



Legislation Details (With Text)

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**Title:** CONSIDERATION OF ORDINANCE NO. 21-2120, AMENDING THE CARSON ZONING ORDINANCE REGARDING REGARDING PERMITTED USES IN THE INDUSTRIAL ZONES FOR REGULATED AND NONREGULATED SUBSTANCES AND HAZARDOUS MATERIALS, AND REGARDING NONCONFORMITIES FOR USE OF REGULATED SUBSTANCES (CITY COUNCIL)

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. EXHIBIT NO. 1: ZTA 187-2021 Ordinance (clean per PC action 7.27.21), 2. EXHIBIT NO. 2: ZTA 187-2021 PC Resolution (7.22)-FINAL, 3. EXHIBIT NO. 3: Prior Minutes, 4. EXHIBIT NO. 4: Text Amendment Request and Response Letter, 5. EXHIBIT NO. 5: CUPA Spreadsheet, 6. EXHIBIT NO. 6: CUPA Spreadsheet (List of Hazardous Materials-Regulated Facilities), 7. EXHIBIT NO. 7: List of CalARP Regulated Materials (state law), 8. EXHIBIT NO. 8: Hazardous Materials

Date	Ver.	Action By	Action	Result
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**Report to Mayor and City Council**

Tuesday, October 19, 2021

Discussion

**SUBJECT:**

**CONSIDERATION OF ORDINANCE NO. 21-2120, AMENDING THE CARSON ZONING ORDINANCE REGARDING REGARDING PERMITTED USES IN THE INDUSTRIAL ZONES FOR REGULATED AND NONREGULATED SUBSTANCES AND HAZARDOUS MATERIALS, AND REGARDING NONCONFORMITIES FOR USE OF REGULATED SUBSTANCES (CITY COUNCIL)**

**I. SUMMARY**

The purpose of this item is for the Council to consider a recommendation from the Planning Commission that the City Council adopt the attached ordinance (Exhibit No. 1), which would amend the City’s Zoning Ordinance to:

- (1) prohibit land uses involving manufacturing or storage of CalARP-regulated materials in the City’s industrial zones;
- (2) require a conditional use permit for land uses involving other hazardous materials in

any quantity in the City's industrial zones;

(3) amend the City's nonconforming use regulations to establish a Director-approved permit program that would enable lawfully-established existing uses that use or store CalARP-regulated materials or hazardous materials in any quantity to be exempted from amortization of the nonconforming use so long as they satisfy the requirements of the Director-approved permit program; and

(4) add numerous categories of non-hazardous materials to the list of materials that are automatically permitted for storage uses in industrial zones, based primarily on the current status of such materials as automatically permitted for manufacturing uses in industrial zones, with the caveat that outdoor storage of such materials would be permitted subject to Director approval to prevent public nuisances or violations of the Carson Municipal Code.

## **II. RECOMMENDATION**

1. INTRODUCE, for first reading by title only and with full reading waived, "ORDINANCE NO. 21-2120, 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." (Exhibit No. 1).

## **III. ALTERNATIVES**

1. MODIFY or DISAPPROVE the recommendation of the Commission; provided, that any modification of the proposed ordinance by the Council not previously considered by the Commission during its hearing(s), shall first be referred to the Commission for report and recommendation in accordance with CMC §9172.11(F).

## **IV. BACKGROUND**

### **A. Text Amendment Request; Current Municipal Code**

The proposed ordinance was initiated by written request of John P. Kinsey, Esq., on behalf of Inland Star Distribution Centers, Inc., via letter to the City dated February 21, 2020, for either a text change to Section 9141.1 of the City's Zoning Ordinance pursuant to CMC

Section 9172.11 or a Director interpretation thereof pursuant to CMC Section 9172.24. As indicated in a response letter issued to the requestor on March 20, 2020, the City opted to proceed with the consideration of the text change request. (Exhibit No. 4).

The request sought an amendment to CMC Section 9141.1 to update and clarify it with regard to what materials may be stored “by right” (i.e., without a City land use entitlement, also referred to as an “automatically permitted use”) in industrial zones. The City’s two industrial zones are the Manufacturing-Heavy (M-H) Zone and the Manufacturing-Light (M-L) Zone. As stated in the request:

...[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.

“CalARP-regulated materials,” as used in the request and in this report, refers to specified hazardous materials when present in a given location above a “threshold quantity” as defined in state law. See Cal. Health & Safety Code §25532, Cal. Code of Regulations, Title 19, Section 2770.5; Exhibit No. 7. Thus, the Request essentially sought an amendment to provide that so long as CalARP-regulated materials are not present, a storage facility should be permitted “by right” for storage of any and all other materials, whereas if CalARP-regulated materials are present, a conditional use permit (“CUP”) should be required to store them.

