



PLANNING COMMISSION

AGENDA REPORT

MEETING DATE: MARCH 9, 2015

ITEM NUMBER: PH-2

SUBJECT: APPEAL OF THE ZONING ADMINISTRATOR'S DECISION TO DENY A MINOR CONDITIONAL USE PERMIT TO LEGALIZE OUTDOOR PLACEMENT OF A WATER VENDING MACHINE AND AN OUTDOOR DVD RENTAL KIOSK AT A CIRCLE K CONVENIENCE STORE

DATE: FEBRUARY 27, 2015

FROM: PLANNING DIVISION/DEVELOPMENT SERVICES DEPARTMENT

PRESENTATION BY: CHELSEA CRAGER, ASSISTANT PLANNER

FOR FURTHER INFORMATION CONTACT: CHELSEA CRAGER (714) 754-5609
chelsea.crager@costamesaca.gov

DESCRIPTION

The applicant is proposing Minor Conditional Use Permit ZA-14-38 to legalize the existing outdoor placement of a DVD vending machine (Redbox) and a water vending machine at an existing Circle K convenience store.

The Zoning Administrator's denial of ZA-14-38 was appealed by the applicant.

APPLICANT

The applicant is Ahmad Ghaderi of A&S Engineering, authorized agent for the property owner Circle K Stores Inc.

RECOMMENDATION

Staff recommends that the Planning Commission uphold the Zoning Administrator's denial of ZA-14-38 by adoption of Planning Commission resolution.

BACKGROUND

Project Site/Environs

The subject property is located on Del Mar Avenue near the corner of Newport Boulevard and Del Mar Avenue. It is zoned C1 (Local Business) with a General Plan land use designation of Commercial Residential. The building is oriented to face west toward Newport Boulevard. Properties to the north across Del Mar Avenue and to the west are zoned C1 and contain commercial uses. The properties to the south and to the east across Del Mar Avenue are zoned R2-MD (Multiple-Family Residential, Medium Density) and contain residential uses.

The subject property is a 31,799 square foot lot developed with 11,670 square feet of commercial building area, 44 parking spaces, and two points of ingress/egress.

Code Enforcement Violation History

This application is in response to a Code Enforcement violation for the placement of the outdoor vending machines. On July 23, 2014, a violation notice was issued by the Code Enforcement Division for illegal storage in public view (CMMC 20-12(e)) and outdoor work, storage, or display without a permit (CMMC 13-44). The property owner was required to remedy the citation by removing an icebox, a Glacier water vending machine, and a Redbox movie vending machine; only the icebox was removed.

Consequently, on October 7, 2014, a second violation notice was issued by the Code Enforcement Division. The property owner was required to remedy the citation by removing the two remaining vending machines or applying for a minor conditional use permit (MCUP) to legalize the outdoor placement of the machines. The business owner applied for a minor conditional use permit to retain both vending machines.

On February 20, 2015, the Zoning Administrator denied the request. The applicant appealed the denial on February 24, 2015.

The Code Enforcement case has been on hold pending final action on the MCUP request.

ANALYSIS

Zoning Administrator's Denial of MCUP for a Glacier Water Vending Machine

The proposal represents an over-intensification of an existing 24-hour convenience store which directly abuts a residential zone. The Glacier Water vending machine is placed approximately 19 feet from the front door of the Circle K. It is visible from the parking lot of the subject property and from Del Mar Avenue, creating visual impacts to the neighborhood. Although Glacier Water vending machines are commonly found outside of retail and grocery stores, Planning Commission recently denied a similar request to retain a Glacier Water vending machine at a Circle K located at 1654 Santa Ana Avenue (ZA-14-34). Findings to support the denial were based on the intensification of the convenience store use and the potential impact on residents in the neighborhood. This is a significant concern because this convenience store is open 24 hours a day, making the

vending machines also available 24 hours a day in proximity to a residential neighborhood.

Poor maintenance and clean-up of outdoor water vending machines may lead to safety hazards (i.e. slip and falls). Additionally, the very concerns with a water vending machine that make it preferable to be placed outside – i.e. leakages and spills from the machine – can cause potential slipping problems for customers walking to the front door of the convenience store. Although there can be potential problems with locating a water vending machine inside the store, it is felt that the potential for impacts on residents in the neighborhood outweigh the benefits of providing such a service.

Zoning Administrator’s Denial of MCUP for a Redbox DVD Vending Machine

Other than over-intensification of the store business to the exterior area, the outdoor location of a Redbox vending machine could not be justified. The Redbox vending machine is placed to the right of the Glacier water vending machine at the front of the Circle K convenience store. It is visible from the parking lot of the subject property and from Del Mar Avenue, creating visual impacts to the neighborhood. This type of vending machine is commonly found indoors at grocery stores or other retail centers. There are no fire hazards, leaks, or other safety hazards commonly associated with a vending machine of this nature that would require an outdoor location.

Advertisements and graphics on the Redbox machine contribute to additional visual clutter associated with the convenience store. The Zoning Administrator denied this request because the machine contains many advertisements and movie titles on the exterior of the vending machine. Consequently, it was found that the vending machine is incompatible with developments in the same general neighborhood.

Additional Discussion

The site has a history of Code Enforcement activity related to property maintenance violations. After the appeal was received, the following information has been prepared: Since 1999, there have been 18 Code Enforcement cases opened on this property: four for trash/debris, four for outdoor uses, three for late night/early morning delivery times, three for outdoor storage, 2 for landscaping, and 2 for illegal signs/banners. This application is in response to the open case on this site, which was opened in response to Planning Commission’s request to review convenience stores city wide. Information of police calls for service to the property is pending.

