



**ZONING ADMINISTRATOR  
PUBLIC HEARING**

May 22, 2012

City Hall Ross Annex  
Second Floor Conference Room  
20 Civic Center Plaza, Santa Ana, CA 92701

**CALL TO ORDER: 10:00 a.m.**

Zoning Administrator: Sergio Klotz  
Recording Secretary: Jocelyn Magalona

**1. CONDITIONAL USE PERMIT NO. 2012-07 (Ali Pezeshkpour)**

Filed by Barry Hammond, representing the 7-Eleven convenience store to allow a conditional use permit for a Type 20 Alcoholic Beverage Control (ABC) license for the sale of beer and wine at the 7-Eleven at 1441 West MacArthur Boulevard located within the General Commercial (C2) zoning district.

**PUBLISHED IN THE ORANGE COUNTY REPORTER:** May 11, 2012  
**PUBLICLY NOTICED:** May 10, 2012

**RECOMMENDATION:**

Adopt a resolution denying Conditional Use Permit No. 2012-07.

**2. Public Comments**

**Adjournment**

If you need special assistance to participate in this Zoning Administrator meeting, please contact Ellen Smiley, City ADA Program Coordinator, at (714) 647-5340. Please call prior to the meeting date, to allow the City time to make reasonable arrangements for accessibility to this meeting. [Americans with Disabilities Act, Title II, 28 CFR 35.102]

Members of the public are allowed three (3) minutes to speak on each agenda item, but when any group desires to address the committee, the committee may request that its members agree on a spokesperson to make the presentation.

# REQUEST FOR Zoning Administrator Action



ZONING ADMINISTRATOR MEETING DATE:  
MAY 22, 2012

TITLE:  
PUBLIC HEARING – FILED BY BARRY HAMMOND  
FOR CONDITIONAL USE PERMIT NO. 2012-07 FOR  
A TYPE 20 ALCOHOLIC BEVERAGE CONTROL  
LICENSE FOR A NEW 7-ELEVEN AT 1441 WEST  
MACARTHUR BOULEVARD

Prepared by Ali Pezeshkpour

PLANNING COMMISSION SECRETARY

APPROVED

- As Recommended
- As Amended
- Set Public Hearing For \_\_\_\_\_

DENIED

- Applicant's Request
- Staff Recommendation

CONTINUED TO \_\_\_\_\_

*Karen Halunza*  
\_\_\_\_\_  
Planning Manager

## RECOMMENDED ACTION

Adopt a resolution denying Conditional Use Permit No. 2012-07.

### Request of Applicant

Barry Hammond, on behalf of 7-Eleven Stores, Inc., is requesting approval of a conditional use permit for a Type 20 Alcoholic Beverage Control (ABC) license for the off-premise sale of beer and wine at 1441 West MacArthur Boulevard. Establishments that sell alcoholic beverages require a conditional use permit pursuant to Section 41-196 of the Santa Ana Municipal Code (SAMC).

### Project Location and Site Description

The proposed location of the 7-Eleven is within an existing tenant suite in the small commercial center at the northeast corner of MacArthur Blvd. and Plaza Drive. The tenant suite is 2,496 square feet in size and is currently vacant. In 2008, Amendment Application No. 2008-02, General Plan Amendment (GPA) No. 2008-01, and Variance No. 2008-03 were approved for the site to allow for the construction of two new retail buildings and the remodeling of an existing structure. The project was completed in 2010. The center has 117 parking spaces. The site is surrounded by commercial uses to the east and south, and residential uses to the north and west (Exhibits 1 and 2).

### Project Description

7-Eleven, Inc. operates multiple convenience store locations in Santa Ana; it does not currently operate at the proposed location. The establishment proposes to obtain a Type 20 off-premise general license for the sale of beer and wine to the public.

The project seeks to display and store alcohol on a store shelf, a cold-case display, and rear storage area in accordance with Police Department regulations. The store shelf and cold-case displays containing the alcohol will be towards the rear of the store. The shelf display will be 1.5-feet by 3-feet in size; the cooler display area will be 2-feet by 10-feet in size, and the rear cooler storage will be 2-feet by 12-feet in size, for a total of 48.5 square feet, representing less than five percent of the store's gross floor area. The store also proposes 24-hour operation, for which an after hours conditional use permit is being processed concurrently with this application (Exhibits 3 and 4).

