



**CITY OF SANTA ANA
OFFICE OF THE CITY ATTORNEY
MEMORANDUM**

To: Ali Pezeshkpour, AICP, Acting Executive Director, Planning and Building Agency

From: Brandon Salvatierra, Deputy City Attorney

Date: April 9, 2025

Re: Memorandum in Support of Revocation of Land Use Certificate No. 2003-03-RCY

cc: Nancy Tran, AICP, Senior Planner

INTRODUCTION

The City of Santa Ana’s (“City”) former Planning and Building Agency Director (hereinafter “Director”) has properly revoked Land Use Certificate (LUC) No. 2003-03-RCY issued to Money for Cans, owned by Bertillio Henriquez (“Appellant”). The Appellant has filed Appeal Application No. 2025-1-APM (“Appeal Application”), raising three objections to the Director’s decision to revoke.

ANALYSIS

In their Appeal Application, the Appellant argues the Director erroneously applied the incorrect version of the Santa Ana Municipal Code (“SAMC”), that Appellant’s activities cannot be deemed a nuisance, and that any violations of the SAMC by Appellant have been cured.

However, as detailed below, Appellant's arguments fail on both procedural and substantive grounds.

1. Application of Santa Ana Municipal Code

Appellant argues the Director erroneously applied current SAMC instead of the SAMC as it existed at the time of LUC issuance, citing *Jones v. Los Angeles* (1930) 211 Cal. 304 and *Trans-Oceanic Oil Corp. v. City of Santa Barbara* (1948) 85 Cal.App. 2d 776.

This claim is without merit as the ordinances in question were enacted prior to the issuance of LUC No. 2003-03-RCY (*see* Staff Report, p. 3-4). Furthermore, even if the ordinances in question were adopted subsequently, the City retains the authority to enforce ordinances protecting public health and safety, particularly regarding public nuisances. (*See City of Bakersfield v. Miller*, (1966) 64 Cal.2d 93 (*stating that it would be an unreasonable limitation of a city's powers to require a danger to be tolerated ad infinitum merely because the building did not violate the statutes in effect when it was constructed 36 years ago*).

2. Nuisance Determination

Appellant also argues that Appellant's activities cannot be deemed a nuisance absent a "paramount and compelling public necessity," relying on *Jones v. Los Angeles* (1930) 211 Cal. 304. And, that in the context of small collection facilities, allegations of littering, loitering, and odor are simply not enough to render a small collection facility a nuisance, relying on *New Way Recycling Ctr., Inc. v. City of Pasadena*, 2003 Cal.App.Unpub. LEXIS 10094

This claim is also without merit as the Director based their decision on much more than "allegations of littering, loitering, and odor." (*See* Staff Report, p. 4-5.) California courts have found that permits issued in violation of zoning laws confer no vested rights. (*See Millbrae Ass'n for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222 (finding that interveners

did not have vested rights because “interveners proceeded under a permit which was invalid when issued because it violated the zoning ordinance”). Additionally, the case cited by Appellant is unpublished and is not mandatory authority¹. Furthermore, *New Way Recycling* is distinguishable as the administrative record in that case supported an argument the collection facility was not the cause of the complaints, unlike the situation here.

3. Alleged Curing of Violations

Appellant argues the violations of the SAMC have been cured, but this claim fails procedurally and substantively.

Procedurally, SAMC violations must be resolved before LUC revocation, not after. Substantively, City Staff confirms that violations persist (*see* Staff Report, p. 5-6), including failure to meet setback requirements (SAMC Section 41-1253(3)) and proximity standards (SAMC Section 41-1253(11)), as the facility remains located within 50 feet of Stanford and King Streets and within 100 feet of residential zones.

Finally, California Government Code Section 818.4 provides that a public entity is not liable for an injury caused by the revocation of any permit, license, certificate, approval, or similar authorization.

CONCLUSION

For the foregoing reasons, Appellant’s arguments lack merit. The City of Santa Ana’s Planning Commission should uphold the Director’s revocation of LUC No. 2003-03-RCY, ensuring the enforcement of SAMC provisions and safeguarding public health and safety.

¹ California Rules of Court, Rule 8.1115 provides that opinions of the California Court of Appeal or superior court appellate division that is not certified for publication or ordered published must not be cited or relied on by a court or party in any other action.