International Municipal Lawyers Association

2024 Mid-Year Seminar

Washington, DC

Pickleball is Fun! But Regulating? Not So Much

April 19, 2024

Robert (Bob) Widner

Widner Juran LLP

City Attorney

City of Centennial, Colorado

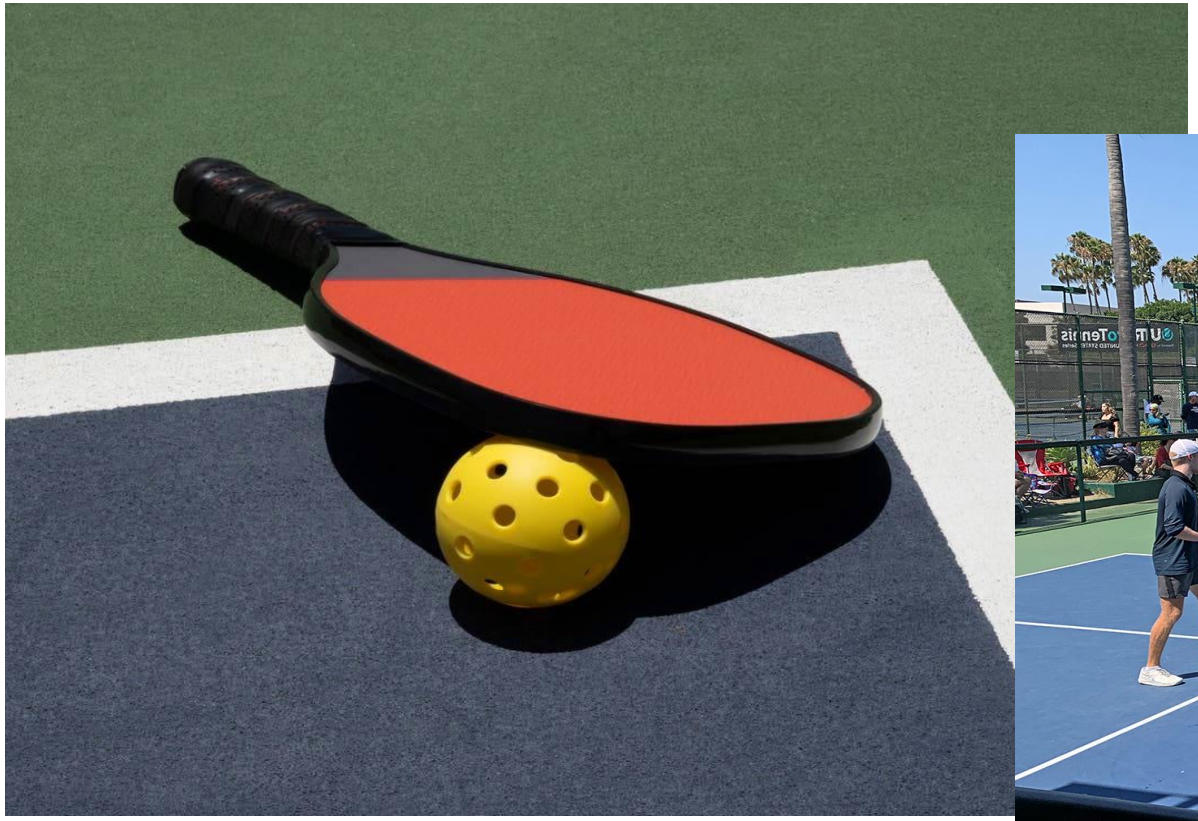
Neil Marciniak

Director, Community and Economic Development

City of Centennial, Colorado

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What is Pickleball?





https://www.flooringinc.com/blog/wp-content/uploads/2020/05/Court-layout-dimension-768x512.jpg

The Popularity of Pickleball

“America’s Fastest Growing Sport”

National Public Radio - https://www.npr.org/2022/02/19/1081257674/americas-fastest-growing-sport-pickleball
NBC News - https://www.nbcnews.com/data-graphics/pickleball-fastest-growing-sport-pandemic-rcna24620
Washington Post - https://www.washingtonpost.com/wellness/2022/11/09/is-pickleball-good-exercise/
Sports Illustrated - https://www.si.com/sports-illustrated/2022/12/29/pickleball-fastest-growing-sport-daily-cover

The Popularity of Pickleball

More than 36.5 million people played pickleball from August 2021 to August 2022.

14% of Americans played pickleball at least once in that 12-month period.

2023 APP Pickleball Participation Report
American Pickleball Professionals
https://www.cnbc.com/2023/01/05/pickleball-popularity-explodes-with-more-than-36-million-playing.html

The Popularity of Pickleball

Pickleball play has increased by **85.7%** year-over-year and by **158.6%** over three years.

