



## Legislation Details (With Text)

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**On agenda:** 5/18/2021      **Final action:**

**Title:** PUBLIC HEARING TO CONSIDER ORDINANCE NO. 21-2113, 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 (CITY COUNCIL)

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Ex 1, ZTA 187-2021 Ordinance FINAL, 2. Ex 2, ZTA 187-2021 PC Resolution No. 21-2707, 3. Ex 3, 4.13.2021 Minutes\_Aproved, 4. Ex 4, ZTA 187-2021 Request and Response Letter, 5. Ex 5, 27705 List of Substances

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

Tuesday, May 18, 2021

Special Orders of the Day

### SUBJECT:

**PUBLIC HEARING TO CONSIDER ORDINANCE NO. 21-2113, 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 (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 proposed ordinance, which would amend the City's Zoning Ordinance to:

- (1) prohibit land uses involving manufacturing or storage of hazardous materials listed in the CalARP regulations ("Regulated Substances") in the City's industrial zones; and
- (2) add numerous categories of non-hazardous materials to the list of materials that are

automatically permitted for storage uses in industrial zones, with the caveat that the automatically permitted use designation would apply only to indoor storage, while outdoor storage would be permitted subject to Director approval to protect against adverse aesthetic impacts constituting or resembling public nuisance conditions.

On April 13, 2021, the Planning Commission voted unanimously in favor of recommending City Council adoption of the proposed ordinance, (Exhibit 1). However, in doing so, the Planning Commission also voted to deliver a note to the City Council requesting that prior to adoption of the proposed ordinance, the City Council carefully consider the effect that the proposed ordinance would have on lawfully-existing businesses involving use of Regulated Substances in the City's industrial zones, which would be rendered legal nonconforming uses by the proposed ordinance, (Exhibit 2).

## **II. RECOMMENDATION**

1. OPEN the Public Hearing.
2. TAKE public testimony.
3. CLOSE the Public Hearing.
4. CONSIDER introduction, for first reading by title only and with full reading waived, of "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" (Exhibit 1).

## **III. ALTERNATIVES**

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

## **IV. BACKGROUND**

### **A. Text Amendment Request; Review Process**

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. (Exhibit 4)

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 4). The process entails Commission consideration of the request and issuance of a Commission recommendation to the City Council regarding same.

Pursuant to CMC Section 9172.11(E)-(F), upon receipt of the recommendation of the Commission, the City Council shall hold a public hearing, after which the City Council may approve, modify or disapprove the recommendation of the Commission, provided that any modification of the proposed ordinance by the City 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 City Council, shall be deemed to be approval of the proposed modification. No timeline is specified for the City Council action, (CMC §9172.11(F)).

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” refers to what is commonly known as hazardous materials, as detailed in section B.2 of this report. Thus, the Request essentially sought an amendment to provide that so long as no hazardous materials are present, a storage facility should be permitted “by right” for storage of any and all other, nonhazardous materials, whereas if hazardous materials are present, a conditional use permit (“CUP”) should be required to store the materials. It should be noted that the state’s CalARP regulations list the various types of hazardous materials and provide that the CalARP regulations apply to such materials only when present above a “threshold quantity.” Below the “threshold quantity,” CalARP regulations do not apply, because the definition of “regulated substance” excludes instances where less than a “threshold quantity” of a listed material is present. The proposed ordinance varies this by providing that the materials listed in the CalARP regulations are considered “regulated materials” for purposes of the ordinance irrespective of the quantity of materials present in a given location (i.e., irrespective of whether it constitutes a “threshold quantity”).

CMC Section 9141.1 lists the approval requirements applicable to various types of storage,

manufacturing, and other industrial uses. The approval requirement 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, (See CMC §9141.3; *City of Corona v. Naulls*, 166 Cal. App. 4th 418 (2008)).

There are numerous types of non-CalARP-regulated materials that are not listed in the storage table in Section 9141.1, meaning such materials are impermissible for storage in industrial zones despite being nonhazardous in nature. Further, many of these types of materials are listed as being permissible 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 of time.

#### B. Planning Commission Decision; Proposed Ordinance

##### 1. Nonhazardous Materials

The proposed ordinance adopted by the Planning Commission partially grants 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, it does expand the list of materials automatically permitted for storage in such zones to include numerous new categories of nonhazardous materials. The vast majority of the new categories are proposed to be added based on their status as automatically permitted for manufacturing uses under CMC Section 9141.1, and the remainder are proposed to be added based on their automatically permitted status under various neighboring cities’ municipal codes after a review of such codes.

The proposed 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 based on a 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., Carson Municipal Code §4124, §§5300 *et seq.*, §5702) without a means of City regulatory oversight to prevent same. Accordingly, the Commission imposed a Director review standard to provide a layer of oversight to help alleviate these concerns. The CMC addresses other outdoor storage activities, as CMC Section 9146.29 outlines 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, but not in a required parking area. All such storage areas shall be screened from view from any adjoining public street or walkway.

## 2. Hazardous Materials

CalARP-regulated materials consist of regulated toxic and flammable substances under Section 112(r) of the federal Clean Air Act (CAA) as well as regulated substances pursuant to California Health & Safety Code Section 25532(j)(2), which includes extremely hazardous substances listed in Appendix to Part 355 of Title 40 of the Code of Federal Regulations and that meet additional criteria relating to the chemical/physical properties of the substances specified in Section 25532(j)(2), or which the Governor's Office of Emergency Services has determined may pose a regulated substances accident risk (HSC §25532(j)(2); 19 CCR §2770.5).

