

**City Of San Leandro**  
**Community Development Department**  
**Planning Services Division**  
**Staff Report**

**DATE:** January 5, 2012

**TO:** Board of Zoning Adjustments

**FROM:** Elmer Penaranda, Senior Planner 

**SUBJECT:** **Matter of Revocation of PLN2011-00021;** to consider revoking Conditional Use Permit (CUP) to operate a trailer rental and sales business at 2661 Alvarado Street, Unit 22. The property referenced in the CUP was used for an unauthorized activity other than the operation of the trailer rental business through rental to an entity that conducted a public assembly in the trailer business location. The unauthorized occupancy violated the PLN2011-00021 Conditions of Approval. Pursuant to Zoning Code Article 29 the Board of Zoning Adjustments shall conduct the public hearing to consider revoking the CUP by making one or more findings listed in Article 29. Assessor's Parcel Number 77A-648-3-11; D. McKinney, C&M Trailer Rental (applicant); R. Legallet, 2661 Alvarado LLC (property owner); IG Industrial General District. *This item was postponed from the December 1, 2011 Board of Zoning Adjustments meeting and is being re-noticed for the January 5, 2012 BZA meeting.*

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**SUMMARY AND RECOMMENDATION**

Due to the seriousness of this matter this item was postponed from the December 1, 2011 Board of Zoning Adjustments meeting and rescheduled to the January 5, 2012 BZA meeting to have as many Board members in attendance as possible to insure the issues are thoroughly discussed and that a proper decision can be rendered.

C&M Trailer Rental, operated by Mr. Damon McKinney, and the property owner, Mr. Robert Legallet, 2661 Alvarado LLC, received a Conditional Use Permit (PLN2011-00021) for equipment rentals and used equipment sales at 2661 Alvarado Street, Unit 22. The Agreement to Conditions for the use permit and the excerpt of the BZA meeting minutes from September 1, 2011 are included as attachments.

The City has found that the property referenced in the Conditional Use Permit (CUP) was used for an unauthorized activity other than the operation of the trailer rental business through rental to an entity that conducted a public assembly in the trailer business location from Friday evening, September 30, 2011 to early Saturday morning, October 1, 2011. The unauthorized occupancy violated PLN2011-00021. In addition, the CUP was issued on misleading information and misrepresentation, as the City of San Leandro Police Department in its investigation found that the business owner advertised the space for rent for uses other than a place for the trailer rental business. Pursuant to Zoning Code Article 29 Enforcement, the City has scheduled a public hearing similar to the September 1st Board of Zoning Adjustments (BZA) meeting to consider revoking the original CUP.

Staff is recommending revocation of PLN2011-00021 based upon the Findings that the permit was issued on the basis of misleading information and misrepresentation and the terms and conditions of approval of the CUP have been violated.

## **BACKGROUND**

The subject property is zoned IG Industrial General and is located on the northwest corner of Alvarado Street and Aladdin Avenue. Properties surrounding the property are all zoned IG and contain primarily warehouse uses with manufacturing and/or distribution businesses, and building contractors. The subject parcel is a 5.4 acre site developed with a 95,860 square-foot multi-tenanted industrial building.

On May 17, 2006 Site Plan Approval (PLN2006-00017) was granted by the Zoning Enforcement Official (ZEO) to allow for the division of the existing single-tenant industrial building into 26 individual tenant rental spaces for light industrial, office and warehouse uses.

C&M Trailer Rental was granted a CUP to operate a rental facility on a portion of the property that specializes in trailers for transporting vehicles only. All of the trailers are stored inside the building until they are rented out by a customer. The business operates in a 3,945 square-foot in-line space facing Aladdin Avenue (south side of the building). The hours of operation are Monday through Saturday, by appointment only.

