CITY COUNCIL AGENDA REPORT

MEETING DATE: NOVEMBER 16, 2010 ITEM NUMBER: VIII-3

SUBJECT: RESOLUTION REVOKING GARCIA RECYCLING MCUPS (ZA-89-25, ZA-92-10)

DATE: NOVEMBER 12, 2010

FROM: KIMBERLY HALL BARLOW, CITY ATTORNEY'S OFFICE

PRESENTATION BY: KIMBERLY HALL BARLOW, CITY ATTORNEY

FOR FURTHER INFORMATION CONTACT: KIMBERLY HALL BARLOW, CITY ATTORNEY, (714) 754-5399

RECOMMENDATION:

Consider proposed resolution revoking the Minor Conditional Use Permits (MCUPs) of Garcia's Recycling based on the public hearing held on October 19, 2010 on Garcia's appeal of the Planning Commission's action revoking the MCUPs, and adopt the Resolution as written or as modified by Council.

BACKGROUND:

A duly noticed public hearing was held by the Planning Commission on July 12, 2010, and continued to August 9, 2010, and ZA-89-25 and ZA-92-10 were revoked by the Planning Commission. The revocation was appealed on August 16, 2010. The appeal came to the City Council for consideration on September 7, 2010 and continued the hearing to October 19, 2010

At the October 19, 2010 meeting, the City Council conducted a duly notice public hearing and a de novo review of the appeal of Garcia Recycling on the revocation of the Minor Conditional Use Permits. Testimonial and documentary evidence was presented by staff, the business owner and members of the public. The business owner and his representatives were permitted an opportunity to respond to all evidence presented at the hearing. Following the public hearing, the Council voted to uphold the Planning Commission's action and gave direction to the City Attorney to prepare an updated and revised Resolution and return with it at a subsequent meeting.

ANALYSIS:

The attached resolution has been prepared by the City Attorney's office and reflects factual findings supported by the evidence presented and consistent with the Council's determination that the business is being operated in violation of the conditions of its approval and as a public nuisance. The resolution also reflects Council's action to delay its action for a period of ninety (90) days to allow the business to relocate to a more suitable location where its impacts can be properly eliminated or mitigated and it will not create a public nuisance.

ALTERNATIVES CONSIDERED:

The Council may revise the resolution to add or delete proposed findings or it may direct the City Attorney to make modifications to the Resolution for consideration at a future meeting.

FISCAL REVIEW:

Fiscal review is unnecessary.

CONCLUSION:

Staff recommends the Council consider and approve the attached Resolution revoking the minor conditional use permits of Garcia's Recycling or make such changes as it deems appropriate and adopt the Resolution as modified.

KIMBERLY HALL BARLOW
City Attorney

ALLAN ROEDER
City Manager

DISTRIBUTION: City Manager
City Clerk
Staff
File

RESOLUTION NO. 10-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA TO UPHOLD THE PLANNING COMMISSION'S ACTION TO REVOKE ZONING APPLICATIONS ZA-89-25 AND ZA-92-10

THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, in 1989, Zoning Application ZA-89-25 was filed by Jesus Garcia, authorized agent for Russell Pange Trust, requesting approval of minor conditional use permit for a recycling facility, located at 739 West 19th Street in a C1 zone;

WHEREAS, on November 6, 1989, the Zoning Administrator approved Zoning Application ZA-89-25 for a minor conditional use permit for a recycling center at the subject location;

WHEREAS, on December 1, 1992, the Zoning Administrator approved Zoning Application ZA-92-10 for a minor conditional use permit for the relocation and expansion of the previously-approved recycling center at the subject location;

WHEREAS, a review of the minor conditional use permits were requested by Planning Commissioner Mensinger to determine if the minor conditional use permits should be modified or revoked;

WHERAS, a duly noticed public hearing was held by the Planning Commission on July 12, 2010, and continued to August 9, 2010, and ZA-89-25 and ZA-92-10 were revoked by the Planning Commission;

WHEREAS, on August 16, 2010 an appeal of the Planning Commission's decision was filed by Miles + Chen Law Group representing the business owner of Garcia Recycling;

WHEREAS, on September 7, 2010, City Council considered the appeal of ZA-89-25 and ZA-92-10, which was continued to the hearing of October 19, 2010;

WHEREAS, at the October 19, 2010, the City Council conducted a duly notice public hearing and a de novo review of the appeal of Garcia Recycling on the revocation of the Minor Conditional Use Permits for a recycling facility, at which public hearing Garcia Recycling and its representatives presented evidence on the behalf of the business;

WHEREAS, further, the City Council considered all evidence presented to the Planning Commission, as well as all evidence presented to the City Council, pursuant to Costa Mesa Municipal Code Section 3-303 (4)(a) & (b), which materials and evidence included a staff report, the presentation of evidence by staff, oral argument and evidence presented by Garcia

Recycling and its representatives, and public comments (oral and written) both in favor of and opposed to revocation;

BE IT RESOLVED that, based upon review and consideration of all materials and evidence presented to it, the City Council hereby makes the findings contained in Exhibit "A," and based upon such materials, evidence and findings, the City Council hereby **UPHOLDS** the Planning Commission's action to **REVOKE** Zoning Applications ZA-89-25 and ZA-92-10.

