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Agenda Item: 10:10 A.M.

Date: 3/6/14

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FRESNO CITY COUNCIL

CITY CLERK, FRESNO CA



Supplemental Information Packet

Agenda Related Items – 10:10 A.M.

Supplemental Packet Date: March 5, 2014

Item(s)

WORKSHOP regarding California Redemption Value (CRV) beverage container recycling facilities in Fresno, and consider direction to staff regarding any revisions to approval criteria for these facilities – **(Citywide)** – Councilmember Olivier and Development and Resource Management Department

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

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10:10 am
3/6/2014

WEBB ♦ BORDSON APC
ATTORNEYS AT LAW

RECEIVED

466 W. FALLBROOK, SUITE 102
FRESNO, CALIFORNIA 93711
TELEPHONE: 559.431.4888
FACSIMILE: 559.821.4500

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WWW.WBLAWGROUP.COM

CITY CLERK, FRESNO CA

LENDEN F. WEBB
MIRANDA M. BORDSON
AMY LOVEGREN-TIPTON

Email: ATipton@WBLawGroup.com

March 5, 2014

Via Email to clerk@fresno.gov and Facsimile to 559-488-1005

Yvonne Spence, CMC
Fresno City Clerk
2600 Fresno Street, Room 2133
Fresno, California 93721-3603

Re: CITY COUNCIL MEETING, March 6, 2014 – CRV Beverage Recycling Facilities
An in-depth look into DARM's Report

Dear Council Members,

Our office represents the interests of the Hernandezes. The Hernandezes have applications on file with the Development and Resource Management Department ("DARM") for two proposed California Redemption Value ("CRV") beverage container recycling facilities to be sited in the City of Fresno. One of the Hernandezes' applications was filed on May 30, 2013, and an application for a second location was filed on December 10, 2013.

Summary of Conclusion

Our office has received a copy of the Report to the City Council prepared by DARM ("Report"). After reviewing the Report, our office would like to make the following relevant observations concerning the contents of the Report.

- **The Report finds no measurable connection between crime and the operation of CRV beverage container recycling facilities, either at the site location or in the surrounding neighborhoods.**
- Existing city requirements mandate that CRV beverage container recycling facilities be designed to be aesthetic and otherwise compatible with surrounding areas. The pending applications are in full compliance with these requirements.
- The Report discusses the threat of overconcentration of CRV beverage container recycling facilities, but does not provide a basis upon which to measure overconcentration. It should be noted that the pending applications would site

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CRV recycling facilities in locations consistent with existing densities in the City of Fresno.

- The Report does not conclude that there is an overconcentration of CRV beverage container recycling facilities, or a threat of overconcentration of CRV beverage container recycling facilities in the foreseeable future in Fresno.

Therefore, we strongly encourage the City Council to maintain existing requirements for CRV beverage container recycling facilities in order to promote business and in order to promote recycling for a greener Fresno. More specifically, we respectfully request that the City Council instruct DARM to promptly process and approve the two pending applications for CRV beverage container recycling facilities in the City of Fresno.

Not All Recycling Centers Are the Same; CRV Facilities Do NOT Accept High-Crime Materials

At the outset, we think it important to distinguish between the different recycling facilities at issue. The Report addresses only CRV beverage container recycling facilities. (“CRV Recycling Facilities”) The CRV Recycling Facilities only pay for glass, plastic and aluminum beverage containers. In contrast, a regular recycling facility not only pays for CRV beverage containers, but also pays for a myriad of other recyclable materials, including, but not limited to, scrap metal, copper, and glass.

The distinction between the two types of facilities is especially important in light of an article in The Business Journal which provides the following quote from City Council Member Clint Oliver: **“Unfortunately these recycling centers have become magnates [sic] for thieves who are stealing anything they can get their hands on to get fast cash.”** (*Business Owners Want Theft of Recyclables Stopped*, The Business Journal, published February 28, 2014, attached as Exhibit “A”.) Oliver appears to be addressing the complaints by business owners and residents regarding stolen air conditioners, copper pipe, and the like. **CRV Recycling Facilities do NOT pay for these high-theft materials**, and, therefore, consideration of this issue is not relevant to the analysis of the current CRV Recycling Facilities situation that is the subject of the Report.