The number of **new** pickleball participants in 2022 exceeded the total number of pickleball participants in 2021.

https://sfia.org/resources/pickleball-sees-unprecedented-growth-will-require-25000-courts-built-900-million-investment-to-keep-up-with-demand/
https://www.nytimes.com/2022/09/03/well/move/pickleball-popular-sport.html

The Popularity of Pickleball

The average age of a pickleball participant:

35

The age group for most participants:

25-34

https://sfia.org/resources/pickleball-sees-unprecedented-growth-will-require-25000-courts-built-900-million-investment-to-keep-up-with-demand/

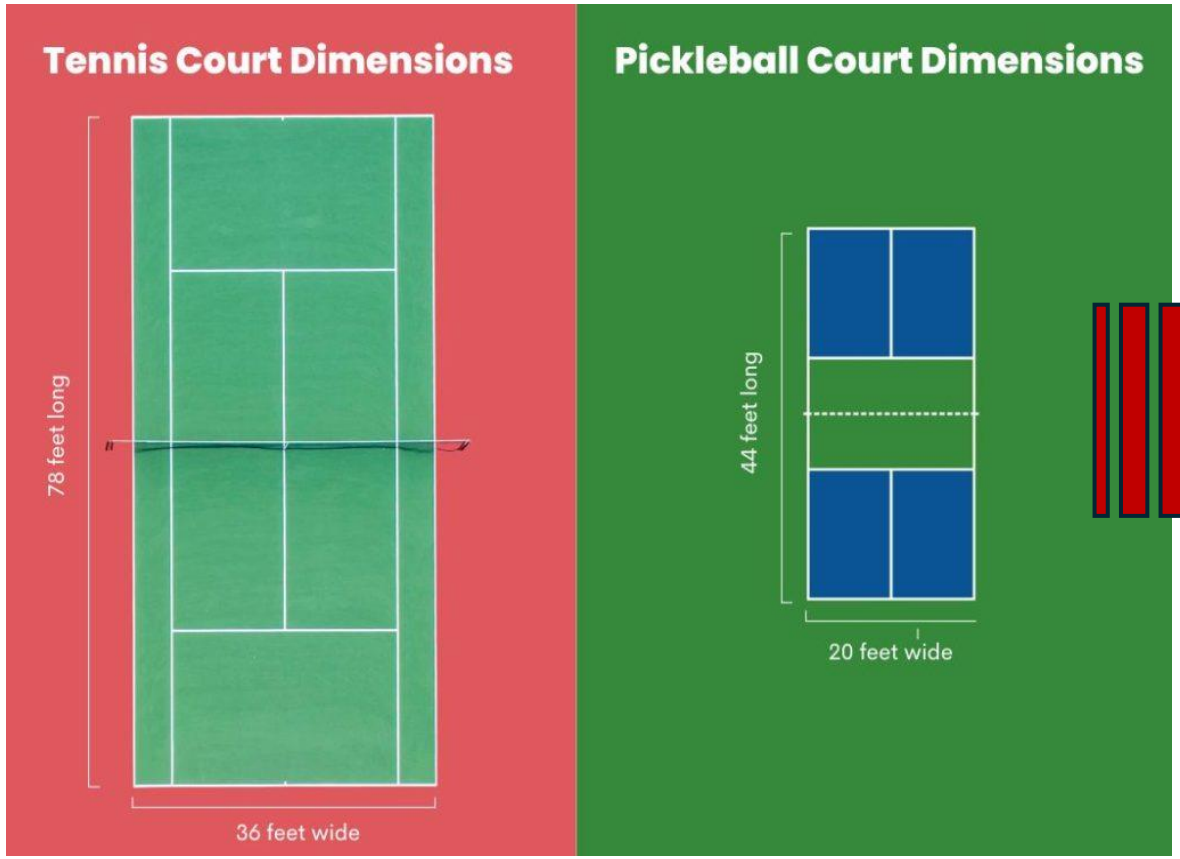
The Popularity of Pickleball

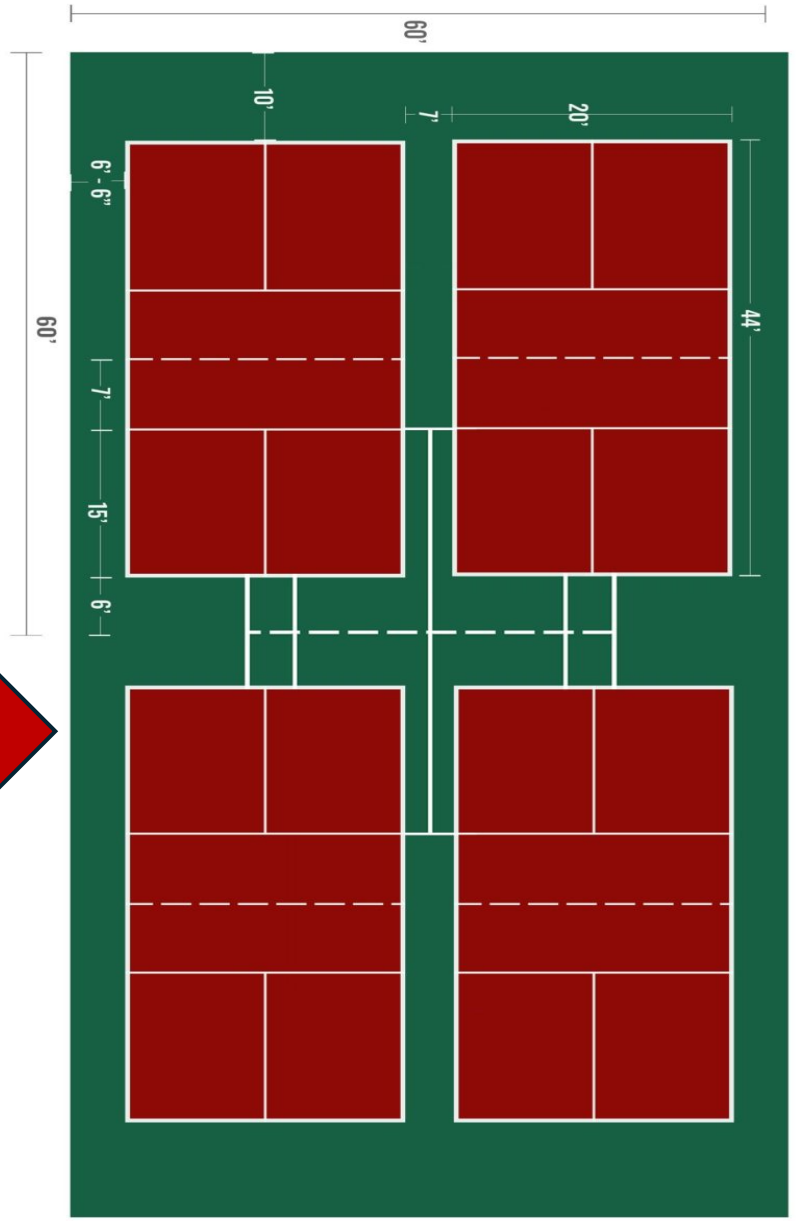
The U.S. needs at least 25,754 new pickleball courts to meet current demand in 2023.

"Demand is increasing every year at astonishing rates."

https://sfia.org/resources/pickleball-sees-unprecedented-growth-will-require-25000-courts-built-900-million-investment-to-keep-up-with-demand/

