

Exhibit D

Proposed Amendments to the Fresno Municipal Code

Relating to Recycling Facilities

Comments Submitted by Leonard Lang

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**DARM - DEVELOPMENT SERVICES
CITY OF FRESNO**

Environmental Review

In accordance with the California Environmental Quality Act, an environmental document is mandatory, and it must be prepared and distributed well in advance of any hearing on the project. I am not aware of any environmental document that has yet been distributed.

When evaluating environmental impacts, consideration is required to be given to "Land Use and Planning," including potential conflicts with any of the City of Fresno's applicable land use plan, policy or regulation, which includes its general plan.

- The City's Resource Conservation and Resilience Element of its General Plan describes Fresno as a "Good Steward," a city that leads by example and embraces a "Zero Waste" initiative that diverts solid wastes that would otherwise go to landfills by 2025. Currently, the initiative has a goal of 75 percent diversion.
- An objective of the Resource Conservation and Resilience Element is to "promote land uses that conserve resources."
- Another objective of the Resource Conservation and Resilience Element is to "Actively engage, listen to, and enlist the support of the Fresno community of the need and strategies for resource conservation."

The proposed text amendments would have a potentially significant detrimental impact on the environment considering that the proposed amendments discourage recycling, would end up reducing the amount of recycled materials, and do not include any mitigation measures.

Additionally, and contrary to an objective to seek strategies for resource conservation, measures are taking place to sway the public in the opposite direction. As such, an environmental impact report is indicated. As part of the environmental review process, a study should be prepared which presents the amount of recycled material currently being collected by the recycling centers and which will no longer be collected in this manner. It should also measure the financial impact on the public from their inability to redeem collected containers. It should also assess the effects of much of this recycling going outside the city in diversion reporting to the state.

Aesthetic issues must also be addressed as part of the environmental review process. Because the proposed text amendments would significantly reduce the number of recycling centers and require them to be located in remote industrial locations, the amount of litter on streets and public places could increase significantly, thereby substantially degrading the existing visual character and quality of Fresno. One of the objectives of the “Beverage Container Recycling and Litter Reduction Act” (*emphasis added*) is to reduce litter by providing the incentive for recycling by promoting recycling centers within a half mile of retailers selling specified amounts of beverages in recyclable bottles and cans. The proposed amendments pose no measures to mitigate the significant aesthetic impacts on the environment, necessitating the preparation of an environmental impact report.

The Transportation and Mobility Element of the General Plan encourages placing origins and destinations close together in order to reduce the number of vehicle miles travelled. Unfortunately, the proposed text amendments would result in those persons committed to recycling at recycling center actually increasing the number of vehicle miles travelled.

One of the policies of the Transportation and Mobility Element calls for integrating land use and transportation planning. On the contrary, the proposed text amendment relating to land use and recycling centers fails to consider traffic and transportation issues. The impacts of non-industrial type traffic on the industrial districts must be addressed because many needy persons, including children, often access recycling centers on foot or on bicycles. Because industrial streets are heavily used by large trucks, tractors and other industrial equipment, the environmental document must examine potential conflicts between industrial-type traffic and other modes of mobility, including pedestrians and bicycles.

Without an adequate environmental analysis, the City places itself in a vulnerable situation from a legal standpoint as court action may ensue.

Project Review

Although social and economic issues are not a part of an environmental analysis, they are very much a part of the review process of the proposed text amendments. An accurate portrayal of the consequences of approving the text amendments must be considered. For example, numerous individuals will become unemployed and may even become homeless if their jobs are lost; the welfare of numerous individuals will likely fall upon the tax payers; children, non-profit organizations, churches, etc., who use recycling centers will lose revenue; money currently infused back into the Fresno community are in the millions of dollars and are considerable and significant, yet are unknown to the Planning staff. What empirical data are available that would indicate that the loss of 75 jobs and the inability of many needy people to augment their income through recycling reduce crime?

