



AGENDA

REGULAR MEETING

* * *

CLAYTON CITY COUNCIL

TUESDAY, November 20, 2012

6:15 p.m.

*Hoyer Hall, Clayton Community Library
6125 Clayton Road, Clayton, CA 94517*

Mayor: Howard Geller

Council Members

Julie K. Pierce

David T. Shuey

Hank Stratford

- A complete packet of information containing staff reports and exhibits related to each public item is available for public review in City Hall located at 6000 Heritage Trail on Monday prior to the Council meeting.
- Agendas are posted at: 1) City Hall, 6000 Heritage Trail; 2) Library, 6125 Clayton Road; 3) Ohm's Bulletin Board, 1028 Diablo Street, Clayton; and 4) City Website at www.ci.clayton.ca.us
- Any writings or documents provided to a majority of the City Council after distribution of the Agenda Packet and regarding any public item on this Agenda will be made available for public inspection in the City Clerk's office located at 6000 Heritage Trail during normal business hours.
- If you have a physical impairment that requires special accommodations to participate, please call the City Clerk's office at least 72 hours in advance of the meeting at (925) 673-7304.

*** CITY COUNCIL ***
November 20, 2012

6:15 P.M.

1. **CALL TO ORDER THE CITY COUNCIL** – Mayor Geller.
2. **CLOSED SESSION**
 - (a) *Government Code Section 54956.8, Conference with Real Property Negotiator*
Real Properties: 6055 Main Street, Clayton (APNs 118-560-010 & 119-011-003)
Instructions to City Negotiator (City Manager) concerning terms and conditions.
Negotiating Party: Clayton Community Church.

Report out of Closed Session: Mayor Geller.

7:00 P.M.

3. **PLEDGE OF ALLEGIANCE** – led by Mayor Geller.
4. **CONSENT CALENDAR**

Consent Calendar items are typically routine in nature and are considered for approval by the City Council with one single motion. Members of the Council, Audience, or Staff wishing an item removed from the Consent Calendar for purpose of public comment, question or input may request so through the Mayor.

 - (a) Approve the minutes of the regular meeting of November 6, 2012. ([View Here](#))
 - (b) Approve the Financial Demands and Obligations of the City. ([View Here](#))
5. **RECOGNITIONS AND PRESENTATIONS** – None.
6. **REPORTS**
 - (a) Planning Commission – Commissioner Sandra Johnson.
 - (b) Trails and Landscaping Committee – No meeting held.
 - (c) City Manager/Staff.
 - (d) City Council - Reports from Council liaisons to Regional Committees,
Commissions and Boards.
 - (e) Other

7. **PUBLIC COMMENT ON NON - AGENDA ITEMS**

Members of the public may address the City Council on items within the Council's jurisdiction, (which are not on the agenda) at this time. To facilitate the recordation of comments, it is requested each speaker complete a speaker card available on the Lobby table and submit it in advance to the City Clerk. To assure an orderly meeting and an equal opportunity for everyone, each speaker is limited to 3 minutes, enforced at the Mayor's discretion. When one's name is called or you are recognized by the Mayor as wishing to speak, the speaker shall approach the public podium and adhere to the time limit. In accordance with State Law, no action may take place on any item not appearing on the posted agenda. The Council may respond to statements made or questions asked, or may at its discretion request Staff to report back at a future meeting concerning the matter.

Public comment and input on Public Hearing, Action Items and other Agenda Items will be allowed when each item is considered by the City Council.

8. **PUBLIC HEARINGS** – None.

9. **ACTION ITEMS**

- (a) Consideration of a staff report outlining options and range of costs for updating the City's Noise Element and Noise Ordinance. ([View Here](#))
(Community Development Director)

Staff recommendation: Following staff presentation and public comments, it is recommended the City Council instruct the City Manager to add updating/revising the City's noise regulations into the Council-Manager's *Staff Work in Progress* document until such time a funding source and prioritization are identified.

10. **COUNCIL ITEMS** – limited to requests and directives for future meetings.

11. **ADJOURNMENT**– the next regularly scheduled City Council meeting is December 4, 2012. There is a Town Hall Meeting on November 27, 2012 with the City Council and Clayton business and commercial property owners starting at 9:00 am in Hoyer Hall of the Clayton Community Library.

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**MINUTES
OF THE
REGULAR MEETING
CLAYTON CITY COUNCIL**

TUESDAY, November 6, 2012

Agenda Date: 11-20-12

Agenda Item: 4a

1. **CALL TO ORDER & ROLL CALL** – The meeting was called to order at 6:17 p.m. by Mayor Geller in Hoyer Hall of the Clayton Community Library, 6125 Clayton Road, Clayton, CA. Councilmembers present: Mayor Geller, Councilmembers Pierce, Shuey, and Stratford. Staff present: City Manager Gary Napper, City Attorney Mala Subramanian, and City Clerk Laci Jackson.
2. **CLOSED SESSION**-Mayor Geller announced the following purposes for Closed Session and then adjourned into Closed Session at 6:17 p.m.
 - (a) *Government Code Section 54956.8*, Conference with Real Property Negotiator Real Properties: 6055 Main Street, Clayton (APNs 118-560-010 & 119-011-003) Instructions to City Negotiator (City Manager) concerning terms and conditions. Negotiating Party: Clayton Community Church.

7:05 p.m. Report out of Closed Session: Mayor Geller reported the Council received information and provided direction to its negotiator.
3. **PLEDGE OF ALLEGIANCE** – led by Mayor Geller.
4. **CONSENT CALENDAR**- It was moved by Councilmember Shuey, seconded by Councilmember Pierce, to approve the Consent Calendar as submitted (Passed; 4-0 vote).
 - (a) Approved the minutes of the regular meeting of October 16, 2012.
 - (b) Approved the Financial Demands and Obligations of the City.
 - (c) Approved a multi-year Agreement (60-month lease) with Neopost Leasing Company for an IS-440 replacement City Hall postage equipment and accompanying maintenance at a 5-year lease price of \$8,422.80.
5. **RECOGNITIONS AND PRESENTATIONS** – None.
6. **REPORTS**
 - (a) Planning Commission – Commissioner Dan Richardson reported on the October 30th Planning Commission meeting. The Commission approved a residential balcony addition, and a Use Permit with conditions for seasonal items in front of the Safeway store.

Mayor Geller stated the Clayton Station shopping center should have entrance signage noting each business in the Center.. Commissioner Richardson stated that was up to the property owner to decide.
 - (b) Trails and Landscaping Committee – No meeting held.

- (c) The City Manager stated last week staff received complaints about dog owners allowing their dogs off leash in the Community Park. He reminded citizens that large portions of the park are used by the adjacent middle school for P.E. and he encouraged dog owners to pick up after their dogs. The City Manager stated interviews were conducted for a new Chief of Police. He stated 22 applications were received and 8 applicants were invited to the interview process. Seven candidates completed interviews with a community panel and a professional panel. He stated he interviewed the top candidate and made a conditional offer of employment. He stated the candidate is very qualified and fairly local. He also noted neighborhood street sweeping will change slightly next week for two areas of town.

(d) City Council

Councilmember Pierce attended two ABAG meetings, a Contra Costa Council workshop, met with a delegation from China, attended a Transportation Authority meeting, and the Mayors' Conference. She also attended the Toll Brothers Lot 25 tour and dedication at Diablo Estates.

Councilmember Stratford sat on the interview panel for the Police Chief, and went on a site tour with Seth Adams and Ron Brown from Save Mt. Diablo.

Mayor Geller met with the owners of Flora Square and a restaurateur from Walnut Creek. He commended the Police Department for dealing with a recent matter (suicide) in Westwood Park this past week.

- (e) Other – None.

7. **PUBLIC COMMENTS** – None.

8. **PUBLIC HEARINGS**- None.

9. **ACTION ITEMS**

- (a) City Council determination of the date, time, location and agenda topics for its 4th annual Town Hall Meeting with the Clayton business community and commercial property owners.

The City Manager stated for the fourth year the Council expects to hold a meeting with Clayton business owners. He stated the staff report outlined a tentative scope for the agenda including:

1. Critique of the 2012 Concerts in The Grove Saturday series (10 concerts).
Suggestions for the 2013 series?
2. Evaluation of the inaugural Thursday 2012 Concert in The Grove series (5 concerts). Suggestions?
3. Ideas for a healthier local business economy.
4. Other topics.

It was moved by Councilmember Shuey, seconded by Councilmember Stratford, to call for a special meeting to be held on Tuesday, November 27, 2012 at 9 a.m. in Hoyer Hall of the Clayton Community Library for its annual town hall meeting with the Clayton business community with the topics on the Agenda as submitted in the staff report (Passed; 4-0 vote).

10. **COUNCIL ITEMS** – Councilmember Shuey asked for information to discuss recording or taking minutes of Closed Session meetings.

13. **ADJOURNMENT**– On call by Mayor Geller the meeting adjourned at 7:32 p.m.

Respectfully submitted,

Laci J. Jackson, City Clerk

APPROVED BY CLAYTON CITY COUNCIL

Howard Geller, Mayor



Agenda Date: 11/20/2012

Agenda Item: 4b

Approved:

Gary A. Napper
City Manager/Executive Director

STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: MERRY PELLETIER, FINANCE MANAGER

DATE: 11/20/2012

SUBJECT: INVOICE SUMMARY

RECOMMENDATION

Approve the following Invoices.

11/16/2012	Cash Requirements Report	\$151,499.33
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11/16/2012	Invoices Paid in Advance of Meeting	\$ 86.09
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1. DeLage Landen Financial Services Property Tax/Admin fee

TOTAL REQUEST	\$	<u>151,585.42</u>
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Attachments:

Cash Requirements Report dated 11/16/2012 (4 pages)

Copy of check and invoice for DeLage Landen (2 pages)

City of Clayton

Cash Requirements Report

City Council 11/20/12

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
Access One								
Access One	11/20/2012	11/2/2012	1309907	Long Distance Service	\$64.14	\$0.00		\$64.14
				<i>Totals for Access One:</i>	<i>\$64.14</i>	<i>\$0.00</i>		<i>\$64.14</i>
All City Management Services, Inc.								
All City Management Services, Inc.	11/20/2012	10/26/2012	28835	School Crossing Guard Services	\$465.00	\$0.00		\$465.00
All City Management Services, Inc.	11/20/2012	11/2/2012	38947	School Crossing Guard Svcs	\$232.50	\$0.00		\$232.50
				<i>Totals for All City Management Services, Inc.:</i>	<i>\$697.50</i>	<i>\$0.00</i>		<i>\$697.50</i>
American Fidelity Assurance Company								
American Fidelity Assurance Company	11/20/2012	10/30/2012	777797A	September Employee Billing	\$975.59	\$0.00		\$975.59
				<i>Totals for American Fidelity Assurance Company:</i>	<i>\$975.59</i>	<i>\$0.00</i>		<i>\$975.59</i>
Bay Area News Group-East Bay								
Bay Area News Group-East Bay	11/20/2012	11/14/2012	0004629912	Mitchell Creek Place Ad	\$130.40	\$0.00		\$130.40
Bay Area News Group-East Bay	11/20/2012	11/14/2012	0004603759	Election Ad	\$91.20	\$0.00		\$91.20
				<i>Totals for Bay Area News Group-East Bay:</i>	<i>\$221.60</i>	<i>\$0.00</i>		<i>\$221.60</i>
Best Best & Kreiger LLP								
Best Best & Kreiger LLP	11/20/2012	11/8/2012	690022-690024	October 2012	\$14,705.00	\$0.00		\$14,705.00
				<i>Totals for Best Best & Kreiger LLP:</i>	<i>\$14,705.00</i>	<i>\$0.00</i>		<i>\$14,705.00</i>
CalPERS Health								
CalPERS Health	11/20/2012	11/14/2012	837	Health Benefits December 2012	\$26,764.92	\$0.00		\$26,764.92
				<i>Totals for CalPERS Health:</i>	<i>\$26,764.92</i>	<i>\$0.00</i>		<i>\$26,764.92</i>
CalPERS Retirement								
CalPERS Retirement	11/20/2012	11/14/2012	11/24/12	City Council - 10/25/12-11/24/12	\$357.28	\$0.00		\$357.28
CalPERS Retirement	11/20/2012	11/14/2012	11/11/12	PPE 11/11/12 Pay 11/14/12	\$21,698.73	\$0.00		\$21,698.73
				<i>Totals for CalPERS Retirement:</i>	<i>\$22,056.01</i>	<i>\$0.00</i>		<i>\$22,056.01</i>
Clayton Historical Society								
Clayton Historical Society	11/20/2012	11/9/2012	024430	Endeavor Hall deposit refund	\$397.00	\$0.00		\$397.00
				<i>Totals for Clayton Historical Society:</i>	<i>\$397.00</i>	<i>\$0.00</i>		<i>\$397.00</i>
Comcast								
Comcast	11/20/2012	11/14/2012	12/01/12	Monthly high speed internet	\$392.48	\$0.00		\$392.48
				<i>Totals for Comcast:</i>	<i>\$392.48</i>	<i>\$0.00</i>		<i>\$392.48</i>
Contra Costa Tractor Mobile Svc								
Contra Costa Tractor Mobile Svc	11/20/2012	11/1/2012	015748	Service Call 2 trip - Replace Oil Switches	\$336.91	\$0.00		\$336.91
				<i>Totals for Contra Costa Tractor Mobile Svc:</i>	<i>\$336.91</i>	<i>\$0.00</i>		<i>\$336.91</i>
Contra Costa Water Dist.								
Contra Costa Water Dist.	11/20/2012	11/14/2012	E Series	Water service September-November	\$28,189.10	\$0.00		\$28,189.10

City of Clayton

Cash Requirements Report

City Council 11/20/12

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount Expires On	Discount Expires On	Net Amount Due
CR Fireline Inc				<i>Totals for Contra Costa Water Dist.:</i>				
CR Fireline Inc	11/20/2012	11/1/2012	93971	Svc call, clean fire alarm duct	\$475.00	\$0.00		\$28,189.10
				<i>Totals for CR Fireline Inc:</i>	\$475.00	\$0.00		\$475.00
Cropper Accountancy Corp								
Cropper Accountancy Corp	11/20/2012	10/31/2012	658	Agreed Upon Procedures report for Low & Mo	\$5,000.00	\$0.00		\$5,000.00
				<i>Totals for Cropper Accountancy Corp:</i>	\$5,000.00	\$0.00		\$5,000.00
De Lage Landen Financial Services, Inc.								
De Lage Landen Financial Services, Inc.	11/20/2012	11/10/2012	15855423	account 380555 Konica lease	\$431.68	\$0.00		\$431.68
				<i>Totals for De Lage Landen Financial Services, Inc.:</i>	\$431.68	\$0.00		\$431.68
Delta Bay Concrete Cutting								
Delta Bay Concrete Cutting	11/20/2012	11/5/2012	30360	Core Drill concrete slab holes for benches	\$465.00	\$0.00		\$465.00
				<i>Totals for Delta Bay Concrete Cutting:</i>	\$465.00	\$0.00		\$465.00
Diablo View Construction								
Diablo View Construction	11/20/2012	11/7/2012	0050	deposit refund 726 Bloching Circle	\$500.00	\$0.00		\$500.00
Diablo View Construction	11/20/2012	11/7/2012	0051	Deposit refund for 407 Mt Sequoia	\$500.00	\$0.00		\$500.00
				<i>Totals for Diablo View Construction:</i>	\$1,000.00	\$0.00		\$1,000.00
Hammons Supply Company								
Hammons Supply Company	11/20/2012	11/14/2012	74952	Library Janitorial Supplies	\$434.35	\$0.00		\$434.35
				<i>Totals for Hammons Supply Company:</i>	\$434.35	\$0.00		\$434.35
HUB Inter of CA Ins Svc								
HUB Inter of CA Ins Svc	11/20/2012	11/12/2012	October 2012	October Policy	\$231.84	\$0.00		\$231.84
				<i>Totals for HUB Inter of CA Ins Svc:</i>	\$231.84	\$0.00		\$231.84
John Deere Landscapes Inc								
John Deere Landscapes Inc	11/20/2012	10/30/2012	63141884	Product 438-336 x 6	\$18.11	\$0.00		\$18.11
				<i>Totals for John Deere Landscapes Inc:</i>	\$18.11	\$0.00		\$18.11
LarryLogic Productions								
LarryLogic Productions	11/20/2012	11/7/2012	1288	City Council Meeting 11/6/12	\$300.00	\$0.00		\$300.00
				<i>Totals for LarryLogic Productions:</i>	\$300.00	\$0.00		\$300.00
Muir/ Diablo Occupation Medicine								
Muir/ Diablo Occupation Medicine	11/20/2012	11/6/2012	200682	Christopher Thorsen	\$436.00	\$0.00		\$436.00
				<i>Totals for Muir/ Diablo Occupation Medicine:</i>	\$436.00	\$0.00		\$436.00
Neopost (add postage)								
Neopost (add postage)	11/20/2012	11/9/2012	11/9	Additional Postage	\$300.00	\$0.00		\$300.00

