

Agenda Item: File ID17-1273 (4:30 P.M.#1)

Date: 9/21/2017

FRESNO CITY COUNCIL



REC'D SEP 20 '17 PM 3:12
FRESNO CITY CLERK

Supplemental Information Packet

Agenda Related Item(s) – File ID17-1273

**Contents of Supplement: Letter from Kahn, Soares & Conway, LLP
Item(s)**

HEARING to consider Text Amendment Application No. TA-17-002 and related Environmental Finding for Environmental Assessment No. TA-17-002, proposing to modify zoning and use regulations for California Redemption Value (CRV) Recycling Centers within the City of Fresno (Citywide)

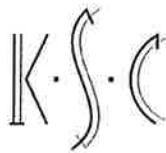
1. **Adopt** Environmental Assessment No. TA-17-002 dated July 26, 2017 prepared for this matter approving a Finding of No Possibility pursuant to Section 15061 (b)(3) of the Environmental Quality Act Guidelines
2. **BILL** – (For introduction) - Approving Text Amendment Application No. TA-17-002 addressing CRV Recycling Centers by amending subsection (B) of Section 15-2750 of the Fresno Municipal Code.

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.

Americans with Disabilities Act (ADA):

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.



REC'D SEP 20 '17 PM3:11
FRESNO CITY CLERK

KAHN, SOARES & CONWAY, LLP
ATTORNEYS AT LAW

Louie A. Brown, Jr.
(916) 448-3826

EMAIL:
lbrown@kscsacramento.com

September 20, 2017

The Honorable Clint Olivier
Council President District 7
Fresno City Council
Fresno, California 93721

DELIVERED VIA EMAIL TO FRESNO CITY CLERK

Re: HEARING to consider Text Amendment Application No. TA-17-002 and related Environmental Finding for Environmental Assessment No. TA-17-002, proposing to modify zoning and use regulations for California Redemption Value (CRV) Recycling Centers within the City of Fresno (Citywide)

Dear President Olivier,

I am writing on behalf of the California Grocers Association (CGA), which is a non-profit, statewide trade association representing over 300 retail members operating more than 6,000 food stores in California and Nevada, and approximately 150 grocery supplier companies. CGA represents many of the grocery stores currently serving the City of Fresno (Fresno).

CGA is very concerned with the Council's proposal to adopt Environmental Assessment No. TA-17-002 dated July 26, 2017 and approve Text Amendment Application No. TA-17-002 addressing CRV Recycling Centers by amending subsection (B) of Section 15-2750 of the Fresno Municipal Code (**Amendment**). CGA understands the concerns the Council and businesses have expressed concerning litter, noise and public intoxication alleged to be caused by CRV Recycling Centers. However, banning CRV Recycling Centers in supermarket parking lots and making it more difficult and increasingly inconvenient for citizens to recycle will not resolve these concerns. It will only move these concerns inside the supermarket, discourage recycling, and hurt those that supplement their income by recycling through their neighborhood CRV Recycling Center.

It will also create a significant hardship on your local supermarkets. The California Beverage Container Recycling & Litter Reduction Act (**Bottle Bill**) requires a certified CRV Recycling Center be located within every Convenience Zone. A Convenience Zone is defined as a ½ mile radius around a supermarket. If a CRV Recycling Center is not located in the radius, every beverage dealer is required to either redeem beverage containers in-store or pay a \$100 per day in-lieu fee to the State of California. The restrictions in the Amendment will force supermarkets to be out of compliance with the Bottle Bill and individual businesses

will need to make the decision of whether to allow people to recycle in store or pay a penalty of \$36,500.00 per year to the state.

Further, we disagree with staff's analysis that the Amendment is exempt from California Environmental Quality Act (CEQA) and that it can be seen with certainty there is no possibility that the activity in question may have a significant effect on the environment. CGA believes there is a strong possibility the Amendment will have a significant effect on aesthetics, air quality, traffic, greenhouse gas emissions, land use and planning as well as have an impact on the socioeconomics of Fresno. For these reasons, staff should have *at the very least* conducted an initial study to determine the potential environmental impacts of the Amendment. If this action is not taken, CGA and its members companies will be forced to consider our options to challenge the Amendment, which may include litigation.

1. The Amendment violates the spirit of the Bottle Bill by placing restrictions on recycling making it inconvenient and unprofitable.

In passing the Bottle Bill, the California Legislature made its intent clear:

"It is the intent of the Legislature to encourage increased, and more convenient, beverage container redemption opportunities for all consumers." (Pub. Res. Code §14501(a).)

"It is the intent of the Legislature to make redemption and recycling convenient to consumers, and the Legislature hereby *urges cities and counties, when exercising their zoning authority, to act favorably on the siting of multimaterial recycling centers, reverse vending machines, mobile recycling units, or other types of recycling opportunities, as necessary for consumer convenience, and the overall success of litter abatement and beverage container recycling in the state.*" (Pub. Res. Code §14501(e) (*emphasis added*)).

