



STAFF REPORT SAN CLEMENTE PLANNING COMMISSION

Date: August 5, 2015

PLANNER: Adam Atamian, Associate Planner 

SUBJECT: Zoning Amendment 15-123, Massage Establishments, a City-initiated proposal to add Section 17.28.185 and amend Tables 17.36.020 and 17.40.030 of the Zoning Ordinance of the San Clemente Municipal Code to provide local regulatory authority over massage uses consistent with State law.

REQUIRED FINDINGS

Prior to approval of the proposed project, the following findings shall be made. The draft Resolution (Attachment 1) and analysis section of this report provide an assessment of the project's compliance with these findings.

Zoning Amendment, Section 17.16.060

- a. The proposed amendment is consistent with the General Plan.
- b. The proposed amendment will not adversely affect the public health, safety and welfare.

BACKGROUND

In 2008, the California Legislature passed Senate Bill (SB) 731 which provided for the formation of a nonprofit organization, known as the California Massage Therapy Council (CAMTC), to oversee a state-sanctioned program of voluntary certification for massage practitioners so that such persons could avoid being required to obtain local massage permits. In compliance with SB 731, the City of San Clemente amended sections of the Municipal Code related to business licenses and zoning. The intent of SB 731 was to allow law enforcement personnel and consumers to identify legitimate therapists easier, by establishing a standard screening process, regulatory authority, and requirements for the profession. Prior to SB 731, cities could adopt and enforce their own massage therapy requirements. SB 731 required cities to regulate State certified massage therapists similar to "professional and personal service" uses, such as barbers, physical therapists, medical clinics, etc.

Due to the changes required by SB 731, the City, and many other municipalities in the State, experienced a number of problems with illicit activities at massage establishments from a reduction in oversight that occurred when the state took over regulatory authority. In September 2014, the State Legislature adopted Assembly Bill (AB) 1147, amending the laws enacted by SB 731 to restore much of the local control and land use authority to local governments which had been preempted by SB 731. This item is before the Planning

Commission because changes to the zoning regulations to restore local land use authority require Planning Commission review and recommendation to the City Council.

Development Management Team Meeting

The Development Management Team reviewed the proposed amendments for consistency with City and State policies.

Noticing

Public notices were posted per City and State requirements. All businesses currently offering massage services were also provided notice of the public hearing.

Municipal Code Amendment

The City Council also initiated amendments to Chapter 5.28 of the San Clemente Municipal Code (SCMC) regulating the business licensing and screening procedures of massage establishments. Planning Commission action does not need to be taken on these items:

PROJECT DESCRIPTION

The proposed Zoning Amendment would make the following modifications to Title 17, Zoning, of the SCMC to restore local land use authority over massage uses (please refer to Exhibit 1 of Attachment 1 for the text of these sections):

1. Add Section 17.28.185, Massage Establishments, to Chapter 17.28, Special Uses, to specify specific zoning standards for massage establishments and uses.
2. Amend Table 17.36.020, Commercial Zone Uses, to conditionally permit massage uses in the Neighborhood Commercial and Community Commercial zones.
3. Amend Table 17.40.030, Mixed-Use Zone Uses, to conditionally permit some massage uses in the Mixed-Use zones.
4. Amend Section 17.88, Definitions, to add a definition for “massage establishment, accessory,” and revise the definitions of “massage” and “massage establishment.”

PROJECT ANALYSIS

The inability of local jurisdictions to effectively regulate the proliferation of massage establishments led to the passage of AB 1147. This law, signed by Governor Brown in September 2014, returns certain regulatory powers over operating standards and land use to local agencies. With respect to land use controls, AB 1147 no longer requires cities to treat CAMTC certified establishments the same as other “professional and personal service” uses.

There are two major changes proposed in the Zoning Amendment that provide for specific development standards applicable only to massage uses. The first change is to the use

from a by-right permitted use to a conditionally permitted use. This will require that massage businesses obtain a Conditional Use Permit (CUP) if the establishment only offers massage services, or a Minor Conditional Use Permit (MCUP) if the establishment offers massage as an accessory use to another primary use, such as a medical office or a beauty salon. Additionally, the proposed conditional nature of the use is accompanied by special development standards specifically for massage establishments. The second change is to the zoning districts where massage uses are allowed to operate. Currently, these uses are permitted in all commercial and mixed-use zones; this amendment proposes to restrict the zones where massage establishments may operate to the more intense commercial areas.

CUP/MCUP Process for Massage Uses

The CUP/MCUP process is beneficial for a number of reasons. The public nature of the process, including the neighborhood notice and hearing, allows community serving operators to stand out. It also serves to filter less virtuous proposals. Under the CUP/MCUP process the Planning Commission is required to find the proposal compatible with the surrounding community. It is believed that legitimate operators, sensitive to their surrounding community, will easily meet this requirement. When granting CUPs/MCUPs, the Planning Commission applies conditions of approval on the proposed use. These conditions are standard for all uses and help provide harmonious operation and ensure the application of best management practices.

The special use standards proposed in Section 17.28.185, Massage Establishments, also provides additional conditions for massage uses. These additional conditions include facility, operational, and sanitation requirements, which are consistent with the regulations applied to these uses in other jurisdictions. Staff has consulted with the City Attorney's office and the Orange County Sheriff's Department to ensure that the proposed ordinance is consistent with state law and appropriately enforceable. Together these conditions ensure safe and legitimate operation and assist enforcement efforts given the revocability of a CUP/MCUP.

Permissible Locations for Massage Uses

The amendment to Table 17.36.020, Commercial Zone Uses, and Table 17.40.030, Mixed-Use Zone Uses, improves zoning compatibility between massage uses and the types of uses intended for each particular zone. With the addition of an "accessory massage establishment" use classification, there is some flexibility in the intensities of the massage uses allowed in different areas. Generally for commercial and mixed-use zones, "massage establishments" require a CUP, while "accessory massage establishments" require a MCUP. However, there are fewer commercial and mixed-use zones where full "massage establishments" are allowed to reduce the potential negative impacts to residential areas and maintain a more visitor-centered character in the City's mixed-use core areas (Downtown/T-street, Pier Bowl, and North Beach). Full massage establishments, being those businesses that do not meet the definition of an "accessory massage establishments" are not allowed in the Neighborhood Commercial 1.1 and 1.2 zones, the Regional Commercial 2 zone, or the Mixed Use zones.

The proposed revisions for the definitions of “massage establishment” and “massage” are to increase consistency between Title 16, Zoning, and Title 5, Business Licenses, of the SCMC. The new definitions serve to simplify and update the terms, but do not significantly alter their meaning. The addition of a definition for “massage establishment, accessory” will provide clarity for the categorization of uses between the two types of massage establishments allowed in the proposed Zoning Amendment.

Development standards currently applied to massage establishments will not change with this Zoning Amendment. Examples of these standards parking and signage. Massage establishments have a parking requirement of one parking space per 200 square feet of the tenant space. Signage will be required to comply with Section 17.84, Sign Regulations.

GENERAL PLAN CONSISTENCY

Table 1 summarizes how the proposed use is consistent with adopted policies outlined in the City of San Clemente General Plan.