The proposed ordinance departs from the request regarding CalARP-regulated 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 proposed ordinance would instead designate all storage and manufacturing uses involving CalARP-regulated materials in industrial zones as prohibited uses.

Additionally, as noted above, the proposed ordinance would go further by attaching the aforementioned prohibited use designation even where materials listed in the CalARP regulations are present in an amount that is below the "threshold quantity" established in the CalARP regulations.

The list of regulated substances contained in the CalARP regulations is attached hereto as Exhibit 5. The fourth column of the list identifies the "threshold quantity" for each substance; the CalARP regulations apply above the threshold quantity (thus regulating, but not prohibiting, the safe handling of such substances), but do not apply below the threshold quantity. Therefore, a listed substance is not technically a CalARP-regulated substance unless present above a threshold quantity.

The proposed ordinance, however, would attach the prohibited use designation to industrial storage and manufacturing uses (both where the listed substance is used as part of the manufacturing process and where the manufacturing process results in a listed substance as the final product), involving the listed substances *even where present below the threshold quantity*. These substances are defined for purposes of the proposed ordinance and this report as "Regulated Substances."

The requestor has indicated they are agreeable to the proposed ordinance because they do not store or manufacture Regulated Substances, but that the proposed ordinance may affect a significant number of businesses in the City, because Regulated Substances are frequently used in industrial manufacturing processes and activities.

### i. *Effect; Nonconforming Uses*

It is important to note that the proposed ordinance would not only prohibit new businesses that store or manufacture Regulated Substances from commencing land uses in the City's industrial zones, but it would also render lawfully-established, existing uses involving Regulated Substances in such zones legal, nonconforming uses. Given that the proposed ordinance would prohibit uses involving such substances regardless of quantity, the proposed ordinance, if adopted without modification, could render a significant number of

existing industrial uses in the City legal, nonconforming uses. While the CMC does not require City to notify property owners of nonconforming use status, the City may want to consider providing notice nonetheless.

The CMC contains provisions applicable to nonconforming uses, including Section 9172.25 and Sections 9182.01 - 9182.45, inclusive. These 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).

Accordingly, the amortization period specified in the CMC 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 (1) 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, "Site Nonconformity").

### C. Considerations for Mitigating Effects on Lawfully-Existing Businesses

Mindful of the foregoing concerns, the Planning Commission, as part of its recommendation, included a "note" to the City Council, recommending that the City Council carefully consider the effects of the proposed ordinance on lawfully-established existing businesses in the City and possible ways to mitigate or alleviate any adverse impacts thereof on such businesses prior to or in connection with adoption of the proposed ordinance.

The primary means of addressing these concerns would be to reduce the scope of the proposed ordinance so as to reduce the number of businesses that would potentially be rendered legal nonconforming. This could be achieved by incorporating the "threshold quantity" concept into the proposed ordinance, thus potentially providing that industrial storage or manufacturing uses involving CalARP Regulated Substances (i.e., above the threshold quantity) be prohibited uses, whereas uses involving CalARP-listed substances below a threshold quantity be, for example, subject to issuance of a CUP. Because this potential modification was considered by the Commission, the City Council could move forward with adopting the proposed ordinance with this modification without referring the matter back to the Commission for report and recommendation.

Alternatively, the City Council could consider other ways of limiting the scope of the proposed ordinance, such as only prohibiting industrial storage or manufacturing uses involving Regulated Substances within a certain distance of specified sensitive uses such as residential uses, schools, parks, and churches. This modification would likely require referring the matter back to the Commission for report and recommendation (within 40 days or such longer period as may be designated by the City Council, although a public

hearing by the Commission would not be required).

Another option the City Council may consider to mitigate the effects of legal nonconforming status to existing businesses resulting from adoption of the ordinance is to define a minimum area of building/land usage before a business is deemed to be nonconforming. For example, perhaps the CMC regulations that govern nonconformities could be amended to say that if more than 50% of the area is devoted to storage of Regulated Substances, that will be deemed nonconforming use, and any use less than that will not render the existing use nonconforming. Another option could be to simply amend the CMC to say that prohibition of Regulated Substances will be exempt from the City's nonconformities regulations, or perhaps allow the nonconforming use while imposing certain regulations such as compliance with CUP requirements.

The above are just a few examples of the many different ways the City Council could consider modifying the proposed ordinance. The City Council also has the discretion to disapprove the Commission's recommendation and not move forward with any ordinance amendment pursuant to the request.

## **V. FISCAL IMPACT**

No direct/immediate impact. The proposed ordinance would preclude new industrial businesses that rely on use of Regulated Substances from commencing land uses in the City moving forward, and would render existing land uses involving same as legal nonconforming uses. The restrictions could result in loss of tax revenue that would otherwise accrue to City from the presence/operation of such businesses, but the net effect, considering businesses that may replace such uses, is unknown at this time. Additionally, 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.

## **VI. EXHIBITS**

1. Proposed Ordinance No. 21-2113 (pgs. 8-40).
2. Planning Commission Resolution No. 21-2707 (pgs.41-45).
3. Planning Commission Minutes, April 13, 2021 (pgs. 46-48).
4. Text Amendment Request and Response Letter (pgs. 49-65).
5. List of Regulated Substances (pgs.66-85).

1.

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