

# REQUEST FOR COUNCIL ACTION



**CITY COUNCIL MEETING DATE:**

**SEPTEMBER 15, 2020**

**TITLE:**

**RESOLUTION RESCINDING CITY COUNCIL  
RESOLUTION NO. 2019-099, UPHOLDING  
PLANNING COMMISSION'S ADOPTION OF  
RESOLUTION NOS. 2019-35, 2019-36, 2019-  
37; RESCINDING THE CITY'S CALIFORNIA  
ENVIRONMENTAL QUALITY ACT-RELATED  
FINDINGS; AND DECLARING NULL AND  
VOID PLANNING COMMISSION  
RESOLUTION NOS. 2019-35, 2019-36, AND  
2019-37 PERTAINING TO THE PROPERTY  
LOCATED AT 301 AND 325 N. TUSTIN  
AVENUE**

**CLERK OF COUNCIL USE ONLY:**

**APPROVED**

- ☐ As Recommended
- ☐ As Amended
- ☐ Ordinance on 1<sup>st</sup> Reading
- ☐ Ordinance on 2<sup>nd</sup> Reading
- ☐ Implementing Resolution
- ☐ Set Public Hearing For \_\_\_\_\_

October 6, 2020  
October 20, 2020  
November 17, 2020  
December 1, 2020

**CONTINUED TO**

**FILE NUMBER**

**CITY MANAGER**

## **RECOMMENDED ACTION**

Adopt a resolution rescinding City Council Resolution No. 2019-099, upholding the Planning Commission's adoption of Resolution Nos. 2019-35, 2019-36, and 2019-37; rescinding the City's California Environmental Quality Act-related findings; and declaring null and void Planning Commission Resolution Nos. 2019-35, 2019-36, and 2019-37 pertaining to the property located at 301 and 325 N. Tustin Avenue.

## **DISCUSSION**

### **The 2018 Project Approvals**

On October 8, 2018, the Planning Commission of the City of Santa Ana took the following actions with regard to the property located at 301 and 325 N. Tustin Avenue (the "2018 Project"):

1. Adopted Resolution No. 2018-28, approving Conditional Use Permit No. 2018-18 to allow a drive-through;
2. Adopted Resolution No. 2018-35, approving Variance No. 2018-10 to allow for reduced yards for a service station;

On November 20, 2018, the City Council of the City of Santa Ana took the following actions with regard to the 2018 Project:



1. Adopted Resolution No. 2018-081, adopting Mitigated Negative Declaration Environmental Review No. 2016-156 and corresponding Mitigation Monitoring and Reporting Program;
2. Adopted Resolution No. 2018-082, approving General Plan Amendment No. 2018-05 for the property located at 301 N. Tustin Avenue, 431 N. Tustin Avenue, and 2321 East Fourth Street;
3. Introduced a first reading of Ordinance No. NS-2960, approving Amendment Application No. 2018-08 to rezone 301 and 325 N. Tustin Avenue, 401 N. Tustin Avenue, and 2320 East Fourth Street from Professional to General Commercial;

On December 4, 2018, after a second reading, the City Council of the City of Santa Ana adopted Ordinance No. NS-2960. Resolution Nos. 2018-28, 2018-35, 2018-081, 2018-082, and Ordinance No. NS-2960 shall be collectively referred to as the "2018 Approvals."

#### The 2019 Project Approvals

On September 9, 2019, the Planning Commission of the City of Santa Ana took the following actions with regard to the property located at 301 and 325 N. Tustin Avenue (the "2019 Project"):

1. Adopted Resolution No. 2019-35, approving Conditional Use Permit No. 2019-30 to allow a car wash;
2. Adopted Resolution No. 2019-36, approving an amendment to Variance No. 2018-10;
3. Adopted Resolution No. 2019-37, approving Conditional Use Permit No. 2019-31 to allow 24-hour operations of a retail store.
4. The City determined that the 2019 Project was eligible for a CEQA Class 32 In-fill Development Exemption.

On October 15, 2019, the City Council upheld the Planning Commission's adoptions of Resolution Nos. 2019-35, 2019-36, 2019-37, the City's CEQA Class 32 In-fill Development Exemption, and further determined that the 2019 Project was eligible for a CEQA Class 3 New Construction or Conversion of Small Structure Exemption after a duly noticed de novo public hearing on Appeal Application 2019-03, by City Council Resolution No. 2019-099. Planning Commission Resolution Nos. 2019-35, 2019-36, 2019-37, City Council Resolution No. 2019-099, and the City's CEQA Class 32 In-fill Development and Class 3 New Construction or Conversion of Small Structure Exemptions are collectively referred to as the "2019 Approvals".

On August 31, 2020, the applicant for the 2019 Project, The Russell Fischer Partnership, LP ("RF"), submitted a letter to the City Council requesting rescission of the 2019 Approvals due to financial hardship caused by dramatic changes in the economy caused by the COVID-19 pandemic. (Letter attached hereto as Exhibit 1).

