



AGENDA REPORT

DATE: June 5, 2018
TO: Members of the City Council
FROM: Mayor Tom Butt
SUBJECT: REVIEW OF SIMS METAL CONDITIONAL USE PERMIT CUP 85-40

STATEMENT OF THE ISSUE:

In order to ensure the health and safety of the Richmond community, the City of Richmond should consider revoking or modifying Conditional Use Permit (CUP 85-40), originally issued to Sims-LMC Metals (Now Sims Metal Management) located at 600 South 4th Street in Richmond.

RECOMMENDED ACTION:

DIRECT the city manager and the city attorney to initiate revocation proceedings by the Richmond Planning Commission and schedule a Planning Commission hearing to consider revoking or modifying the conditional use permit (CUP 85-40), originally issued to Sims-LMC Metals (currently Sims Metal Management) located at 600 South 4th Street in Richmond, no later than July 30, 2018.

FINANCIAL IMPACT OF RECOMMENDATION:

There is no financial impact related to this item at this time.

DISCUSSION:

Pursuant to RMC 15.04.803.130 and 15.04.815.030, "Any permit granted under Article XV may be revoked or modified for cause if ... any law or regulation is violated."

On January 30, 2018, a fire occurred at the Sims Metal Management facility that, according to the BAAQMD, released, "high levels of particulate matter from the burning metals and plastics."¹

¹ BAAQMD Media Advisory, January 31, 2018, "Air District investigates fire at Sims scrap metal facility in Richmond."

Subsequently, the BAAQMD issued two Notices of Violation to Sims Metal Management for (1) an “illegal fire” and (2), “causing a public nuisance.”

In 2013, Sims Metal Management settled a lawsuit brought by the Contra Costa and San Francisco district attorneys by accepting a \$4.1 million fine.

According to the City and County of San Francisco's District Attorney's Office, during an investigation of Sims, undercover officers in San Francisco and Contra Costa County offered to sell the company utility wire, communication wire, and public utility fixtures.

The prosecutors said that the company's employees purchased the clearly “stolen” material, and failed to record the required information about the sellers.

Digging deeper, the investigators said that a lengthy review of the company's records revealed that these failures were just the tip of the iceberg.

For many years, Sims was said to have violated the anti-metal theft laws by, for example, not holding payments for the required three days or buying scrap metal without requiring identification or other information from the sellers.

Under the settlement reached with the prosecutors, Sims must pay \$4.1 million in civil penalties and costs.

Sims will also be bound by a permanent injunction that insures good business practices and prohibits future violations of the law.²

Because of the violation of laws and regulations by Sims Metal Management, the City of Richmond may revoke or modify CUP 85-40.

In addition to the violations described above, Sims Metal Management has made a practice of using intimidation against nearby property owners seeking permits for projects legitimately allowed by the applicable zoning.

Sims Metal Management filed a lawsuit against the City of Richmond and the developers of “Baywalk” at Wright Avenue and Marina Way, dropping it only after a monetary payment to Sims Metal Management.

Sims Metal Management filed an appeal of a Conditional Use Permit granted by the Richmond Planning Commission for a small restaurant proposed for 600 Hoffman Street. As a condition of dropping the appeal, Sims Metal Management demanded that the applicant post in the restaurant a statement that included, “

The eating establishment is located adjacent to and near industrially zoned and operated properties. The applicant acknowledges that industrial uses at the surrounding industrial properties may result in inconveniences or discomfort from noise, vibrations, odors, industrial and other heavy vehicle traffic, and visual impacts such as from industrial materials and equipment if such uses are not conducted in compliance with applicable

² <https://waste-management-world.com/a/4-1m-fine-for-sims-for-buying-clearly-stolen-metal-at-california-recycling-facilities>

local, state and federal regulations. In particular, the applicant, its employees and customers may be subject to: (1) loud noises from outdoor industrial, manufacturing or fabrication processes or movements of outdoor industrial materials; (2) vibrations generated from or during the outdoor industrial, manufacturing or fabrication processes or movements of related materials; (3) industrial lights from buildings, outdoor operations, parking areas and driveways at all hours of the day or night, and (4) views of outdoor industrial activities and materials. The applicant acknowledges that these potential impacts may result from operating a commercial eating establishment in an industrial area.

Ironically, when Levin Metals Corporation filed the initial application for a Conditional Use Permit, The Initial Study, signed by George D. Garafalo of Levin Metals Corporation, wrote:

Our existing facility has never had a noise or vibration problem. We have had our equipment tested and have met all OSHA standards. The area in which we are locating is zoned for heavy industrial uses. The equipment purchased is technologically the most advanced in reducing noise, vibration and is also energy efficient in its design.

We have also placed a tree line around our facility as an added feature to help as a sound and visual break. Our engineers feel this is more than adequate.

In addition to demanding that the applicant post the notice quoted above, Sims Metal Management threatened to sue the City of Richmond if the applicant did not acquiesce, putting the applicant in the position of defending the lawsuit due to the standard indemnification clause in conditional use permits issued by the City of Richmond.

The actions described above bring into question whether Sims Metal Management is a good neighbor and a good corporate citizen.

DOCUMENTS ATTACHED:

- Attachment 1 – 2.5.18 BAAQMD Notice of Violation
- Attachment 2 – Article \$4.1m Fine for Sims for Buying Clearly Stolen Metal at California Recycling Facilities
- Attachment 3 - BAAQMD Media Advisory January 31, 2018