

Dan and Maureen Egan
[REDACTED]
Cottonwood Heights, Utah 84093

October 11, 2023

Planning Commission
Cottonwood Heights
2777 E. Bengal Boulevard
Cottonwood Heights, Utah 84121

Re: Ordinance 402

Dear Planning Commission:

We write in support of the recently passed City Ordinance 402: Establishing Temporary Land Use Regulations for Non-Vegetative Outdoor Playing Areas and Commencing Proceedings to Amend Ordinances ("Ordinance 402"). Ordinance 402 enacted a temporary land use regulation for sports courts and commenced proceedings to amend the City's Municipal Code. The thrust of the proposed ordinance amendments is to regulate the installation and use of private outdoor sports facilities ("PSFs") in residential areas. Many of the concerns expressed in this letter also apply to sports facilities located on public properties, such as parks and school grounds.

The Planning Commission is tasked with the development of a proposed ordinance for PSFs or amending the existing City ordinances to specifically address the installation and use of PSFs in the City. We applaud and encourage the City's efforts in this regard. Outlined below is a listing of our concerns and recommendations relating to this initiative by the City.

1. The installation of PSFs should require the prior approval of the Planning Commission. The application for approval should include a site plan that shows the location of the PSF on the property and the distance from the PSF to the neighboring property lines. The minimum set-back from neighboring property lines should be 200 feet. The application should also show how the PSF will comply with the City's lighting and noise ordinances.
2. The City's Outdoor Lighting Ordinance (Chapter 19.77 in the City's Municipal Code) should be made expressly applicable to all PSFs, whether installed after adoption of the new ordinance, or already in existence in the City. Either by amendment to the existing ordinance or set out in the proposed new ordinance, artificial lighting of PSFs should be limited in hours of operation, with no such use before 8:00 a.m. or after 9:00 p.m. In addition, the proposed amendment or ordinance should clarify that the lumens limitation for any lot is pro rata based on the property's acreage. In other words, the lumens limit for a one-acre lot is 43,560 lumens under the ordinance; therefore, if the lot in question is one-half acre, the total lumens available for outdoor lighting is 21,780 lumens. We understand that the recommended lumens for an outdoor PSF (tennis and pickleball) is 50,000. That means that a lot must exceed one-acre to comply with the City's lighting ordinance. The light trespass requirements and limitations of the City's lighting ordinance should be made applicable to PSFs, if they qualify for outdoor lighting.
3. The City should not rely entirely on Salt Lake County's noise rule for application to PSFs. The County's rule was not written with PSFs in mind. There are two interpretive issues with respect to

the County's noise rule. First, the County's rule is aimed at "stationary noise sources" such as engines and loudspeakers. The PSF is a stationary object, but the movement of players and balls and the surface of the PSF may not strictly fall under the definition of a stationary noise source. Second, the County's noise rule may be limited to sounds that are continuous in nature at a sustained level. The noise that results from balls that are struck by rackets or bounced on a hard surface may not be considered continuous. The City's amendment or new ordinance should provide clarity on these issues. We note that it is widely observed that the sound from pickleball play can reach or exceed 70 dBA, which is in excess of the County's limit of 60 dBA during daylight hours and 50 dBA at night. Further, pickleball sound can and does exceed 70 dBA "at a distance of 100 feet. This is higher than tennis (at 40 dBA), city noise (at 55 dBA), and a whisper (at 25 dBA)." (Source: <https://thepickler.com/blogs/pickleball-blog/pickleball-noise-issue>). In addition, any application for a PSF in a residential zone should include a noise mitigation plan. The minimum set-back stated in paragraph 1 above might be reduced if a noise mitigation plan, acceptable to the City, is put in place. The requirements for a noise mitigation plan should include items such as a noise study prepared by a certified professional, the methods proposed to comply with the noise plan recommendations, and additional landscaping that the Planning Commission may require for noise mitigation. See, for example, Park City's ordinance 15-4-22 regarding Outdoor Pickleball Courts in Residential Areas. If the City approves a noise mitigation plan, the set-back requirement mentioned above should not be reduced to less than 100 feet from the nearest property line.

4. The amendment or new ordinance should restrict PSFs from being used in a commercial manner, whether producing revenue or not, so that continuous play from dawn into the night is not a regular practice. Such a limitation would obviate issues related to crowding streets with parked cars and limiting access through neighborhoods by residents, and sanitation, delivery, and emergency vehicles.
5. The amendment or new ordinance should also require compliance with the City's Sensitive Lands Evaluations and Development Standards (Chapter 19.72 of the Municipal Code). This ordinance limits impervious surface to 30% of the total site, including roofs, driveways, walkways, and other hardscape features. Most City residents are unaware of this limitation or how it may impact their proposed improvements. This requirement serves to strengthen the need for prior approval of the proposed PSF before work on the project commences.
6. The amendment or new ordinance must have an enforcement mechanism. The City should have the right to stop work that has not received the necessary approvals from the City, to impose fines for violations, and to require remediation for failure to abide by the City's ordinances or approvals applicable to the property, including change of use or removal of PSF improvements that are not in compliance with City requirements. The City should not solely rely on neighbors to report violations, although neighbors should have the ability to notify the City of violations.

The issues involving PSFs in the City have grown in frequency and intensity over time. The growing popularity of outdoor sports, such as pickleball, is not an excuse for ignoring the consequences that installation and use of these facilities have on neighboring property owners. Even a casual search on the internet involving the words "pickleball" and "noise" produces many articles and news reports of the issues raised in this letter. See, for example, the CNBC news report from September 25, 2023, at <https://www.cnbc.com/2023/09/25/pickleball-noise-remedies-in-the-works.html>. The article references a sound engineer and pickleball player, named Bob Unetich. Quoting from the article:

He [Unetich] said pickleball paddles vibrate at a high pitch of 1,000 times per second, which what leads to the pop noise. Humans are sensitive to pop sounds and often annoyed by them, he added. “I appreciate the problem and frankly wouldn’t want to live next door to numbers like 70 decibels over and over and over every four seconds for eight hours a day,” Unetich said. “And I’m sure you wouldn’t either.”

See also the Denver Gazette report on the City of Denver closing public pickleball courts, primarily due to noise considerations at https://denvergazette.com/outdoors/congress-park-pickleball-courts-closed-noise/article_eebeb5d6-d236-11ed-9c78-e32582087367.html.

Thank you for your time and consideration.

Sincerely,

Dan and Maureen Egan