

CITY OF CARSON
PLANNING COMMISSION
RESOLUTION NO. 21-2714

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CARSON RECOMMENDING THAT THE CITY COUNCIL ADOPT “ORDINANCE NO. 21-2113, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, AMENDING SECTION 9141.1 (USES PERMITTED) OF DIVISION 1 (USES PERMITTED) OF PART 4 (INDUSTRIAL ZONES) OF CHAPTER 1 (ZONING) OF ARTICLE IX (PLANNING AND ZONING) OF THE CARSON MUNICIPAL CODE REGARDING PERMITTED USES IN THE INDUSTRIAL (MANUFACTURING-HEAVY AND MANUFACTURING-LIGHT) ZONES FOR REGULATED AND NONREGULATED SUBSTANCES AND HAZARDOUS MATERIALS, AND ADDING SECTION 9182.46 (NONCONFORMITY FOR USE OR STORAGE OF REGULATED SUBSTANCES AND HAZARDOUS MATERIALS) TO DIVISION 2 (NONCONFORMITIES) OF PART 8 (IMPLEMENTING PROVISIONS) OF CHAPTER 1 (ZONING) OF ARTICLE IX (PLANNING AND ZONING) REGARDING NONCONFORMITIES FOR USE OF REGULATED SUBSTANCES” (ZONE TEXT AMENDMENT NO. 187-2021)

WHEREAS, pursuant to a letter dated February 21, 2020 and a response letter dated March 20, 2021 (copies of which are attached to the staff report submitted herewith and incorporated herein by reference), the City of Carson (“City”) received a request from John P. Kinsey, Esq., on behalf of Inland Star Distribution Centers, Inc., pursuant to Carson Municipal Code (“CMC”) Section 9172.11(A), for a text amendment to CMC Section 9141.1, a part of the Carson Zoning Ordinance (Chapter 1 of Article IX of the CMC), regarding the permitted uses for storage of materials in the City’s industrial zones (the “Request”); and

WHEREAS, following public hearings on April 13, 2021 and June 22, 2021 conducted by the Planning Commission and a public hearing held by the City Council on May 18, 2021, on July 27, 2021, the Planning Commission held a duly noticed public hearing as required by law to consider the Request. In so doing, the Planning Commission is recommending that the City Council approve Zone Text Amendment No. 187-2021 to modify CMC Section 9141.1 to provide (i) that land uses involving “Regulated Substances” in the M-H (Manufacturing-Heavy) or M-L (Manufacturing-Light) Zones at or above the “Threshold Quantity” are prohibited, (ii) that land uses involving “Regulated Substances” below the “Threshold Quantity” and land uses involving non-CalARP “Hazardous Materials” of any quantity, in the M-H (Manufacturing-Heavy) or M-L (Manufacturing-Light) Zones, be made subject to issuance of a conditional use permit, and (iii) for an expanded list of non-CalARP, nonhazardous substances that are automatically permitted uses for indoor storage, and permitted subject to Director approval for outdoor storage. The recommended prohibition of uses involving “Regulated Substances” at or above a threshold quantity would apply irrespective of whether the use involves only storage of “Regulated Substances,” storage of “Regulated Substances” in connection with any manufacturing process, or manufacturing involving “Regulated

Substances.” Regulated Substances, Threshold Quantity and Hazardous Materials are defined in Zone Text Amendment No. 187-2021; and

WHEREAS, Zone Text Amendment No. 187-2021 will also add CMC Section 9182.46 to provide a path forward for lawfully-established existing businesses in the City to continue to operate without becoming subject to the City’s legal nonconforming use regulations by mitigating or alleviating any adverse impacts thereof on such businesses. Businesses that elect not to engage in such mitigation process will be deemed nonconforming and be subject to the City’s nonconforming use regulations.

NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF CARSON, CALIFORNIA, HEREBY FINDS, RESOLVES AND ORDERS AS FOLLOWS:

SECTION 1. The Planning Commission finds that the foregoing recitals are true and correct, and incorporates them herein by reference.

