

APPEAL
REQUEST FOR CITY COUNCIL OR PLANNING COMMISSION PUBLIC HEARING

TO: City Clerk's Office, City of Garden Grove
11222 Acacia Parkway, Garden Grove, CA 92840
(714) 741-5040

Pursuant to Section 9.32.110 of the Municipal Code, I hereby appeal the decision of the **Planning Commission / Zoning Administrator** in Case No. CUP-339-11 (REV. 2020), and petition the **City Council / Planning Commission** for a Public Hearing to consider **approving / denying / modifying** the subject application for the following reasons:

Please see the attached letter.

RECEIVED

SEP 09 2020

BY: Liz Vasquez
Deputy City Clerk
11:39 a.m.

9/9/2020 *[Signature]*

Date: September 8, 2020 Appeal Fee (see reverse): \$100.00

Appellant: Container Supply Company, Inc.

Address: 12571 Western Avenue

City & ZIP: Garden Grove 92841 Phone No.: 714-892-8321 x140

TITLE 9 APPEALS

SECTION 9.32.110 PURPOSE

The purpose of an appeal of a Hearing Body decision is to allow an applicant or an interested party of a land use action who feels aggrieved by the decision to seek review of the case by another imported hearing body.

SECTION 9.32.120 TIME FOR APPEAL

A decision of a Hearing Body on a land use action may be appealed by the applicant or an individual within twenty-one (21) days of the date on which the decision was rendered.

SECTION 9.32.130 FILING OF AN APPEAL

All appeals shall be submitted to the City Clerk on a City application form along with all applicable fees and shall specifically state the basis for the appeal.

SECTION 9.32.140 NOTICE OF AN APPEAL

Notice of an appeal hearing shall conform to the manner in which the original notice was given, as described in Section 9.32.040-100 of this Chapter.

SECTION 9.32.150 APPEAL HEARING/DECISION

- A. The hearing and decision procedures of an appeal shall be in accordance with 9.32.040-100 of this Chapter.
- B. Any modification of a land use action that was appealed by City Council shall be returned to the City Council for review.

Appeal Fee*	
General Plan Amendment	\$350
Amendment	\$350
Site Plan Amendment	\$350
Site Plan	\$350
Variance	\$350
Conditional Use Permit	\$480
Unclassified Use Permit	\$350
Planned Unit Development	\$350

*Tenants/Owners/Residents within legal notification area (300 feet) the appeal fee is \$100.00.



September 9, 2020

Ms. Teresa Pomeroy
City Clerk
City of Garden Grove
11222 Acacia Parkway
Garden Grove, CA. 92840

Dear Ms. Pomeroy:

The expansion of operating hours for The MAP to be concurrent to operating hours of industrial users in the area goes against the very argument that was used to allow for The MAP to be issued its original conditional use permit.

The original CUP incorporated an amendment to Title 9 to allow a new use, an "Indoor Sports Facility," in the M-P (Industrial Park) Zone, subject to a Conditional Use Permit. The amendment was predicated on the fact that indoor sports facility uses will not operate at the same time as regular business hours; rather the uses will operate after-hours on weekday evening and on the weekends. This measure to limit the operating hours was placed in order to mitigate conflicting operations and to ensure that children were not present in an industrial zone while industrial businesses were in their prime operating hours.

The expansion of operating hours to run concurrent with industrial users goes against the supporting arguments that were used to approve the original CUP.

Furthermore, the original CUP incorporated a modification to Title 9, Chapter 4, Subsection C.9 to include the following definition: *"Indoor Sports Facility" means an indoor space used by teams to practice sports or engage in league/club play most often during weekday evening and weekend days.* The very reasoning for adding the language to limit Indoor Sports Facility to weekday evenings and weekend days was to ensure that non-industrial uses would not conflict with industrial uses in an industrial zone.

Section 9.16.020.050: Special Operating Conditions and Development Standards was also modified to add specific standards for an "Indoor Sports Facility." *At no time shall an indoor sports facility impede the normal functions of the permitted uses in the zone in which it is located.* In point of fact, CSC has filed numerous complaints with Code

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Enforcement on weekdays during our normal operating hours of business when The MAP was concurrently operating, wherein our normal functions were impeded upon.

Trying to be good neighbors, the number of complaints we filed were not as frequent as the number of times that we witnessed cars lined up on Western Avenue waiting to enter the facility during our normal operating hours, the number of times The MAP patrons have parked on our facility and ran across the street to avoid being charged the parking toll more frequently than we care to remember. When we confront The MAP patrons who park in our parking lot or use our shipping area as drop off points, most often, we are met with disregard for private property. We have all but given up until this CUP was brought to our attention to extend the operating hours. We were not aware of the permitted hours of operation under the CUP, but had we known, we would have likely made more calls to the City. Their violations of operating hours were not brought to our attention until we received notice from the City that The Map was applying for extended hours. Their use of the facility during concurrent hours of our operation were so frequent, we assumed they had permission to operate concurrently.

The MAP cites one incident where CSC allowed a few of its employees to park on site on a weekend to attend a game at The MAP. This was one incident that we have voluntarily owned and they make attempts to blanket all weekend parkers as CSC employees. Nothing can be further from the truth.

Allowing for expansion of hours would create a dangerous situation for surrounding businesses. Truck drivers on Western Avenue understand that this is an industrial zone and do not expect children to dart into the street. It has happened and will continue to happen.