City of Clayton

Cash Requirements Report

City Council 11/20/12

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount Expires On	Discount Expires On	Net Amount Due
PERMCO, Inc.				<i>Totals for Neopost (add postage):</i>	<u>\$300.00</u>	<u>\$0.00</u>		<u>\$300.00</u>
PERMCO, Inc.	11/20/2012	11/13/2012	9868	Retainer- General Services	\$2,469.75	\$0.00		\$2,469.75
PERMCO, Inc.	11/20/2012	11/13/2012	9854	General retainer, corrected previous invoice	\$136.00	\$0.00		\$136.00
PERMCO, Inc.	11/20/2012	11/13/2012	9869	P G & E EP (minor)	\$41.50	\$0.00		\$41.50
PERMCO, Inc.	11/20/2012	11/13/2012	9870	CCWD EP (minor)	\$41.50	\$0.00		\$41.50
PERMCO, Inc.	11/20/2012	11/13/2012	9871	AT&T Wireless - Nottingham Circle	\$750.00	\$0.00		\$750.00
PERMCO, Inc.	11/20/2012	11/13/2012	9872	Diablo Pointe Plan Check	\$636.75	\$0.00		\$636.75
PERMCO, Inc.	11/20/2012	11/13/2012	9856	Diablo Pointe Plan Check, corrected previous i	\$150.00	\$0.00		\$150.00
PERMCO, Inc.	11/20/2012	11/13/2012	9873	Diablo Pointe Construction Inspection	\$1,992.00	\$0.00		\$1,992.00
PERMCO, Inc.	11/20/2012	11/13/2012	9874	Construction Activity Permit	\$41.50	\$0.00		\$41.50
PERMCO, Inc.	11/20/2012	11/13/2012	9874	Construction Activity Permit	\$41.50	\$0.00		\$41.50
PERMCO, Inc.	11/20/2012	11/13/2012	9874	Construction Activity Permit	\$41.50	\$0.00		\$41.50
PERMCO, Inc.	11/20/2012	11/13/2012	9874	Construction Activity Permit	\$41.50	\$0.00		\$41.50
PERMCO, Inc.	11/20/2012	11/13/2012	9875	GHAD - Kelok Dewatering Well Installation	\$122.50	\$0.00		\$122.50
				<i>Totals for PERMCO, Inc.:</i>	<u>\$6,506.00</u>	<u>\$0.00</u>		<u>\$6,506.00</u>
Pinnacle Residential Services								
Pinnacle Residential Services	11/20/2012	11/5/2012	1576	Diablo Estates BAD	\$4,099.00	\$0.00		\$4,099.00
				<i>Totals for Pinnacle Residential Services:</i>	<u>\$4,099.00</u>	<u>\$0.00</u>		<u>\$4,099.00</u>
Rex Lock & Safe, Inc.								
Rex Lock & Safe, Inc.	11/20/2012	10/31/2012	100562	Parts & Labor Library	\$374.32	\$0.00		\$374.32
				<i>Totals for Rex Lock & Safe, Inc.:</i>	<u>\$374.32</u>	<u>\$0.00</u>		<u>\$374.32</u>
Rita Howe								
Rita Howe	11/20/2012	11/14/2012	11/14/12	Petty Cash Replenishment	\$181.07	\$0.00		\$181.07
				<i>Totals for Rita Howe:</i>	<u>\$181.07</u>	<u>\$0.00</u>		<u>\$181.07</u>
Rock & Waterfall Co								
Rock & Waterfall Co	11/20/2012	10/28/2012	108-69	Waterfall Maintenance	\$650.00	\$0.00		\$650.00
				<i>Totals for Rock & Waterfall Co:</i>	<u>\$650.00</u>	<u>\$0.00</u>		<u>\$650.00</u>
Simpson Investigative Svc Grp								
Simpson Investigative Svc Grp	11/20/2012	11/14/2012	1306	Pre-employment background investigation - T	\$1,853.28	\$0.00		\$1,853.28
				<i>Totals for Simpson Investigative Svc Grp:</i>	<u>\$1,853.28</u>	<u>\$0.00</u>		<u>\$1,853.28</u>
SPRAYTEC (Sprayer Sales Co)								
SPRAYTEC (Sprayer Sales Co)	11/20/2012	11/9/2012	11491	WTS - Clayton 10/15 & 10/30	\$225.00	\$0.00		\$225.00
				<i>Totals for SPRAYTEC (Sprayer Sales Co):</i>	<u>\$225.00</u>	<u>\$0.00</u>		<u>\$225.00</u>
Sprint Comm (PW & ADM)								
Sprint Comm (PW & ADM)	11/20/2012	10/29/2012	531409315-126	Service 9/26-10/25/12	\$335.75	\$0.00		\$335.75
				<i>Totals for Sprint Comm (PW & ADM):</i>	<u>\$335.75</u>	<u>\$0.00</u>		<u>\$335.75</u>

City of Clayton

Cash Requirements Report

City Council 11/20/12

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
Stockbridge General Contracting, Inc								
Stockbridge General Contracting, Inc	11/20/2012	10/29/2012	9	Pay Application #9 SGC12-017	\$15,992.97	\$0.00		\$15,992.97
Stockbridge General Contracting, Inc	11/20/2012	11/10/2012	1035	Draw 01-12-017-0009	\$1,156.67	\$0.00		\$1,156.67
				Totals for Stockbridge General Contracting, Inc:	\$17,149.64	\$0.00		\$17,149.64
SWRCB Fees								
SWRCB Fees	11/20/2012	10/23/2012	WD-0078703	State Water Resources Control Board Annual I	\$7,279.00	\$0.00		\$7,279.00
				Totals for SWRCB Fees:	\$7,279.00	\$0.00		\$7,279.00
US Bank Corp Pymt System (Cal Card)								
US Bank Corp Pymt System (Cal Card)	11/20/2012	10/22/2012	ADM 10/12	Supplies, storage rent	\$173.26	\$0.00		\$173.26
US Bank Corp Pymt System (Cal Card)	11/20/2012	10/22/2012	ADM 10/12	Food for Interview Panel	\$301.52	\$0.00		\$301.52
US Bank Corp Pymt System (Cal Card)	11/20/2012	10/22/2012	ADM 10/12	AGI - Checkfree	\$126.55	\$0.00		\$126.55
US Bank Corp Pymt System (Cal Card)	11/20/2012	10/22/2012	PW 10/12	Paint and Rollers	\$142.86	\$0.00		\$142.86
US Bank Corp Pymt System (Cal Card)	11/20/2012	10/22/2012	PW 10/12	OSH - paint and tire seal	\$45.84	\$0.00		\$45.84
US Bank Corp Pymt System (Cal Card)	11/20/2012	10/22/2012	PW 10/12	Vehicle fuel	\$1,280.25	\$0.00		\$1,280.25
US Bank Corp Pymt System (Cal Card)	11/20/2012	10/22/2012	PW 10/12	OSH - wasp spray	\$32.57	\$0.00		\$32.57
US Bank Corp Pymt System (Cal Card)	11/20/2012	10/22/2012	PW 10/12	East Bay Tire, repair/replace tire	\$424.23	\$0.00		\$424.23
US Bank Corp Pymt System (Cal Card)	11/20/2012	10/22/2012	PW 10/12	Landscape fuel	\$950.88	\$0.00		\$950.88
US Bank Corp Pymt System (Cal Card)	11/20/2012	10/22/2012	PW 10/12	OSH - pipe for downtown	\$16.92	\$0.00		\$16.92
US Bank Corp Pymt System (Cal Card)	11/20/2012	10/22/2012	PD 10/12	First Aid supplies, pants, key, step stool	\$318.60	\$0.00		\$318.60
US Bank Corp Pymt System (Cal Card)	11/20/2012	10/22/2012	PD 10/12	Office supplies	\$287.91	\$0.00		\$287.91
US Bank Corp Pymt System (Cal Card)	11/20/2012	10/22/2012	PD 10/12	USPS - Postage	\$34.70	\$0.00		\$34.70
US Bank Corp Pymt System (Cal Card)	11/20/2012	10/22/2012	PD 10/12	Pro Force LE - Taser Cartridges	\$553.41	\$0.00		\$553.41
US Bank Corp Pymt System (Cal Card)	11/20/2012	10/22/2012	PD 10/12	Bike repair, paint repair - chief's car, car wash	\$841.60	\$0.00		\$841.60
US Bank Corp Pymt System (Cal Card)	11/20/2012	10/22/2012	PD 10/12	Vehicle gas	\$2,953.47	\$0.00		\$2,953.47
US Bank Corp Pymt System (Cal Card)	11/20/2012	10/22/2012	PD 10/12	Ice and drinks for OKT staff	\$60.52	\$0.00		\$60.52
US Bank Corp Pymt System (Cal Card)	11/20/2012	10/22/2012	PD 10/12	SRPSTC - registration for FTO SAC school	\$57.00	\$0.00		\$57.00
US Bank Corp Pymt System (Cal Card)	11/20/2012	10/22/2012	PD 10/12	AmerUSA - credit report for Andre Charles	\$9.95	\$0.00		\$9.95
				Totals for US Bank Corp Pymt System (Cal Card):	\$8,612.04	\$0.00		\$8,612.04
Western Exterminator								
Western Exterminator	11/20/2012	10/31/2012	699283	October 2012	\$342.00	\$0.00		\$342.00
				Totals for Western Exterminator:	\$342.00	\$0.00		\$342.00
GRAND TOTALS:					\$151,499.33	\$0.00		\$151,499.33

To: De Lage Landen Financial Services, Inc.
PO Box 41602
Philadelphia, PA 19101-1602

INVOICE NUMBER	DATE	DESCRIPTION	AMOUNT	DISCOUNT	NET AMOUNT
15695785	10/27/2012	Property Tax and Admin Fee	\$86.09	\$0.00	\$86.09
		Totals:	\$86.09	\$0.00	\$86.09

on # F055 To reorder, please call Blackbaud Forms at our toll free number 800.341.2197

THIS DOCUMENT CONTAINS A TRUE WATERMARK - HOLD TO LIGHT TO VERIFY WATERMARK



6000 HERITAGE TRAIL, CLAYTON, CALIFORNIA 94517

BANK OF AMERICA, NA
11-35/1210

028983

CHECK DATE CHECK NO.

11/7/2012 28983

CHECK AMOUNT

\$** 86.09

Eighty six and 09/100 Dollars

PAY

TO THE
ORDER
OF

De Lage Landen Financial Services, Inc.
PO Box 41602
Philadelphia, PA 19101-1602

VOID AFTER 6 MONTHS

AUTHORIZED SIGNATURE

Details on Back

Security Features Included

⑈028983⑈ ⑆121000358⑆ 09825⑈04799⑈



De Lage Landen Financial Services, Inc.



Please check here if your address has changed.
Provide new address on reverse side.

Remittance Section

Invoice No.	Account	Due Date
15695785	380555	11/19/2012
Due This Period	Amount Enclosed	
\$86.09	\$	

See Statement Below



CITY OF CLAYTON
EMAIL INVOICING
6000 HERITAGE TRL
CLAYTON, CA 945171249

Please make check payable to



DE LAGE LANDEN
PO BOX 41602
PHILADELPHIA, PA 19101-1602

21000000156957850000086096

Keep lower portion for your records - Please return upper portion with your payment

DE LAGE LANDEN
PO BOX 41602
PHILADELPHIA, PA 19101-1602

Invoice Date
10/27/2012

Invoice Number
15695785

Account
380555

Contract Number
25079777

Important Messages

Please visit us online at www.lesseedirect.com to:

- Make payments
- View copies of your contract and open invoices

See Reverse for Important Information

Invoice Details			
Description	Payment Amount	Sales/Use Tax	Total Amount
PROPERTY TAX	\$72.30	\$5.96	\$78.26
PROPERTY TAX ADMIN FEE	\$7.23	\$0.60	\$7.83
Billed this Invoice			\$86.09

(Please see the following pages for details.)

Jurisdiction	Contract Number	Make/ Model	Serial Number	Purchase Order	Lien Date	Assessed Value	Rate	Property Tax
	25079777	KONMIN/C6 52	AOP001100 3383		01/01/2012	\$6652.00	1.09	\$72.30

Asset Details						
Contract Number	Serial Number	Make / Model	Asset Number	Payment Amount	Sales/Use Tax	Total Amount
25079777	AOP0011003383	KONMIN/C652	25079777_1	\$79.53	\$6.56	\$86.09
Asset Location: 6000 HERITAGE TRL CLAYTON CONTRA COSTA CA 94517-1250 United States						
						Asset Amount Total \$86.09

Jan Sack 11/7/12
AUTHORIZED BY DATE
3023 101-7331-05
VENDOR # ACCOUNT #
86.09
AMOUNT CITY MANAGER APPROVAL

11-07-12



Agenda Date: 11-20-12

Agenda Item: 9a

Approved:

Gary A. Napper
City Manager

AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: DAVID WOLTERING, COMMUNITY DEVELOPMENT DIRECTOR

DATE: NOVEMBER 20, 2012

SUBJECT: CITY OF CLAYTON NOISE REGULATIONS (CDD 04-12)

RECOMMENDATION

It is recommended the City Council instruct the City Manager to list amending and/or comprehensively updating the City's noise regulations in the Council-Manager's *Staff Work in Progress* document for tracking purposes until a dedicated funding source can be identified and approved for this planning work.

BACKGROUND

At the October 2, 2012 City Council meeting, an informational item was placed on the agenda that the operators of the Clayton Club had submitted a letter, dated September 15, 2012 (See **Attachment 1**), requesting that the City modify its noise regulations, specifically Chapter 9.30 of the Clayton Municipal Code (CMC) and the City's General Plan Noise Element (See **Attachments 2 and 3**). In this letter submitted by Mr. Steve Barton, one of the operators of the Clayton Club, he described a process the Club had gone through with City staff to address noise complaints received by the City regarding the Club's operations. He complimented the efforts of all parties involved, but indicated the City's current noise regulations and policies (i.e., Chapter 9.30 of the CMC and the Noise Element, specifically) did not allow for a balanced solution when considering commercial interests and other interests of the community. Among the concerns cited in the letter are the lack of consistent quantitative thresholds for determining compliance and the lack of prescribed methods for taking sound measurements. Given that this was an informational item, discussion was not appropriate for this item at the October 2, 2012 meeting. The Council, however, asked staff to research the matter and report back with its findings.

Since the October 2, 2012 meeting, staff has reviewed noise regulations from other communities including the City of Walnut Creek, Contra Costa County, City of Carmel, City of St. Helena, Town of Los Gatos, and the City of Saratoga. Staff has also researched online information about noise regulations pertaining to mixed-use environments (i.e., environments in which there are commercial and non-commercial land uses, including residential uses), contacted other staff members, and spoken to consultants that have prepared Noise Elements for local communities.

DISCUSSION

Clayton's noise policies and regulations are found primarily in two locations – the General Plan Noise Element and Chapter 9.30 of the CMC. Clayton's General Plan was originally adopted on July 17, 1985, and the Noise Element most recently amended in March of 2000. Chapter 9.30 of the CMC was adopted by the City in 1999 and most recently amended in 2007. Neither of these documents provides specific policy direction or clear regulatory requirements for addressing noise complaints in "mixed-use" environments. As staff has spoken with other staff members from other communities and consultants working in the field of noise regulation, this issue of establishing policies and regulations to address these environments is an area of work that many communities are yet to address. Staff has reviewed and attached an internet article titled, "Noise Management in Mixed-Use Urban Environments" (See **Attachment 4**). This article discusses the inherent conflict between trying to create vital and successful commercial places and, at the same time, mix in residential and other non-commercial uses. There are many techniques discussed in the article for addressing the potential conflicts from not allowing sensitive uses in certain areas, to requiring buffers and separation standards, to construction methodologies which entail using sound absorbing materials, to operational restrictions on hours, sound volumes, etc.

Staff generally agrees with Mr. Barton's assessment that Clayton's current policies and regulations do not provide specific guidance for addressing noise management in mixed-use environments and that the policies and codes could be updated to provide more specific and consistent quantitative thresholds and methodologies for taking sound measurements. When managing such land use conflicts, it is inherently beneficial to have the most current tools available. There are various options to address this circumstance as follows:

1. Continuing to work with the current Noise Element and regulations (i.e., Chapter 9.30) as staff attempted to do with the operators of the Clayton Cub (**No Change Option**).
2. Selectively amend the Noise Element goals, objectives and policies and the regulations (i.e., Chapter 9.30) to address the primary area of concern to formulate noise standards for mixed-use environments, i.e., Town Center Area (**Amendment Option A**).
 - Estimated timeframe: 4-6 months
 - Estimated costs: \$10,000- \$15,000 (Consultant); \$7,000-\$10,000 (Staff): **\$17,000-\$25,000 total**
3. Selectively amend and update the Noise Element goals, objectives and policies and the regulations (i.e., Chapter 9.30) Citywide (**Amendment Option B**).
 - Estimated timeframe: 6-8 months
 - Estimated costs: \$15,000- \$20,000 (Consultant); \$10,000-\$12,000 (Staff): **\$25,000-\$32,000 total**

4. Comprehensively update the Noise Element and the regulations to address citywide noise issues. This would involve mapping new noise contours for the community (Options 2 and 3 do not include this task) (**Comprehensive Update Option**).

- Estimated timeframe: 8-12 months
- Estimated costs: \$20,000- \$30,000 (Consultant); \$12,000-\$15,000 (Staff): **\$32,000-\$45,000 total**

FISCAL IMPACT

There is no dedicated funding source to amend or comprehensively update the City's noise regulations at this time. General Fund money would need to be used to fund any work directed pertaining to this issue.

CONCLUSION

Staff acknowledges that it would be helpful to amend or comprehensively update the City's noise regulations. However, there is no dedicated funding source for this work effort. Moreover, there are other demands that will be forthcoming for the City to consider. For example, the City will need to consider, prior to January 31, 2013, a One Bay Area Grant (OBAG) requirement to adopt a Complete Streets resolution. And, next year, the City will need to again initiate work on updating its Housing Element. The consulting cost alone for the last Housing Element update was approximately \$44,000. The City had Redevelopment Agency funds that it could use for the last Housing Element update. A funding source will need to be identified for that project.

