

CITY OF OAKLAND
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE REPORT

FILED
 OFFICE OF THE CLERK
 OAKLAND

2004 MAY 25 AM 10:11

TO: Office of the City Manager
 ATTN: Deborah Edgerly
 FROM: Community & Economic Development Agency
 DATE: June 8, 2004
 RE: FOLLOW-UP INFORMATIONAL REPORT ON FENTONS CREAMERY'S COMPLIANCE WITH CONDITIONS OF APPROVAL

SUMMARY

On April 27, 2004 the CED Committee received an informational report on Fentons Creamery's compliance with the conditions of approval associated with application number DV03-111 (see Attachment A for staff report). Based upon the staff report and public testimony, Fenton's was out of compliance with 8 of the 15 conditions, specifically conditions 1, 3, 4, 7, 8, 10, 11, 12. As of this writing (May 20, 2004), Fentons has offered the following responses to these specific conditions.

Compliance Status

The table outlines Fenton's responses to these specific conditions.

CONDITIONS	April 27, 2004 STATUS	Fenton's May 14, 2004 Response	Compliance / Noncompliance
1. Within 30 days, the applicant will sound proof all compressors or rooftop equipment as recommended in the June 30, 2003 report from Wilson, Ihrig and in accordance with applicable Oakland Noise Ordinances.	A roof sound screen has been installed per permit # CG030069. Prior to finalization of the permit staff has requested that the applicant obtain certification of compliance from an acoustical engineer, prior to finalization of the permit.	Waiting on the certification by the acoustical engineer.	Noncompliance Certification from acoustical engineer submitted to staff on May 18. As of this writing, staff is reviewing the certification.
3. The operator shall establish and enforce a list or rules for employees to conduct themselves in the exterior areas if the property and when going to and from transportation, particularly in regard to controlling excessive noise and loitering. These rules shall be submitted for	Rules not submitted to staff.	Attorney for Fentons indicated that he has received the employee handbook, but has not had the opportunity to review it and suggest additions.	Noncompliance Rules have not been submitted to staff.

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review and approval to the CONDITIONS	April 27, 2004	Fenton's May 14, 2004 Response	Compliance / Noncompliance
Planning Department within 30 days of this approval.	STATUS		
4. Applicant shall install a sign, with a minimum dimension of 2ft. x 2ft., clearly visible to patrons leaving Fenton's stating, "Please keep the noise and disturbance level down for our neighbors".	Sign not installed because the applicant expressed concern about the language proposed for the sign.	Fentons proposes the following language: THANK YOU! PLEASE COME AGAIN FENTONS IS PROUD TO BE A PART OF THE PIEDMONT AVENUE BUSINESS COMMUNITY AND NEIGHBORHOOD. Please join us in keeping the neighborhood safe, clean, and quiet.	Noncompliance A sign has not been installed.
7. Applicant shall notify, in writing, all delivery services using trucks in excess of one ton to use Piedmont Avenue for entering Fenton's parking lot to make deliveries. There shall be no use of Entrada for loading or unloading purposes.	Proof of written notification to delivery services not provided.	All deliveries to Fentons are initiated by Purchase Orders. Fentons has added the following language in 12 point type to its Purchase Orders. In the short run, the purchase orders will have a label with this information. When the purchase order is next printed, the language will be added to the purchase order: ALL DELIVERIES IN TRUCKS THAT WEIGH IN EXCESS OF ONE TON MUST ENTER THE FENTONS PROPERTY FROM PIEDMONT AVENUE TO MAKE DELIVERIES AND MAY NOT USE ENTRADA FOR LOADING OR UNLOADING PURPOSES.	Compliance
8. An arrow must be painted on the asphalt at the exit of the parking lot directing traffic to the right and a sign put up on	Right turn arrow not painted on asphalt nor directional sign posted.	Right arrow painted. With regard to the "Right Turn Only" sign "on Fentons Property",	Noncompliance Directional sign has not been

