

CITY OF PASADENA

MEMORANDUM

TO: CITY COUNCIL
FROM: CITY ATTORNEY *MBM*
DATE: July 30, 2001
RE: CALL FOR REVIEW OF ZONING ADMINISTRATOR CASE #19, SMALL
COLLECTION FACILITY/RECYCLING CENTER, 452 N. LOS ROBLES AVENUE

This memorandum and attachments supplement the attached Staff Report which sets forth staff's recommendation regarding this item.

BACKGROUND

The City received complaints from citizens regarding the operation of the New Way Recycling Center located at 452 No. Los Robles Avenue. On March 15, 2001, the Zoning Administrator conducted a hearing under the authority of Pasadena Municipal Code (PMC) Section 17.108.060 to determine whether the permit should be revoked or revised. After considering the evidence presented at the hearing and conducting a site visit, the Zoning Administrator determined that the facility constituted a public nuisance and revoked the permit (17.108.060D4). New Way Recycling appealed the Zoning Administrator's decision to the Board of Zoning Appeals (BZA). The BZA conducted a public hearing on May 16, 2001. After considering the evidence presented, the BZA overturned the decision of the Zoning Administrator to revoke the permit and instead imposed conditions upon the permit (17.108.060E). The decision of the BZA was called up for review by the City Council. The attached materials should be considered by the Council in addition to any oral or written evidence received at this public hearing.

REVIEW BY THE COUNCIL

The City Council conducts a de novo review, based on the information that is presented to you. The determination to be made by the City Council is whether the New Way Recycling facility is operating as a public nuisance, and, as such, should have its permit revoked. A public nuisance is defined by Civil Code Sections 3479 and 3480 as "anything which is injurious to health . . ." and "affects at the same time an entire community or neighborhood . . .". The courts have long held that "every holder of property, holds it under implied liability that his use of it shall not be injurious to the equal enjoyment of others having equal right to the enjoyment of their property." *People v George* (1941) 42 Cal App 2d 568.

7/30/2001
6.B. 8:00 P.M.

CITY COUNCIL

July 30, 2001

Page 2

A public nuisance is an offense against, or interference with, the exercise of rights common to the public. Such interference must be substantial and requires real and appreciable invasion of those rights. The standard is an objective one, and if a normal person in that locality would not be substantially annoyed or disturbed by the situation, then the interference is not a significant one. The question is not whether a particular person found the interference unreasonable but whether reasonable persons generally, looking at the whole situation impartially and objectively, would consider it unreasonable.

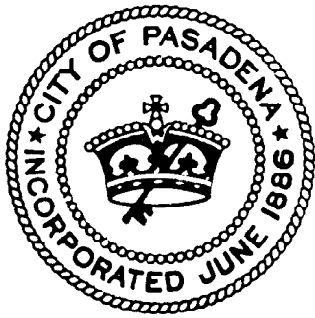
EVIDENCE

The City Council may consider the attached materials presented to the Zoning Administrator and the Board of Zoning Appeals, as well as all other written and oral evidence received at this public hearing. Proposed City Council Findings are also attached in the event that the Council determines that a public nuisance exists which warrants revocation of the permit.

CITY COUNCIL FINDINGS
REVOCATION OF PERMIT TO OPERATE A SMALL COLLECTION FACILITY
452 NORTH LOS ROBLES AVENUE

Based on testimony received, and oral and written evidence presented to the City Council, the City Council hereby finds as follows:

1. New Way Recycling received a permit from the City for a Small Collection Facility/Recycling Center at 452 North Los Robles in 1996 ("the Facility"). The Facility is located at the Farmer's Family Foods grocery store on the southeast corner of Los Robles Avenue and Villa Street. The Facility is surrounded by a residential neighborhood, with residences directly across the street on the north side of Villa. The City has received complaints from neighbors regarding the patrons of the Facility loitering in front of the Facility before and during the business hours, blocking the driveway to the adjacent grocery store, littering, drinking, and creating noise.
2. The operators of the Facility indicate that the Facility accounts for 60% of the recycling materials (i.e., glass, plastic and aluminum) that come to markets in the Pasadena area. This facility recycles 157% more containers than all other small collection facilities in the City of Pasadena combined. The Facility attracts patrons from an area outside of the local neighborhood. As such, due to the large quantities of recyclable materials taken in at the site, the land use impacts typically associated with a small collection recycling facility are significantly compounded by the exceptionally high volume at the site. Such activity is inconsistent with the concept of a neighborhood oriented recycling center that is designed to be convenient to the surrounding neighborhood, rather than the region.
3. Patrons waiting to submit their recyclable materials have been observed drinking beer while waiting to have their recycling materials weighed, and the ability to purchase such beverages is very convenient due to the alcoholic beverage sales at the adjoining market. Excessive noise is also created at the Facility as a result of the glass bottles being tossed into baskets so that they can be weighed. People have also been observed loitering in front of the Facility before and after it opens, and patrons also bring in large truckloads of materials for recycling.
4. The foregoing activities, including littering, loitering, and noise emanating from the Facility, coupled with the intensity of the use and the close proximity to residences, have been recurring and constitute offensive activities which are unreasonable and disturb the residents in the neighboring homes. As such, the Facility has been operated in a manner which constitutes a public nuisance. The operator of the Facility has failed to eliminate the nuisance. The configuration of the buildings on the lot and the location in relation to adjacent residences, makes it impossible to relocate the Facility to another location on the site in a manner to eliminate the problems. The continuing problems at the Facility amount to a public nuisance and warrant revocation of the permit for operation of a small collection/recycling facility at the location.



