

- - URGENCY ORDINANCE NO. 4332

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF POMONA, CALIFORNIA, IN ACCORDANCE WITH GOVERNMENT CODE SECTION 65858, EXTENSION OF TERM BY ONE HUNDRED AND SIXTY-NINE (169) DAYS, A MORATORIUM ON THE ESTABLISHMENT, EXPANSION, OR MODIFICATION OF WAREHOUSES, TRUCKING FACILITIES, AND RELATED USES THAT ARE LOCATED WITHIN THE CITY OF POMONA

WHEREAS, the City of Pomona (“City”) has the police power, pursuant to Article XI, section 7 of the California Constitution, to make and enforce ordinances to regulate the use of land within its jurisdictional boundaries, to the extent such regulations are not in conflict with the general laws of the State of California; and

WHEREAS, Government Code Section 65858 expressly authorizes the City Council, in order to protect public health, safety, and welfare, to adopt an interim urgency ordinance prohibiting a use that is in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission, or the planning department is considering or studying or intends to study within a reasonable time, provided that the urgency measure shall require a five-sevenths (5/7) vote of the legislative body for adoption, and shall be of no further force and effect forty-five (45) days from its date of adoption, unless duly extended; and

WHEREAS, on July 18, 2022, the City Council adopted Urgency Ordinance No. 4319 establishing a temporary forty-five (45) day moratorium on the establishment, expansion, or modification of warehouses, trucking facilities, and related uses that are located within the City; and

WHEREAS, the temporary forty-five (45) day moratorium was scheduled to expire on September 1, 2022, unless extended pursuant to Government Code Section 65858, which authorizes the City Council, after notice pursuant to Government Code Section 65090 and a public hearing, to adopt an ordinance extending the Moratorium for a term of ten (10) months and fifteen (15) days, upon approval by a five-sevenths (5/7) vote, and upon making the same findings required for initial adoption of the Moratorium; and

WHEREAS, Government Code Section 65858(d) requires the City Council, ten (10) days prior to expiration of the Moratorium or any extension thereof, to issue a written report describing the measures taken to alleviate the condition which led to the adoption of the Moratorium; and

WHEREAS, in accordance with Government Code Section 65858(d), on August 1, 2022 the City Council approved the ten (10) day report, describing the measures being taken to alleviate the conditions which led to the adoption of the temporary forty-five (45) day moratorium; and

WHEREAS, on August 15, 2022, the City Council adopted Urgency Ordinance No. 4321 establishing a temporary ten (10) months and fifteen (15) days moratorium on the establishment, expansion, or modification of warehouses, trucking facilities, and related uses that are located within the City, thereby extending the temporary forty-five (45) day moratorium; and

WHEREAS, the temporary ten (10) months and fifteen (15) days moratorium is scheduled to expire on July 16, 2023, unless extended pursuant to Government Code Section 65858, which authorizes the City Council, after notice pursuant to Government Code Section 65090 and a public hearing, to adopt an ordinance extending the Moratorium for a term of up to twelve (12) months, upon approval by a five-sevenths (5/7) vote, and upon making the same findings required for initial adoption of the Moratorium; and

WHEREAS, Government Code Section 65858(d) requires the City Council, ten (10) days prior to expiration of the Moratorium or any extension thereof, to issue a written report describing the measures taken to alleviate the condition which led to the adoption of the Moratorium; and

WHEREAS, in accordance with Government Code Section 65858(d), on May 15, 2023 the City Council approved the ten (10) day report, describing the measures being taken to alleviate the conditions which led to the adoption of the temporary forty-five (45) day moratorium as extended by the temporary ten (10) months and fifteen (15) days moratorium; and

WHEREAS, Government Code Sections 36934 and 36937 expressly authorize the City Council to enact urgency ordinances, which take effect immediately upon introduction, for the immediate preservation of the public peace, health, or safety, containing a declaration of the facts constituting the urgency, and which must be passed by a five-sevenths vote of the City Council; and

WHEREAS, the City has determined that there is an unprecedented demand for the development and redevelopment of parcels for industrial development within the City of Pomona and across Los Angeles, San Bernardino, and Riverside counties due to the growing market share of Internet commerce (e-commerce), and increased interest among private financial institutions to invest in the industrial market as a real estate asset class. Due to this current demand, the City has seen an exponential and rapid increase in industrial developments within the City and neighboring communities; and

WHEREAS, industrial development in this context refers to warehouses, distribution centers, trucking facilities, and logistics facilities, inclusive of built-to-suit and speculative industrial facilities (collectively, “Warehouses”), which include any use for the conduct, business, or management of warehousing, storing, safekeeping, freight forwarding, handling, keeping inventory, and/or distribution activities for any product or component, including but not limited to goods, wares, consumer products, materials, or merchandise, partially or wholly within an enclosed space, building, or other structure; and