Table 1 - General Plan Consistency

Policies and Objectives	Consistency Finding
<p><i>Land Use Element Primary Goal #1:</i> Retain and enhance established residential neighborhoods, commercial and industrial districts, recreational resources, community-activity areas and amenities, and open spaces that improve the community’s quality of life, enhance the appeal of our many attractions, maintain our small-town character, and ensure long-term environmental and fiscal health.</p>	<p>Consistent. The amendment to the types of massage uses conditionally permitted in certain commercial and mixed-use districts enhances those districts by locating massage uses with other similarly intense commercial uses.</p>
<p><i>Land Use Element Primary Goal #8:</i> provide a diversity of land use areas that complement one another and are characterized by differing functional activities and intensities of use.</p>	<p>Consistent. The zones where massage uses are conditionally permitted ensures that neighborhood character is maintained and that new massage uses are compatible with the intent of the zone.</p>
<p><i>LU-2.03. Neighborhood Compatibility.</i> We require that commercial projects abutting residential neighborhoods be designed and operated to protect residents from the effects of noise, light, odors, vibration traffic, parking and other operational impacts.</p>	<p>Consistent for the reasons stated above.</p>

Policies and Objectives	Consistency Finding
<p><i>LU-3.02. Flexibility.</i> We apply flexible development standards to respond to changing market demands, where it can be demonstrated that by doing so, the proposed development or land use will help achieve General Plan goals.</p>	<p>Consistent for the reasons stated above.</p>
<p><i>LU-11.03. Flexibility.</i> We allow flexibility to accommodate market changes for the mix of uses identified in the Del Mar/T-Zone Mixed Use Guide [link to Figure LU-4], if doing so promotes achieving the Area’s vision and improves livability, reduces vehicular trips, creates community gathering places and activity nodes, or helps strengthen the its character and identity.</p>	<p>Consistent for the reasons stated above.</p>
<p><i>LU-11.10. Unique Commercial Character.</i> We encourage unique, locally-based businesses and services that help maintain and enhance Downtown’s unique village character.</p>	<p>Consistent for the reasons stated above.</p>

ENVIRONMENTAL REVIEW/COMPLIANCE (CEQA):

The Planning Division completed an environmental assessment of ZA 10-370 for compliance with the California Environmental Quality Act (CEQA). Pursuant to CEQA Guidelines Section 21065, the proposed zoning amendments do not meet the definition of a “project” as they do not have the potential to change the environment. Therefore, they are not subject to further environmental review.

CALIFORNIA COASTAL COMMISSION REVIEW

Certain commercial and mixed use zones discussed in this amendment occur entirely, or partially, within the Coastal Zone. However, the amendment is consistent with the City of San Clemente Local Coastal Program currently being processed and Coastal Commission review is not necessary.

ALTERNATIVES; IMPLICATIONS OF ALTERNATIVES

1. The Planning Commission can concur with staff and recommend approval of the proposed project.

This action would result in the Commission recommending the City Council adopt the proposed Zoning Amendment to provide local regulatory authority over massage uses consistent with State law.

2. The Planning Commission can, at its discretion, add, modify or delete provisions of the proposed project or conditions.

This action would result in any modifications being reviewed and considered by the City Council.

3. The Planning Commission can recommend denial of the proposed project.

This action would result in the Commission recommending the City Council deny the proposed Zoning Amendment, finding the amendment is not consistent with the General Plan or does not maintain the health, safety, and welfare of the public.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission recommend the City Council approve Zoning Amendment 15-123, subject to the attached Resolution.

Attachments:

1. Resolution No. PC 15-023
Exhibit 1 – Draft Massage Establishment Ordinance
2. Draft Section 17.28.185, Massage Establishments, of Chapter 17.28, Special Uses
3. Draft Table 17.36.020, Commercial Zone Uses, excerpted, with Track Changes
4. Draft Table 17.40.030, Mixed-Use Zone Uses, excerpted, with Track Changes
5. Draft Section 17.88, Definitions, excerpted, with Track Changes

ATTACHMENT 1

RESOLUTION NO. PC 15-023

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN CLEMENTE, CALIFORNIA, RECOMMENDING THE CITY COUNCIL APPROVE AND ADOPT AN ORDINANCE (ZONING AMENDMENT 15-123), AMENDING TITLE 17 OF THE MUNICIPAL CODE FOR THE PURPOSE OF PROVIDING LOCAL REGULATORY AUTHORITY OVER MASSAGE USES CONSISTENT WITH STATE LAW.

WHEREAS, in January 2015, the State of California adopted Assembly Bill 1147 (“AB 1147”), an act to amend Section 460 of, and to add and repeal Chapter 10.5 (commencing with Section 4600) of Division 2 of, the Business and Professions Code, and to amend Section 51034 of the Government Code, relating to healing arts. The State law authorizes the City of San Clemente to adopt and enforce local ordinances that govern zoning, business licensing, and reasonable health and safety requirements for establishments and businesses of a licensed or certified healing arts professional, including a certified massage therapist. The law also made clarifying and conforming changes regarding local regulation of massage establishments and businesses; and

WHEREAS, on April 21, 2015, the City Council initiated a Municipal Code Amendment, a proposal to amend sections of the San Clemente Municipal Code to restore municipal land use regulatory and permitting authority over massage establishments consistent with AB 1147; and

WHEREAS, the City's Development Management Team reviewed the application for consistency with the General Plan and other applicable requirements; and

WHEREAS, the Planning Division completed an environmental assessment of the proposed zoning amendments for compliance with the California Environmental Quality Act (CEQA). Pursuant to CEQA Guidelines Section 21065, the proposed zoning amendments do not meet the definition of a “project” as they do not have the potential to change the environment. Therefore, they are not subject to further environmental review.

WHEREAS, on August 5, 2015, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties.

NOW, THEREFORE, the Planning Commission of the City of San Clemente hereby resolves as follows:

Section 1: The proposed code amendments are not defined as a project pursuant to California Environmental Quality Act (CEQA) Guidelines Section 21065, therefore the request is not subject to CEQA.

Section 2: With respect to Zoning Amendment 15-123, the Planning Commission recommends that the City Council find as follows:

Resolution PC 15-023

- A. The proposed amendments are consistent with the General Plan, in that the types of massage uses conditionally permitted in certain commercial and mixed-use districts enhances those districts by locating massage uses with other similarly intense commercial uses.
- B. The proposed amendments will not adversely affect the public health, safety, and welfare, in the zones where massage uses are conditionally permitted ensures that neighborhood character is maintained and that new massage uses are compatible with the intent of the zone. The increased regulatory authority enhances the City's capacity to ensure that massage uses do not negatively affect the public health, safety, and welfare of the City's residents, businesses, and visitors.

Section 3: The Planning Commission hereby recommends that the City Council approve Zoning Amendment 15-123, an ordinance amending Title 17 of the Municipal Code, attached as Exhibit 1, subject to the above Findings.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of San Clemente on August 5, 2015.

Chair

TO WIT:

I **HEREBY CERTIFY** that the foregoing resolution was duly adopted at a regular meeting of the Planning Commission of the City of San Clemente on August 5, 2015, and carried by the following roll call vote:

AYES: COMMISSIONERS:
NOES: COMMISSIONERS:
ABSTAIN: COMMISSIONERS:
ABSENT: COMMISSIONERS:

Secretary of the Planning Commission

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING TITLE 17 OF THE SAN CLEMENTE MUNICIPAL CODE, FOR THE PURPOSE OF PROVIDING LOCAL REGULATORY AUTHORITY OVER MASSAGE USES CONSISTENT WITH STATE LAW.

