

**ATTACHMENT 2
DRAFT RESOLUTIONS**

RESOLUTION NO. 15-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA UPHOLDING THE PLANNING COMMISSION'S REVOCATION OF CONDITIONAL USE PERMIT PA-87-154 FOR REPLANET RECYCLING FACILITY TO OPERATE AT 2180 NEWPORT BLVD

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

WHEREAS, on September 14, 1987, the Costa Mesa Planning Commission approved Planning Application PA-87-154 that authorized the establishment of a neighborhood recycling facility in the parking lot of Stater Bros. Market located at 2180 Newport Blvd; and

WHEREAS, the approval of Planning Application PA-87-154 authorized the operation of a neighborhood recycling facility in the parking lot of Stater Bros. Market located at 2180 Newport Blvd for a period of six months, with an approved subsequent extension on September 12, 1988, subject to two-year reviews for the purpose of ensuring continued compliance with applicable conditions of approval; and

WHEREAS, on July 9, 2012, the two-year review of PA-87-154 was referred to the Planning Commission for review to address concerns raised by abutting neighbors related to noise, litter and loitering problems. The Planning Commission granted an extension to September, 2013; and

WHEREAS, RePlanet took over operation of the facility in early 2013. At the September 9, 2013 Planning Commission meeting, RePlanet requested a continuance to November 12, 2013 to allow for additional time to work with the neighboring residents, Stater Bros., City staff, and the Planning Commissioners to address concerns regarding the operation of the facility; and

WHEREAS, at the November 12, 2013 Planning Commission Meeting, the Commission granted a six-month extension to March 10, 2014 to give RePlanet time to implement the conditions of approval, including relocation of the recycling vestibule, the installation of a new vestibule with reverse vending capabilities, and to continue to work with Stater Bros. on the installation of permanent landscaping; and to allow for additional time to work with the neighboring residents, Stater Bros., City staff, and the

Planning Commissioners to address concerns regarding the operation of the facility;
and

WHEREAS, at the March 10, 2014 Planning Commission meeting, staff was directed to (1) investigate and prepare evidence supporting revocation of RePlanet's conditional use permit, and (2) discuss with RePlanet other options for their business location; and

WHEREAS, on July 15, 2014, City staff held a meeting with RePlanet to discuss potential relocation sites for its business; and

WHEREAS, on September 22, 2014, a duly noticed public hearing on the revocation of PA-87-154 was held before the Planning Commission, which included a staff report, presentation of evidence by staff wherein the applicant and applicant's counsel were allowed to cross-examine members of the City staff and provide oral arguments to the Planning Commission. In addition, public comments both in favor of and opposed to revocation were received by the Planning Commission; and

WHEREAS, the Planning Commission, on September 22, 2014 voted to revoke the conditional use permit on a 4-0 vote (Vice Chair Dickson absent); and

WHEREAS, on September 29, 2014, an appeal of the decision of the Planning Commission was requested by the applicant's legal counsel with a request to conduct the City Council hearing on January 20, 2015; and

WHEREAS, a duly noticed public hearing was held by the City Council on January 20, 2015 with all persons having the opportunity to speak for and against the proposal.

WHEREAS, the project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines; and the City environmental procedures, and has been found to be categorically exempt from CEQA under Section 15321 for Enforcement Actions by Regulatory Agencies, and the CEQA exemption reflects the independent judgment of the City of Costa Mesa.

WHEREAS, based upon its review and due consideration of all materials presented to it, the City Council makes the following findings regarding the revocation of PA-87-154.

NOW THEREFORE, the City Council of the City of Costa Mesa finds and resolves as follows:

A. The Costa Mesa Development Services Department has identified the following Conditions of Approval that have been violated by RePlanet during the period from December 2013 through January 2015, inclusive:

- Condition of approval number 5 provides that "The business shall be conducted at all times, in a manner that will allow the quiet enjoyment of the surrounding neighborhood. The operator shall institute whatever security and operational measures are necessary to comply with this requirement."
- Condition of approval number 8(a) provides that the "attendants shall enforce no shopping carts, no loitering, and ensure all customers follow the rules. Attendants shall refuse service to anyone who disobeys."
- Condition of approval number 8(g) provides that "any bagged product or trash shall not be kept outside of the facility."
- Condition of approval number 10 provides that "Hours for the pick-up and drop-off of the recycling trailers shall not occur before 9:00 am or after 5:00 pm, Tuesday through Saturday only."
- Condition of approval number 18 provides that "the business operator shall adequately patrol the area over which he/she has control in an effort to prevent the loitering of persons about the premises during business hours."
- Condition of approval number 19 provides that "the business operator shall secure the premises with appropriate security lighting and employee scrutiny of adjacent areas under which he/she has control to prevent trash, graffiti and littering."
- Condition of approval number 20 provides that "the business operator shall maintain free of litter and graffiti all areas of the premises under his/her control."
- Condition of approval number 29 provides that "the operator shall install the modern vestibule as shown on the conceptually approved plans."
- Condition of approval number 30 provides that "to the fullest extent possible, the applicant shall continue to work with staff to incorporate new landscaping in the parking lot. A landscape planter consisting of ground cover, irrigation, and a minimum of two trees shall be installed to the satisfaction of the Development Services Director. Alternatives to the landscape planter that would achieve a similar effect to beautify or screen the recycling facility may be approved by the Development Services Director."

- Condition of approval number 31 provides that “the applicant shall provide planter boxes with appropriate landscape materials as shown on the approved plans.”

B. RePlanet has operated in violation of these conditions, to wit:

1. On December 10, 2013, RePlanet removed its recycling bins and replaced them with empty ones at 6:00 a.m. using a large truck, in violation of conditions of approval number 5 and number 10. These violations were observed by Christy Turley, 2183 Rural Lane, Costa Mesa and Deanne Hemmens, 2177 Rural Lane, Costa Mesa.
2. Also on December 10, 2013, RePlanet failed to prevent three individuals from loitering around its facility in violation of conditions of approval number 8(a) and number 18. One of them approached neighboring resident Tyler Turley and asked if he had any drugs for sale. These violations were observed by Tyler Turley, 2183 Rural Lane, Costa Mesa.
3. On January 29, 2014, RePlanet again failed to prevent loitering around its facility in violation of conditions of approval number 8(a) and number 18. These violations were observed by Deanne Hemmens.
4. On February 5, 2014, RePlanet again failed to prevent loitering around its facility in violation of conditions of approval number 8(a) and number 18. These violations were observed by Deanne Hemmens.
5. On February 8, 2014, RePlanet allowed stacks of cans outside its facility in violation of conditions of approval number 8(b), number 19 and number 20. These violations were observed by Deanne Hemmens.
6. On February 20, 2014, RePlanet again failed to prevent loitering around its facility in violation of conditions of approval number 8(a) and number 18. These violations were observed by Deanne Hemmens.
7. On February 26, 2014, RePlanet again removed and replaced its recycling bins at 4:50 a.m. using a large truck, in violation of conditions of approval number 5 and number 10. These violations were observed by Deanne Hemmens.
8. On March 30, 2014, RePlanet again removed and replaced its recycling bins at 2:30 a.m. using a large truck, in violation of conditions of approval number 5 and number 10. These violations were observed by Deanne Hemmens.
9. On May 24, 2014, RePlanet again removed and replaced its recycling bins at 7:15 a.m. using a large truck, in violation of conditions of approval number 5 and number 10. These violations were observed by Christy and Tyler Turley.

10. On May 31, 2014, RePlanet again removed and replaced its recycling bins at 10:25 p.m. using a large truck, in violation of conditions of approval number 5 and number 10. These violations were observed by Deanne Hemmens.
 11. As of September 5, 2014, no vestibule or landscaping has been installed at RePlanet's facility in violation of conditions of approval number 29 and number 30.
 12. On September 30, 2014, a week after RePlanet's CUP was revoked by the Planning Commission, RePlanet allowed trash to remain outside its facility in violation of conditions of approval number 8(g), number 19, and number 20. These violations were observed by Deanne Hemmens.
 13. On October 1, 2014, RePlanet again allowed trash to remain outside its facility in violation of conditions of approval number 8(g), number 19, and number 20. These violations were observed by Deanne Hemmens.
 14. On October 5, 2014, RePlanet again allowed trash to remain outside its facility in violation of conditions of approval number 8(g), number 19, and number 20. These violations were observed by Deanne Hemmens.
 15. On October 6, 2014, RePlanet allowed broken glass and trash to remain outside its facility in violation of conditions of approval number 8(g), number 19, and number 20. These violations were observed by Deanne Hemmens.
 16. On December 30, 2014, RePlanet again failed to prevent loitering around its facility in violation of conditions of approval number 8(g) and number 18. These violations were observed by Deanne Hemmens.
 17. On December 31, 2014, no planter boxes with appropriate landscape materials were installed in violation of condition of approval number 31.
 18. On January 5, 2015, RePlanet allowed a spill of an unknown liquid to accumulate on the ground near its facility in violation of conditions of approval number 8(g), number 19, and number 20. These violations were observed by Deanne Hemmens.
- C. The property has been operated as a public nuisance, pursuant to Section 13-29 of the Costa Mesa Municipal Code and Sections 3479 and 3480 of the Civil Code. Namely, the following conditions are found to be injurious to health, indecent or offensive to the senses, or constitute obstructions to the free use of property, so as to interfere with the comfortable enjoyment of life or property:
- a. Consistent late night and early morning trailer removal and replacement adjacent to a residential neighborhood.
 - b. Storage of trash in plain sight.