WHEREAS, the development of Warehouses, if not sufficiently regulated, will increase the risk of negative public health outcomes and other adverse impacts, including the following:

- The exacerbation of pollution levels and therefore health impacts in already overburdened, vulnerable communities that have been identified by the Office of Environmental Health and Hazard Assessment (OEHHA) as “disadvantaged” in its Cal Enviro Screen model;
- Increased noise and vibration impacts on adjacent residential and commercial properties;
- Increased public safety risk for smaller vehicles, pedestrians, and bicyclists, including school-age children traveling to and from public schools and residents traveling to and from adjacent public parks and facilities;
- Damage to City streets and property/facilities from collisions (reported and unreported), such as street lights, traffic signal equipment, signs, trees, curbs, medians, etc.;
- Traffic congestion and reduced levels of service on public streets and at public intersections;
- Increased public safety impacts from improperly over-loaded trucks; and

WHEREAS, the Pomona General Plan calls for the City’s Workplace Districts, which are inclusive of existing industrially zoned properties, to “strengthen the current structural relationship between Cal Poly, Downtown, and the major employment districts,” and that “buildings in the workplace districts will be similar to conventional “office campus” formats.” Moreover, that “these buildings will be located to support a greater street presence, walkability, and opportunities for open spaces that foster interaction and innovation,” and that “safe streets, bikeways, and sidewalks will emphasize connectivity for commuter access and convenient use of business services, meeting facilities, and eating places in nearby activity centers;” existing regulations in the Pomona Ordinance for Warehouses is insufficient to meet the goals and policies of said General Plan; and

WHEREAS, the City has additional concerns regarding the compatibility of Warehouse uses that are adjacent or near to sensitive uses such as schools and residences, as Warehouses oftentimes operate on a 24-hour basis and cause deteriorating air quality, health, noise, vibration, and other disruptions to the peace and quiet that is necessary for the enjoyment of residential neighborhoods and efficacy of educational uses; and

WHEREAS, the close proximity of Warehouses to schools and residential uses also causes a decline in aesthetic standards and visual quality to those living in the residences and going to schools; and

WHEREAS, the City of Pomona has determined that Warehouse uses have a detrimental impact upon the City, which are not being addressed by the City's current ordinances and zoning regulations; and

WHEREAS, there is a need to study and develop policy guidance to ensure there is logical relationship between the placement of Warehouses and available truck routes to avoid the deleterious effects of routing trucks past sensitive uses; and

WHEREAS, the City intends to update the Pomona Zoning Ordinance to further address the potential side effects of Warehouses to ensure that they are properly regulated within the City; and

WHEREAS, the adverse impacts associated with trucking facilities are similar to those of Warehouses. As such, the City also intends to address trucking facilities, and associated buildings, queuing, stacking, loading, unloading and parking of trucks; and

WHEREAS, City staff, the City Planning Commission, and the City Council, each requires a reasonable period of time to study existing Warehouse and trucking facility regulations and developments to determine the potential adverse impacts on the environment, traffic, aesthetics, and visual quality of properties within the City, and to make recommendations on appropriate alternative regulations for Warehouses and trucking facilities within the City; and

WHEREAS, city staff, begun researching the issues related to warehouses and truck storage facilities but require more time after the current Moratorium expiration date of July 16, 2023, to complete the measures necessary to alleviate the conditions which lead to the adoption of the Moratorium; and

WHEREAS, the City Council wishes to extend the Moratorium for a period of one hundred and sixty-nine (169) days, or until the City Council adopts an ordinance addressing the issues raised, whichever occurs first; and

WHEREAS, at a duly noticed public hearing on June 5, 2023, testimony evidence was heard and presented from all persons interested in affecting said proposal to extend the Moratorium, from all persons protesting the same and from members of the City staff, and the City Council has reviewed, analyzed, considered, and studied all oral and written testimony and evidence presented at such public hearing, including staff reports and presentations by City staff.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Pomona as follows:

SECTION 1. Recitals Incorporated. The City Council finds the recitals contained in this ordinance to be true and correct, relies upon them in passing this ordinance, and incorporates them herein as though set forth in full herein.

