



# ***CITY COUNCIL AGENDA REPORT***

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MEETING DATE: JANUARY 17, 2012

ITEM NUMBER:

**SUBJECT:** REQUEST FOR WAIVER OF CITY COUNCIL APPEAL FEE FOR DEVELOPMENT REVIEW DR-99-22 A2

**DATE:** JANUARY 5, 2012

**FROM:** DEVELOPMENT SERVICES DEPARTMENT

**PRESENTATION BY:** MEL LEE, AICP, SENIOR PLANNER

**FOR FURTHER INFORMATION CONTACT:** MEL LEE, AICP, SENIOR PLANNER (714) 754-5611  
[mel.lee@costamesaca.gov](mailto:mel.lee@costamesaca.gov)

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## **RECOMMENDATION:**

Approve or deny a request to waive a \$1,220 appeal fee for Development Review DR-99-22 A2, to modify the winter holiday hours for Target Costa Mesa. The fee waiver is being requested by Al Morelli, the appellant.

## **BACKGROUND:**

On November 14, 2011, Planning Commission approved, in part and subject to conditions, the applicant's request for a midnight opening on Black Friday, the day after Thanksgiving. However, Planning Commission denied the request to further extend the remaining holiday hours.

On November 21, 2011, Mr. Morelli submitted an appeal of the Planning Commission's action to approve the midnight opening on Black Friday. In his attached appeal application, he also requested a waiver of the \$1,220 fee paid to file the appeal.

At the December 6, 2011 City Council meeting, Council directed staff to place the appellant's fee waiver request on the January 17, 2012 City Council agenda for their consideration. Fee waiver requests may be considered by the City Council on a case-by-case basis. Actions on these requests are at the discretion of the City Council.

## **ALTERNATIVES**

City Council may consider the following alternatives:

1. Waive the appeal fee as requested by the appellant. If the fee is waived, the City will process and issue a refund check to the appellant for the full amount.
2. Deny the fee waiver request. The \$1,220 appeal fee will not be refunded to the appellant.

**FISCAL REVIEW**

The waiver of the appeal fee is a one-time waiver.

**LEGAL REVIEW**

No legal review is required.

**CONCLUSION**

The City Council may consider the appellant's request to waive the \$1,220 appeal fee for Development Review DR-99-22 A2.

  
\_\_\_\_\_  
MEL LEE, AICP  
Senior Planner

  
\_\_\_\_\_  
KHANH NGUYEN  
Interim Development Services Director

ATTACHMENT:            1. Appeal and Fee Waiver Request

DISTRIBUTION:            Chief Executive Officer  
                                 Assistant Chief Executive Officer  
                                 City Attorney  
                                 Interim Development Services Director  
                                 Public Services Director  
                                 Transportation Services Director  
                                 City Clerk (2)  
                                 Staff (4)  
                                 Planning Staff (8)  
                                 File (2)

                                 Al Morelli  
                                 3412 Geranium Street  
                                 Costa Mesa, CA 92626



City of Costa Mesa

RECEIVED CITY CLERK

2011 NOV 21 AM 11:42

- Appeal of Planning Commission Decision/Rehearing: \$1220.00
- Appeal of Zoning Administrator/Building Official / Fire Marshal / Staff Decision: \$690.00

APPLICATION FOR APPEAL, REHEARING, OR REVIEW

Applicant Name\* AL MORELLI  
 Address Costa Mesa CA 92626  
 Phone \_\_\_\_\_  
 Representing Self - resident impacted by Target actions

REQUEST FOR:  REHEARING  APPEAL  REVIEW\*\*

Decision of which appeal, rehearing, or review is requested: (give application number, if applicable, and the date of the decision, if known.)

Appeal to the City Council regarding DR 99-22-2A  
 "Black Friday hours: 12:00 A.M. Store"  
 "attached"

Decision by: \_\_\_\_\_  
 Reasons for requesting appeal, rehearing, or review:

By having store hours at original land use agree for DR 99-22 as 12:00 A.M. hours residential is unlawful which for

476  
 16-241220-4484  
 DATE 11/22/11  
 \$ 1220.00  
 11/22/11

AMORELLI  
 COSTA MESA, CA 92626-1674  
 Pay to the order of  
 City of Costa Mesa  
 One Thousand Two Hundred and No/100ths Dollars  
 Appeal DR 99-22-2A  
 11/22/11

runs  
 of faith  
 for DR 99-22  
 subject to  
 rules and violations

person you represent and provide proof of authorization.  
 Commission Member, City Council, or City Council Member

only - do not write below this line

PLANNING COMMISSION MEETING OF:  
 person or body other than City Council/Planning Commission, date of hearing of

SC#  
 If app.  
 appeal,

Supplemental Document: To Support The "Appeal To DR 99-22 A2", December 6, 2011  
Costa Mesa City Council Meeting

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2011 NOV 28 AM 9:54  
CITY OF COSTA MESA

**Fellow City Council:**

I am asking you to **deny the request for extended hours regarding the Target Store**, grateful for the trust that you will make the right decision.