WHEREAS, in January 2015, the State of California adopted Assembly Bill 1147 ("AB 1147"), an act to amend Section 460 of, and to add and repeal Chapter 10.5 (commencing with Section 4600) of Division 2 of, the Business and Professions Code, and to amend Section 51034 of the Government Code, relating to healing arts. The State law authorizes the City of San Clemente to adopt and enforce local ordinances that govern zoning, business licensing, and reasonable health and safety requirements for establishments and businesses of a licensed or certified healing arts professional, including a certified massage therapist. The law also made clarifying and conforming changes regarding local regulation of massage establishments and businesses; and

WHEREAS, on April 21, 2015, the City Council initiated a Municipal Code Amendment, a proposal to amend sections of the San Clemente Zoning Code to restore municipal land use regulatory and permitting authority over massage establishments consistent with AB 1147; and

WHEREAS, the City's Development Management Team reviewed the application for consistency with the General Plan and other applicable requirements; and

WHEREAS, the proposed code amendments are not defined as a project pursuant to California Environmental Quality Act (CEQA) Guidelines Section 21065, therefore the request is not subject to CEQA.

NOW, THEREFORE, the City Council of the City of San Clemente hereby resolves as follows:

Section 1: The proposed code amendments are not defined as a project pursuant to California Environmental Quality Act (CEQA) Guidelines Section 21065, therefore the request is not subject to CEQA.

Section 2: With respect to this ordinance, the City Council finds as follows:

- A. The proposed amendments are consistent with the General Plan, in that the types of massage uses conditionally permitted in certain commercial and mixed-use districts enhances those districts by locating massage uses with other similarly intense commercial uses.

- B. The proposed amendments will not adversely affect the public health, safety, and welfare, in the zones where massage uses are conditionally permitted ensures that neighborhood character is maintained and that new massage uses are compatible with the intent of the zone. The increased regulatory authority enhances the City’s capacity to ensure that massage uses do not negatively affect the public health, safety, and welfare of the City’s residents, businesses, and visitors.

Section 3: the definition of “Massage” is hereby amended in Municipal Code, Section 17.88.30, to read as follows:

“Massage” shall mean the scientific manipulation of the soft tissues, including but not limited to any method of treating any of the external parts of the body for remedial, health or hygienic purposes by means, including but not limited to, rubbing, stroking, pressuring, acupressuring, kneading, tapping, pounding, vibrating or stimulating with the hands, feet, elbows or any other part of the body, with or without the aid of any instrument or device and with or without such supplementary aids as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment, or other similar preparations commonly used in this practice, under such circumstances that it is reasonably expected that the person to whom the treatment is provided or some third person on his or her behalf will pay money or give any other consideration or any gratuity therefor.

Section 4: the definition of “Massage Establishment” is hereby amended in Municipal Code, Section 17.88.30, to read as follows:

“Massage establishment” shall mean a fixed location where massage is performed for compensation.

Section 5: the definition of “Massage Establishment” is hereby amended in Municipal Code, Section 17.88.30, to read as follows:

“Massage establishment, accessory” shall mean an establishment that provides massage which is incidental to the primary business, where the owner of the primary business is responsible for the massage services and conduct of the massage technician(s) employed at the location.

Section 6: Section 8 of Table 17.36.010 is hereby amended as follows:

	NC 1.1, NC 1.2	NC 2, NC 3, CC 1, CC 2, CC 3	RC 2
8. Unclassified Uses			
Accessory Buildings	C	C	C
Alcoholic Beverage Sales Concurrent With Motor Vehicle Fuel-Convenience Stores Sales 13	C	C	NP

Amusement Centers ¹⁴	C	C	NP
Animal Grooming	MC	P	NP
Bowling Alleys	NP	C	NP
Drive-Thru Facilities, When in Conjunction with a Use Permitted or Conditionally Permitted in the Zone	NP	C	NP
Grading ¹⁵ , (Not Accompanying a Development Request)			
Emergency	P	P	P
Major	C	C	C
Minor	P	P	P
Health/Fitness/Sports Clubs and Facilities	C	C	NP
Internet Access Studio/Internet Cafe	P	P	NP
With 5 or more computers available to the public (excluding school, library and other similar public uses) ¹⁸	C	C	NP
Massage ¹⁹		C	
Accessory Massage ¹⁹	MC	MC	
Mortuaries	NP	C	NP
Pool Halls ²⁰	NP	C	NP
Recycling Facilities ²¹			
Reverse Vending Machines	P	P	NP
Small Collection	C	P	NP
Large Collection	NP	C	NP
Theaters	NP	C	NP
Wine Tasting (Only as an Accessory Use to establishments selling wine or wine-related products as a primary use)	MC	MC	NP

Section 7: Footnote 19 is amended in Section 8 of Table 17.36.020, to read as follows "Massage is subject to Section 5.28 of the City of San Clemente Municipal Code. Refer to Section 17.28.185, Massage Establishments, of this title, for special provisions for massage establishments and accessory massage establishments."

Section 8: Section 7 of Table 17.40.030 is hereby amended as follows:

7. Unclassified Uses	MU 3	MU 3-CB	MU 5.1
Accessory Buildings, Residential ¹⁸			
Detached, Over 15 Feet in Height	NP	NP	C
All Others	NP	NP	P
Accessory Buildings, Nonresidential ¹⁹	C	C	C
Alcohol Beverage Sales Concurrent with Motor Vehicle Fuel-Convenience Store Sales ²⁰	NP	NP	C
Amusement Centers ²¹	C	C	C
Animal Grooming Shops	NP	NP	MC
Bowling Alleys	NP	NP	C
Drive-Thru Facilities, When in Conjunction with a Use Permitted or Conditionally Permitted in this Zone	NP	NP	C
Grading ²² , Not Accompanying a Development Request.			
Emergency	P	P	P
Major	C	C	C
Minor	P	P	P
Health/Fitness/Sports Clubs and Facilities	C	C	C
Internet Access Studio/Internet Cafe	P	P	P
With 5 or more computers available to the public (excluding school, library and similar public uses) ²³	C	C	C
Massage ²⁴			
Accessory Massage ²⁴	MC	MC	
Mortuaries	NP	NP	C
Pool Halls ²⁴	C	C	C
Recycling Facilities: ²⁵ Reverse Vending Machines	MC	MC	MC
Theaters	C	C	C
Urban Private Storage ²⁶	C	C	NP
Wine Tasting (Only as an Accessory Use to establishments selling wine or wine related products as a primary use)	MC	MC	MC

Section 9: Footnote 24 is amended in Section 7 of Table 17.40.030, to read as follows “Massage is subject to Section 5.28 of the City of San Clemente Municipal Code. Refer to Section 17.28.185, Massage Establishments, of this title, for special provisions for massage establishments.”

Section 10: Section 17.28.185, Massage Establishments, is hereby added to Title 17, Zoning, of the San Clemente Municipal Code, as follows:

17.28.185 - Massage Establishments.

