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*Mark P. Wall*  
Oakland City Attorney's Office

## OAKLAND CITY COUNCIL

Resolution No. 81626 C.M.S.

Introduced by Councilmember \_\_\_\_\_

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**RESOLUTION DENYING THE APPEALS AND SUSTAINING THE DECISION OF THE CITY PLANNING COMMISSION IN APPROVING THE APPLICATION FOR A MAJOR CONDITIONAL USE PERMIT TO LEGALIZE THE PREVIOUSLY UNPERMITTED EXPANSION OF THE AARON METALS SCRAP METAL RECYCLING FACILITY LOCATED AT 750 105<sup>TH</sup> AVENUE, OAKLAND, WITH REVISED CONDITIONS OF APPROVAL**

**WHEREAS**, the applicant, Aaron Metals, filed an application on June 1, 2006 to legalize the unpermitted expansion of the Aaron Metals Scrap Metal Recycling Facility at 105th Avenue; and

**WHEREAS**, the aforementioned application filed by the applicant, Aaron Metals, was deemed to be complete by the City of Oakland on July 1, 2006; and

**WHEREAS**, the City Planning Commission held a duly noticed public hearing, took testimony and considered the matter at its meeting held March 19, 2008, and at the close of the public hearing it voted (4-0) to approve the Project, subject to revised conditions of approval; and

**WHEREAS**, on March 31, 2008, an appeal of the Planning Commission's decision was filed by CBE, representing Rose Black and others (CBE Appellant); and

**WHEREAS**, on March 31, 2008, an appeal of the Planning Commission's decision was filed by Paul Forkash, representing Aaron Metals (Aaron Metals Appellant); and

**WHEREAS**, the CBE Appellant was permitted to submit certain additional materials and did so on June 16, 2008; and

**WHEREAS**, after giving due notice to the Appellants, the Applicant, all interested parties and the public, the Appeals came before the City Council at a duly noticed public hearing on October 21, 2008; and

**WHEREAS**, the Appellant, the Applicant, supporters of the application, those opposed to the application and interested parties were given ample opportunity to participate in the public hearing by submittal of oral and/or written comments; and

**WHEREAS**, the public hearing on the Appeals was closed by the City Council on October 21, 2008; now, therefore, be it

**RESOLVED:** That, the City Council independently finds and determines that this Resolution complies with CEQA and the Environmental Review Officer is directed to cause to be filed a Notice of Exemption with the appropriate agencies, for the reasons stated in the March 19, 2008 Staff Report to the City Planning Commission and the October 21, 2008 City Council Agenda Report; and be it

**FURTHER RESOLVED:** That, the City Council, having heard, considered and independently weighed all the evidence in the record presented on behalf of all parties and being fully informed of the Application, the City Planning Commission's decision, and the Appeals, independently finds that both Appellants have **not** shown that the City Planning Commission's decision was made in error, that there was an abuse of discretion by the Commission or that the Commission's decision was not supported by substantial evidence in the record based on the March 19, 2008 Staff Report to the City Planning Commission and the October 21, 2008, City Council Agenda Report (hereafter called "City Reports"), hereby incorporated by reference as if fully set forth herein. Accordingly, the Appeals are denied, the Planning Commission's findings and decision are upheld, and the Project is approved, subject to the findings and conditions of approval contained in the City Reports, each of which is hereby separately and independently adopted by this Council in full, except where otherwise expressly stated in this Resolution; and be it

**FURTHER RESOLVED:** That, in support of the City Council's decision to approve the Project, the City Council independently affirms and adopts as its own findings and determinations (a) the March 19, 2008 Staff Report to the City Planning Commission [(including without limitation the discussion, findings, conclusions and conditions of approval(each of which is hereby separately and independently adopted by this Council in full)]; and (b) the October 21, 2008, City Council Agenda Report (including without limitation the discussion, findings, and conclusions [(each of which is hereby separately and independently adopted by this Council in full)]), except where otherwise expressly stated in this Resolution; and be it

**FURTHER RESOLVED:** That, condition of Approval # 21 is amended to read as follows:

The recycling center shall be kept in as neat in appearance as is reasonable for the activity. All exterior storage of finished materials shall be in sturdy containers that are covered, secured, and maintained in good condition, on bales or pallets. Storage containers for flammable material shall be constructed of nonflammable material.

and be it

**FURTHER RESOLVED:** That, condition of Approval # 8 is amended to read as follows:

**1. Compliance with Conditions of Approval**

***Ongoing***

The project applicant shall submit to the Planning and Zoning Division and the Building Services Division a **Conditions** compliance plan that lists each condition of approval, the City agency or division responsible for review, and how/when the project applicant has met or intends to meet the conditions. The applicant will sign the Conditions of Approval attached to the approval letter and submit that with the compliance plan for review and approval. The compliance plan shall be organized per step in the plancheck/construction process unless another format is acceptable to the Planning and Zoning Division and the Building Services Division. The project applicant shall update the compliance plan and provide it with each item submittal.

