



CITY OF POMONA

PLANNING COMMISSION REPORT

DATE: April 26, 2017

TO: Chairperson and Members of the Planning Commission

FROM: Development Services Department - Planning Division

SUBJECT: **CODE AMENDMENT (CODE 6899-2017) WASTE AND RECYCLNG FACILITIES**

A request to amend Section .062 ("Definitions"), Section .580 J ("Uses requiring CUP"), Section .342 (C-1 Zone uses expressly prohibited), Section .352 (C-2 Zone uses expressly prohibited), Section .362 (C-3 Zone uses expressly prohibited), Section .367 (C-C zone uses expressly prohibited), Section .372 (C-4 Zone uses expressly prohibited), Section .392 (C-IND Zone uses expressly prohibited), Section .398 (M Zone uses expressly prohibited), Section .412 (M-1 Zone uses expressly prohibited), and Section .422 (M-2 Zone uses expressly prohibited) of the Pomona Zoning Code to prohibit new waste and recycling uses as allowed uses throughout the City, with the exception of convenience recyclers, and rescind Determination of Similarity (DOS 99-008) allowing Trash Transfer Facilities with a CUP.

STAFF RECOMMENDATION

The Planning Division recommends that the Planning Commission adopt the attached Resolution recommending to the City Council the following:

1. Approval of Code 6899-2017 to amend Section .062 ("Definitions"), Section .580 J ("Uses requiring CUP"), Section .342 (C-1 Zone uses expressly prohibited), Section .352 (C-2 Zone uses expressly prohibited), Section .362 (C-3 Zone uses expressly prohibited), Section .367 (C-C zone uses expressly prohibited), Section .372 (C-4 Zone uses expressly prohibited), Section .392 (C-IND Zone uses expressly prohibited), Section .398 (M Zone uses expressly prohibited), Section .412 (M-1 Zone uses expressly prohibited), and Section .422 (M-2 Zone uses expressly prohibited) of the Pomona Zoning Code to prohibit new waste and recycling uses as allowed uses throughout the City, with the exception of convenience recyclers, as defined.
2. Rescind Determination of Similarity (DOS 99-008) allowing Trash Transfer Facilities with a CUP.

PROJECT/APPLICANT INFORMATION

Project Location:	Citywide
APN Information:	Not applicable
Project Applicant:	City of Pomona, Development Services Department, Planning Division
Property Owner:	Not applicable
City Council Districts:	Citywide

BACKGROUND

On June 16, 2014, the City Council enacted a moratorium on waste and recycling facilities in the City of Pomona. That moratorium was extended twice, as allowed by law, in order for the City to evaluate the issues and possible regulations available to address the effects of these land uses. The Council created a Waste & Recycling Task Force which presented a proposed zoning code amendment to the Planning Commission on March 23, 2016. The Planning Commission did not approve the proposed ordinance, but recommended that the City Council review the findings and proposal of the Task Force. On April 18, 2016, the City Council heard testimony from the public and reviewed the proposed ordinance of the Task Force. The Council then appointed an Ad Hoc committee comprised of former Mayor Rothman, and former Councilmembers Paula Lantz and John Nolte to evaluate the proposed ordinance and legal issues raised at prior meetings.

The Waste and Recycling Ad Hoc Committee discussed various options of moving forward with a new Ordinance to address both new and existing waste and recycling businesses. To understand the magnitude of the current conditions in Pomona, the City Council requested that staff from the Development Services Department inspect existing waste and recycling operators, and provide a report on the status of the conditions and identify any noticeable violations of CUPs or violations of the Pomona Zoning Ordinance.

After the City Council received the report from Development Services Department staff on the status of the conditions of waste and recycling Facilities within the City on October 3, 2016, the City Council directed staff to enforce code enforcement actions against those waste and recycling businesses not in compliance with development and operational standards defined in the City's Zoning Code, or are in violation of CUPs. Further, the City Council directed staff to introduce amendments to the Pomona Zoning Code banning any new waste and recycling facilities throughout the City, with the exception of convenience recyclers.