Further, it is worth noting that the state of California, in an effort to reduce the likelihood of large-scale theft of beverage containers, has recently reduced the daily amount of material that a CRV Recycling Facility may accept from any individual by eighty percent (80%). (*See pg. 4 of Report, and Exhibit “E” to Report.*)

Existence of CRV Beverage Recycling Facilities Mandated by California Law

As the Report indicates, CRV Recycling Facilities are mandated by California state enactment, to wit, the California Beverage Container Recycling and Litter Reduction Act. (*See pp. 3-4 of Report.*) Therefore, the existence of CRV Recycling Facilities in Fresno is not a determination which falls within the purview of City Council. Instead, at issue is the purported proliferation of CRV Recycling Facilities in Fresno, or, alternatively, the potential for proliferation of CRV Recycling Facilities in Fresno. It is with this in mind that we would like to

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make the following points in response to the Report and in advance of the City Council's discussion of same.

Analysis of Potential Problems Relating to CRV Recycling Facilities

The Report's analysis into potential problems associated with CRV Recycling Facilities can be narrowed down to two categories: Theft or crime, and visual blight.¹

No Evidence of Crime Associated with CRV Recycling Facility Operations

In terms of crime at or near the CRV Recycling Facilities, **the Report finds no measurable increase as compared with areas in which there are no CRV Recycling Facilities.** (See pp. 9-11 of Report.) Yet, notwithstanding the foregoing, the Report goes on to suggest that a policy change could be implemented through which applications for CRV Recycling Facility locations could be denied where the pre-existing crime rate is high. If it is the Report's unsubstantiated conclusion that CRV Recycling Facilities promote criminal activity, then it would flow from that logic that in denying applications in areas where pre-existing crime rates are high, the City will simply be forcing the criminal element from these high crime rate areas into areas of lower crime rates where CRV Recycling Facilities have been duly approved. It is worth noting that in terms of geographic size, Fresno is fairly small, and, therefore, the distinction between high-crime rate areas and areas of lower crime rates is more a theoretical distinction.

Proactive Steps Unnecessary in Light of Fresno PD Findings

Further, the Report outlines additional proactive steps that may deter crime, if any, at the CRV Recycling Facilities. The potential policy changes could require applicants to choose a more visible location at the shopping center, or, alternatively use video surveillance at the location. (See p. 10 of Report.) A voucher system for paying people who drop off materials is also suggested. (See p. 10 of Report.) Without any empirical evidence of criminal activity at CRV Recycling Facility locations, it is difficult to justify a series of conditions and limitations placed on the permitting of same, ostensibly in order to reduce the likelihood of criminal activity.

Conclusory Statements Without Attendant Evidence Should Be Given No Weight

Despite the determination that there is no measurable increase in crime associated with CRV Recycling Facilities, the Report makes the following assertions:

- "It is widely observed that persons are stealing cans and bottles from curbside recycling bins . . . and leaving litter behind." (See p. 8 of Report.)
- "Having too many recycling stations and/or siting them too close to each other can . . . potentially exacerbate the plundering of recyclable beverage containers [in] recycling and trash bins." (See p. 8 of Report.)

¹ The Report mentions "Overconcentration of CRV recycling facilities" (See p. 12 of Report.) as an independent area of concern but then goes on to state that the potential for recyclable material theft is the harm that may result from overconcentration. Therefore, we will address that concern in conjunction with our analysis of the theft and crime component of the Report.

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The foregoing conclusory statements are not supported by any evidence establishing that the statements accurately reflect or predict criminal behavior. As such, the statements should be treated as unsubstantiated opinions. In fact, the evidence contained within the Report contradicts the implication that there is a wide-scale problem of persons stealing “cans and bottles from curbside recycling bins.” (*See p. 8 of Report; see also See p. 11 of Report and Exhibit “J” to Report.*)

No Evidence that Theft from Recycling Bins is Problem Requiring Attention

The Report, in looking into the criminal element that could be associated with CRV Recycling Facilities, specifically addresses the possibility of theft from recycling bins. However, **the Report finds that there were only fourteen (14) incidents relating to theft from recycling bins in Fresno during the calendar years of 2012 and 2013.** (*See p. 11 of Report and Exhibit “J” to Report.*) Yet, the Report goes on to state that “[t]he low number of incidents in the database indicates that complaints are not being directed to the Police Department.” (*See p. 11 of Report.*) There is no factual assertion in support of this proposition. Rather, the Report states that other city offices have received complaints about this problem. (*See p. 11 of Report.*) There is nothing in the Report, or any other source, to indicate that the low number of reported incidents relating to recycling bin theft is not reflective of the actual level of activity. Without more, the City Council should rely on the actual numbers provided by the Fresno Police Department in order to determine the extent of the problem relating to recycling bin theft. As with the other crime data, the recycling bin theft numbers are too low to warrant further attention.