SECTION 2. Definitions. For the purposes of this urgency ordinance, the following words and phrases have the meanings respectively ascribed to them by this section:

“Warehouse” means a facility, including any property and/or structure, which includes any use for the conduct, business, or management of warehousing, storing, safekeeping, freight forwarding, handling, keeping inventory, and/or distribution activities for any product or component, including but not limited to goods, wares, consumer products, materials, or merchandise, partially or wholly within an enclosed space, building, or other structure. This definition includes built to suit and speculative facilities that are developed purpose built for land uses covered under this definition but for which tenants have not yet been secured. This definition includes, but is not limited to, the following uses enumerated in the Pomona Zoning Ordinance: “General warehousing where all storage of merchandise, materials or equipment is within a totally enclosed building,” “Transportation equipment yard and storage space for transit,” “Wholesaling and warehousing (including wholesaling and warehousing of meats or meat products),” “Distributing plants,” and “Refrigerated food locker services and related incidental uses, including process of meat and meat products in connection with refrigerated food locker services,” and “Transportation equipment yard and storage space for transit” as well as any other use determined to be similar to the uses identified in this section through the approval of a Determination of Similarity.

“Common Carrier Trucking Company” means a freight transporting or transfer company serving the general public and/or business community, and regulated by the State Public Utilities Commission and/or the Federal Interstate Commerce Commission. Such businesses pay transportation taxes to the state. The city receives a portion of this tax in lieu of city business license fees, which are not required of such businesses.

“Self-storage facility (miniwarehouses or ministorage)” means a complex of buildings containing separate, enclosed units or cubicles, or other spaces which are available for rent to individuals for storage of dry goods, personal belongings, and other miscellaneous articles of value.

“Trucking facilities” means any property and improvements used for freight transfer truck terminals or for the operations of a "common carrier trucking company," including the parking, or servicing, or repairing, or storage of trucks, truck tractors, and/or truck trailers, except where such activities are not part of a "common carrier trucking company" operation, and are incidental and accessory to a primary use, permitted in the zone district, serving only said use, and located on the same property or on property adjacent to that occupied by said primary use.

“Trucking station” means an establishment designed or used primarily for dispensing of fuel or service to trucks and characterized by features such as high canopies or absence of canopies, a high percentage of diesel fuel or propane fuel dispensed in comparison with gasoline, and solicitation to the trucking trade. A restaurant serving the traveling public may be a part of the development of a trucking station.

SECTION 3. Immediate Threat. The City Council finds that there is a current and immediate threat to public health, safety, and welfare posed by current Warehouse development and over proliferation in all areas in the City, due to the insufficiency of regulations under the Pomona Zoning Ordinance. As stated above, the rapid development and expansion of Warehouses within the City has increased truck traffic, caused extensive damage to local streets, contributed to the loss of potential economic revenue, and is deteriorating the air quality, noise, and aesthetics of the City. This Ordinance is necessary as an urgency measure to address said threats to public health, safety, and welfare.

SECTION 4. 10-Day Report. In accordance with Government Code Section 65858(d), on August 1, 2021, the City Council issued a written report describing the measures being taken to alleviate the conditions that lead to the adoption of the Moratorium and this extension thereof, attached hereto as “Exhibit A”.

SECTION 5. Moratorium. Accordingly, pursuant to California Government Code Section 65858, the Pomona City Council hereby approves Code Amendment (CODE-021507-2023) adopting a citywide moratorium to establish, expand, or modify the following uses:

- A. Common carrier trucking companies.
- B. Trucking facilities.
- C. Trucking stations.
- D. Warehouses. Not including, Self-storage facilities (miniwarehouses or ministorage).

During the Moratorium, the City shall not issue any permits or entitlements inconsistent with this urgency ordinance after July 18, 2022.

SECTION 6. Exemptions.

Limited Expansion. This moratorium shall not apply to the expansion of any existing Warehouse use that does not exceed 20,000 square feet and includes no more than one at-grade roll-up door.

Executed Purchase and Sale Agreements. Any parcel(s) of land that has an executed Purchase and Sale Agreement with the City prior to August 15, 2022 and a subsequent agreement such as, but not limited to, a Development and Disposition Agreement, Public Benefits Agreement or Statutory Development Agreement shall be exempt from Ordinance 4332.

Approved Entitlements. This moratorium is only intended to apply to new or pending discretionary approvals, and shall not apply to the issuance of ministerial permits, such as grading, demolition or building permits, for the uses set forth in Section 5 above, provided that such ministerial permits are applied for in connection with an approval (conditional use permit, a subdivision map or land use entitlement) effective prior to the initiation of the moratorium on July 18, 2022. Thus, such permits may continue to be issued to implement discretionary entitlements and/or permits (including but not limited to conditional use permits) that were approved by the City prior to the date set forth above. All entitlements and permits issued prior to the adoption of this moratorium or ordinance shall not be impacted in any way by this ordinance.