GENERAL PLAN CONFORMANCE

The General Plan land use designation for the subject property is Commercial Residential, which is intended to allow a complementary mix of commercial and residential zoning. The proposed use is not consistent with the General Plan Objective LU-1F to minimize blighting influences and maintain integrity of stable neighborhoods. Due to the proximity of nearby residential areas, and the intensification of the 24-hour convenience store use that results by retaining the two outdoor vending machines, the over-intensification of the convenience store use is considered incompatible with the surrounding neighborhood and therefore inappropriate for this location.

ENVIRONMENTAL DETERMINATION

The project is categorically exempt from the provisions of the California Environmental Quality Act under Section 15301 (Class 1) for Existing Facilities. Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

If denied, CEQA does not apply to the project, pursuant to CEQA Guidelines Section 15270(a).

ALTERNATIVES

The Planning Commission has the following alternatives:

- Dismiss without prejudice. This constitutes a denial of the application. However, the applicant could reapply without observing the 6 month waiting period.
- Approve the project subject to conditions. The Planning Commission may suggest specific conditions to include in an approval of the project. If any of the requested changes are substantial, the item should be continued to a future meeting to allow a redesign or additional analysis. In the event of significant modifications to the proposal, should the Planning Commission choose to do so, staff will return with a revised resolution incorporating new findings and/or conditions.

CONCLUSION

The Zoning Administrator determined that the proposed outdoor location for the DVD rental machine and Glacier water vending machine is not compatible with the surrounding residential properties and is therefore not consistent with the City's Zoning Code and General Plan.



CHELSEA CRAGER
Assistant Planner



WILLA BOUWENS-KILLEEN, AICP
Zoning Administrator

- Attachments:
1. Draft Planning Commission Resolution and Exhibits
 2. Location and Zoning Map
 3. Applicant's Letter
 4. Project Plans
 5. Appeal Form
 6. Zoning Administrator Denial Letter
 7. Site Photos
- 4

Distribution: Director of Economic & Development Services/Deputy CEO
Senior Deputy City Attorney
Public Services Director
City Engineer
Transportation Services Manager
Fire Protection Analyst
Staff (6)
File (2)

Circle K Stores, Inc.
255 E. Rincon Street #100
Corona, CA 92879

A&S Engineering
28405 Sand Canyon Road
Canyon Country, CA 91387

ATTACHMENT 1
DRAFT PLANNING COMMISSION RESOLUTIONS AND
EXHIBITS

RESOLUTION NO. PC-15-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA UPHOLDING THE ZONING ADMINISTRATOR'S DENIAL OF ZONING APPLICATION ZA-14-38 AND DENY A MINOR CONDITIONAL USE PERMIT FOR OUTDOOR USES LOCATED AT 111 DEL MAR AVENUE (CIRCLE K STORE)

THE PLANNING COMMISSION OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, an application was filed by A&S Engineering, as the authorized agent on behalf of the property owner, Circle K Stores, Inc, requesting approval of a minor conditional use permit to allow the outdoor use of a DVD rental vending machine and a water vending machine; and

WHEREAS, on February 20, 2015, the Zoning Administrator denied the request; and

WHEREAS, on February 24, 2015, the Zoning Administrator's decision was appealed by the applicant; and

WHEREAS, a duly noticed public hearing held by the Planning Commission on March 9, 2015 with all persons having the opportunity to speak for and against the proposal; and

WHEREAS, the project was reviewed in accordance with the requirements of the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the City of Costa Mesa Environmental Guidelines; and it was determined that CEQA does not apply to the project, pursuant to CEQA Guidelines Section 15270(a), because the project was denied; and **BE IT RESOLVED** that, based on the evidence in the record and the findings contained in Exhibit A, the Planning Commission hereby **UPHOLDS** the Zoning Administrator's decision and **DENIES** Planning Application ZA-14-38 with respect to the property described above.

BE IT FURTHER RESOLVED that if any section, division, sentence, clause, phrase or portion of this resolution, or the documents in the record in support of this resolution, are for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions.

PASSED AND ADOPTED this 9th day of March, 2015.

Rob Dickson, Chair
Costa Mesa Planning Commission

EXHIBIT A

FINDINGS

- A. The information presented does not comply with Costa Mesa Municipal Code Section 13-29(e) in that:

Finding: The proposed use is not considered compatible and harmonious to the relationship between the proposed building and the site development, and use, and the building and site developments, and uses that exist or have been approved for the general neighborhood.

Facts in Support of Finding: The property containing the vending machines abuts residentially-zoned properties to the south and to the east across Del Mar Avenue. The outdoor vending machines are clearly visible from Del Mar Avenue and the public right of way, creating visual impacts to the subject and surrounding properties. Additionally, the vending machines intensify the 24-hour convenience store use and would negatively impact the surrounding area.

Finding: Safety and compatibility of the design of buildings, parking area, landscaping, luminaries, and other site features which may include functional aspects of the site development such as automobile and pedestrian circulation have been considered and may be affected.

Facts in Support of Finding: The water vending machines may pose a safety concern for pedestrians utilizing the walkway in the event of water spills or leaks.

Finding: The use is not consistent with General Plan Objective LU-1F in establishing policies, standards, and procedures to minimize blighting influences and maintain the integrity of stable neighborhoods.

Facts in Support of Finding: The proposed uses do not protect existing stabilized neighborhoods of nearby residential properties due to the intensification of an existing convenience store in proximity to established residential neighborhoods.

Finding: This zoning application is for a project-specific case and is not to be construed to be setting a precedent for future development.

- B. The information presented does not comply with Costa Mesa Municipal Code Section 13-29(g)(2) in that:

Finding: The proposed use is not compatible and harmonious with developments in the same general area and would be materially detrimental to other properties within the area.

Facts in Support of Finding: The outdoor vending machines result in an intensification of the 24-hour convenience store use that can impact residents in the immediate neighborhood.

Finding: Granting the minor conditional use permit will be detrimental to the health, safety and general welfare of the public or otherwise injurious to property or improvements within the immediate neighborhood.