Agenda Report

TO: CITY COUNCIL
FROM: CITY MANAGER

DATE: July 16, 2001

SUBJECT: CALL FOR REVIEW OF ZONING ADMINISTRATOR CASE #19, SMALL COLLECTION FACILITY/RECYCLING CENTER, 452 N. LOS ROBLES AVENUE

CITY MANAGER'S RECOMMENDATION: It is recommended that, the City Council:

1. Acknowledge that this action is categorically exempt from CEQA; and
2. Overturn the decision of the Board of Zoning Appeals and revoke the permit to operate a Small Collection Facility/Recycling Center at the Farmers Family Foods grocery store on the property located at 452 N. Los Robles Avenue.

BACKGROUND:

The City has received complaints regarding the small collection facility/recycling center located at the Farmer's Family Foods grocery store at 452 N. Los Robles Avenue at the southeast corner of Los Robles Avenue and Villa Street. Complaints have included loitering in front of the collection facility before and when the facility is open, patrons blocking the driveway to the grocery store, littering, drinking, noise and an excessively high volume of patrons utilizing the small collection facility.

On March 15, 2001, the Zoning Administrator conducted a fact finding hearing to determine if the existing small collection facility/recycling center located at 452 N. Los Robles Avenue was operating as a public nuisance. At the public hearing, there were five people who spoke in favor of retaining the small collection facility, and three people who indicated that there have been long-term nuisance problems and indicated that they would like to see the discretionary permit revoked. Subsequent to lengthy discussion, the Zoning Administrator took the case under advisement before making a decision. Based on public testimony, the Zoning Administrator revoked the discretionary permit for the small collection facility/recycling center.

On April 3, 2001, the appellant, Joseph Massey, appealed the Zoning Administrator's decision revoking the discretionary permit. The appellant indicated that the findings of fact cite complaints that have already been addressed or eliminated by the operator of the small collection facility. In addition, the findings of fact also cite conditions that the recycling center does not have any control over such as loitering and drinking in public.

Subsequent to the submittal of the appeal application, the appellant submitted a written petition from people in favor of retaining the collection facility. This is a petition that was signed when customers visited the small collection facility. There are approximately 1,160 persons who signed the petition.

On May 16, 2001, the Board of Zoning Appeals conducted a public hearing on the appeal application. Subsequent to lengthy testimony and the number of people in favor of retaining the collection facility, the Board of Zoning Appeals decided to overturn the Administrator's determination to revoke the permit for a Small Collections Facility by a 5-0 vote. It was the Board of Zoning Appeals determination that there was not enough supportive evidence on the part of concerned residences to revoke the permit. It was the Board's opinion that conditions of approval could be added to alleviate the problems currently experienced by the neighborhood. As such, the Board of Zoning Appeals imposed conditions to mitigate impacts from the Small Collections Facility. See Attachment B for the Board of Zoning Appeals Decision Letter.

ANALYSIS:

As indicated in the March 15, 2001 Zoning Administrator staff report, there are land use issues related to the operation of the small collection facility/recycling center and its proximity to the surrounding residential neighborhood. These problems include loitering in front of the collection facility before and when the facility is open, patrons blocking the driveway to the grocery store, littering, drinking, noise (e.g., the breaking of bottles and the clanging of aluminum cans), odors (e.g., stale beer and soda smells), high volume of patrons utilizing the small collection facility, and trucks bringing in large loads of recyclable materials for redemption.

At the Zoning Administrator's public hearing, the appellant provided information as to the volume of recyclable material that is accepted at the collection facility at 452 N. Los Robles Avenue. Out of the dozen or so collection facilities in the city, the appellant indicated that this facility takes in approximately 60 percent of all the recyclable materials out of all the facilities in the city. Moreover, based on the number of petitions that were signed (i.e., 1,160) at the facility over a three day period, staff is concerned with the excessively high volume of customers utilizing the recycling center. The high volume of customers has lead to land use impacts on the surrounding residential neighborhood. Based on the high volume of customer and recyclable materials, this facility should be classified as a large collection facility, a use which is not permitted in the CL (Limited Commercial) district. A Large Collection Facility is only permitted in the CG (General Commercial) and IG (General Industrial) subject to a conditional use permit.

Based on the land use impacts mentioned above and the fact that the collection facility generates such a high volume of recyclable material that further exacerbates the existing land use impacts, staff recommends that the existing permit to operate the collection facility at 452 N. Los Robles Avenue be revoked.

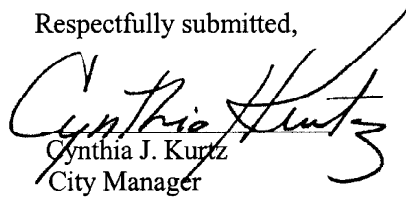
ENVIRONMENTAL DETERMINATION:

The subject project has been determined to be exempt from environmental review pursuant to the guidelines of the California Environmental Quality Act (Public Resources Code §21080(b)(9); Administrative Code, Title 14, Chapter 3, §15301, Existing Facilities, and §15321, Enforcement Actions by Regulatory Agencies).

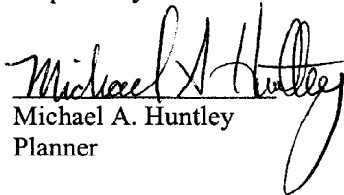
FISCAL IMPACT:

There may be minor fiscal impacts associated with the ongoing monitoring of the small collection facility/recycling center by City Code Compliance Department and the Police Department.

Respectfully submitted,


Cynthia J. Kurtz
City Manager

Prepared by:


Michael A. Huntley
Planner

Approved by:


Richard J. Bruckner
Director Planning and Development

LIST OF ATTACHMENTS

ATTACHMENT A - FINDINGS FOR DENIAL
ATTACHMENT B – DECISION LETTER, BOARD OF ZONING APPEALS