



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:

Anita D. Gutierrez, AICP
Development Services Director

Prepared By:

Sandra Elias
Assistant Planner

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

PC RESOLUTION NO. 19-035

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF POMONA, RECOMMENDING CITY COUNCIL APPROVAL OF ZONING CODE AMENDMENT (CODE 12173-2019) TO MODIFY POMONA ZONING ORDINANCE SECTIONS .554.B. “NONCONFORMING USE OF A CONFORMING BUILDING” AND .554.C. “NONCONFORMING USE OF THE LAND,” TO MODIFY THE LENGTH OF TIME IN WHICH LAND USES MADE NONCONFORMING BY WASTE & RECYCLING ORDINANCE NO. 4234 CAN BE DISCONTINUED FROM TWO YEARS TO 180 DAYS.

THE PLANNING COMMISSION OF THE CITY OF POMONA DOES RESOLVE AS FOLLOWS:

WHEREAS, there has heretofore been initiated by the City of Pomona a proposed Code Amendment to amend Sections .554.B. “Nonconforming Use of a Conforming Building” and .554.C. “Nonconforming Use of the Land” pertaining to the time period as presently specified for discontinuance of nonconforming uses to reduce said time period specifically related to land uses made nonconforming by Waste & Recycling Ordinance No. 4234 in all zones from two years to 180 days;

WHEREAS, the Planning Commission of the City of Pomona, after giving notice thereof as required by law, held a public hearing on July 24, 2019, concerning Code Amendment (CODE 12173-2019) and carefully considered all pertinent testimony and the staff report offered in the case as presented; and

WHEREAS, the Planning Commission has duly considered the proposed changes to the Pomona Zoning Ordinance as well as finding consistency with the General Plan of the City.

NOW, THEREFORE, BE IT HEREBY RESOLVED:

SECTION 1. The Planning Commission exercising independent judgment finds that Code Amendment (CODE 12173-2019) is exempt from further review under the State Guidelines to Implement the California Environmental Quality Act (CEQA), Section 15060(c)(2) and 15060(c)(3). These sections 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, Code Amendment (CODE 12173-2019) is not subject to CEQA in that the proposed code amendment is not defined as a project.

SECTION 2. The Planning Commission recommends City Council approval of Code Amendment (CODE 12173-2019) amending Zoning Ordinance Sections .554.B. and .554.C. as follows:

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; **except for land uses made nonconforming by Waste & Recycling Ordinance No. 4234 as defined in Section .062., in which case if such nonconforming use is discontinued for a period for 180 days or more, any future use of said building shall be in conformity with the provisions of this ordinance or in the case of destruction due to acts of god, if an application for a building permit for the repair or replacement of the nonconforming structure has not been submitted to the Planning Department within 180 days after the structure's damage, the right to continue the nonconforming use and/or nonconforming structure shall terminate and the property and facilities accommodating or serving such activity or structure shall thereafter be utilized only for uses and with structures permitted or conditionally permitted by the regulations of the applicable zone** 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, **except for land uses made nonconforming by Waste & Recycling Ordinance No. 4234 as defined in Section .062., in which case if such nonconforming use is discontinued for a period for 180 days or more, any***

future use of said building shall be in conformity with the provisions of this ordinance (Ord. No. 3699, § 3 (part).)
c) *These provisions do not apply to land used for agricultural purposes.*

PLANNING

General Condition:

1. Business/property owners' of legal non-conforming waste & recycling businesses shall be notified of code amendment should the proposed code amendment be adopted by City Council.

SECTION 5. The Secretary shall certify to the adoption of this Resolution and forward the original to the City Clerk.

APPROVED AND PASSED THIS 24TH DAY OF JULY 2019.

DR. KYLE BROWN
PLANNING COMMISSION CHAIRPERSON

ATTEST:

ANITA D. GUTIERREZ, AICP
PLANNING COMMISSION SECRETARY

APPROVED AS TO FORM:

MARCO A. MARTINEZ
INTERIM ASSISTANT CITY ATTORNEY

CODE 12173-2019
PC Resolution No. 19-035
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STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)
CITY OF POMONA)

AYES: Camcho-Gonzalez, Urey, Grajeda, Bunce, & VanderMolen.