Facts in Support of Finding: A risk of slippage can be present due to the potential for spills and leaks from the water vending machine

Finding: Granting the minor conditional use permit will allow a use that is not in accordance with the General Plan designation and any applicable specific plan for the property.

Facts in Support of Finding: General Plan Objective LU-1F establishes policies, standards, and procedures to minimize blighting influences and maintain the integrity of stable neighborhoods. The vending machines do not protect the existing, nearby stabilized neighborhoods since they result in an intensification of the 24-hour convenience store use.

- C. The Costa Mesa Planning Commission has denied Planning Application ZA-14-38. Pursuant with the Public Resources Code Section 21080(b)(5) and the CEQA Guidelines Section 15270(a) CEQA does not apply to this project because it has been rejected and will not be carried out.
- D. The project is exempt from Chapter XII, Article 3, Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.

RESOLUTION NO. PC-15-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA TO REVERSE THE ZONING ADMINISTRATOR'S DENIAL OF ZONING APPLICATION ZA-14-38 AND APPROVE A MINOR CONDITIONAL USE PERMIT FOR OUTDOOR USES LOCATED AT 111 DEL MAR AVENUE (CIRCLE K STORE)

THE PLANNING COMMISSION OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, an application was filed by A&S Engineering, as the authorized agent on behalf of the property owner, Circle K Stores, Inc, requesting approval of a minor conditional use permit to allow the outdoor use of a DVD rental vending machine and a water vending machine; and

WHEREAS, on February 20, 2015, the Zoning Administrator denied the request; and

WHEREAS, on February 24, 2015, the Zoning Administrator's decision was appealed by the applicant; and

WHEREAS, a duly noticed public hearing held by the Planning Commission on March 9, 2015 with all persons having the opportunity to speak for and against the proposal; and

WHEREAS, the project was reviewed in accordance with the requirements of the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the City of Costa Mesa Environmental Guidelines; and the project was determined to be exempt from further CEQA analysis under Section 15301 for Existing Facilities; and

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit A, and subject to the conditions of approval contained within Exhibit B, the Planning Commission hereby overturns the Zoning Administrator's decision and **APPROVES** Planning Application ZA-14-38 with respect to the property described above.

BE IT FURTHER RESOLVED that the Costa Mesa Planning Commission does hereby find and determine that adoption of this Resolution is expressly predicated upon the activity as described in the staff report for Zoning Application ZA-14-34 and upon applicant's compliance with each and all of the conditions in Exhibit B, and compliance of all applicable federal, state, and local laws. Any approval granted by this resolution

shall be subject to review, modification or revocation if there is a material change that occurs in the operation, or if the applicant fails to comply with any of the conditions of approval.

BE IT FURTHER RESOLVED that if any section, division, sentence, clause, phrase or portion of this resolution, or the documents in the record in support of this resolution, are for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions.

PASSED AND ADOPTED this 9th day of March, 2015.

Rob Dickson, Chair
Costa Mesa Planning Commission

EXHIBIT A

FINDINGS

- A. The proposed project complies with Costa Mesa Municipal Code Section 13-29(e) because:
 - 1. A compatible and harmonious relationship exists between the proposed use and existing buildings, site development, and uses on surrounding properties.
 - 2. The proposed project complies with the performance standards as prescribed in the Zoning Code.
 - 3. The proposed project is consistent with the General Plan or Zoning Code.

- B. The information presented substantially complies with Costa Mesa Municipal Code Section 13-29(g)(2) in that:
 - 1. The proposed use is substantially compatible with developments in the same general area and would not be materially detrimental to other properties within the area.
 - 2. Granting the minor conditional use permit will not be materially detrimental to the health, safety and general welfare of the public or otherwise injurious to property or improvements within the immediate neighborhood.
 - 3. Granting the minor conditional use permit will not allow a use, density, or intensity which is not in accordance with the General Plan designation and any applicable specific plan for the property.

- C. 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 under Section 15301, Class 1, Existing Facilities, of the CEQA Guidelines.

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

EXHIBIT B

CONDITIONS OF APPROVAL

- Plng.
1. The use shall be limited to the type of operation described in this staff report: the outdoor display of a water vending machine and DVD rental machine. Any change in the operational characteristics including, but not limited to, type of service provided outdoors or location of the displays will require approval of an amendment to the minor conditional use permit, subject to Zoning Administrator approval.
 2. Applicant shall defend, indemnify and hold harmless the City, its officials and employees, against all legal actions filed challenging City's approval of the applicant's project and/or challenging any related City actions supporting the approval. City shall have the right to select the attorney defending it, if it elects to do so.
 3. The use shall be conducted, at all times, in a manner that will allow the quiet enjoyment of the surrounding neighborhood. The applicant and/or business owner shall institute appropriate security and operational measures are necessary to comply with this requirement.
 4. The applicant shall contact the Planning Division to arrange a Planning inspection of the site. This inspection is to confirm that the conditions of approval and code requirements have been satisfied.
 5. The water vending machine and DVD rental machine shall be placed entirely against the front of the tenant space and shall not interfere with pedestrian — including wheelchairs — or vehicle access to the building, including parking areas. The machines may not encroach into the street setback.

CODE REQUIREMENTS

The following list of federal, state and local laws applicable to the project has been compiled by staff for the applicant's reference. Any reference to "City" pertains to the City of Costa Mesa.