Such findings and determination is made based upon the totality of the circumstances, for which there is substantial evidence that Garcia Recycling is being operated, and continues to operate, contrary to the health, safety and general welfare of the adjacent and surrounding neighborhoods and the people of the City of Costa Mesa, as well as in violation of the express parameters and Conditions of Approval of the MCUP(s) under which it operates. The current and past operation of Garcia Recycling constitutes a public nuisance and is detrimental to the public health or safety so as to constitute a public nuisance.

Notwithstanding the findings and determinations herein, the City Council further finds that Garcia Recycling should be afforded time to relocate and re-establish its recycling operations at a more suitable location. The City Council recognizes that recycling is generally of significant benefit to the community and the environment, even though the recycling center at its present location is unsuitable and constitutes a nuisance. Therefore, the revocation of Zoning Applications ZA-89-25 and ZA-92-10, shall not take effect for ninety (90) days from and after it is adopted. If Garcia Recycling is unable to find a suitable alternate location with ninety (90) days, but has made diligent efforts and/or substantial progress toward re-location as determined by the City Council, then the ninety (90) days' stay on the effectiveness of the revocation of the Zoning Applications may be extended by the City Council upon application by Garcia Recycling, as deemed necessary and appropriate by the City Council.

PASSED AND ADOPTED this ____ day of _____, 2010.

_____
ALLAN MANSOOR
Mayor, City of Costa Mesa

ATTEST:

APPROVED AS TO FORM:

_____
CITY CLERK OF THE
CITY OF COSTA MESA

_____
CITY ATTORNEY OF THE
CITY OF COSTA MESA

STATE OF CALIFORNIA
COUNTY OF ORANGE) ss
CITY OF COSTA MESA)

I, Julie Folcik, City Clerk and ex-officio Clerk of the City Council of the City of Costa Mesa, hereby certify that the above and foregoing Resolution No. 10-____ was duly and regularly passed and adopted by the said City Council at a regular meeting thereof held on the ____ day of November 2010.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Costa Mesa this ____ day of November 2010.

_____
City Clerk and ex-officio Clerk of
the City Council of the City of Costa Mesa

EXHIBIT "A"

FINDINGS

A. Review of ZA-89-25 and ZA-92-10 was initiated to determine whether the operation of the use (a recycling facility) was a public nuisance and whether it was compliant with the applications and conditions of the approvals, pursuant to Costa Mesa Municipal Code Section 13-29 (o) (Enforcement Authority). Based on substantial evidence, the use is determined to be a public nuisance and is not being operated in compliance with the conditions of approval for ZA-89-25 and ZA-92-10, specifically:

1. The recycling facility is not being operated in a manner deemed compatible with surrounding properties and uses. From July 2009, to the present, the City has documented code enforcement and Planning staff inspections of the use identifying the following concerns: excessive noise related to employees pouring recycled materials into containers at the facility, particularly bottles; odors stemming from used beverage containers, trash going into neighboring yards; and customers parking on an adjacent property to use the recycling facility. In fact, there have been complaints about the use since 1992. The conditions of approval of ZA-89-25 and ZA-92-10 were designed to minimize these types of impacts. Indeed, in the MCUP applications themselves, the applicant promised to keep the site "clean and free from any type of noise." Thus, the MCUPs were issued based on applicants' assurance that the trash and noise impacts to surrounding property owners would essentially be non-existent.

Specific video evidence was presented of the sound impacts to neighboring residents. The noise impact to the adjacent residences and the surrounding area is significant and begins from early morning hours (7:30 a.m.) for six days per week. The use was originally approved for hours only from 10:30 a.m. to 5 p.m., with only one attendant. In addition, there is substantial evidence relating to odors and trash debris emanating from the use.

