

RESOLUTION NO. 22-173

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, INTERPRETING THE PROVISIONS OF DIVISION 2 (NONCONFORMITIES) OF PART 8 (IMPLEMENTING PROVISIONS) OF THE CARSON ZONING ORDINANCE PERTAINING TO NONCONFORMING MOBILE HOME PARK USES

WHEREAS, the City of Carson is a Charter City; and

WHEREAS, Section 9141.1 prohibits mobilehome parks located in industrial zones as a planned use, but the City has continually opted to allow actual, existing uses of those parks to continue despite the running of amortization periods in light of the Council's expressed desire to protect and preserve its existing supply of mobile home park spaces as an essential component of the City's affordable housing stock in the face of the current housing crisis and the fact that doing so is consistent with and furthers the City's General Plan goals and policies of protection of the existing supply of affordable housing in the City; and

WHEREAS, the City Council desires to initiate a formal interpretation of the provisions of the City's Zoning Ordinance (Chapter 1 of Article IX of the City's Municipal Code, and more specifically Division 2 of Part 8 thereof) on the question of whether Municipal Code Section 9182.22 imposes a ministerial duty on the City to abate legally nonconforming mobilehome park uses after the period of time for such uses has run; and

WHEREAS, the Director of Community Development ("Director") has prepared an interpretation on the issue, which is attached hereto as Exhibit "A" (the "Interpretation"). Having reviewed the Interpretation, the Council finds it is based on an examination of the intent of the Zoning Ordinance, considering all of the relevant provisions thereof, and is consistent with such intent. Consideration has been given to the relationship among regulations of the various zoning classifications and the uses and development standards therein. The Council finds the Interpretation clarifies, confirms and reiterates the Council's clear and continuing desire to preserve nonconforming mobile park uses in industrial zones regardless of the amortization periods set forth in Municipal Code Section 9182.22; and

WHEREAS, accordingly, the Council sees fit to approve and endorse the Interpretation prepared by the Director pending any further proceedings thereon, and to direct the Director to give public notice of preparation of the Interpretation.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The recitals above are true and correct, and are incorporated herein by this reference as findings of fact.

SECTION 2. The City's preparation, consideration or approval of the Interpretation is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines because there is no possibility that the Interpretation or its implementation would have a significant negative effect on the environment (14 Cal. Code Regs. § 15061(b)(3)). The Interpretation maintains the existing environmental baseline and existing environmental conditions. Likewise, the Interpretation is also exempt from CEQA because it involves no expansion of use of existing facilities and maintains the existing environmental baseline (14 Cal. Code Regs. § 15301).

SECTION 3. Based on the findings set forth above, the City Council hereby: (1) initiates the preparation of an interpretation of the provisions of the City's Zoning Ordinance on the question(s) set forth above; (2) having considered the Interpretation attached hereto as Exhibit "A," approves and endorses the Interpretation pending any further proceedings thereon; and (3) directs the Director to give public notice of preparation of the Interpretation.

SECTION 4. The City Council declares that, should any provision, section, paragraph, sentence or word of this Resolution be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Resolution as hereby adopted shall remain in full force and effect.

SECTION 5. The City Clerk shall certify to the adoption of this Resolution and enter it into the book of original Resolutions.

SECTION 6. This Resolution shall take effect immediately upon its adoption.

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PASSED, APPROVED, and ADOPTED this 16th day of August, 2022.


