



PLANNING COMMISSION STUDY SESSION MEMORANDUM

Date: July 22, 2020

To: Planning Commissioners
From: Long Range Planning
Jennifer Savage, Senior Planner
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Subject: Zoning Amendments Study Session

Background

On January 21, 2020, the City Council initiated Zoning Amendments to bring the City into compliance with the General Plan, and State and Federal law. In addition, the Zoning Amendments will correct erroneous and ambiguous language, and provide clear and concise direction for potential developers, staff, and decision makers.

Discussion

Staff categorized amendments into 13 subject areas. The areas for consideration in each subject area are summarized in Table 1 below and consist of amendments identified before 2020.

The July 22, 2020 Study Session introduces Zoning Amendments for 3 subject areas: Accessory Structures; Historic; and State and Federal law. There are 3 attachments included with the July 22, 2020 Study Session memo; other subject area attachments will be included at future study sessions and public hearings. These attachments discuss the changes for these subject areas and identify the proposed amendments with redline changes.

Table 1. Proposed Zoning Amendment Subject Areas

Attachment	Subject Area	Items
1	Accessory Structures	<ul style="list-style-type: none">• Definitions for accessory building; attached, accessory building; and building• Clarify when accessory structures are attached and detached• Consider limiting quantity of accessory buildings less than 450 square feet allowed in setbacks• Consider retaining wall spacing exception to accommodate an in-bank garage driveway approach

Attachment	Subject Area	Items
		<ul style="list-style-type: none"> • Modify setback for street facing garages to be consistent with Interpretation 96-41 • Consider standards for skateboard ramps • Add standards for in-bank garages in street-side yards with sloped topography • Clarify encroachment exceptions for attached and detached accessory structures
2	Definitions	<ul style="list-style-type: none"> • Define "alley" and residential setbacks for alleys • Define cultural facilities • Define hedge and when to apply height restrictions • Define method to measure chimney height • Define roof element • Consider adding definition for lot depth for irregular lots • Refine restaurant definitions • Add graphic and clarify how setbacks are applied to multiple, long, or irregular street frontage • Define canyon edge and inland canyon, and add specific canyon standards • Add definitions for tap rooms and microbreweries, and add uses to Commercial and Mixed Use zones with a Minor Conditional Use Permit
3	Encroachments	<ul style="list-style-type: none"> • Add findings for encroachment permits, and consider removing discretionary review • Consider modifying/removing 6 feet width limitation for BBQs/fireplaces • Add exceptions to allow basements to encroach into setbacks • Clarify that no setback is required for pools • Add encroachment and setback standards for through lots • Clarify how to measure accessory structures, including patio covers, to determine encroachments
4	General Plan	<ul style="list-style-type: none"> • Update Animals, Commercial Grazing and Raising of Large Species section per General Plan • Add standards to reflect Bicycle and Pedestrian Master Plan and green building code • Define business incubator term as referenced in the General Plan Economic Development Element • Modify Transportation Demand Management provisions for consistency with General Plan • Modify Affordable Housing Overlay to allow stand-alone affordable housing on any mixed use zoned lots in the Housing Element site inventory

Attachment	Subject Area	Items
5	Historic	<ul style="list-style-type: none"> • Add considerations to approve demolition of structures that are older than 50 years old • Consolidate historic regulations and update per General Plan • Modify Historic Preservation Incentives section to reflect Historic Property Preservation Agreement program (inspection frequency, mandatory provisions, amendments) • Modify ordinance to require a Cultural Heritage Permit (instead of an Architectural Permit) for commercial lots within 300 feet of a historic residence
6	Nonconforming	<ul style="list-style-type: none"> • Clarify/modify the 50% provision for detached garages and garage expansions • Clarify/modify what counts as floor area for nonconforming additions • Consider requiring that multi-family expansions bring parking into compliance • Clarify parking requirements for demolition of homes with a one-car garage • Clarify how the 50% provision applies to accessory structures • Consider removing the Minor Architectural Permit requirement for an existing nonconforming structure
7	Parking	<ul style="list-style-type: none"> • Clarify parking standards for off-site parking (requirements, distance, Conditional Use Permit, agreements) • Consider exceptions for narrow lots • Consider parking standards for event centers • Correct typo in parking standards table
8	Residential	<ul style="list-style-type: none"> • Add minimum lot area for Residential, High Density Zone • Update setbacks in Special Residential Overlay Appendix A for consistency with tract plans and Covenants, Conditions & Restrictions • Consider height exceptions for entry walls consistent with approved architectural style • Add storage requirements for multi-family residential projects • Modify accessory dwelling unit standards for consistency with State law
9	Retaining Walls	<ul style="list-style-type: none"> • Modify retaining wall height standards for consistency with fence height standards