- PIng. 1. Approval of the zoning application is valid for one year from the effective date of this approval and will expire at the end of that period unless applicant establishes the use by one of the following actions: 1) obtains building permits for the authorized construction and initiates construction; and/or 2) obtains a business license and/or legally establishes the business. If the applicant is unable to establish the use/obtain building permits within the one-year time period, the applicant may request an extension of time. The Planning Division must receive a written request for the time extension prior to the expiration of the zoning application.
- 2. Permits shall be obtained for all signs according to the provisions of the Costa Mesa Sign Ordinance.
- Bldg. 3. Comply with the requirements of the following adopted codes 2013 California Building Code, 2013 California Electrical code, 2013 California Mechanical code, 2013 California Plumbing code, 2013 California Green Building Standards Code, and 2013 California Energy Code (or the applicable adopted, California Building code, California Electrical code, California Mechanical code, California Plumbing Code, California Green Building Standards, and California Energy Code at the time of plan submittal or permit issuance) and California Code of Regulations also known as the California Building Standards Code, as amended by the City of Costa Mesa.
- Bus. 4. All contractors and subcontractors must have valid business licenses to do business in the City of Costa Mesa. Final inspections, final occupancy and utility releases will not be granted until all such licenses have been obtained.
- Lic.

SPECIAL DISTRICT REQUIREMENTS

The requirements of the following special districts are hereby forwarded to the applicant:

- Sani. 1. It is recommended that the applicant contact the Costa Mesa Sanitary District at 949-645-8400 for current district requirements.

ATTACHMENT 2
LOCATION AND ZONING MAPS

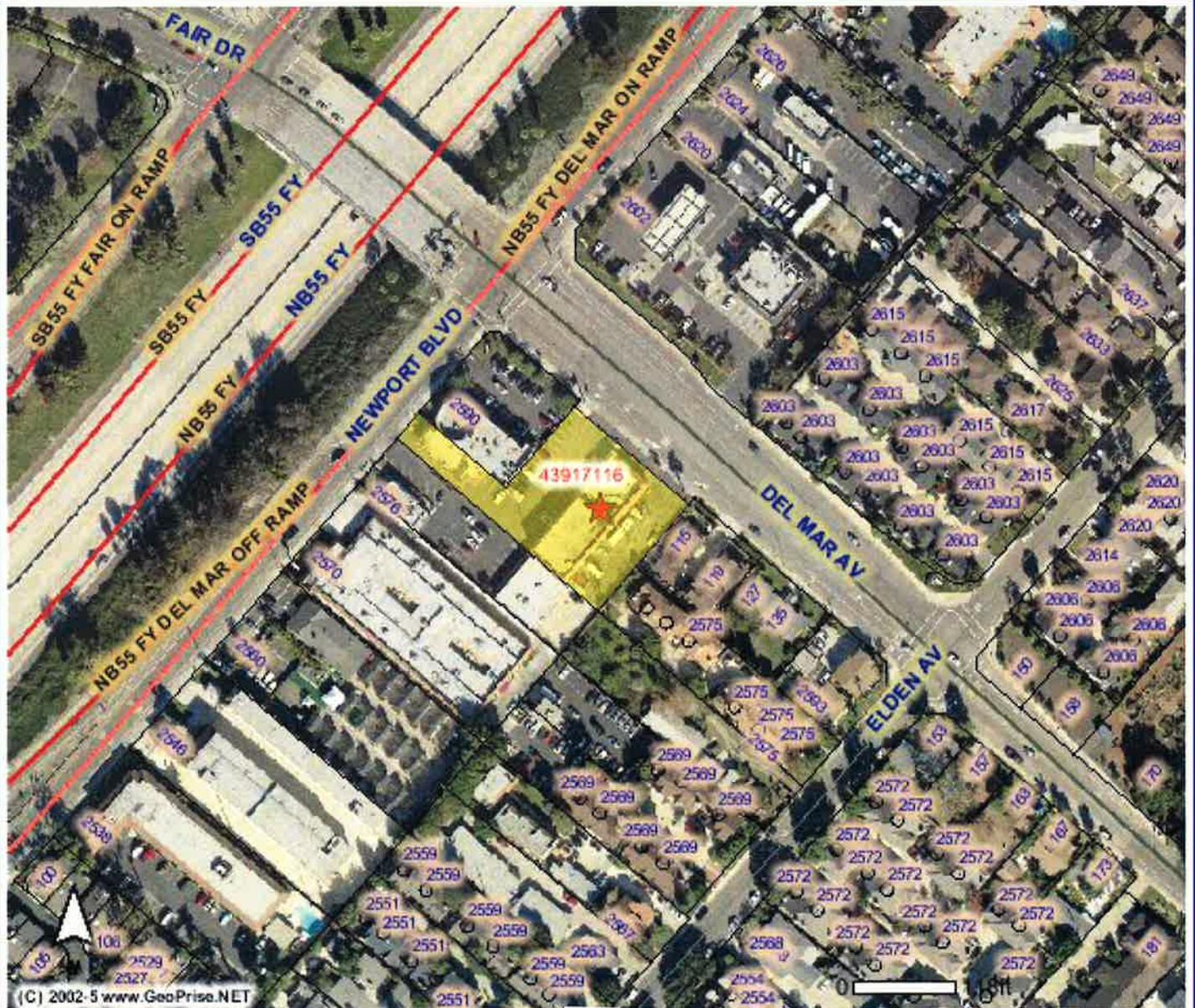
Overview Map



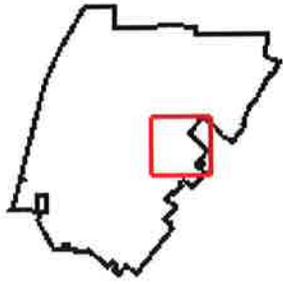
Legend

- | | | | | | | | |
|----------------|--|------------------|--|---------------------|--|-----------|--|
| Address Small | | Freeway | | Freeway Major | | Primary | |
| Address Points | | Roads | | Newport BLVD (cont) | | SECONDARY | |
| | | Collector (cont) | | | | Hydrology | |
| | | | | | | Channels | |