Item: 3

Fenton's property stating CONDITIONS	April 27, 2004 STATUS	Fentons states "we Fenton's May 14, 2004 Response	posted. Compliance / Noncompliance
"Right Turn Only".		believe that the existing large City sign is more than adequate and that an additional sign would only block (and possibly confuse) the existing sign. Moreover, Fentons is concerned that multiple signs might cause visual pollution".	
<p>10. All garbage and garbage to receptacles shall be kept in an enclosure completely screened from public view. All garbage receptacles will have lids that shall be completely secured at all times such that they can be firmly in place so as to control garbage odors and pests. Operator shall establish a weekly trash pick-up schedule commensurate with trash storage capacity.</p>	<p>After preliminary review of screening plans, staff requested that revised plans be submitted for final review and approval. As of April 27, plans were not submitted.</p>	<p>Plans submitted to staff on May 6, 2004.</p> <p>Staff has requested that detailed elevations of the trash enclosure be submitted.</p>	<p>Noncompliance</p> <p>Staff has requested that detailed elevations of the trash enclosure be submitted prior to final approval of the screening plan.</p>
<p>11. Applicant will maintain the sidewalks adjacent to Fenton's by placing trash cans on each adjacent street corner (at Glenwood and Entrada), emptying the trash cans on a regular schedule and picking up litter at least trice per day, and washing down the sidewalks at least once per day to remove spilled ice cream. Applicant will be responsible for litter within a one block radius of Fenton's. Trash cans shall meet or exceed standards for such cans maintained by the city elsewhere on Piedmont Avenue, with regard to design and construction. Operator shall complete a maintenance agreement with the City and submit a security deposit</p>	<p>Maintenance agreement nor security deposit submitted.</p>	<p>Draft maintenance agreement, prepared by staff and submitted to Fentons on May 13, 2004, being reviewed by Fentons attorney.</p>	<p>Noncompliance</p> <p>Maintenance agreement not finalized by Fentons nor security deposit submitted.</p>

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CONDITIONS	April 27, 2004 STATUS	Fenton's May 14, 2004 Response	Compliance / Noncompliance
during a two year period to assure compliance with this condition.			
12. All exterior lighting will be adjusted to eliminate glare into neighbors' windows.	At the Committee hearing a neighbor indicated that lighting on the loading dock was creating glare into the neighboring windows.	Fentons states that the two loading dock lights are essential for security—"The lights cover a gap in the lighting and are essential for security reasons. An employee has already been mugged in this area. Any further decrease in the lighting will create a serious security risk".	Noncompliance

ACTION REQUESTED OF THE CED COMMITTEE

None. This is an informational report

Respectfully submitted,

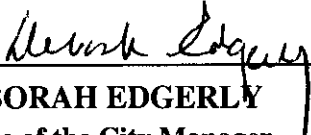


CLAUDIA CAPPIO
Development Director
Community & Economic Development Agency

Prepared by:

Leigh McCullen, Planner II
Planning & Zoning

Approved and Forwarded to the CEDA Committee:



DEBORAH EDGERLY
Office of the City Manager

ATTACHMENTS:

- A. April 27, 2004 CED Committee Report
- B. Neighborhood Comments from April 27, 2004
- C. May 14, 2004 email response from Fenton's attorney

Item: 3

OAKLAND CITY COUNCIL

John T. X

RESOLUTION NO. 78059 C.M.S.

INTRODUCED BY COUNCILMEMBER _____

03 APR 25 PM 2:42

RESOLUTION DENYING THE APPEAL OF E. FELIZARDO AND UPHOLDING THE PLANNING COMMISSION DECISION TO APPROVE THE DESIGN REVIEW AND VARIANCES FOR THE RESTORATION AND REHABILITATION OF FENTON'S CREAMERY AT 4226 PIEDMONT AVENUE AND FURTHER DIRECTING THE PLANNING COMMISSION TO REVIEW ALL ASPECTS OF FENTON'S CURRENT FACILITIES AND TO MAKE APPROPRIATE DETERMINATIONS CONCERNING CONFORMITY WITH THE APPLICABLE PROVISIONS OF THE ZONING CODE PERTAINING TO LEGAL NON-CONFORMING USES

WHEREAS, Fenton's Creamery located at 4226 Piedmont Avenue was damaged by fire in November, 2001; and

WHEREAS, as part of the restoration and rehabilitation of the building, Fenton's applied for Design Review and Variance Applications (DV03-111) including the rebuilding and expansion of a rear structure and exterior modifications to the building; and

WHEREAS, on April 2, 2003 the Planning Commission, after a duly and properly notice public hearing, reviewed and considered the Design Review and Variance applications and approved them subject to conditions and requirements; and

