



# CITY COUNCIL AGENDA REPORT

MEETING DATE: JANUARY 20, 2015

ITEM NUMBER: PH-2

**SUBJECT: APPEAL OF THE REVOCATION OF PLANNING APPLICATION PA-87-154:  
CONDITIONAL USE PERMIT FOR A NEIGHBORHOOD RECYCLING FACILITY  
(REPLANET, FORMERLY EARTHWISE RECYCLING)**

**2180 NEWPORT BOULEVARD**

**FROM: PLANNING DIVISION/DEVELOPMENT SERVICES DEPARTMENT**

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

**DATE: JANUARY 8, 2015**

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

## **DESCRIPTION**

Per the appeal of RePlanet, conduct a de novo hearing on the Planning Commission's revocation of Conditional Use Permit PA-87-154 to determine the following:

- Whether RePlanet recycling facility has operated in violation of Conditional Use Permit PA-87-154 and/or as a public nuisance such that revocation of the Conditional Use Permit is appropriate; or, in lieu of revocation, impose additional conditions.

## **RECOMMENDATION**

Uphold the Planning Commission's revocation of PA-87-154 by adopting a resolution consistent with its findings as follows:

- Make findings that RePlanet recycling facility has been operated in violation of the conditions of approval in Conditional Use Permit PA-87-154 and/or as a public nuisance, such that the Planning Commission's revocation of the CUP was justified; and uphold the Planning Commission's revocation, or in lieu of revocation, amend the conditions of the CUP; or
- Conclude that there are insufficient findings that RePlanet recycling facility has been operated in violation of the conditions of approval of Conditional Use Permit PA-87-154 or as a public nuisance. The existing conditions of approval regulating the facility would remain as originally approved.

## **BACKGROUND**

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 for a period of six months. The facility accepts CRV (California Redemption Value) aluminum cans, glass and plastic bottles. A subsequent extension was granted on September 12, 1988, subject to two-year reviews for the purpose of ensuring continued compliance with applicable conditions of approval.

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

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 moving the recycling vestibule further away from residential properties, the installation of a new vestibule with reverse vending capabilities, 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 Planning Commissioners to address concerns regarding the operation of the facility. The applicant also proposed interim landscaping in the form of planter boxes to screen the facility from Newport Boulevard. A copy of the updated conditions of approval adopted by the Commission at the November 12, 2013 meeting is provided in the evidence packet, under separate cover, under Tab 7.

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 options to relocate the facility from their current location. On July 15, 2014, City staff held a meeting with RePlanet to discuss potential relocation sites for its business, however, as of September 8, 2014, RePlanet had neither submitted a new conditional use permit application to relocate their facility to another property nor had fully complied with the conditions of PA-87-154, which include a number of operational requirements. Staff scheduled a hearing before the Planning Commission on September 22, 2014 to consider either revoking the conditional use permit or modifying the conditions of approval.

### ***Summary of Planning Commission Action***

The Planning Commission held a public hearing on September 22, 2014, which included presentation of the staff report and 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. Based on the evidence and testimony presented during the hearing, the Planning Commission voted to revoke the conditional use permit by a 4-0 vote (Vice Chair Dickson was absent).

## **APPEAL**

An appeal of the Planning Commission's decision was filed by the applicant's legal counsel on September 29, 2014. Normally, the appeal hearing would be scheduled for the next available City Council meeting date, however, the applicant's representative requested that the item be considered by the City Council at their January 20, 2015 meeting.

### ***De Novo Hearing***

It should be noted that the City Council hearing is a **de novo hearing** in which the City Council may consider the project in its entirety. The purpose of this report is to highlight and/or clarify the evidence in the administrative record that was presented to the Planning Commission prior to its action. The Commission determined that several grounds existed to revoke the CUP:

1. RePlanet has operated in violation of condition of operation 5, to wit, RePlanet has not conducted its operations in a manner that will allow the quiet enjoyment of the surrounding neighborhood by replacing its recycle bins late at night and during the early morning hours; and
2. RePlanet has operated in violation of condition of operation 8(a), to wit, by not preventing loitering at its recycling facility; and
3. RePlanet has operated in violation of condition of operation 8(g), to wit, by not preventing bagged trash from being kept outside the facility; and
4. RePlanet has operated in violation of condition of operation 10, to wit, by picking up and dropping off recycling trailers before 9:00 am and after 5:00 pm; and
5. RePlanet has operated in violation of condition of operation 18, to wit, by not adequately patrolling the area to prevent loitering; and
6. RePlanet has operated in violation of condition of operation 19, to wit, by not preventing securing the premises with appropriate security lighting and employee scrutiny of adjacent areas to prevent trash, graffiti and littering; and
7. RePlanet has operated in violation of condition of operation 20, to wit, by not maintaining its facility and all areas under its control free of litter and graffiti; and

8. RePlanet has operated in violation of condition of operation 29, to wit, by not installing a modern vestibule as shown on the conceptually approved plans; and
9. RePlanet has operated in violation of condition of operation 30, to wit, by not working with staff to the fullest extent possible to incorporate new landscaping in the parking lot.
10. RePlanet has operated in violation condition of operation 31, to wit, by not providing planter boxes with appropriate landscape materials as shown on the approved plans.