The policy question arises if the City has \$25,00-\$30,000 in General Fund monies to expend on land use/planning studies or updates, is revising the City's noise regulations the highest priority or need, particularly with the very few complaints registered.

Accordingly, staff suggests that until a dedicated funding source can be identified for amending or comprehensively updating the City's noise regulations that this work effort be listed in the Council-Manager's *Staff Work in Progress* document for tracking purposes.

Attachments:

- 1 September 15, 2012 letter from Steve Barton, Clayton Club Operator
- 2 Chapter 9.30 of the Clayton Municipal Code (CMC)
- 3 Noise Element of the City of Clayton
- 4 Internet article titled "Noise Management in Mixed-use Urban Environments"
- 5 Staff report, dated September 21, 2012 presented at the October 2, 2012 City Council meeting



6096 Main Street, Clayton, CA 94517

Attachment 1

September 15, 2012

City of Clayton
Clayton City Council
Clayton Planning Commission

Ref: Clayton Noise Ordinance

Attached is a recommendation to modify Chapter 9.30 of the Clayton Municipal Code and the Noise Element of the City Goals, Objectives, Policies and Implementation Measures document (Section VIII of the Clayton General Plan).

The current ordinance and policies do not reflect the actual conditions which can be achieved given the natural background noise levels that exist in the downtown commercial district. Further, no distinction is made between permissible noise levels in residential neighborhoods and the commercial district.

We at the Clayton Club recently had the opportunity to work closely with city officials to address noise mitigation measures attendant to a recent complaint. We saw this as an opportunity to work out a balanced approach to sound management which could satisfy neighbors, allow us to make informed decisions on sound emanating from the club and save the local Police time in addressing non-critical issues. We felt that we could intelligently manage levels with new equipment and collective understanding regarding those levels that produced too much transmitted sound.

Despite high hopes and diligent efforts on the part of city staff and Clayton Club managers, a balanced solution which addressed both the needs of the Commercial district and complies with the ordinance was not achieved. City staff worked hard to manage to an ordinance that seems reasonable on the surface. Clayton Club managers strived to implement a predictable and reproducible solution. The result was a set of measures taken by the Clayton Club to without regard to ambient conditions which are beyond our control. While we recognize that some sound mitigation measures were necessary, some of those implemented will have a continuing and long term financial impact on the Club. These measures involve curtailment of operations and loss of privileges by the Clayton Club. Despite these views, we continue to have the highest regard for the efforts and good intentions put forth by city staff during this project.

We all look forward to the day when the economy will be sufficiently robust to encourage new investment in our small downtown and the City can move forward with new development. If the City of Clayton is intent on attracting the additional businesses needed to create a vibrant downtown a viable noise ordinance must be devised.

Regards,

Steve Barton
Dennis Mitchell

RECEIVED

SEP 14 2012

**CLAYTON COMMUNITY
DEVELOPMENT DEPT**

CITY OF CLAYTON NOISE ORDINANCE RECOMMENDATION

INTRODUCTION

This is a recommendation to change to the current Chapter 9.30 of the Clayton Municipal Code, specifically the Noise Ordinance. Based on discussions with city staff, only one set of criteria exists within city code to govern noise management for both commercial and residential applications. It is our position that different criteria should be applied to commercial enterprises than is used for residential areas. The current code is not uniformly enforceable and is, in many respects, unreasonable when applied to the Town Center Commercial District. We offer two reasons for this assertion:

- 1) It is a violation of the Municipal Code if the sound emanating from a business is audible 50 feet from the property line.
- 2) It is a violation of the Noise Element of General Plan if property line decibel readings exceed 60Db.

Audibility alone should not be the basis for citing a violation as it is not a measurable criteria and leads to subjective interpretation. It is virtually unattainable to have an outdoor patio conversation area that cannot be detected from 50 feet away.

Second, and of greater importance, we have collected more than 100 decibel measurements at locations throughout the Town Center at various times of day, and it is clear that the decibel level used to determine that a violation has occurred is unachievable even before businesses are open. The ambient level of sound in the downtown area averages around 65Db and within a range between 60 and 75Db.

RECOMMENDATION

We have the following recommendations to city government:

1. Modify Municipal Code to recognize specific decibel levels as the determining factor in citing violations of code. Audibility should be removed as a criterion for citing violations in commercial areas and, if used at all, be used as a trigger to take measurements following a complaint.
2. Modify code for commercially zoned areas to use decibel readings which take into account the ambient sound conditions which form a baseline for the area. Contra Costa County regulations recognize conditionally acceptable levels of 70Db during the day time and 65Db from 10pm to 7am. These could be applied to the commercial areas of Clayton. Alternatively, the city could undertake studies of its own to discover ambient sound levels in various conditions, locations and times to arrive at their own conclusion on appropriate regulatory levels.

The goal must be to achieve a balanced solution which affords businesses the ability to predictably manage noise compliance, to enable city officials to respond to complaints with objective data at their fingertips, and to ensure that we will be successful as the good neighbors we would like to continue to be.

Finally, unamplified voice sound should not be a violation of the ordinance downtown if it falls at or below the regulatory decibel levels.

In these austere times, it seems unreasonable to put the city to the sort of expense that sound engineers incur. We would be pleased to provide volunteer time to work at the city's direction to gather data to allow draft criteria to be developed.

Attachments:

1. **Decibel Management – Response to City Concerns:** Final Draft of the working document used to identify and track measures taken to resolve sound issues between City of Clayton and Clayton Club.
2. **Graphs** of recent extended time sound measurements taken at Clayton Club property lines: These graphs reflect sound measurements ranging from one half hour to one and a half hours at points where infractions were noted in recent discussions and represent the normal sound levels of the downtown. No audible sound was coming from the Clayton Club during these recording sessions with the exception of the measurement taken at 22:18 on 9/5. (recorded by Steve Barton)
3. **Clayton Club Noise Test - 6/13/12:** A set of 30 second average sound measurements taken by city staff with participation from owners of the Clayton Club recorded by Dave Woltering
4. **Decibel Readings – Clayton:** A collection of point in time measurements taken at various times of day and locations in the town center as recorded by Steve Barton

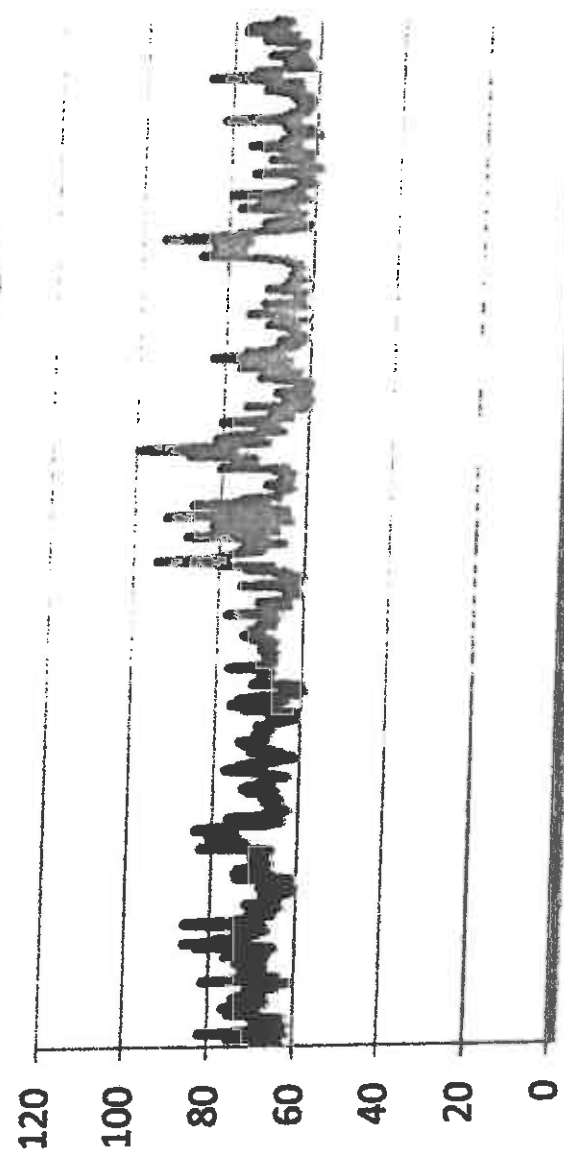
Decibel management - response to city concerns

Measures taken to date		Status
	Temporary "line of sight" sound absorption barrier place near rear exit to reduce sound transmission levels toward new housing. Given the limited success of this test, it will be removed.	complete
	Ventilation window on dance floor sealed with sound absorption material. This closure will be made permanent	complete
	Signage has been place on entry/exit doors stating that doors must remain closed after 10 pm when musicians are performing	complete
	Bar staff have been provided with handheld Db meter to monitor sound levels during hours of musical performance and advised to instruct musicians when DB levels exceed 95.	complete
Additional Measures to be taken		
	Current 8-1/2x11 signs stating that doors must be closed after 10 pm are deemed inadequate. City would like them readable from 30 feet away. Existing signs will be replaced with signage that is 11x17 with larger font than the 55 point currently used	complete
	Mandatory door closure restrictions will be expanded to seven days a week after 10 pm, and not just on nights when musicians are not performing.	with immediate effect
	Multiple similarly large signs will be placed in the patio area to caution customers to avoid loud behavior. Signs must be visible from all gathering places and large enough to be read from 30 feet away.	complete with immediate effect
	The patio bar may not be operated after 10pm on weekdays unless a Temporary Use Permit has been obtained. Weekdays are defined as Sunday night through Thursday night excluding holiday eves.	with immediate effect
	The patio bar must be closed for business on or before 12:30 am on weekends. Use up to 12:30am on weekends will not require a Temporary Use Permit. For the purpose of this item, weekends are defined as Friday and Saturday nights and holiday eves.	with immediate effect
	When patio bar is in use Clayton Club must ensure that, in addition to the outside bartender, two doormen are present in patio area so one may circulate among patio customers to advise them to refrain from loud behavior.	with immediate effect
	Additional ventilation will be installed (i.e. portable fan and/or portable air conditioners) to replace lost ventilation arising from door closures and window elimination. City approval is required for types of equipment and measures to be taken.	complete
	Additional surveillance will be provided to ensure door closures do not result in unobserved behavior at front entry. These measures may be installing windowed doors, additional camera monitors, additional doormen to position observers on both sides of closed doors. Final solution to be approved by city.	complete
	A decibel alarm will be placed in view of the bartender to alert them when sound levels exceed 95 decibels inside the building. The bartender will advise musicians to reduce sound to below the 95Db threshold. 95Db was chosen because it allows a Db reading of 60 at the center street property line when doors are open.	complete
Recommendations to the city for future consideration		
	Allow the Clayton Club to have doors open if they remain in compliance with noise ordinance	
	Allow Clayton Club to keep patio bar open during normal licensing hours if in compliance with noise ordinance.	
	City should determine sound violations solely based on Db level measurements which are specific. A business should not be held in violation of city ordinance for audible sounds which are at or below the acceptable decibel readings. The city noise ordinance should be modified to cite specific acceptable decibel readings rather than subjective audibility.	
	City should consider ambient sound levels in the downtown areas in its determination of noise violations by a single business. Since ambient sound levels when downtown businesses are closed average about 65Db, citing violations between 60Db and 65Db seems impractical. City should consider adopting a standards in line with county standards for the downtown commercial district at 70Db during daytime hours and 65Db between 10pm and 7am. Alternatively, the city should undertake a study of ambient noise conditions at various times of day and evening and establish a noise ordinance which is acheivable based on the study.	
	Review the disclosure signed by residents of Mitchell Canyon Place to determine if it is applicable to sounds emanating from existing downtown businesses.	

Center Street Property Line

9/5/2012 18:35 0:35:00

Average 68.50



<CEL-242 Data> 035-07 <Run>
9/5/2012 18:35 0:35:00
621950 3 30-100 dB Yes No

CONDITIONS

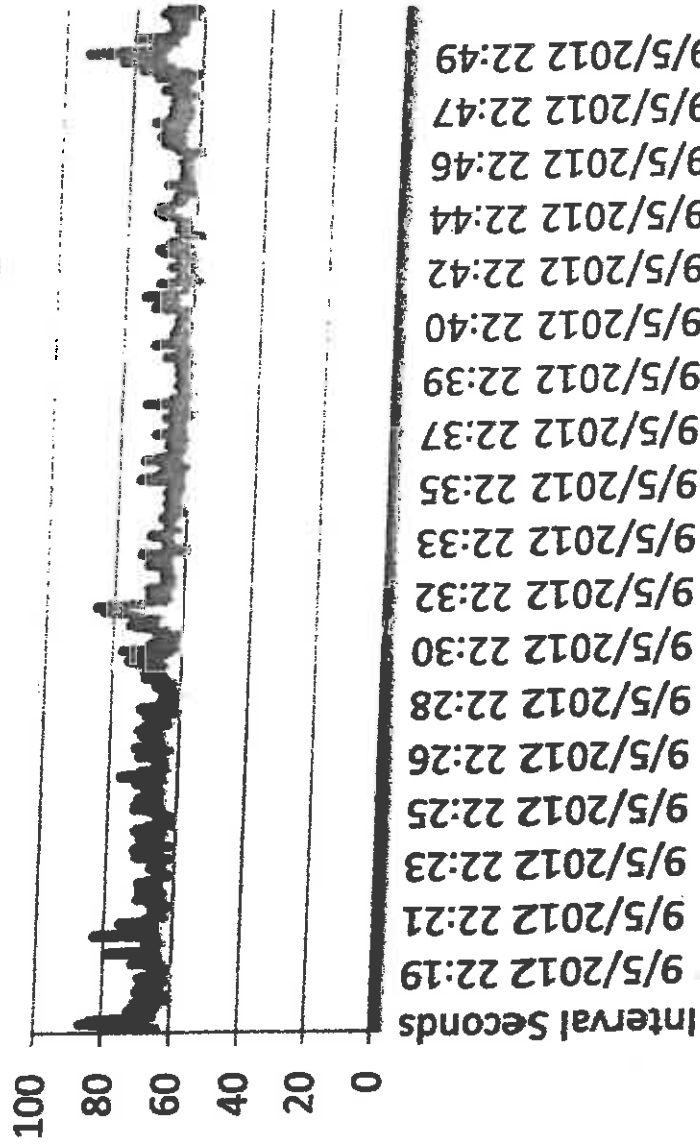
No AUDIBLE SOUND
FROM CLAYTON CLUB

9/5/2012 18:37
9/5/2012 18:38
9/5/2012 18:40
9/5/2012 18:42
9/5/2012 18:44
9/5/2012 18:46
9/5/2012 18:47
9/5/2012 18:49
9/5/2012 18:51
9/5/2012 18:53
9/5/2012 18:54
9/5/2012 18:56
9/5/2012 18:58
9/5/2012 19:00
9/5/2012 19:01
9/5/2012 19:03
9/5/2012 19:05
9/5/2012 19:07
9/5/2012 19:09

Center Street Property Line

9/5/2012 22:18 0:33:11

Average 65.85



<CEL-242 Data> 035-07

<Run> 9/5/2012 22:18

0:33:11 621950 4 30-100 dB

No No

CONDITIONS

LIGHT AUDIBLE

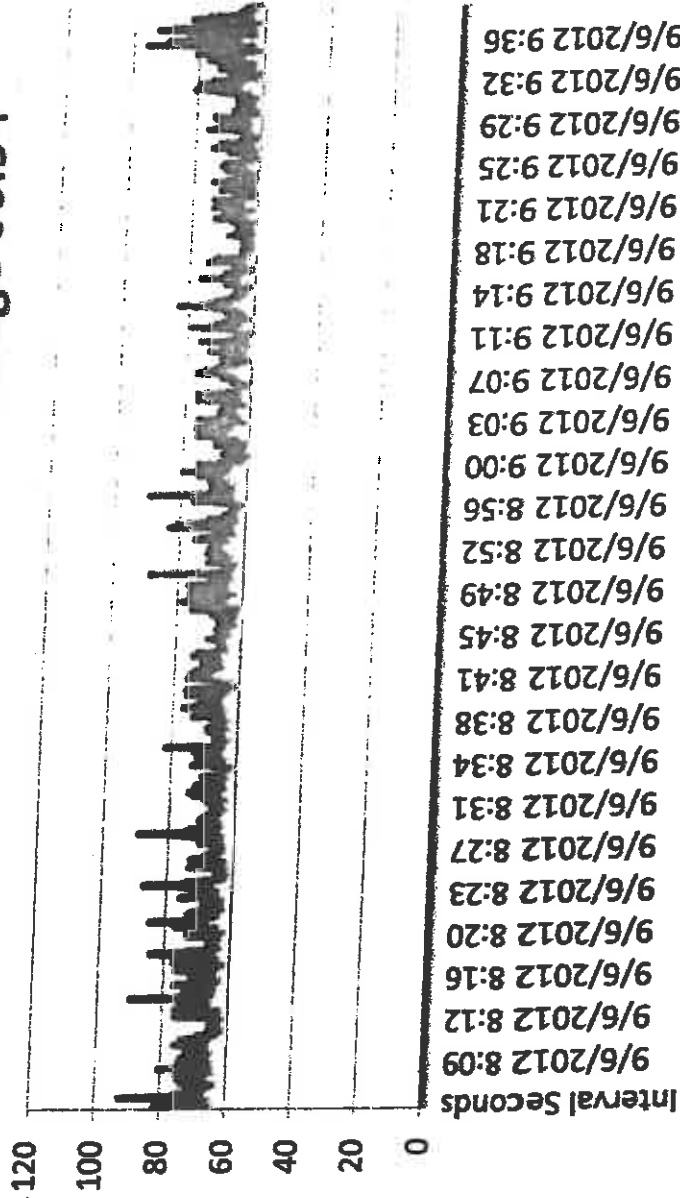
CONVERSATION FROM
CLAYTON CLUBS

Center Street Property Line

9/6/2012 8:05 a.m.