Are the proposed text amendments actually a thinly veiled attempt to reduce the number of homeless individuals in areas where they are visible to the public? Or, are the text amendments so financially onerous as to render the new texts incapable of allowing recycler to relocate? Or, are there any actually physical locations in the industrial district conducive to the operation of recycling centers? Are the text amendments being considered with the thought that challenges related to homeless individuals should be dealt with through police strategies when homelessness is a much more complex and vast social issue necessitating other resolutions.

Recognizing the possible need for the preparation of an environmental impact report and the lack of adequate information with which to make a decision on the text amendments would indicate that the project *is not ready* to be considered by the decision-makers. Indications that it is premature to be setting hearing dates include:

- The proposed amendments have not been adequately researched to determine their feasibility.
- The number of recycling facilities affected was unknown by the planner overseeing the project.
- The area of industrial land available, if any, to develop with recycling facilities is unknown. For example, a map showing some Fresno elementary schools eliminated over 95% and possibly 100% of the city for potential occupation by all recycling centers. Also, it is not known how many older dwellings are still located in the industrial districts that would severely restrict potential and for recycling centers.
- The feasibility of any recycling center owner to relocate to the industrial district is unknown and probably impossible as the text amendments are written.
- The anticipated loss of revenue or loss of business by the recycling center owners is not identified and the damage to their livelihoods and quality of life.
- The loss of revenue to the community associated with loss of serving the community has not been measured. (CalRecycle)
- The increased costs to local businesses that sell beverages and start redeem them themselves. Health and hygiene issues should be considered on those that choose to redeem. Currently CalRecycle has failed in their responsibility to provide for stores to be reimbursed for redemption paid to the public, a significant and unknown cost.

- The penalties which would be incurred by grocers without recycling centers \$36,500 annually added to the cost of groceries or loss of employees.
- The loss of rents where paid by recycling centers to stores or property owners.
- The information provided by the Police Department relating to the number of calls for service to existing recycling facilities appears inadequate and possibly skewed since it fails to reflect affected areas; to compare the number of calls to other types of facilities, such as a fast food restaurant or a service station; further, calls for service are typically reported by address. There is no data from the Police Department which indicates any potential increase in crime due to removing opportunities to get cash from recycling centers, which some depend on to provide food (survival).
- **TIME** - The provisions made relating to deadliness for relocation to an industrial district are unreasonable and unreliable. There is inadequate time allowed by the amendments give to recycling centers opportunity relocate given the following steps that would possibly need to be completed in order to relocate depending upon insufficient available properties (our incomplete and preliminary map indicates that all property within the city may be excluded):
 - Find available land and enter into a contract for purchase or lease. Arrange for a means to pay for the land. Est. 6+ weeks. (Depends on the availability of land.)
 - Locate and contract with a designer to design plans for submittal to the City for a conditional use permit. EST. 2+ weeks. And depends upon availability of designer.
 - Preparation of plans for the conditional use permit, meetings with City staff, and submittal of application to the City. Est. 4+ weeks.
 - City staff time required to review plans, prepare a report, and take to the Planning Commission. EST. 6+ weeks.
 - If the Planning Commission denies the application, an appeal to the City Council Est. 6+ weeks.
 - If approved, working drawings for a building permit must be prepared. Est. 3+ weeks.
 - Submittal of a building permit application to the City and review by City Building Department. Est 2 weeks.
 - Hiring of a contractor to oversee construction. Construction occurs, which includes sewer hook-up for bathroom, independent electrical connections, paving, landscaping, irrigation, and inspections. At least 3 months,

depending upon weather and availability of contractor, construction workers, inspectors, and supplies.