Attachment	Subject Area	Items
		<ul style="list-style-type: none"> • Add minimum space between a fence and a retaining wall
10	Signs	<ul style="list-style-type: none"> • Add size limitation for directional and parking lot signs • Add setbacks for free-standing signs to account for traffic visibility • Consider adding exemption or provisions for historic signs • Modify to be consistent for measuring sign area of two-sided signs • Clarify service station sign provisions and make consistent with State law • Add graphics to illustrate sign measurements • Modify requirements for signs on vehicles for consistency with State law • Define project site for monument sign locations referring to interpretation 10-089 • Make provision and figure consistent • Modify for consistency with State law • Correct typo for grand opening banner size • Correct typo for Discretionary Sign Permits
11	State & Federal Law	<ul style="list-style-type: none"> • Consider merit and impacts of prohibiting small family day care homes in multi-family residential units • Add State Law provisions for home occupations, and consider modifying requirements • Modify tattoo regulations for consistency with case rulings
12	Temporary & Special Activities	<ul style="list-style-type: none"> • Correct typo in Special Activity, Applicability • Consider modifications to allow staff approval for some events, and define the number allowed per year • Add provisions for temporary storage for a specified holiday period • Add provisions for relocatable buildings
13	Other	<ul style="list-style-type: none"> • Consolidate applications where required findings and purpose of permits are similar • Consider modifying findings to make complying with standards more common and granting exceptions more rare • Consider revising Pedestrian Overlay to Visitor Serving Commercial District Overlay throughout for consistency with the Local Coastal Program • Correct typo in Inclusionary Housing Requirements

Attachment	Subject Area	Items
		<ul style="list-style-type: none"> • Consider requiring a Conditional Use Permit for a 24-hour fast food establishment when adjacent to residential • Re-evaluate the need for the minimum contiguous standards in the El Camino Real South, East of Interstate 5 Mixed Use Zone and its consequences for housing • Modify mobilehome standards for consistency with Title 25 or refer to Title 25

Attachments

- 1. Accessory Structures
- 5. Historic
- 11. State & Federal Law

Subject Area: Accessory Structures

INTRODUCTION

The Accessory Structures Subject Area considers amendments to address the following:

- Limit number of accessory buildings/structures less than 450 square feet;
- Reduce in-bank garage retaining wall separation;
- Implement regulations and development standards for skateboard ramps;
- Clarify encroachment exceptions for attached and detached accessory structures;
- Distinguish between “attached” and “detached” accessory structures;
- Consistent with Interpretation 96-41:
 - Reduce front street-facing garage setbacks to match reduced front yard setbacks in specific overlay districts;
 - Exception to setbacks for side street-facing garages in RL and RML zones; and
- Update definitions for attached accessory structures and attached buildings.

Modifications to Zoning Code

- **Location and Number.** Accessory buildings/structures that are 450 square feet or less are currently allowed to be located on any existing property line. Modification to the code will require a specific distance in relation to the size of the lot to exist between accessory buildings/structures that are located on the property line and are less than 450 square feet.
- **Relaxed standards for in-the-bank garages.** Retaining walls are currently required by the Zoning Code to be separated by a minimum length equal to the height of the tallest retaining wall. This development standards makes it increasingly difficult to implement in-the-bank garages for properties that have less lot area on average and a sloping front yard setback. The proposed modification would create an exception to spacing of retaining walls in order to accommodate an in-the-bank garage driveway approach with the approval of a Minor Exception Permit.
- **Special Uses: Skateboard Ramps.** Creates Section 17.28.335 providing regulations for skateboard ramps, as newly defined in Section 17.88, including provisions on dimensions, location, and times of permitted use.
- **Clarifying review for attached accessory structures/buildings.** Section 17.24.040.B proposed modifications would clarify how attached accessory building/structures are to be reviewed in regards to development standards.
- **Attached accessory structure defined.** “Structure, Accessory, Attached” proposed to be added to Section 17.88, Definitions. The Zoning Ordinance currently defines an attached accessory building but does not define when

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accessory structures (e.g. fences, decks, porches) are attached. This amendment would define when accessory structures are attached.