Map Display



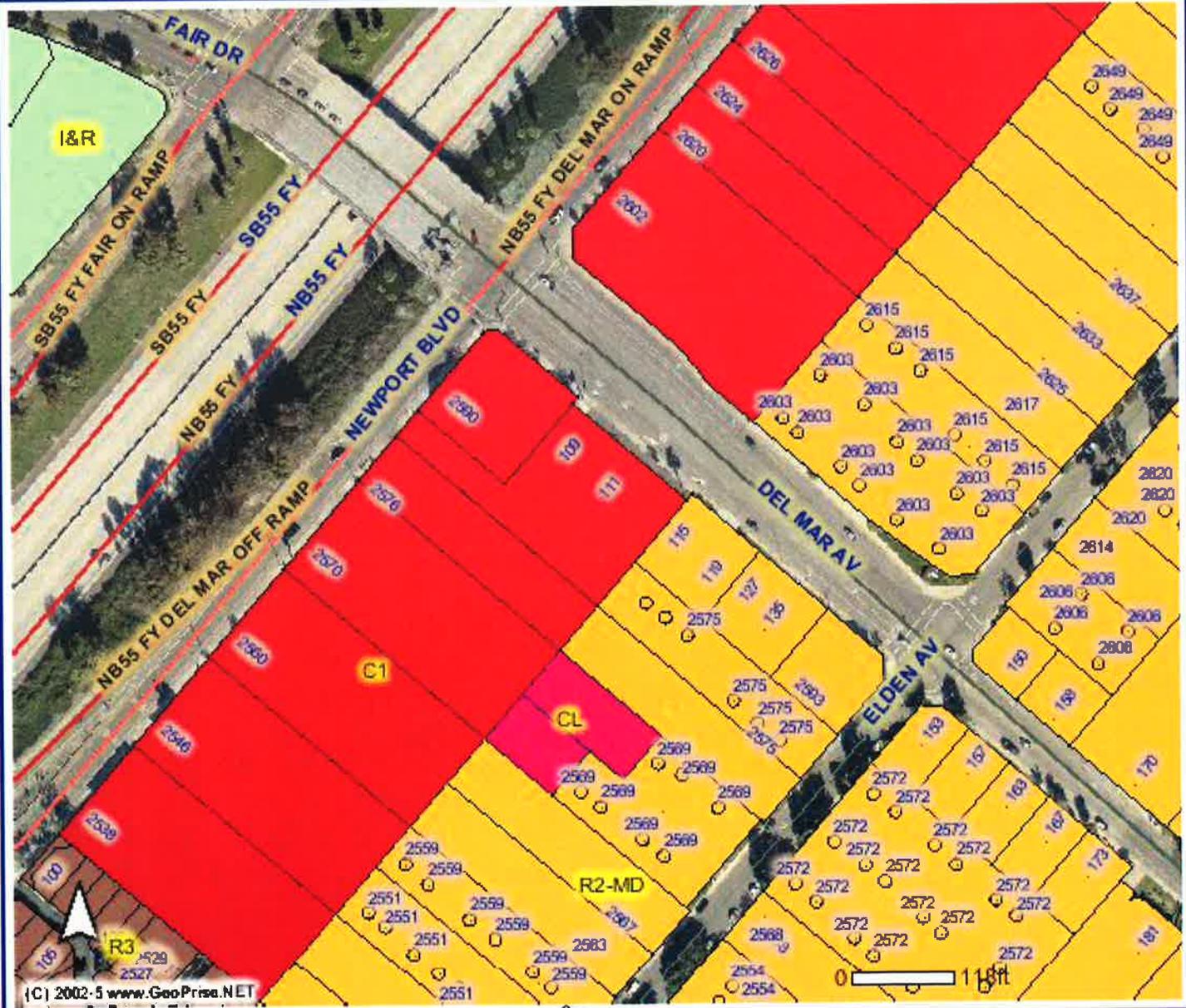
Overview Map



Legend

Address Small		Freeway		Newport BLVD		Street Names
Address Points		Roads		Primary		Street Centerlines
		Collector		SECONDARY		Parcel Lines
		Freeway		Hydrology		
		Major (cont)		Channels		

Map Display



ATTACHMENT 3
APPLICANT'S LETTER



A & S Engineering, Inc.

Planning

Engineering

Project Management

28405 Sand Canyon Road, Canyon Country, Ca. 91387 Ph. 661-250-9300 Fax. 661-250-9333

October 24, 2014

To: City of Costa Mesa

Re: Circle K
111 Del Mar Ave.
Costa Mesa, Ca.

To whom it may concern,

We respectfully request, planning department's approval for our door merchandising and vending at the subject site.

We currently have a Glacier Water and a Red Box vending units outside the building area, which we would like to obtain approval for.

Sincerely,
Ahmad Ghaderi

ATTACHMENT 4
PROJECT PLANS

ATTACHMENT 5
APPEAL FORM



City of Costa Mesa

RECEIVED
CITY CLERK

Appeal of Planning Commission Decision/Rehearing - \$4,220.00
 Appeal of Zoning Administrator/Staff Decision - \$690.00

15 FEB 24 AM 10:04
CITY OF COSTA MESA
M. Taylor

APPLICATION FOR APPEAL, REHEARING, OR REVIEW

Applicant Name* A & S Engineering on behalf of Circle K
Address 28405 Sand Canyon Road, Canyon Country, Ca. 91387
Phone 661-250-9300 Representing Circle K

REQUEST FOR: REHEARING x 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 of the Zoning Administrator's denial of our application no. ZA-14-38, issued on 2-20-15.

Decision by: Ms. Willa Bouwens-killeen
Reasons for requesting appeal, rehearing, or review:

Dear Honorable planning commissioners,

We respectfully appeal Zoning Administrator's decision to deny our application for continued operation of two existing vending machines at the subject site. We find that the zoning administrator erred in her decision in that the existing vending machines (Glacier water and Red Box) are placed in front of the store in such a manner where they are only visible to the commercial corridor along Del Mar.

There are no issues with leakage of the Glacier Water dispensing equipment as stated by the ZA. This vending machine is self contained and designed as such to prevent any leaks and has a containment pan under the unit in case of any leaks. Both these vending machines are intended to provide a convenience to our local customers who can utilize these machines without having to wait in line inside the store.