- The process failed to include all stakeholders in the preparation of the text changes in a timely manner, including but not limited to:
 - Owners and operators of major commercial businesses involved in the sale of beverages recyclable containers
 - Non-profit organizations who patronize existing recycling centers for fund raising purposes.
 - Owners and operators of businesses in the industrial districts.
 - Adjacent jurisdictions, such as Fresno County.
 - RESIDENTS who benefit from the money received through recycling.
- The Council failed to assess STATE statutes and mandates.
The Legislature recognizes the importance of public participation at every level of the planning process. It is therefore the policy of the state and the intent of the Legislature that, the public be afforded the opportunity to respond to clearly defined alternative objectives, policies, and action. No alternatives or mitigation measures were brought forward for consideration by the public. Planning and Zoning law, (California Government Code Section 65033, Public Participation, *Repealed and Added by Stats. 1976, Ch. 1386*)
- The process of creating the proposal failed to identify the impacts of small, permanent buildings on industrial properties since industrial-type uses typically occupy larger facilities and there would be little opportunity for adaptive re-use of small recycling-related buildings once vacated.
- The proposal failed to acknowledge the intrusion and potential conflicts of residential-type traffic on industrial streets, which are most often traveled by larger trucks and trailers and equipment associated with industrial uses.
- No alternatives to the proposed amendments were offered for discussion. One alternative could address other businesses that attract those individuals who have limited means to support themselves, e.g., dollar meals at fast food restaurants, commercial establishments like retail drug stores that display inexpensive alcoholic beverages and cheap food in prominent places, sell beer by the can rather than a 6-pack, and dollar stores.

- The proposed text amendment does not allow recycling centers to operate on collection when residents put out containers. With the end goal being to recycle, this amendment is intended to reduce the number of customers going to recycling centers, which also reduces the number of days that those wishing to claim cash from recycling can do so. There was no discussion offered as to the wisdom behind this amendment. This amendment inhibits recycling efforts.
- The information provided to recyclers was inadequate and understated. Sadly, it failed to mention that recycling center operators who could invest thousands of dollars and months of time in the course of action to obtain a conditional use permit to operate in the industrial district could be denied. This amendment further inhibits recycling efforts. State planning law, Article 7, 65054, California Small Business Advocate, Office of Small Business Advocate, states,
 - (a) The Legislature finds and declares that it is in the public interest to aid, counsel, assist, and protect, insofar as is possible, the interests of small business concerns in order to preserve free competitive enterprise and maintain a healthy state economy
- There is no indication as to reasons a recycling center might be required to install restroom facilities even if it were located next to a building to provided restrooms which could be used by recycling center employees and customers. This amendment could be handled in better ways. This amendment further inhibits recycling efforts.
- There is no data to indicate the costs to the city, county and state when jobs associated with the recycling are lost. Nor is there consideration for failure to meet state mandated diversion goals.
- A text amendment limits recycling facilities to no closer than a half mile to liquor store; however, there is no definition of a liquor store. Many “convenience stores” sell a great deal of liquor as do many delis, yet it is not clear if they would be considered liquor stores based on their sales
- A text amendment could prohibit cash from being given to customers for their recycled goods. This assumes a relationship between a recycler and a retailer which would no longer exist. It is also unnecessarily punitive to fund raising activities organizations, children, and

those needing fast cash for goods not available by voucher. Again, amendment further inhibits recycling efforts.

- A text amendment requires recycling centers to maintain a physical separation from residential uses of a mile. However, the text amendment fails to indicate the implications of a house being built within this distance after the recycling center is established.
- The amendment requires recycling centers to maintain a distance from each other further reducing the amount of available properties.
- The Council's request to initiate the text amendments failed to recognize the existence of state law and the diversion goals imposed upon the city and any subsequent fines for failure to meet those goals.
- The Council's request to initiate the text amendments did not acknowledge and consider the penalties that would be imposed and added to the costs of local grocers and the subsequent impact of those costs added to the cost of living to the residents of Fresno and those that come to shop here. These costs will not be imposed on the competitors outside of the city.

Please keep me advised as to the actions of Planning and Development and the City Council in addressing these issues.

Respectfully,

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