The applicant is also applying for a Conditional Use Permit to allow the store to operate 24 hours. Due to the fact that applications for ABC licenses, but not for after-hours permits, are heard by the Zoning Administrator, a separate public hearing has been scheduled with the Planning Commission to consider the request for the after-hours CUP. The sale of alcohol combined with the after hours operation are part of the company's business model, and the applicant has indicated that they would not occupy the space without approval of both the alcohol and the after hours conditional use permit applications.

### **Project Background**

7-Eleven Stores, Inc. is a globally-recognized convenience store chain. The company operates approximately one dozen stores in Santa Ana, which range in size from 2,400 to 3,000 square feet. These stores offer a full range of items typically found at a convenience store, as well as a large prepared food and beverage section. The company operates as a franchise, and the proposed store at 1441 West MacArthur Boulevard would be this operator's first location in Santa Ana.

### **General Plan and Zoning Consistency**

The parcel is located within the General Commercial (C-2) zoning district. C-2 zones allow for retail and service uses such as 7-Eleven stores, making the proposed use consistent with the zoning code.

The General Plan land use designation for the site is General Commercial (GC). Such land use designations are designed to provide retail-oriented uses along the City's commercial corridors, and to accommodate major development activity. The project site is consistent with this General Plan land use designation. However, the resulting over-concentration from the proposed alcohol license is inconsistent with multiple policies of the Land Use and Economic Development element of the General Plan. These include: Land Use Element Policy 2.9, which supports developments that create a safe and attractive business environment; Economic Development Element Policy 4.5, which discourages making land use decisions based purely on fiscal considerations; and Land Use Element Policies 5.1 and 5.5, which discourage projects that are not compatible with surrounding land uses and have the potential to negatively impact quality of life. Further details are provided in the Project Analysis and Findings of Fact sections, below.

**Project Analysis**

The Santa Ana Municipal Code regulates over-concentration of alcohol licenses for smaller markets and similar establishments. At 2,496 square feet in size, this application is subject to Section 41-132 of the SAMC which regulates off-site sale alcohol licenses for markets less than 20,000 square feet in size. The location is considered over-concentrated per this code section if it meets any of the following three criteria: the premise is located within 1,000 feet of another existing establishment with an off-site sale license, excluding markets over 20,000 square feet; the premise is located within 1,000 feet of any property used as a school primarily attended by minors, a church or a park; or the premise is determined to be over-concentrated by the State Department of Alcoholic Beverage Control.

After a thorough review of the surrounding land uses, it was determined that the subject property meets two of the three criteria necessary to be considered over-concentrated per the SAMC.

First, this store is within 1,000 feet of another off-sale outlet. It is located approximately 350 feet from Smart & Final at 3430 South Bristol Street. Next, the market is located within a census tract determined to be over-concentrated by the State of California because there are six existing licenses in the census tract; six is the maximum number of active licenses allowed for this census tract. Table 1 below provides details of the six licensed establishments.

Table 1

<b>Applicant</b>	<b>Location</b>	<b>Type</b>
Vons	3650 South Bristol	Type 21
Trader Joe's	3329 South Bristol	Type 21
Big Lots	3321 South Bristol	Type 20
Craig Liquor	1200 West MacArthur	Type 21
Smart and Final	3430 South Bristol	Type 21
Rite Aid	3325 South Bristol	Type 21

Type 20 – beer and wine for consumption off-site

Type 21 – beer, wine and distilled spirits for consumption off-site

Applications for similar conditional use permits for stores under 20,000 square feet in over-concentrated locations have been reviewed by staff in the past and were subject to the City's overconcentration standards. In 2009, K&S Food Store applied for a conditional use permit to allow a Type 21 ABC license for the off-premise sale of beer, wine, and distilled spirits. Following a presentation by staff, the Zoning Administrator adopted a resolution denying Conditional Use Permit No. 2009-16. This decision was based on findings that the location met two out of three of the City's criteria for overconcentration: the location was over concentrated with alcohol licenses and was within 1,000 feet of other sensitive land uses.