- **Front yard setbacks consistency with garage setbacks.** Added footnotes proposed to Section 17.32.040 to allow front street-facing garage setbacks to match front yard setback development standards for underlying overlay districts with reduced front yard setbacks, such as the Special Residential Overlay zoning districts. This amendment would be consistent with Interpretation 96-41.
- **Development standards for side-street garages.** Added footnotes proposed to Section 17.32.040 to create an exception in RL and RML zones to allow garage setbacks to match side-yard setbacks as long as sufficient right-of-way exists from the property line to the curb. This amendment would be consistent with Interpretation 96-41.
- **Update to definitions.** Recommended updates to definitions of “Building, Accessory”, “Building, Accessory, Attached”, and “Structure, Accessory, Attached” to distinguish between building and structure, and clarify when a building and structure are attached to the primary building on site.

PROPOSED CHANGES

17.24.040 - Accessory Buildings and Structures.

B. Standards for Attached Accessory Buildings and Structures (Except Fences, Walls, Hedges, Retaining Walls and Skirt Walls) in All Zones.

1. Setbacks. With the exception of garages in residential zones which qualify for encroachment into the front yard setback, as provided for in Section 17.32.050(E), Garage Encroachment Into the Front Setback, and except as modified by Table 17.24.080B, Maximum Encroachments into Setbacks and Height limits of this Title, attached accessory buildings/structures shall comply in all respects with the setback requirements for the primary building.
2. Height Limits. Attached accessory buildings/structures shall have the same height limit as primary buildings.

C. Standards for Detached Accessory Buildings and Structures (Except Fences, Walls, Hedges, Retaining Walls and Skirt Walls) in Residential Zones and on Residential Lots in Mixed-Use Zones.

1. Setbacks. Except as modified by Table 17.24.080B, Maximum Encroachments into Setbacks and Height Limits of this Title, a detached accessory building/structure shall adhere to the following general setbacks:

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- a. When located wholly in the front one-half of the lot, a detached accessory building/structure shall follow the setbacks for the primary building, as prescribed by the zone.
- b. When located wholly in the rear one-half of the lot:
 - i. A detached accessory building or structure being 450 square feet or less may have a zero interior-side yard and/or rear yard setback. Multiple detached accessory buildings on the same property with a zero interior-side yard and/or rear yard setback shall be separated by one-half the lineal length of the property line they share. Exception: Through lots. Refer to Section 17.24.210 for through lot standards.
 - ii. A detached accessory building being over 450 square feet shall conform to the setbacks of the underlying zone. Exception: Through lots. Please refer to the standards for through lots found in Section 17.24.210, Through Lots, Rear Setbacks For, of this Title.
 - iii. A detached accessory structure shall adhere to the setbacks of the zone for the primary building, except as modified by Table 17.24.080B, Maximum Encroachments into Setbacks and Height Limits of this Title. Exception: Through lots. Please refer to the standards for through lots found in Section 17.24.210, Through Lots, Rear Setbacks For, of this Title.

17.24.180 - Retaining Walls.

- D. Standards for Retaining Walls in Residential Zones.** Unless otherwise provided for in the applicable zones, the following standards shall apply to retaining walls and to all structural elements supporting the retaining walls, including pilasters, trellises, etc. In addition to the regulations set forth in this section, all retaining walls shall be constructed and maintained so that they do not constitute a hazard to traffic, persons or property.
- 1. Height Limits. The maximum height limits for residential retaining walls are shown in Table 17.24.180, Height Limits for Residential Retaining Walls, below.