WHEREAS, an appeal was filed objecting to the Planning Commission approval by E. Felizardo; and

WHEREAS, on July 29, 2003, after a duly and properly notice public hearing, the City Council reviewed and considered the appeal filed by E. Felizardo; and

WHEREAS, the Appellant, the Project Applicant, and all other interested parties were given opportunity to participate in the public hearing by submittal of oral and written comments; and

WHEREAS, the public hearing on the Appeal was closed by the City Council on July 29, 2003; and

WHEREAS, on July 29, 2003, the City Council, having fully reviewed, considered and evaluated the staff reports, public testimony and all documents and other evidence submitted on this matter, determined that the appellants failed to demonstrate where there was an error or abuse of discretion by the Commission or where its decision was not supported by the evidence in the record, and thereupon resolved as follows:

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JUN 8 2004

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DEVELOPMENT CMTE~~

~~APR 8 7 2004~~

NOW, THEREFORE, BE IT RESOLVED that the City Council, as the final decision making body for this matter, hereby upholds the Planning Commission's findings and approval of the Design Review and Variance Applications as set forth in the staff report and minutes of the meeting where the matter was considered by the Planning Commission, subject to the conditions imposed by the Planning Commission, as well as the following additional Conditions of Approval:

NOISE:

1. Within 30 days, the applicant will sound proof all compressors or rooftop equipment as recommended in the June 23, 2003 report from Wilson, Ibrig and in accordance with applicable Oakland Noise Ordinances.
2. There shall be no outdoor amplified sound.
3. The operator shall establish and enforce a list of rules for employees to conduct themselves in the exterior areas of the property and when going to and from transportation, particularly in regard to controlling excessive noise and loitering. These rules shall be submitted for review and approval to the Planning Department within 30 days of this approval.
4. Applicant shall install a sign, with a minimum dimension of 2ft. x 2ft., clearly visible to patrons leaving Fenton's stating, "Please keep the noise and disturbance level down for our neighbors."

ZONING

5. Hours of operation shall be 9:00 a.m. to 12:00 a.m. Sunday through Thursday and 9:00 a.m. to 1:00 on Fridays and Saturdays. All employees are to leave the premises within two hours of closing time.

TRAFFIC

6. All deliveries to Fentons shall be limited to weekdays and Saturdays from 7:00am to 7:00pm
7. Applicant shall notify, in writing, all delivery services using trucks in excess of one ton to use Piedmont Avenue for entering Fenton's parking lot to make deliveries. There shall be no use of Entrada for loading or unloading purposes.
8. An arrow must be painted on the asphalt at the exit of the parking lot directing traffic to the right and a sign put up on Fenton's property stating "Right Turn Only."
9. Applicant must keep the Fenton's parking lot open to patrons during all operating hours.

GARBAGE

10. All garbage and garbage receptacles shall be kept in an enclosure completely screened from public

view. All garbage receptacles will have lids that shall be completely secured at all times such that they can be firmly in place so as to control garbage odors and pests. Operator shall establish a weekly trash pick-up schedule commensurate with trash storage capacity.

11. Applicant will maintain the sidewalks immediately adjacent to Fenton's by placing trash cans on each adjacent street corner (at Glenwood and Entrada), emptying the trash cans on a regular schedule and picking up litter at least twice per day, and washing down the sidewalks at least once per day to remove spilled ice cream. Applicant will be responsible for litter within a one block radius of Fenton's. Trash cans shall meet or exceed standards for such cans maintained by the city elsewhere on Piedmont Ave., with regard to design and construction. Operator shall complete a maintenance agreement with the City and submit a security deposit during a two year period to assure compliance with this condition.

GENERAL OPERATING CONDITIONS

12. All exterior lights will be adjusted to eliminate glare into neighbors' windows.

13. All ingress and egress shall be through the main door on Piedmont Avenue with the exception of employees using the loading dock or cold storage area located immediately adjacent to the parking lot, at the South corner of the building. Ingress and egress from the warehouse on Glenwood is also permitted for the purposes of moving goods to and from the warehouse.

14. Operator shall designate a complaint manager during all hours of operation and until all employees are off the premises. All complaints shall be logged in writing and responded to within 72 hours, either by resolving the complaint or stating a time certain for taking corrective action. This log may be reviewed by the City upon request.