NOES: None.

ABSTAIN: None.

ABSENT: Brown & Kercheval.

"Pursuant to Resolution No. 76-258 of the City of Pomona, the time in which judicial review of this action must be sought is governed by California Code of Civil Procedure Section 1094.6."

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POMONA ZONING ORDINANCE

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; **except for land uses made nonconforming by Waste & Recycling Ordinance No. 4234 as defined in Section .062., in which case if such nonconforming use is discontinued for a period for 180 days or more, any future use of said building shall be in conformity with the provisions of this ordinance or in the case of destruction due to acts of god, if an application for a building permit for the repair or replacement of the nonconforming structure has not been submitted to the Planning Department within 180 days after the structure's damage, the right to continue the nonconforming use and/or nonconforming structure shall terminate and the property and facilities accommodating or serving such activity or structure shall thereafter be utilized only for uses and with structures permitted or conditionally permitted by the regulations of the applicable zone** 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, **except for land uses made nonconforming by Waste & Recycling Ordinance No. 4234 as defined in Section .062., in which case if such nonconforming use is discontinued for a period for 180 days or more, any future use of said building shall be in conformity with the provisions of this ordinance** (Ord. No. 3699, § 3 (part).)
 - c) These provisions do not apply to land used for agricultural purposes.

Inland Valley Daily Bulletin

(formerly the Progress Bulletin)
9616 Archibald Avenue Suite 100
Rancho Cucamonga, CA 91730
909-987-6397
legals@inlandnewspapers.com

(Space below for use of County Clerk Only)

5030269

Legal No. **0011290453**

POMONA CITY OF LEGAL
ATTN: CITY CLERK
PO BOX 660
POMONA, CA 91769

FILE NO. No. 4234.

PROOF OF PUBLICATION (2015.5 C.C.P.)

STATE OF CALIFORNIA County of Los Angeles

I am a citizen of the United States, I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the principal clerk of the printer of INLAND VALLEY DAILY BULLETIN, a newspaper of general circulation printed and published daily for the City of Pomona, County of Los Angeles, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Los Angeles, State of California, on the date of June 15, 1945, Decree No. Pomo C-606. The notice, of which the annexed is a true printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

07/10/2019

I declare under the penalty of perjury that the foregoing is true and correct.

Executed at Rancho Cucamonga, San Bernardino Co., California, on this 10th day of July, 2019.



Signature

NOTICE OF PUBLIC HEARING

Project Title: Code Amendment to the City of Pomona Zoning Ordinance (PZO) Section .554.B and .554.C related to land uses made nonconforming by Waste & Recycling City Council Ordinance No. 4234.

Project Applicant: Development Services Department, Planning Division

Project Location: Citywide

Project Description: Code Amendment (CODE 12173-2019) is a City-initiated request to amend Pomona Zoning Ordinance Section .554.B. ("Nonconforming Use of a Conforming Building"), 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 made nonconforming by Waste & Recycling City Council Ordinance No. 4234 can be discontinued from two years to 180 days.

Lead Agency: City of Pomona, Development Services Department, Planning Division.

Public Hearing Date & Location/Time: The public hearing is scheduled for **Wednesday, July 24, 2019 at 7:00 p.m.** in the City of Pomona City Council Chambers at 505 S. Garey Avenue in the City of Pomona.

located

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. Therefore, no further environmental review is required. This environmental determination will be considered by the Planning Commission at the public hearing for this project scheduled for July 24, 2019.

Public Hearing Notice

Any interested individual may appear in person or by agent at the Planning Commission hearing and be heard on any matter relevant to such proceedings. The staff report on this matter will tentatively be available in the Planning Division on July 18, 2019. Please call the Planning Division at (909) 620-2468 with any questions you may have regarding this matter.

PLEASE NOTE: If you challenge this matter in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Pomona, Planning Division at, or prior to, the public hearing.

Para Información en Español, llame (909) 620-2468

Date: July 8, 2019

Anita Gutierrez, ATCP
Development Services Director

Publication Date: July 10, 2019

Rosalía Butler
City Clerk

Inland Valley Daily Bulletin

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