CMC Section 9141.1 lists the permitted use designations/approval requirements applicable to various types of storage, manufacturing, and other industrial uses. The categories include (among others): automatically permitted use, automatically permitted provided any special limitations/requirements are satisfied, permitted subject to Director approval, and permitted upon approval of a CUP.

Currently, CMC Section 9141.1 does not define or comprehensively address CalARP-regulated materials. It lists certain categories of substances that likely include some CalARP-regulated materials, such as “poisons,” “organic peroxides,” and “explosives,” generally providing that such uses are conditionally permitted in the M-H zone and prohibited in the M-L zone. Substances listed as a blank in the storage table in CMC Section 9141.1, or not listed at all, are prohibited. (CMC §9141.3; see also *City of Corona v. Nulls*, 166 Cal. App. 4th 418 (2008)).

There are numerous types of non-CalARP regulated, nonhazardous materials that are not listed in the storage table in CMC Section 9141.1, meaning such materials are currently impermissible for storage in industrial zones despite being nonhazardous in nature. Further, many of these types of materials are listed as being permitted for manufacturing uses in the same zones, and it stands to reason that manufacturing involving a particular material requires the material to be stored at the manufacturing site for at least some

period.

**B. Review Process; Prior Hearings**

The process for review of the text amendment request entails Planning Commission consideration of the request and issuance of a recommendation to the Council regarding same. Upon receipt of the recommendation of the Commission, the Council shall hold a public hearing, after which the Council may approve, modify or disapprove the recommendation of the Commission, provided that any modification of the proposed ordinance by the Council not previously considered by the Commission during its hearing shall first be referred to the Commission for report and recommendation, but the Commission shall not be required to hold a public hearing thereon. Failure of the Commission to report within 40 days after the reference, or such longer period as may be designated by the Council, shall be deemed to be approval of the proposed modification. No timeline is specified for the Council action. (CMC §9172.11(E)-(F)).

The Planning Commission provided its original recommendation to the Council on the text amendment request following a public hearing on April 13, 2021 (Exhibit No. 3.a). The recommendation was considered by Council on May 18, 2021, and the Council referred the matter back to the Commission for further review, analysis and recommendations related primarily to understanding and addressing the potential effects of the ordinance on existing businesses. The Commission then conducted two further hearings, on June 22, 2021 and July 27, 2021. (Exhibit No. 3.b-3.c). Following the July 27 hearing, the Commission recommended the proposed ordinance to Council (Exhibit No. 1-2).

**C. Planning Commission Recommendation - Proposed Ordinance**

**1. Nonhazardous Materials**

The recommended ordinance would partially grant the request regarding nonhazardous materials. Although the proposed ordinance does not go so far as to designate *all* nonhazardous materials as permissible for storage in industrial zones as suggested by the request, it does expand the list of materials that would be automatically permitted for storage in such zones to include numerous additional categories of nonhazardous materials. The new categories proposed to be added in the staff-recommended ordinance are included primarily based on their current status as automatically permitted for manufacturing uses under CMC Section 9141.1.

The ordinance does include one significant limitation on the automatically permitted use designation for these new categories of materials - such designation applies to *indoor* storage of such materials. Outdoor storage would be permitted subject to Director review. This limitation was added by the Planning Commission to address the concern that many of the categories of materials, if automatically permitted for outdoor storage, could result in adverse aesthetic impacts constituting or resembling public nuisance conditions related to the accumulation of trash, litter, refuse, rubbish, junk, debris, or waste materials (see, e.g., CMC §4124, §§5300 *et seq.*, §5702) without a means of City regulatory oversight to prevent same. CMC Section 9146.29 also addresses outdoor storage uses/activities, outlining certain items that may be displayed in any outdoor yard area. Outdoor storage is permitted only in yards other than a required front yard and abutting future right-of-way area, and not in a required parking area. All such storage areas shall be screened from

view from any adjoining public street or walkway. Director review would include review to ensure compliance with this municipal section, among others.

## 2. Hazardous Materials

The recommended ordinance departs from the request regarding hazardous materials. As noted above, the request suggests that storage of all CalARP-regulated materials in industrial zones should be subject to issuance of a CUP.

The recommended ordinance would instead prohibit land uses involving storage or manufacturing of CalARP-regulated materials (which as noted above is defined to mean at or above threshold quantity) in industrial zones. However, a caveat is included in the proposed ordinance's definition of "Regulated Substances" that would operate to exclude fuel retailers such as gas stations from the prohibition; a corresponding exclusion exists in the state's CalARP regulations.