15. The applicant shall pay to move the two north-facing windows at the rear of the apartment building immediately behind Fenton's (located on Entrada) to preserve solar access, if the owner of the building so desires.

FURTHER RESOLVED: That the City Council, as the final decision making body of this matter, request that the Planning Commission, consider within 45 days, all aspects of Fenton's current facilities and operations to ensure that it is operating in conformance with its rights as a preexisting legal non-conforming use.

FURTHER RESOLVED: That the City Council directs the Planning Commission, after their review of Fentons current facilities and operations, to make a determination of conformity with the applicable provisions of the Zoning Ordinance.

FURTHER RESOLVED: That the City Council, further directs that if the Planning Commission finds that Fentons current facilities are not in conformance with the provisions of the Zoning Ordinance concerning preexisting, legal non-conforming uses, then Fenton's shall apply for the required Use Permits or terminate such uses within 60 days of the Planning Commission's determination. Appeal is denied, and the Planning Commission's CEQA findings are upheld as set forth in Exhibit A.

FURTHER RESOLVED: That the City Council determines that the referral to the Planning Commission for review and consideration of Fenton's current facilities and operations shall not compromise any rights it may have as a pre-existing legal non-conforming use.

FURTHER RESOLVED: That the record before this Council relating to this application and Appeal includes, without limitation, the information set forth in all final staff reports prepared both for the Planning Commission hearing as well as the appeal to the City Council, including all final documentation and information produced by or on behalf of the City, all oral and written evidence and testimony received by the City Planning Commission and City Council during the public hearings on the application and Appeal; all written evidence received by relevant City staff before and during public hearings on the application and appeal; any matters reflected in the minutes or recorded proceedings for these meetings, including any and all deliberation of the Planning Commission and the City Council, and all matters of common knowledge and all official enactments of the City such as the General Plan, Oakland Municipal Code, Oakland Fire Code, Oakland Planning Code, other applicable City policies and regulations and all applicable state and federal laws, rules and regulations.

FURTHER RESOLVED: That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively: 1) the Community and Economic Development Agency (CEDA), Planning Division, 250 Frank Ogawa Plaza, suite 3300, Oakland, CA and 2) the Office of the City Clerk, 1 Frank Ogawa Plaza, 1st Floor, Oakland, CA.

FURTHER RESOLVED: That the recitals contained in this Resolution are true and correct and are an integral part of the City Council's decision.

FURTHER RESOLVED: That this resolution confirms the City Council action taken on July 29, 2003, and that all time limits set forth herein are in effect and shall run from July 29, 2003.

In Council, Oakland, California, SEP 16 2003, 2003

PASSED BY THE FOLLOWING VOTE:

AYES: BRUNNER, CHANG, BROOKS, NADEL, REID, WAN, AND QUAN - 7

NOES: 0

ABSENT: 0

ABSTENTION: 0

EXCUSED - DE LA FUENTE - 1

ATTEST:

Ceda Floyd
CEDA FLOYD

City Clerk and Clerk of the Council of the
City of Oakland, California

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COMMUNITY & ECONOMIC
DEVELOPMENT CMTE

JUN 8 2004

~~153~~
COMMUNITY & ECONOMIC
DEVELOPMENT CMTE

~~APR 27 2004~~

**CITY OF OAKLAND
AGENDA REPORT**

OFFICE OF THE CITY CLERK

2004 APR 15 PM 1:23

TO: Office of the City Manager
 ATTN: Deborah Edgerly
 FROM: Community & Economic Development Agency
 DATE: April 27, 2004
 RE: AN INFORMATIONAL REPORT ON FENTON'S CREAMERY'S COMPLIANCE WITH CONDITIONS OF APPROVAL

SUMMARY

Fenton's Creamery, located at 4226 Piedmont Avenue, was damaged by fire in 2001. In April, 2003, the Planning Commission approved a design review and variance application for restoration and rehabilitation of the structure and improvements to the parking lot. This approval was subsequently appealed to the City Council by the owner of the adjacent property at 20 Entrada. The Council took action to uphold the Planning Commission's approval, subject to a number of conditions and requirements (please refer to attached City Council resolution.) The Council also requested that the non-conforming ice cream manufacturing activity at the site be reviewed. At the Planning Commission's direction, staff is currently reviewing the historic and other documentation required to make a determination pertaining about the legal non-conforming manufacturing use on the site.