A more detailed description of the above items follows.

- **RePlanet routinely replaces its recycling bins late and night and during early morning hours, preventing neighboring residents from the quiet enjoyment of their neighborhood.**

Condition of approval number 5 stipulates 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 10 stipulates 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.”*

Neighboring residents regularly report that RePlanet’s recycling bins are replaced late at night and during early morning hours:

- On December 10, 2013 at 6:00 a.m., RePlanet’s recycling bins were exchanged by a large, loud truck. This violation was witnessed by Christy Turley, resident at 2183 Rural Lane, Costa Mesa and Deanne Hemmens, resident at 2177 Rural Lane, Costa Mesa.
- On February 26, 2014 at 4:50 a.m., RePlanet’s recycling bins were again exchanged by a large, loud truck. This violation was witnessed by Deanne Hemmens.
- On March 30, 2014 at 2:30 a.m., RePlanet’s recycling bins were again exchanged by a large, loud truck. This violation was witnessed by Deanne Hemmens.
- On May 24, 2014 at 7:15 a.m., RePlanet’s recycling bins were again exchanged by a large, loud truck. This violation was witnessed by Christy and Tyler Turley, residents at 2183 Rural Lane, Costa Mesa.

- On May 31, 2014 at 10:25 p.m., RePlanet's recycling bins were again exchanged by a large, loud truck. This violation was witnessed by Deanne Hemmens.

- **RePlanet consistently fails to prevent loitering around its facility.**

Condition of approval number 8(a) stipulates that:

*"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 18 stipulates 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."*

Neighboring residents regularly report that RePlanet fails to prevent loitering at its facility:

- On December 10, 2013, RePlanet failed to prevent three individuals from loitering around its facility. One of these individuals approached neighboring resident Tyler Turley and asked if he had any drugs for sale. This violation was observed by Tyler Turley, resident at 2183 Rural Lane, Costa Mesa.
- On January 29, 2014, RePlanet again failed to prevent loitering around its facility, as at least two individuals (transients) were observed loitering at the facility and interacting with RePlanet employees. This violation was observed by Deanne Hemmens, 2177 Rural Lane, Costa Mesa.
- On February 5, 2014, RePlanet again failed to prevent loitering around its facility, as transients were observed loitering at the facility. This violation was observed by Deanne Hemmens.
- On February 20, 2014, RePlanet again failed to prevent loitering around its facility as transients were observed loitering at the facility. This violation was observed by Deanne Hemmens.
- 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.

- **RePlanet has allowed trash to remain outside its facility.**

Condition of approval number 8(g) stipulates:

*"Any bagged product or trash shall not be kept outside of the facility."*

Condition of approval number 19 stipulates:

*“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 stipulates:

*“The business operator shall maintain free of litter and graffiti all areas of the premises under his/her has control.”*

- On February 8, 2014, RePlanet allowed stacks of cans to remain outside its facility as witnessed by Deanne Hemmens.
- 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.
- 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.
- 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.
- On October 6, 2014, RePlanet allowed broken glass 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.
- 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.

• **RePlanet has failed to install a modern vestibule and required landscaping.**

Condition of approval number 29 stipulates:

*“The operator shall install the modern vestibule as shown on the conceptually approved plans.”*

Condition of approval number 30 stipulates:

*“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.”*

On September 5, 2014, neither the vestibule nor parking lot landscaping has been installed at RePlanet’s recycling facility.

Condition of approval number 31 stipulates:

*“The applicant shall provide planter boxes with appropriate landscape materials as shown on the approved plans.”*

On December 31, 2014, there are no planter boxes or other landscaping materials at RePlanet’s recycling facility in violation of condition of approval number 31.

**Public Nuisance.**

Additionally, Section 13-29(o)(1)(a) provides that the Planning Commission may require the modification or revocation of a conditional use permit when the use is being operated as a public nuisance, as defined in Civil Code Section 3479 and 3480.

A nuisance is “[a]nything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property . . . .” A public nuisance “is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.” Civ. Code §§ 3479, 3480.

Conditions such as loud, late night recycle-bin replacement, excessive loitering and trash storage constitute public nuisances, as they are the type of conditions that are likely to affect a considerable number of persons.

In addition, RePlanet’s operation in violation of the conditions of approval listed above also violate CMMC 20-12(ii) that declares any use in violation of conditions of approval a public nuisance.