- A. Purpose and Intent. The purpose of this section is to provide standards for massage establishments, where allowed in compliance with Title 17, Zoning, and Chapter 5.28, Massage Establishments, of the San Clemente Municipal Code.
- B. Applicability. This section applies to all businesses proposing to conduct massage, including Accessory Massage Establishments. This chapter shall not apply to the following classes of individuals while engaged in the performance of the duties of their respective professions:
 - 1. Physicians, surgeons, chiropractors, osteopaths or physical therapists who are duly licensed to practice their respective professions in the State of California.
 - 2. Nurses registered under the laws of the State of California.
 - 3. Trainers of any amateur, semi-professional or professional athlete or athletic team.
 - 4. Barbers and beauticians who are duly licensed under the laws of the State of California when engaged in such practice within the scope of their employment.
 - 5. Hospitals, nursing homes, sanatoriums, or other health care facilities duly licensed by the State of California; provided that at all times such physicians, surgeons, chiropractors, osteopaths and physical therapists are acting in adherence with the provisions of the state law that govern Massage.
 - 6. Accredited high schools and colleges and coaches and trainers therein while acting within the scope of their employment.
 - 7. Physical therapy students and massage therapy students, enrolled in a State approved educational program earning practical hours for school/education, may provide massage under the direct supervision of a State-certified, City-licensed physical therapist or massage therapist at all times when a student performs massage for educational purposes at an approved educational facility.
- C. Review Requirements. Please refer to the use table in Chapter 17.36, Commercial Zones and Standards, and Chapter 17.40, Mixed Use Zones and Standards, of this title.
 - 1. Massage Establishment Business license required. All businesses that are proposing to conduct massage from a location that have an

approved and active Conditional Use Permit or Minor Conditional Use Permit for massage services must obtain approval of a business license prior to the initiation of operations.

2. Change of Tenancy or Ownership. Change of management, ownership, or tenancy of a Massage Establishment, which was legally established and operational by [insert date of Massage Ordinance approval], shall require a Conditional Use Permit/ Minor Conditional Use Permit as required in Chapter 17.36, Commercial Zones and Standards, and Chapter 17.40, Mixed Use Zones and Standards, of this title, as determined by the City Manager.

D. Facility Requirements.

1. A recognizable and readable sign shall be posted at the main entrance identifying the establishment as a massage establishment; provided that all such signs shall comply with Chapter 17.84, Sign Regulations, of this title.
2. If shower facilities are provided, an enclosed changing area, directly adjacent to the shower shall be provided. The changing area shall be designed to allow the patron utilizing the shower facility to exit the shower, and enter the changing area, without being exposed or visible to any other area of the massage establishment. A private changing area shall be provided for each shower facility provided. The minimum dimension of the changing area shall be 25 square feet, and meet ADA standards.
3. A minimum of one separate washbasin shall be provided in each massage establishment for the use of employees of any such establishment. Said basin shall provide soap or detergent and hot and cold running water at all times, and shall be located within or as close as practicable to the area devoted to the performing of massage services. In addition, there shall be provided at each washbasin sanitary towels placed in permanently installed dispensers.
4. The storefront windows of the massage establishment shall be transparent to provide clear visibility into the unit. The windows shall not be obscured by curtains, blinds, or other temporary devices during operating hours.
5. Table showers
 - a. If an establishment is proposing the use of table showers in the facility, the entire massage room where the table shower is located shall be designed and built as a shower facility.

- b. The floor and walls shall be designed and built to be waterproof per California Building Code requirements.
- c. The room shall drain properly per the California Building Code.

E. Operational Requirements.

1. A massage business licensee shall have the premises supervised at all times when open for business by the operator or a designated manager. A person designated as the responsible managing officer shall be on the premises at all times of operation and must be registered with the city manager by the owner to receive all complaints and citations. The appointment of a managing officer in charge must be in writing with the managing officer in charge acknowledging this appointment. The violation upon the premises of any massage establishment of any provision of this chapter by any agent, employee or independent contractor of the holder of a massage business license shall constitute a violation by the licensee.
2. Each massage establishment shall have at least one person who has a valid CAMTC certification on the premises at all times while the establishment is open for business.
3. The operator of a massage establishment shall maintain a register of all persons employed as a massage technician and their CAMTC certification numbers, along with all receptionists, or other employees of the establishment. Such register shall be provided to the City upon application of a massage establishment license and business license, and shall be updated when an employee, massage technician, or independent contractor is added or discontinues services at the establishment. Notification shall be provided to the City within ten (10) calendar days of the date an employee, massage technician, or independent contractor is added or discontinues service at the establishment. The register shall also be made available for inspection by representatives of the city at any time during the establishment's business hours. If the register is not made available during inspection, the establishment may receive an administrative citation, along with any individual, not including patrons, at the establishment that cannot be verified as a legal employee.
4. In no circumstance shall any owner, operator, responsible managing employee, manager, licensee, employee or independent contractor expose any of his or her specified anatomical areas to another person or persons while at the massage establishment.

5. In no circumstance shall any specified sexual activities take place at any time at the massage establishment.
6. No person or persons shall be allowed to live inside the massage establishment at any time. No food of any kind shall be prepared for sale or sold in the establishment unless an appropriate food vending license is obtained. There shall be no beds located in areas not designated specifically as massage rooms. Locker facilities shall be provided for all employees and independent contractors. All personal items of the employees or independent contractors shall be kept in the lockers while at the establishment.
7. No massage establishment shall operate as a school of massage, or use the facilities as that of a school of massage.
8. No massage establishment employing a massage technician shall be equipped with tinted or one-way glass in any room or office.
9. There shall be no display, storage, or use of any instruments, devices, or paraphernalia which are designed for use in connection with specified sexual activities, including, but not limited to, vibrators, dildos, or condoms, or any goods or items which are replicas of, or which simulate, specified anatomical areas, or pornographic magazines, videos, or other material.
10. Each service offered, the price thereof, and the minimum length of time such service shall be performed shall be posted in a conspicuous public location in each massage business or establishment. All letters and numbers shall be capitals not less than one inch in height. No services shall be performed and no sums shall be charged for services other than those posted. This posting requirement shall not apply to exempt physicians and/or surgeons who employ or retain non-exempt persons to perform massage therapy as part of licensed medical activities. All arrangements for services to be performed shall be made in a room that is not used for massage therapy.
11. Alcoholic beverages may not be sold, served, furnished, kept, consumed, imbibed, or possessed on the premises without a Conditional Use Permit approved in compliance with Chapter 17.16.060, Conditional Use Permits, and any applicable California Department of Alcoholic Beverage Control licenses.
12. Hours of operation shall be limited to the hours of 7:00 a.m. to 9:00 p.m. daily. A massage begun any time before 9:00 p.m. must nevertheless terminate at 9:00 p.m. The hours of operation shall be clearly displayed within a common area of the facility, or may be displayed as a form of window signage in compliance with Chapter 17.84, Sign Regulations, of this title.

13. The owner or operator of each massage establishment shall display the business license issued to the establishment and the CAMTC license issued to each massage technician employed in the establishment in an accessible and conspicuous place on the premises. CAMTC certified massage practitioners shall have his or her original state certification at his or her place of business and his or her identification card in his or her possession while providing massage services. All sub-contracted massage technicians, as defined by the Internal Revenue Service, operating within a massage establishment shall have his or her business license at his or her place of business.
14. Every Massage Establishment shall keep a written record of the date and hour of each treatment administered, the name and telephone number of each patron, the name of the Massage Therapist or Massage Practitioner administering treatment, and the type of treatment administered, to be recorded on a patron release form. Such written record shall be open to inspection by officials charged with enforcement of this chapter. Such records shall be kept on the premises of the Massage Establishment for a period of two (2) years.
15. No massage services shall be provided to a patron that results in intentional contact, or occasional repetitive contact, with specified anatomical areas.
16. No person shall give, or assist in giving, any massage or other body treatment to any other person under the age of eighteen (18) years, unless the parent or guardian of the minor person has consented thereto in writing.

