

# Agenda Report

April 8, 2013

**TO:** Honorable Mayor and City Council  
**FROM:** Planning & Community Development Department  
**SUBJECT:** **EXTENSION OF URGENCY ORDINANCE NO. 7229 OF THE CITY OF PASADENA TEMPORARILY PROHIBITING THE APPROVAL OF NEW RECYCLING FACILITIES, THE EXPANSION OR MODIFICATION OF EXISTING FACILITIES, AND THE RESUMPTION OF DISCONTINUED LEGAL NONCONFORMING STATUS FOR RECYCLING CENTERS**

## **RECOMMENDATION:**

Staff recommends that the City Council:

1. Find that the proposed extension of the interim ordinance is categorically exempt from the California Environmental Quality Act (CEQA Guidelines Sections 15060 (C)(2) and 15262 because the interim ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment and because the project involves only feasibility or planning studies for possible future actions which the City has not approved, adopted, or funded, and does not involve adoption of a plan that will have a legally binding effect on later activities;
2. Find that: (a) there is a current and immediate threat to public health, safety and welfare because continued approval of new, the expansion or modification of existing, and the resumption of discontinued legal nonconforming status recycling facilities would have adverse impacts on the public health, safety, or welfare pursuant to the standards and policies set forth in the General Plan, and (b) the proposed interim ordinance is necessary to avoid these adverse impacts; and
3. Adopt an urgency ordinance extending Ordinance No. 7229, to March 11, 2014.

## **BACKGROUND:**

At the March 11, 2013 City Council Meeting, the Council adopted Ordinance No. 7229 which imposed a moratorium on the establishment of new, the expansion or modification of existing, and the resumption of discontinued legal nonconforming recycling facilities. In addition, the City Council: 1) asked staff to determine whether or

not State law requires that recycling centers be permitted in the City; and 2) provide specific guidance to staff in amending existing regulations. The adopted ordinance is effective for 45 and is currently set to expire on April 25, 2013. Tonight's request before the City Council is to extend the moratorium for an additional 10 months and 15 days.

### **DISCUSSION:**

Currently, new recycling facilities may be established in the City, and existing facilities may be expanded or replaced, which may result in additional negative impacts to surrounding uses. To address the immediate concerns of new, expanded or replaced recycling facilities, on March 11, 2013, the City Council adopted a 45 day moratorium on such uses while a permanent ordinance is being drafted and additional information is being collected.

The requested extension provides an opportunity to develop revised regulations with public input and also to understand how further regulation on recycling centers may impact businesses governed by the California Beverage Container Recycling and Litter Reduction Act (Public Resources Code §§ 14500 et seq.). Permanent revisions to the existing ordinance would be developed in coordination with affected neighborhood groups and presented to the Planning Commission and the public for further input and a formal recommendation prior to adoption by the City Council.

### **STATE REGULATIONS**

Staff is continuing to explore state law requirements regarding recycling centers within certain distances of beverage distribution facilities, such as grocery stores. Recycling facilities are governed in part by the California Beverage Container Recycling and Litter Reduction Act. Because the City has a curbside recycling program, there may be opportunity to reduce the number of recycling facilities within the City, but there may be unintended consequences of such actions which are not yet fully understood by staff. While staff has begun research and discussions with the California Department of Resources Recycling and Recovery, additional research coordinated with the City Attorney's Office, the Public Works Department, and the California Department of Resources Recycling and Recovery is required in the coming weeks.

### **PROPOSED ORDINANCE REVISIONS**

While staff has begun the process of evaluating revisions to the ordinance, the City Council specifically directed staff to include outreach and discussion with potentially affected Home Owners Association Groups in the development of the ordinance. Staff anticipates that this research effort will begin in April and the requested extension of the moratorium will afford time for a process that includes meaningful public participation.

**ENVIRONMENTAL ANALYSIS:**

The proposed ordinance is statutorily exempt from the provisions of the California Environmental Quality Act (CEQA). CEQA Guidelines Section 15060 (C)(2) states that projects which will not result in a direct or reasonably foreseeable indirect physical change in the environment are not subject to CEQA. The exemption from CEQA pursuant to Section 15262 apply to projects that involve only feasibility or planning studies for possible future actions which the City has not approved, adopted, or funded, and does not involve adoption of a plan that will have a legally binding effect on later activities. Any proposed changes to the Zoning Code will require separate environmental review at the time they are presented to Council.

**FISCAL IMPACT:**

There is no significant effect to the City's General Fund associated with the adoption of the interim urgency ordinance.