Conditional use permit requests are governed by Section 41-638 of the SAMC. Conditional use permits may be granted when it can be shown that the following can be established:

- That the proposed use will provide a service or facility which will contribute to the general well being of the neighborhood or community.
- That the proposed use will not, under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity.
- That the proposed use adversely will not affect the present economic stability or future economic development of properties surrounding the area.
- That the proposed use will comply with the regulations and conditions specified in Chapter 41 for such use.
- That the proposed use will not adversely affect the General Plan of the city or any specific plan applicable to the area of the proposed use.

If these findings can be made, then it is appropriate to grant the conditional use permit. Conversely, the inability to make these findings would result in a denial. Using this information staff has prepared the following analysis, which, in turn forms the basis for the recommendation contained in this report. In analyzing the conditional use permit request, staff believes that the following findings of fact warrant denial of the conditional use permit.

- The proposed alcoholic beverage control (ABC) license, in conjunction with the proposed after hours operations at the site, will not provide a service or facility which will contribute to the general well being of the neighborhood or community. Approving an additional off-site retail license would render the location over-concentrated per City standards as the location is within 1,000 feet of another active off-site retail license. Moreover, approving an additional off-site license would render the location over-concentrated per State standards, bringing the total number of licenses to seven. This over-concentration of establishments, coupled with the proposed 24-operation at the store, could have detrimental effects on the surrounding area.
- The proposed ABC license will be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity. The Police Department has determined that the proposed market is located in an area that is average in police-related incidents and is located within Reporting District No. 130, which ranks 30<sup>th</sup> out of 102 citywide districts in total number of police-related incidents. However, alcohol is a contributing factor in crimes, such as drunk driving, fatal traffic collisions, homicide, assaults, rape, domestic violence, drunk in public and other nuisance type of offenses. The addition of an alcohol sales establishment at a site that is also proposing 24-hour operation would create the potential for an increase in calls for service and/or the crime rate of the area.

- The proposed use will adversely affect the present economic stability or future economic development of properties surrounding the area. The denial of this application would support Policy 4.5 of the Economic Development Element of the General Plan. This policy discourages making land use decisions based purely on fiscal considerations and stresses the importance of the qualitative implications that are associated with new uses. The proliferation of alcohol licenses in a concentrated area is correlated with increases in nuisance crimes. Approving an additional ABC license at the location creates the potential to increase calls for service and nuisance crimes that will adversely affect the economic stability of the surrounding properties.
- The proposed alcohol license will not be in compliance with all applicable conditions of Chapter 41 of the Santa Ana Municipal Code regarding off-premise general liquor license since this location meets two of the three criteria established for defining over-concentration. The Santa Ana Municipal Code defines the overconcentration of alcohol licenses as a site that meets any one of the following criteria:
  1. The premise is located within 1,000 feet of another existing off-premise license location excluding markets over 20,000 square feet;
  2. The premise is located within 1,000 feet of any property used as a school primarily attended by minors, a church or a park;
  3. The premise is determined to be over-concentrated by the State Department of Alcoholic Beverage Control.

Although the subject property is not within 1,000 feet of a property used as a school primarily attended by minors, a church or a park, it is located within 1,000 feet of another existing off-premise license location under 20,000 square feet in size and is determined to be over-concentrated by the State.

- The proposed alcohol license will adversely affect the goals stated General Plan. The new alcohol license will be inconsistent with Policy 2.9 of the Land Use Element which supports developments that create a business environment that is safe and attractive. The alcohol license increases the potential for nuisance crimes such as loitering, disturbing the peace, graffiti and other crimes that impact surrounding businesses and residential neighborhoods. This potential would also be enhanced by the proposed 24-hour operation at the site. The granting of this application is also inconsistent with Policies 5.1 and 5.5 of the Land Use Element of the General Plan which discourages projects that are not compatible with surrounding land uses and have the potential to negatively impact their quality of life. The project's proximity to multi-family residential properties to the north and west further supports the denial of this application.