Because RF no longer intends to pursue the 2019 Approvals, staff recommends that the City Council rescind the following 2019 Approvals in their entirety such that the 2019 Approvals will have no further force or effect: Resolution No. 2019-099, upholding the Planning Commission's adoption of Resolution Nos. 2019-35, 2019-36, and 2019-37; and the City's determination that the

2019 Project is eligible for a CEQA Class 32 In-fill Development Exemption and Class 3 New Construction or Conversion of Small Structure Exemptions. Staff further recommends that the City Council declare null and void Planning Commission Resolution Nos. 2019-35, 2019-36, and 2019-37 such that these resolutions are no longer in effect. The 2018 Approvals are valid and remain in full force and effect.

**FISCAL IMPACT**

There is no fiscal impact associated with this action.

Submitted By: Sonia R. Carvalho, City Attorney

Exhibit(s): 1. Letter Requesting Rescission of 2019 Approvals  
2. Resolution



**Via E-Mail**

August 31, 2020

Honorable Mayor Miguel Pulido  
 Honorable City Council Members  
 City of Santa Ana  
 20 Civic Center Plaza  
 Santa Ana, CA 92701

**Re:    The Russell Fischer Partnership, LP 2019  
 Approvals**

Dear Honorable Mayor Pulido and Honorable City Council Members:

In September 2019, the City of Santa Ana ("City") Planning Commission issued approvals to The Russell Fischer Partnership, L.P. ("RF"), for RF to develop an automated car wash, fuel station and convenience store ("2019 Project"). In connection with the 2019 Project, the Planning Commission issued the following approvals: Resolution No. 2019-35, approving Conditional Use Permit No. 2019-30 to allow a car wash; Resolution No. 2019-36, approving an amendment to Variance No. 2018-10; and Resolution No. 2019-37, approving Conditional Use Permit No. 2019-31 to allow 24-hour operations of a retail store. The City determined that the 2019 Project was eligible for a CEQA Class 32 In-fill Development Exemption ("CEQA Exemption"). Resolution Nos. 2019-35, 2019-36 and 2019-37 and the CEQA Exemption are collectively the "2019 Approvals".

RF has chosen to not move forward with the development of the 2019 Project. Due to dramatic changes in the economy caused by the COVID-19 pandemic, RF sales and profits have substantially decreased. RF went almost two months without generating any income, while RF paid all business expenses, including employee wages. Therefore, by this letter, RF hereby requests the City Council to rescind the 2019 Approvals. As a condition precedent to RF's request for rescission of the 2019 Approvals, the City Council is to approve the settlement agreement which has been reached between RF and the City. This condition precedent may be waived, if at all, solely by RF. If the City does not approve the settlement agreement, then RF's request to rescind the 2019 Approvals is hereby withdrawn.

Very truly yours,

A handwritten signature in black ink, appearing to read "Chase Russell", is written over a faint, larger signature.

Chase Russell

cc:    Ms. Kristine Ridge  
       Sonia Carvalho, Esq.  
       Alisha Winterswyck, Esq.

## RESOLUTION NO. 2020-xx

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA ANA RESCINDING CITY COUNCIL RESOLUTION NO. 2019-099, UPHOLDING PLANNING COMMISSION'S ADOPTION OF RESOLUTION NOS. 2019-35, 2019-36, 2019-37; RESCINDING THE CITY'S CALIFORNIA ENVIRONMENTAL QUALITY ACT-RELATED FINDINGS; AND DECLARING NULL AND VOID PLANNING COMMISSION'S RESOLUTION NOS. 2019-35, 2019-36, AND 2019-37 PERTAINING TO THE PROPERTY LOCATED AT 301 AND 325 N. TUSTIN AVENUE

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

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

A. On October 8, 2018, the Planning Commission of the City of Santa Ana took the following actions with regard to the property located at 301 and 325 N. Tustin Avenue (the "2018 Project"):

1. Adopted Resolution No. 2018-28, approving Conditional Use Permit No. 2018-18 to allow a drive-through;
2. Adopted Resolution No. 2018-35, approving Variance No. 2018-10 to allow for reduced yards for a service station;

B. On November 20, 2018, the City Council of the City of Santa Ana took the following actions with regard to the 2018 Project:

1. Adopted Resolution No. 2018-081, adopting Mitigated Negative Declaration Environmental Review No. 2016-156 and corresponding Mitigation Monitoring and Reporting Program;
2. Adopted Resolution No. 2018-082, approving General Plan Amendment No. 2018-05 for the property located at 301 N. Tustin Avenue, 431 N. Tustin Avenue, and 2321 East Fourth Street;
3. Introduced a first reading of Ordinance No. NS-2960, approving Amendment Application No. 2018-08 to rezone 301 and 325 N. Tustin Avenue, 401 N. Tustin Avenue, and 2320 East Fourth Street from Professional to General Commercial;