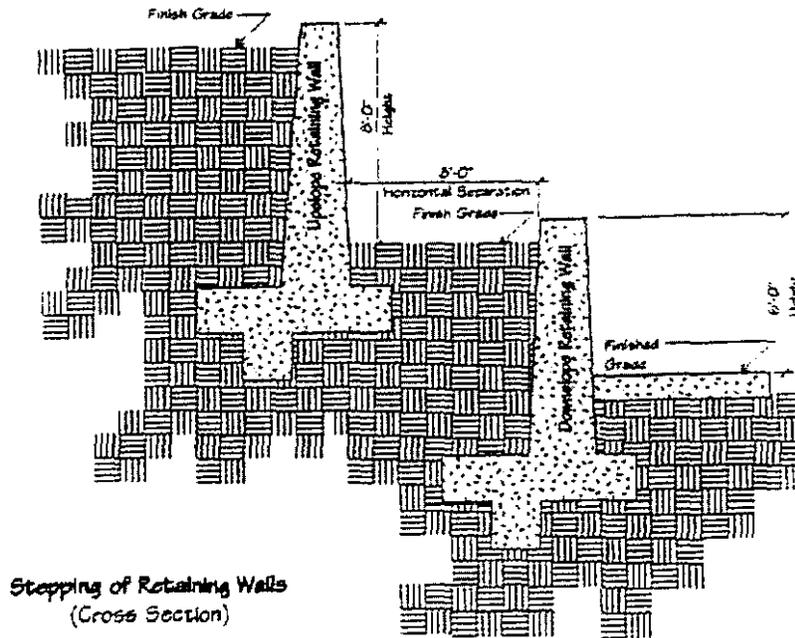
**Table 17.24.180
Height Limits for Residential Retaining Walls**

Area of Lot	Maximum Height Limit
Front Yard Setback Area	3 ft. 6 in.
Interior Side Yard	6 ft., except when the retaining wall faces toward the subject property, in which case the retaining wall shall not exceed 8 ft. 6 in. in height.

Setback Area	
Street-Side Yard Setback Area	Reverse corner lot 3 ft. 6 in. Corner lot: Within 5 ft. of street-side property line: 3 ft. 6 in. Remaining width of the street side yard: 6 ft.
Rear Yard Setback Area	6 ft., except when the retaining wall faces toward the subject property, in which case the retaining wall shall not exceed 8 ft. 6 in. in height.
Other Areas of Lot	6 ft., except when the retaining wall faces toward the subject property, in which case the retaining wall shall not exceed 8 ft. 6 in. in height.

2. Stepping of Retaining Walls. A number of retaining walls (stepping) may be constructed to substitute for one tall retaining wall if both of the following occur:
 - a. The height of each retaining wall must comply with the height limits of Table 17.24.180, Height Limits for Retaining Walls, above; and
 - b. The minimum distance between any two retaining walls shall be equal to or greater than the height of the taller of the two retaining walls. The distance between the two walls shall be measured as the horizontal separation between the two closest wall faces: the back face of the downslope retaining wall and the front face of the up slope retaining wall. Any deviation from this minimum distance for the construction of in-the-bank-garages shall be permitted with the approval a Minor Exception Permit, in accordance with Section 17.16.090, Minor Exception Permits, of this title, with concurrent approval from the City Engineer.

Figure 17.24.180



CHAPTER 17.28 - SPECIAL USES

17.28.335 – Skateboard Ramps.

- A. Purpose and Intent.** The purpose of this section is to ensure that skateboard ramps, as defined in this Chapter, do not result in an adverse impact on adjacent properties by reason of visual or aesthetic significance, noise, or impose a fire and safety hazard to life and property. In the interest of protecting the health, safety, and general welfare of the City and its residents, the following special regulations are imposed on skateboard ramps, consistent with the goals, objectives, and policies of the General Plan.
- B. Applicability.** These regulations apply to any outdoor ramp or similar device designed to create a slope, slant, or curve for the purposes of skating, skateboarding, dirt/freestyle/trick/racing bikes, or similar activities. A skateboard ramp may be constructed and used as an accessory use upon privately owned property located in all zoning districts subject to the provisions set out below.
- C. Review Requirements.** Proposals to construct skateboard ramps on private property will be reviewed by the Planning Division to ensure compliance with the Municipal Code, development standards, and use regulations set forth in this section. Building Division approval will be required prior to construction. A Conditional Use Permit, in accordance with Section 17.16.060, Conditional Use Permits, shall be required for all ramps dissenting from the provisions in this section.
- D. Minimum Standards.**
1. No such ramp shall be constructed prior to the issuance of a building permit.
 2. Applications shall include a plan detailing the exact location and dimensions of the ramp(s), as required by standard development review, and shall further

include a statement regarding the type of materials to be used in constructing the ramp.