An additional point worth noting is that persons willing to commit theft of another’s recyclables will likely not cease simply because he or she has to travel a few extra blocks to cash in the stolen recyclables. The proposed changes requiring additional steps and procedures in the City’s permitting of new CRV facilities will have little effect, if any, in terms of discouraging theft of beverage containers from recycling bins.

Analysis of Overconcentration of CRV Recycling Facilities Cautionary, But Unsupported

Finally, regarding potential for criminal activity, the Report mentions that an overconcentration of CRV Recycling Facilities could “exacerbate” theft of recyclable material. This assertion appears twice in the Report, but does not provide any supporting authority. (*See pp. 8, 12 of Report*) Therefore, the proposition merely amounts to speculation, and, as such, should be treated by the City Council accordingly.

Summary of Criminal Activity in Relation to CRV Recycling Facilities

In sum, **the Report is noticeably devoid of any facts or statistics that indicate that CRV Recycling Facilities increase crime rates, or otherwise encourage or foster criminal activity.** While cursory steps should be contemplated to help reduce any potential for criminal activity, any changes in the application process should be weighed against the need for the additional steps. The City Council should consider that placing additional hurdles in front of prospective CRV recycling business owners may have the deleterious effect of discouraging new business in the City of Fresno as well as hampering community-wide recycling efforts.

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Current City Requirements Address Location and Aesthetics of CRV Recycling Facilities

An additional area of concern addressed by the Report concerns “visual blight and poor design.” (See pp. 12-13 of Report.) Overall, the analysis should center on aesthetics, while not giving short shrift to the other issues of concern. It would appear that some of the suggestions for improving aesthetics would actually result in more areas in and around the CRV Recycling Facilities being hidden from public view. (See p. 13 of Report.) This stands in contrast to an earlier suggestion contained within the Report which indicates a need to site the facilities in “visible, public areas of shopping centers.” (See p. 10 of Report) Moreover, the Report suggests many upgrades and improvements which would improve the appearances of the CRV Recycling Facilities. The City Council should temper these suggestions with the reality that many of the CRV Recycling Facilities operate on a thin budget due to a small profit margin. Further, many CRV Recycling Facilities operate under short-term leases with shopping center landlords. Therefore, to require CRV Recycling Facilities to erect permanent and semi-permanent structures with architectural and aesthetic qualities may be the coup de grace to many existing and prospective CRV recycling business owners. This too may have the deleterious effect of discouraging new business in the City of Fresno.

Public Policy: Lesser of Two Evils

A final comment worth noting involves public policy. From a public policy standpoint, even assuming that bad actors are in fact stealing recyclable beverage containers that would otherwise be picked up by the City’s contractor, and therein diverting them to CRV Recycling Facilities, this conduct would be the lesser of the two evils if it prevented those same bad actors from engaging in nefarious acts of violence and/or damage to property or persons. Along those lines, the Report makes a passing reference to fiscal impact relating to losses of curbside recycling materials. However, these minimal losses, as inferred from the lack of “incidents” reported in 2012 and 2013, would be more than offset by the licensing and business fees that existing and additional CRV Recycling Facilities generate.

Conclusion

To recapitulate, there is no evidence of an increase of criminal activity in relation to CRV Recycling Facility operations, either at the site or in the surrounding neighborhoods. Further, there is no evidence to suggest that at present time, there is an overconcentration of CRV Recycling Facilities. **Instead, it looks as though CRV Recycling Facilities have been unfairly targeted due to theft of scrap metal, copper materials and the like.** However, these materials are not redeemable at CRV facilities, and, thus, the connection is unfounded. Moreover, the current City requirements already mandate that each CRV Recycling Facility be “located and designed to be aesthetically compatible with the design of the existing commercial center”, so any additional requirements relating to aesthetics would be redundant.