ISSUES ANALYSIS

All proposed code amendments included in CODE 6899-2017 are presented in Attachment 1 to this staff report. The major area issues are outlined below.

CREATION OF NEW DEFINITIONS

The Waste & Recycling Task Force presented a proposed code amendment to the Planning Commission and to the City Council on March 23, 2016, and April 18, 2016, respectively. Although not adopted by the City Council, the code language presented by the Task Force contains a number of new definitions that is necessary to be included in the Pomona Zoning Code in order to effectively capture the wide array of different waste and recycling facilities in the industry. Therefore, staff has included the pertinent new definitions in the proposed amendment to Section .062 of the Pomona Zoning Code.

The new definitions to be added are the following:

- Pallet yards
- Automobile dismantling facility
- Construction & demolition waste
- Electronic waste
- Electronic waste facility
- Food waste
- Food waste facility
- Greenwaste
- Greenwaste facility
- Hazardous waste
- Hazardous waste facility
- Medical waste facility
- Mixed waste
- Recyclable materials or recyclables
- Recycle, recycling
- Recycling facility
- Recycling facility - Convenience
- Recycling manufacturer
- Solid waste
- Solid waste facility

The definitions proposed are designed to be broad enough in description that they are capable of capturing the complexities of the various evolving types and systems of processing waste and recycled materials that occurs in a worldwide logistical environment.

USES REQUIRING A CUP

Section .580 J of the Pomona Zoning Code governs the uses that are allowed in the City with an approval of a Conditional Use Permit (CUP). Currently, recycling centers are allowed with a CUP approval in M, M-1, and M-2 zones. It was the City Council's direction to ban new waste and recycling uses citywide. To do so, such uses (i.e. Recycling centers) must be removed from the list of uses allowed with a CUP approval.

The City Council also directed that convenience recycling facilities be allowed in all commercial zones, as well as commercial and mixed-use districts in Specific Plan areas. Therefore, convenience recycling facilities shall be added to the list of uses allowed with a CUP. In addition, Recycling Manufacturer is recommended to be added to list of uses allowed with a CUP.

Proposed revisions to Section .580 J of the Pomona Zoning Code is outlined below.

USE	ZONE IN WHICH ALLOWED
Recycling centers	M, M-1, M-2
<u>Recycling Facility - Convenience</u>	<u>C-1, C-2, C-3, C-4, C-IND, M-1, M-2, as well as commercial and mixed-use districts in Specific Plan areas</u>
<u>Recycling Manufacturer</u>	<u>M-1, M-2</u>

USES EXPRESSILY PROHIBITED

In the Pomona Zoning Code, a list of expressly prohibited uses is identified in each zone. On October 3, 2016, the City Council directed to ban all new waste and recycling facilities including hazardous waste, automobile dismantling, electronic waste facility, food waste facility, green waste facility, recycling facility, solid waste facility, construction and demolition waste facility, medical waste facility, and pallet yards throughout the City. Currently, these uses are not on the list of uses expressly prohibited for all commercial and industrial zones.

In order to accomplish the City Council's direction, the aforementioned uses shall be added to the list of uses expressly prohibited for the all commercial and industrial zones. This lead to the proposed amendments to Section .342 (C-1 zone uses expressly prohibited), Section .352 (C-2 zone uses expressly prohibited), Section .362 (C-3 zone uses expressly prohibited), Section .372 (C-4 zone uses expressly prohibited), Section .392 (C-IND zone uses expressly prohibited), Section .395 (M zone uses expressly prohibited), Section .412 (M-1 zone uses expressly prohibited), Section .422 (M-2 zone uses expressly prohibited), as presented in Attachment 1 to this staff report.

RECIND DETERMINATION OF SIMILARITY (DOS 99-008)

It is recognized that in the development of a comprehensive zoning ordinance, not all uses of land can be listed, nor can all future uses be anticipated. Therefore, Section .501-A of the Pomona Zoning Code authorized the city planner to approve a Determination of Similarity (DOS) application to grant allowance for uses that are similar to another permitted use, but are not listed. Once a DOS is approved to allow for an unlisted use in a particular zoning district, it allows for all other applications of the same use or the same category of uses to be permitted in that zoning district.