- c. Enabling the site to become a popular loitering spot for the homeless and drug users.
- D. Under the totality of the circumstances above, there is substantial evidence that RePlanet has been operated by its management in disregard for the health, safety and general welfare of the neighborhood, its patrons and the people of the City of Costa Mesa, as well as in violation of law.
- E. The current and past operation of RePlanet constitutes a public nuisance and is detrimental to the public health or safety so as to constitute a public nuisance.
- F. This revocation hearing of Conditional Use Permit PA-87-154 is deemed Categorically Exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15321 (Class 21), Enforcement Actions of Regulatory Agencies.
- G. Chapter IX, Article 12, Transportation Demand Management, of Title 13 of the Costa Mesa Municipal Code does not apply to this revocation hearing.

The City Clerk shall attest to the adoption of this resolution and shall forward a copy to the applicant, and any person requesting the same.

BE IT RESOLVED, therefore, that based on the evidence in the record and the findings contained in this resolution, the City Council hereby upholds the Planning Commission's revocation of Conditional Use Permit PA-87-154 with respect to the property described above.

UPHOLDING THE REVOCATION OF CONDITIONAL USE PERMIT PA-87-154 PASSED AND APPROVED at the City Council meeting of January 20, 2015, by the following vote:

PASSED AND ADOPTED on this 20TH day of January, 2015.

STEPHEN M. MENSINGER
Mayor, City of Costa Mesa

ATTEST:

APPROVED AS TO FORM:

CITY CLERK OF THE
CITY OF COSTA MESA

CITY ATTORNEY

RESOLUTION NO. 15-

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF COSTA MESA MODIFYING CONDITIONAL
USE PERMIT PA-87-154 FOR REPLANET
RECYCLING FACILITY TO OPERATE AT 2180
NEWPORT BLVD**

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

WHEREAS, on September 14, 1987, the Costa Mesa Planning Commission approved Planning Application PA-87-154 that authorized the establishment of a neighborhood recycling facility in the parking lot of Stater Bros. Market located at 2180 Newport Blvd; and

WHEREAS, the approval of Planning Application PA-87-154 authorized the operation of a neighborhood recycling facility in the parking lot of Stater Bros. Market located at 2180 Newport Blvd for a period of six months, with an approved subsequent extension on September 12, 1988, subject to two-year reviews for the purpose of ensuring continued compliance with applicable conditions of approval; and

WHEREAS, on July 9, 2012, the two-year review of PA-87-154 was referred to the Planning Commission for review to address concerns raised by abutting neighbors related to noise, litter and loitering problems. The Planning Commission granted an extension to September, 2013; and

WHEREAS, RePlanet took over operation of the facility in early 2013. At the September 9, 2013 Planning Commission meeting, RePlanet requested a continuance to November 12, 2013 to allow for additional time to work with the neighboring residents, Stater Bros., city staff, and the Planning Commissioners to address concerns regarding the operation of the facility; and

WHEREAS, at the November 12, 2013 Planning Commission Meeting, the Commission granted a six-month extension to March 10, 2014 to give RePlanet time to implement the conditions of approval, including relocation of the recycling vestibule, the installation of a new vestibule with reverse vending capabilities, and to continue to work with Stater Bros. on the installation of permanent landscaping; and to allow for additional time to work with the neighboring residents, Stater Bros., city staff, and the

Planning Commissioners to address concerns regarding the operation of the facility; and