Site is operational 24/7 and which allows for security and monitoring of the vending machines, thereby preventing any issues with vandalism or any safety concerns for our local customers.

Proposed vending machines are compatible with the existing commercial use and provide ancillary products for our customers who have asked for these type of products to be provided for them.

Look forward to planning commission to overturn ZA's decision and look forward to providing additional findings at the hearing.

Sincerely,
Ahmad Ghaderi

Date: 2-23-15 Signature: *Ahmad Ghaderi*

*If you are serving as the agent for another person, please identify the person you represent and provide proof of authorization.
**Review may be requested only by Planning Commission, Planning Commission Member, City Council, or City Council Member

For office use only – do not write below this line

SCHEDULED FOR THE CITY COUNCIL/PLANNING COMMISSION MEETING OF:
If appeal, rehearing, or review is for a person or body other than City Council/Planning Commission, date of hearing of appeal, rehearing, or review:

ATTACHMENT 6
ZONING ADMINISTRATOR DENIAL LETTER

February 20, 2015

Ahmad Ghaderi
A&S Engineering
28405 Sand Canyon Road
Canyon Country, CA 91387

**RE: ZONING APPLICATION ZA-14-38
MINOR CONDITIONAL USE PERMIT FOR OUTDOOR USES
111 DEL MAR AVENUE, COSTA MESA**

Dear Mr. Ghaderi:

City staff's review of your zoning application for the above-referenced project has been completed. The application, as described in the attached project description, has been **denied**, based on the findings. The decision will become final at 5:00 p.m. on **February 27, 2015**, unless appealed by an affected party (including filing of the necessary application and payment of the appropriate fee) or called up for review by a member of the Planning Commission or City Council.

If you have any questions regarding this letter, please feel free to contact the project planner, Chelsea Crager, at either 714.754.5609 or chelsea.crager@costamesaca.gov.

Sincerely,

WILLA BOUWENS-KILLEEN, AICP
Zoning Administrator

Attachments: Project Description and Analysis
Findings
Project Description
Conceptual Plans

cc: Engineering
Fire Protection Analyst
Building Safety Division

PROJECT DESCRIPTION

Project Location

The subject property is located on Del Mar Avenue, zoned C1 (Local Business) with a General Plan land use designation of Commercial Retail. The building is oriented to face west towards Newport Boulevard. Properties to the north across Del Mar Avenue and to the west are zoned C1 and contain commercial uses. The properties to the south and to the east across Del Mar Avenue are zoned R2-MD (Multiple-Family Residential District, Medium Density) and contain residential uses. The subject property is a 31,799 square foot lot developed with 11,670 square feet of commercial building area, 44 parking spaces, and two points of ingress/egress.

History

Circle K was issued a business license in July 1993; the current owners renewed the business license in July 2014. The business is approved to operate twenty-four hours a day, seven days a week.

On July 23, 2014, a violation notice was issued by the Code Enforcement Division for illegal storage in public view (CMMC 20-12(e)) and outdoor work, storage, or display without a permit (CMMC 13-44). The property owner was required to remedy the citation by removing an icebox, a Glacier water vending machine, and a Redbox movie vending machine; only the icebox was removed. Consequently, on October 7, 2014, a second violation notice was issued by the Code Enforcement Division. The property owner was required to remedy the citation by removing the two remaining vending machines. Instead, the business owner applied for a minor conditional use permit (MCUP) to retain both vending machines.

ANALYSIS

Glacier Water Vending Machine

The Glacier Water vending machine is placed approximately 19 feet from the front door of the Circle K; it is visible from both Del Mar Avenue and the parking lot, generating visual impacts. Although Glacier Water vending machines are commonly found outside of retail and grocery stores, Planning Commission recently denied a similar request to retain a Glacier Water vending machine at a Circle K located at 1654 Santa Ana Avenue (ZA-14-34). Findings to support the denial were based on the intensification of the convenience store use and the potential impact on residents in the neighborhood. This is a significant concern since this convenience store is open 24 hours a day so the vending machines are also available 24 hours a day – in proximity to a residential neighborhood.

Additionally, the very concerns with a water vending machine that make it preferable to be placed outside – i.e. leakages and spills from the machine – can cause potential slipping problems for customers walking to the front door of the convenience store. Although there can be potential problems with locating a water vending machine inside the store, it is felt that the potential for impacts on residents in the neighborhood outweigh the benefits of providing such a service.

Redbox Movie Vending Machine

The Redbox movie vending machine is placed to the right of the Glacier water vending machine; it is viewable from Del Mar Avenue and the parking lot of the subject property, generating visual impacts. This type of vending machine is commonly found indoors at grocery stores or other retail centers. There are no fire hazards, leaks, or other safety hazards commonly associated with a vending machine of this nature that would require an outdoor location. A Redbox movie vending machine does not pose any sort of safety or other issues requiring an exterior location and is, therefore, incompatible with developments in the same general neighborhood.

General Plan Consistency

The General Plan land use designation for the subject property is General Commercial, which is intended to permit a wide range of commercial uses. The proposed use is not consistent with the General Plan Objective LU-1F to minimize blighting influences and maintain integrity of stable neighborhoods. Due to the proximity of nearby residential areas, and the intensification of the 24-hour convenience store use that results by retaining the two vending machines, the retention of the two vending machines is considered incompatible and inappropriate for this location.