SECTION 7. Duration of Ordinance. The Moratorium is hereby extended for an additional one hundred and sixty-nine (169) days beyond its original expiration date, such that the Moratorium will now expire on December 31, 2023, or until the City Council adopts an ordinance addressing the issues related to the establishment, expansion, or modifications of Warehouses and Truck Storage Facilities, whichever occurs first. Thereafter, this Moratorium extension shall be of no further force and effect unless, after a duly noticed public hearing, the City Council further extends the Moratorium for an additional period of time pursuant to Government Code Section 65858.

SECTION 8. Enforcement. The City of Pomona may enforce any provision of this Ordinance by mandamus, injunction, or any other appropriate civil remedy in any court of competent jurisdiction.

SECTION 9. City Action. During the period of this Moratorium, and any extension thereof, the City Manager or his designees shall: (1) review and consider options for the regulation of Warehouses, trucking facilities, and related uses, and (2) shall issue a written report describing

the measures which the City has taken to address the conditions which led to the adoption of this ordinance with the City Council ten (10) days prior the expiration of this Moratorium, or any extension thereof, and (3) shall make said report available to the public.

SECTION 10. Environmental Review. Pursuant to Section 15378(b)(5) of the California Environmental Quality Act (CEQA), this Ordinance is an organizational or administrative activity of the City that will not result in direct or indirect physical changes in the environment, and therefore not a project. Additionally, pursuant to CEQA Guidelines Section 15061(b)(3), this Ordinance is exempt from CEQA review because there is no possibility that the Moratorium may have a significant effect on the environment, insofar as it prohibits the construction of or alterations to, Warehouses, trucking facilities, and related uses within the City. Furthermore, even if the Ordinance is considered a project, the proposed moratorium is categorically exempt under CEQA Guidelines Section 15308, because it is clear that the Moratorium will not create an environmental impact and the action will assure the maintenance, enhancement, or protection of the environment through the eventual adoption of regulations and development standards on Warehouses, trucking facilities, and related uses. Accordingly, no further environmental review is necessary. Furthermore, as the Ordinance is an administrative procedure related to uses, facilities, and regulations identified in the Pomona Zoning Ordinance and General Plan, and given that the proposed Ordinance is not related to a specific project, the Ordinance (i) by virtue of the location of affected improvements, will not impact a sensitive environmental resource of hazardous or critical concern; (ii) will not have a cumulative impact on the environment through successive projects of the same type, in the same place, over time; (iii) does not have any unusual circumstances that will have a significant effect on the environment; (iv) does not impact a scenic highway; (v) is not located on a hazardous waste site; and (vi) will not adversely impact a historical resource. Accordingly, none of the exceptions to categorical exemptions set forth in the CEQA Guidelines, Section 15300.2, apply to this Ordinance.

SECTION 11. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof. By enacting this Ordinance, the City ordains that nothing herein shall be deemed to conflict with or duplicate federal or state law, or otherwise or to license any activity that is prohibited thereunder except as mandated by such laws.

SECTION 12. Effective Date. This Ordinance shall take effect immediately and shall be of no further force and effect one hundred and sixty-nine (169) days beyond its current expiration date, such that the Moratorium will now expire on December 31, 2023, or until the City Council adopts an ordinance addressing the issues related to the establishment, expansion, or modifications of Warehouses and Truck Storage Facilities, whichever occurs first. Thereafter, this Moratorium extension shall be of no further force and effect unless, after a duly noticed public hearing, the City Council further extends the Moratorium for an additional period of time pursuant to Government Code Section 65858.

SECTION 13. If any section, subsection, sentence clause or phrase or word of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction or preempted by state legislation, such decision or legislation shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Pomona hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence clause or phrase or word not declared invalid or unconstitutional without regard to any such decision or preemptive legislation.

PASSED, APPROVED AND ADOPTED this 5th day of June, 2023.

CITY OF POMONA:

Tim Sandoval
Mayor

APPROVED AS TO FORM:

Sonia Carvalho
City Attorney

ATTEST:

Rosalia A. Butler, MMC
City Clerk

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CITY OF POMONA

I, DIANA ROBLES, DEPUTY CITY CLERK of the City of Pomona do hereby certify that the foregoing Urgency Ordinance was introduced for first reading at a regular meeting of the City Council of the City of Pomona held on June 5, 2023 and was adopted at second reading at a regular meeting of the City Council of the City of Pomona held on June 5, 2023, by the following vote:

AYES: Nolte, Preciado, Garcia, Lustro, Sandoval
NOES: Ontiveros-Cole
ABSTAIN: None
ABSENT: Torres

Diana Robles
Deputy City Clerk