WHEREAS, at the March 10, 2014 Planning Commission meeting, staff was directed to (1) investigate and prepare evidence supporting revocation of RePlanet's conditional use permit, and (2) discuss with RePlanet other options for their business location; and

WHEREAS, on July 15, 2014, city staff held a meeting with RePlanet to discuss potential relocation sites for its business; and

WHEREAS, on September 22, 2014, a duly noticed public hearing on the revocation of CUP PA-87-154 was held before the Planning Commission, which included a staff report, presentation of evidence by staff wherein the applicant was allowed to cross-examine members of the City staff and provide oral arguments to the Planning Commission. In addition, public comments both in favor of and opposed to revocation were received by the Planning Commission; and

WHEREAS, based upon its review and due consideration of all materials presented to it, the Planning Commission revoked PA-87-154 on September 22, 2014.

WHEREAS, on September 29, 2014, an appeal of the decision of the Planning Commission was requested by the applicant's legal counsel with a request to conduct the City Council hearing on January 20, 2015; and

WHEREAS, on January 20, 2015, the City Council heard RePlanet's appeal, which consisted of a de novo hearing where the City Council considered revocation or modification of PA-87-154; and

WHEREAS, based upon its review and due consideration of all materials presented to it, the City Council makes the following findings regarding the revocation of PA-87-154.

NOW THEREFORE, the City Council of the City of Costa Mesa finds and resolves as follows:

- A. The Costa Mesa Development Services Department has identified the following Conditions of Approval that have been violated by RePlanet during the period from December 2013 through January 2015, inclusive:

- Condition of approval number 5 provides that “The business shall be conducted at all times, in a manner that will allow the quiet enjoyment of the surrounding neighborhood. The operator shall institute whatever security and operational measures are necessary to comply with this requirement.”
- Condition of approval number 8(a) provides that the “attendants shall enforce no shopping carts, no loitering, and ensure all customers follow the rules. Attendants shall refuse service to anyone who disobeys.”
- Condition of approval number 8(g) provides that “any bagged product or trash shall not be kept outside of the facility.”
- Condition of approval number 10 provides that “Hours for the pick-up and drop-off of the recycling trailers shall not occur before 9:00 am or after 5:00 pm, Tuesday through Saturday only.”
- Condition of approval number 18 provides that “the business operator shall adequately patrol the area over which he/she has control in an effort to prevent the loitering of persons about the premises during business hours.”
- Condition of approval number 19 provides that “the business operator shall secure the premises with appropriate security lighting and employee scrutiny of adjacent areas under which he/she has control to prevent trash, graffiti and littering.
- Condition of approval number 20 provides that “the business operator shall maintain free of litter and graffiti all areas of the premises under his/her control.”
- Condition of approval number 29 provides that “the operator shall install the modern vestibule as shown on the conceptually approved plans.”
- Condition of approval number 30 provides that “to the fullest extent possible, the applicant shall continue to work with staff to incorporate new landscaping in the parking lot. A landscape planter consisting of ground cover, irrigation, and a minimum of two trees shall be installed to the satisfaction of the Development Services Director. Alternatives to the landscape planter that would achieve a similar effect to beautify or screen

the recycling facility may be approved by the Development Services Director.”

- Condition of approval number 31 provides that “the applicant shall provide planter boxes with appropriate landscape materials as shown on the approved plans.”

