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June 5, 2017

Honorable Mayor Tim Sandoval City Council Members
City of Pomona
505 S. Gary Avenue
Pomona, CA 91766

Re: Proposed Code Amendment for Waste & Recycling Facility
Hearing Date June 5, 2017

Dear Honorable Mayor and Council members:

This letter services to offer clarification about SA Recycling's concern over the harm that will be caused by the proposed Code amendment that would prohibit recycling facilities in any part of the city. There was some conversation by the city attorney at the the planning commission hearing that SA would not lose any rights and any legal right to challenge would not be justified at this time. As discussed below, SA respectfully disagrees with that position.

SA has vested right as metal recycler pursuant to a use permit granted in 1986. The proposed code amendment will make a recycling facility a prohibited use in all zones of the city of Pomona. Under Section 550, 1st paragraph, of the Pomona Municipal Zoning Ordinance (PMZO), when a use that was once allowed in a zone is no longer permitted due to a zone change, the city is required to determine a time for the use to be terminated. A copy of that section is attached for your review. This section gives no guidance as to when this determination is to be made but it clearly gives the city the right and possibly the obligation to mandate a time for the unpermitted use to terminate. Some guidance on the section could be obtained from PMZO section 555 B wherein it states in part "that within five years after the notification by the city that an existing use is nonconforming, and not compatible, said use shall be terminated." A copy of that section is attached for your review. These sections would seem to give the city the right, and possibly the obligation, to determine a nonconforming use to be incompatible, causing the use to be terminated in 5 years. There is no guidance on the basis of a determination of incompatibility.

That fact that there is little guidance on sections 550 or 555 creates significant concern for SA Recycling as to how the city will treat the use if the use is deemed nonconforming by the proposed code amendment. As pointed out in the previous letters from legal council for SA and as has been recognized by the City Attorney in prior planning commission and city council hearings, a short time period for a nonconforming use to be terminated is probably an unconstitutional taking of a property right without due compensation. The fact that the City seems to have the ability, and maybe the obligation, to terminate the

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use in a short time frame is a significant enough concern that litigation would have to be considered if this code amendment is adopted as it is currently written

In addition, even if the code does not require termination of the use, the nonconforming use sections are extremely restrictive on how SA will be able to operate the use. Under the several Pomona zoning code sections, nonconforming uses are not allowed to add structures or equipment that were not part of the prior existing use permit, even if the equipment did not intensify or change the nature of the use. In other words, If SA wanted to install a new piece zero emission equipment that made loading inventory more efficient, the code would not allow that change. As an example, SA recently partnered with the Port of Los Angeles and the US EPA to acquire and install a zero emission electric crane used to load recycled metal onto ships. If that facility was a nonconforming use, the EPA would not have granted the grant nor would the city allow the crane to be install. Attached to this letter is a press release about crane installation and program. Or, if state regulations for metal recyclers were changed to require a new structure or permanent equipment, the nonconforming use sections of the zoning would prohibit the installation of the equipment. In other words, SA's existing vested rights will be immediately and severely impacted by the code amended, requiring litigation to resolve the impact.

SA offers a solution that should be a win win for everyone, which is to amend the code amendment to include the following language:

“This code amendment shall not apply to any metal recycling facility legally operating pursuant to a conditional use permit on the date this code amendment become effective. Those facilities shall not be deemed as a nonconforming use as a result of this code amendment, and shall be allowed to continue to operate in accordance with all applicable laws and permits”

With this language included, SA would continue to be able to operate based on its vested rights, the city would continue to have a facility provide the community with a much need metal recycling business, the city would not lose 200-300 jobs, new waste and recycling facilities would be banned and city still has code enforcement rights against exist waste and recycling facilities.

Jeff Farano Sr. Esq.
Corporate Counsel for
SA Recycling LLC.

Cc: Via email Andrew Jared, Esq., City Attorney
Via email Brad Johnson, Development Services Manager
Via email Linda Lowry, City Manager.

- **Sec. .550. - Nonconforming buildings and uses; intent and purpose.**

Where buildings and/or the use of buildings and/or the use of land with or without structures are not in conformity with the provisions of this zoning ordinance and where the uses of buildings and/or land are not compatible with the uses permitted in the zoning district in which they are located or where such uses are specifically prohibited, it is the intent and purpose of this section, in part, to:

- A.
Require, within a reasonable time, that said nonconforming uses be terminated; and
- B.
Require nonconforming, incompatible buildings, to be, within a reasonable period of time, removed from the land upon which they are located: and
- C.
Prescribe a reasonable amortization period for said nonconforming buildings, which period will define the remaining useful life of said buildings, after which the provisions set forth in subsection B of this section shall be applied; and also
- D.
Prescribe a reasonable period of time for the termination of nonconforming uses of the land where no buildings are involved.