Respectfully submitted,



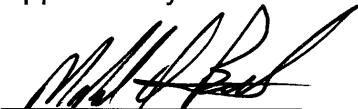
VINCENT P. BERTONI, AICP  
Director of Planning & Community  
Development Department

Prepared by:



David Reyes  
Principal Planner/Zoning Administrator

Approved by:



MICHAEL J. BECK  
City Manager

Attachments (1):

Attachment 1 – Ordinance Fact Sheet dated February 25, 2013



**PROGRAMS, DEPARTMENTS OR GROUPS AFFECTED**

The Planning and Development Department will implement the moratorium.


**FISCAL IMPACT**

There will not be an immediate fiscal impact as a result of this temporary moratorium.

**ENVIRONMENTAL DETERMINATION**

Prior to first reading, Council is being asked to find that the interim ordinance is statutorily exempt from the provisions of the California Environmental Quality Act (CEQA). CEQA Guidelines Section 15060 (C)(2) states that projects which will not result in a direct or reasonably foreseeable indirect physical change in the environment are not subject to CEQA. The exemptions from CEQA pursuant to Section 15262 apply to projects that involve only feasibility or planning studies for possible future actions which the City has not approved, adopted, or funded, and does not involve adoption of a plan that will have a legally binding effect on later activities.

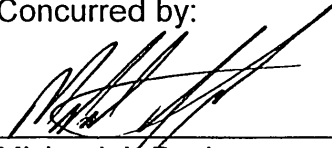
Respectfully submitted,

  
Michele Beal Bagneris  
City Attorney

Prepared by:

  
Theresa E. Fuentes  
Assistant City Attorney

Concurred by:

  
Michael J. Beck  
City Manager

Introduced by: Councilmember Gordo

ORDINANCE NO. 7229

**AN INTERIM URGENCY ORDINANCE OF THE CITY OF PASADENA  
TEMPORARILY PROHIBITING THE APPROVAL OF NEW RECYCLING  
FACILITIES, THE EXPANSION OR MODIFICATION OF EXISTING  
FACILITIES, AND THE RESUMPTION OF DISCONTINUED LEGAL  
NONCONFORMING STATUS FOR RECYCLING FACILITIES**

The People of the City of Pasadena ordain as follows:

**SECTION 1.** This ordinance, due to its length and corresponding cost of publication, will be published by title and summary as permitted in Section 508 of the Pasadena City Charter. The approved summary of this ordinance is as follows:

**"Summary**

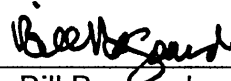
"Ordinance No. 7229 temporarily prohibits the approval of new recycling facilities, the expansion or modification of existing recycling facilities, and the resumption of discontinued legal nonconforming recycling facilities, for a 45-day period. During that time, the City will undertake a review of state law, including but not limited to the California Beverage Container Recycling and Litter Reduction Act, to determine the extent to which the City can further regulate, or even prohibit, recycling facilities. This ordinance may be extended after a duly noticed public hearing.

Ordinance No. 7229 shall take effect upon publication."

**SECTION 2.** The City Clerk shall certify the adoption of this ordinance and shall cause this ordinance to be published by title and summary.

**SECTION 3.** This ordinance shall take upon publication, and shall remain in effect for a period of 45 days from the date of adoption, in accordance with California Government Code Section 65858.

Signed and approved this 11th day of March, 2013.



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Bill Bogaard  
Mayor of the City of Pasadena

I HEREBY CERTIFY that the foregoing ordinance was adopted by the City Council of the City of Pasadena at its meeting held this 11th day of March 2013, by the following vote:


AYES: Councilmembers Bryant, Gordo, Madison, Masuda, Robinson, Tornek, Vice Mayor McAustin

NOES: None

ABSENT: Mayor Bogaard

ABSTAIN: None

Date Published: March 14, 2013  
Pasadena Journal



\_\_\_\_\_  
Mark Jomsky, CMC  
City Clerk

Approved as to form:



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Theresa E. Fuentes  
Assistant City Attorney

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Introduced by: Councilmember Gordo

ORDINANCE NO. 7229

**AN INTERIM URGENCY ORDINANCE OF THE CITY OF PASADENA  
TEMPORARILY PROHIBITING THE APPROVAL OF NEW RECYCLING  
FACILITIES, THE EXPANSION OR MODIFICATION OF EXISTING  
FACILITIES, AND THE RESUMPTION OF DISCONTINUED LEGAL  
NONCONFORMING STATUS FOR RECYCLING FACILITIES**

WHEREAS, the City of Pasadena ("City") has adopted the Land Use Element of the General Plan; and

WHEREAS, the Land Use Element sets forth policies and goals toward the improvement of the physical environment and protection of neighborhoods; and