B. RePlanet has operated in violation of these conditions, to wit:

1. On December 10, 2013, RePlanet removed its recycling bins and replaced them with empty ones at 6:00 a.m. using a large truck, in violation of conditions of approval number 5 and number 10. These violations were observed by Christy Turley, 2183 Rural Lane, Costa Mesa and Deanne Hemmens, 2177 Rural Lane, Costa Mesa.
2. Also on December 10, 2013, RePlanet failed to prevent three individuals from loitering around its facility in violation of conditions of approval number 8(a) and number 18. One of them approached neighboring resident Tyler Turley and asked if he had any drugs for sale. These violations were observed by Tyler Turley, 2183 Rural Lane, Costa Mesa.
3. On January 29, 2014, RePlanet again failed to prevent loitering around its facility in violation of conditions of approval number 8(a) and number 18. These violations were observed by Deanne Hemmens.
4. On February 5, 2014, RePlanet again failed to prevent loitering around its facility in violation of conditions of approval number 8(a) and number 18. These violations were observed by Deanne Hemmens.
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8. On March 30, 2014, RePlanet again removed and replaced its recycling bins at 2:30 a.m. using a large truck, in violation of conditions of approval number 5 and number 10. These violations were observed by Deanne Hemmens.
9. On May 24, 2014, RePlanet again removed and replaced its recycling bins at 7:15 a.m. using a large truck, in violation of conditions of approval number 5 and number 10. These violations were observed by Christy and Tyler Turley.
10. On May 31, 2014, RePlanet again removed and replaced its recycling bins at 10:25 p.m. using a large truck, in violation of conditions of approval number 5 and number 10. These violations were observed by Deanne Hemmens.
11. As of September 5, 2014, no vestibule or landscaping has been installed at RePlanet's facility in violation of conditions of approval number 29 and number 30.
12. On September 30, 2014, a week after RePlanet's CUP was revoked by the Planning Commission, RePlanet allowed trash to remain outside its facility in violation of conditions of approval number 8(g), number 19, and number 20. These violations were observed by Deanne Hemmens.
13. On October 1, 2014, RePlanet again allowed trash to remain outside its facility in violation of conditions of approval number 8(g), number 19, and number 20. These violations were observed by Deanne Hemmens.
14. On October 5, 2014, RePlanet again allowed trash to remain outside its facility in violation of conditions of approval number 8(g), number 19, and number 20. These violations were observed by Deanne Hemmens.
15. On October 6, 2014, RePlanet allowed broken glass and trash to remain outside its facility in violation of conditions of approval number 8(g), number 19, and number 20. These violations were observed by Deanne Hemmens.

16. On December 30, 2014, RePlanet again failed to prevent loitering around its facility in violation of conditions of approval number 8(g) and number 18. These violations were observed by Deanne Hemmens.
 17. On December 31, 2014, no planter boxes with appropriate landscape materials were installed in violation of condition of approval number 31.
 18. On January 5, 2015, RePlanet allowed a spill of an unknown liquid to accumulate on the ground near its facility in violation of conditions of approval number 8(g), number 19, and number 20. These violations were observed by Deanne Hemmens.
- C. The property has been operated as a public nuisance, pursuant to Section 13-29 of the Costa Mesa Municipal Code and Sections 3479 and 3480 of the Civil Code. Namely, the following conditions are found to be injurious to health, indecent or offensive to the senses, or constitute obstructions to the free use of property, so as to interfere with the comfortable enjoyment of life or property:
- a. Consistent late night and early morning trailer removal and replacement adjacent to a residential neighborhood.
 - b. Consistent storage of trash in plain sight.
 - c. Enabling the site to become a popular loitering spot for the homeless, drug users, and other undesirables.
- H. Under the totality of the circumstances above, there is substantial evidence that RePlanet has been operated by its management in disregard for the health, safety and general welfare of the neighborhood, its patrons and the people of the City of Costa Mesa, as well as in violation of law.
- I. Under the totality of the Circumstances above, there is substantial evidence that RePlanet has been operated in violation of PA-87-154.
- J. The current and past operation of RePlanet constitutes a public nuisance and is detrimental to the public health or safety so as to constitute a public nuisance.
- K. This revocation/modification hearing of Conditional Use Permit PA-87-154 is deemed Categorical Exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15321 (Class 21), Enforcement Actions of Regulatory Agencies.

L. Chapter IX, Article 12, Transportation Demand Management, of Title 13 of the Costa Mesa Municipal Code does not apply to this revocation/modification hearing.

The City Clerk shall attest to the adoption of this resolution and shall forward a copy to the applicant, and any person requesting the same.

BE IT RESOLVED, therefore, that based on the evidence in the record and the findings contained in this resolution, the City Council hereby reverses the revocation of Conditional Use Permit PA-87-154 with respect to the property described above and instead imposes the following additional conditions:

[INSERT ADDITIONAL CONDITIONS HERE]

REVERSING THE REVOCATION OF CONDITIONAL USE PERMIT PA-87-154 AND IMPOSING ADDITIONAL CONDITIONS PASSED AND APPROVED at the City Council meeting of January 20, 2015, by the following vote:

PASSED AND ADOPTED on this 20TH day of January, 2015.

STEPHEN M. MENSINGER
Mayor, City of Costa Mesa

ATTEST:

APPROVED AS TO FORM:

CITY CLERK OF THE
CITY OF COSTA MESA

CITY ATTORNEY