3. Location.

a. No such ramp shall be constructed less than five (5) feet from a property line or less than ten (10) feet of any occupied structure.

b. If greater than 450 square feet, setbacks for the underlying zone apply, or whichever is more restrictive.

c. It shall be unlawful to construct, erect, place, or maintain a skateboard ramp in the front yard of any property.

4. No such ramp shall exceed twenty-four feet in length, or eight feet in height. The height of the ramp shall be measured from the ground level and shall exclude railings erected for safety purposes.

5. No such ramp shall be used for skating, skateboarding, biking or other similar activities earlier than two hours after sunrise or later than sundown.

6. No such ramp shall be used for commercial purposes including charging or receiving compensation for the use of a skateboard ramp or to use or operate a skateboard ramp in a commercial manner.

17.32.040 - Residential Zone General Development Standards.

The following property development standards shall apply to all land and permitted or conditionally permitted buildings located within their respective residential zone.

A. **General Requirements.** Table 17.32.040, Residential Zone Development Standards, lists the site development standards required for residential development projects.

Table 17.32.040

Residential Zone Development Standards

Standards	RVL	RL	RML	RM	RH
To Street-Facing Garage or Carport: ^{4,5,9}	Determined through discretionary review process	20/18 ft.	20/18 ft.	20/18 ft.	20/18 ft.
To <u>Side</u> Street - Facing Garage or Carport ^{5,10}	Determined through the discretionary review process	20/18 ft.	20/18 ft.	20/18 ft.	20/18 ft.

Footnotes:

⁹ Exceptions shall be granted when a reduced front yard setback is provided for in an overlay district's zoning regulations, such as numbered Special Residential Zones, where the garage setback shall match the front yard setback.

¹⁰ -Exceptions shall be granted in RL and RML Zones, where street-side yard setbacks allow for less than an 18 or 20 feet setback and sufficient right-of-way exists from the property line to the curb so that vehicles in the driveway will not overhang into the street or onto the sidewalk, if a sidewalk exists.

- B. Special Residential Zones (Numbered Overlays).** The City of San Clemente has a number of residential tracts that were developed with their own unique development standards. These tracts have individual overlays which are numbered. The standards for these tracts are listed in Appendix A of this title; otherwise, the development standards of the underlying zone contained in Table 17.32.040, Residential Zone Development Standards, shall apply, except front street-facing garage setbacks which shall match the front yard setback of the underlying overlay district.

17.32.050 - Residential Zone Special Development Standards.

This section and Chapter 17.24, General Development Standards, of this title include a number of special provisions affecting residential properties. Unless otherwise indicated in the following or referenced sections, or in other City documents regulating residential development, the following development standards shall apply to all residential zones described in this chapter.

E. Garage Encroachment Into the Front Yard Setback.

1. Purpose and Intent. Some residential lots within the City have a steep topography. On these lots, the requirement of the standard front yard setback for a garage could result in significant grading and/or fill. The purpose of allowing garages to encroach into the front yard setback on these lots is to reduce the need for mass grading or fill and allow structures to follow the natural topography of the site, either stepping up or down with the lot.
2. Review Requirements. Encroachment of new garages into the front setback, as provided for in this section, shall require the approval of a Minor Exception Permit, in accordance with Chapter 17.16, Applications, of this title.
3. Encroachment. If the existing natural grade on the lot has a rise or fall in excess of 10 feet, as measured from the elevation at the established top of curb, attached garages are granted an exception to the required spacing between retaining walls in accordance with Section 17.24.180(D)2(b), Retaining Walls, and may use the following setback

17.88 – Definitions.

