



Legislation Details (With Text)

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Title: CONSIDERATION OF ORDINANCE NO. 21-2120, AMENDING THE PERMITTED USE DESIGNATIONS AND NONCONFORMING USE PROVISIONS OF THE CARSON ZONING ORDINANCE REGARDING INDUSTRIAL USES INVOLVING CALARP SUBSTANCES AND REGULATED AND NONREGULATED MATERIALS (CITY COUNCIL)

Sponsors:

Indexes:

Code sections:

Attachments: 1. EXHIBIT NO.1 187-2021 Ordinance (brj 4.27.22), 2. EXHIBIT NO. 2 ZTA 187-2021 PC Resolution, 3. EXHIBIT NO. 2A ZTA 187-2021 Ordinance (clean per PC action 7.27, 4. EXHIBIT NO 3 Prior Minutes, 5. EXHIBIT NO 4 Text Amendment Request and Response Letter, 6. EXHIBIT NO 5 List of CalARP Substances, 7. EXHIBIT NO 6 Health & Safety Code 25501 (n)

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

Tuesday, May 03, 2022

Special Orders of the Day

SUBJECT:

CONSIDERATION OF ORDINANCE NO. 21-2120, AMENDING THE PERMITTED USE DESIGNATIONS AND NONCONFORMING USE PROVISIONS OF THE CARSON ZONING ORDINANCE REGARDING INDUSTRIAL USES INVOLVING CALARP SUBSTANCES AND REGULATED AND NONREGULATED MATERIALS (CITY COUNCIL)

I. SUMMARY

The purpose of this item is for the Council to consider an ordinance pursuant to recommendation of the Planning Commission, which would amend the City's Zoning Ordinance (Chapter 1 of Article IX of the CMC) to:

(1) Prohibit new industrial land uses involving CalARP Regulated Substances (Exhibit No. 5; herein, "CalARP Substances");

(2) Impose a conditional use permit requirement for new industrial land uses involving materials that are regulated under State hazardous material regulations, unless such uses

are prohibited by the aforementioned CalARP prohibition or an existing prohibition of the City's Zoning Ordinance (Exhibit No. 6; herein, "Regulated Materials");

(3) Establish a program that would enable lawfully-established existing industrial uses involving CalARP Substances or Regulated Materials to continue operating without running of any amortization period for termination of a nonconforming use so long as they maintain a Director permit requiring specified disclosures and inspections; and

(4) Expand the list of categories of materials that are automatically permitted for indoor storage in the industrial zones to include various categories of non-Regulated Materials that are currently automatically permitted for manufacturing uses in said zones and provide that any outdoor storage of such materials is subject to Director approval to ensure that such uses will not have adverse effects constituting or resembling public nuisance conditions or violations of the CMC related to the accumulation of trash, litter, refuse, rubbish, junk, debris, or waste materials.

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: (1) 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 (2) ADDING SECTION 9182.46 (NONCONFORMITY FOR USE OR STORAGE OF REGULATED SUBSTANCES) TO DIVISION 2 (NONCONFORMITIES) OF PART 8 (IMPLEMENTING PROVISIONS) OF CHAPTER 1 (ZONING) OF ARTICLE IX (PLANNING AND ZONING) OF THE CARSON MUNICIPAL CODE REGARDING NONCONFORMITIES FOR USE OF REGULATED SUBSTANCES." (Exhibit No. 1).
2. DIRECT staff to prepare a resolution, to be presented for Council consideration at a subsequent meeting, to establish heightened administrative fines, pursuant to CMC 1203.3(d), for violations of the land use regulations established via Ordinance No. 21-2120.

III. ALTERNATIVES

1. MODIFY or DISAPPROVE the recommendation; provided, that any modification of the proposed ordinance or amendment by the Council not previously considered by the Commission 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 process that has resulted in the proposed ordinance was originally 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. (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 the City’s industrial (M-L and M-H) zones. 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 Substances, as referenced in the letter, refers to the substances specified in Exhibit No. 5 when present in the quantities specified therein.

CMC Section 9141.1 lists the approval requirements applicable to various types of storage, manufacturing, and other industrial uses. The permitted use 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 comprehensively address CalARP Substances or Regulated Materials. It lists certain categories of substances that likely include some such 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. Naulls*, 166 Cal. App. 4th 418 (2008)).

There are numerous types of non-CalARP, non-Regulated 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 of time.