C. On December 4, 2018, after a second reading, the City Council of the City of Santa Ana adopted Ordinance No. NS-2960;

D. Planning Commission Resolution Nos. 2018-28, 2018-35, and City Council Resolution Nos. 2018-081, 2018-082, and Ordinance No. NS-2960 shall be collectively referred to as the "2018 Approvals";

E. On September 9, 2019, the Planning Commission of the City of Santa Ana took the following actions with regard to the property located at 301 and 325 N. Tustin Avenue (the "2019 Project"):

1. Adopted Resolution No. 2019-35, approving Conditional Use Permit No. 2019-30 to allow a car wash;

2. Adopted Resolution No. 2019-36, approving an amendment to Variance No. 2018-10;

3. Adopted Resolution No. 2019-37, approving Conditional Use Permit No. 2019-31 to allow 24-hour operations of a retail store.

4. The City determined that the 2019 Project was eligible for a CEQA Class 32 In-fill Development Exemption.

F. On October 15, 2019, the City Council upheld the Planning Commission's adoption of Resolution Nos. 2019-35, 2019-36, 2019-37, the City's CEQA Class 32 In-fill Development Exemption, and further determined that the 2019 Project was eligible for a CEQA Class 3 New Construction or Conversion of Small Structure Exemption after a duly noticed de novo public hearing on Appeal Application 2019-03, by City Council Resolution No. 2019-099.

G. Planning Commission Resolution Nos. 2019-35, 2019-36, 2019-37, City Council Resolution No. 2019-099, and the City's CEQA Class 32 In-fill Development and Class 3 New Construction or Conversion of Small Structure Exemptions shall be collectively referred to as the "2019 Approvals";

H. By letter addressed to the City Council dated August 31, 2020 (Exhibit A attached hereto), the applicant for the 2019 Project, The Russell Fischer Partnership LP ("RF"), has chosen to not move forward with the development of the 2019 Project;

I. Due to dramatic changes in the economy caused by the COVID-19 pandemic, RF sales and profits have substantially decreased, with little money coming in while RF still incurred and paid all business expenses, including employee wages. Therefore, RF has requested the City Council to rescind the 2019 Approvals because the 2019 Project is no longer financially feasible.

**Section 2.** The City Council hereby rescinds the following 2019 Approvals in their entirety and as such 2019 Approvals shall have no further force or effect:

A. City Council Resolution No. 2019-099, upholding the Planning Commission's adoption of Resolution Nos. 2019-35, 2019-36, and 2019-37;

B. City's determination that the 2019 Project is eligible for a CEQA Class 32 In-fill Development Exemption and Class 3 New Construction or Conversion of Small Structure Exemptions.

Furthermore, the City Council hereby declares null and void Planning Commission Resolution Nos. 2019-35, 2019-36, and 2019-37 such that these Resolutions are no longer in effect.

**Section 3.** The following 2018 Approvals have not expired and were not rescinded by the City, and therefore are valid and remain in full force and effect:

A. Planning Commission Resolution No. 2018-28, approving Conditional Use Permit No. 2018-18 to allow a drive-through;

B. Planning Commission Resolution No. 2018-35, approving Variance No. 2018-10 to allow for reduced yards for a service station;

C. City Council Resolution No. 2018-081, adopting Mitigated Negative Declaration Environmental Review No. 2016-156 and corresponding Mitigation Monitoring and Reporting Program;

D. City Council Resolution No. 2018-082, approving General Plan Amendment No. 2018-05 for the property located at 301 N. Tustin Avenue, 431 N. Tustin Avenue, and 2321 East Fourth Street;

E. Ordinance No. NS-2960, approving Amendment Application No. 2018-08 to rezone 301 and 325 N. Tustin Avenue, 401 N. Tustin Avenue, and 2320 East Fourth Street from Professional to General Commercial.

**Section 4.** This Resolution shall take effect immediately upon its adoption by the City Council, and the Clerk of the Council shall attest to and certify the vote adopting this Resolution.


ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Miguel A. Pulido  
Mayor

Resolution No. 2020-xx  
Page 3 of 4



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

By:   
Lisa E. Storck  
Assistant City Attorney

AYES: Councilmembers \_\_\_\_\_

NOES: Councilmembers \_\_\_\_\_

ABSTAIN: Councilmembers \_\_\_\_\_

NOT PRESENT: Councilmembers \_\_\_\_\_

#### **CERTIFICATE OF ATTESTATION AND ORIGINALITY**

I, Daisy Gomez, Clerk of the Council, do hereby certify the attached Resolution No. 2020 - \_\_\_\_\_ to be the original resolution adopted by the City Council of the City of Santa Ana on \_\_\_\_\_, 2020.

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

\_\_\_\_\_  
Clerk of the Council  
City of Santa Ana