On March 3, 1999, the Planning Division approved DOS 99-008 to allow a waste and recycling use in the M-1 zone with a Conditional Use Permit. The decision made with the approval of DOS 99-008 now conflicts with the City Council's direction to ban any new waste and recycling uses throughout the City, including in the M-1 zone. Therefore, the recommendation is for the Planning Commission to also rescind the approval of DOS 99-008. Staff has included language in the attached Planning Commission resolution to implement this recommendation.

RESO CHANGES RECOMMENDED BY COMMISSIONER KYLE BROWN

This item was originally scheduled for the Planning Commission meeting on March 8th, 2017. Prior to the meeting, staff received an email from Commissioner Kyle Brown recommending that the following changes be made to the draft code language.

“Recycling Manufacturer” means a business that includes the cleansing, grinding, treating, and reconstituting of recyclable materials that would otherwise become solid waste, and returning them to the economic mainstream in the form of ~~raw material for new, reused, or~~ reconstituted products which meet the quality standards necessary to be used in the marketplace. Reconstituted products do not include wood chips, saw dust, compost or raw materials resulting from processing greenwaste or construction and demolition waste.

Commissioner Brown stated that his intent is to offer language that expressly excludes wood chips, etc. from being considered “reconstituted products” and also to exclude facilities that merely process items into raw material for reconstitution. He believes that these facilities will offer the same adverse impacts as other processing facilities, without substantial benefit to the community.

Therefore, staff prepared revised Resolution incorporating the amended language recommended by Commissioner Brown and provided the Commissioners a copy of the revised Resolution at the March 8th, 2017 Planning Commission meeting.

PLANNING COMMISSION HEARING ON MARCH 8, 2017

This item was on the Planning Commission Agenda for its regular meeting on March 8th, 2017. The Planning Commission continued this item, but took public testimony. There were a total of 41 individual who filled out a speaker card to express support or opposition of the proposed ordinance. A majority of the 41 individuals provided verbal testimony while some declined to speak.

Among the speakers were members of Clean and Green Pomona who expressed discontent that contents from the original ordinance drafted by the Waste & Recycling Task Force were omitted in the proposed ordinance. To that, the Planning Commission directed that members of Clean and Green Pomona to submit to staff information on which items were omitted from the ordinance presented, and provide a comparison between the proposed ordinance and the original ordinance drafted by the Waste & Recycling Task Force. As of this writing, staff has not received the information from members of Clean and Green.

Members of the pallet yard industry were also present at the March 8, 2017 Planning Commission meeting and spoke in opposition of pallet yards being included as a waste and recycling facility in the proposed ordinance. To that, the Planning Commission directed the pallet industry to submit a memorandum detailing their issues of concern. Since then, members of the pallet company have met with planning staff. However, as of this writing, staff has not received a written memorandum from the pallet industry.

Members of the community also expressed air quality concerns. To that, the Commission directed

staff to return with air quality data from the Southern California Air Quality Management District (SCAQMD). Staff discusses the findings in the following section.

AIR QUALITY IN POMONA

The Southern California Air Quality Management District (SCAQMD) is the air pollution control agency for all of Orange County and the urban portions of Los Angeles, Riverside and San Bernardino Counties. The City of Pomona falls within the boundary of patrol of SCAQMD. The SCAQMD uses an Air Quality Index (AQI) to measure daily air quality. The range and description of the AQI values is listed below:

AQI 0-50: Good
AQI 51-100: Moderate
AQI 101-150: Unhealthy for Sensitive Groups
AQI 151-200: Unhealthy
AQI 201-300: Very Unhealthy
AQI 301-500: Hazardous

The AQI is a daily air quality index. Therefore, the AQI reading is reflective of the daily fluctuating environmental conditions of the city and could change daily. Data on Pomona's air quality was retrieved on Thursday, April 20th, 2017. According to the data, the City of Pomona has an AQI of 55, which is consider moderate. Staff has attached the data with this report.