The Pickleball Court



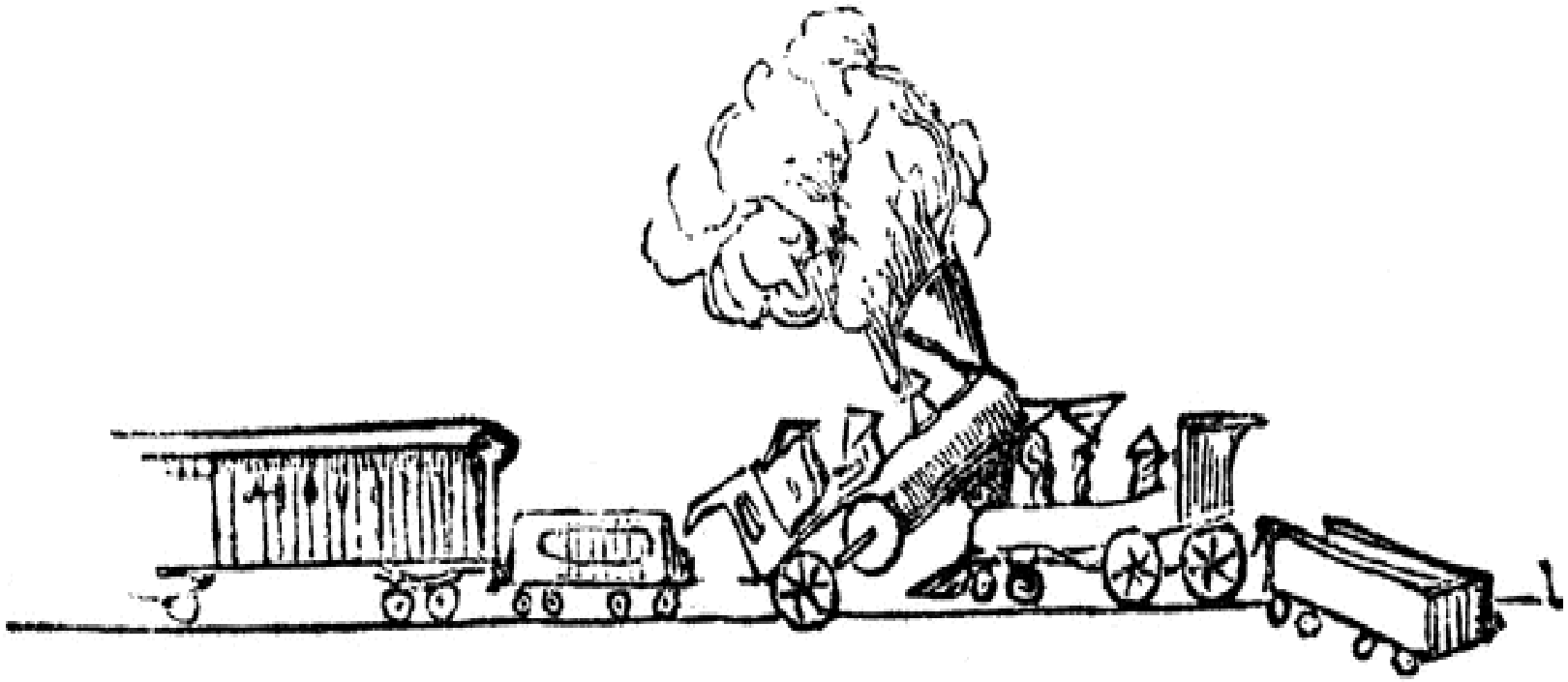


https://pickleballunion.com/wp-content/uploads/2022/11/What-is-a-pickleball-court-Image-4-1024x731.jpg
https://www.flooringinc.com/blog/wp-content/uploads/2020/05/Court-layout-dimension-768x512.jpg




DecoTurf

So, What's the Problem?



Free Use from www.pexels.com

Noise

Type

Duration

Regularity

<u>Proximity</u>









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One&Only
PORTONOVI
Montenegro
Tipsarević
LUXURY TENNIS
One&Only
PORTONOVI
Montenegro
Novak hitting
forehand drills

Kansas City Star

Neighbors can't take the racket, so a Johnson County city is taking down pickleball nets

The popular game has led to noise complaints and even lawsuits.

Los Angeles Times

Pickleball noise is fueling neighborhood drama from coast to coast

abc News

As pickleball grows in popularity, noise complaints are also on the rise

THE WALL STREET JOURNAL.

It's Been Awkward.' Pickleball Is Pitting Neighbor Against Neighbor in Noise-Conscious Communities.

Pickleball Rally

Pickleball brings noise complaints, lawsuits to Phoenix neighborhoods

The New York Times

Shattered Nerves, Sleepless Nights: Pickleball Noise Is Driving Everyone Nuts

Nationwide scourge of unneighborly clashes, petitions, calls to the police and lawsuits, with no solution in sight.