F. Sanitation Requirements.

1. Adequate equipment for disinfecting and sterilizing instruments used in performing the acts of massage shall be provided.
2. Hot and Cold running water shall be provided at all times.
3. All walls, ceiling, floors, pools, showers, bathtubs, steam rooms, and all other physical facilities for the establishment must be in good repair and maintained in a clean and sanitary condition. Wet and dry rooms, steam and vapor rooms or cabinets, shower compartments, and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs/table showers shall be cleaned after each use.
4. Clean and sanitary towels and linens shall be provided for each patron of the establishment or each patron receiving massage services. No common use of towels or linens shall be permitted.
5. Minimum ventilation shall be provided in accordance with the California Building Code.

G. Attire Requirements.

1. Dressing while engaging in the practice of massage for compensation, or while visible to clients in a massage establishment, in any of the

following is a violation of Chapter 4609 California Business and Professions code:

- a. Attire that is transparent, see-through, or substantially exposes the massage technician's undergarments.
 - b. Swim attire, if not providing a water-based massage modality approved by CAMTC.
 - c. A manner that exposes the massage technician's specified anatomical areas.
 - d. A manner that constitutes a violation of Section 314 of the Penal Code.
 - e. A manner that is otherwise deemed by CAMTC to constitute unprofessional attire based on the custom and practice of the profession in California.
- H. Permit conditions. In approving a Conditional Use Permit to establish a massage use, the review authority may impose conditions (e.g., security and safety measures, light, noise buffers, parking, etc.) on the use to ensure that it operates in a manner that provides adequate protection to the public health, safety, and general welfare.
- I. Inspection by Government Officials. The Director, City Manager, or their authorized representatives shall have the right to enter massage establishments or businesses, from time to time, unannounced, for the purposes of making reasonable inspections to observe and enforce compliance with this Section and all laws of the City and State of California.
- J. Nuisances. Any massage establishment operated, conducted, or maintained contrary to the provisions of this chapter shall be unlawful and a public nuisance, and the city attorney may in the exercise of discretion, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings, for the abatement, removal or enjoinder thereof, in a manner provided by law. Violations of this chapter or any permit provided pursuant to this chapter shall also be subject to enforcement under Title 1 of this Code or suspension, revocation, or non-renewal of any applicable permit.
- K. Post-Decision Procedures. The procedures and requirements in Chapter 17.16.060, Conditional Use Permits, and those related to appeals in Chapter 17.12.140, Appeals of an action, shall apply following the decision on a massage establishment Conditional Use Permit application.

Section 11: Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of San Clemente hereby declares that it would have adopted this Ordinance and each section, subsection,

sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

Section 12: The City Clerk shall certify to the passage of this ordinance and the same shall take effect as provided by law.

APPROVED, ADOPTED and SIGNED this _____ day of _____, 2015.

Mayor of the City of San Clemente, California

ATTEST:

City Clerk of the City of
San Clemente, California

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS
CITY OF SAN Clemente)

I, JOANNE BAADE, City Clerk of the City of San Clemente, California, hereby certify that Ordinance No. _____ having been regularly introduced at the meeting of _____, was again introduced, the reading in full thereof unanimously waived, and duly passed and adopted at a regular meeting of the City Council on the ____ day of _____, _____, and said ordinance was adopted by the following vote:

AYES:
NOES:
ABSENT:

CITY CLERK of the City of
San Clemente, California

APPROVED AS TO FORM:

CITY ATTORNEY

Chapter 17.28.185

MASSAGE ESTABLISHMENTS

17.28.185 Massage Establishments.

- A. Purpose and Intent.** The purpose of this section is to provide standards for massage establishments, where allowed in compliance with Title 17, Zoning, and Chapter 5.28, Massage Establishments, of the San Clemente Municipal Code.
- B. Applicability.** This section applies to all businesses proposing to conduct massage, including Accessory Massage Establishments. This chapter shall not apply to the following classes of individuals while engaged in the performance of the duties of their respective professions:
1. Physicians, surgeons, chiropractors, osteopaths or physical therapists who are duly licensed to practice their respective professions in the State of California.
 2. Nurses registered under the laws of the State of California.
 3. Trainers of any amateur, semi-professional or professional athlete or athletic team.
 4. Barbers and beauticians who are duly licensed under the laws of the State of California when engaged in such practice within the scope of their employment.
 5. Hospitals, nursing homes, sanatoriums, or other health care facilities duly licensed by the State of California; provided that at all times such physicians, surgeons, chiropractors, osteopaths and physical therapists are acting in adherence with the provisions of the state law that govern Massage.
 6. Accredited high schools and colleges and coaches and trainers therein while acting within the scope of their employment.
 7. Physical therapy students and massage therapy students, enrolled in a State approved educational program earning practical hours for school/education, may provide massage under the direct supervision of a State-certified, City-licensed physical therapist or massage therapist at all times when a student performs massage for educational purposes at an approved educational facility.
- C. Review Requirements.** Please refer to the use table in Chapter 17.36, Commercial Zones and Standards, and Chapter 17.40, Mixed Use Zones and Standards, of this title.
1. **Massage Establishment Business License required.** All businesses that are proposing to conduct massage from a location that have an approved and active Conditional Use Permit or Minor Conditional Use Permit for massage services must obtain approval of a Massage Establishment Business License prior to the initiation of operations.

2. **Change of Tenancy or Ownership.** Change of management, ownership, or tenancy of a Massage Establishment, which was legally established and operational by [insert date of Massage Ordinance approval], shall require a Conditional Use Permit/ Minor Conditional Use Permit as required in Chapter 17.36, Commercial Zones and Standards, and Chapter 17.40, Mixed Use Zones and Standards, of this title, as determined by the City Manager.

D. Facility Requirements.

1. A recognizable and readable sign shall be posted at the main entrance identifying the establishment as a massage establishment; provided that all such signs shall comply with Chapter 17.84, Sign Regulations, of this title.
2. If shower facilities are provided, an enclosed changing area, directly adjacent to the shower shall be provided. The changing area shall be designed to allow the patron utilizing the shower facility to exit the shower, and enter the changing area, without being exposed or visible to any other area of the massage establishment. A private changing area shall be provided for each shower facility provided. The minimum dimension of the changing area shall be 25 square feet, and meet ADA standards.
3. A minimum of one separate washbasin shall be provided in each massage establishment for the use of employees of any such establishment. Said basin shall provide soap or detergent and hot and cold running water at all times, and shall be located within or as close as practicable to the area devoted to the performing of massage services. In addition, there shall be provided at each washbasin sanitary towels placed in permanently installed dispensers.
4. The storefront windows of the massage establishment shall be transparent to provide clear visibility into the unit. The windows shall not be obscured by curtains, blinds, or other temporary devices during operating hours.
5. Table showers
 - a. If an establishment is proposing the use of table showers in the facility, the entire massage room where the table shower is located shall be designed and built as a shower facility.
 - b. The floor and walls shall be designed and built to be waterproof per California Building Code requirements.
 - c. The room shall drain properly per the California Building Code.