Lula Davis-Holmes, Mayor

ATTEST:


Dr. Khaleah R. Bradshaw, City Clerk

APPROVED AS TO FORM:


Sunny K. Soltani, City Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF CARSON)

I, Dr. Khaleah K. Bradshaw, City Clerk of the City of Carson, California, hereby attest to and certify that the foregoing resolution, being Resolution No. 22-173 adopted by the City of Carson City Council at its meeting held on August 16, 2022, by the following vote:

AYES: COUNCIL MEMBERS: Davis-Holmes, Hilton, Dear, Hicks, Rojas
NOES: COUNCIL MEMBERS: None
ABSTAIN: COUNCIL MEMEBES: None
ABSENT: COUNCIL MEMBERS: None

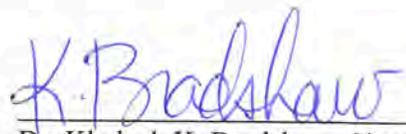

Dr. Khaleah K. Bradshaw, City Clerk

EXHIBIT "A"

COMMUNITY DEVELOPMENT DIRECTOR INTERPRETATION

PROVISIONS OF DIVISION 2 (NONCONFORMITIES) OF PART 8 (IMPLEMENTING PROVISIONS) OF THE CARSON ZONING ORDINANCE PERTAINING TO NONCONFORMING MOBILE HOME PARK USES

This interpretation is submitted by the Director of the Community Development Department ("Director") of the City of Carson ("City") regarding the provisions of Division 2 (nonconformities) of Part 8 (implementing provisions) of the City's Zoning Ordinance (Chapter 1 of Article IX of the Carson Municipal Code ["CMC"]) pertaining to nonconforming mobile home park uses.

I. Issue

Does Municipal Code Section 9182.22 impose a ministerial duty on the City to abate legally nonconforming mobilehome park uses after the period of time for such uses has run?

II. Summary

No, Municipal Code Section 9182.22 imposes no duty to abate legally nonconforming mobilehome park and trailer uses. Instead, Municipal Code Section 9182.22 establishes an amortization period for nonconforming uses. The running of an amortization period is separate and distinct from the duration of a nonconforming use. Regardless of its amortization schedule, the City can voluntarily take immediate action to abate a nonconforming use as long as it does so consistently with the requirements of the Charter and its Municipal Code. Likewise, the running of an amortization period has no impact on whether the nonconforming use must cease and be abated. Instead, the City has complete discretion whether (and when) to voluntarily engage in an abatement process. In this regard:

- The nonconforming uses must have an adverse impact on health, safety and the general welfare, or negatively impact adjacent land uses;
- The City may choose to take action to enforce the nonconforming uses consistent with adopted ordinances; and
- Abatement may only occur after the City must have engaged in affirmative steps to abate, with "abatement terms and the opportunities for hearings, taking of evidence, and extensions based upon recovery of a reasonable return on investment."

Even assuming for the sake of argument Municipal Code Section 9182.22 did not set amortization periods for nonconforming uses, harmonizing that section with both the City's Charter and enforcement provisions makes clear that the City has no ministerial duty to abate nonconforming mobilehome park uses. Instead, the City has discretion to allow nonconforming uses to either be shorter or to continue well beyond the periods set forth in Municipal Code Section 9182.22, and there is a mechanism for nonconforming uses to voluntarily seek extensions of the same if they

desire greater certainty. As a result, under either scenario Municipal Code Section 9182.22 imposes no ministerial duty upon the City to abate nonconforming uses that have exceeded the periods. Accordingly, that Section is interpreted to allow nonconforming uses to continue consistent with other provisions of the Code unless and until the City takes affirmative steps as required by the Charter and Municipal Code to abate the nonconforming use or the nonconforming use voluntarily ceases.

III. Analysis

The Director is authorized to prepare and provide interpretations regarding the meaning or intent of any provision of the Zoning Ordinance, including further defining or enumerating the uses permitted in various zones. As part of this process, the Director takes into consideration the City's Charter and all portions of the Municipal Code, as particular provision(s) must be construed with reference to the entire statutory scheme of which it forms a part in such a way that harmony may be achieved among the parts.

A. City Charter Provisions

Any interpretation of the City's Zoning Ordinance must be consistent with the framework and requirements of the City's Charter. The City has a Charter that was adopted on November 6, 2018.