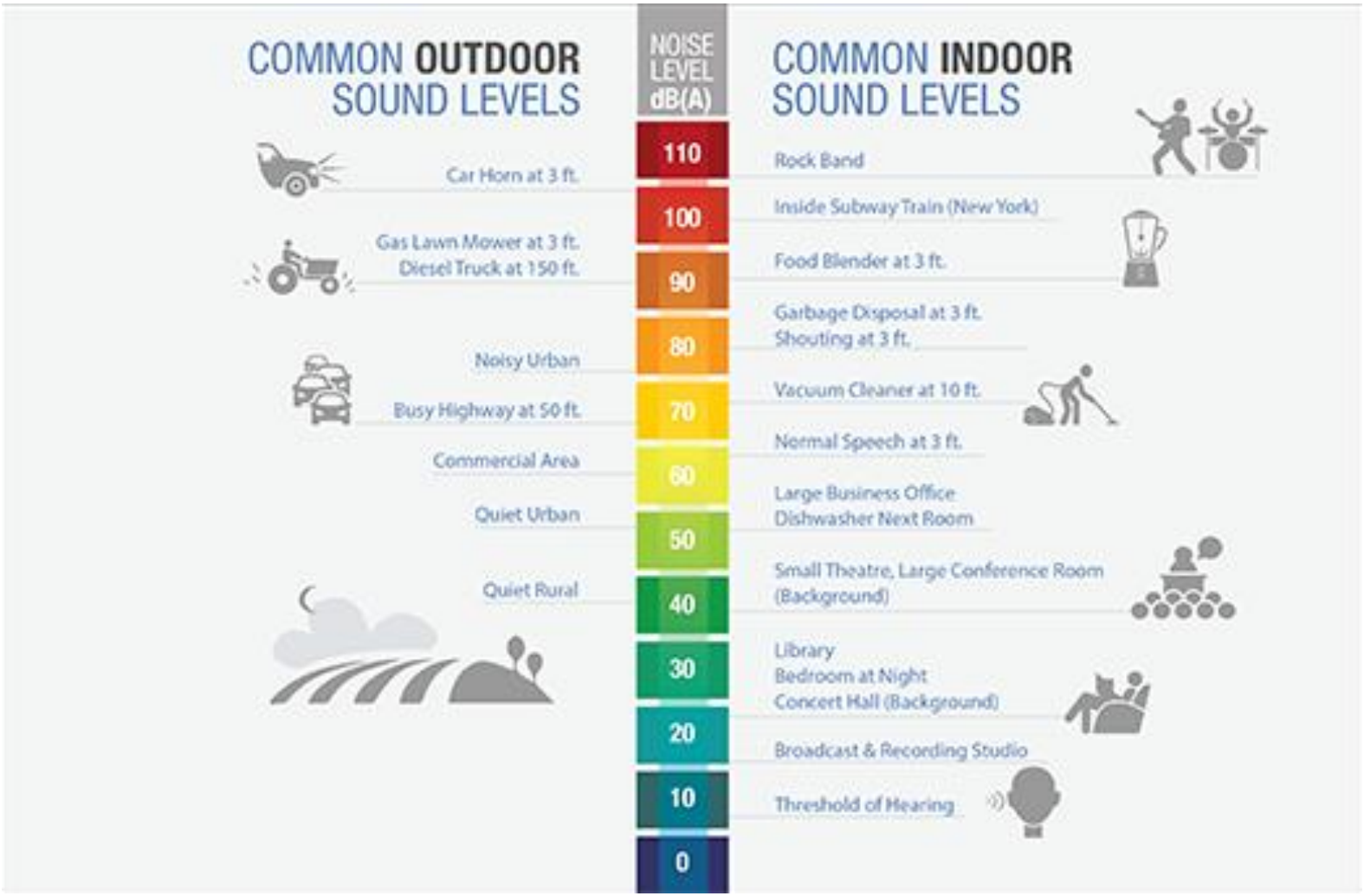
kpbs

Homeowners are increasingly taking legal action over pickleball racket

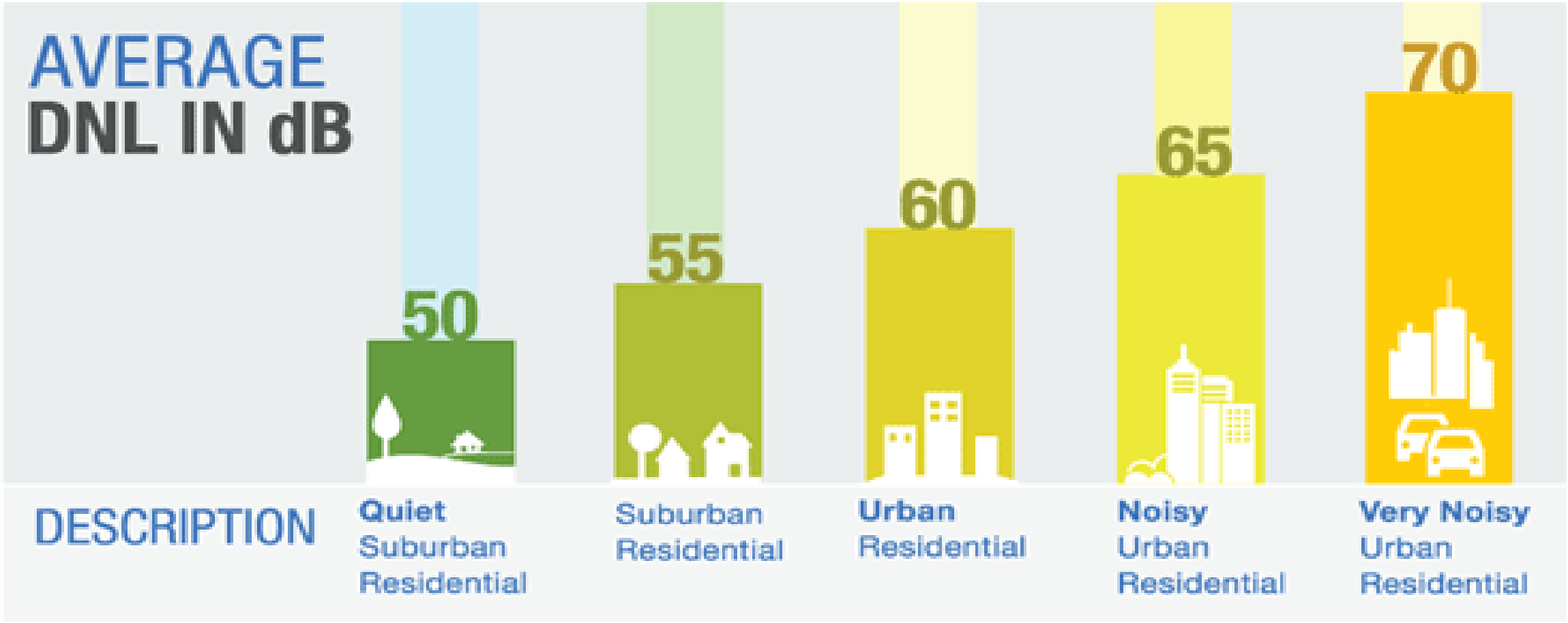
PENNSYLVANIA RECORD

Lawsuit says Pittsburgh's pickleball courts are a noisy nuisance

Noise = Unwanted Sound



Based on Annoyance?