E. Operational Requirements.

1. A massage business licensee shall have the premises supervised at all times when open for business by the operator or a designated manager. A person designated as the responsible managing officer shall be on the premises at all times of operation and must be registered with the city manager by the owner to receive all complaints and citations. The appointment of a managing officer in charge must be in writing with the managing officer in charge acknowledging this appointment. The violation upon the premises of any massage establishment of any provision of this chapter by any agent,

employee or independent contractor of the holder of a massage business license shall constitute a violation by the licensee.

2. Each massage establishment shall have at least one person who has a valid CAMTC certification on the premises at all times while the establishment is open for business.
3. The operator of a massage establishment shall maintain a register of all persons employed as a massage technician and their CAMTC certification numbers, along with all receptionists, or other employees of the establishment. Such register shall be provided to the City upon application of a massage establishment license and business license, and shall be updated when an employee, massage technician, or independent contractor is added or discontinues services at the establishment. Notification shall be provided to the City within ten (10) calendar days of the date an employee, massage technician, or independent contractor is added or discontinues service at the establishment. The register shall also be made available for inspection by representatives of the city at any time during the establishment's business hours. If the register is not made available during inspection, the establishment may receive an administrative citation, along with any individual, not including patrons, at the establishment that cannot be verified as a legal employee.
4. In no circumstance shall any owner, operator, responsible managing employee, manager, licensee, employee or independent contractor expose any of his or her specified anatomical areas to another person or persons while at the massage establishment.
5. In no circumstance shall any specified sexual activities take place at any time at the massage establishment.
6. No person or persons shall be allowed to live inside the massage establishment at any time. No food of any kind shall be prepared for sale or sold in the establishment unless an appropriate food vending license is obtained. There shall be no beds located in areas not designated specifically as massage rooms. Locker facilities shall be provided for all employees and independent contractors. All personal items of the employees or independent contractors shall be kept in the lockers while at the establishment.
7. No massage establishment shall operate as a school of massage, or use the facilities as that of a school of massage.
8. No massage establishment employing a massage technician shall be equipped with tinted or one-way glass in any room or office.
9. There shall be no display, storage, or use of any instruments, devices, or paraphernalia which are designed for use in connection with specified sexual activities, including, but not limited to, vibrators, dildos, or condoms, or any goods or items which are replicas of, or which simulate, specified anatomical areas, or pornographic magazines, videos, or other material.
10. Each service offered, the price thereof, and the minimum length of time such service shall be performed shall be posted in a conspicuous public location in each massage business or establishment. All letters and numbers shall be capitals not less than one

inch in height. No services shall be performed and no sums shall be charged for services other than those posted. This posting requirement shall not apply to exempt physicians and/or surgeons who employ or retain non-exempt persons to perform massage therapy as part of licensed medical activities. All arrangements for services to be performed shall be made in a room that is not used for massage therapy.

11. Alcoholic beverages may not be sold, served, furnished, kept, consumed, imbibed, or possessed on the premises without a Conditional Use Permit approved in compliance with Chapter 17.12.060, Conditional Use Permits, and any applicable California Department of Alcoholic Beverage Control licenses.
12. Hours of operation shall be limited to the hours of 7:00 a.m. to 9:00 p.m. daily. A massage begun any time before 9:00 p.m. must nevertheless terminate at 9:00 p.m. The hours of operation shall be clearly displayed within a common area of the facility, or may be displayed as a form of window signage in compliance with Chapter 17.84, Sign Regulations, of this title.
13. The owner or operator of each massage establishment shall display the business license issued to the establishment and the CAMTC license issued to each massage technician employed in the establishment in an accessible and conspicuous place on the premises. CAMTC certified massage practitioners shall have his or her original state certification at his or her place of business and his or her identification card in his or her possession while providing massage services. All sub-contracted massage technicians, as defined by the Internal Revenue Service, operating within a massage establishment shall have his or her business license at his or her place of business.
14. Every Massage Establishment shall keep a written record of the date and hour of each treatment administered, the name and telephone number of each patron, the name of the Massage Therapist or Massage Practitioner administering treatment, and the type of treatment administered, to be recorded on a patron release form. Such written record shall be open to inspection by officials charged with enforcement of this chapter. Such records shall be kept on the premises of the Massage Establishment for a period of two (2) years.
15. No massage services shall be provided to a patron that results in intentional contact, or occasional repetitive contact, with specified anatomical areas.
16. No person shall give, or assist in giving, any massage or other body treatment to any other person under the age of eighteen (18) years, unless the parent or guardian of the minor person has consented thereto in writing.

F. Sanitation Requirements.

1. Adequate equipment for disinfecting and sterilizing instruments used in performing the acts of massage shall be provided.
2. Hot and Cold running water shall be provided at all times.
3. All walls, ceiling, floors, pools, showers, bathtubs, steam rooms, and all other physical facilities for the establishment must be in good repair and maintained in a clean and sanitary condition. Wet and dry rooms, steam and vapor rooms or cabinets, shower compartments, and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs/table showers shall be cleaned after each use.

4. Clean and sanitary towels and linens shall be provided for each patron of the establishment or each patron receiving massage services. No common use of towels or linens shall be permitted.
5. Minimum ventilation shall be provided in accordance with the California Building Code.

G. Attire Requirements.

1. Dressing while engaging in the practice of massage for compensation, or while visible to clients in a massage establishment, in any of the following is a violation of Chapter 4609 California Business and Professions code:
 - a. Attire that is transparent, see-through, or substantially exposes the massage technician's undergarments.
 - b. Swim attire, if not providing a water-based massage modality approved by CAMTC.
 - c. A manner that exposes the massage technician's specified anatomical areas.
 - d. A manner that constitutes a violation of Section 314 of the Penal Code.
 - e. A manner that is otherwise deemed by CAMTC to constitute unprofessional attire based on the custom and practice of the profession in California.

H. Permit conditions. In approving a Conditional Use Permit to establish a massage use, the review authority may impose conditions (e.g., security and safety measures, light, noise buffers, parking, etc.) on the use to ensure that it operates in a manner that provides adequate protection to the public health, safety, and general welfare.

I. Inspection by Government Officials. The Director, City Manager, or their authorized representatives shall have the right to enter massage establishments or businesses, from time to time, unannounced, for the purposes of making reasonable inspections to observe and enforce compliance with this Section and all laws of the City and State of California.

J. Nuisances. Any massage establishment operated, conducted, or maintained contrary to the provisions of this chapter shall be unlawful and a public nuisance, and the city attorney may in the exercise of discretion, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings, for the abatement, removal or enjoinder thereof, in a manner provided by law. Violations of this chapter or any permit provided pursuant to this chapter shall also be subject to enforcement under Title 1 of this Code or suspension, revocation, or non-renewal of any applicable permit.

K. Post-Decision Procedures. The procedures and requirements in Chapter 17.16.060, Conditional Use Permits, and those related to appeals in Chapter 17.12.140, Appeals of an action, shall apply following the decision on a massage establishment Conditional Use Permit application.