Duration 1:34:00

Average 66.94



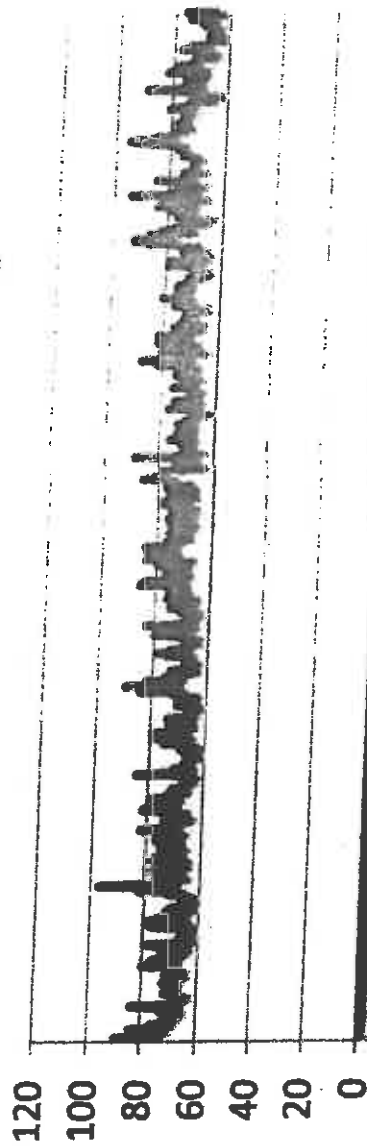
9/6/2012 8:05 1:34:00 621950 5 30-

100 dB No No

CONDITIONS

BUSINESSSES CLOSED

Main Street Property Line 9/6/2012 12:01 1:08:00 Average 70.29



<CEL-242 Data> 035-07 <Run>
 9/6/2012 12:01 1:08:00
 621950 6 30-100 dB No No

CONDITIONS

No Audible Sound
 From Clayton Club

Interval Seconds
 9/6/2012 12:04
 9/6/2012 12:08
 9/6/2012 12:11
 9/6/2012 12:15
 9/6/2012 12:18
 9/6/2012 12:22
 9/6/2012 12:25
 9/6/2012 12:28
 9/6/2012 12:32
 9/6/2012 12:35
 9/6/2012 12:39
 9/6/2012 12:42
 9/6/2012 12:45
 9/6/2012 12:49
 9/6/2012 12:52
 9/6/2012 12:56
 9/6/2012 12:59
 9/6/2012 13:03
 9/6/2012 13:06

Clayton Club Noise Test (6/13/12)

These noise tests were conducted from approximately 10:20 p.m. until 10:50 p.m. on Wednesday evening, June 13, 2012. These tests were conducted by Clayton Police Chief Dan Lawrence, Clayton Community Development Director David Woltering, Clayton Club Operator Steve Barton, and Clayton Club Operator Dennis Mitchell.

First Set of Tests

1. Approx. 50' from rear property line on Center Street:

- **Door open (Condition)**
- Interior Noise - 93 dbh (30 Second Weighted Average)
- Exterior Noise - 65 dbh (30 Second Weighted Average)

2. Approx. 50' from rear property line on Center Street:

- **Door open (Condition)**
- Interior Noise - 93 dbh (30 Second Weighted Average)
- Exterior Noise - 62 dbh (30 Second Weighted Average)

3. At rear property line:

- **Door open (Condition)**
- Interior Noise - 93 dbh (30 Second Weighted Average)
- Exterior Noise - 60 dbh (30 Second Weighted Average)

4. At property line:

- **Door closed (Condition)**
- Interior Noise - 97 dbh (30 Second Weighted Average)
- Exterior Noise - 60 dbh (30 Second Weighted Average)

5. Approx. 50' from rear property line on Center Street:

- **Door closed (Condition)**
- Interior Noise - 96 dbh (30 Second Weighted Average)
- Exterior Noise - 63 dbh (30 Second Weighted Average)

Second Set of Tests

1. Approx. 50' from rear property line on Center Street:

- **Door open (Condition)**
- Interior Noise - 100 dbh (30 Second Weighted Average)
- Exterior Noise - 62 dbh (30 Second Weighted Average)

2. At rear property line:

- **Door open (Condition)**
- Interior Noise - 99 dbh (30 Second Weighted Average)
- Exterior Noise - 59 dbh (30 Second Weighted Average)

3. At property line:

- **Door closed (Condition)**
- Interior Noise - 101 dbh (30 Second Weighted Average)
- Exterior Noise - 62 dbh (30 Second Weighted Average)

4. Approx. 50' from rear property line on Center Street:

- **Door closed (Condition)**
- Interior Noise - 101 dbh (30 Second Weighted Average)
- Exterior Noise - 62 dbh (30 Second Weighted Average)

Time of event		Conditions		Town		Center		Data		Clayton		Club		Property		
Date	Time Start	Time End	Device	Settings	CC Cond	Ambient Cond	Main/Mor	Main/Pk	Marsh Crk	Ctr/Mor	Ctr/Diab	Main/Diab	Inside	Ratio	Mid Pkg	Pkg at Ctr
Sunday, June 03, 2012	10:46 AM	11:15 AM	Iphone	n/a	CLOSED	calm	58	65	64	60-81	63	60-65		55	60	59-63
Sunday, June 03, 2012	2:22 PM	2:40 PM	Iphone	n/a	No Music	light breeze		63	63-70	60-63	65-80	70-86		65	60-66	70
Sunday, June 03, 2012	9:39 PM	9:49 PM	Iphone	n/a	Music, dr open	modest breeze	67	65	67	68-73	63	65-75		65	80	75
Sunday, June 03, 2012	10:05 PM	10:16 PM	Iphone	n/a	Music, dr open	modest breeze	70-71	65	63	68-70	62	60		67	78	68-70
Sunday, June 03, 2012	10:30 PM		Iphone	n/a	Music, dr closed	modest breeze	69		60	58-63	68-70	62		67	67	83
Sunday, June 03, 2012	11:05 PM		Iphone	n/a	Band off, dr open	modest breeze	61	64-65			58	58			63	57
Wednesday, June 06, 2012	2:30 PM	2:45 PM	Db Meter	continuous	no music, dr open	calm	66-72	64-68	64-66	64-67	68-72	65-67		63		82-87
Wednesday, June 06, 2012	3:00 PM	4:15 PM	Db Meter	2 min avg	5 people	calm	63		67	63	69	66				64
Wednesday, June 06, 2012	4:40 PM		Db Meter	3 min avg		calm								83		
Wednesday, June 06, 2012	9:40 PM	10:15 PM	Db Meter	3 min avg	Kar-2lts, dr open, Kar-3lts, dr open, 65 people in, 41 out	calm							93	73	63	63
Wednesday, June 06, 2012	10:45 PM	11:15 AM	Db Meter	3 min avg	Kar-3/4lts, dr open, 65 people in, 50 out	calm							100	82	68	64
Wednesday, June 06, 2012	11:20 PM	11:40 PM	Db Meter	3 min avg		calm										
Wednesday, June 06, 2012	11:50 PM		Db Meter	3 min avg	Kar-3/4lts, dr clsd	calm							95	83	71	63
Thursday, June 07, 2012	9:45 AM		Db Meter	3 min avg	CLOSED	light breeze										below 60
Wednesday, June 13, 2012	9:00 PM		Db Meter	30 sec avg	10ppt	calm										65
Wednesday, June 13, 2012	9:10 PM		Db Meter	30 sec avg	Kar1-2, dr open, 10ppt	calm							74	68	66	64
Wednesday, June 13, 2012	9:30 PM		Db Meter	30 sec avg	Kar2, dr open, 12 ppl	calm							87	61	64	61
Wednesday, June 13, 2012	10:00 PM	11:00 PM	Db Meter	30 sec avg	door open	official test A							88	74	62	66
Wednesday, June 13, 2012	10:00 PM	11:00 PM	Db Meter	30 sec avg	door open	official test B					63		93			
Wednesday, June 13, 2012	10:00 PM	11:00 PM	Db Meter	30 sec avg	door open	official test C							93			
Wednesday, June 13, 2012	10:00 PM	11:00 PM	Db Meter	30 sec avg	door closed	official test D							97			60
Wednesday, June 13, 2012	10:00 PM	11:00 PM	Db Meter	30 sec avg	door open	official test E					63		98			60
Wednesday, June 13, 2012	10:00 PM	11:00 PM	Db Meter	30 sec avg	door open	official test F							100			59
Wednesday, June 13, 2012	10:00 PM	11:00 PM	Db Meter	30 sec avg	door closed	official test G							98			62
Wednesday, June 13, 2012	10:00 PM	11:00 PM	Db Meter	30 sec avg	door closed	official test H					62		101			
Saturday, June 30, 2012	9:00 AM	9:15 PM	Db Meter	30 sec avg	door open	farmers mkt	70	67	65	75	79	68	101			
Sunday, July 01, 2012	Noon	12:10 PM	Db Meter	30 sec avg	door open	slight breeze, no audible voice	68	79	73	72	85	72	67	58	73	66
Sunday, July 01, 2012	1:00 PM	1:15 PM	Db Meter	30 sec avg	5 cust, do	slight breeze, no audible voice	71	79	73	77	74	70	70	61	66	74
Sunday, July 01, 2012	2:30 PM	2:45 PM	Db Meter	30 sec avg	17 cust, do	slight breeze, no audible voice	74	70	64	71	83	71	73			
Sunday, July 01, 2012	10:40 PM	11:00 PM	Db Meter	30 sec avg	14 cust, dc	calm	64	57	55	59	64	64	75	62	69	70
Saturday, July 07, 2012	10:00 PM		Db Meter	30 sec avg	55 out, patio bar	calm	77 door ajar	60	72	65	61	63	103	56	58	57
Saturday, July 07, 2012	11:00 PM		Db Meter	30 sec avg	77 out, patio bar	calm	63	62	61	61	67	67	98	70	63	62
Saturday, July 07, 2012	Midnight		Db Meter	30 sec avg	31 out, patio bar	calm	66	58	64	58	58	60	92	81	59	55

Chapter 9.30

NOISE

SECTIONS:

9.30.010	Definitions
9.30.020	General Noise Regulations
9.30.030	Standards
9.30.040	Prohibitions
9.30.050	Permits
9.30.060	Emergency Exemptions
9.30.070	Enforcement
9.30.080	Police Services Fees
9.30.090	Appeals
9.30.100	Remedies and Penalties

9.30.010 Definitions. For the purpose of this ordinance, the following definitions shall apply:

A. Commercial purpose. This shall mean and include the use, operation, or maintenance of sound-amplifying equipment for the purposes of advertising business, goods, or services; or for the purpose of attracting the attention of the public to, or advertising for, or soliciting patronage to or for a performance, show, entertainment, exhibition, or event; or for the purpose of demonstrating any such sound equipment; or for the purpose of paging employees or customers.

1. This section shall also include the actual performance of such equipment, whether inside or outside a commercial establishment, for purposes of entertainment.

B. Emergency Work. Emergency work means work made necessary to restore property to a safe condition following a public calamity, or work required to protect persons or property from an imminent exposure to danger. Emergency work includes the operation of a generator during the time that electrical power service has been interrupted. (Ord. 411, 2007)

C. Motor vehicle. This term shall mean a motor vehicle as defined by the California Vehicle Code.

D. Non-commercial purpose. This term means and includes the use, operation, or maintenance of sound equipment for other than a commercial purpose. Non-commercial purpose includes philanthropic, political, community events, patriotic, and charitable purposes.

E. Sound-amplifying equipment. This term means a machine or device for the amplification of the human voice, music, or any other sound. Sound-amplifying equipment does not include:

1. A standard automobile radio when used and heard only by the occupant of the vehicle in which the radio is installed; or

2. A warning device on authorized emergency vehicle, or horn or other warning device used for traffic safety purposes.

F. Sound truck. This term shall mean a motor vehicle regardless of motive power, whether in motion or stationary, having sound-amplifying equipment mounted or attached to it. (Ord.349, 1999)

9.30.020 General Noise Regulations. Except as otherwise provided by this Chapter and Chapter 15.01 of this code, it is unlawful for a person to willfully make a loud, unnecessary or unusual noise, which disturbs the peace or quiet of a neighborhood or which causes discomfort or annoyance to a reasonable person or normal sensitiveness residing in the area. (Ord. 411, 2007)

9.30.030 Standards. The standards which shall be considered in determining, whether a violation of Section 9.30.020 exists include, but are not limited, to the following:

- A. The volume of noise;
- B. Whether the nature of the noise is usual or unusual;
- C. The proximity of the noise to residential sleeping facilities;
- D. The nature and zoning of the area within which the noise emanates;
- E. The time of the day or night the noise occurs;
- F. The duration of the noise;
- G. Whether the noise is continuous, recurrent or intermittent;
- H. Whether the noise is produced by a commercial or non-commercial activity
- I. The number of persons in the neighborhood who have complained of the noise. (Ord. 349, 1999)

9.30.040 Prohibitions. Except as otherwise provided in this section, it is unlawful for a person to do any of the following acts:

A. Radios, television sets, and similar devices. A person may not operate or play a radio, television set, stereo, phonograph, receiving set, tape or compact disk player, jukebox, musical instrument, or similar device in such a manner as to disturb the peace, quiet, or comfort of the neighboring inhabitants, or to do so with a louder volume than is necessary for convenient hearing for persons in the room, vehicle, or chamber in which the device is operated.

1. A prima facie violation has occurred if the noise is plainly audible at a distance of fifty (50) feet from the nearest property line of any yard, park, or outside activity area, or any building or structure from which the noise is emanating from or vehicle from which it is located, or a distance of fifty (50) feet from the device if outside.

B. Schools and churches. Creating noise on a street, sidewalk or public place adjacent to a school or church while in use if the noise unreasonably interferes with the working of the institution.

C. Machinery, Equipment, Fans, Air Conditioning and Power Equipment. It is unlawful to operate machinery, equipment, or a pump, fan, air-conditioner, spa or pool equipment or engine in a manner which causes excessive noise to nearby residents between the hours of 10:00 p.m. and 7:00 a.m. Additionally, the use of power equipment for home use or residential yard maintenance including power tools, lawn mowers and leaf blowers is prohibited except as set forth below in this section:

(1) Weekdays. Monday through Friday between seven a.m. and eight p.m.

- (2) Saturdays, Sundays and City-observed Holidays between eight a.m. and eight p.m. (Ord. 411, 2007)

D. Construction or repair work. Such work which creates noise within or adjacent to a residential land use district or planned development is subject to time and other restrictions listed in the Clayton Municipal Code.

E. Loudspeakers or sound-amplifying equipment. A person may not install, use or operate a loudspeaker or sound-amplifying equipment in a fixed or movable position or mounted on a sound truck for the purpose of transmitting sound to a person in or on a street, sidewalk, park or public property without a permit.

F. Animals or birds in residential neighborhoods. No person shall keep or maintain an animal, fowl, or bird (otherwise permitted to be kept) which, by sound, cry, or audible behavior causes annoyance or discomfort or disturbs the repose of a reasonable person.

G. Garbage disposal and street sweeping. Unless otherwise permitted by franchise agreement or other City regulation, it shall be unlawful to perform these activities between 10:00 p.m. and 6:00 a.m. weekdays and 10:00 p.m. and 8:00 a.m. on weekends. (Ord. 349, 1999)

9.30.050 Permits: The Police Chief may grant a permit on an event(s) or seasonable basis allowing an exception to this Chapter for such activities as civic events, civic sponsored events, or youth sports and/or recreational events, or permitting the use of sound-amplification equipment, subject to the requirements of section. An application for either type of exemption must be submitted at least twenty-five (calendar days before the proposed activity and must be accompanied by an application fee in the amount set by Council resolution.

A. Exception permit. The Police Chief may grant a permit, subject to reasonable restrictions, allowing an exception to subsection on 9.30.020 or 9.30.040 for as short a period of time as is reasonable if the permit applicant notices nearby residences and businesses and demonstrates all of the following according to City policy:

1. Compliance with this chapter could be impractical or unreasonable;
2. Which mitigation measures will implemented to minimize the sound disturbance.