Time of Day Penalty

-5 for evenings (7pm - 10pm) and weekends

-10 for nighttime (10pm - 7am)

"The loudest sound produced hundreds of times during a Pickleball match - two to four millisecond ‘impulse sound’ generated when a paddle connects with a ball - peaks at **85** decibels from a backyard more than 50 feet away.”

Lance Willis, Ph.D. Acoustical Engineering
Spendiarian & Willis Acoustics & Noise Control

Solutions to the Problem?

Solution Considerations: Nuisance vs. Land Use Regulation

Key = Nature of the Problem

- Highly Popular Activity
- Conflict In Some – Not All Circumstances
- Location, Number of Courts, Operation Hours
- Third Parties Use of Court – Not Owner
- Not a Consistent “Nuisance”

Solution Approaches: Nuisance vs. Land Use Regulation

- Private Nuisance
- Public Nuisance
- Zoning
- Focused Land Use Regulation

Centennial's Approach







✓ Focused Land Use Regulation

https://gappsi.com/2020/09/10/pickleball-court-contractor-on-long-island-ny-long-island-ny/
https://downbeachbuzz.com/new-places-to-play-pickleball-near-margate-ventnor/

What We Knew

- Pickleball is Popular
- Court Conversions & Construction is *Imminent*
- Nationally Proven Conflict for Residential Uses
- Complete Ban Would be Difficult
- No Comprehensive Regulatory Examples

What We Did NOT Know

- The “Nature and Extent” of Pickleball Noise
- How to Measure Pickleball Noise
- Types of Mitigation Methods & Opportunities
- Effectiveness of Mitigation Methods
- Number of Existing Pickleball Courts in City

Considerations

- Risk of New Pickleball Courts
- Reasonable Justification for Regulations
- Types of Courts to Address
- Balance of Stakeholder Interests
- Identifying Impacts of Greatest Concern
- Permit Program & Requirements
- How to Address *Pre-Existing* Courts

Risks of New Pickleball Courts

CITY OF CENTENNIAL, COLORADO
ORDINANCE NO. 2023-O-03

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CENTENNIAL, COLORADO ESTABLISHING A TEMPORARY MORATORIUM ON THE … ESTABLISHMENT OF NEW OUTDOOR PICKLEBALL COURTS LOCATED WITHIN 500 FEET OF RESIDENTIAL ZONED OR RESIDENTIALLY USED LAND AND DECLARING AN EMERGENCY

Look to: - Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency, 532 U.S. 302 (2002).
- *Land Use Moratoria and Temporary Takings Redefined After Lake Tahoe,* 30 Pepp. L. Rev., Issue 2 (2003) at https://digitalcommons.pepperdine.edu/plr/vol30/iss2/3

Reasonable Justification for Regulations

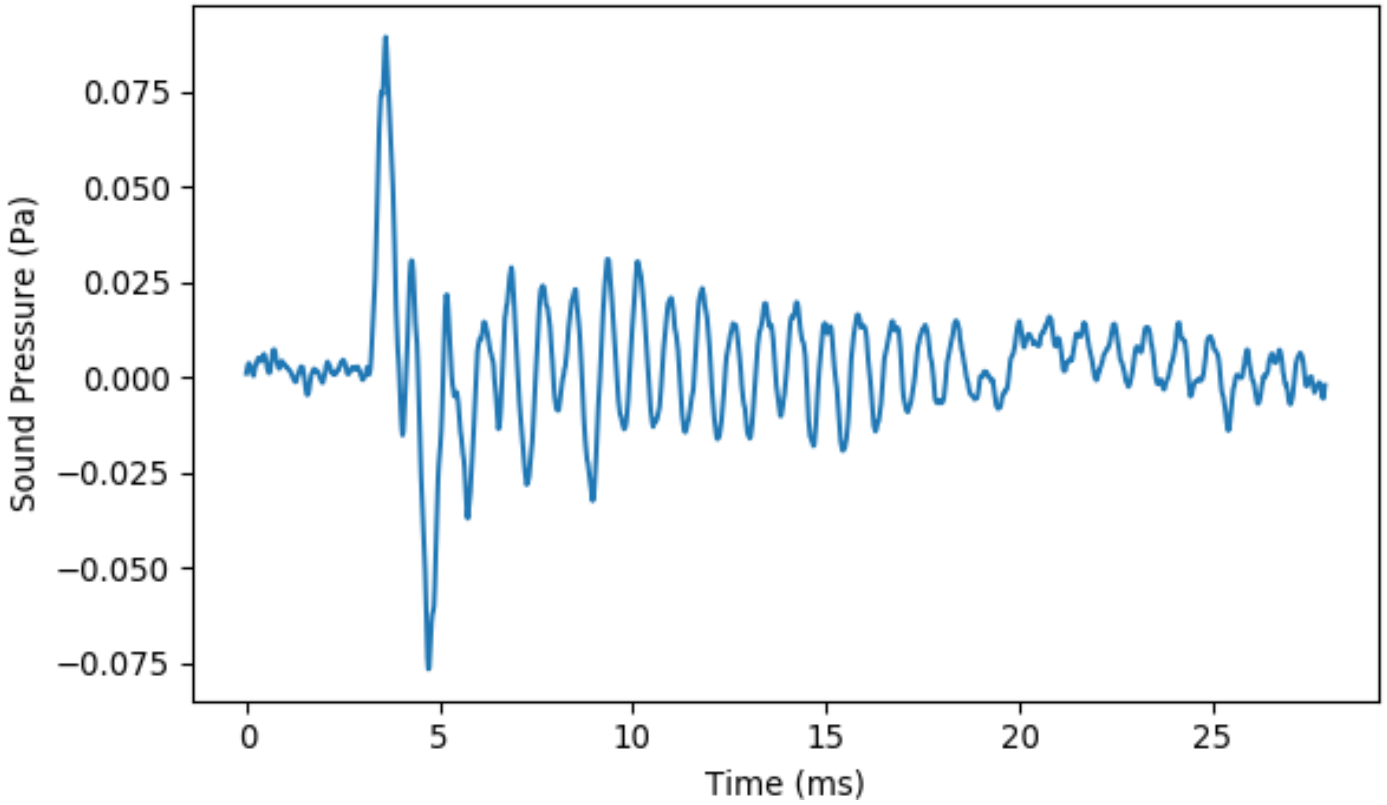
Spendiarian & Willis Acoustics & Noise Control LLC
The Form and Function of Sound
(520) 623-6003 AcousticalNoise.com 4335 N Alvernon Way, Tucson, AZ 85718