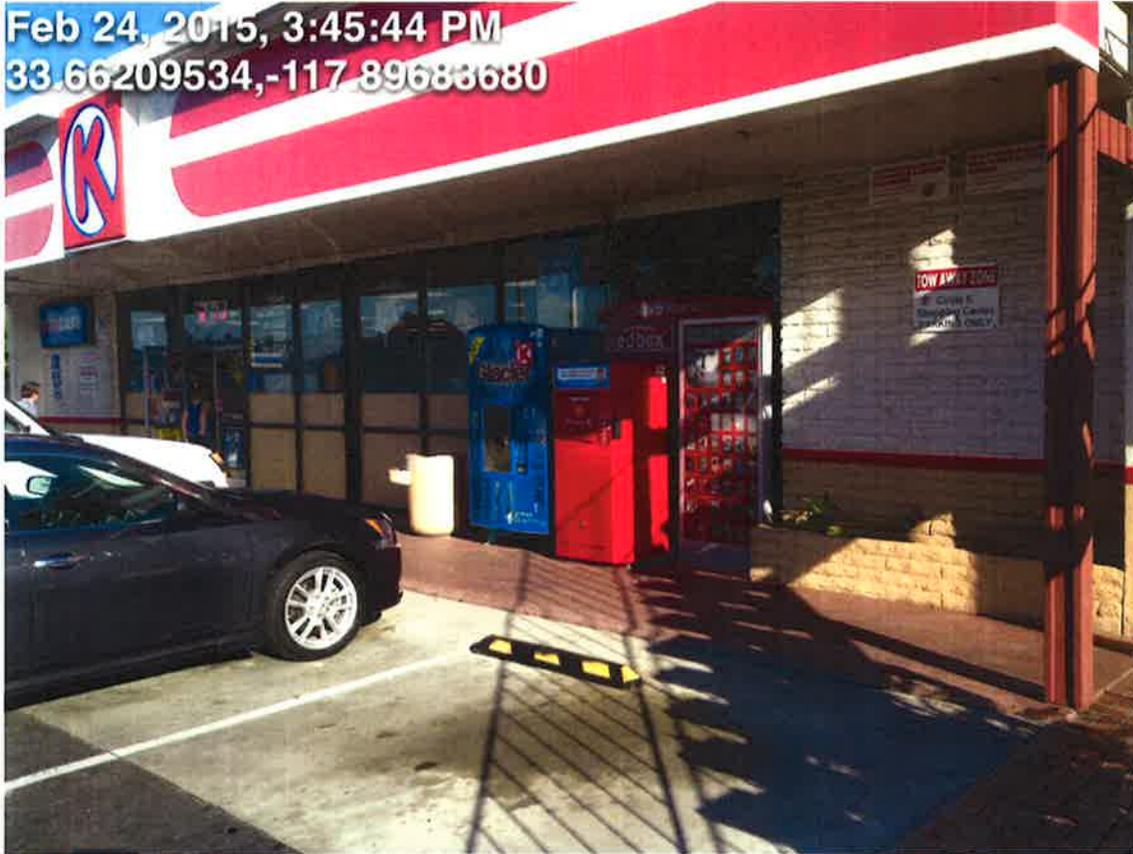
FINDINGS

- A. The information presented does not comply with Costa Mesa Municipal Code Section 13-29(g)(2) in that:
1. The proposed use is not compatible and harmonious with developments in the same general area and would be materially detrimental to other properties within the area in that the outdoor vending machines result in an intensification of the 24-hour convenience store use that can impact residents in the immediate neighborhood.
 2. Granting the minor conditional use permit will be detrimental to the health, safety and general welfare of the public or otherwise injurious to property or improvements within the immediate neighborhood. A risk of slippage can be present due to the potential for spills and leaks from the water vending machine.

3. Granting the minor conditional use permit will allow a use that is not in accordance with the General Plan designation and any applicable specific plan for the property. General Plan Objective LU-1F establishes policies, standards, and procedures to minimize blighting influences and maintain the integrity of stable neighborhoods. The vending machines do not protect the existing, nearby stabilized neighborhoods since they result in an intensification of the 24-hour convenience store use.
- B. The information presented does not comply with Costa Mesa Municipal Code Section 13-29(e) in that:
1. The proposed use is not considered compatible and harmonious to the relationship between the proposed building and the site development, and use, and the building and site developments, and uses that exist or have been approved for the general neighborhood. The property containing the vending machines abuts residentially-zoned properties to the south and to the east across Del Mar Avenue. The outdoor vending machines are clearly visible from Del Mar Avenue and the public right of way, creating visual impacts to the subject and surrounding properties. Additionally, the vending machines intensify the 24-hour convenience store use and would negatively impact the surrounding area.
 2. Safety and compatibility of the design of buildings, parking area, landscaping, luminaries, and other site features which may include functional aspects of the site development such as automobile and pedestrian circulation have been considered and may be affected. The water vending machines may pose a safety concern for pedestrians utilizing the walkway in the event of water spills or leaks.
 3. The use is not consistent with General Plan Objective LU-1F in establishing policies, standards, and procedures to minimize blighting influences and maintain the integrity of stable neighborhoods. The proposed uses do not protect existing stabilized neighborhoods of nearby residential properties due to the intensification of an existing convenience store in proximity to established residential neighborhoods.
 4. This zoning application is for a project-specific case and is not to be construed to be setting a precedent for future development.
- C. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA). The Costa Mesa Zoning Administrator has denied ZA-14-38. Pursuant to Public Resources Code Section 2108(b)(5) and CEQA Guidelines Section 15270(a), CEQA does not apply to this project because it has been rejected and will not be carried out.
- D. The project is exempt from Chapter XII, Article 3, Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.