B. Permit for Sound-Amplification Equipment. The Police Chief may grant a permit to allow sound-amplification equipment, subject to reasonable restrictions regarding time, place and manner of use for the safety and convenience of the public. If the application is denied, the Police Chief shall advise the applicant in writing of the reasons for denial. The applicant shall submit an application containing the following information:

1. The name, address and telephone number of both the owner and user of the sound-amplifying equipment
2. The maximum wattage to be used, and the approximate distance for which sound will be audible from the sound-amplifying equipment;
3. The license number, if a sound truck is used;
4. A general description of the sound-amplifying equipment to be used;
5. Whether the sound-amplifying equipment will be used for a commercial or non-commercial purpose;

6. Which measures will be implemented to reduce noise to neighbors;

7. Where the equipment will be used; and

8. During which day(s) and hour(s) the equipment will be used.

C. Notwithstanding other provisions of this Chapter, if the City Manager determined that exceptional circumstances exist and the City and a property owner enter into a recordable noise abatement agreement with the land, the provisions of this Chapter shall not be applicable to the uses identified in the agreement. (Ord. 349, 1999, Ord 362, 2001)

9.30.060 Emergency Exemptions. Actions made necessary to protect the health, safety or general welfare of the public or of their property shall not be a violation of this Chapter. (Ord.349, 1999)

9.30.070 Enforcement. The person(s) responsible for the noise will be held liable for the cost of providing police services during a second or follow-up response by police, after a first warning (including an explanation of possible police service fee imposition if a second response is necessary to the person(s) responsible for the noise to control the specified threat to the public peace, health, safety, or general welfare. The second or follow-up response may also result in the arrest and/or citation of violators of the State Penal Code or other provisions of the Municipal Code. (Ord.349, 1999)

9.30.080 Police Services Fees. The police services fee shall include the cost of personnel and equipment, but shall not exceed Five Hundred Dollars (\$500.00) for a single incident, provided however that the City does not hereby waive its right to seek reimbursement for actual costs exceeding Five Hundred Dollars (\$500.00) through other legal remedies. The amount of the fees shall be deemed a debt owed to the City by the person responsible for the event, and if such person is a minor, the debt shall be the obligation of such minor and his/her parents or guardians. Such fees shall be due upon receipt of billing from the City. Any person owing such fees shall be liable in an action brought in the name of the City for recovery of such fees, including reasonable attorney fees.

A. Automatic adjustment in police services fees. Such fees may be adjusted each year, computing the adjustment on the Official Consumers Price Index published by the United States Department of Labor, Bureau of Labor Statistics, for the San Francisco-Oakland Metropolitan Area. (Ord. 349, 1999)

9.30.090 Appeal of Decision of Police Chief. The decision of the Police Chief may be appealed within 10 calendar days of such decision to the City Manager. The decision of the City Manager shall be final. (Ord. 411, 2007)

9.30.100 Remedies and Penalties for Violation

A. Violation an infraction. A person who violates a provision of this section is guilty of an infraction and subject to the penalty set forth in Chapter 1.20.

B. Violation a public nuisance. A violation of this section is a public nuisance and may be abated by a civil action including a restraining order or injunction. (Ord. 349, 1999)

Section VIII

NOISE ELEMENT

GOALS, OBJECTIVES, POLICIES, AND IMPLEMENTATION MEASURES

THE EFFECT OF NOISE

NOISE PROBLEMS IN THE CITY OF CLAYTON

NOISE ELEMENT

Goal

To maintain or improve the overall environment and the general well being of the community by reducing annoying levels of noise for all land uses in the city. Physically harmful levels of noise (70 Ldn* and above) shall be mitigated to below harmful levels and to levels of minimum annoyance (below 60 Ldn) where feasible.

Objective 1

To identify routes in Clayton with high levels of noise.

Policies

- 1a Prepare noise contour maps for Kirker Pass Road, Clayton Road, Marsh Creek Road, Mitchell Canyon Road, Concord Boulevard, Main Street, El Molino, Pine Hollow Road, Oak Street, Mountaire Parkway, and Regency Drive. These maps are needed as a new baseline to reflect changes in noise levels due to the significant growth which has occurred since the last General Plan revision.
- 1b Identify future routes with potential for significant levels of noise. Noise contour maps for these routes should be prepared when development is proposed which will affect noise levels on the routes.

Objective 2

To establish mitigation measures for reducing exposure to traffic noise.

Policies

- 2a Require sound mitigation to 45 Ldn for indoor noise level uses and 60 Ldn for outdoor noise level uses in new developments.
- 2b Require setbacks, sound walls, specific orientation and other measures where new uses are exposed to noise. Such measures shall be consistent with the intent of the Community Design Element.
- 2c Permit noise attenuation measures that do not create traffic hazards along South Mitchell Canyon Road and Clayton Road and retain limited hours of trucking operations on weekdays from 7:00 AM to 4:00 PM with no activity on weekends. Hours may be exceeded in event of emergency with prior city authorization.
- 2d Require developer to conduct noise studies to determine an appropriate noise reduction plan in event development is proposed in areas where roadway or fixed point sources exceed 60 Ldn.

* Ldn and dBA definitions are provided in the Glossary, Section XII.

Objective 3

To provide control of fixed point sources.

Policies

- 3a Encourage Concord Pavilion not to generate noise in excess of 60 dBa in Clayton.
- 3b Limit construction activities to the hours of 7:00 AM to 5:30 PM on weekdays and 9:00 AM to 6:00 PM on weekends when adjacent neighbors are affected.
- 3c Restrict home sound equipment noise in excess of 55 Ldn at the property line.
- 3d Restrict operation of home power equipment before 7:00 AM to after 10:00 PM at a noise level above 55 Ldn at the property line.
- 3e Consider an ordinance to reduce the nuisance effects of unattended pets.

Implementation Measures

- 1. Adopt mitigation measures for affected areas.
- 2. Provide information and assistance in measures to mitigation noise.
- 3. Adopt and enforce noise control ordinances.

THE EFFECT OF NOISE

Noise affects people in three ways:

- 1. It is detrimental to their health.
- 2. It interferes with their activities.
- 3. It reduces their economic potential.

Noise can affect the health of people to a widely varying extent, depending on the intensity. The impact can range from mildly involuntary physiological reactions to a permanent injury or even death.

Noise interferes with human activities in a variety of ways, intruding upon the total quality of life. Perhaps one of the more serious problems is disturbance of sleep; specific sound levels for this effect have been established. Noise can also interfere with cultural or leisure activities. For example, it detracts from the appreciation of park land, historic sites and other outdoor activities.

Noise can have several effects with social or economic implications. These include productivity for workers and students in both their jobs and in the schoolroom, as well as indemnity payments for work-related hearing loss. The value of residential property can be adversely affected by noise and result in reduced livability, reduced saleability, transition from owner to renter status, conversion to nonresidential uses, and pressure for zone change.

NOISE PROBLEMS IN THE CITY OF CLAYTON

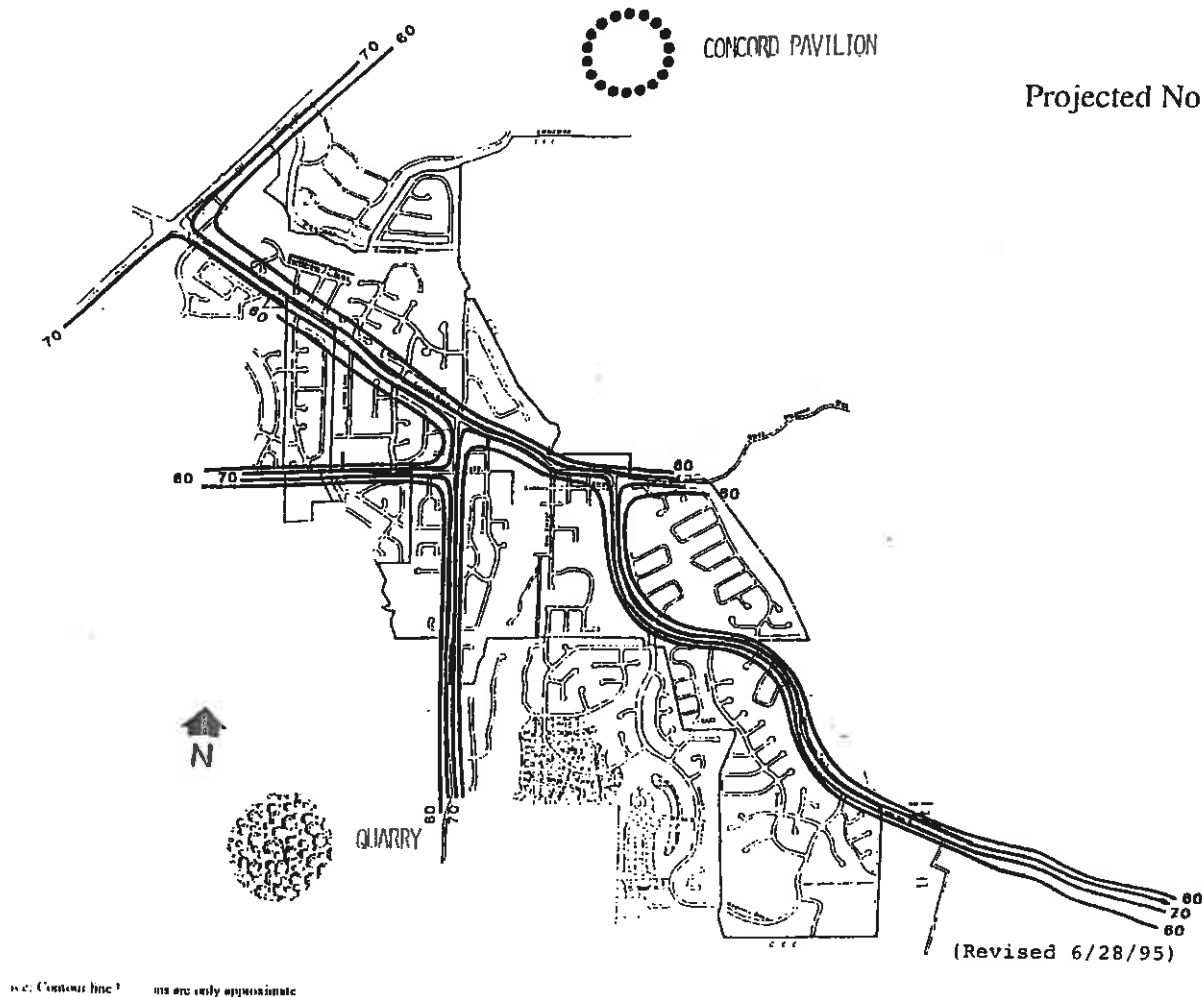
The sources of adverse noise in Clayton can be separated into two categories, mobile (or line) sources, and fixed point sources. The mobile sources include the major through streets and, in particular, the route followed by the gravel trucks from the Lone Star Industries Quarry.

Mobile or Line Noise Sources

Exhibit VIII-1 indicates noise contours for the City of Clayton based on monitoring in January 1985. Exhibit VIII-2 provides projected contours based on anticipated short-term growth. The monitoring and contours verify common knowledge in Clayton. Points for development of contours are indicated in Exhibit VIII-3.

Truck and automobile traffic are the most common sources of noise in the City, and the predominate source of this noise that of the gravel trucks going to and from the quarry.

Projected Noise Contours 1995



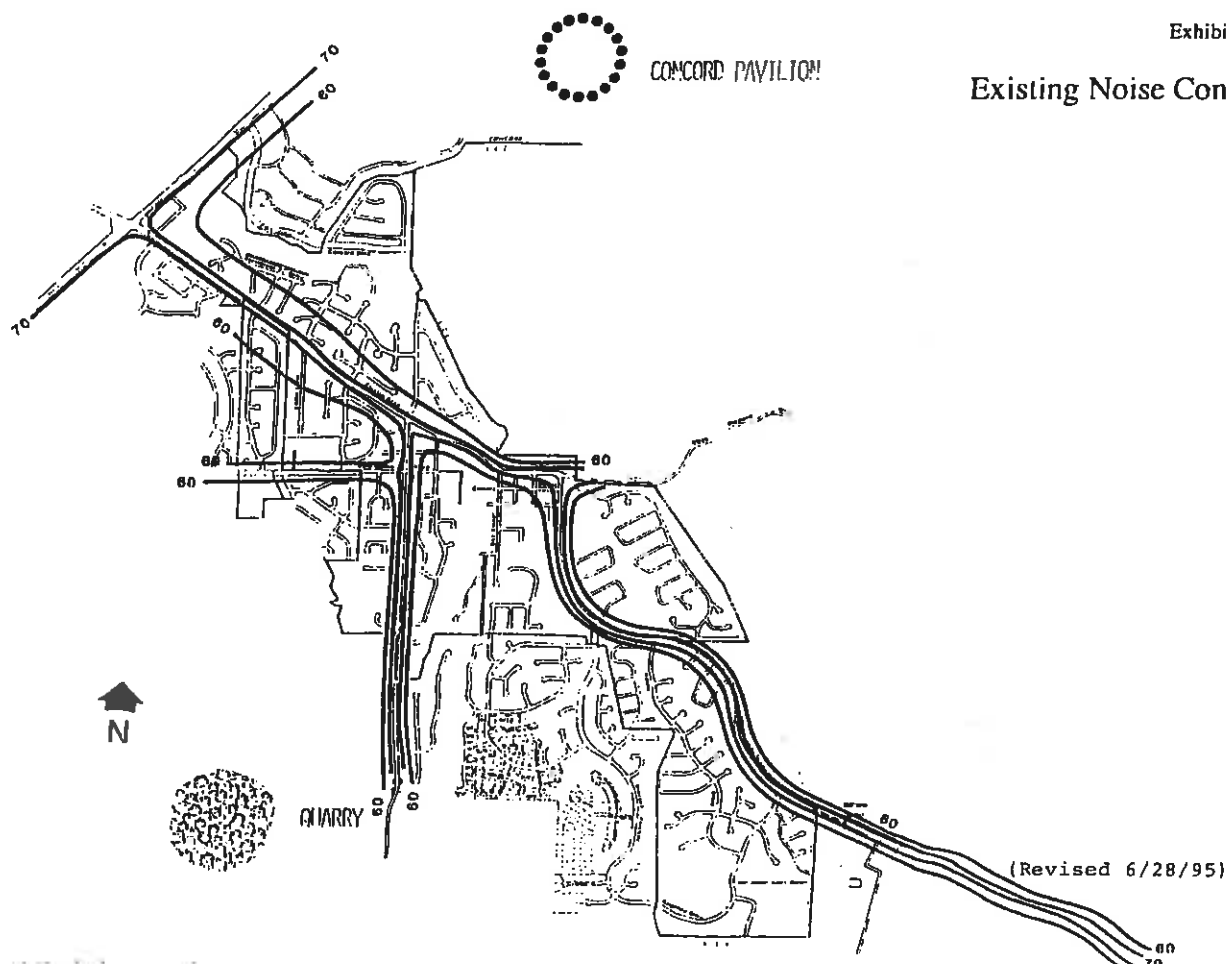
NOTE: Contour lines are only approximate

Gravel truck noise is characterized by fluctuation in frequency and duration. These changes are caused by the varying demands for the aggregates extracted by the quarry and the consequent variations in the amount of gravel truck traffic. Truck noise is further characterized by the fact that it occurs along a specific route, and the noise problems of the community are intense along this route.

Truck and automobile noise are additionally intensified in the City because of the existing crosstown thoroughfare, Clayton Road, which must serve as the truck as well as passenger car through route to eastern Contra Costa County. There appears to be no alternative truck route in the future.

Further compounding the problem of mobile noise along Clayton Road is the fact that this street must serve as the only through access for emergency vehicles with the attendant siren noise.

Existing Noise Contours



It should be noted that the identification, measurement, and examination of noise problems, whether from mobile or fixed point sources, is critical to the considerations of future land use planning. While problems for people who live in the existing homes may be minimized by the enforcement of the proposed ordinance, the problems of noise for future residents can better be addressed by appropriate planning and design. There have been two complaints regarding noise of Clayton Road in the past year. Based on noise contours it can be estimated that two parcels fall within the existing 70 Ldn contour and 51 parcels will fall within the contours projected for 1995. A total of 143 parcels currently fall between the 70 and 60 Ldn contour and 109 parcels will fall within the contour at 1995 levels. These contours identify base noise levels. They do not take into account mounding, changes in elevation, walls or other measures that will affect noise factors for specific homes. Individual homes can benefit from element information in general but site specific monitoring is necessary prior to action. Noise prediction will be affected by future population levels, street design and vehicle equipment standards. Concord Boulevard will not be included until population is projected.

Data deriving from the survey are presented in Appendix F. Previous noise study data is also included.

Critical Routes

The areas where existing and/or potential noise impacts are determined to have potentially severe impact on individuals that can be classified as critical are as follows:

1. The Clayton Road-Marsh Creek Road thoroughfare including the Main Street traffic through the Town Center area of Clayton.
2. Mitchell Canyon Road, which is the gravel truck route from Lone Star Quarry. The proposed Concord Boulevard extension between Silver Creek II subdivision and the intersection with Marsh Creek Road.
3. The proposed extension of Marsh Creek Road to the connection with the Concord Boulevard extension just east of the downtown area.
4. The proposed extension of Center Street to connect with the Concord Boulevard extension.
5. Other areas of the City in close enough proximity to a street where traffic noise generation is deemed likely to produce exterior noise levels of 60 or more dBA, considering the maximum traffic volume expected.