Pickleball Noise Impact Assessment and Abatement Planning

Prepared for
City of Centennial 13133 E. Arapahoe Road Centennial, Colorado 80112

Project Manager
Neil Marciniak

Pickleball NOISE is different...
But the SOUND is the same.



Measuring Sound

Measurement procedures based on the adjusted sound exposure level according to ANSI S12.9 (Quantities And Procedures For Description And Measurement Of Environmental Sound), Part 4 (Noise Assessment and Prediction of Long-Term Community Response)



Study Recommendation on Distance and Successful Noise Abatement

Distance of Outdoor Courts to Residential:

- 600' and beyond – noise abatement less likely
- 500'-600' - review is recommended
- Within 350' - most require noise abatement
- **Within 150' - requires extensive noise abatement**
- **Within 100' - not recommended**

"Pickleball Noise Impact Assessment and Abatement Planning" (Centennial, CO) - Lance Wills, PhD

Reasonable Justification for Regulations

Conclusions:

- Pickleball Noise is Special & Harmful
- Pickleball Noise can Be Measured
- **Noise Study** can Identify Site's Noise Impact
- Distancing = Best Practice to Mitigate
- Other Methods can Mitigate a Site's Noise

Types of Courts

- Indoor
  No Recognized Noise Problem
- Outdoor
  Permanent *Lines and/or Net*

  Temporary *Lines and Net*
- Informal
  Unorganized/Impromptu Play









Balance of Interests

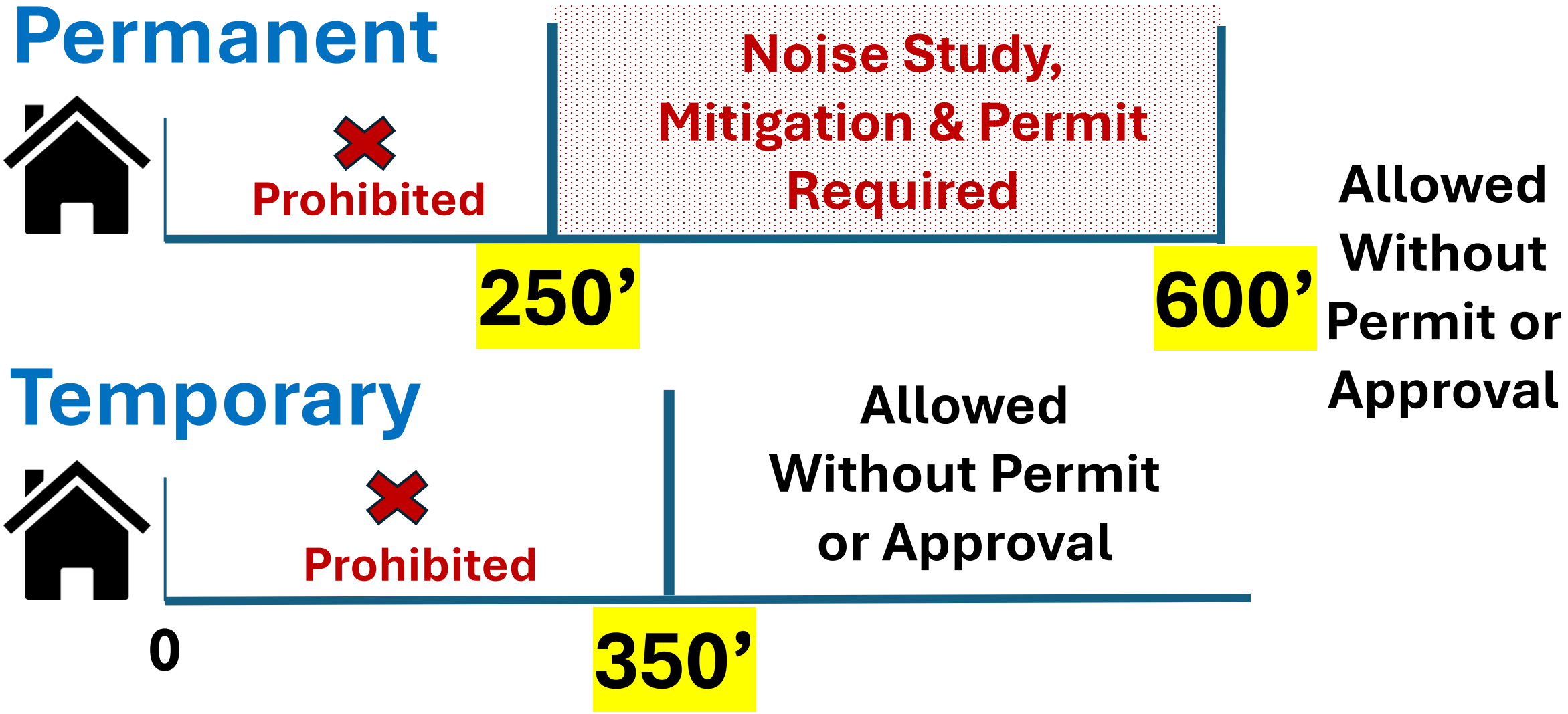




Impacts of Concern

- Proximity to Residential Use
- Type & Level of Noise
- Hours of Operation
- Lighting
- Variances

Proximity to Residential Use



Noise Standard

Pickleball Noise Standard. An Outdoor Pickleball Court, or any collection of adjacent Outdoor Pickleball Courts, **shall not produce noise in excess of 47 decibels** measured at the nearest adjacent property lines for properties zoned for residential use or used for residential purposes.

Measurement Standard

Averaging techniques such as **equivalent-continuous and maximum fast exponential time weighted sound pressure levels (LAeq and LAmax) are not permitted** for the Noise Impact Assessment.