"The purpose of this division is to create and maintain a marketplace where it is profitable to establish sufficient recycling centers and locations to *provide consumers with convenient recycling opportunities* through the establishment of minimum refund values and processing fees and, through the proper application of these elements, to enhance the profitability of recycling centers, *recycling centers, recycling locations, and other beverage container recycling programs.*" (Pub. Res. Code §14501(f) (*emphasis added*)).

Lastly, Public Resources Code Section 14529 states the Bottle Bill is a matter of statewide interest and concern and is "applicable uniformly throughout the state."

The staff report to the Council acknowledges CRV Recycling Centers will close in Fresno and that citizens will need to either bring their recycling to a supermarket willing to take recyclables in-store, have a curbside recycling program, or travel to one of the remaining permanent CRV Recycling Centers that are in compliance with the Amendment. Many supermarkets will not take recyclables in store due to health and safety concerns, thus creating greater inconvenience to the citizens of Fresno who seek to redeem their CRV. This is in direct contradiction to the intent of the Bottle Bill to provide convenient recycling centers. Further, the goal of the Amendment is to push recycling centers out of residential districts into industrial zones. Again, this violates the directive of the Bottle Bill that cities act favorably toward the siting of recycling centers when exercising their zoning authority.

The Amendment is contradictory to the spirit and intent of the Bottle Bill and the Council should reexamine the burdens they are placing on the residents of Fresno, supermarkets and recyclers.

2. The Ordinance will force supermarkets into noncompliance with the Bottle Bill and force many, if not all, to pay a steep penalty to the state causing millions of dollars to leave the local economy.

As stated above, if a convenience zone is unserved by a CRV Recycling Center, every beverage dealer within the zone is required to either redeem beverage containers in-store or pay a \$100 per day in-lieu fee to the State of California. This in-lieu fee is envisioned as a penalty to encourage recycling. However, the Ordinance, which will severely limit recycling opportunities in Fresno, only serves to force beverage dealers to make the choice of whether to redeem CRV containers in-store, resulting in health and safety risks, or be penalized for a situation outside of their control.

This penalty will result in a \$36,500.00 cost per year to each dealer. This is no small amount and will impact the hiring potential for dealers as well as the hours dealers may continue to operate. As shown in Exhibit I of Report to the City Council, Fresno has 35 non-exempt convenience zones housing approximately 35 supermarkets. If supermarkets in these zones decide not to take recycling in-store, that is \$1,277,500.00 leaving the local economy each year just from supermarkets. This number will increase substantially once all dealers in these convenience zones are identified.

Further, the newest draft of the Amendment does not resolve the concerns expressed by CalRecycle in its letter dated March 21, 2017. Public Resources Code Section 14583 prohibits payments to cities that pass or enforce ordinances prohibiting the siting of recycling centers at supermarket sites. The Amendment continues to be too restrictive and will prohibit supermarket recycling center from operating. This prohibition will result in Fresno losing its eligibility for funding through the Beverage Container Recycling Program (BCRP). In 2016, Fresno received over \$330,000.00 through the BCRP. Losing these funds, as well as the funds from dealers paying the state penalty, will result in an economic impact to Fresno.

3. The Fresno Ordinance is not exempt from CEQA, will result in significant environmental impacts, and Fresno must conduct at least an initial study to determine the extent of these environmental impacts.

Before engaging in a project, a lead agency must determine if CEQA applies to the activity being evaluated. As stated in the Report to the City Council, an amendment of a zoning code is a project under CEQA. (Pub. Res. Code §21065(a); Guidelines §15378(a)(1).) Once Fresno determined the amendment to the zoning code was a project, it was required to determine whether an exemption to CEQA applied to the project. Fresno determined an exemption to CEQA did apply to the Amendment under the "common sense" exemption found in CEQA Guideline 15061(b)(3), which states, "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment."

A significant effect on the environment is defined as a substantial or *potentially* substantial adverse change in the physical environment. (Guidelines §15358.) "Environment" means the physical conditions that exist within the area affected by the proposed project, which would be the city of Fresno, including, land, air, water, minerals, flora, fauna, ambient noise and objects of historical or aesthetic significance. (Guidelines §15360.) While the Report to the City Council acknowledges that the Amendment may result in fewer recycling facilities, it states "enforcing these code regulations on existing facilities will only result in fewer impacts to the physical environment, not more. It will reduce traffic, noise and aesthetic concerns within

existing neighborhoods, thus it is clear, looking at the cumulative effect of this text amendment, that there is no possibility that the activity in question may have a significant effect on the environment.” However, Fresno fails to provide detail, analysis or explanation as to how these reductions in traffic, noise and aesthetic concerns will be achieved with certainty through the adoption of the Amendment.

a. An initial study is needed to determine the potential impacts to the environment the Amendment may cause.