Once a charter is adopted, it operates as a "constitution" for the adopting city. The provisions of California Constitution article XI, § 3(a) authorize the adoption of a city charter and provides that such a charter has the force and effect of state law. The provisions of California Constitution article XI, § 5(a), the "home rule" provision, further grant charter cities supremacy of "municipal affairs," i.e., a city charter is subject only to conflicting provisions in state or federal constitutions and preemptive state law on matters of statewide concern. The Charter's Preamble reflects the intent to exercise complete control over its municipal affairs as follows:

The express purpose of this Charter is to secure and exercise for the City of Carson the full scope of control over its municipal affairs that is authorized by law. We do hereby exercise the express home rule rights granted by the Constitution of the State of California for the people and adopt this Charter for the citizens of the City of Carson.

One such "municipal affair" is local land use, including planning, zoning regulations, and abatement of nonconforming uses. In this regard, Charter section 207(B) contains special provisions for the preservation of mobilehome park uses as follows:

(11) Establish procedures that encourage the development of affordable housing sufficient to meet community needs and improve housing quality standards through zoning regulations, and authorize the Housing Authority to develop varied housing assistance programs to address housing affordability issues including preserving mobilehome parks.

As such, an intent to preserve mobilehome parks and to address affordable housing issues is given heightened consideration by the City's Charter.

Against this backdrop, Section 208 (Abatement of Nonconforming Uses) of the City's Charter states in relevant part as follows:

B. Nonconforming Uses. Where uses no longer conform with general plan or zoning regulations, and where such uses are having an adverse impact on health, safety and the general welfare, or negatively impact adjacent land uses, the City may by adoption of suitable general plan and zoning regulations, make such uses nonconforming, and may by ordinance provide for the abatement of such uses, in a manner similar as for franchise under Section 1002 of this Charter, with abatement terms and the opportunities for hearings, taking of evidence, and extensions based upon recovery of a reasonable return on investment.

(Emphasis added.) As a result, even when previously legal uses no longer conform with the General Plan or zoning regulations, the Charter does not require automatic abatement by the City of the nonconforming use. Instead, three steps are first required for abatement:

1. The nonconforming uses must have an adverse impact on health, safety and the general welfare, or negatively impact adjacent land uses;
2. The City may choose to take action to enforce the nonconforming uses consistent with adopted ordinances; and
3. Abatement may only occur after the City must have engaged in affirmative steps as required by the Charter and Municipal Code to abate, with "abatement terms and the opportunities for hearings, taking of evidence, and extensions based upon recovery of a reasonable return on investment."

Given the forgoing, the City's Charter does not impose a ministerial duty on the City to abate nonconforming uses, nor does it require automatic abatement of nonconforming uses. To the contrary, it does contemplate the preservation of mobilehome parks and affordable housing issues, while at the same time envisioning a reasonable return on investment (amortization) for nonconforming uses that are abated.

B. Municipal Code

Municipal Code Section 9182.22 establishes an amortization period for nonconforming uses. Even if Municipal Code Section 9182.22 did not set amortization periods for nonconforming uses, harmonizing that section with both the City's Charter and enforcement provisions makes clear that the City has discretion to allow nonconforming uses to either be shorter or to continue well beyond the periods set forth in Municipal Code Section 9182.22. As a result, under either scenario Municipal Code Section 9182.22 imposes no ministerial duty upon the City to abate nonconforming uses that have exceeded the periods. As such, that Section is interpreted to allow nonconforming uses to continue consistent with other provisions of the Code unless and until the

City uses its discretion and takes affirmative steps as required by the Charter and the Municipal Code to abate the nonconforming use or the nonconforming use voluntarily ceases.

1. Section 9182.22 Establishes Amortization Periods

Any interpretation of Municipal Code Section 9182.22 requires taking into account the distinction between the amortization period for a use, and the ability to legally continue a nonconforming use.