The project applicant shall be responsible for compliance with the recommendations in any submitted and approved technical report and all the Conditions of Approval set forth below at its sole cost and expense, and subject to review and approval of the City of Oakland.

***One (1) year after the granting of the CUP***

The Planning Commission shall review compliance with conditions after inspection by staff. As part of its compliance review, staff shall make reasonable good faith efforts to obtain relevant information about Aaron Metals' operation and the project site from various regulatory agencies, including without limitation Oakland Fire Department, Alameda County Department of Public Health, Regional Water Quality Control Board, Bay Area Air Quality Management District, CalEPA, and California Department of Toxic Substances Control. If such information is obtained, it shall be included in the compliance report prepared for the Planning Commission.

and be it

**FURTHER RESOLVED:** That, condition of Approval # 22b is amended to read as follows:

**22. Litter and Debris Control.**

***a. Ongoing.***

a. The recycling center site shall be maintained free of litter and any other undesirable materials, and will be cleaned of loose debris on a daily basis. Delivery areas will be kept free of litter and any other undesirable material, and the containers will be clearly marked to identify the type of material that may be deposited; facility shall display a notice stating that no material shall be left outside the recycling containers.

b. A Litter Control Plan that ensures that the premises of the property, and in a two block radius, are kept free of litter and debris shall be submitted to and approved by the Planning and Zoning Division. The applicant shall implement the approved plan within 30 days of granting the CUP at the applicant's expense. The plan shall include, but not be limited to:

1. Distribution of proposed locations of litter receptacles on site and in the public right of way. The design and location of litter receptacles shall be consistent and coordinated with the City's street furniture program.
2. A management schedule for keeping the premises and surrounding area free from litter originating from the operation of the commercial activities; and
3. Daily sweeping and trash collection of the premises, the public sidewalk and the gutter area of the public street immediately adjacent to the project, and mechanically clean the sidewalk with steam or equivalent measures at least once per month.
4. Provisions for the removal of abandoned shopping carts.

and be it

**URTHER RESOLVED:** That, the record before this Council relating to this application and appeals includes, without limitation, the following:

1. the application, including all accompanying maps and papers;
2. all plans submitted by the Applicant and his representatives;
3. the notices of appeal and all accompanying statements and materials;
4. all final staff reports, final decision letters and other final documentation and information produced by or on behalf of the City, including without limitation and all related/supporting final materials, and all final notices relating to the application and attendant hearings;
5. all oral and written evidence received by the City Planning Commission and City Council during the public hearings on the application and appeal; and all written evidence received by relevant City Staff before and during the public hearings on the application and appeal;
6. all matters of common knowledge and all official enactments and acts of the City, including, without limitation (a) the General Plan; (b) Oakland Municipal Code (c) Oakland Planning Code; (d) other applicable City policies and regulations; and, (e) all applicable state and federal laws, rules and regulations; and be it

**FURTHER RESOLVED:** That, the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively: (a) Community & Economic Development Agency, Planning & Zoning Division, 250 Frank H. Ogawa Plaza, 2<sup>nd</sup> Floor, Oakland CA.; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1<sup>st</sup> floor, Oakland, CA.; and be it

**FURTHER RESOLVED:** That, the recitals contained in this Resolution are true and correct and are an integral part of the City Council's decision.

IN COUNCIL, OAKLAND, CALIFORNIA, OCT 21 2008

**PASSED BY THE FOLLOWING VOTE:**

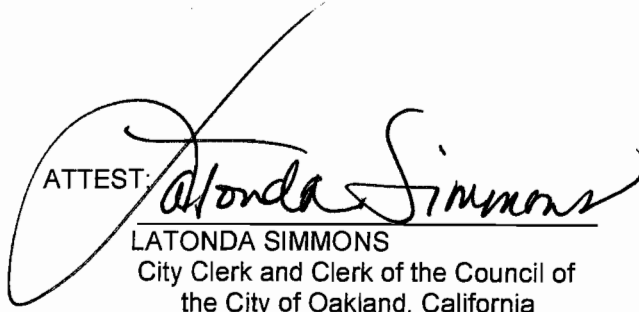
AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, ~~KESSLER~~, QUAN, REID, AND  
PRESIDENT DE LA FUENTE - 7

NOES - Nadel - 1

ABSENT - 0

ABSTENTION - 0

ATTEST:

  
LATONDA SIMMONS  
City Clerk and Clerk of the Council of  
the City of Oakland, California