An initial study is needed to determine the potential significance of an environmental impact, and in this determination, the lead agency, Fresno, must consider the direct and reasonably foreseeable indirect impacts of the project. (Guidelines §15064(c).) Environmental factors that may be potentially affected by the amendment to the zoning ordinance include aesthetics; land use and planning; transportation and traffic; air quality; and greenhouse gas emissions.

i. Land Use and Planning

A project may have an environmental impact on land use and planning if the project would conflict with any applicable land use plan, policy or regulation of an agency with jurisdiction over the project, including the general plan, adopted for the purpose of avoiding or mitigating an environmental effect. Fresno, in its general plan, has adopted a Zero Waste Initiative. Through the Fresno Green 2025 General Plan, Fresno has committed to a goal of becoming completely sustainable by 2025, including a goal of sending zero waste to landfills by 2025. Without CRV Recycling Centers, Fresno residents that do not have curbside recycling may cease recycling, which may have a significant impact on the goals of the Fresno General Plan. This is both a direct and reasonably foreseeable indirect impact on the environment that should be analyzed through the CEQA process.

ii. Traffic

A project may have an environmental impact on transportation or traffic if the project would conflict with adopted policies, plans or programs regarding public transit, bicycle, or pedestrian facilities. If CRV Recycling Centers are not available in convenience zones, residents that desire to continue recycling will be required to travel to recycling centers in the industrial areas of Fresno. This will result in additional trips as residents can no longer drop off their recycling at the same time and location they do their grocery shopping. These trips have the potential to cause an environmental impact and should be analyzed.

iii. Aesthetics

A project may have an environmental impact on aesthetics if the project would substantially degrade the existing visual character or quality of the site and its surroundings. The Amendment will significantly reduce the number of CRV Recycling Centers available to residents and could increase the amount of litter on streets and public places, resulting in a substantial degradation of the visual character and quality of Fresno. This potential environmental impact should be analyzed to ensure there are no significant aesthetic impacts on the environment.

iv. Air Quality and Greenhouse Gas Emissions

A project may have an environmental impact on air quality if it conflicts with or obstructs implementation of the applicable air quality plan. Fresno is located in a federal nonattainment area and is committed to reducing greenhouse gases and criteria pollutants to improve air quality and achieve attainment. As part of

the Fresno Green 2025 General Plan, Fresno adopted the Sierra View 2025 policy. One of the goals of the Sierra View 2025 initiative is to improve public health with cleaner air, enhance public transportation, and increase opportunities for walking and cycling. The City also has committed to reducing vehicle miles traveled by striving to ensure that trip generators and destinations are located near one another to allow for shorter trips. Forcing the relocation of CRV Recycling Centers outside of where residents live and shop will cause more vehicle trips in contradiction to Fresno's air quality and greenhouse gas emission goals. This potential environmental impact should be analyzed to ensure Fresno can move into attainment and achieve the goals of Fresno's General Plan.

v. Socioeconomic Effects

An economic or social change alone is not considered a physical effect on the environment, however, an economic or social change that is causally related to a physical change may be taken into consideration when determining the significance of a physical change under CEQA. (Guidelines §§ 15064, 15382.) As shown above, the Amendment has the potential to result in more litter and urban decay due to lack of facilities for individuals to take their recycling, which could lead to aesthetic, traffic, and air quality impacts on the physical environment. As such, the economic impact must be disclosed and analyzed as to the indirect significance of the physical effect on the environment in an initial study. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1205.)

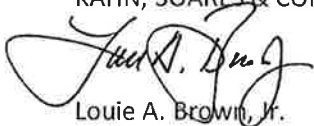
Residents of Fresno benefit from money received through recycling at convenient CRV Recycling Centers. If these centers close, residents may not have the means to travel to the remaining CRV Recycling Centers, which will have a detrimental impact on their income. Further, as discussed above, the restrictive nature of the Amendment will result in beverage dealers paying high penalties to the state, impacting hiring potential and causing funds to leave the local economy. Fresno must evaluate these socioeconomic effects as well as how the city will mitigate the loss of funds it has traditionally received through the Beverage Container Recycling Program.

In conclusion, the Amendment discourages recycling and will have a potentially significant detrimental impact on the environment. The Amendment will have a financial impact on Fresno businesses and residents and will result in financial resources leaving the local community. We encourage the Council to table the Amendment, conduct a proper CEQA analysis and hold additional stakeholder workshops to ensure local businesses and residents are not harmed.

Please do not hesitate to reach out to us if you have questions concerning this letter or wish to discuss CGA's issues further.

Sincerely,

KAHN, SOARES & CONWAY, LLP



Louie A. Brown, Jr.

Cc: Mr. Tim James, California Grocers Association