There is a difference between the amortization period for a use, and the ability to legally continue a nonconforming use. The purpose of an amortization period is to give the owner of a nonconforming use a period of time to recoup some (but not necessarily all) of the investment in the use. Simply stated, the amount of money the City may be required to pay for just compensation under amortization is distinct from whether a nonconforming use can legally continue or whether the City has a ministerial duty to abate the use.

A city seeking to eliminate nonconforming uses has two constitutionally available options: (i) it can eliminate the use immediately by payment of just compensation, or (ii) it can require removal of the use without compensation following a reasonable amortization period. (*United Business Com. v. City of San Diego* (1979) 91 Cal.App.3d 156, 179.) The use of a reasonable amortization scheme does not constitute a taking of property, as it “provides an equitable means of reconciliation of the conflicting interests in satisfaction of due process requirements.” (*City of Los Angeles v. Gage* (1954) 127 Cal.App.2d 442, 460.) An amortization period provides an equitable means of reconciliation of the conflicting interests in satisfaction of due process requirements. (*Id.*) It allows the owner of the nonconforming use to at least partially offset any loss he might suffer. (*Id.*) The property owner’s loss is spread out over a period of years, and the owner enjoys a monopolistic position by virtue of the zoning ordinance as long as they remain. (*Id.*) When the amortization period is reasonable, the loss to the owner is small when compared with the benefit to the public. (*Id.*)

The reasonableness of the amortization period depends on the interplay of many factors, including the depreciated value of the structures to be removed, their remaining useful life, and the harm to the public if they are left standing. (*City of Salinas v. Ryan Outdoor Advertising, Inc.* (1987) 189 Cal.App.3d 416, 424.)

Here, Municipal Code Section 9182.22 provides in relevant part that:

9182.22 Termination of Existing Nonconforming Use.

A lawfully established use which becomes a nonconforming use, including any buildings, structures or facilities designed or intended only for uses which are nonconforming, shall be terminated and such buildings, structures or facilities shall be removed or made conforming in all respects within the time period specified in subsection A or B of this Section, whichever is applicable and results in the later termination date.

A. The time period indicated in the following table measured from the date of becoming a nonconforming use:

[Table omitted]

B. The time period indicated in the following table measured from the date of construction of the most recently constructed main building or other major facilities which are designed or intended for the nonconforming use:

[Table omitted]

The Tables set forth a period of time for various uses ranging from as little as 6 months (cargo container storage) to 50 years (nonconforming fire resistive heavy steel and/or concrete structures) in duration.

Although Municipal Code Section 9182.22 does not expressly identify these tables as amortization periods, it must be consistent with the subsequently adopted Charter, and such an interpretation is consistent with Charter Section 208 (nonconforming uses may be extended “based upon recovery of a reasonable return on investment”). This is further reinforced by Municipal Code Section 9172.25(D)(1), which provides for extensions of time of the periods in Municipal Code Section 9182.22 upon a finding “that the required time for termination of the nonconformity as provided in Division 2 of Part 8 of this Chapter is insufficient for the reasonable amortization of the fixed investment in such nonconformity.” (Emphasis added.) The time periods are also consistent with the City’s past and current practice of treating the periods of time in Section 9182.22 as amortization periods based on types of use and structures involved.¹ Finally, given the optional extension period for nonconforming uses, as well as the City’s discretion as to zoning enforcement and to abate nonconforming uses at any time, it is a reasonable interpretation that the time periods in Municipal Code Section 9182.22 are not hard and fast deadlines on nonconforming uses but rather amortizations periods associated with the nonconforming uses. (See discussion, below; *Terminal Plaza Corporation v. San Francisco* (1986) 186 Cal.App.3d 814, 834 (zoning enforcement is subject to discretion.)

2. No Ministerial Duty to Abate

Even assuming for the sake of argument Municipal Code Section 9182.22 did not set amortization periods for nonconforming uses, harmonizing that section with both the City’s Charter, zoning ordinance, and enforcement provisions makes clear that the City has no ministerial duty to abate nonconforming mobilehome park uses.