With respect to noise, the Costa Mesa Municipal Code provides as follows:

It shall be unlawful for any person to willfully make or continue, or cause to be made or continued, any loud, unnecessary and unusual noise which disturbs the peace or quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area, regardless of whether the noise level exceeds the standards specified in section 13-280, Exterior noise standards, and section 13-281, Interior noise standards. The standard which may be considered in determining whether a violation of the provisions of this section exists may include, but not be limited to, the following:
(a) The level of noise;
(b) Whether the nature of the noise is usual or unusual;
(c) Whether the origin of the noise is natural or unnatural;
(d) The level and intensity of the background noise, if any;
(e) The proximity of the noise to residential sleeping facilities;

(f) The nature and zoning of the area within which the noise emanates;
(g) The density of the inhabitation of the area within which the noise emanates;
(h) The time of the day and night the noise occurs;
(i) The duration of the noise;

(j) Whether the noise is recurrent, intermittent or constant;
(k) Whether the noise is produced by a commercial or noncommercial activity; and
(l) The density of the inhabitation of the area affected.
CMMC 13-283

Further, the Costa Mesa Municipal Code provides that "[i]t is determined that certain noise levels are detrimental to the public health, welfare and safety and contrary to public interest, and therefore the city council does ordain and declare that the creating or maintaining or causing or allowing to be created or maintained any noise in a manner prohibited by or not in conformity with the terms of this chapter is a public nuisance. . . ." A conditional use permit or minor conditional use permit may be revoked due to the use constituting a nuisance. CMMC § 13-29 (o)(1).

2. The use has created a negative visual impact on West 19th Street, due to lack of property maintenance. Specifically, the containers generally have an unsightly, "battered" appearance; the landscape planters surrounding the facility have not been adequately maintained due to high use of the facility by customers; and the high volume of recyclables received at this location requires the daily staging of a commercial truck on a long-term basis, in lieu of a second recycling container as required by the permit. Although some of these conditions were mitigated recently, such as the re-painting of the outside of the containers and re-sodding of the landscape area directly adjacent to the use, the high use of the facility still requires the continuous presence of a commercial vehicle and/or the daily replacement of one or more of the large storage containers, which creates visual blight on a prominent street frontage. Photographs of the business reflect the fact that the commercial truck permanently staged at the site is not kept in compliance with the requirement that the containers "maintain a minimum setback of twenty (20) feet from the front property line." Further, as admitted by the permit holder, the use contributes to the vagrancy problem in the area by providing money to transients and encouraging transients to rummage through trash in the surrounding neighborhood, often for the purpose of buying liquor.

3. A significant degree of City staff resources has been devoted to the use as a result of complaints related to the use and continual enforcement of noise and property maintenance issues. The business owner/property owner has failed to fully rectify the problems to be in compliance with the minor conditional use permit requirements to the satisfaction of the City. Specifically, the use has historically received complaints from neighbors regarding noise, trash, odors and attracting vagrants. Further, staff has, over the course of the last year, had to devote significant resources to gaining compliance with the Conditions of Approval applicable to the use and to the Costa Mesa Municipal Code, while Garcia Recycling has refused to acknowledge the actual existence of violations and has refused to comply with certain requests,

such as removal of the commercial truck and limiting the operations to the container(s) as requested in writing by staff more than one year ago. Police resources have also been utilized to an excessive degree patrolling the use and the surrounding area due to transients attracted to the use.

4. Issues related to noise, odors, loitering, and property maintenance are not as prevalent at other recycling facilities in the City as they are at this location. According to City records, the City has had no complaints related to noise, odors, loitering, property maintenance, etc. related to the operation of the recycling facilities at other locations in the City.

5. Modifications to the conditions of approval for ZA-89-25 and ZA-92-10 are not sufficient to address the adverse impacts to surrounding properties. Revocation will require cessation of the current use and a similar use cannot be established in the future unless a new Zoning Application is submitted and approved.

6. The intensity and scale of the recycling facility is inappropriate for a prominent parking lot location adjacent to West 19th Street, a major arterial designated as an "urban path" in the City's 2000 General Plan. Given the high volume of recycling occurring at this facility, the facility is considered out-of-scale with the intended function of neighborhood recycling facilities which may be in parking lots pursuant to a minor conditional use permit. The use was originally approved for a single, one-ton truck. Photographs of Garcia Recycling reflect the current and, apparently long-standing, use of a three-ton truck. The use as modified by ZA-92-10 permitted the use of two containers for recycling. Garcia Recycling has admitted that two containers is not sufficient to hold all of the recyclables that it accepts in one day.