Measurement procedures based on the adjusted sound exposure level according to **ANSI S12.9** (Quantities And Procedures For Description And Measurement Of Environmental Sound), Part 4 (Noise Assessment and Prediction of Long-Term Community Response) **shall be used** to assess the noise impact assessment of Pickleball.

Hours of Operation and Lighting

Hours of Operation. An Outdoor Pickleball Court shall only be made available for use and may **only be used for Pickleball between the hours of 8:00 a.m. and 8:00 p.m.** It is unlawful to allow the use of or to use an Outdoor Pickleball Court for Pickleball after 8:00 p.m.

Lighting. If the Outdoor Pickleball Court is illuminated pursuant to a City-approved application, **all illumination of the court shall be limited to the hours between 8:00 a.m. and 8:00 p.m.** It is unlawful to illuminate an Outdoor Pickleball Court after 8:00 p.m.

Variances

Variances. Requirements for the creation and operation of Outdoor Pickleball Courts **are not eligible** for variances…

Permitting Process

- **Permanent Court**
  - Permit Application & Approval Required
  - Pre-Submittal Meeting & Community Meeting
  - Application Requirements
    - Site Plan
    - **Noise Impact Assessment**
      - Prove < 47 db at Residential Adjacent Property
      - Mitigation Methods (if Needed)

Permitting Process

- **Temporary Court**
  - NO Permit Required
  - Operational Requirements:
    - Temporary
    - <47 dB at Adjacent Residential Property Lines
    - 8:00 AM to 8:00 PM Operation Limits

Pre-Existing Outdoor Permanent Courts

- Existing = Permanent & Before Date of Moratorium
- Found: Recreation Districts, HOAs, and Backyards
- Allow "**Limited Exception**" Application
  - Prove Existing
  - Granted Exception
  - Must Operate <47 dB
  - 8:00 AM – 8:00 PM Limitation
- Violation Risks Order to Cease Operation
- Following Order, Continued Operation Requires Full Permit





Free use - https://clipground.com/pickleball-clipart-images.html

Free use - https://www.vecteezy.com/vector-art/375353-question-mark-vector-icon