SECTION 2. The Planning Commission finds as follows:

- a) The Planning Commission has considered the Request in accordance with CMC Section 9172.11(A). The request seeks an update and clarification to CMC Section 9141.1 with respect to the permissible uses for storage of particular materials in the City’s industrial zones, which are the Manufacturing-Heavy (“M-H”) and Manufacturing-Light (“M-L”) zones. More specifically, the Request states that “[t]here are any number of ways the City would amend the text of Section 9141.1 to provide clarity to the regulated public. However, the simplest way to strike a balance between achieving the City’s objectives of promoting health, safety and welfare and allowing storage facilities sufficient flexibility to engage in standard business practices would be to modify Section 9141.1 to allow storage facilities as a “by right” land use so long as CalARP-regulated materials are not stored onsite. If any landowner seeks to store CalARP-regulated materials, such use would require a Conditional Use Permit. [¶] Alternatively, the City could specifically authorize the storage of materials that are typically used in the manufacturing process for other industrial ‘by right’ uses.”
- b) There are several categories of nonhazardous materials that, under the existing CMC §9141.1, are listed as automatically permitted for manufacturing uses in the industrial zones, but that are not listed for storage uses in the industrial zones. The Carson Zoning Ordinance provides that all uses not expressly permitted are prohibited (CMC §9141.3). Accordingly, storage of these categories of materials is currently prohibited in the City’s industrial zones, notwithstanding that such uses do not present any danger to the public arising from the nature of the materials stored, and notwithstanding that manufacturing uses involving such materials necessarily must involve storage of the materials for at least some period of time. Accordingly, the Commission finds that insofar as the Request seeks amendment of the CMC to expand the list of permissible industrial storage uses in CMC §9141.1 to encompass the aforementioned categories of nonhazardous materials, the requested change is advisable as an improvement to the Zoning Ordinance and would benefit the overall public health, safety and welfare of the City, subject to addition of a caveat limiting the new automatically permitted storage uses to indoor storage only, with outdoor storage subject to Director approval to avoid potential adverse aesthetic impacts and

public nuisance conditions. However, to the extent the Request goes further and seeks amendment to CMC §9141.1 to provide that all storage of *any and all* non-CalARP-regulated materials is an automatically permitted use in the industrial zones, the requested changes are not recommended by the Commission, because there could be some categories of materials that if permitted for storage in industrial zones without City regulatory oversight could have adverse impacts on the public health, safety or welfare, and such category is too broad to justify relinquishment of City regulatory control without risking adverse consequences to public health, safety or welfare resulting therefrom.

c) With respect to the portion of the Request that suggests, “[i]f any landowner seeks to store CalARP-regulated materials, such use would require a Conditional Use Permit,” such changes are not recommended by the Commission. Few if any CalARP-regulated materials are currently encompassed by the categories of permissible uses listed in CMC §9141.1. Where categories potentially encompassing such materials are listed, they are generally prohibited uses in M-L zones and may be permitted subject to a CUP in M-H zones, but the vast majority of the universe of CalARP-regulated materials is not listed or encompassed at all, meaning industrial uses involving such materials are prohibited uses. Providing that all industrial storage uses involving CalARP-regulated materials are permissible uses subject to approval of a conditional use permit would represent a significant loosening of the City’s existing land use restrictions, and one that is not justified when considering the potential adverse impacts of such action on public health and safety. CalARP-regulated materials are designated as such by state law because they have hazardous qualities such as being toxic, combustible, corrosive and/or flammable, and are potentially harmful to human health if accidentally released. The Commission considers protection of public health and safety its paramount concern, and therefore has a strong interest in minimizing the presence of these materials in the community to ensure the protection of public health and safety. Accordingly, the Commission does not and will not recommend any change to the CMC that loosens the City’s existing land use restrictions pertaining to CalARP-regulated materials. Instead, the Commission recommends strengthening these restrictions to provide that all industrial uses involving substances listed in the relevant provisions of the CalARP-regulations, where the “Regulated Substances” exist in a quantity at or above the “Threshold Quantity,” as detailed in the definitions of “Regulated Substances” and “Threshold Quantity” set forth in the proposed ordinance attached hereto as Exhibit “A” (“Zone Text Amendment No. 187-2021”), are prohibited uses. The Commission also recommends subjecting use in the M-H (Manufacturing-Heavy) or M-L (Manufacturing-Light) Zones of “Regulated Substances” below a “Threshold Quantity” or any non-CalARP “Hazardous Materials” of any quantity, as such term is defined in Zone Text Amendment No. 187-2021, be made subject to issuance of a conditional use permit.