There is an old saying that a lie can go half way around the city while the truth is putting its shoes on---and as for Target store, a steady drumbeat of misinformation and mischaracterization are given as often to hide the truth.

So instead of asking you to apply the moral, ethical and legal to **deny Target** store request for modification to the original DR99-22 (land use restrictions); here are real and truthful facts for why you should **DENY Target** with their request.

**FACT:** DR99-22 was recorded in the official records with the County of Orange, on April 18, 2000. Owner (Target) as signed agreed to **execute and uphold all the land restrictions**. Per item 57 of conditions: "Hours of operations for the Target Store shall be limited to between the hours of 8:00 a.m. to 10:00 p.m., seven days a week".

**FACT:** Target management publicly acknowledged during year 2000 Planning and City Council meeting/s that they have no intention to become super Target and not to open the store beyond 10:00 PM.

**FACT:** The Targets store at 3030 Harbor is now a **Super Target**, a change from the original as claimed in year 2000. That's part Target, part grocery store. **Groceries are not subject to sales tax**. The **California Supreme Court** ruled on July 13, 2007 that cities and counties can restrict development of big-box superstores in order to **protect local businesses**. The decision upholds the lower court ruling that allowed city to enact an ordinance prohibiting development of retail stores larger than 100,000 square feet that use more than 5 percent of their space for grocery sales. The 3030 Harbor Target store have a total of 143,500 square feet.

**FACT:** Per **Planning Commission meeting on July 15, 2005**, Target was **DENIED** their request to open the store at **6:00AM**. Former planning commissioner Egan clearly expressed her concerns: "As to the 6 a.m. opening, she felt it was unreasonable to impose that on the residents to the north. There is no reason they should bear that burden". Commissioner Garlich:"he felt this application was overreaching." Vice Chair Hall: "said he agrees with this denial because the residents next to this property have gone through an awful lot over the years and he saw no reason to subject them to further inconvenience".

**FACT:** the Target's management folks cannot be trusted. The record shows that Target provided false and broken promises. Here are samples of Violation and Citation:

- 7/26/07- 5:45 AM Gardner blowing leaves, violation under item 30 -DR99-22
- 7/26/06 : 5:00 AM Noise complain, item 43 per DR99-22
- 11/22/2004, (Sunday) citation # 5751 issued for large semi truck-idling/loading by near the north neighbor area, violation under item 10, ZA-99-47.
- 1/27/03 (1:00AM-3:00AM ) parking lot sweeper, violation, item 30 under DR99-22
- 9/14/02 Deliveries in front of the store-citation # 3427

**FACT:** Target store manager (Tim Kindig) has been the same manager since year 2000 and thus he is fully aware of the conditions and land use restriction. However, he and or his staff do not abide by the law and have so many times violated the land use restrictions.

**FACT:** the dollar value per each citation as given by code enforcement ranged from \$75 to \$200 per incident, with the latest 11/22/11 for \$300.

**FACT:** Based on the evidence in the record (code enforcement and police records) and find that "Target" store management has demonstrated lack of faith compliance with the terms and conditions of development agreement DR99-22 by order.

**FACT;** During Commission Planning Nov.14, 20011, Mr. Al Morelli (party of interest /owner of adjacent property) was given only 3 minutes to present his input. Mr. William Morelli asked the Planning Commission to yield his three minute time to A.Morelli and he was denied. However, then thereafter Target were called back to answer question, while Mr. A. Morelli was not given any opportunity for rebuttal or express clarification.

**FACT:** for a Costa Mesa citizen at large—to appeal the planning commission decision, where the citizen (not the applicant) have to pay \$1,220. *Such \$1,220 fee is prohibitive and restrictive* as most citizens cannot afford or are willing to pay. As with such, the voices of Cost Mesa citizens are mostly do not come forward.

