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K Jarn  
DEPUTY CITY ATTORNEY

## OAKLAND CITY COUNCIL

### RESOLUTION NO. 82942 C.M.S.

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**A RESOLUTION DENYING THE APPEAL (A10-125), THEREBY UPHOLDING THE PLANNING COMMISSION DECISION TO APPROVE A MAJOR CONDITIONAL USE PERMIT AT 1500 E. 12<sup>TH</sup> STREET TO ESTABLISH A SELF-SERVE LAUNDROMAT (CONSUMER SERVICE COMMERCIAL ACTIVITY) (PLANNING CASE FILE NO. CM10-065)**

**WHEREAS**, the applicant Phil Do (the "Applicant"), filed an application on March 10, 2010 for a Major Conditional Use Permit (the "Application"), in accordance with City of Oakland Emergency Ordinance No. 12972 (the "Emergency Ordinance"), to establish a Self-Serve Laundromat (Consumer Service Commercial Activity) (the "Project"); and

**WHEREAS**, the aforementioned Application was deemed to be complete by the City of Oakland on April 9, 2010; and

**WHEREAS**, the City Planning Commission held a duly noticed public hearing, took oral and written testimony and considered the matter at its meeting held May 5, 2010, and at the close of the public hearing it voted (6-0) to determine that the Project is categorically exempt from the California Environmental Quality Act and to approve the Project, subject to conditions of approval; and

**WHEREAS**, on May 17, 2010, an appeal of the Planning Commission's decision to approve the Project (the "Appeal") was filed by Bruce Vuong, Bill Phua, Ramesh Patel, Louis Lam, Nancy Chung, and Enoch Shin, ("Appellants"); and

**WHEREAS**, after the filing of the Appeal and prior to the City Council hearing on the Appeal, three of the Appellants (Bruce Vuong, Louis Lam and Nancy Chung) withdrew in writing from the Appeal such that only Bill Phua, Ramesh Patel, and Enoch Shin remain as Appellants; and

**WHEREAS**, Appellants failed to exhaust their administrative remedies because they did not (nor did anyone else) present to the Planning Commission at or prior to the May 5, 2010 public hearing on the Project the specific objections they now raise in the Appeal, even though

the Notice of such hearing expressly required that "[i]f you challenge a Commission decision in court, you will be limited to issues raised at th[is] public hearing or in correspondence delivered . . . at, or prior to, the public hearing." Thus the Appeal raised for the first time the specific objections to the Project when such objections are required to have been raised before the Planning Commission in order to be considered as part of an appeal; and

**WHEREAS**, after giving due notice to the Appellants, the Applicant, all interested parties, and the public, the Appeal came before the City Council in a duly noticed public hearing on July 20, 2010; and

**WHEREAS**, the Appellants, Applicant and all other interested parties were given the opportunity to participate in the public hearing by submittal of oral and written comments; and

**WHEREAS**, The City Council independently finds and determines that this Resolution complies with CEQA, as the Project is categorically exempt from the California Environmental Quality Act ("CEQA"), pursuant to, without limitation, CEQA Guideline Section 15301; 15332; and Section 15183, "Projects Consistent with a Community Plan, General Plan or Zoning" of the State CEQA Guidelines; and

**WHEREAS**, the public hearing on the Appeal was closed by the City Council on July 20, 2010; now, therefore, be it

**RESOLVED:** That the City Council, having independently heard, considered, and weighed all the evidence in the record presented on behalf of all parties and being fully informed of the Project and the Application, the Planning Commission's decision, and the Appeal, finds that the Appellant has **not** shown, by reliance on evidence in the record, that the Planning Commission's decision was made in error, that there was an abuse of discretion by the Commission, and/or that the Commission's decision was not supported by sufficient, substantial evidence in the record. This decision is based, in part, on the July 20, 2010, City Council Agenda Report and the May 5, 2010, Approved Planning Commission Report, which are hereby incorporated by reference as if fully set forth herein. Accordingly, the Appeal is denied, the Planning Commission's decision approving a Major Conditional Use Permit for the Project to establish a Self-Serve Laundromat (Consumer Service Commercial Activity) required by the Emergency Ordinance and the Oakland Planning Code, is upheld and the Application is approved; and be it

**FURTHER RESOLVED:** That the Project is exempt from CEQA for the reasons set forth in the foregoing Recitals. The Environmental Review Officer as defined in Code Section 17.158.090 is directed to cause to be filed a Notice of Exemption with the appropriate agencies; and be it

**FURTHER RESOLVED:** That, in further support of the City Council's decision to deny the Appeal and approve the Project, the City Council affirms and adopts as its findings and determinations (i) the July 20, 2010, City Council Agenda Report 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 (ii) the May 5, 2010, Approved City Planning Commission Report, 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), except where otherwise expressly stated in this Resolution; and be it

**FURTHER RESOLVED:** That the City Council, separately and independently, denies the Appeal because the Appellants failed to exhaust their administrative remedies; and be it

**FURTHER RESOLVED:** That the record before this Council relating to this Project and Appeal includes, without limitation, the following:

1. the Project Application, including all accompanying maps and papers;
2. all plans submitted by the Applicant and his representatives;
3. all final staff reports, decision letters and other documentation and information produced by or on behalf of the City.
4. all oral and written evidence received by the City staff, Planning Commission and City Council before and during the public hearings on the Project and Appeal, including without limitation the transcript of the May 5, 2010 Planning Commission hearing on the Project;
5. all matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan and the General Plan Conformity Guidelines; (b) Oakland Municipal Code, including, without limitation, the Oakland real estate regulations, (c) Oakland Fire Code; (d) Oakland Planning Code; (e) other applicable City policies and regulations; and, (f) 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, Suite 2114, 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, JUL 20 2010

**PASSED BY THE FOLLOWING VOTE:**

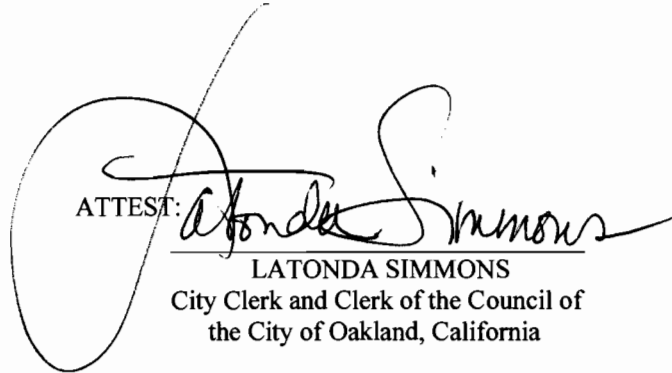
AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, AND PRESIDENT BRUNNER - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST:



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

**LEGAL NOTICE:**

**ANY PARTY SEEKING TO CHALLENGE THIS FINAL DECISION IN COURT MUST DO SO WITHIN NINETY (90) DAYS OF THE DATE OF THE ANNOUNCEMENT OF THIS DECISION, PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 1094.6, UNLESS A SHORTER PERIOD APPLIES.**