d) To avoid unduly severe adverse impacts on lawfully-established existing businesses resulting from Zone Text Amendment No. 187-2021, the Commission also recommends, as part of Zone Text Amendment No. 187-2021, adding a new Section 9182.46 to the City’s Municipal Code governing nonconforming uses to exempt existing lawfully-established businesses that use or store Hazardous Materials or Regulated Substances of any quantity from being rendered legal, nonconforming by the proposed ordinance, and to therefore exempt such existing uses from applicability

of the City's nonconforming use regulations (Division 2 of Part 8 of the Carson Zoning Ordinance) that would otherwise require the use to be terminated or made conforming within a specified amortization period, provided such businesses timely obtain Director approval under designation "LD" of Section 9141.1, which would allow such uses to continue to operate and become exempt from City's nonconforming use regulations without starting the clock for the applicable amortization period for the use to be terminated or made conforming, effectively freezing the running of the amortization period. Failure to timely submit a completed application would result in the existing use being rendered legal nonconforming and the applicable amortization period commencing, but would not preclude the use from later submitting a completed application, provided it does so before expiration of the applicable amortization period. The permit would issue effective upon submission of a completed application on a Director-approved form, requiring disclosures of any possession or use of Hazardous Materials or Regulated Substances and the then-current and maximum potential quantities of same, and requiring businesses to submit to annual inspections conducted by yet-to-be-hired City staff or consultant inspectors (which inspections would be additional to any inspections required or conducted by the Los Angeles County Fire Department as the Certified Unified Program Agency for the City (CUPA) pursuant to the Unified Program), for the purpose of ensuring compliance with the Carson Municipal Code and facilitating the identification and reporting of any suspected Unified Program violations to the CUPA regarding the presence of Regulated Substances or Hazardous Materials. Maintaining the Director-approved permit would require timely updating the reported maximum potential quantities as disclosed in the application, and submitting to all required inspections; failure to do so would cause a permit to automatically lapse and be terminated upon notice from the Director without a hearing. Re-application would be permitted, subject to a limit of three permit lapses or terminations. The amortization period would continue running during any period in which the permit has lapsed and the existing use has failed to timely reapply, as detailed in the proposed ordinance. If at any time an application or any addendum is determined by the Director to have been falsified or fraudulent, the applicant shall be ineligible to receive any Director-approved permit and any already issued Director-approved permit shall be deemed null and void effective retroactively as of the date of submission of the falsified or fraudulent application or addendum.

e) Zone Text Amendment No. 187-2021 would amend the Zoning Ordinance in a manner that deviates from that suggested by the Request and as necessary to effectuate the Commission's findings and recommendations described above. Zone Text Amendment No. 187-2021 represents a blend of changes to CMC Section 9141.1 that implement components of the Request, insofar as the same are recommended by the Commission and in the best interest of the public health, safety and welfare, together with different or additional changes that are related to the issues raised by the Request but which the Commission has determined would better serve the public health, safety and welfare pertaining to such issues. It also adds CMC Section 9182.46 governing nonconforming uses to provide that existing lawfully established businesses that use or store Hazardous Materials or Regulated Substances

of any quantity are deemed nonconforming unless such businesses obtain Director approval under designation “LD” of Section 9141.1 which will allow businesses to continue to operate and become exempt from City’s nonconforming use regulations. Zone Text Amendment No. 187-2021 is consistent with the General Plan of the City and all applicable specific plans, and is recommended as a necessary update to and clarification of CMC Section 9141.1 and as addition of CMC Section 9182.46, as well as a means of strengthening protection of public health and safety and promoting the overall public welfare by making the City’s industrial land use regulations more logical and practical so as to facilitate the ability of manufacturing and storage businesses in the City to legally engage in safe, standard business activities without facing unnecessary land use restrictions or prohibitions.

SECTION 3. The Planning Commission finds that adoption of this Ordinance does not constitute a “project” within the meaning of the California Environmental Quality Act (CEQA), because it does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. 14 CCR §§15378, 15060(c)(2)-(3). Without limitation, CEQA Guidelines Section 15378(b)(5) excludes “[o]rganizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment” from CEQA’s definition of “project.” Furthermore, even if the proposed zone text amendment were a “project,” it would be exempt from environmental review under CEQA Guidelines Section 15061(b)(3)’s “general rule” that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Here, it can be seen with certainty that there is no possibility that the proposed zone text amendment, in and of itself, will have a significant effect on the environment.

SECTION 4. The Planning Commission of the City of Carson, pursuant to the findings noted above, hereby recommends that the City Council approve Zone Text Amendment No. 187-2021, which is attached hereto as Exhibit “A” and incorporated herein by reference.

SECTION 5. This decision of the Planning Commission shall become effective and final 15 days from the date of the action, in accordance with Section 9173.33 of the City’s Zoning Ordinance, unless an appeal is filed in accordance with Section 9173.4 of the City’s Zoning Ordinance.

SECTION 6. The Secretary of the Planning Commission shall certify to the adoption of the Resolution, and shall transmit it to the City Council.

PASSED, APPROVED and ADOPTED this 27th day of July, 2021.

Chair Charles Thomas (Covid Signature)
CHAIRMAN

ATTEST:

Lucille Sandoval

SECRETARY

EXHIBIT “A”

[proposed ordinance – to be attached]