**OTHER ISSUES**

The recycling of aluminum cans, glass and plastic bottles is pursuant to Assembly Bill AB 2020 (California Beverage Container Recycling and Litter Reduction Act, or “The Bottle Bill”). Cal Recycle establishes state wide “convenience zones” around retail supermarkets based on the following criteria:

*“A half-mile radius circle with the center point originating at a supermarket that meets the following definitions of Public Resources Code Sections 14509.4 and 14562.5:*

- *A supermarket as identified in the Progressive Grocer Marketing Guidebook.*
- *A supermarket with gross annual sales of \$2 million or more.*

*A supermarket is considered a “full-line” store that sells a line of dry groceries, canned goods, or non-food items and perishable items.*

*A convenience zone is required by law to have within the zone's boundaries a recycling center that redeems all California Redemption Value (CRV) containers. A convenience zone with a recycler inside its boundaries is considered a served zone”.*

If the RePlanet at the Stater Bros Market vacates the site as a result of the CUP revocation, the convenience zone serving the below stores would be affected, requiring the stores to either redeem CRV containers within the stores through modern “reverse vending” type machines or pay the \$100.00 daily fee in lieu of redeeming:

- 1) **Stater Bros Market** – 2180 Newport Blvd, Costa Mesa
- 2) **Albertsons** – 2300 Harbor Blvd, Costa Mesa
- 3) **Irvine Ranch Market** – 2651 Irvine Ave, Costa Mesa

Also, as stated in the background section of this report, RePlanet was advised by staff and the Planning Commission that they can establish another freestanding recycling facility on a commercially-zoned property elsewhere within the convenience zone served by the above stores, subject to the approval of a new conditional use permit application.

## **LEGAL REVIEW**

The draft resolutions have been reviewed and approved as to form by the City Attorney's Office.

## **ALTERNATIVES**

The City Council may take the following actions:

- Uphold the Planning Commission's Revocation of PA-87-154 and adopt a resolution making findings that RePlanet has been operated in violation of the conditions of approval and/or as a public nuisance, or, in lieu of revocation, amend the conditions of the CUP; or
- Reverse the Planning Commission's revocation of PA-87-154 and conclude that there are insufficient findings that RePlanet has been operated in violation of the conditions of approval of Conditional Use Permit PA-87-154 or as a public nuisance. The existing conditions of approval regulating RePlanet would remain as originally approved.

## **CONCLUSION**

De novo literally translates to “anew,” “afresh” or “a second time.” A de novo hearing is essentially a new proceeding where the proposal is presented to the City Council for final consideration. In its decision making, Council is not restricted to the evidence that was previously presented to the Planning Commission. In sum, the following grounds for revocation are being presented to the City Council:

- RePlanet has consistently operated in violation of condition of operation numbers 5 and 10 by replacing its recycle bins late at night and during the early morning hours on at least 5 separate occasions.
- RePlanet has consistently operated in violation of condition of operation numbers 8(a) and 18 by allowing loitering at its facility on at least 4 separate occasions.
- RePlanet stored trash outside its facility in violation of condition of operation numbers 8(g), 19 and 20 on several occasions, and failed to install the required vestibule and landscaping in violation of condition of operation numbers 29 and 30.

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MEL LEE, AICP  
Senior Planner

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GARY ARMSTRONG, AICP  
Director of Economic & Development /  
Deputy CEO

- Attachments:
1. [Location Map and Plans](#)
  2. [Draft Resolution](#)
  3. [Appeal Application and Attachments](#)
  4. [Planning Commission Minute Excerpts](#)
  5. [Planning Commission Staff Report and Related Exhibits \(Note: Evidence Packet is Under Separate Cover\)](#)
  6. [Planning Commission Resolution](#)
  7. [Correspondence From Public](#)

cc:

- Chief Executive Officer
- Assistant Chief Executive Officer
- Director of Economic & Development / Deputy CEO
- City Attorney
- Public Services Director
- Transportation Svs. Mgr.
- City Engineer
- City Clerk (9)
- Staff (7)
- File (2)

Jackson/DeMarco/Tidus/Peckenpaugh  
Attn: Paige H. Gosney  
2030 Main Street, Suite 1200  
Irvine, CA 92614

RePlanet, LLC  
c/o Brian Jackson  
491 Kettering Drive,  
Ontario, CA 91761

RePlanet, LLC  
c/o Doug Sanchez  
491 Kettering Drive,  
Ontario, CA 91761

Costa Mesa Grocery Investors. LLC  
11456 Olive Boulevard, Suite 210  
Saint Louis, MO 63141

Stater Bros. Markets  
c/o Mark Avalos, Grocery Supervisor - Retail  
301 S. Tippecanoe Avenue  
San Bernardino, CA 92408

Stater Bros. Markets  
c/o Karen Molina-Stahl, Property Manager  
301 S. Tippecanoe Avenue  
San Bernardino, CA 92408

Stater Bros. Markets  
c/o Bill Wall, Store Manager  
2180 Newport Boulevard  
Costa Mesa, CA 92627

DeAnne Hemmens  
2177 Rural Lane  
Costa Mesa, CA 92627

Christy Turley  
2183 Rural Lane  
Costa Mesa, CA 92627

## 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 20<sup>TH</sup> day of January, 2015.**

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STEPHEN M. MENSINGER  
Mayor, City of Costa Mesa

ATTEST:

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CITY CLERK OF THE  
CITY OF COSTA MESA

APPROVED AS TO FORM:

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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.
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. 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 20<sup>TH</sup> 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