Over-concentration criteria were established by the City Council to maintain a balance between the sale of alcoholic beverages and the health and safety of the surrounding community. Based on those criteria, the project's incompatibility with several polices of the General Plan, and the concurrent application for an after hours conditional use permit at the site, staff recommends the denial of Conditional Use Permit 2012-07.

### **Police Department Analysis**

The Police Department reviews conditional use permit (CUP) applications for the sale of alcoholic beverages based on studies that show a strong correlation between the availability of alcohol and increased crime. It has been determined that the project's location at 1441 West MacArthur Boulevard is in an area with average police incidents, ranking 30<sup>th</sup> out of 102 citywide districts in total number of police-related incidents.

The proposed project is subject to Santa Ana Municipal Code (SAMC) Section 41-132(1) which defines over-concentration as any off-sale premises that are within 1,000 feet of another off-sale license. If approved, the site would be over-concentrated due to the other active license within 1,000 feet, Smart & Final, at 3430 South Bristol Street. Next, the proposed location is within 100 feet of high density multi-family dwellings that may see an increase in nuisance types of incidents if this license is approved.

Due to over-concentration issues, proximity to multi-family residential developments, and concerns with crime that could result from an over-concentration of licenses, the Police Department's policy is to recommend denial of applications such as these in order to provide consistency of analysis.

### **Public Notification**

The project site is not located within an established Neighborhood Association boundary. However, the presidents of the South Coast and Republic Homes neighborhood associations were notified by mail 10 days prior to this public hearing. In addition, the district representative from the City's Neighborhood Improvement Division contacted the presidents to ensure that the presidents were notified of the project and to see if there were any areas of concern. No areas of concern were identified by either Neighborhood Association president, nor was there a request that the applicant present the project to a meeting of members.


The project site itself was posted with a notice advertising this public hearing, a notice was published in the Orange County Reporter and mailed notices were sent to all property owners within 500 feet of the project site. At the time of this printing, no correspondence, either written or electronic, had been received from any members of the public.

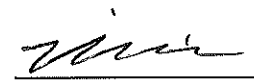
**CEQA Compliance**

In accordance with the California Environmental Quality Act the recommended action is exempt from further review per Section 15061(b)(3), which is a general rule exemption applying to projects that have no possibility of having a significant impact on the environment. Categorical Exemption Environmental Review No. 2012-16 will be filed for this project.

**Conclusion**

Based on the analysis provided within this report, staff recommends that the Zoning Administrator deny Conditional Use Permit No. 2012-07.

