



# CITY OF POMONA COUNCIL REPORT

June 5, 2017

To: Honorable Mayor and Members of the City Council

From: Linda Lowry, City Manager

Submitted By: Mark Lazzaretto, Development Services Director

**Subject:** CODE AMENDMENT (CODE 6899-2017) WASTE AND RECYCLNG FACILITIES 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 EXPRESSEDLY 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 TH EXCEPTION OF CONVENIENCE RECYCLING USES AS ALLOWED USES THROUGHOUT THE CITY, WITH THE EXCEPTION OF CONVENIENCE RECYCLERS AND RECYCLING MANUFACTURES, AND RESCIND DETERMINATION OF SIMILARITY (DOS 99-008) ALLOWING TRASH TRANSFER FACILITIES WITH A CUP, AND RESCIND ARTICLE VI, DIVISION 8 OF THE POMONA CITY CODE PERTAINING TO MEDICAL WASTE FACILITIES.

## OVERVIEW

**Recommendation** – That the City Council conduct a public hearing and introduce for first reading an Ordinance approving a City-initiated Code Amendment to amend Section .062 (“Definitions”), Section .580 J (“Uses requiring CUP”), Section .342 (C-1 Zone uses

Submitted to City Council: \_\_\_\_\_  
Approved: \_\_\_\_\_  
Continued to: \_\_\_\_\_  
Denied: \_\_\_\_\_

Agenda Item # \_\_\_\_\_  
Resolution No(s): \_\_\_\_\_  
Ordinance No. \_\_\_\_\_

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 recycling manufacturers, and rescind Determination of Similarity (DOS 99-008) allowing Trash Transfer Facilities with a CUP, and rescind Article VI, Division 8 of the Pomona City Code pertaining to medical waste facilities.

**Fiscal Impact** – The proposed ordinance will not have any short term or long term financial impacts to the City.

**Previous Related Action** – On March 8<sup>th</sup>, 2017, the Planning Commission continued the meeting to April 26<sup>th</sup>, 2017. On April 26, 2017, the Planning Commission voted 5-2-0-0 to recommend to the City Council the approval of Code Amendment (CODE 6899-2017).

**Public Noticing Requirements** – Pursuant to Section .571(D) of the Zoning Ordinance, a notice of public hearing is required to be published in a newspaper of local circulation, at least ten days prior to the date of the public hearing. A notice was published in the Inland Valley Daily Bulletin on Friday, May 26, 2017.

**Environmental Determination** – Pursuant to the provisions of the California Environmental Quality Act (CEQA)-Public Resources Code, Sections 15060(c)(2) and 15060(c)(3) which pertain to activities that will not result in a direct or reasonably foreseeable indirect change to the environment and that are not defined as a *project* under Section 15378. Therefore, no further environmental review is required.

## 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 affects 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 and recycling manufacturers.

Under the City Council's direction, staff prepared the proposed Code Amendment (CODE 6899-2017). On March 8<sup>th</sup> 2017 the Planning Commission took public testimony on this project and continued the item to the April 26<sup>th</sup>, 2017 Planning Commission Meeting. On April 26<sup>th</sup>, the Planning Commission voted 5-0-2-0 to recommend to the City Council the approval of Code Amendment (CODE 6899-2017), with the inclusion of two additional prohibited uses – waste transfer station and medical waste facility.

## **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
- Medical waste
- Medical waste treatment facility
- Medical waste handling facility
- Mixed waste
- Recyclable materials or recyclables
- Recycle, recycling
- Recycling facility

- Green waste
- Greenwaste facility
- Hazardous waste
- Hazardous waste 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 and recycling manufacturers 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
<del>Recycling centers</del>	<del>M, M-1, M-2</del>
<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. Further, on April 26<sup>th</sup>, 2017, the Planning Commission recommended to the City Council the inclusion of two more prohibited uses – waste transfer station and medical waste facility.

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 and the Planning Commission's recommendation, 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.

### **RESCIND 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 City Council to also rescind the approval of DOS 99-008. Staff has included language in the attached City Council Ordinance to implement this recommendation.

### **RESCIND ARTICLE VI, DIVISION 8 OF THE POMONA CITY CODE PERTAINING TO MEDICAL WASTE FACILITIES**

Article VI, Division 8 of the Pomona City Code addresses to the construction, operation, franchise agreement, and maintenance requirements for medical waste facilities. Since new medical waste facilities are among the uses that would be banned with the proposed code amendment, Article VI, Division 8 of the Pomona City Code would then become obsolete and should be rescinded. Therefore, the recommendation is for the City Council to also rescind Article VI, Division 8 of the Pomona City Code. Staff has included language in the attached City Council Ordinance to implement this recommendation.

### **LETTERS RECEIVED**

In the past two months and throughout the process of Planning Commission hearing for the proposed code amendment, staff received many letters from interested individuals/groups addressed to the Planning Commission expressing both support and concerns of the proposed

ordinance. The letters were presented with the staff report to the Planning Commission. Staff has attached the Planning Commission staff report for the City Council's reference.

In addition, staff received a letter addressed to the City Council from the Institute of Scrap Recycling on May 13<sup>th</sup>, a letter from the California Metals Coalition May 16<sup>th</sup>, a letter from SA Recycling on June 1<sup>st</sup>, and a letter from the LA County Business Federation on June 1<sup>st</sup>. The letters have been attached with this report.

## **INSPECTIONS ON EXISTING WASTE AND RECYCLING FACILITIES**

Development Services Staff members including the Department Director, Manager, Code Compliance Manager and Code Compliance staff conducted inspections on a majority of the existing pallet yards that are currently operating in the City. Several of the operations have opened recently and several of the operations have existed for many years. There are physical and operational areas of concern that staff would recommend be modified at most of the locations. It is still recommended at this time, that the ban on new facilities continue to apply to pallet yard operations. It would be staff's recommendations that at a later date, staff present to the Planning Commission and the City Council, additional development standards that would apply to pallet yards to mitigate problem areas identified during the inspections.

## **CONCLUSION**

Over the past several years, the City Council has 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.

Once the Ordinance is approved by the City Council as presented, or modified, at the discretion of the City Council at second reading, the Ordinance will take effect 30 days thereafter.

Attachments:

1. Proposed Code Amendment
2. City Council Ordinance 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. Letter from California Metals Coalition, dated May 16, 2017
7. Planning Commission staff report dated April 26<sup>th</sup>, 2017
8. Unofficial Planning Commission meeting minutes dated March 8, 2017
9. Unofficial Planning Commission meeting minutes dated April 26, 2017