## **VIOLATION**

The November 5, 2011 letter to the applicant and property owner (included as an attachment) cites the property in the CUP was used for an unauthorized activity other than the operation of the trailer rental business through rental to an entity that conducted a public assembly in the trailer business location from Friday evening, September 30, 2011 to early Saturday morning, October 1, 2011. The unauthorized occupancy violated Conditions of Approval (COA), Section **II. PERMITTED USES** (see COA excerpt below) because it was not approved by the BZA as a permitted use and it was not permitted by the BZA as a modification to the use permit.

### **II. PERMITTED USE**

- A. This conditional use permit allows to operate a trailer rental and trailer sales business at 2661 Alvarado Street, Unit 22, where Vehicle/Heavy Equipment Dealers, Used and Vehicle/Heavy Equipment Sales are conditionally permitted uses in the IG Industrial General District; Alameda County Assessor's Parcel Number 77A-648-3-11. Per the proposed conditional use permit application there shall be no display or storage of the trailers outside the building.
- B. Any change or additional occupancy deemed minor in nature may be approved by the Community Development Director. A change or additional occupancy deemed major shall be referred to the Board of Zoning Adjustments for its consideration as a modification to the existing use permit.

In addition, the Police Department report states that business owner advertised the space for rent for other activities other than a place for trailer rentals (City of San Leandro Police Department Report is included as an attachment). The advertisement shows that the business owner had intentions to use the property for purposes other than the proposed and conditionally approved use. The CUP was therefore issued on the

basis of erroneous information and misrepresentation. Furthermore, a triple homicide occurred in the immediate area shortly after the unauthorized occupancy violating PLN2011-00021.

## **FINDINGS**

In order to revoke the Conditional Use Permit, the Board of Zoning Adjustments must make one or more of the following findings (Zoning Code Article 29 Enforcement):

1. That the permit was issued on the basis of erroneous or misleading information or misrepresentation;
2. That the terms or conditions of approval of the permit have been violated or that other laws or regulations have been violated;
3. That there has been a discontinuance of the exercise of the entitlement granted by the permit for 180 days;
4. That the approval has been so exercised to constitute a public nuisance or be detrimental to public health and safety.

Staff believes that the Board of Zoning Adjustments can make a finding that the activity at 2661 Alvarado Street, Unit 22 has been operated in violation of the terms and conditions of PLN2011-00021 (per #2. above). In addition, the advertisement to rent the space for other activities other than a place for trailer rentals shows that the permit was issued on the basis of erroneous information and misrepresentation (per #1 above). These findings comply with the requirements of Section 5-2906 of the Zoning Code and allows the Board of Zoning Adjustments to revoke the Permit.

After hearing testimony, should the Board believe it is necessary to revoke the permit, staff recommends that the Recommended Resolution containing written findings for that purpose be adopted.

### Business Owner's and Property Owner's Statements

The business owner and property owner have provided statements requesting that the City not revoke the CUP. They are attached to this staff report.

## **ENVIRONMENTAL REVIEW**

This project to revoke PLN2011-00021 is categorically exempt from the California Environmental Quality Act (CEQA) per CEQA Guidelines, Article 19, Section 15321 as enforcement actions by regulatory agencies do not require environmental review.

## **PUBLIC OUTREACH**

This item received normal noticing, including a legal advertisement in the Daily Review newspaper, posting of the property, and mailing notification of both business and property owners within a 300-foot radius.

## **RECOMMENDATION**

Staff is recommending revocation of PLN2011-00021 based upon the attached Recommended Resolution Revoking Conditional Use Permit PLN2011-00021 with the following Findings: 1) the permit was issued on the basis of misleading information and misrepresentation; and 2) the terms and conditions of approval of the CUP have been violated.

## ATTACHMENTS

Vicinity Map

City Letter to Mr. Damon McKinney, C&M Trailer Rental, and Mr. Robert Legallet (Property Owner), dated November 3, 2011

City of San Leandro Police Department Report

Recommended Resolution Revoking Conditional Use Permit PLN2011-00021 including Findings

Agreement to Conditions (unsigned COA)

Excerpt of Minutes of the Meeting of September 1, 2011

Business Owner's Statement

Property Owner's Statement

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