CITY OF CLAYTON NOISE CONTOURS

Exhibit VIII-3

(Distance from Centerline of Roadway in Feet)

	1985				1995			
	55	60	65	70	55	60	65	70
Clayton Road between City Limit at Atchinson Stage Road	300	150	65	30	600	200	140	60
Clayton Road between Atchinson Stage Road and Mitchell Canyon Rd.	200	100	45	20	390	180	80	40
Clayton Road between Mitchell Canyon Road and Oak Street	79	37	15	10	85	40	19	10
Mitchell Canyon Road at Mitchell Canyon Court	130	65	30	15	200	90	45	23
Clayton Road from Oak Street to Mountaire Parkway	80	33	16	10	86	41	20	10
Clayton Road/Marsh Creek Road/ Mountaire Parkway to Regency Drive	95	50	22	10	110	55	27	15
Marsh Creek Road east of Regency Drive	93	48	20	10	108	53	25	13
Pine Hollow Road at Mitchell Canyon Road	80	40	19	0	100	45	20	0
Concord Boulevard from Kirker Pass Road to end	160	78	35	18	N/A			
Concord Boulevard from Kirker Pass Road to Marsh Creek Road	N/A				300	150	70	30
Concord Boulevard south of Marsh Creek Road	N/A				250	120	58	25

All contours shown in Ldn

Characteristics of Mobile Source

1. In numerous instances there was wide variation in the amount of noise produced by motor vehicles moving at the same speed.
 - a. Motorcycles, especially the two-cycle type, often produce more noise than gravel trucks.
 - b. The amount of noise produced by the same size trucks can vary greatly, depending upon the mechanical condition of noise muffling equipment, and the design and condition of tires.
 - c. Passenger cars and pickup trucks equipped with special tires for snow and mud sometimes produce as much noise as gravel trucks.
2. Speed of the vehicle is closely related to the amount of noise produced, with increase from 25 mph to 35 mph causing a noise level increase of 4 or 5 decibels.
3. Noise levels at stop signs are significantly higher in location having considerable truck traffic, due to braking, gear changing, and acceleration noises.
4. Siren noises from emergency vehicles, especially ambulances, are a significant source of noise, particularly along Clayton Road.

Fixed Point Noise Sources

The two most prominent fixed point sources of noise in the Clayton area are located outside the Clayton city limits. They include the Concord Pavilion and the Lone Star Quarry. In both cases the city limits are over 1,000 feet away. Vibration from the Concord Pavilion can be heard in the evenings when the performers use powerful amplifying equipment. The configuration of the land may magnify the problem for Clayton residents somewhat distant from the source, while Concord residents in homes close to the Concord Pavilion may find the problem more acute. The nature of future programming, including the type of entertainment, amplification of the sound, and the positioning of loudspeakers, promises to influence the extent of this problem.

Complaints will first come from Concord residences; however, Keller development near the Concord Pavilion should conduct noise analysis to determine the extent of this problem and development-wide and parcel-specific mitigation.

Operational noise from the two quarries in the vicinity of Clayton are generated by blasting in the course of excavating, and by machinery used in conveying, loading, and crushing the rock. The sound of blasting is infrequent. Normally a two-week period within six months will produce a single blast per day. The noise startles people and they call City Hall, but it is not continuous. Posting of blast schedules would help this problem. Machinery that is used to crush rock runs continuously during quarry hours (7 AM to 4 PM on weekdays). It is a vibration noise that can be perceived in Clayton but does not exceed noise standards. Development of vacant parcels within city limits that are near the quarry would increase resident exposure to noise. Unless adequate mitigation or change in quarry operations occur, residential development near the quarry should be prohibited. Mobile source noise from gravel trucks has been effectively limited to specified hours. Other fixed point sources of noise generally fall into the category of those which are problems for residents in the more immediate vicinity of the source.

They may include, but are not limited to the following:

1. Sound reproducing and amplifying equipment such as music (live or recorded) amplifiers, radios, and television sets.
2. Construction noises resulting from the numerous home-building projects in the community.
3. Barking dogs, which sometimes intrude upon peace and quiet and the rest of nearby residents.
4. Homeowner-operated power equipment, such as saws, mowers, tillers, etc.

Mitigation Measures

1. New developments, consideration of the noise impacts upon present and future residents must be an essential part of the environmental impact reporting and acceptance process. Mitigation measures which assure that the development will conform to State and local standards shall be required and enforced.

Where new residential construction is proposed within an area identified as critical, a noise study together with acceptable plans to assure compliance with the standards shall be required. Required noise studies should be done simultaneously with or as part of the EIR preparation and planning process to assure that the results and recommendations will be incorporated into the project proposal, including the grading plan, street layout, height of buildings, orientation and design of buildings, design and elevation of noise barriers required, and any other elements of planing and design that may be related to the noise impacts.

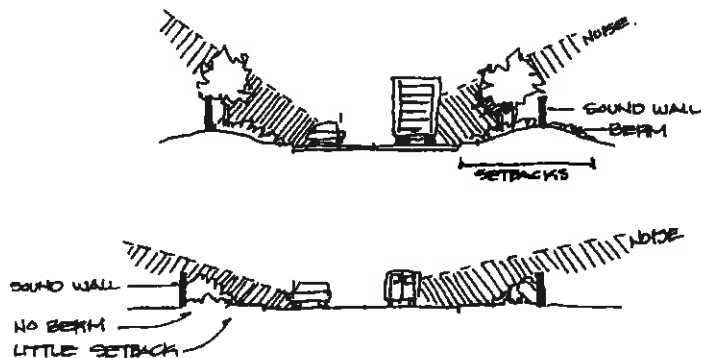
2. In the case of major changes to existing streets, the noise impacts upon the residents in the area will be considered. These impacts should be determined by a noise study provided by the City with appropriate requirements for mitigation.
3. It is recommended that representatives of the Police Department, Fire Department, and local ambulance services meet for the purpose of establishing criteria for the use of emergency vehicle sirens. The aim of the criteria should be to prevent the indiscriminate or unnecessary use of sirens, while maintaining safe practices.
4. The City, through the Police Department should vigorously pursue the enforcement of the California Motor Vehicle Code with regard to illegal operation and equipment of vehicles.
5. In the case of locating and developing noise sensitive recreational areas and activities, the City should be cognizant of the existing and potential noise impacts, recognizing that a dBa of 55 is the level at which most noise begins to interfere with outdoor activity. Conversely, introducing outdoor recreational activity may produce noise which could annoy residents.

6. A source of noise which could present a potentially significant problem for Clayton is the Concord Pavilion, as previously mentioned. The location of the Concord Pavilion being outside the legal jurisdiction of Clayton, but the potential effects of the noise falling inside the City, presents a possible future problem. The City should research all avenues of mitigation available, including seeking the utmost cooperation with those in charge of the programming, levels of amplification, and any other factors contributing to the potential for noise problems for people in Clayton. At the same time Clayton must use design measures to prevent unnecessary exposure to noise.
7. Construction in critical noise areas should be preceded by acceptable noise mitigation measures including recommendations for changes in elevations, setbacks, construction of effective noise barriers, and any other items deemed to be necessary in an attempt to achieve the standard of less than 60 dBA in residential yard areas.

Ordinance/ Enforcement

The City should enact a comprehensive noise control ordinance. It is suggested that Model Community Noise Ordinances, written by the California Office of Noise Control be adapted to apply specifically to Clayton. The noise ordinance should contain regulations and standards including, but not limited to the following:

1. The exterior noise level of 60 dBA as the maximum allowable traffic noise for homes in areas of new construction. This standard should be based upon the predicted noise level for the maximum traffic flow expected through the area.
2. Regulate construction activities so as to provide relative quiet during the more sensitive evening and early morning periods.
3. Regulate the design and construction of public projects so as to cause as little as practical long-term noise inconvenience to existing residents.
4. Require acoustical studies for major residential projects as required by the State of California, pursuant to the critical areas reflected in this element.
5. Prepare a noise abatement program consistent with State and Federal guidelines, which is (a) legally valid, (b) not unduly costly, and (c) does not impose undue hardships on landowners.
6. Require construction and maintenance of noise barriers at standards that do not permit gaps and cracks in protection.



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Noise management in mixed-use urban environments

Abstract

Noise is an environmental effect that has the potential to cause annoyance and affect health. It is often identified as a nuisance in the local environment and is a frequent cause of complaints, often related to reverse sensitivity.

This guidance note contains advice on noise management in mixed-use urban areas. It particularly emphasises the **balance** that needs to be achieved between providing for legitimate commercial activity while controlling potential adverse noise effects to reasonable levels.

This guidance note provides:

- an explanation of noise effects in the environment, and information on how noise is quantified and assessed
- an overview of the legislation related to noise and the management of environmental effects
- an overview of the techniques that local authorities might use in managing noise in mixed-use environments
- examples of case law and planning best practice.

Guidance note

- Effects of noise in mixed-use environments
- How does noise affect people?
- Managing noise in mixed-use urban environments
- Control of noise

Effects of noise in mixed-use environments

Noise management in mixed-use urban environments: the context

'Mixed-use' urban environments often contain commercial premises (entertainment, retail, office, hospitality or light manufacturing) sited close to residential uses such as apartments.

As with many countries overseas, urban population densities are increasing. At the same time many commercial activities now want to operate both during the day and at night. Commercial operations may enhance the vitality and culture of urban

areas, but they can also create noise problems. These can include sounds from fixed plant and equipment, mobile vehicles and machinery, or worn out (or poorly maintained) equipment such as fans and pumps. Outdoor activities and noise from car parks can also have significant adverse effects on those living nearby. In some cases the applicable district plan noise limits are not being met by existing activities.

The key players in the management of noise in such situations are:

- those who activities or property generate the noise
- those who are or may be affected by noise
- local authorities.

This guidance note focuses on the obligations to control noise emissions at or near the source, as well as the need for local authorities to adopt sound land use planning practices to monitor and manage noise in mixed-use urban environments. While not addressed in this note, there are also wider planning matters relating to compatible land use planning.

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How does noise affect people?

Noise can be thought of as unwanted sound and can vary greatly in volume (see what is noise?). Noise as defined in the RMA includes vibration, which in most cases is associated with high levels of noise. In environmental assessments it is usually the noise effects that are of most concern. However, specific vibration effects can arise from some types of commercial activities and these may require specialist investigation outside the scope of this guidance note. The effects of environmental noise are usually expressed in terms of:

- annoyance
- speech interference - high levels of noise can make normal speech difficult to hear
- performance - some noises can make concentration difficult and interfere with tasks such as learning, checking fine details (such as any job with a large mathematical component or where the meaning of words is critical) or work where small, precise, movements or intense concentration is required
- mental health (including noise-induced stress-related effects)
- sleep disturbance - in addition to fatigue and mental health effects, disrupted sleep patterns can leave people irritable, change their behaviour, and reduce their ability to work or perform tasks.

For further descriptions of the health effects that may be attributable to noise see Noise Effects Handbook: A desk reference to health and welfare effects of noise published by the United States Environmental Protection Agency.

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Managing noise in mixed-use urban environments

Under s.31 of the RMA, territorial authorities have the primary responsibility for managing the effects of land uses and noise (including the mitigation of noise). Territorial authorities also have responsibility under the RMA to achieve integrated management of the effects of the use, development, or protection of land associated with natural and physical resources. This includes effects on amenity values that may be affected by noise.

As noise is a specific adverse effect identified in the Act, district plans must include policies, objectives and (generally) rules to manage the effects of noise within their district.

Regional councils have responsibility for the control of noise within the coastal marine area. Noise may be addressed by controls in regional coastal plans.

Factors affecting receipt of noise

Noise from commercial premises can be a dominant source for nearby residential and other noise-sensitive activities, especially at night. Natural sounds, traffic sounds, and other non-target sounds are also present in the urban environment. Methods for measuring and assessing the impact of specific nuisance sounds within the context of an urban ambient noise environment are covered by the New Zealand Standards NZS 6801 and NZS 6802. (For a list of other noise standards see related documents at the end of this guidance note). These are available from the Standards New Zealand.

Difficulties often arise where noise-sensitive land uses (such as residential activities) move into or close to established commercial areas or major infrastructural assets such as ports or airports. This is often referred to as 'reverse sensitivity' for an explanation of reverse sensitivity and relevant case law).

One technique for dealing with the issue of reverse sensitivity is to ensure people are fully informed of the environment which they are proposing to move into. Overseas, the City of Sydney provides suggestions to residents thinking of moving into the inner-city on what to expect and how they can judge for themselves whether they will be able to cope with issues like noise before they take up residence (see Noise and Inner City Living).

A similar publication is available from the Ministry for the Environment website (see Living in the inner city).

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Assessing noise effects in mixed-use urban areas

Different factors are considered when assessing noise from commercial or trade premises in mixed-use zones. These include:

- **Time of day:** There is less tolerance of noise by residents when it occurs at night. Therefore district plan noise limits are typically lower for night.
- **Level of sound:** Sound levels can range from loud (exceeding the normally occurring or existing background sound level by 10 dBA or more) through to relatively low level with bass or beat components. District plan provisions should allow for some noise to be emitted, but only up to allowable limits measured at the residential location (often around 45-55 dBA).
- **Type of sound:** Some sounds have a special audible character that can cause additional annoyance. For example, some music sounds contain both tonal and beat (impulsive) qualities, both of which attract an assessment penalty under noise assessment procedures set out in the relevant New Zealand Standards. Tones, screeches, and hums are examples of sounds from commercial premises that often require special consideration during the assessment process.
- **Location of premises:** Commercial and industrial areas located close to residential sites will often have more noise issues than those occupying sites well within commercial or industrial zones (further from residential sites). District plan noise provisions usually allow higher levels of noise (day and night) within commercial and industrial zones. Distance, and the placement of barriers between the source of the noise and those receiving, are mitigating factors but the ability to use these can be limited in mixed-use environments. Where residential activities locate in established commercial or industrial areas it is more practical for the new residential use to insulate itself from noise than it is for existing commercial uses to comply with acceptable residential noise levels.
- **Body corporate and private undertakings:** Complaints can arise where noise-sensitive residences are located in the same premises as a noise-making commercial activity. Clauses within leases or body corporate constraints covering noise nuisance often place such complaints beyond the scope of territorial authority action. However, many territorial authorities successfully deal with these matters in the same way as if the parties were located within separate buildings.

Managing noise at source

Generally, the overriding requirement is for control of noise 'at source'. As well as the wider duty under s.17 of the RMA to avoid, remedy or mitigate adverse effects, noise makers need to recognise the general duty to avoid unreasonable noise (s.16) by containing as much of the sound as possible. Usually this means considering:

- the building's location, orientation and design

- the specification, selection, and operation of equipment (machinery such as air conditioning units and waste disposal systems) that emit low levels of noise
- managing operations on site so noise activities may be located as far as possible away from boundaries with noise sensitive neighbours, and/or choosing times of the day to operate noise generating equipment when noise is less likely to be an issue
- barriers to control or reduce noise (insulation, bunding and double glazing for example).

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Distance as a mitigation measure

For new noise generating activities, control can be achieved by incorporating appropriate buffer distances. New noise generating activities need to consider the distance to the nearest neighbours, traffic routes and other relevant factors when determining the layout, design and operation of their activities. However, as buffer distances are often not practical in inner-city areas where differing land uses tend to be located in close proximity, measures such as the use of noise barriers or insulation may present a more realistic management method.

Noise barriers

Barriers may include such features as:

- solid walls or fences to stop or deflect sound
- bunds
- other non-noise sensitive structures
- topography (locating activities in depressions or behind hills for example).

Barriers to control noise emission or to reduce noise received can be effective, but the effects of reflected sound need to be considered within the design and orientation of barriers (see *Hill Park Residents Association Inc v Manukau City Council* A30/2003). Factors such as orientation and materials used in the construction of barriers should be considered. Acoustic consultants can provide detailed guidance to match the specifics of individual sites.

Vegetation is not considered a good sound barrier as it will not block noise emissions unless plantations are very dense. Within inner-city mixed-use environments there are few opportunities to provide planting capable of mitigating noise.

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Building design and construction

Commercial activities may attempt to reduce sound emissions through building design and making sure the building is suitable for containing the levels of sound likely to be generated within it. Distance between the noise source and boundaries helps, so premises with larger land areas will be better placed to internalise the noise effects, keeping adverse effects within the site.

Noise control is most effectively achieved on smaller sites by paying particular attention to design before constructing any buildings. The layout of premise the location and orientation of openings, loading bays, doors, windows, and car parks and on-site vehicle circulation patterns are all important for good noise control.

- Acoustic weak points (loading bays, doors and windows for example) may be orientated to face away from noise sensitive areas, or provided with measures to reduce noise escaping (for example using two sets of doors with seals or double glazed windows or glass laminates that reduce noise).

The floor, walls and roof form a building envelope and need to be of a certain minimum mass (kilograms per square metre) to adequately contain high levels of sound. Many lightweight timber-framed structures are not suited to noisy commercial uses as they are capable of reducing noise by only modest amounts. Improved technology means better control of noise emission through lower sound output from modern mechanical sources (such as compressors, pumps, motors and fans). Improvements in materials and methods mean sound can be more effectively contained within buildings and purpose-built structures.

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Noise and the Building Regulations 1992

The Building Regulations 1992 (which contain the New Zealand Building Code) require all structural and non-structural components of a building that are shared between owners or occupiers (such as walls), shall be constructed to prevent undue noise transmission to the habitable spaces of dwellings contained in the building. The Building Code specifies the following performance standards:

- the *Sound Transmission Class* of walls, floors and ceilings, shall be no less than a rating of 55.
- the Impact Insulation Class of floors shall be no less than a rating of 55.

Note that the Building Code is being reviewed and a move towards another standard is proposed (see the emerging issues section).

The **Sound Transmission Class (STC)** is a single number rating derived from measured values of transmission loss in accordance with classification "ASTM E413, Determination of Sound Transmission Class". It provides an estimate of the performance of partitions (such as walls) in certain common sound insulation situations.