Now that we know the permitted hours of operation, it is clear The MAP has consistently violated its original CUP. Their permitted operating hours have been ignored for a long period of time. According to The MAP's Facebook advertisements dated September 22, 2015 and July 6, 2018, The MAP was in violation of its own CUP, as they hosted tournaments starting from 8 am on weekdays. Commissioner Lindsay attested on June 18, 2020 that their posted hours of operation on their front door were in violation of the allowed operating hours. The MAP countered that this was due to the hardship posed by COVID-19 and that the hours inconsistent with permitted hours were for soft openings. This is a false statement. They have been operating in violation of their permitted hours for a long period of time, well before the advent of COVID. The wear and tear of the signage that stated hours of operations as Mon – Fri 9am – 11pm, as witnessed by Commissioner Lindsay (*"The stickers on the window did not appear to be very new"*) as well as our observation being immediately across the street, will attest

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to its long standing violation of operating hours. Another commissioner texted his wife during the hearing and asked her what time she normally takes their child to The MAP on weekdays and she responded 4:30, a time that was not permitted. When he asked if there were teams playing before she arrived, she responded, yes. It was further stated that this was the case for the last two years. Finally, an audit of their reservation schedule would bear witness to the falsehood of the statement that their early openings were for soft opening purposes or were COVID related.

When responding to why they were in violation of the granted CUP, the owner of The MAP, Marty Walker, stated, *"We had a small hiccup. We've been closed for three months... We had some private schools that needed assistance since Next Level closed in mid and late afternoon, and I guess that would be the reasoning we stepped out of the zone for a very minute time."*

There were two problems with this statement. The first issue is The MAP was in operation outside of the allowed hours during the first CUP meeting in June. In August, Marty stated they have been closed for three months. There is no evidence to suggest that The MAP has ever been in compliance with the CUP. To reward the applicant with expanding their hours of operation seems unreasonable. The second issue is that they did not violate the CUP for a *"minute time."* They were in violation since 2015, and they advertised the hours on their own Facebook website. There is no evidence to prove that The MAP was ever in compliance with the CUP.

In response to a commissioner's statement regarding his experience living next to another indoor sports facility, Next Level, dealing with the weekend parking that flooded the high school nearby and the residential neighborhoods with patrons who did not want to pay the parking toll, The MAP's representative stated, *"There is a difference between location of Next Level and the location of The MAP in an industrial park. There was so much adjacency to Next Level and residential, school that it was so convenient for them to park off-site unfortunately interrupting neighborhoods and a byproduct of what went on at Next Level."* CSC may not be a high school or a residential site, but we experience exactly what the commissioner stated. In fact, it is the adjacency of our facility that makes it attractive for patrons of The MAP who wish to avoid paying the parking toll that draws them to park on our private property. The commissioner went on further to state that Next Level had plenty of parking when patrons were flooding his neighborhood. It wasn't for lack of parking that Next Level patrons weren't parking on-site, it was to save money. In the case of The MAP, the same is true. They may have sufficient parking on-site, but there will always be patrons who wish to avoid the parking toll by simply parking across the street on our property.

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There were also actions by Planning Commission that were confusing to say the least.

A commissioner asked, *"Isn't it true that we have the opportunity to modify the conditions...?"* The City Attorney responded, *"the public notice did not put the applicant on notice that the Planning Commission would be considering modifying hours, it would be inappropriate for the Planning Commission to unilaterally take that action."* In conclusion, the Commission called for a follow up hearing scheduled for September 17, 2020.

By the City Attorney's initial response, it would seem that an action by Planning Commission requires proper notice to the public of potential action to be taken. However, on July 16, 2020, a public hearing was held and the Planning Commission changed the date of the follow up hearing from September 17, 2020 to August 20, 2020. Curiously, The MAP representatives were present at this meeting, but no notice was sent out to the public for this action; therefore, we were not able to make comment on this change. If the Planning Commission was aware that this action would be considered, CSC should have been notified so that we too could participate in this process, but we were unaware of this action and only learned of its action after the fact. It seems terribly unfair for The MAP to be placed on notice by the City of a pending action and the rest of the public, who are known to have interest, were not made aware. The lack of notice to the public is not only unfair, but appears to be in direct contrast to the City Attorney's initial statement that actions cannot be taken if proper public notice is not given in advance.

In sum, the consideration to extend the operating hours to coincide with other industrial users in the area creates a dangerous situation for all parties involved. It goes against the very argument that allowed The MAP to operate in an industrial zone – that they would operate only during non-operating hours of the industrial users around it.

We request an appeal to the City Council and that this letter along with all of our previous correspondences to the City be made available to the City Council members.

Cordially,

Spencer Hurtt
President/CEO

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CONTAINER SUPPLY CO., INC.

63688

DATE	INVOICE NO	COMMENT	AMOUNT	DISCOUNT	NET AMOUNT
09/08/20	09082020	FEE TO APPEAL-THE MAP	100.00	.00	100.00

CHECK: 063688 09/08/20 CITY OF GARDEN GROVE

CHK TOTAL: 100.00

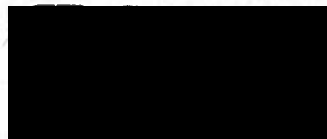
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CONTROL NO.	CHECK DATE
063688	09/08/20



CONTAINER SUPPLY CO., INC.
 Manufacturer of Metal & Plastic Containers
 12571 Western Ave.
 Garden Grove, CA 92841-4012

63688



*ONE HUNDRED DOLLARS AND NO CENTS

CHECK AMOUNT
\$100.00*

PAY TO THE ORDER OF
 CITY OF GARDEN GROVE
 ATTN: BUSINESS TAX
 P.O. BOX 3070



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