CONDITIONS OF APPROVAL

The following table outlines Fenton's compliance with the conditions.

CONDITIONS	IN COMPLIANCE	NONCOMPLIANCE	EXPLANATION
1. Within 30 days, the applicant will sound proof all compressors or rooftop equipment as recommended in the June 30, 2003 report from Wilson, Ihrig and in accordance with applicable Oakland Noise Ordinances.		Permit has not been finalized.	A roof sound screen has been installed per permit # CG030069. Prior to finalization of the permit staff has requested that the applicant obtain <i>certification of compliance</i> from an acoustical engineer.
2. There shall be no outdoor amplified sound.	X		Outdoor sound speaker has been disconnected.
3. The operator shall establish and enforce a list of rules for employees to		X	Rules have not been submitted to staff.

Community and Economic De

ATTACHMENT A

conduct themselves in the exterior areas of the property and when going to and from transportation, particularly in regard to controlling excessive noise and loitering. These rules shall be submitted for review and approval to the Planning Department within 30 days of this approval.			
4. Applicant shall install a sign, with a minimum dimension of 2ft. x 2ft., clearly visible to patrons leaving Fenton's stating, "Please keep the noise and disturbance level down for our neighbors".		X	The applicant has expressed concern regarding the language proposed for the sign.
5. Hours of operations shall be 9:00 a.m. to 12:00 a.m. Sunday through Thursday and 9:00 a.m. to 1:00 a.m. Friday and Saturdays. All employees are to leave the premises within two hours of closing time.	X		The applicant has indicated that no new costumers are allowed inside the restaurant after closing time; however those that are inside prior to closing time are served. As a result, according to the applicant, employees are occasionally on the site longer than two hours after closing time.
6. All deliveries to Fentons shall be limited to weekdays and Saturdays from 7:00 a.m. to 7:00 p.m.	X		
7. Applicant shall notify, in writing, all delivery services using trucks in excess of one ton to use Piedmont Avenue for entering Fenton's parking lot to make deliveries. There shall be no use of Entrada for loading or unloading purposes.	X		
8. An arrow must be painted on the asphalt at the	X		

<p>exit of the parking lot directing traffic to the right and a sign put up on Fenton's property stating "Right Turn Only".</p>			
<p>9. Applicant must keep the Fenton's parking lot open to patrons during all operating hours.</p>	<p>X</p>		
<p>10. All garbage and garbage to receptacles shall be kept in an enclosure completely screened from public view. All garbage receptacles will have lids that shall be completely secured at all times such that they can be firmly in place so as to control garbage odors and pests. Operator shall establish a weekly trash pick-up schedule commensurate with trash storage capacity.</p>		<p>X</p>	<p>The applicant indicated that screening plans have been submitted to staff, and after a preliminary review, has requested that revised plans be submitted for final review and approval. As of this writing plans have not been submitted.</p>
<p>11. Applicant will maintain the sidewalks adjacent to Fenton's by placing trash cans on each adjacent street corner (at Glenwood and Entrada), emptying the trash cans on a regular schedule and picking up litter at least trice per day, and washing down the sidewalks at least once per day to remove spilled ice cream. Applicant will be responsible for litter within a one block radius of Fenton's. Trash cans shall meet or exceed standards for such cans maintained by the city elsewhere on Piedmont Avenue, with regard to design and construction. Operator shall complete a maintenance agreement with the City and submit a</p>	<p>X</p>		<p>Staff has found, during site visits throughout the year, that the applicant has maintained compliance with this condition. A maintenance agreement has never been submitted.</p>