WHEREAS, citizens have repeatedly voiced concerns regarding secondary effects of recycling facilities on surrounding land uses; and

WHEREAS, the Planning Department has reviewed the recycling facility land use and operational requirements set forth in the Zoning Code at Section 17.50.220 and, in conjunction with the Public Works Department, has started to analyze other avenues to address these potential secondary effects on surrounding land uses; and

WHEREAS, further regulation of and/or banning of recycling facilities may reduce the secondary effects commonly associated with such businesses on areas in close proximity to recycling facilities, such as increased crime, noise, pollution and accumulation of litter and debris, which reduces the quality of life in City neighborhoods and negatively impacts adjacent uses. However, to understand how further regulation



or a prohibition on recycling centers may impact businesses governed by the California Beverage Container Recycling and Litter Reduction Act (Public Resources Code §§ 14500 et seq.), City staff would need adequate time to study the matter; and

WHEREAS, nonetheless the City Council finds that there is a current and immediate threat to the public health, safety and welfare because, without the moratorium, a new recycling facility may operate after receiving approval from the City, an existing recycling facility may be expanded, or a recycling facility currently “grandfathered” from compliance with the Zoning Code may resume operations within a certain time after discontinuing such use without full protection to adjacent uses and neighborhoods from the secondary effects of recycling facilities; and

WHEREAS, pursuant to California Government Code Section 65858, and in order to protect the public health, safety and welfare, the City Council may adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan or zoning proposal that the City intends to study within a reasonable time.

NOW THEREFORE, the People of the City of Pasadena ordain as follows:

**SECTION 1.** This ordinance, due to its length and corresponding cost of publication, will be published by title and summary as permitted in Section 508 of the Pasadena City Charter. The approved summary of this ordinance is as follows:

**“Summary**

“Ordinance No. 7229 temporarily prohibits the approval of new recycling

facilities, the expansion or modification of existing recycling facilities, and the resumption of discontinued legal nonconforming recycling facilities, for a 45-day period. During that time, the City will undertake a review of state law, including but not limited to the California Beverage Container Recycling and Litter Reduction Act, to determine the extent to which the City can further regulate, or even prohibit, recycling facilities. This ordinance may be extended after a duly noticed public hearing.

Ordinance No. 7229 shall take effect upon publication.”

**SECTION 2.** The provisions of this ordinance temporarily prohibit the issuance of any approvals for new recycling centers, any approvals for expansion or modification of existing facilities, and the resumption of a discontinued legal nonconforming recycling center as currently allowed by the Zoning Code. During the effectiveness of this ordinance, the City will undertake a review of state law, including but not limited to the California Beverage Container Recycling and Litter Reduction Act, in consideration of the goals and policies established in the City’s Land Use Element and Zoning Code, to determine the extent to which the City can further regulate, or even prohibit, recycling facilities.

**SECTION 3.** Unless extended pursuant to California Government Code Section 65858, the provisions of this ordinance shall expire at the end of the 45 day period following its date of adoption.

**SECTION 4.** This ordinance is additional to and supplemental to, and shall not affect, except as specifically provided herein, any provision of the Pasadena Municipal


Code, which shall be operative and remain in full force and effect without limitation with respect to all such land uses.

**SECTION 5.** The City Council hereby declares that, should any section, paragraph, sentence, phrase, term or word of this ordinance, hereby adopted, be declared for any reason to be invalid, it is the intent of the City Council that it would have adopted all other portions of this ordinance irrespective of any such portion declared invalid.

**SECTION 6.** The City Clerk shall certify the adoption of this ordinance and shall cause this ordinance to be published by title and summary.

**SECTION 7.** This ordinance shall take upon publication, and shall remain in effect for a period of 45 days from the date of adoption, in accordance with California Government Code Section 65858.

Signed and approved this 11th day of March, 2013.



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Bill Bogaard  
Mayor of the City of Pasadena

I HEREBY CERTIFY that the foregoing ordinance was adopted by the City Council of the City of Pasadena at its meeting held this 11th day of March 2013, by the following vote:

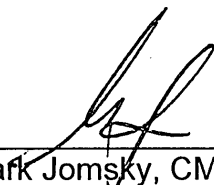
AYES: Councilmembers Bryant, Gordo, Madison, Masuda, Robinson, Tornek, Vice Mayor McAustin

NOES: None

ABSENT: Mayor Bogaard

ABSTAIN: None

Date Published: March 14, 2013  
Pasadena Journal

  
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Mark Jomsky, CMC  
City Clerk

Approved as to form:

  
\_\_\_\_\_  
Theresa E. Fuentes  
Assistant City Attorney

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