LINKS TO REFERENCE MATERIALS AND BACKGROUND INFORMATION

- Existing Conditions Traffic Analysis [staff to provide link to F&P report]
- Regulatory and Policy Overview [staff to provide link to F&P report]
- Model Design Manual of Living Streets (MDML) (with exceptions) [<http://www.modelstreetdesignmanual.com/>]
- City of San Clemente Bicycle and Pedestrian Master Plan [staff to provide link]
- City of San Clemente Climate Action Plan [staff to provide link]
- City of San Clemente Traffic Calming Policy [staff to provide link]
- Master Plan of Arterial Highways [staff to provide link]
- Future Conditions Traffic Analysis [staff to provide link to F&P report]
- California Office of Planning & Research General Plan Guidelines, Complete Streets [http://opr.ca.gov/docs/Update_GP_Guidelines_Complete_Streets.pdf]
- Federal Safe and Complete Streets Act of 2011 [<http://www.govtrack.us/congress/bills/112/hr1780/text>]

Roadway System

San Clemente's roadway system [link to Figure M-1] shall meet multiple goals. It must be safe, convenient, efficient, balanced to address all roadway users' needs and compatible with its surroundings. The roadway system must provide the necessary capacity to meet existing needs and future transportation needs resulting from growth and development as allowed in the City's General Plan Land Use Plan [link to Figure LU-1]. At the same time, the roadway system must meet or exceed adopted performance standards. When feasible and where appropriate, the public rights-of-way must accommodate motor vehicles, pedestrians, bicyclists, landscaping, street furniture, utilities and traffic control devices in safe and aesthetically pleasing ways.

GOAL:

Create a balanced transportation network that provides mobility and access for all modes of travel, including motor vehicles, transit, bicyclists, pedestrians, and rail traffic.

POLICIES:

- M-1.01. **Roadway system.** We require the City's roadways to:
- a. Accommodate public transit, motor vehicles, bicyclists, skateboarders and pedestrians within the public right-of-way wherever feasible.
 - b. Consider Federal, State, Orange County and City standards and guidelines for roadway design, maintenance and operation.
 - c. Comply with Orange County Transportation Authority (OCTA) requirements for arterial highways as determined through the Master Plan of Arterial Highways (MPAH) and Measure M. Maintain at least a Level of Service (LOS) D or better at all intersections, except where

ATTACHMENT 3

Amended Table 17.36.020 – with Track Changes

Commercial Zone Uses

Use	NC 1.1, NC 1.2	NC 2, NC 3, CC 1, CC 2, CC 3	RC 2	CRC- 4
8. Unclassified Uses				
Accessory Buildings	C	C	C	C
Alcoholic Beverage Sales Concurrent With Motor Vehicle Fuel-Convenience Stores Sales ¹⁴	C	C		
Amusement Centers ¹⁵	C	C		C
Animal Grooming	MC	P		
Bowling Alleys		C		C
Drive-Thru Facilities, When in Conjunction with a Use Permitted or Conditionally Permitted in the Zone		C		
Grading ¹⁶ (Not Accompanying a Development Request)				
a. Emergency	P	P	P	P
b. Major	C	C	C	C
c. Minor	P	P	P	P
Health/Fitness/Sports Clubs and Facilities	C	C		C
Internet Access Studio/Internet Café	P	P		P
a. With five or more computers available to the public (excluding school, library and other similar public uses) ¹⁷	C	C		C
Massage ¹⁹	P	<u>PC</u>	P	P
<u>Accessory Massage</u> ¹⁹	<u>MC</u>	<u>MC</u>		
Mortuaries		C		
Pool Halls ²⁰		C		C
Recycling Facilities ²¹				
a. Reverse Vending Machines	P	P		
b. Small Collection	C	P		
c. Large Collection		C		
Theaters		C		C

Wine Tasting (Only as an Accessory Use to establishments selling wine or wine-related products as a primary use)	MC	MC	MC
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- 1 Refer to Section 17.28.120, Convenience Stores/Retail Establishments Selling Convenience Items, of this title, for special provisions for convenience stores.
- 2 Refer to Section 17.28.220, Parking Lots, of this title, for special provisions for single-use parking lots.
- 3 Refer to Section 17.28.090, Bed and Breakfast Inns, of this title, for special provisions for bed and breakfast inns.
- 4 Refer to Section 17.28.110 Congregate Care Facilities of this title for special provisions for congregate care facilities.
- 5 Refer to Section 17.28.100, Child Day Care Facilities, this title, for special provisions for day care facilities.
- 6 Small-family day care homes are permitted in single-family homes. A Minor Conditional Use Permit is required to allow small-family day care homes in other residential dwellings. Small-family day care homes only shall operate in buildings that were lawfully constructed.
- 7 Refer to Section 17.28.220, Parking Lots, of this title, for special provisions for parking lots.
- 8 Refer to Section 17.28.230, Public Park Facilities, of this title for review requirements for parks.
- 9 Refer to Section 17.28.240, Public Utilities, of this title, for special provisions for public utilities.
- 10 Refer to Section 17.56.090, Affordable Housing Overlay Zone, for projects in Commercial and Mixed-Use Zones, of this title, for special provisions for Affordable Housing Projects.
- 11 Refer to Section 17.28.280, Senior Housing Projects, of this title, for special provisions for senior housing projects.
- 12 Refer to Section 17.28.260, Restaurants, Drive-In, Drive-Through, of this title, for special provisions for drive-in/drive-thru restaurants.
- 13 When a restaurant has an approved CUP for the service of alcohol indoors and a CUP is required for the service of alcohol outdoors, then the applicant may request an amendment to the existing CUP to extend service outdoors. When a restaurant has an approved CUP for the service of alcohol indoors and an MCUP is required for the service of alcohol outdoors, an MCUP is the only application necessary (an amendment to the existing CUP shall not be necessary).
- 14 If a CUP has been previously approved for service of hard alcohol indoors, then that service may be extended outdoors for outdoor facilities with no more than 16 seats or four tables with the approval of an MCUP. If no CUP has been approved for service of hard alcohol indoors, then any service of hard alcohol outdoors requires a CUP.
- 15 Refer to Section 17.28.040, Alcoholic beverages and motor vehicle fuel, concurrent sale of, of this title, for special provisions for concurrent sales of motor fuel and alcoholic beverages.
- 16 Refer to Section 17.28.050, Amusement Centers, of this title, for special provisions for arcades/amusement centers.
- 17 Refer to Section 17.28.130, Grading, of this title, for special provisions for grading requests that are not accompanying development requests.

18 The provisions for amusement centers shall apply to Internet Access Studios/Internet Cafés. Please refer to Section 17.28.050, Amusement Centers, for special provisions for amusement centers.

19 Massage is subject to Section 5.28 of the City of San Clemente Municipal Code. Refer to Section 17.28.185, Massage Establishments, of this title, for special provisions for massage establishments and accessory massage establishments.

20 The provisions for amusement centers shall apply to pool halls. Please refer to Section 17.28.050, Amusement Centers, for special provisions for amusement centers.

21 Refer to Section 17.28.250, Recycling Facilities, of this title, for special provisions for recycling facilities.

22 Refer to Section 17.28.330, Vehicle Service and Repair-Related Facilities, for provisions for all vehicle service and repair-related facilities.

23 Refer to Section 17.28.290, Service Stations, of this title, for special provisions for service/gas stations.

24 Refer to Section 17.28.310, Vehicle Dealerships, of this title, for special provisions for vehicle dealerships. The sales, leasing, and/or rental of new and/or used vehicles which meet any of the following criteria shall be prohibited within the commercial zones described in this chapter:

25 Over-sized vehicles as defined in Section 17.88.030, Definitions, Vehicle, Over-Sized, of this title;

26 Boats with trailers exceeding 40 feet in length, 20 feet in height (not including masts), or 15 feet in width; or Motor trucks as defined in the California Vehicle Code, excluding pick-up trucks, as defined in the same code.

27 Refer to Section 17.28.320, Vehicle Repair Facilities, of this title, for special provisions for vehicle repair facilities.