<p>security deposit during a two year period to assure compliance with this condition.</p>			
<p>12. All exterior lighting will be adjusted to eliminate glare into neighbors' windows.</p>	<p>X</p>		<p>New exterior light fixtures have been installed. Staff has requested that specification for the lighting be submitted to verify compliance.</p>
<p>13. All ingress and egress shall be through the main door on Piedmont Avenue with the exception of employees using the loading dock or cold storage area located immediately adjacent to the parking lot, at the South corner of the building. Ingress and egress from the warehouse on Glenwood is also permitted for the purposes of moving goods to and from the warehouse.</p>	<p>X</p>		
<p>14. Operator shall designate a complaint manager during all operating hours and until employees are off the premises. All complaints shall be logged in writing and responded to within 72 hours, either by resolving the complaint or stating a time certain for taking corrective action. This log may be reviewed by the City upon request.</p>	<p>X</p>		<p>During an unannounced site visit on April 2, 2004, staff met with the complaint manager. There is a log of complaints.</p>
<p>15. The applicant shall pay to move the two north-facing windows at the rear of the apartment building immediately behind Fenton's (located on Entrada) to preserve solar access, if owner of the building so desires.</p>			<p>The property owner of the adjacent building has declined to have the windows relocated.</p>

ACTION REQUESTED OF THE CEDA COMMITTEE

Review and discuss Fenton's compliance with the Conditions of Approval.

Respectfully submitted,



CLAUDIA CAPPIO

Development Director

Community & Economic Development Agency

Prepared by:

Leigh McCullen, Planner II

Planning & Zoning

APPROVED & FORWARDED TO THE
COMMUNITY AND ECONOMIC DEVELOPMENT
COMMITTEE



Office of the City Manager

ATTACHMENTS:

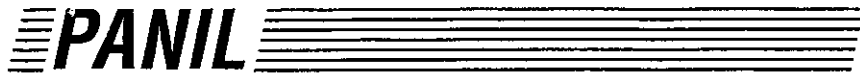
A. City Council Resolution

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**COMMUNITY & ECONOMIC
DEVELOPMENT CMTE**

JUN 8 2004

Item: ~~12~~
Community and Economic Development Agency Committee
~~April 27, 2004~~



**PIEDMONT AVENUE
NEIGHBORHOOD IMPROVEMENT LEAGUE**

Please reply to:

Valerie Winemiller
PANIL
P.O. Box 20375
Oakland, CA 94620-0375
510/653-4552

vwinemiller@hotmail.com

April 27, 2004

Jane Brunner, City Council District I, and
Community and Economic Development Agency Committee
Oakland City Council
One Frank Ogawa Plaza
Oakland, CA 94612

BY HAND

Re: Agenda Item 12
Fentons Creamery and Restaurant
4226 Piedmont Avenue

Dear Ms. Brunner and Committee members,

The Conditions of Approval for Fentons Creamery and Restaurant were imposed at the July 29, 2003 City Council meeting. Fentons had already been open on a Temporary Certificate of Occupancy for about 6 weeks by that time. City Council stipulated that Fentons should be in compliance with those conditions within 30 days. It has now been 274 days since the Council's directive, and approximately 318 days since the restaurant opened with the Temporary Certificate of Occupancy.

PANIL distributed the staff report to a number of neighbors. The following is a summary of neighbors' responses to the report, as submitted to PANIL:

Item 1 (Soundproofing). Still incomplete. The walls were built but baffling is not installed—baffling which Fentons' own consultant said was absolutely necessary to make the facility meet the city's noise standards. So noise is still a problem, though the work finally resumed on the rooftop soundproofing after this Committee report was agendized. (see photo)

Item 3 (Employee rules for behavior) Neighbors report that this is not working. Late night, after-hours noise is happening, and neighbors are finding Coors beer cans and cigarette butts after employee break-time and after-hours socializing on neighbors' lawns and front steps. The employee noise is also a problem because they stay longer than 2 hours after closing, as noted for item 5.

Item 5 (Hours) Please see note on staff noise for Item 3.

Item 7: (Deliveries) There are still problems with trucks parking on Entrada. Crystal dairy products trucks are reportedly the most frequent offenders. Neighbors wonder whether staff saw a copy of the written notices to delivery companies.