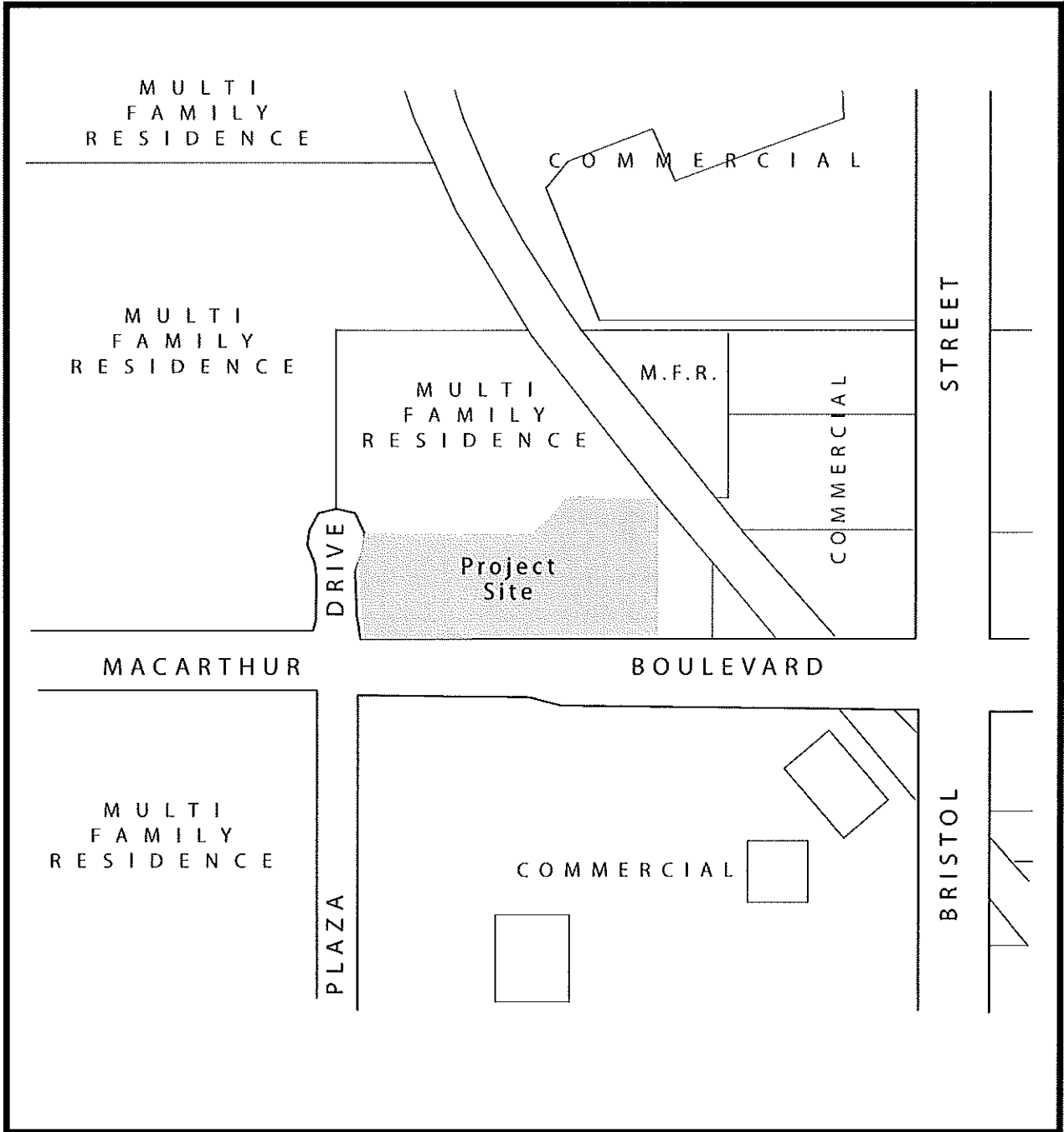
  
\_\_\_\_\_  
Ali Pezeshkpour  
Planning Intern

  
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Verny Carvajal  
Senior Planner

AP:jm  
ap\reports\CUP12-07 7-Eleven ABC.za

- Attachments:  
Exhibit 1 – Vicinity Map  
Exhibit 2 – Zoning Map  
Exhibit 3 – Site Plan  
Exhibit 4 – Floor Plan





CUP 12-07

7-ELEVEN TYPE 120 ABC  
 1441 WEST MACARTHUR BOULEVARD



P L A N N I N G   A N D   B U I L D I N G   A G E N C Y

LAND USE MAP  
 EXHIBIT 2





RESOLUTION NO. 2012-xx

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF SANTA ANA DENYING CONDITIONAL USE PERMIT NO. 2012-07 FOR A TYPE 20 ALCOHOLIC BEVERAGE CONTROL LICENSE FOR THE PROPERTY LOCATED AT 1441 WEST MACARTHUR BOULEVARD

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

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

- A. The applicant is requesting approval of Conditional Use Permit No. 2012-07 for a Type 20 Alcoholic Beverage Control license, which allows the sale of beer and wine for off-premise consumption, for the property located at 1441 West MacArthur Boulevard.
- B. Conditional Use Permit No. 2012-07 came before the Zoning Administrator of the City of Santa Ana for a duly noticed public hearing on May 22, 2012.
- C. Santa Ana Municipal Code Section 41-196 requires a conditional use permit for the sale of alcoholic beverages.
- D. The Zoning Administrator determines that the following findings, which must be established in order to grant a Conditional Use Permit pursuant to Santa Ana Municipal Code Section 41-638, have not been established:
  1. Will the proposed use provide a service or facility which will contribute to the general well being of the neighborhood or community?