ATTACHMENT 7
SITE PHOTOS

Feb 24, 2015, 3:45:44 PM
33.66209534,-117.89688680



Feb 24, 2015, 3:46:39 PM
33.66247386,-117.89667319





PLANNING COMMISSION

SUPPLEMENTAL MEMO

MEETING DATE: MARCH 9, 2015

ITEM NUMBER PH-2

SUBJECT: APPEAL OF THE ZONING ADMINISTRATOR'S DECISION TO DENY A MINOR CONDITIONAL USE PERMIT TO LEGALIZE OUTDOOR PLACEMENT OF A WATER VENDING MACHINE AND AN OUTDOOR DVD RENTAL KIOSK AT A CIRCLE K CONVENIENCE STORE

DATE: MARCH 9, 2015

FROM: CHELSEA CRAGER, ASSISTANT PLANNER

**FOR FURTHER INFORMATION CONTACT: CHELSEA CRAGER, (714) 754-5609
chelsea.crager@costamesaca.gov**

The purpose of this memo is to provide police calls for service to the subject property to the Planning Commission. The following are police calls for service to 111 Del Mar Avenue for the dates of April 1, 2013 through February 28, 2015 (18 months). Included are 135 calls, which omits calls such as traffic stops or medical aid, as these cannot be attributed to Circle K.

DATE	NATURE
08/10/2013	Suspicious Vehicle
08/12/2013	Intoxicated Male
08/15/2013	Disturbance Male
08/18/2013	Suspicious Female
08/25/2013	Petty Theft Report
08/26/2013	Fight
08/27/2013	Suspicious Circumstance
09/06/2013	Suspicious Male
09/14/2013	Transient
09/14/2013	Drug Involved Incident
09/18/2013	Intoxicated in Public
10/06/2013	Drug Involved Incident
10/12/2013	Suspicious Male
10/17/2013	Suspicious Circumstance
11/02/2013	Disturbance Male
11/02/2013	Disturbance
11/06/2013	Disturbance Male
11/07/2013	Suspicious Male
11/08/2013	Drug Involved Incident
11/12/2013	Disturbance
11/15/2013	Trespassing
11/18/2016	Intoxicated Male
11/26/2013	Intoxicated Male

12/01/2013	Drinking in Public
12/03/2013	Drinking in Public
12/04/2013	Transient
12/06/2013	Petty Theft
12/14/2013	Drinking in Public
12/18/2013	Disturbance Male
12/26/2013	Disturbance Male
12/27/2013	Transient
01/03/2014	Petty Theft of Beer
01/08/2014	Drinking in Public
01/20/2014	Transient
01/22/2014	Transient
01/22/2014	Disturbance
01/23/2014	Transient
01/25/2014	Drug Involved Incident
01/25/2014	Intoxicated in Public
01/31/2014	Drug Involved Incident
02/05/2014	Intoxicated Person
02/08/2014	Drug Involved Incident
02/18/2014	Disturbance Male
02/19/2014	Person Begging
02/20/2014	Person Begging
02/21/2014	Drug Involved Incident
02/26/2014	Suspicious Male
02/27/2014	Transient
03/01/2014	Intoxicated in Public
03/08/2014	Intoxicated in Public
03/08/2014	Intoxicated in Public
03/11/2014	Drug Involved Incident
03/12/2014	Transient
03/15/2014	Transient
03/21/2014	Suspicious Male
03/27/2014	Intoxicated Male
03/28/2014	Disturbance Male
03/28/2014	Drug Involved Incident
04/16/2014	Intoxicated Female
04/21/2014	Petty Theft
05/03/2014	Drinking in Public
05/04/2014	Petty Theft Report
05/05/2014	Drinking in Public
05/09/2014	Transient
05/09/2014	Fight
06/03/2014	Intoxicated Person in Vehicle
06/10/2014	Transient

06/13/2014	Intoxicated in Public
06/21/2014	Burglary Commercial
06/29/2014	Transient
07/10/2014	Transient
07/12/2014	Intoxicated in Public
07/15/2014	Drug Involved Incident
07/17/2014	Transient
07/22/2014	Transient
07/22/2014	Transient
08/11/2014	Drug Involved Incident
08/18/2014	Unknown Trouble
08/18/2014	Disturbance
08/24/2014	Drinking in Public
08/26/2014	Drinking in Public
08/29/2014	Suspicious Person in Vehicle
08/30/2014	Drinking in Public
08/30/2014	Intoxicated Male
09/01/2014	Transient
09/01/2014	Transient
09/05/2014	Disturbance Male
09/05/2014	Disturbance
09/07/2014	Drinking in Public
09/08/2014	Drinking in Public
09/16/2014	Battery
09/22/2014	Suspicious Male
09/22/2014	Transient
09/24/2014	Suspicious Circumstance
09/24/2014	Disturbance
10/02/2014	Intoxicated Male
10/02/2014	Transient
10/04/2014	Disturbance Male
10/04/2014	Person Begging
10/06/2014	Suspicious Circumstance
10/08/2014	Disturbance Female
10/18/2014	Suspicious Person in Vehicle
10/21/2014	Disturbance Male
10/28/2014	Transient
10/29/2014	Transient
10/29/2014	Intoxicated Male
10/31/2014	Suspicious Male
11/04/2014	Transient
11/04/2014	Disturbance Male
11/06/2014	Transient
11/06/2014	Intoxicated Male

11/07/2014	Transient
11/15/2014	Person Begging
11/20/2014	Disturbance
11/21/2014	Intoxicated Male
12/01/2014	Disturbance Female
12/04/2014	Suspicious Person in Vehicle
12/08/2014	Drug Involved Incident
12/09/2014	Transient
12/22/2014	Intoxicated Male
12/22/2014	Disturbance Male
12/28/2014	Transient
01/04/2015	Disturbance Female
01/18/2015	Suspicious Person in Vehicle
01/25/2015	Transient
01/31/2015	Drug Involved Incident
02/03/2015	Suspicious Male
02/11/2015	Transient
02/15/2015	Fight
02/17/2015	Person Begging
02/18/2015	Drinking in Public
02/20/2015	Fight
02/21/2015	Transient
02/25/2015	Disturbance Male
02/25/2015	Burglary Vehicle Report

Distribution: Director of Economic & Development/Deputy CEO
Interim Assistant Development Services Director
Senior Deputy City Attorney
Public Services Director
City Engineer
Transportation Services Manager
Fire Protection Analyst
Staff (6)
File (2)