The recommended ordinance would also require a CUP for industrial manufacturing or storage uses that involve non-CalARP "hazardous materials," which is defined in the ordinance by reference to the definition set forth in Cal. Health & Safety Code §25501(n), but when present or existing in a given location in *any quantity*. More specifically, although there are threshold quantities applicable to "hazardous materials" under the state law hazardous materials regulations (generally 55 gallons of a liquid, 200 cubic feet of a compressed gas, or 500 pounds of a solid), the proposed ordinance's CUP requirement is intended to apply irrespective of whether such threshold quantities are or will be met. Exhibit No. 8 provides the state law definition and list of hazardous materials under Health & Safety Code §25501(n).

Note that to the extent a proposed use involving "hazardous materials" as defined in the ordinance is prohibited in the relevant zone under any other/existing provision of CMC 9141.1 (e.g., poisons, explosives, organic peroxides), the use would remain prohibited notwithstanding the proposed ordinance.

## 3. Existing Uses; Nonconforming Use Regulations

By imposing these new land use regulations, the proposed ordinance would render lawfully-established existing uses that involve CalARP-regulated materials, or that involve hazardous materials without a CUP pertaining to the use of hazardous materials, to be legal nonconforming uses, absent some modification to the City's nonconforming use regulations set forth in CMC Section 9172.25 and Sections 9182.01 - 9182.45 (the "Nonconforming Use Regulations"). Existing uses that are not "lawfully established," such as those that were established without a required City land use entitlement, would not enjoy legal nonconforming status and would instead be subject to immediate applicability of the new regulations.

As an example, Inland Star commenced operating in the City several years ago without a CUP, even though a CUP was required for its original use as a facility that stored poisons, explosives or other materials listed as requiring a CUP for storage in the relevant zone under current CMC 9141.1. As such, Inland Star would not be considered a "lawfully-established" existing use. However, Inland Star has indicated it no longer stores these or other hazardous materials or CalARP regulated substances (and a December 2019

inspection confirmed no CalARP-regulated materials were present at its facility at that time). In that case, Inland Star would not be rendered nonconforming by the proposed regulations, so the question of whether it is a “lawfully-established use” would not be implicated; instead, it would be treated like a new use and thus (1) prohibited from storing CalARP-regulated materials, and (2) required to obtain a CUP to store non-CalARP hazardous materials in any quantity, effective immediately upon the ordinance taking effect. However, as noted above, Inland Star would also be permitted “by right” to store additional types of nonhazardous materials under the proposed ordinance, so if Inland Star does not seek to store hazardous materials in the future and if the nonhazardous materials it does store are all automatically permitted for storage in the relevant zone following effectiveness of the proposed ordinance, which is expected to be the case, Inland Star could obtain a business license to move forward with its business operations as a non-hazardous materials storage business without the need for CUP.

The current Nonconforming Use regulations generally: (1) prohibit change of use, expansion, addition, alteration, improvement, relocation on the same site or other changes in connection with a development or use which involves a nonconformity, unless certain limited criteria are met as determined by the Director (CMC §9182.02); and (2) require the nonconforming use to be terminated or made conforming within a specified period of time which is designed to be sufficient for the reasonable amortization of the property owner’s/business’ fixed investment in the nonconformity (CMC §§9182.22, 9182.42). The amortization period will generally be longer where the investment in the nonconformity that will need to be eliminated is greater. Where the use can be made conforming without a capital expenditure or capital loss, the use is required to be made conforming within one year of the date of nonconformance. The CMC also provides a procedure whereby a business or property owner may apply for extension of the date for a termination of a nonconformity (CMC §9172.25), and in some limited circumstances likely inapplicable here provides that the nonconformity may continue indefinitely (see CMC §9182.1).

There are 15 businesses in the City that are regulated by the CUPA under the CalARP program (Exhibit No. 5). Because that program only regulates businesses that at least sometimes possess CalARP-regulated materials, these businesses would all be rendered legal nonconforming by the proposed ordinance (except to the extent any of them are not lawfully-established).

No exact number is available regarding the number of uses that would be rendered nonconforming by the proposed CUP requirement, in part because the CUPA does not regulate hazardous materials below the applicable state law threshold quantities. However, based on information provided by the CUPA regarding the number of regulated hazardous materials facilities in the City, this number is likely far higher than the number of uses that would be rendered legal nonconforming by the CalARP prohibition (Exhibit No. 6).