The **Impact Insulation Class (IIC)** is a single number rating derived from measured values of normalised sound pressure impact levels in accordance with "*Method ASTM E492, Annex A1. Laboratory Measurement of Impact Sound Transmission Through Floor-Ceiling Assemblies Using the Tapping Machine*". It provides an estimate of the 'impact sound' insulating performance of floors and ceilings between levels in a building.

The Relationship between the Building Act and Resource Management Act

The Building Act and Resource Management Act have differing functions and neither has primacy over the other. Controls in district plans under the Resource Management Act relating to noise insulation or control do not override regulations made under the Building Act, but neither do regulations made under the Building Act restrain local authorities from providing stricter controls in their district plans provided those district plan controls are made for resource management reasons.

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Noise management plans

A noise management plan usually contains:

- the identification of the range of potential noise sources
- specific steps that will be taken to ensure compliance with specified noise limits (these may be linked to a resource consent or district plan limit)
- a written undertaking from the author (either an acoustic engineer or noise consultant) that the means given in the plan will be adequate to ensure compliance with the noise limits specified in the conditions
- a programme of noise measurement to check that compliance has been achieved through monitoring and testing.

Noise management plans may be incorporated into a district plan through permitted activity standards associated with particular (usually known) land uses, or their formulation and compliance with them made a condition on a resource consent. Some district plans actually specify that a noise guidance plan must be prepared to comply with rules (see Palmerston North District Plan Airport noise management).

As with any reference to an external document that is incorporated into a plan by way of a rule, is important that the name of the document, year of publication and the publisher is included in the rule or resource consent (eg, 'management of noise generating activities on the site shall be in accordance with the *Cacophony Acoustic Consultants "Mammoth Mall On-site Noise Management Plan"* (2004) version 3 '). The Resource Management Amendment Act 2005 contains specific requirements as to how external documents are to be incorporated into plans and the availability of those documents for public inspection (see Schedule 1, Part 3, clauses 30-35).

Other RMA options, such as designations for airports, may also refer to noise management plans as a way managing noise.

- It is good practice for key stakeholders, such as transport operators, adjoining residents and site users, to be consulted in the preparation of noise management plans to allow a wide range of options to be explored and help assess what is practicable.

Some examples of noise management plans for large-scale commercial activities are:

- Pan Pac Forest Products Ltd (operates an integrated sawmill and pulp mill complex at Whirinaki near Napier)
- Auckland International Airport Noise Management Plan (prepared in 2003 and includes information on how the airport company manages the airport to comply with the Manukau District Plan)
- Port of Auckland Ltd (describes the noise mitigation work carried out to date and discusses noise management procedures to be carried out in the future).

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Management of noise in the receiving environment

Many district plans now require specific precautions to be taken by the noise receiver to avoid adverse noise effects. Precautions include:

- requiring buffer zones between new noise sensitive activities (such as dwellings) and commercial premises
- placing restrictions on dwelling numbers and density in some areas
- requiring acoustic insulation of new buildings, or retrofitting insulation into buildings being converted to residential use
- specifying the types of sound absorbing materials new buildings may constructed from (see Schedule P from the Palmerston North City District Plan for an example of this form of management technique).

Where new noise sensitive activities are locating in mixed-use environments, buffer zones or restricting the location of dwellings may not always be desirable or practicable. Insulation or the use of noise deflecting or absorbing barriers (or a combination of both) between activities may be the best option. Requirements for such insulation or barriers could form either standards for permitted activities or conditions on a resource consent.

- Providing indoor living spaces in mixed-use areas with a reasonable standard of acoustic protection is emerging as an effective method of addressing reverse sensitivity.
- Specifying the standard required for acoustic insulation (for example the materials to be used, or the level of sound reduction to be achieved).

It can be difficult to keep a list of specified materials up-to-date with what is available in the market. Product brand names should be avoided, and plan provisions written in such a way as to allow for the use of other materials with the same insulation performance (or else the provisions should be periodically reviewed to keep them up-to-date).

The Dunedin City Plan, introduces provisions into the Dunedin City District Plan that require new residential and commercial residential activities in the inner-city central activity and large scale retail zones to be insulated from external noise. The amendments include a formula for specifying the level of noise reduction insulation is to achieve. The plan change also considers the issues of ventilation (open windows and mechanical ventilation).

Ventilation is an important consideration. Indoor sound targets will not be achieved in rooms with open windows whether they are acoustically insulated or not. The Wellington City Council plan change (see permitted and discretionary activities) specifically requires that acoustic protection be provided when openable windows are used as the main ventilation method. This does not replace any mandatory requirement for ventilation under the Building Code, but ensures an alternative source of air is provided for bedrooms with openable windows. The Building Code requires mechanical ventilation for habitable rooms without openable windows. The Wellington City Council approach provides a useful balance between allowing for activities which create noise and allowing noise-sensitive activities within a noisy receiving environment.

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Setting noise limits in district plans and consent conditions

District plan provisions

Generally, there are two types of noise rules that can be included in plans:

- **noise emission** rules, which apply noise limits at the site from which the noise is being emitted
- **noise immission** rules, which apply (lower) noise limits at sensitive receiving positions.

The specific level of noise control in district plans is usually set out in detail in **noise rules**. These are usually included in the plan's performance standards for each zone or class of land use. In some cases district-wide noise rules may apply. The definitions section of the plan is often used to clarify the types of noise to which rules apply, and the relevant technical standards and procedures that apply when assessing noise under district plan criteria.

NZS 6802:1999 gives a range of noise levels as a guideline for the reasonable protection of health and amenity for **land used for residential purposes**. The recommended range of noise limits for residentially zoned sites is:

Day 45-55 dBA Leq

35-45 dBA Leq

Night

70-75 dBA Lmax.

In inner-city areas, night-time noise limits are usually set at 55 to 60 dBA. This exceeds normally acceptable noise limits for residential areas. Planning restrictions for inner-city areas recognise the need to provide for a wide range of activities. Councils often see this as contributing to a vibrant and culturally diverse city centre, while at the same time ensuring a business-friendly environment. Higher permissible noise limits in city centres is a key reason why new residential premises need to be acoustically insulated.

Setting noise limits at the site boundary is often the best way to minimise adverse noise effects on sensitive land use activities. However, it may not be sustainable to set the actual level above residential limits if residential uses are also permitted within the zone.

Setting district plan noise limits higher than the guidelines for areas that are primarily used for residential purposes needs to be accompanied by a parallel requirement for acoustic insulation of all new buildings housing noise-sensitive activities. In the longer term this will lead to a more balanced outcome whereby both noise generators and receivers share the mitigation measures required to allow them to locate in mixed-use areas.

- Indoor sound level targets (eg, World Health Organization (WHO) sleep protection measures) should be considered when setting both noise limits and acoustic insulation standards. Indoor sound level guideline values set by WHO for bedrooms are 30 dBA Leq for continuous noise and 45 dBA Lmax for single sound events. Standards to reduce noise inside residential dwellings in mixed-use environments could use these as a target.

Some buildings have internal noise limits that apply through conditions on the building lease. District plans and resource consents may sometimes also include noise limits that apply to indoor areas. Setting indoor noise limits is usually a measure of last resort and is typically to protect against sleep disturbance. For rooms other than bedrooms, noise limits may be set to protect against annoyance and speech interference. These levels will typically be higher than for bedrooms.

The critical indoor design criteria will depend on the needs for each individual environment. For example, dwellings, schools and hospitals all have differing

indoor design criteria. The advice of a qualified acoustic engineer or noise consultant should be obtained when setting these.

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Consent conditions

Consent conditions relating to noise should contain clear information about:

- why the noise condition is being imposed
- what types of activities to which the limits apply
- how noise is to be measured and assessed (eg, reference to New Zealand Standards) and any numerical limits and the correct metric standards used.
- where noise is to be measured from
- when the noise limits are applicable.

Example noise condition[Reveal/Hide]

The monitoring and assessment procedures in the appropriate New Zealand Standards can be used to ensure compliance. Compliance with the rule does not automatically mean the level of noise is reasonable, but is likely to be the best available guide to acceptable levels.

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Control of noise

Environmental noise in New Zealand is controlled under the Resource Management Act 1991 (RMA) and the Health Act 1956. The Health Act contains nuisance provisions, in particular, ss.29-34 dealing with nuisances including:

'Where any noise or vibration occurs in or is emitted from any building, premises, or land to a degree that is likely to be injurious to health'.

Under the Health Act, nuisances such as noise are the responsibility of local authorities. This provides a potential alternative mandate and enforcement mechanism for the control of noise. Enforcement can extend to prosecution through the district court.

However, most territorial authorities have adopted the RMA as the main method for controlling environmental noise. Noise within the workplace is dealt with by the Occupational Safety and Health (OSH) Service of the Department of Labour.

Best practicable option for avoiding noise emission

s.16 of the RMA requires all noise makers to adopt the **best practicable option** to avoid the emission of unreasonable noise. The duty to adopt the best

practicable option is **in addition to** the duty to comply with district plan noise limits. This duty applies to every person, company, legal entity, and the Crown, and includes persons undertaking activities on designated sites. There are no exceptions.

Enforcement tools

The enforcement tools available within the RMA to control adverse noise effects in the environment are:

- abatement notices issued by territorial local authorities subject to s.322(1)(c)
- enforcement orders to avoid unreasonable noise or enforce plan rules under ss.314-321
- excessive noise direction notices issued by or on behalf of a territorial authority subject to s.327.

More information on enforcement mechanisms that may be used in regard to the effects of noise can be found in Chapter 4 of the Resource Management Enforcement Manual 2005.

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Best practice examples

Auckland City Council - district plan 'noise in the central city area' and 'acoustic privacy' provisions (PDF 245KB)

The City of Auckland District Plan (Central Area Section) contains a chapter aimed at managing noise in the inner-city. Noise standards are tighter in noise sensitive areas such as the 'residential' and 'educational' precincts.

City of Auckland District Plan (Isthmus Section) (PDF 25KB)

The City of Auckland District Plan (Isthmus Section) contains specific controls in the high-density Residential 8 Zone that seek to minimise the transmission of unacceptable noise between sites and between dwellings within the same development. Controls set external and internal noise standards, and limit commercial vehicle operations.

New Plymouth District Council District Plan

The New Plymouth District Plan (Amenity, Health and Safety) includes objectives, policies and rules that look at methods to resolve reverse sensitivity issues and encourage separation of noisy activities from noise-sensitive ones.

Wellington City Council - insulation in mixed-use environments

An example of best practice to address reverse sensitivity is the Wellington City Council Central Area provisions that were included in the Wellington District Plan via Plan Change 23 (approved February 2004). The change introduces new rules requiring acoustic insulation of buildings accommodating noise-sensitive activities in the inner-city.

Queenstown Lakes District Council - acoustic insulation in town centres plan change (PDF 19KB)

Queenstown Lakes District Council also recently prepared a plan change covering noise insulation in mixed use environments and buildings in the Arrowtown, Queenstown and Wanaka town centres.

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RMA provisions

The sections of the RMA that are particularly relevant to managing the effects of environmental noise are:

- s.2 Interpretation
- s.5 Purpose
- s.7(c) Protecting amenity
- s.16 General duty to avoid unreasonable noise
- s.17 Duty to avoid, remedy, or mitigate adverse effects
- s.31 Functions of territorial authorities under this Act
- s.326 Excessive noise
- s.327 Issue and effect of excessive noise direction
- s.328 Compliance with excessive noise direction.

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Case law

Air conditioning

Waitakere City Council -v- All Seasons Property A40/96: An enforcement order was issued requiring the respondent to cease permitting noise to be emitted from the land at levels which contravened the noise controls in the transitional and proposed district plans. The enforcement order also restricted the hours of operation of an air conditioning unit.

Amenity

Shell Oil New Zealand Ltd -v- New Plymouth District Council W 20/96

Turner A and R -v- Grey District Council W 89/94

Mobil Oil New Zealand Ltd -v- Taupo District Council A 149/98

Cox -v- Kapiti Coast District Council W 05/94

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Best practicable option

Cox -v- Kapiti District Council W05/94 3 NZPTD 195: s.16 may affect activities (even though they may be permitted) if they are not adopting the best practicable option. 'This section will make it extremely difficult to import potentially noisy activities into a quiet residential environment' and 'might even enable termination of a permitted use if the best practicable option is not adopted'. Specialist evidence is sometimes needed when dealing with noise cases. Where a person potentially affected by an activity has reasonable cause to fear amenity detraction from noise, then an applicant is under an obligation to call acoustical evidence.

Ngataranga Bay 2000 Inc -v- The Attorney General & North Shore City Council A010/94 3 NZPTD 420: The duty in s.16 is not necessarily avoided by compliance with a district rule on noise control, nor by an assessment that a particular noise emission is not deemed a danger to health nor by reference to general standards.

Hall & Stevens -v- Port Otago Ltd & Owens Services Ltd C036/95 4 NZPTD 390: Respondents under s.16 are entitled to know which option the applicants consider to be the best practicable option and why.

Auckland Kart Club Inc. -v- Auckland City Council A124/92 The definition of **best practicable option** has too many matters of interpretation and discretion built into it to allow it to be used as a basis for strict liability. The phrase 'other things' does not limit the regard to be given to just the three provisions (a), (b) and (c), of the definition; nor does it mean that one provision should prevail over another. The question of weight accorded each provision depends on the particular case. The conjunctive use of 'and' at the end of each provision means that an evaluation of the best method should take account of all factors mentioned in the provisions. However, one or two of the provisions may, at any one time, be exclusive of others. What is reasonable is a question of fact and degree. 'Reasonable' is a question of fact and degree, it is necessary to consider the technical options and the financial implications separately. The best possible option is the optimum combination of all methods to limit noise to the greatest extent achievable.

Buffer zones

Winstone Aggregates Ltd; Auckland Regional Council -v- Papakura District Council A096/98: The Court considered whether a reverse sensitivity buffer zone was appropriate. The primary responsibility on the owners and occupiers of a site is to internalise the effects of an activity as much as possible. Only where it is unreasonable (having regard to all the circumstances of each particular case) to internalise should other methods of controlling effects be considered. The Court held that a measurement should be imposed on the Quarry Zone boundary defining the reasonable noise constraints imposed on the quarry operator. Those levels are site specific and will depend on factors such as technology, cost, geography and the geological structure of the site and its surrounds. When the control at the interface is set, it can then be determined whether a buffer zone is necessary and the extent of any such zone.

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Building Act

Christchurch City International Airport C113/94 Sheppard, Skelton: The Building Act and Resource Management Act have differing functions, neither has primacy over the other and the requirements of each need to be met. The Building Act does not prevent rules in District Plans regulating similar matters for different objectives.

Building Industry Authority; Christchurch City Council; Christchurch International Airport, AP78/96 (Christchurch City International Airport) Building Act: Relationship between Building Act and Resource Management Act. Where a condition (noise attenuation) is required to control activities in terms of the Resource Management Act then it is not contrary to s.7(2) of the Building Act. Bill of Rights Act - "Any condition which a consent authority may otherwise lawfully, fairly and reasonably impose on a resource consent pursuant to s.108 of The Resource Management Act does not breach s.14 of the NZ Bill of Rights Act 1990."

Entertainment noise

Hamilton City Council; Le Grand Hotel Ltd -v- PG Bryant Ltd A01/96 (across a road): The Council and Le Grande Hotel sought enforcement orders that the respondents adopt the best practicable option to ensure that emission of noise did not exceed a reasonable level in compliance with s.16. The Tribunal held that the first respondent was under a duty by virtue of s.16(1) of the RMA to adopt the best practicable option to ensure that, between the hours of 11pm and 6am, the emission of noise from the bar did not exceed 50 dBA (L10) (allowing for special audible characteristics), when measured 1m from the outside of the wall of the hotel facing Collingwood Street. The bar could be modified by creating a sound barrier between the inner part of the bar and its open balcony by providing an

entrance lobby at either end of the balcony. The likely cost was likely to be in the order of \$52,000 to \$65,000 and included allowance for alteration to ventilation and air extraction. However, the respondents were afforded the opportunity of arranging for a final design to be undertaken by an acoustic consultant. Subject to approval of the design, modification of the bar along the lines described represented the best practical option.

Hamilton City Council; Le Grand Hotel Ltd -v- PG Bryant Ltd A064/96 (55 dBA L10) This order follows from A001/96. An enforcement order was made in respect of the "Freemans Cocktail Bar", within The Commercial Establishment at 287 Victoria Street, Hamilton, requiring the respondents to adopt the best practicable option to ensure that noise emitted from the premises did not exceed specified noise limits. The best practicable option specified was: control of the noise source where possible including control over levels of noise produced by musical instruments and amplified sound reproduction; and/or acoustic insulation of the premises.

Shepherd -v- Far North District Council A095/98: An appeal against refusal of resource consent to establish licensed tourist house premises at 18 King's Road, Paihia. The site occupied by the "Pipi Patch" is a transitional or mixed-use area. There are a high proportion of commercial properties, many servicing various sections of the tourist market. Residential uses continue to be important in the area. The Court held that the proposed conditions were sufficient to allow the proposal to be approved. Conditions were imposed that limited the area to which the license would apply; the number of patrons; compliance with noise limits; monitoring of noise; and landscaping. The Environment Court said had no jurisdiction in regard to guests travelling on public roads.

Berhampore Residents Association -v- Wellington City Council W054/92: The Tribunal concluded that the needs of, or benefits to, concert goers did not override the considerations of the residents and their amenity values. Residents should not be expected to tolerate the environmental disruption outlined for the purpose of enabling non-residents to enjoy excessively noisy and potentially environmentally destructive musical performances. An enforcement order was made prohibiting the Wellington Rugby Union (Inc.) from commencing or continuing any musical concert making use of amplified music upon the [Athletic] park after 6.30pm and before 11pm if such a concert was likely to produce sound which may exceed 68 dBA Leq measured at any residential or hospital boundary in the vicinity. Amplified music was totally prohibited between 11pm and 9am.

