

**TOWN OF FAIRFAX
STAFF REPORT**

To: Mayor, Members of the Town Council

From: Jim Moore, Director of Planning & Building Services

Date: November 7, 2012

Subject: Discussion of questions regarding Good Earth Market Use Permit Compliance

BACKGROUND

At the October 3, 2012 Town Council meeting, public speakers complained about early morning truck deliveries at the Good Earth Market at 720 Center Boulevard (the "Market"). Council members also indicated that they had questions about the status of the Market's compliance with its use permit and requested that the item be placed on the agenda for this meeting.

This memorandum describes the current status of the Market's construction activities and compliance with use permit conditions, complaints the Town has received, and finally background on the Planning Department's options for enforcing use permit conditions.

STATUS OF MARKET CONSTRUCTION

The entitlements, including the use permit, for the Market were approved by the Planning Commission on April 21, 2011 and Town Council on June 22, 2011. Among the conditions of approval for the use permit are compliance with the Resolution 11-26 approving the Traffic Impact Permit and adopting the Mitigated Negative Declaration (i. e., California Environmental Quality Act or CEQA review) for the Market, including all Mitigation Measures enumerated in the Initial Study.

Subsequently, the Market submitted construction drawings and was granted a Building Permit to commence construction. As is often the case in projects of this size, during construction certain design considerations arose in the field and in a limited number of cases the Market's project team made minor design changes during construction.

After construction, and after consultations between the Market and Town staff, staff determined that a Temporary Certificate of Occupancy could be issued for the Market to open on time – provided that the Market submit an application to the Town for use permit modifications within one year's time. The Market opened for business on or about February 10, 2012.

The one year deadline for submitting the application expires in February of 2013, and the Market is now working with Town staff toward completing an application as stipulated. Once complete, and routed to relevant agencies for review, that application will be heard by the Planning Commission. At that time, the Planning Commission may approve, approve

conditionally or deny the application. If, after the Planning Commission acts on this matter, an appeal of that ruling is submitted to the Town within ten days and the appropriate fee is paid – Town Council would hear any appeal.

COMPLAINTS ABOUT EARLY DELIVERIES

The use permit for the Market was granted based on the CEQA project description contained in the Initial Study and incorporated into the Mitigated Negative Declaration. Under state law and CEQA, it is a condition of the use permit approval that the project not exceed the levels of activity contemplated by the project description. The project description for the Market stipulated that there would be just one 60 foot truck arriving between the hours of 5:00 am and 6:00 am Monday thru Friday, and just two 45 foot trucks between the hours of 6:00 am and 7:00 am Monday thru Saturday. Thus, deliveries that do not conform to these limitations would violate the use permit.

After the Market received its Temporary Certificate of Occupancy, Mr. Steve Franks, 19 Willow Avenue, complained to the Building Official as to the number of trucks arriving on-site for deliveries before 7:00 am in the morning. The Building Official and the Police Department then commenced monitoring the situation in the early morning in order to begin the process of enforcing the use permit – and/or seeking compliance from the Good Earth Market if called for. Please see the Building Officials Memorandum articulating the results of this monitoring to date, attached as **Exhibit A**.

TOWN OPTIONS FOR ENFORCING USE PERMIT CONDITIONS

When complaints are received that allege violations of conditions of use permits, any other entitlement or any Town Code section, the Planning staff investigates the complaint and if the complaint appears valid, it works with the violating property owner to achieve voluntary compliance. Where that is not successful, the Town staff has several other options with increasingly severe consequences:

- Issuance of Citations under the Administrative Citation Ordinance (Chap. 1.10 of the Town code), which allows monetary penalties for each time the violation occurs based on administrative (staff) citations that are appealable to Council;
- Commencement of Nuisance Proceedings (Chap. 1.12 of the Town Code), which provides for a formal hearing before the Council and can result in a direct order to abate the nuisance (e.g., a use permit or Town Code section violation) that can be enforced directly by the Town at the property owner's expense if the property owner does not comply); or
- Enforcement Action to Revoke the use permit, after notice and due process in accordance with state law.

DISCUSSION

At this stage, staff is still working with the Market to achieve compliance, and the Market is aware that when the Market goes back before the Planning Commission for a use permit modification in the near future (presumably by the January 2013 Planning Commission meeting), staff will be revisiting the issue of early morning truck deliveries and additional conditions may be proposed. Revisiting this issue may involve either gaining compliance from

the Market and/or modifying the number and/or time of early morning truck deliveries.

Staff requests direction from the Council as to whether it should pursue other enforcement actions at this time.

ATTACHMENTS

Exhibit A – Building Official Memorandum to the Director of Planning & Building Services



TOWN OF FAIRFAX

142 Bolinas Road, Fairfax, California 94930
(415) 453-1584 / Fax (415) 453-1618

Memorandum

TO: Jim Moore Planning Director
FROM: Mark Lockaby Building Official
DATE: October 31, 2012
RE: Morning Trucks at Good Earth Market

On July 13, 2012 I was asked to monitor the number of trucks located in the east parking lot before 7am. I typically drive past this location between 6:20-6:40 Monday through Friday. I have a clear view of the loading dock and the parking lot. The truck numbers cited include trucks both at the loading dock, and parking lot.

I observed the number of trucks being over the limit on three occasions from July 13, 2012 through October 31, 2012.

1 truck over limit 6-7am 7-30-2012
4 trucks over limit 6-7am 8-3-2012
1 truck over limit 6-7am 10-16-2012

The Fairfax Police Department was asked to respond to complaints, create an incident, and transfer the findings to the Building Department.

The police observed the number of trucks being over the limit on one occasion, and trucks being there before the permitted time of 5am on six occasions from July 13, 2012 through October 31, 2012.

5 trucks over limit 5-6am observed at: 5:46am 8-24-2012
1 truck before 5am observed at: 4:42 10-9-2012
1 truck before 5am observed at: 4:47 10-15-2012
1 truck before 5am observed at: 4:51 10-16-2012
2 trucks before 5am observed at: 4:32 10-20-2012
1 truck before 5am observed at: 4:28 10-25-2012
1 truck before 5am observed at: 4:07 10-31-2012

If you need further information regarding this matter please let me know.

Sincerely

Mark Lockaby
Building Official

EXHIBIT #

A