For the foregoing reasons, we respectfully request that the City Council instruct DARM to process the pending applications, pursuant to existing rules for same, and allow those same regulations to govern until such a time when empirical evidence mandates action by the City Council regarding this matter.

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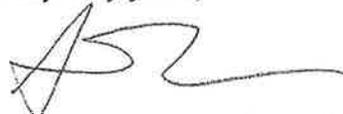
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Feel free to contact our office with any questions regarding the foregoing.

Very truly yours,

A handwritten signature in black ink, appearing to read 'ART', with a long horizontal flourish extending to the right.

Amy R. Lovegren-Tipton, Esq.
WEBB & BORDSON, APC

ART:mss

cc: client (*via email*)

EXHIBIT A

Business owners want theft of recyclables stopped

Published on 02/28/2014 - 2:29 pm
Written by Business Journal Staff



Clint Olivier with chain lock.

Local business owners, meeting with Fresno City Council member Clint Olivier on Friday, told Olivier that it's time to stop thieves who steal goods for recycling.

They also complained that the city has too many recycling centers, most of which they said are not well monitored.

To start with, they want shopping carts removed from the streets of Fresno to reduce the theft of thousands of dollars of copper and other recyclable goods by people using the carts to haul away recyclables and then sell them to recycling centers.

Thieves also use the carts to carry tools needed to steal copper and other goods, they said.

They suggested that the city use cable locks to attach shopping carts to poles along streets until they can be picked up. The group also called on the city to provide a city truck and workers to gather carts that have been left on streets.

They complained that supermarkets make little effort to gather up their carts.

3/5/2014 www.thebusinessjournal.com/news/government-and-politics/10966-business-owners-want-theft-of-recyclables-stopped?tmpl=component&print=1&layout=d...

In addition, they want the city to place tighter restrictions on the more than 100 recycling centers that are run under California's CalRecycle program. The business leaders charged that the centers are havens for people looking to cash in stolen goods.

The City Council will address the recycling center issue at 10:10 a.m. on March 6.

Don Plaster, owner of Skee's Recycling Inc. in Fresno, said some recycling businesses are lax, while others are more responsible. Skee's requires identification and a three-day wait for payment if the center does not have the sellers name and information on file.

"We turn down people all the time," he said.

Olivier said in a release that several business owners and residents contacted him about the high density of recycling centers in Fresno. They complained that criminals are targeting their stores, homes and offices to steal items that can be easily turned into cash at nearby recycling centers.

"Unfortunately these recycling centers have become magnets for thieves who are stealing anything they can get their hands on to get fast cash," Olivier said. "Our business owners and residents have had enough and something must be done to address this issue.

Items being stolen range from air conditioners and copper pipe to aluminum cans taken from city-issued recyclable trash barrels.

Olivier said the city could place a moratorium on new recycling centers in the city. And code enforcement could be more strictly enforced, he said.

But Rick Austin, owner of Austin Enterprises in Fresno, said that crime could be cut by 80 percent in 30 days simply by getting shopping carts off the streets. "The paperwork process doesn't do anything," he said regarding to making changes in recycling center laws.

He said that without the carts, thieves simply cannot carry the heavy recyclables like copper that they are stealing. Austin handed a heavy-duty chain lock to Olivier, saying, "this is what we need."

Olivier suggested some additional ideas, including requiring a permit to operate a recycling facility, requiring a recycling center to keep a security guard on staff and limiting the amount of recycling materials recycling centers can accept.

Dear Ms. Spence,

Please find attached corresponded from our office regarding the DARM Report that will be discussed by the City Council at the March 6, 2014 meeting. Please provide a copy to all City Council members.

Please fell free to contact our office should you have any questions regarding the foregoing.

Regards,

Michael

Michael S. Shaddix, *Post-bar Law Clerk*
WEBB & BORDSON, APC
466 W. Fallbrook Avenue, Suite 102
Fresno, CA 93711

Phone: (559) 431-4888

Fax: (559) 821-4500

Direct: (559) 579-1506

E-mail: MShaddix@WBLawGroup.com

Website: www.WBLawGroup.com

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