See also:

- *Wellington City Council -v- Ryan AW W 166/95*
- *Lawton -v- North Shore City Council W152/95*
- Crn6048006284/86 District Court Sept 96 (manager's liability/responsibility).

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Excessive noise and enforcement

Wilhemsen, GR -v- Dunedin City Council C 059/92: The standard of proof required to support an abatement notice is the civil standard based on the balance of probabilities having regard to the gravity of the matter. Abatement notices should not refer to excessive noise as excessive noise is specifically dealt with in s.326 and s.328 of the Act. An abatement notice has to set out what the recipient is required to do, not what he/she may be required to do, or may have to do. While the abatement notice was cancelled it was made clear that the appellant was not absolved from the responsibility that every occupier of land/person carrying out activities has under s.16(1) is to adopt the best practicable option to ensure that any noise he/she creates does not exceed a reasonable level. It is no answer to say that one is simply carrying on normal residential usage such as developing one's residential property.

Groot -v- Tauranga District Council NP30/92: Powers under the sections concerning excessive noise orders are in addition to the powers under ss.322 to 325 to issue abatement notices relating to unreasonable noise and to seek an enforcement order under s.316. This was illustrated in the case where it was stated that 'All may be employed to enforce the general duty under s.16 to ensure the avoidance of unreasonable noise'.

See also:

- *Antunovich -v- Marine Helicopters Ltd* A 137/92
- *Bird BG and Ors -v- South Canterbury Car Club* C 027/94.

Insulation of dwellings

Matamata Piako District Council -v- Matamata Piako District Council A 41/96: A successful appeal to the extent that a new condition was substituted in regard to a roading designation. Before the construction of a proposed heavy traffic bypass a noise assessment is to be made within all existing dwellings directly adjacent to the road. Within six months of the bypass becoming operational a further noise assessment is to be made within the existing dwellings. In the event that the second noise assessment shows that the stipulated noise levels are not met the designating authority is to take measures to ensure that the stipulated noise levels will be achieved. Such measures may be either fencing or insulation of the dwelling(s).

Unreasonable noise

Ngataranga Bay 2000 Inc -v- Attorney-General A 16/94 (duty to adopt best practicable option, s. 17 duty, district rule): s.16 does not impose an undefined noise level standard, rather a duty to adopt the best practicable option to ensure that emission of noise does not exceed a reasonable level. The duty in s.16 is not necessarily avoided by compliance with a district rule on noise control, nor by an

assessment that a particular noise emission is not deemed a danger to health nor by reference to general standards. The duty under s.17 only arises if there is an adverse effect on the environment from the activity.

See also:

Auckland Kart Club Inc -v- Auckland City A 124/92

Hall -v- Port Otago Ltd and Owens Services Ltd C 36/95

Groot -v- Tauranga D C NP30/92

Cox -v- Kapiti Coast District Council W 005/94

Ventilation

Ports of Auckland Ltd -v- Auckland City Council Cp 306/98: Reverse sensitivity - the operation of the Port is likely to cause a noise nuisance to those living adjacent which means future owners of proposed residential apartments in vicinity may in future object - the Port clearly an affected party in regard to development of Railway Station Apartments. Council has the ability to require minimum noise standards in apartments and adequate closed window ventilation.

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Emerging issues and work in progress

New Zealand Building Code: building insulation

The New Zealand Building Code has been updated in line with the Building Act 2004. Under clause G6, acoustic insulation methods (PDF 362 KB) are specified for protecting habitable spaces in buildings from environmental noise arising from beyond the building.

The 'trigger' for requiring acoustic insulation against external noise in new buildings housing noise-sensitive activities rests with territorial authorities and the Environment Court. Acoustic insulation may be specified as being necessary at the time of making decisions on resource consents, designations or district plan provisions, or appeals on these RMA mechanisms. If this change is implemented, councils may need to consider whether to change their plans to allow for acoustic noise controls to be imposed under the Building Code.

Within the draft clause G6 there are moves away from traditional methods for quantifying levels for building acoustic isolation. This should improve the implementation of acoustic insulation. The familiar method of specifying a maximum indoor sound level for determining insulation requirements has been replaced with a method termed **Standardised Level Difference** or DnT,w

(AS/NZS 1276.1:1999 *Acoustics - Rating of sound insulation in buildings and of building elements: Airborne sound insulation*). The DnT,w approach for specifying the acoustic performance of the building envelope avoids these difficulties and provides certainty. This approach is used in both the Wellington and Dunedin District Plans.

No complaint clauses

The use of caveats and 'no complaints' notations on land titles is being used more frequently as a means of limiting noise complaints from future landowners. A caveat can take the form of a notice attached to a certificate of title alerting owners to the presence of aircraft noise. This also has the effect of preventing occupiers from complaining about aircraft noise. A High Court decision (AP 78/96) has indicated that such caveats would not breach existing statutes (particularly the Bill of Rights Act), but it specifically did not consider whether such a caveat would be a reasonable method for controlling adverse effects.

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Related documents

New Zealand Standards

NZS 6801: 1999 *Acoustics - Measurement of sound*

NZS 6802: 1999 *Acoustics - Assessment of environmental sound*

NZS 6803: 1999 *Acoustics - Construction noise*

NZS 6805: 1992 *Airport noise management and land use planning*

NZS 6807: 1994 *Noise management and land use planning for helicopter landing areas*

NZS 6808: 1998 *Acoustics - The assessment and measurement of sound from wind turbine generators*

NZS 6809: 1999 *Acoustics - Port noise: Management and land use planning*

Copies of these standards can be purchased from Standards New Zealand.

Other New Zealand documents

Department of Labour Noise in the Workplace Approved Code of Practice for the management of noise. Wellington.

Local Government New Zealand. 2001. Resource management enforcement manual 2001 update. Wellington: Local Government New Zealand.

Ministry for the Environment Preparing effective and enforceable consent conditions.

Ministry for the Environment. 2001. Managing rural amenity conflicts. Wellington: Ministry for the Environment.

Office of the Parliamentary Commissioner for the Environment (PCE). 1996. The control of noise, with particular reference to airport noise. Wellington: PCE.

Office of the Parliamentary Commissioner for the Environment (PCE). 2000. The management of noise from aircraft overflying sensitive environments. Wellington: PCE.

Palmer, K A. 'Airport noise insulation. ' Resource Management Bulletin 2, (1997) 18 Williams, D A R, ed. Environmental and Resource Management Law in New Zealand. 2nd ed. Wellington: Butterworths, 1997.

International documents

Berry B F, Flindell I H, and Porter N D. '*Health effect based noise assessment methods: A review and feasibility study*'. National Physical Laboratory Report CMAM 16, September 1998.

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Helen Atkins, Phillips Fox
Peter Frawley, Greater Bendigo City Council (formerly at Palmerston North City Council)
Nigel Lloyd, Acousafe.

Date of posting: December 2005

This guidance note was updated in November 2010 to reflect RMAA 2009.

MEMORANDUM

To: Gary Napper, City Manager
City Council
Planning Commission

From: David Woltering, Community Development Director 

Date: September 21, 2012

Re: Clayton Club Recommendation to Modify City's Noise Regulations

Over the past six months, Chief Dan Lawrence and I have been meeting with the operators of the Clayton Club, Steve Barton and Dennis Mitchell, to address noise complaints that have been received by the City regarding the operations of the Club. The complaints have been related to amplified music coming from the Club late at night (generally after 10:00 p.m.). During our visits to the Club regarding this matter, the Chief and I noted that a large number of patrons sometimes congregate outside in the rear garden area late at night, effectively expanding the capacity of the Club.

The staff's basis for evaluating the noise complaints were regulations found in Chapter 9.30 Noise of the Clayton Municipal Code (See **Attachment 1**) and the City's General Plan Noise Element. The regulations in Chapter 9.30 and, more specifically, Sections 9.30.030 and 9.30.040 allow for a more qualitative evaluation of circumstances to determine if there is a violation. For example, under Section 9.30.040.A.1, it states that there is a "prima facie violation if the noise is plainly audible at a distance of fifty (50) feet from the nearest property line...." The General Plan Noise Element states as a general goal that "[p]hysically harmful levels of noise [70 Ldn and above] shall be mitigated to below harmful levels and to levels of minimum annoyance [below 60 Ldn] where feasible. Hence, our objective in working with the Club operators was to identify a range of measures that could be readily achievable and without significant cost to the operators, yet effective to reduce noise levels to approximately 60 decibels.

Chief Lawrence and I visited the Club at various times, including after 10:00 p.m., when amplified music was being played and measured the decibel levels inside and outside of the Club. We noticed there was a tendency to keep the door open to the back yard area when the Club was full with patrons and/or indoor temperatures were high to allow the overflow crowd to move inside and outside the Club and to allow increased air flow. We also noticed that, when the door was closed and the amplified music did not exceed 95 decibels inside, the noise levels approximately 50 feet from rear property line did not exceed approximately 60-62 decibels (adjusting for other momentary noise incidents [clarification added 9/28/12]). Consequently, there was general agreement reached between staff and the operators that they would adjust the operations of the Clayton Club

as referenced in the attached September 13, 2012 letter (See **Attachment 2**) from Chief Lawrence and myself to Steve Barton and Dennis Mitchell addressing achievement of those thresholds. These measures included keeping the doors to the Club generally closed after 10:00 p.m., assuring that indoor decibel levels would not exceed 95 decibels, and adding indoor fans for better air circulation. After receiving their agreement to these measures, it was unexpected to then receive the attached letter (See **Attachment 3**) from the operators indicating that the effort had been deficient and their business was being harmed by the agreed to measures.

It should be noted that the Clayton Club's amplified music was the subject of complaints that the staff was reacting to and it is the only business in the Town Center area playing amplified music late at night (after 10:00 p.m.) without containing this noise to an enclosed building as part of regular operations. Chapter 9.30 of the CMC could be modified to include quantitative standards and thresholds, including standards and thresholds for mixed-use environments like the Town Center area. Likewise, the Noise Element of the General Plan could be similarly updated. This type of effort is likely to require at least one year to complete and would require hiring specialized consultants (e.g., acoustical consultants) to assist the City with this effort. Staff estimates the total cost of the effort would be in excess of \$25,000.

Attachments:

- 1 Chapter 9.30 Noise of the Clayton Municipal Code.
- 2 Letter from Community Development Director David Woltering and Police Chief Dan Lawrence to Steve Barton and Dennis Mitchell, dated September 13, 2012.
- 3 Letter from Steve Barton and Dennis Mitchell to City of Clayton, Clayton City Council, and Clayton Planning Commission, dated September 15, 2012.



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City Council
HOWARD GELLER, MAYOR
JOSEPH A. MEDRANO, VICE MAYOR
JULIE K. PIERCE
DAVID T. SHUEY
HANK STRATFORD

September 13, 2012

Steve Barton &
Dennis Mitchell
Clayton Club
6096 Main Street
Clayton, CA 94517

Re: Resolution of Noise Complaints at Clayton Club

Dear Mr. Barton and Mr. Mitchell:

Over the past several months, Clayton Police Chief Dan Lawrence and I have met with the two of you on a number of occasions at the Clayton Club at 6096 Main Street to effectively address noise complaints the City had received regarding the operations of the Club. The focus of the complaints had to do primarily with late night (i.e., after 10:00 p.m.) amplified music coming from the Club.

The Chief and I appreciated the time and good faith efforts you both demonstrated in evaluating the operations of the Clayton Club and looking for reasonable, yet effective, adjustments to Club operations to address the noise complaints. We listened to a variety of types of amplified music — juke box, DJ with recorded music, and live musicians — and took noise measurements inside and outside of the Club of the music under different circumstances (e.g., doors open and doors closed). We observed nighttime operations on several occasions, including after 10:00 p.m. We noticed that, at times, there can be loud behavior in the outdoor garden area of the establishment. We noted, based on our observations and noise measurements, that not exceeding an interior noise level of 95 decibels, with doors closed, resulted in general conformance with the City's current noise standards and related provisions described in Chapter 9.30 of the Clayton Municipal Code (CMC) and the City's General Plan Noise Element. We also noted that additional monitoring and mitigation measures are needed in the open, outdoor yard area late at night to address loud behavior to avoid future noise complaints.

In a collaborative manner, staff discussed with the two of you operational adjustments needed to comply with the provisions of Chapter 9.30 and the General Plan Noise Element. These adjustments are listed in the attached Decibel Management document under the Sections titled, "Measures taken to date" and "Additional Measures to be taken." You also included in the schedule a section titled "Recommendations to the city for future consideration." Although

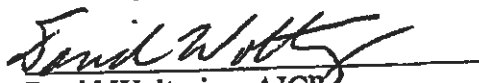
noted, it does not pertain to addressing the subject noise complaints received by the City, given the current, applicable CMC and General Plan provisions.

Important aspects of these two sections of the Decibel Management document cited include closing the doors to the Club after 10:00 p.m.; an interior noise meter (i.e., decibel alarm) will be placed at the bar to help assure that the interior noise level does not exceed 95 decibels; additional fans for improved ventilation will be placed inside the Club; and signage, increased monitoring, and limitations on how late the outside bar can stay open related to mitigating outdoor loud behavior. We understand that you agree to implement all of the measures mentioned in the two currently applicable Sections of the Decibel Management document.

Staff believes that if these agreed upon measures are consistently implemented by you and your staff, the operations of the Clayton Club should conform to the current provisions of Chapter 9.30 and the Noise Element Standards, Goals, and Objectives of the Clayton General Plan.

Again, we thank you for your time, efforts, and agreement to consistently implement the measures in the attached Decibel Management program.

Sincerely,


David Woltering, AICE
Community Development Director


Dan Lawrence
Chief of Police

Attachment: Decibel management – response to city concerns (7) document

c: Gary Napper, City Manager

comdev/Clayton Club/Ltr. To Barton and Mitchell.9.13.12

Decibel management - response to city concerns (7)

		Status
Measures taken to date		
	Temporary "line of sight" sound absorption barrier placed near rear exit to reduce sound transmission levels toward new housing. Given the limited success of this test, it will be removed.	Aug 1st
	Ventilation window on dance floor sealed with sound absorption material. This closure will be made permanent	Aug 1st
	Signage has been placed on entry/exit doors stating that doors must remain closed after 10 pm when musicians are performing	complete
	Bar staff have been provided with handheld Db meter to monitor sound levels during hours of musical performance and advised to instruct musicians when DB levels exceed 95.	complete
Additional Measures to be taken		
	Current 8-1/2x11 signs stating that doors must be closed after 10 pm are deemed inadequate. City would like them readable from 30 feet away. Existing signs will be replaced with signage that is 11x17 with larger font than the 55 point currently used	complete
	Mandatory door closure restrictions will be expanded to seven days a week after 10 pm, and not just on nights when musicians are not performing.	with immediate effect
	Multiple similarly large signs will be placed in the patio area to caution customers to avoid loud behavior. Signs must be visible from all gathering places and large enough to be read from 30 feet away.	complete
	The patio bar may not be operated after 10pm on weekdays unless a Temporary Use Permit has been obtained. Weekdays are defined as Sunday night through Thursday night excluding holiday eves.	with immediate effect
	The patio bar must be closed for business on or before 12:30 am on weekends. Use up to 12:30am on weekends will not require a Temporary Use Permit. For the purpose of this item, weekends are defined as Friday and Saturday nights and holiday eves.	with immediate effect
	When patio bar is in use Clayton Club must ensure that, in addition to the outside bartender, two doormen are present in patio area so one may circulate among patio customers to advise them to refrain from loud behavior.	with immediate effect
	Additional ventilation will be installed (i.e. portable fan and/or portable air conditioners) to replace lost ventilation arising from door closures and window elimination. City approval is required for types of equipment and measures to be taken.	complete
	Additional surveillance will be provided to ensure door closures do not result in unobserved behavior at front entry. These measures may be installing windowed doors, additional camera monitors, additional doormen to position observers on both sides of closed doors. Final solution to be approved by city.	complete
	A decibel alarm will be placed in view of the bartender to alert them when sound levels exceed 95 decibels inside the building. The bartender will advise musicians to reduce sound to below the 95Db threshold. 95Db was chosen because it allows a Db reading of 60 at the center street property line when doors are open.	complete
Recommendations to the city for future consideration		
	Allow the Clayton Club to have doors open if they remain in compliance with noise ordinance	
	Allow Clayton Club to keep patio bar open during normal licensing hours if in compliance with noise ordinance.	
	City should determine sound violations solely based on Db level measurements which are specific. A business should not be held in violation of city ordinance for audible sounds which are at or below the acceptable decibel readings. The city noise ordinance should be modified to cite specific acceptable decibel readings rather than subjective audibility.	
	City should consider ambient sound levels in the downtown areas in its determination of noise violations by a single business. Since ambient sound levels when downtown businesses are closed average about 65Db, citing violations between 60Db and 65Db seems impractical. City should consider adopting a standards in line with county standards for the downtown commercial district at 70Db during daytime hours and 65Db between 10pm and 7am. Alternatively, the city should undertake a study of ambient noise conditions at various times of day and evening and establish a noise ordinance which is achievable based on the study.	
	Review the disclosure signed by residents of Mitchell Canyon Place to determine if it is applicable to sounds emanating from existing downtown businesses.	