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. The recommendation was considered by Council on May 18, 2021, and the Council referred the matter back to the Commission for further review and analysis. The Commission then conducted two further hearings, on June 22, 2021 and July 27, 2021. Following the July 27 hearing, the Commission adopted Planning Commission Resolution No. 21-2714 (Exhibit No. 2), recommending the ordinance attached thereto as Exhibit "A" for Council adoption. The matter was continued by Council on October 19, 2021, and November 16, 2021. (Exhibit No. 3)

The proposed ordinance attached hereto as Exhibit No. 1 is the version recommended by staff, which differs slightly from the version recommended by the Planning Commission. For example, the ordinance as recommended by staff does not apply the proposed regulations below applicable regulatory threshold quantities established in state law for CalARP Substances or Regulated Materials, as doing so would be impracticable from an enforcement perspective. Although staff's recommendation differs from the Commission's recommendation on this topic, the Commission did consider the issue both ways, so adoption of the ordinance as recommended by staff would not require further report to or consideration or recommendation by the Commission. Other differences include added recitals clarifying the intended scope of the ordinance and other non-substantive changes that do not represent modifications not previously considered by the Commission.

Additionally, although not included in the proposed ordinance, staff also recommends that the Council consider directing staff to prepare a resolution to establish increased administrative fines for violation of the regulations set forth in the proposed ordinance, to provide an additional deterrent against industrial land uses that may otherwise unlawfully commence or continue operations involving CalARP Substances or Regulated Materials in the City. By doing so, fines for violations could be set at, for example, \$1,000 per violation, rather than the general \$100/\$250/\$500 fine structure set out in CMC 1203.3(d). Each day a violation persists can be considered a separate violation, which at \$1,000 per violation could create a powerful deterrent effect. This staff recommendation is included in recommendation item 2, above.

C. Proposed Ordinance

1. Non-Regulated Materials

The proposed ordinance expands the list of materials that would be automatically permitted for storage in industrial zones to include numerous categories of non-CalARP, non-Regulated Materials which are currently automatically permitted for manufacturing uses in such zones under CMC Section 9141.1. The proposed ordinance also makes it clear that the “automatically permitted” designation applies only to indoor storage, and any outdoor storage of such materials would be subject to Director review to protect against any adverse impacts constituting or resembling public nuisance conditions or violations of the Municipal Code, including those related to accumulation of trash, litter, refuse, rubbish, junk, debris, or waste materials (see, e.g., CMC §4124, §§5300 *et seq.*, §5702, 9146.29).

2. Regulated Materials

The proposed ordinance would require a conditional use permit for new industrial uses that involve Regulated Materials (as defined in Cal. Health & Safety Code §25501(n)), provided that in the event a given type of Regulated Material also constitutes a CalARP Substance or falls within another category of material that is a prohibited use under CMC 9141.1, the use involving such materials would be prohibited. Stated differently, the ordinance establishes a *minimum* CUP requirement for any industrial use involving Regulated Materials.

3. CalARP Substances

The proposed ordinance would prohibit new industrial land uses involving CalARP Substances. Exceptions are provided for fuel retailers such as gas stations (which are exempt from the definition of CalARP Substances under state law) and uses permitted in commercial zones.

4. Lawfully-Established Existing Uses; Director Permit Program

The land use regulations of the proposed ordinance would apply to: (i) new uses; and (ii) existing uses that were not lawfully established as permitted uses, such as those that did not obtain a required City conditional use permit or other approval required under CMC 9141.1.

Lawfully-established existing industrial land uses that involve CalARP Substances or Regulated Materials within the scope of the proposed regulations would generally be rendered nonconforming under CMC Section 9172.25 and Sections 9182.01 - 9182.45 (the “Nonconforming Use Regulations”). However, to alleviate any unnecessary hardship on these law-abiding businesses that may otherwise result from the proposed 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 may avoid the running of any applicable amortization period for termination of a nonconforming use under the Nonconforming Use Regulations so long they maintain a Director-approved permit requiring specified disclosures and inspections.

To obtain the Director-approved permit, a lawfully-established existing use 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 whether they possess CalARP Substances or Regulated Materials, the quantities and types of such materials they possess or may possess, and their compliance status with respect to the State hazardous materials regulations known as the Unified Program; and (2) agree to submit to annual City inspections for compliance with the CMC and the Director permit and reporting of any suspected Unified Program violations to the CUPA.

If at any point the information disclosed in an application for a Director permit becomes inaccurate or out-of-date, the permittee would be required to submit an addendum to the application to correct/update same within 30 days of discovering the inaccuracy.

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 to commence running from said date 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. 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 it conducts 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 to help supplement its oversight, 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 avail itself of this exemption from the Nonconforming Use Regulations.

V. FISCAL IMPACT

No direct/immediate impact. The proposed ordinance authorizes a fee to fund the Director permit program; if adopted, a resolution to set the fee will be presented for the Council's consideration.

VI. EXHIBITS

1. Proposed Ordinance No. 21-2120 (pgs. 8-44)
2. Planning Commission Resolution No. 21-2714 (pgs.45-50)
 - a. Ordinance No. 2120 as Recommended by Planning Commission (pgs. 51-87)
3. Prior Minutes (pgs. 88-96)
4. Text Amendment Request and Response Letter (pgs. 97-113)
5. List of CalARP Substances (pgs. 114-133)
6. Health & Safety Code 25501(n) (pg. 134)

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