ATTACHMENT B



wwinemiller@hotmail.com

Printed: Thursday, April 22, 2004 2:43 PM

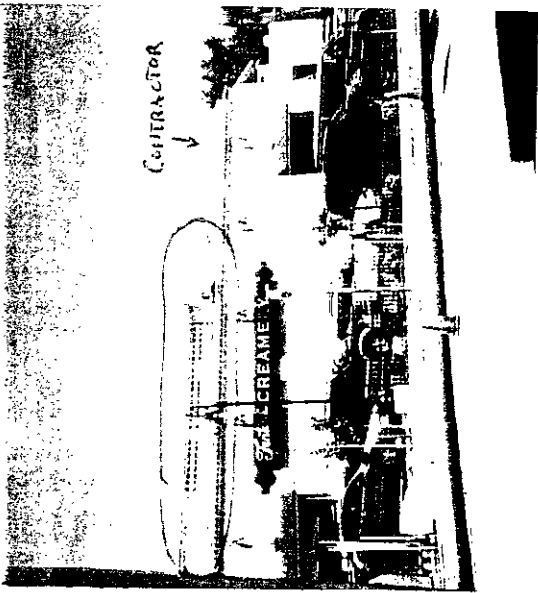
From : <mike.lydon@ktvu.com>
Sent : Thursday, April 22, 2004 11:23 AM
To : wwinemiller@hotmail.com
CC : mfarias@oaklandnet.com
Subject : Compliance on Fentons Conditions

Item 8. Noncompliance - No arrow on the asphalt directing traffic to right. No sign on Fenton's property indicating Right Turn Only - that sign stating such is on city property and this has been relocated closer to the exit.

Item 11 Noncompliance - Consider me an expert on this. After 20 years of handling the clean sweep program for PAMA, I think I know what is clean and what is not. There is no trash can at Glenwood & Piedmont contrary to the staff report.. In fact there are no trash cans outside that are maintained by Fentons. The only trash can is at Entrada & Piedmont and that is a city trash can maintained by the city and Waste Management. As to cleaning within a block of the business, that stopped five months ago when Seth stopped handling exterior cleanliness. Even then it was never twice a day. Now its a parade of employees hosing the lot in a random and disorganized fashion. There has been no evident cleaning beyond the Fenton's property line. The truth is that the neighborhood has been left to clean up ice cream containers, napkins, spoons, spills and vomit. Fenton's does an admirable job at washing down its own property to the extent that two trees in the landscaping have died and another is near death caused by drowning from runoff from the parking lot. Incidentally Fentons has not maintained the landscaping or replaced dead plants.

Item 12 Noncompliance - I believe near neighbors can give an accurate call on this, but my sense is that the loading dock light still glares into homes across the street.

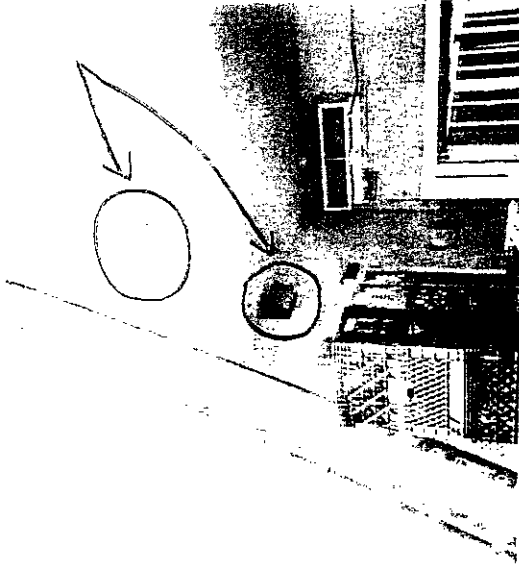
As to the other items, I have no comment and will defer to other neighbors that to hope that staff has assessed the situation correctly.



4-22-04 (THUR) ~ 4:00 pm - FENTON'S
 ROOF TOP SOUND BARRIER - STILL UNDER CONSTRUCTION,
 EXPOSED STUDS, NO SOUND DAMPING LAYER AS REQUIRED,
 IN EXPOSURE REPORT.



4-21-04 (WED) ~ 7:00 pm
 FENTON'S PARKING LOT EXIT
 - PAINTED AREA STILL DURING PAINT RIGINT.