Where buildings and/or the uses of buildings and/or the use of land with or without structures are not in conformity with the provisions of this zoning ordinance and where said uses of buildings and/or land are compatible with the uses prescribed in the zoning district in which they are located, it is the intent and purpose of this section, in part, to:

- A.
Permit said uses to continue for an unspecified length of time.
- B.
Prescribe limitations on the expansion of said nonconforming buildings and/or uses: and
- C.
Prescribe the termination of said nonconforming buildings and/or uses when said buildings and/or uses have been voluntarily discontinued for a specified period of time, and
- D.
Define the amount of reconstruction or rebuilding that may be done if said nonconforming building is destroyed by fire or act of God; and
- E.
Provide for the improvement of nonconforming buildings and/or uses as may be required by law and/or where the degree of nonconformity would be decreased.

All for the purpose of protecting the health, safety, welfare, convenience and prosperity of the persons residing or owning property in the neighborhood and zoning district in which the nonconforming uses are found to exist.

Sec. .554. - Nonconforming use of buildings and/or land.

A.

NONCONFORMING USE OF A NONCONFORMING BUILDING

Nonconforming uses in a nonconforming building may be expanded or extended throughout said building; provided, however, that no structural alterations, except those required by law or ordinance shall be made therein; and provided, further, that the uses of said building are not incompatible with the use of other property in the district. Further, if no structural alterations are made a nonconforming use of a nonconforming building may be changed to permit a similar or more restricted type of nonconforming use; provided, however, that said new use be determined by the commission to be more compatible with the uses permitted in the district.

B.

NONCONFORMING USE OF A CONFORMING BUILDING

The nonconforming use of a conforming building shall not be expanded or extended into any other portion of the conforming building, and if such nonconforming use is discontinued for a period of two years, any future use of said building shall be in conformity with the provisions of this ordinance; and further, that within five years after the notification by the city that an existing use is nonconforming, and not compatible, said use shall be terminated. Conforming uses in said buildings may be expanded.

(Ord. No. 3699, § 3 (part).)

C.

NONCONFORMING USE OF THE LAND

1.

The nonconforming use of land, where no main buildings are involved, may be continued for a period not to exceed three years after the effective date of this ordinance, subject to the following conditions:

(a)

No such nonconforming use of land shall be expanded or extended in any way either on the same or adjoining property.

(b)

Where such nonconforming use of the land is discontinued for a period of two years any future use of the land shall be in conformity with this ordinance.

Honorable Mayor
City of Pomona.
June 5, 2017

PACIFIC MARITIME ONLINE MAGAZINE

FRIDAY, MAY 19, 2017

New Electric Crane Debuts at POLA

By Mark Edward Nero

SA Recycling, Southern California's largest recycling operation and exporter of scrap metal, unveiled a new electric mobile crane at its Port of Los Angeles terminal this week.

A live demonstration of the crane was held during the May 15 event, which was attended by numerous port officials, as well as various public officials, or their designated representatives, including members of the state Assembly and US House of Representatives.

The \$6.3 million Liebherr 550 electric crane replaces a model year 1987 diesel ship-loading crane, and is the port complex's first electric mobile ship-loading crane for non-container cargos. The crane was acquired in part through a \$1.3 million grant from the Environmental Protection Agency, as part of efforts between the Port of LA and its customers to transition to cleaner equipment.

The port has said the crane is expected to eliminate 74 tons of oxides of nitrogen (NOx), three tons of particulate matter (PM), three tons of hydrocarbons (HC) and 14 tons of carbon monoxide (CO) over the life of the equipment.



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Dear Honorable Mayor and Council members:

I am the Chief Financial officer for SA Recycling. I have the responsibility for all financial affairs of the company including obtaining financing for acquisition and day to day operations. I deal with many major lenders on a daily basis as part of my responsibilities.

It has come to my attention that the city is considering adopting a code amendment that would make the current use of metal recycling not allowed in any part of the city of Pomona and a nonconforming use. Unless we have an absolute right to operate on the property, we can not include the land in the collateral pool for a loan package. In addition, many grants that may be available for green equipment are not available unless the business has an unconditional right to operate. Nonconforming use designations generally is a deal stopper for these financing situations.

Mark Sweetman
Chief Financial Officer
SA Recycling LLC.

Cc: Via email Andrew Jared, Esq., City Attorney
Via email Brad Johnson, Development Services Manager
Via email Linda Lowry, City Manager.