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

A speaker at the March 8th, 2017 Planning Commission meeting provided information that the Office of Environmental Health Hazard Assessment (OEHHA) identified the City of Pomona as one of the most polluted cities in the region. In response to that, staff researched into data available on the OEHHA's website.

The OEHHA, on behalf of the California Environmental Protection Agency (CalEPA), provides the California Environmental Health Screening Tool online named CalEnviroScreen 3.0. CalEnviroScreen is a screening methodology that can be used to help identify California communities that are disproportionately burdened by multiple sources of pollution. The higher the CalEnviroScreen score, the more polluted a community is.

According to the tool, Pomona has a CalEnviroScreen score of between 75% to 100%, which is higher than most communities in the region. Nevertheless, the data is a compilation of various sources and types of pollution and is not specific to just air pollution. Staff has attached the CalEnviroScreen finding with this report.

LETTERS RECEIVED

As of this writing, staff received five letters from interested individuals/groups expressing both

support and concerns of the proposed ordinance. Staff has attached the letters with this report, and the City Attorney will provide his opinion of the letters at the hearing.

CONCLUSION

Over the past several years, the City Council and the Planning Commission have received numerous testimonies from residents voicing concerns regarding the nuisance generated by existing waste and recycling uses located adjacent to existing homes within industrial areas mostly in the southeast quadrant of the City. As a result, the City Council created a Waste & Recycling Task Force and established an Ad Hoc Committee to study the issues, and to work with the residents and owners of waste and recycling facilities. The City Council recognized the negative health and safety impacts that these facilities could impose on the surrounding residents; therefore, on October 3, 2016, the City Council has directed to ban any new waste and recycling uses citywide.

CODE 6899-2017 incorporates all necessary code amendments to implement the City Council's direction. Once adopted, these code amendments are anticipated to contribute to the improvement of overall health and safety of citizens of Pomona by better separating land uses that have been known to be incompatible with each other. Staff notes that Specific Plan areas were not included due to the fact that the Specific Plans are already very specific in describing allowed uses and waste and recycling uses are not allowed.

RECOMMENDATION

The Planning Division recommends that the Planning Commission adopt the attached Resolution recommending to the City Council the following:

1. Approval of Code 6899-2017 to amend Section .062 ("Definitions"), Section .580 J ("Uses requiring CUP"), Section .342 (C-1 Zone uses expressly prohibited), Section .352 (C-2 Zone uses expressly prohibited), Section .362 (C-3 Zone uses expressly prohibited), Section .367 (C-C zone uses expressly prohibited), Section .372 (C-4 Zone uses expressly prohibited), Section .392 (C-IND Zone uses expressly prohibited), Section .398 (M Zone uses expressly prohibited), Section .412 (M-1 Zone uses expressly prohibited), and Section .422 (M-2 Zone uses expressly prohibited) of the Pomona Zoning Code to prohibit waste and recycling uses as allowed uses throughout the City, with the exception of convenience recyclers, as defined.
2. Rescind Determination of Similarity (DOS 99-008) allowing Trash Transfer Facilities with a CUP.

Respectfully Submitted:



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Prepared By:



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PC ATTACHMENTS:

1. Proposed Code Amendments
2. Planning Commission Resolution approving CODE 6899-2017
3. City Council staff report dated October 3, 2016
4. City Council meeting minutes from October 3, 2016
5. Original ordinance drafted by the Task Force
6. Pomona air quality data retrieved from SCAQMD website
7. Data from CalEnviroScreen
8. Letter from Rutan & Tucker dated March 8, 2017, and April 14, 2017
9. Letter from Dave Holmes dated March 22, 2017
10. Letter from Inland Communities Organizing Network dated April 19, 2017
11. Letter from Jackson Tidus Law Corporation dated April 20, 2017
12. Letter from SA Recycling dated April 20, 2017