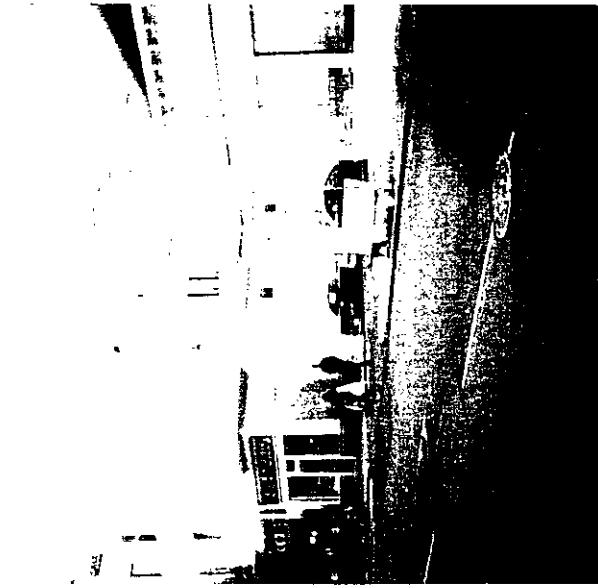
4-22-04 (THUR) ~ 4:00 pm
 FENTON'S - LOADING DOCK LIGHTS
 - GLARING LIGHTS STILL UNSHIELDED / UNADJUSTED.



4-21-04 (WED) ~ 7:00 pm
 NEAR FENTON'S - CORNER OF GREENWOOD / PIEDMONT
 - STILL NO TRASH RECEPTACLE ON THIS CORNER



8-22-03 (FRI) - AFTER DARK
 FENTON'S - LOADING DOCK
 (CONTINUED UNSHIELDED, GLARING LIGHTS, ETC.)



4-21-04 (WED) ~ 7:00 pm
 NEAR FENTON'S - CORNER OF GREENWOOD / PIEDMONT
 ->

McCullen, Leigh

From: Harold P. (Peter) Smith [psmith@smithlawcal.com]
Sent: Friday, May 14, 2004 5:05 PM
To: 'McCullen, Leigh'
Cc: jbrunner@oaklandnet.com; jhorner@oaklandnet.com; scott@fentonscreamery.com
Subject: RE: 0514 Fentons RE: Trash Enclosure Plans

Please note the following:

1. I have met with my client and personally confirmed that the right arrow is painted on the parking lot.
2. We are still waiting on the certification by the acoustical engineer.
3. I have received the employee handbook, but have not had the opportunity to review it and suggest additions.
4. Fentons believes that the language proposed by the City will offend customers and, as such, will be bad for business. I have prepare alternative language for the sign to patrons as follows:

THANK YOU! PLEASE COME AGAIN
 FENTONS IS PROUD TO BE A PART OF THE PIEDMONT AVENUE BUSINESS COMMUNITY AND
 NEIGHBORHOOD.
 PLEASE JOIN US IN KEEPING THE NEIGHBORHOOD SAFE, CLEAN, AND QUIET.

5. All deliveries to Fentons are initiated by Purchase Orders. Fentons has added the following language in 12 point type to its Purchase Orders. In the short run, the purchase orders will have a label with this information. When the purchase order is next printed, the language will be added to the purchase order:

ALL DELIVERIES IN TRUCKS THAT WEIGH
 IN EXCESS OF ONE TON MUST ENTER THE
 FENTONS PROPERTY FROM PIEDMONT AVENUE
 TO MAKE DELIVERIES AND MAY NOT USE
 ENTRADA FOR LOADING OR UNLOADING PURPOSES.

6. I received the maintenance agreement yesterday, but have not had a chance to review it.
7. With regard to the "Right Turn Only" sign "on Fentons Property", we believe that the existing large City sign is more than adequate and that an additional sign would only block (and possibly confuse) the existing sign. Moreover, Fentons is concerned that multiple signs might cause visual pollution.
8. The two loading dock lights that have come to your attention (but about which Fentons has not received any complaints) are essential for security. The lights cover a gap in the lighting and are essential for security reasons. An employee has already been mugged in this area. Any further decrease in the lighting will create a serious security risk.
9. I have forwarded your comment regarding the revised trash enclosure on to Scott and the general contractor.

I am in trial and may not get to the remaining issues for several work days. Please feel free to get back to me with any questions.

-----Original Message-----

From: McCullen, Leigh [mailto:LMcCullen@oaklandnet.com]
Sent: Friday, May 14, 2004 4:21 PM
To: 'Harold P. (Peter) Smith'
Subject: RE: 0514 Fentons RE: Trash Enclosure Plans

**COMMUNITY & ECONOMIC
 DEVELOPMENT CMTE
 JUN 8 2004**

ATTACHMENT C