

RESOLUTION NO. 2025-XX

A RESOLUTION OF THE PLANNING COMMISSION DENYING APPEAL APPLICATION NO. 2025-01, THEREBY REVOKING LAND USE CERTIFICATE NO. 2003-03 THAT ALLOWS THE OPERATION OF A SMALL COLLECTION FACILITY DOING BUSINESS AS MONEY FOR CANS LOCATED AT 2610 W. EDINGER AVENUE (APN 408-041-04).

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SANTA ANA AS FOLLOWS:

**Section 1.** The Planning Commission of the City of Santa Ana hereby finds, determines, and declares as follows:

- A. Bertilio Henriquez (“Appellant/Business Owner”) of Money for Cans filed an appeal (Appeal Application No. 2025-01) pursuant to Santa Ana Municipal Code (“SAMC”) Section 41-677, contesting the Executive Director of the Planning and Building Agency (“PBA Director”) decision to revoke Land Use Certificate (LUC) No. 2003-03, for a small collection facility located at 2610 W. Edinger Avenue. Pursuant to SAMC Section 41-677, the PBA Director’s decision is vacated and the Planning Commission shall hear the appeal and act upon the LUC application, either approving or revoking the LUC.
- B. On January 19, 1988, the City Council adopted Ordinance No. NS-1946, adding Article XIV to Chapter 41 of the SAMC to regulate recycling facilities. This ordinance established definitions, zoning regulations, and operational standards for various recycling-related uses, including collection and processing facilities. It set permit requirements and standards for operation, addressing land use compatibility and zoning compliance for small collection facilities.
- C. On October 6, 1997, the City Council adopted Ordinance No. NS-2333, amending Section 41-1253 of the SAMC. This ordinance required small collection facilities to be in a Convenience Zone, limited them to one per zone, increased setbacks, and prohibited facilities near residential areas, enhancing land use compatibility and addressing community concerns.
- D. On December 15, 2000, the City Council adopted Ordinance No. NS-2340, modifying off-street parking regulations of the SAMC. This ordinance included amending Section 41-1304, which governs parking lot maintenance and operation standards and added subsections (g), (h), and (i), with subsection (i) requiring that all parking areas be maintained in a safe, clean, and well-repaired condition.
- E. On February 3, 2003, the City Council adopted Ordinance No. NS-2522, amending Chapter 8 of the SAMC to incorporate the International Property Maintenance Code (“IPMC”). This ordinance ensured ongoing updates with each new IPMC publication, mandating compliance with evolving property maintenance

standards to address safety concerns and technological advancements.

- F. The Appellant/Business Owner was issued Business License No. 1791 for Money for Cans on November 1, 2002, which remains active to this day.
- G. On April 10, 2003, the Planning Division issued an LUC to the Appellant/Business Owner, authorizing the operation of a small collection facility at the property.
- H. On November 7, 2024, the City issued a Notice of Proposed Revocation to the Appellant/Business Owner following multiple Code Enforcement Compliance Inspections. The notice included a comprehensive list of outstanding code violations from May 16, October 1, and October 9, 2024, and scheduled a hearing for December 12, 2024.
- I. On December 12, 2024, the PBA Director conducted a hearing, pursuant to SAMC Section 41-676, to address alleged violations that the facility was not operating in compliance with the standards for small collection facilities.
- J. On December 23, 2024, the PBA Director issued a letter revoking LUC No. 2003-03. The decision was based on the PBA Director's determination that the small collection facility was operating in a manner that violated the applicable SAMC regulations and was inconsistent with the terms under which the land use certificate was originally granted.
- K. On January 14, 2025, the Appellant/Business Owner, filed an appeal of the PBA Director's revocation of LUC No. 2003-03.
- L. Therefore, pursuant to SAMC Section 41-677, the PBA Director's decision to revoke LUC No. 2003-03 is vacated and the Planning Commission shall determine whether to issue or revoke the land use certificate in accordance with the applicable requirements of the Chapter 41.
- M. Pursuant to SAMC Section 41-677, the Appellant was given at least five (5) days prior written notice by the City of the time and place at which the planning commission would consider the application or revocation.
- N. On April 14, 2025, the Planning Commission held a duly-noticed public hearing on the appeal of revocation for LUC No. 2003-03:
- O. The Planning Commission of the City of Santa Ana has determined to revoke LUC No. 2003-03, finding that it was being used in violation of applicable zoning regulations. The facility consistently failed to adhere to the standards for small collection facilities outlined in SAMC Section 41-1253. The violations contradict the terms under which the LUC was originally granted, demonstrating a disregard for applicable regulations. Following the December 12, 2024, hearing regarding the Notice of Revocation, the PBA Director made the following findings upon reviewing Code Enforcement Division's Compliance Inspection reports:

- i. **SAMC Section 41-1253 (1) – Commercial Compliance:** The facility was not "established in conjunction with an existing commercial use which is in compliance with all applicable zoning, building and fire code requirements."
- ii. **SAMC Section 41-1253 (2) - Size Limitation:** The facility exceeds the allowable 500 square feet by using the east side yard for trash bin storage and **relying** on an electrical wire crossing from a neighboring residence.
- iii. **SAMC Section 41-1253 (3) - Setback:** The facility is **located** within 50 feet of the terminus of Stanford and King Streets, violating setback standards.
- iv. **SAMC Section 41-1253 (6) - Container Standards:** Trash bins on the east side of the property are not covered when the attendant is absent, failing to meet container standards.
- v. **SAMC Section 41-1253 (7) - Storage of Recyclable Material:** Trash bins used for recyclable material storage are left uncovered when unattended, violating **storage** standards.
- vi. **SAMC Section 41-1253 (8) – Maintenance Standards:** The exterior property, parking areas, and premises are not maintained in a clean, safe, and sanitary condition, requiring pressure washing and cleaning.
- vii. **SAMC Section 41-1253 (11) - Proximity to Residential:** The facility abuts residential property within five feet and is also located within 100 feet of **residentially** zoned or occupied property. The PBA Director dismissed the citation for operating beyond allowed hours, as the Business Owner provided evidence of updated, compliant business hours.
- viii. **SAMC Section 41-1253 (12) - Signage:** Signs are located inside container doors and are not visible when closed. The facility lacks signage stating that materials cannot be left outside the recycling enclosure or containers.

The basis for revocation stems from the facility's documented violations of municipal codes and operational standards, including non-compliance with size limitations, setback requirements, and proximity to residential areas. Additionally, observed violations related to waste storage, property maintenance, and electrical hazards pose significant risks to public health and safety. The evidence clearly demonstrates that the business operation violates the terms outlined for small collection facilities, justifying revocation. These violations show a persistent failure to adhere to regulations essential for maintaining community well-being and orderly development. The facility's continued operation in its current state poses ongoing risks to public health, welfare, and safety, and necessitates immediate action to protect the community's well-being.

A review of the original application and the SAMC regulations in place at the time indicate likelihood that Planning staff issued the LUC for the facility in 2003 in error, failing to account for its close proximity to residential areas and its non-compliance with SAMC Section 41-1253 subsections 3 and 11, which requires a minimum setback of 50 feet from the street and 100 feet from property zoned or occupied for residential use. As such, the permit is invalid. This error further underscores the need for revocation as a cure to the ongoing issues resulting from the issuance of this LUC, as the facility should not have been approved at this location in the first place. California courts have found that permits issued in violation of zoning laws are void from inception and cannot confer vested rights. (See City Attorney's Memo, attached as Exhibit 9). The need to correct zoning mistakes, particularly in land use cases involving public health, safety, and

welfare, outweighs any argument that the facility should be allowed to continue operating based on the permit being issued in error. Moreover, the lack of substantial investments by the appellant, limited to a shipping container and commercial trash cans, further undermines a claim of a vested right to continue operations. As valid permits are essential for vested rights claims, and the minimal investments here do not demonstrate significant reliance on the invalid permit. These factors collectively reinforce the justification for revocation, aligning with California courts' consistent stance that protecting public welfare through proper zoning enforcement takes precedence over maintaining erroneously issued permits.

Revocation of the LUC is more appropriate than suspension pursuant to SAMC Section 41-650.5 due to the property's ongoing non-compliance with city regulations, operations functioning outside of and in violation of the permitted use and conditions, and the significant risks posed to public well-being. The persistence of these violations, combined with the need to protect public health and safety, necessitates a more definitive action than temporary suspension. Revocation will ensure a complete cessation of non-compliant activities and effectively address the ongoing issues. Where temporary measures may fall short, revocation will decisively uphold community standards and regulations and address persistent violations.

P. The Planning Commission of the City of Santa Ana determines that revocation aligns with the following goals and policies of the General Plan:

- Goal LU-1: Growing Responsibly. Provide a land use plan that improves quality of life and respects our existing community
  - Policy LU-1.1 Compatible Uses. Foster compatibility between land uses to enhance livability and promote healthy lifestyles.
- Goal LU-3: Compatibility of Uses. Preserve and improve the character and integrity of existing neighborhoods and districts.
  - Policy LU-3.3 Enforcement of Standards. Maintain a robust and proactive code enforcement program that partners with community stakeholders and is responsive to community needs.