(Ord. 1314 §§ 37—43, 2006; Ord. 1308 § 13, 2006; Ord. 1182 § 13, 1997; Ord. 1172 § 3 (Repealed by 96-555), 1996)

(Ord. No. 1517, § 3, 8-17-2010; Ord. No. 1524, §§ 5, 6, 12-7-2010; Ord. No. 1536, § 4(Exh. A), 6-21-2011; Ord. No. 1561, § 3(Exh. A, § 20), 11-27-2012; Ord. No. 1575, § 3(Exh. A, § 8), 12-3-2013)

ATTACHMENT 4

Amended Table 17.40.030 – with Track Changes

Mixed-Use Zone Uses

Use	MU 3	MU 3-CB	MU 5.1
Alcohol Beverage Sales Concurrent with Motor Vehicle Fuel-Convenience Store Sales ²⁰			C
Amusement Centers ²¹	C	C	C
Animal Grooming Shops			MC
Bowling Alleys			C
Drive-Thru Facilities, When in Conjunction with a Use Permitted or Conditionally Permitted in this Zone			C
Grading ²² , Not Accompanying a Development Request:			
a. Emergency	P	P	P
b. Major	C	C	C
c. Minor	P	P	P
Health/Fitness/Sports Clubs and Facilities	C	C	C
Internet Access Studio/Internet Café	P	P	P
a. With five or more computers available to the public (excluding school, library and similar public uses) ²³	C	C	C
b. Massage ²⁴	P	P	P
c. Accessory Massage ²⁴	MC	MC	
d. Mortuaries			C
e. Pool Halls ²⁵	C	C	C
f. Recycling Facilities: ²⁶ Reverse Vending Machines	MC	MC	MC
g. Theaters	C	C	C
h. Urban Private Storage ²⁷	C	C	

Wine Tasting (Only as an Accessory Use to establishments selling wine or wine related products as a primary use)	MC	MC	MC
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- 1 Refer to Section 17.28.120, Convenience Stores/Retail Establishments Selling Convenience Items, of this title.
- 2 Refer to Section 17.28.090, Bed and Breakfast, of this title.
- 3 Refer to Section 17.28.110, Congregate Care Facilities, of this title.
- 4 Refer to Section 17.28.100, Child Day Care Facilities, of this title.
- 5 Small-family day care homes are permitted in single-family homes. A Minor Conditional Use Permit is required to allow small-family day care homes in other residential dwellings. Small-family day care homes only shall operate in buildings that were lawfully constructed.
- 6 Refer to Section 17.28.220, Parking Lots, of this title.
- 7 Refer to Section 17.28230, Public Park Facilities, of this title.
- 8 Refer to Section 17.28.240, Public Utilities, of this title.
- 9 Refer to Section 17.56.090 Affordable Housing Overlay District in Commercial and Mixed-Use Zones, of this title, for special provisions for Affordable Housing Projects.
- 10 Manufactured homes are subject to the same requirements as individual mobile homes. Please refer to Section 17.28.190(D), Minimum Standards for Individual Mobile Homes, of this title.
- 11 Refer to Section 17.28.190, Mobile Homes, of this title.
- 12 Refer to Section 17.36.040, Planned Residential District Overlay, of this title.
- 13 Refer to Section 17.28.280, Senior Housing Projects, of this title.
- 14 Refer to Section 17.28.260, Drive-Throughs.
- 15 When a restaurant has an approved CUP for the service of alcohol indoors and a CUP is required for the service of alcohol outdoors, then the applicant may request an amendment to the existing CUP to extend service outdoors.
- 16 When a restaurant has an approved CUP for the service of alcohol indoors and an MCUP is required for the service of alcohol outdoors, an MCUP is the only application necessary (an amendment to the existing CUP shall not be necessary).
- 17 If a CUP has been previously approved for service of hard alcohol indoors, then that service may be extended outdoors for outdoor facilities with no more than 16 seats or four tables with the approval of an MCUP. If no CUP has been approved for service of hard alcohol indoors, then any service of hard alcohol outdoors requires a CUP.
- 18 Refer to Section 17.24.040, Accessory Buildings, of this title.
- 19 Refer to Section 17.24.040, Accessory Buildings, of this title.

20 Refer to Section 17.28.040, Alcoholic beverages and motor vehicle fuel, concurrent sale of, of this title, for special provisions for concurrent sales of motor fuel and alcoholic beverages.

21 Refer to Section 17.28.050, Amusement Centers, of this title.

22 Refer to Section 17.28.130, Grading, of this title.

23 The provisions for amusement centers shall apply to Internet Access Studios/Internet Cafés. Refer to Section 17.28.050, Amusement Centers, of this title.

24 Massage is subject to Section 5.28 of the City of San Clemente Municipal Code. Refer to Section 17.28.185, Massage Establishments, of this title, for special provisions for massage establishments.

25 The provisions for amusement centers shall apply to pool halls. Refer to Section 17.28.050, Amusement Centers, of this title.

26 Refer to Section 17.28.250, Recycling Facilities, of this title.

27 Refer to Section 17.28.305, Urban Private Storage, of this title.

28 Refer to Section 17.28.330, Vehicle Service and Repair-Related Facilities, of this title.

(Ord. 1442 §§ 5, 6, 2007; Ord. 1314 §§ 44—48, 2006; Ord. 1308 § 14, 2006; Ord. 1304 § 26, 2005; Ord. 1252 §§ 7 and 8, 2001; Ord. 1182 § 14, 1997; Ord. 1172 § 3 (part), 1996)

(Ord. No. 1524, §§ 7, 8, 12-7-2010; Ord. No. 1536, § 4(Exh. A), 6-21-2011; Ord. No. 1561, § 3(Exh. A, §§ 21—23), 11-27-2012; Ord. No. 1575, § 3(Exh. A, § 9), 12-3-2013)

ATTACHMENT 5

Amended Definitions with Track Changes

"Massage" shall mean the scientific manipulation of the soft tissues, including but not limited to any method of treating any of the external parts of the body for remedial, health or hygienic purposes by means, including but not limited to, rubbing, stroking, pressuring, acupressuring, kneading, tapping, pounding, vibrating or stimulating with the hands, feet, elbows or any other part of the body, with or without the aid of any instrument or device and with or without such supplementary aids as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment, or other similar preparations commonly used in this practice, under such circumstances that it is reasonably expected that the person to whom the treatment is provided or some third person on his or her behalf will pay money or give any other consideration or any gratuity therefor. ~~any method of pressure on, or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating the external parts of the human body with the hands or with the aid of any mechanical or electrical apparatus, or other appliances or devices, with or without such supplementary aids as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment, or other similar preparations commonly used in this practice.~~ The terms "massage" and "bodywork" shall have the same meaning.

"Massage establishment" shall mean a fixed location where massage is performed for compensation ~~a professional and personal service land use, consisting of any establishment with a fixed place of business where any individual, firm, association, partnership, corporation, joint venture, or combination of individuals, certified in accordance with Sections 4600 through 4620 of the California Business and Professions Code, whom engages in, conducts, carries on or permits to engage in, conducted or carried on, massages, baths, or health treatments involving massage or baths as the principal functions.~~

New Definition

"Massage establishment, accessory" shall mean an establishment that provides massage which is incidental to the primary business, where the owner of the primary business is responsible for the massage services and conduct of the massage technician(s) employed at the location.