The proposed project will not provide a service to the community since the new license would result in an overconcentration of ABC licenses in the area. The off-premise alcoholic beverage license has the potential to negatively impact the surrounding commercial and industrial uses, as well as residents in the adjacent areas. The established criterion was intended to

protect the health and safety of the surrounding community.

2. Will the proposed use under the circumstances of the particular case be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity?

The proposed alcoholic beverage control license would be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity. The Police Department has determined that the proposed market is located in an area that is average in police-related incidents and is located within Reporting District No. 130, which ranks 30th out of 102 citywide districts in total number of police-related incidents. Studies have shown that alcohol is a contributing factor in crimes, such as drunk driving, fatal traffic collisions, homicide, assaults, rape, domestic violence, drunk in public and other nuisance type of offenses. The addition of an alcohol sales establishment would contribute to the crime rate in the area.

3. Will the proposed use adversely affect the present economic stability or future economic development of properties surrounding the area?

The proposed use would adversely affect the present economic stability or future economic development of properties surrounding the area. The denial of this application would support Policy 4.5 of the Economic Element of the General Plan which discourages making land use decisions based purely on fiscal considerations but also the qualitative implications that are associated. This new alcohol license's potential to increase nuisance crimes will adversely affect the economic stability of the surrounding properties.

4. Will the proposed use comply with the regulations and conditions specified in Chapter 41 of the S.A.M.C. for such use?

The proposed alcohol license will not be in compliance with all applicable conditions of Chapter 41 of the Santa Ana Municipal Code regarding off-premise general liquor license since this location meets one of the three criteria established for defining over-concentration. The Santa Ana Municipal Code defines the over-

concentration of alcohol licenses as a site that meets any one of the following criteria:

1. The premise is located within 1,000 feet of another existing off-premise license location;
2. The premise is located within 1,000 feet of any property used as a school primarily attended by minors, a church or a park;
3. The premise is determined to be over-concentrated by the State Department of Alcoholic Beverage Control.

Although the subject property is not within 1,000 feet of a property used as a school primarily attended by minors, a church, or a park, it is located within 1,000 feet of another off-premise alcohol license and is in a location determined to be over-concentrated by the State.

5. Will the proposed use adversely affect the General Plan or any specific plan of the City?

The proposed alcohol license will adversely affect the General Plan in several ways. The new alcohol license will be inconsistent with Policy 2.9 of the Land Use Element which supports developments that create a business environment that is safe and attractive. The alcohol license increases the potential for nuisance crimes such as loitering, disturbing the peace, graffiti and other crimes that impact surrounding businesses and residential neighborhoods. The granting of this application is also inconsistent with Policies 5.1 and 5.5 of the Land Use Element of the General Plan which discourages projects that are not compatible with surrounding land uses and have the potential to negatively impact their quality of life. The project's proximity to multi-family residential properties to the north and west further supports the denial of this application.

- E. In accordance with the California Environmental Quality Act the recommended action is exempt from further review per Section 15061(b)(3), which is a general rule exemption applying to projects that have no possibility of having a significant impact on the

environment. Categorical Exemption Environmental Review No. 2012-16 will be filed for this project.

Section 2. The Zoning Administrator of the City of Santa Ana after conducting the public hearing hereby denies Conditional Use Permit No. 2012-07. This decision is based upon the evidence submitted at the abovesaid hearings, which includes, but is not limited to: the Request for Zoning Administrator Action dated May 22, 2012, and exhibits attached thereto; and the public testimony, all of which are incorporated herein by this reference.

ADOPTED this 22<sup>nd</sup> day of May, 2012.

\_\_\_\_\_  
Sergio Klotz  
Zoning Administrator

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

By: \_\_\_\_\_  
Ryan O. Hodge  
Assistant City Attorney

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, JOCELYN MAGALONA, Clerk of the Zoning Administrator, do hereby attest to and certify the attached Resolution No. 2012-XX to be the original resolution adopted by the Zoning Administrator of the City of Santa Ana on May 22, 2012.

Date: \_\_\_\_\_  
\_\_\_\_\_  
Clerk of the Zoning Administrator  
City of Santa Ana