Revoking the LUC supports responsible growth and preserves neighborhood character by fostering compatible land uses. This action reinforces the City's expectation for responsible business operations and strengthens neighborhood livability. It also demonstrates Santa Ana's commitment to a responsive Code Enforcement Division that addresses community needs.

- Goal CM-3: Active Living and Well-being. Promote the health and wellness of all Santa Ana residents.
  - Policy CM-3.2 Healthy Neighborhoods. Continue to support the creation of healthy neighborhoods by addressing public safety, land use conflicts, hazardous soil contamination, incompatible uses, and maintaining building code standards.

The revocation is consistent with this General Plan Community Element goal and policy, as it addresses land use conflicts and public safety concerns that

impact community well-being. This action will promote a healthy neighborhood by addressing Money for Cans' noncompliant small collection facility operations, which has created nuisance conditions and numerous health and safety violations.

- Goal N-2: Noise Generators. Reduce the impact of known sources of noise and vibration.
  - Policy N-2.2 Stationary Related Noise. Minimize noise impacts from commercial and industrial facilities adjacent to residential uses or zones where residential uses are permitted.

The revocation is consistent with this General Plan Noise Element goal and policy as the property, currently used as an small collection facility, poses a noise risk to the nearest residential development, which is approximately five feet away. The continued operation of the small collection facility, conflicts with the General Plan's goals and policies. The revocation will reduce noise impacts adjacent to the residential area, thereby ensuring that commercial operations respect the needs of existing neighborhoods and minimizes negative impacts on residents.

**Section 2.** In accordance with the California Environmental Quality Act (CEQA), the project is categorically exempt from further review per Section 15321(a), (Class 21 – Enforcement Actions by Regulatory Agencies) of the CEQA Guidelines. The Class 21 exemption applies to actions by regulatory agencies to enforce or revoke a lease, permit, license, certificate, or other entitlement for use issued, adopted, or prescribed by the regulatory agency or enforcement of a law, general rule, standard, or objective, administered or adopted by the regulatory agency. Such actions include, but are not limited to, the following:

- (1) The direct referral of a violation of lease, permit, license, certificate, or entitlement for use or of a general rule, standard, or objective to the Attorney General, District Attorney, or City Attorney as appropriate, for judicial enforcement;
- (2) The adoption of an administrative decision or order enforcing or revoking the lease, permit, license, certificate, or entitlement for use or enforcing the general rule, standard, or objective.

Planning Commission revocation of the Land Use Certificate is consistent with Section 15321. As such, a Notice of Exemption, Environmental Review No. 2025-22, will be filed for this project.

**Section 3.** Upon the Planning Commission's decision to uphold the revocation of the LUC, Appellant/Business Owner shall, at their sole cost and expense, completely remove all small collection facility operations on the subject property within 60 calendar days of the effective date of revocation, unless otherwise directed in writing by the City. The Appellant/Business Owner shall promptly notify the City in writing of any inability to comply with the conditions set forth in this LUC revocation within 48 hours of becoming aware of such non-compliance. Furthermore, the Appellant/Business Owner hereby agrees to fully cooperate with any and all City inspections and investigations related to compliance with this revocation. Such cooperation shall include, but not be limited to, providing access to the property, furnishing requested documentation, and making relevant personnel available for questioning, as deemed necessary

by City officials. Failure to comply with these provisions may result in additional enforcement actions, including but not limited to fines, penalties, and legal proceedings as authorized by applicable local and state laws.

**Section 4.** The Planning Commission of the City of Santa Ana, after conducting the public hearing, hereby revokes LUC No. 2003-03, which allowed the operation of a small collection facility at 2610 W. Edinger Avenue. This decision is based upon the evidence submitted at the above-referenced hearing, including but not limited to: The Request for Planning Commission Action dated April 14, 2025, and exhibits attached thereto; and the public testimony, written and oral, all of which are incorporated herein by this reference.

ADOPTED this 14th day of April 2025 by the following vote.

AYES: Commissioners:

NOES: Commissioners:

ABSENT: Commissioners:

ABSTENTIONS: Commissioners:

\_\_\_\_\_  
Jennifer Oliva  
Chairperson

APPROVED AS TO FORM:  
Sonia R. Carvalho, City Attorney

By: \_\_\_\_\_

#### CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, Nuvia Ocampo, Recording Secretary, do hereby attest to and certify the attached Resolution No. 2025-XX to be the original resolution adopted by the Planning Commission of the City of Santa Ana on April 14, 2025.

Date: \_\_\_\_\_

\_\_\_\_\_  
Nuvia Ocampo  
Recording Secretary  
City of Santa Ana