A “ministerial duty” is one required to be performed in a prescribed manner under the mandate of legal authority without the exercise of discretion or judgment. (*Zubarau v. City of*

¹ There are a wide-variety of legal nonconforming uses historically or currently operating within the City whose amortization periods have expired under Municipal Code Section 9182.22.

Palmdale (2010) 192 Cal.App.4th 289, 305.) Zoning enforcement is subject to discretion. (*Terminal Plaza Corporation v. San Francisco* (1986) 186 Cal.App.3d 814, 834.)

Here, there is no clear, present, and ministerial duty imposed by Municipal Code Section 9182.22 that would require it to abate a nonconforming mobilehome park use whose operations exceeded the periods set forth in Subsection A. This is consistent with the requirements of Charter Section 208 (Abatement of Nonconforming Uses) requiring discretion and procedures prior to abatement. Likewise, there are no other provisions of the Municipal Code that require or provide for a duty of the City to abate nonconforming uses.² If a nonconforming use would like to obtain greater certainty, it may formally seek one or “more extensions of any time limit specified for termination of a nonconforming use or other nonconformity.” (CMC § 9182.05.)

Taken together, there is no ministerial or mandatory duty of the City to abate nonconforming uses once the periods in Municipal Code Section 8182.22(a) have run.

3. Affordable Housing Considerations

As discussed above, Charter section 207(B) contains special provisions for the preservation of mobilehome park uses and affordable housing issues. In this regard, the State Legislature has repeatedly addressed the existing housing supply crises, and has found and declared the following:

1. California is experiencing a housing supply crisis, with housing demand far outstripping supply. In 2018, California ranked 49th out of the 50 states in housing units per capita.
2. Existing housing in this state, especially in its largest cities, has become very expensive.
3. California is also experiencing rapid year-over-year rent growth.
4. The housing crisis harms families across California and has resulted in increased poverty and homelessness.
5. The lack of housing is a critical problem that threatens the economic, environmental, and social quality of life in California.

The City of Carson is likewise experiencing a housing supply crisis, especially with regard to that portion of the public served by mobile home parks and trailer parks. The City Council has taken steps to continue to help preserve existing mobile home and trailer parks within the community. For example, the City Council adopted Ordinance No. 22-2205 in April of 2022 declaring that mobilehome spaces that are subject to the City’s Mobile Home Space Rent Control Ordinance or are occupied by low or very low income households, are “protected units” under SB 330.³

² To the contrary, see Municipal Code Section 1203(a) (Authority and Fines) [“Any person violating any provision of the Carson Municipal Code may be issued an administrative citation by a Code Enforcement Officer as provided in this Chapter”] (emphasis added); Section 1203.1(e) (Legislative Findings and Statement of Purpose) [“Use of this Chapter shall be at the sole discretion of the City and nothing in this Chapter shall preclude the City from enforcing City law through other civil, administrative and criminal remedies.”] (emphasis added).

³ As a result, under SB 330 the City may not approve a housing development project requiring demolition of these protected units unless the project will replace the demolished units with

Consistent with existing law, the City has continually exercised its authority and discretion to allow for legally nonconforming mobile home and trailer parks to continue their uses in the face of the housing crisis. These actions are consistent with the requirements of the Charter (including regarding the preservation of affordable housing and mobilehome parks), the City's General Plan goals and policies, and the provisions of the Zoning Ordinance.

The interpretation that the running of City's amortization period does not mandate that the City (or the user, absent affirmative steps taken by City as required by the Charter and Municipal Code) abate the nonconforming mobilehome park uses is consistent with the intent of the Charter and General Plan to promote affordable housing and to preserve mobilehome parks.

IV. Conclusion

Municipal Code Section 9182.22 imposes no duty to abate legally nonconforming mobilehome park and trailer uses, irrespective of expiration of the amortization periods it imposes.

Date: August 11, 2022



Saied Naaseh
Community Development Director

affordable units.

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