



CITY OF POMONA

PLANNING COMMISSION REPORT

DATE: July 24, 2019

TO: Chairperson and Members of the Planning Commission

FROM: Planning Division

SUBJECT: **CODE AMENDMENT (CODE 12173-2019):** A request to amend the Pomona Zoning Ordinance (PZO) Section .554.B. (“Nonconforming Use of a Conforming Building”) and Section .554.C. (“Nonconforming Use of the Land”), pertaining to the period of time a legal nonconforming use has been discontinued. This proposed code amendment will include language to modify the length of time in which land uses and made nonconforming by Waste & Recycling Ordinance No. 4234 may be discontinued before the use is terminated, from two years to 180 days.

STAFF RECOMMENDATION

The Planning Division recommends that the Planning Commission adopt the attached Resolution recommending City Council approval of Code Amendment (CODE 12173-2019) (Attachment 1).

PROJECT/APPLICANT INFORMATION

Address	Citywide
Assessor’s Parcel Number (APN)	N/A
City Council District	Citywide
Applicant	City of Pomona, Development Services, Planning Division
Property Owner	N/A

BACKGROUND

On June 19, 2017, the Pomona City Council adopted Ordinance 4234 (“Waste and Recycling Ordinance”), which prohibited the establishment of new waste and recycling uses in the City of Pomona and added additional definitions for such uses. Under the current Pomona Zoning Ordinance, waste and recycling facilities that were legally established prior to the Waste and Recycling Ordinance are considered “legal nonconforming” and are allowed to continue operations without expansion unless the use has discontinued operation for a period of two or

more years.

On June 3, 2019, the City Council expressed concerns about relying on existing legal nonconforming timelines for waste and recycling facilities that were legally established prior to the implementation of the Waste and Recycling Ordinance and directed the Planning Division to provide options on phasing out legal nonconforming waste and recycling uses.

On June 17, 2019, the Planning Division presented the City Council with three options for terminating a legal nonconforming waste and recycling use:

Option 1: Abandonment. This option includes voluntary abandonment of a use, natural attrition, or , if a use is destroyed by fire or other disaster such that it cannot be conducted on site, the City may require the property to be brought into compliance. Under the Pomona Zoning Ordinance, when a business ceases operation for a period of two years or more, any future use of the land shall be in conformity with current standards. This rule requires both the cessation of use and proof of the property owner’s intent to abandon the nonconforming use.

Option 2: Amortization. This option involves establishing an amortization period that allows the owner to realize the value of its investment before ceasing operations. Federal law protects private property owners from unlawful “takings” of land; therefore, this method may require the City to provide just compensation for the elimination of a use, or a buy a business for market value in order to eliminate its use.

Option 3: Abatement of a Nuisance. This method refers to when there is a tangible threat or impact to public health and safety, defined as a “public nuisance.” Ultimately, a court decides whether such a nuisance exists. This option would require a detailed inquiry into the impacts of the businesses and a legal analysis of those facts in light of existing law. As abating a public nuisance necessarily interferes with individual investments in property, the City must proceed based on facts and afford the individual property owners an opportunity to challenge any nuisance findings. Abatement of public nuisances can be an effective way to address polluters and other businesses that have specific environmental impacts.

The City Council voted unanimously (7-0-0-0) to pursue Option 1 and directed the Planning Division to prepare a code amendment to the nonconforming section of the Pomona Zoning Ordinance (PZO) to shorten the timeframe in which a waste and recycling use can be discontinued from two years to 180 days.

ANALYSIS

This ordinance amendment would apply to all businesses that fall under the definitions set forth in the Waste and Recycling Ordinance. There are at least a dozen known pallets yards and five recycling businesses that were made legal nonconforming by the approval and adoption of the Waste & Recycling Ordinance. If a business operating with a legal nonconforming use ceases to operate and seeks to resume its legal nonconforming use prior to the two year timeframe, the business may resume its operations pursuant to Section .554.B and Section .554.C. The proposed code amendment will reduce the timeframe for land uses made nonconforming by

Waste & Recycling Ordinance No. 4234 from two years to 180 days. The request to reduce the timeframe for land uses made nonconforming is done so with the best interest of the community in mind while also taking into consideration the rights of the individual business/property owners to whom this change will impact.

PUBLIC NOTICING

A copy of the public hearing notice was published on July 10, 2019 in the Inland Valley Daily Bulletin (Attachment 3). As of the date of this report, staff has not received any comments in support or in opposition to the proposed ordinance.

ENVIRONMENTAL REVIEW

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. Accordingly, Code Amendment (CODE 12173-2019) is not subject to CEQA in that the proposed code amendment is not defined as a project.

CONCLUSION

The intent of the proposed code amendment is to ensure that the goals and objectives of the Pomona Zoning Ordinance are carried out by implementing an option that is equitable to the business/property owners with legal nonconforming land uses and to the community. Once adopted, the code amendment is anticipated to provide a path to bring legal nonconforming uses in line with the objectives of the Pomona Zoning Ordinance.

Respectfully Submitted:

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PC ATTACHMENTS:

- 1) Draft PC Resolution for Code Amendment (CODE 12173-2019)
- 2) Proposed Zoning Ordinance Sections .554.B. and .554.C.
- 3) Public Hearing Notice