**FACT:** City of Costa Code of Enforcement is lacking oversight in relation to monitoring Target store. Most citations were issued after neighbors calling the city to report violation. The Code Enforcements staff does not work during night hours. Also, Police as they were often called upon, do not normally report a given violation to the code enforcement. **For the record, Specific calls were to made the police over the years, however no records are shown.**

**FACT:** Regarding Target claim of being responsible corporation - March 11, 2011, **Target Corporation paid California \$22.5 million Settlement for Environmental Violations: Stores Illegally Dumped Pesticides and Hazardous Chemicals.** The lawsuit included all 240 Target stores in the State of California.

**FACT:** As discovered during the Planning Commission meeting, **Target did violate the store operating hours during year 2010 -2011** (for a full year and half). The store hours are limited to 10:00 PM, where the Target violated the land use restriction by operating till 11 PM. (Refer to citation#9511). A citation fine of \$150 was given for the violation that was occurring for a period longer than a year, which by the way such dollar fine is less than a CM parking dog fine violation.

**FACT: Mel lee – CM City Sr. Planner,** met with Target staff for his **2010 bi-annual review**, where he was made aware that Target was violating the store hours **and he failed to report it and act on it.** During year 2000, and thereafter, Mel Lee has been responsible for conducting-Target Store review since year 2000. Mel lee/city review giving Target good faith finding by his report is now questionable.

**FACT: Holiday hours during year 2010.** Target was operating till **mid night 12:00AM without authorization-** The city failed to observe and report. (Refer to photo taken during this period).

**FACT:** During the planning meeting of Nov 14, 2011, where Target claimed they were abiding by all the land restriction and rules, then a week later another violation did occur on Sunday 11/20/2011(Refer to citation#9533)

**FACT:** Friday morning Nov 25, 2011, **Target opened the store at midnight 12:00AM** and thus **violating the land use restriction regarding store hours.** During the Nov 25 Friday early morning, the police (Officer N. Brown) was present at 3030 Harbor and she can testify to the record. She was informed (**2:00AM**) of the violation by showing her the land use restriction/hours document item 57 under DR99-22 (police case #11-12740).

**FACT:** Per original noise study (**March 2, 2000**), "Parking lot noise", as claimed in the study, the homes to north to have interior home noise level with 52 dBA. The study was based exclusively with store hours limited by 10:00PM. However, Per CM City **noise ordinance**, the **noise cannot exceed 50dBA after 11:00.**

**FACT:** As indicated per CM review March 8, 2000 traffic generation study were not conducted claiming the proposed project is within the and below .30 maximum FAR and trip per hour guidelines. However, several years later, the CM city while applying to **Measure M funding** provided **different data** by presenting adverse impact on Harbor Blvd to support their request for funding.

**FACT:** Per evidence in the record (code enforcement and police records) "Target" store management has demonstrated **lack of faith compliance** with the terms and conditions of development agreement DR99-22 by order.

**FACT:** Per city code sec 13-15 – "All departments, officials and public employees of the city invested with the duty or authority to issue permits or licenses shall conform to the provisions of this Zoning Code and shall issue no permit or license for uses, buildings or purposes in conflict with the provisions of this code; and any such permit or licenses issued in conflict with the provisions of this Zoning Code shall be null and void. **It shall be the duty of the development services director to enforce the provisions of this Zoning Code**". Also, "any such **permit or licenses issued in conflict with the provisions of this Zoning Code shall be null and void.**"

**FACT:** For record, **written request were made to city manager** concerning the ongoing and severity of violation as associated with Target, and thus the City has not willing to address the null and void legal requirements, nor willing to file misdemeanor charges as required under **Criminal citation**. Pursuant to State Government Code Sections 36900 and 36901

**FACT:** Significant changes had occurred since year 2000, at 3030 Harbor location, regarding the original land development. **Thus the city had failed to re-compare year 2000 former analysis to today current data.** All new reviews should match and re-address the negative declaration data, CEQA, EIR and compare to the originally specified by staff reports during year 2000.

**FACT:** Target management and city staff are compensated and paid to present their organization. However, Mr. Morelli is not paid to defend to protect his property rights. Thus Mr. Morelli efforts to deal with CM city had cost him time, money (**\$1,220 to appeal**) and also **undue hardship**. Mr. Morelli asked the City Clerk for **fee waiver** and thus he was denied.

I am asking you to **deny the request for extended hours regarding the Target Store. Deny the adoption of any modifications to the original DR99-22. Also, constrain any and all future reviews to DR99-22 as it should be legally binding per agreed and recorded with the land deed use agreement for the 3030 Harbor Blvd. property.**

**Based on the evidence and facts, Target has shown their lack of compliance. In addition, I am asking the city officials to apply the governing laws per city code Sec 13-16 (Enforcement) and file criminal charges against Target management for present and any future code violations.**

Al Morelli  
11/26/2011