7. If the minor conditional use permits are revoked, the City will remain in compliance with all applicable provisions of State Law as it pertains to recycling and waste management. Specifically, revocation would not result in an unserved "convenience zone" as defined by State Law because other recycling alternative including, but not limited to, existing recycling center locations, provisions for reverse vending machines, and other alternatives as specified in the bottle bill would continue to be applicable. City staff has conferred with CalRecycle on the specific issue of whether an unserved recycling area would be created if Garcia Recycling were no longer operating at its current location and CalRecycle has specifically indicated that the convenience area where Garcia Recycling is located would not become unserved. Additionally, per the letter submitted to the City by the Costa Mesa Sanitary District dated August 9, 2010, revocation of the minor conditional use permits would not compromise the Integrated Waste Management Plan because the City's Sanitary District separates recyclables from regular trash to comply with the applicable beverage container diversion goals.

8. The use is not being operated in compliance with the applications and conditions of approval for ZA-89-25 and ZA-92-10 in that the original approval was for a neighborhood recycling facility approved to operate within the parking area for the 739 W. 19th Street property. Based on substantial evidence, the original operation has expanded to the scale and intensity of

a regional recycling facility, processing approximately 4.2 million pounds of recyclable materials in 2008, based on the applicant's testimony. This expansion has resulted in a scale and intensity of use beyond the boundaries of the subject property, requiring the use of the parking area for the adjacent 709 W. 19th Street property (Smart & Final property) for the unloading of recyclable materials by customers.

9. Based on the photographic and testamentary evidence:

a. The use is operating off-site (on the adjacent Smart and Final property) in violation of ZA-89-25 and ZA-92-10, which was approved for the 739 West 19th Street property (subject site) only.

b. The use is in violation of the following Conditions of Approval of Zoning Application ZA-92-10, Minor Conditional Use Permit for a recycling center:

i. Storage of a commercial truck on the property to serve as additional storage area in lieu of a container is in **violation of Condition of Approval No. 3 for ZA-92-10**: "Any and all containers, with a maximum of two, shall be located at the northeast corner of the site as shown on the approved plans, and shall maintain a minimum setback of twenty (20) feet from the front property line."

ii. The site is being operated outside of the requested and approved hours of operation (See Preliminary Environmental Description for ZA-92-10), 9 a.m. to 5 p.m. six days a week, and 9 a.m. to 4 p.m. on Sunday. The current operations begin at 7:30 a.m., six days a week. No approval was ever given for this change.

iii. Not keeping the area free of debris, in **violation of Condition of Approval No. 6 for ZA-92-10**: "Applicant shall keep the area surrounding the container(s) free of debris."

10. The use is in violation of the City of Costa Mesa's Municipal Code, Title 20 (Property Maintenance) Standards, in that the use constitutes a nuisance, detrimental to the health, safety, or welfare of the public and adjoining properties.

11. Based on substantial evidence, the original operation has significantly expanded beyond the scale and intensity of a neighborhood recycling facility and is more comparable to a regional recycling facility. Orange Coast College is considered a regional recycling facility. Neighborhood recycling facilities in the surrounding area include Earthwize Recycling and NexCycle.

The processing of approximately 4.2 million pounds of recyclable materials in 2008 at Garcia Recycling as indicated in the attachments to the letter from Miles + Chen Law Group dated July 12, 2010, exceeds the annual 2009 number of the following recycling facilities:

- Orange Coast College Recycling Center (2701 Fairview Road) – 3.9 million pounds (source: OCC August 17, 2010).

- EarthWize Recycling (2180 Newport Boulevard) – 496,387 pounds (source: EarthWize Recycling August 16, 2010).
- NexCycle (185 East 17th Street) – 283,315 pounds (source: NexCycle August 17, 2010).

Although there was no evidence of a specific quantitative increase in operations, there was substantial evidence, including the admission by Garcia Recycling, that current operations total approximately 4.2 million pounds, that these operations are estimated to be twice as much as any other recycling facility, that there is an incredibly significant amount of recycling, that these operations are too large for the location, and that the intensity of the current use was never contemplated in the approved use permit(s). Furthermore, the original approval for the use was for operating hours only from 10:30 a.m. to 5 p.m. six days a week and the modified approval was for operating hours from 9 a.m. to 5 p.m. six days a week (9 a.m. to 4 p.m. Sunday). The current operations begin at 7:30 a.m., six days a week. The original approval included only one attendant, but numerous attendants now assist on a regular basis. At whatever point that the use became a nuisance as to its intensity and quantity, it has become so with respect to its current level at its present location.

12. Numerous individuals testified against the use and the significant negative effects caused by the use in the adjacent and surrounding neighborhoods. Despite the claim by Garcia Recycling that hundreds of individuals supported the use, only one individual spoke at the public hearing in favor of the continued recycling use.

B. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines; and the City's environmental procedures, and has been found to be exempt from CEQA under Section 15321 for Enforcement Actions by Regulatory Agencies.

C. The project is exempt from Chapter XII, Article 3, Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.