#### 4. Proposed Amendment to Nonconforming Use Regulations

To alleviate any unnecessary hardship that may be caused by the proposed land use regulations while advancing the City’s intended purposes of improving safety and transparency, the proposed ordinance would add a new Section 9182.46 to the Nonconforming Use Regulations to provide that lawfully-established existing uses that do not conform to the proposed regulations shall be exempt from applicability of the

Nonconforming Use Regulations so long as they obtain and maintain a Director-approved permit and satisfy specified conditions and requirements related to same. If a lawfully-established use that does not conform to the proposed regulations fails to obtain the Director-approved permit, it would not be exempted and thus would be subject to general provisions of the Nonconforming Use Regulations, including the requirement that the nonconforming use be eliminated within the applicable amortization period.

To obtain the Director-approved permit, such existing uses would be required to submit, within 60 days of the effective date of the proposed ordinance, a completed application on a Director-approved form which would require them to: (1) disclose (without limitation) whether they use or store CalARP regulated materials or other hazardous materials, the quantity of such materials they currently have, and the maximum quantity of such materials that they may have at any given time; and (2) agree to submit to annual City inspections.

If at any point the information disclosed in an application for a Director-approved permit application becomes inaccurate or out-of-date with respect to the maximum quantity of CalARP regulated materials or other hazardous materials that the lawfully-established existing use could potentially have at any given time, the existing use would be required to submit an addendum to the application to correct/update same.

Upon receipt of a completed application, the Director would be required to approve the permit. The permit approval would be effective as of the date of submission of the completed application and would have the effect of freezing the applicable amortization period for elimination of the nonconforming use.

Failure to submit a completed application within 60 days of effectiveness of the proposed ordinance would cause the applicable amortization period for elimination of the nonconforming use to commence running but would not preclude the existing use from later obtaining the Director-approved permit to freeze the amortization period, provided a completed application is submitted before expiration of the amortization period.

The annual City inspections would be conducted by yet-to-be-hired staff or consultant inspectors and would be in addition to any inspections conducted by the CUPA pursuant to the Unified Program (i.e., the state hazardous materials regulations, including the CalARP program). The CUPA has confirmed it cannot agree to conduct inspections on behalf of the City pursuant to the proposed ordinance, nor to increase the frequency of inspections conducted pursuant to the Unified Program. However, the CUPA does accept and investigate complaints of reported Unified Program violations. The City inspections would enable the City to ascertain and report suspected Unified Program violations to the CUPA, as well as to ensure compliance with the CMC.

If at any point the Director determines that the information contained in an application or addendum was falsified or fraudulent, or the permittee fails or refuses to submit to any required City inspection, the permit would automatically lapse and terminate (or if the application is pending it would be denied) without a hearing, upon Director notice to the permittee. In the case of a falsified or fraudulent application, the application would be deemed null and void effective retroactively as of the date of submission of the application.

Following the date of Director notice to a permittee of the lapse of a permit, the permittee would have 60 days to re-apply. If the permittee does not timely re-apply, the remaining

amortization period would commence running from the date of the missed re-application deadline. Effective upon receipt of a completed application, the Director would again approve the permit. However, if any permit lapses three times (or once if due to fraud), the use would permanently forfeit its right to further utilize the exemption from the Nonconforming Use Regulations. **V. FISCAL IMPACT**

No direct/immediate impact. The proposed land use regulations prohibiting industrial uses involving CalARP regulated substances could result in loss of tax revenue that would otherwise accrue to City from the presence/operation of the uses being restricted, but the net effect, considering the business activities that may replace the restricted uses, is unknown at this time. The proposed ordinance would add to the list of automatically permitted and Director-permitted storage uses in industrial zones, which could potentially have a positive event on economic development and tax revenues (including business license fees) received by the City. The costs of processing conditional use permit applications for new uses involving hazardous materials other than CalARP regulated substances will be covered by the City's conditional use permit application fees, and the costs of the Director-approved permit program for existing uses would be covered by permit fees to be established by resolution.

## **VI. EXHIBITS**

1. Proposed Ordinance No. 21-2120 (pgs. 9-45)
2. Planning Commission Resolution No. 21-2714 (pgs.46-51)
3. Prior Hearing Minutes
  - a. Planning Commission, April 13, 2021 (pgs. 52-54)
  - b. City Council, May 18, 2021 (pgs. 0)
  - c. Planning Commission, June 22, 2021 (pgs. 55-57)
  - d. Planning Commission, July 27, 2021 (pgs. 58-60)
4. Text Amendment Request and Response Letter (pgs. 61-77)
5. CUPA Spreadsheet (List of CalARP-Regulated Facilities) (pg.78)
6. CUPA Spreadsheet (List of Hazardous Materials-Regulated Facilities) (pgs.79-85)
7. List of CalARP Regulated Materials (state law) (pgs. 86-105)
8. List of Hazardous Material (state law) (pg. 106)

1.

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