Building, Accessory. "Accessory building" means a building, consisting of at least one solid wall and closed to the sky by a roof either solid or not, -which may either be attached to or detached from a primary building on the same lot, but which is incidental in scale to the primary building and/or within which a use is being conducted which is accessory to the primary use being conducted on the site.

Building, Accessory, Attached. An "accessory building" shall be considered "attached" when it is structurally a part of the primary building with adjoining floor area that is separated by, -sharing a minimum of one shared common wall with the primary building.

"Skateboard ramp" means any outdoor ramp or similar device designed to create a slope slant, or curve transitioning from a horizontal plane to a vertical section on the top for the purposes of skating, skateboarding, dirt/freestyle/trick/racing bikes, or similar activities.

"Structure" means anything constructed or erected which requires location on ground or attached to something having location on the ground.

Structure, Accessory. An Accessory Structure means a structure that is incidental to the primary building on a site. The classification includes fences, walls, decks, landings, swimming pools, outdoor fire places, patios, platforms, porches and terraces and similar minor structures other than buildings (see "Building, Accessory" and "Building, Accessory, Attached").

Structure, Accessory, Attached. An "accessory structure" shall be considered "attached" when it is structurally a part of a building or structure, either accessory or primary, that requires foundation, footing, or similar construction below grade that ensures the structure's stability.

Subject Area: Historic**INTRODUCTION**

The Historic Subject Area considers amendments to address the following:

- A process to review/approve demolition of structures older than 50 years
- Consolidation of historic regulations and updates to be consistent with the General Plan
- Requirements for a Cultural Heritage Permit (instead of an Architectural Permit) for commercial lots within 300 feet of a historic residence
- Updates for Historic Preservation Incentives to reflect the Historic Property Preservation Agreement program

Demolition of Structures Older Than 50 Years

Demolition of structures by age. The San Clemente Municipal Code does not require consideration of historic significance based on a building's age. This means that demolition of historic resources could occur without the review required by the California Environmental Quality Act (CEQA). This amendment would modify Section 17.16.170 - Demolition of Historic Properties to specify years that are significant to San Clemente, and thus, ensure demolition is consistent with CEQA requirements for historic resources.

The City's current process. The City currently processes requests for demolition through the Historic Demolition Permit process (Section 17.16.170). A Historic Demolition Permit (HDP) is required for demolition of buildings:

- (1) On the City's Designated Historic Resources List, or
- (2) Listed in or eligible for listing in the California Register of Historic Resources.

The criteria for eligibility for listing in the California Register of Historic Resources are:

- **Events.** Associated with events that have made a significant contribution to the broad patterns of local or regional history or the cultural heritage of California or the United States (Criterion 1).
- **Persons.** Associated with the lives of persons important to local, California or national history (Criterion 2).
- **Construction/Architecture.** Embodies the distinctive characteristics of a type, period, region or method of construction or represents the work of a master or possesses high artistic values (Criterion 3).
- **Information.** Has yielded, or has the potential to yield, information important to the prehistory or history of the local area, California or the nation (Criterion 4).

What is the relationship between potentially historic buildings and CEQA? CEQA documentation is required with a request for an Historic Demolition Permit. Pursuant to CEQA guidelines, resources that are listed in the California Register must be considered through the CEQA process. In addition, resources that are determined to be *eligible for*

listing in the California Register of Historic Resources must also be considered through the CEQA process.

How does age come into play? The California Register of Historic Resources does *not* stipulate a specific age such as 50 years. Rather, it is the National Register that maintains a 50-year threshold. The California Register specifically directs applicants *not* to rely on a 50-year threshold; applicants should rely on the criteria for eligibility for listing in the California Register of Historic Resources. CEQA guidelines reference the California Register of Historic Resources, not the National Register.

Therefore, this amendment would specify periods of significance for the California Register of Historic Resources eligibility criteria, rather than a 50-year threshold. Periods of significance are identified in the Historic Resources Survey.

Summary. The proposed amendment would specify factors that contribute to eligibility for listing in the California Register of Historic Resources, including periods of significance for San Clemente. This would provide clear direction for staff and applicants as to when a building's age elicits the requirement for an HDP permit and CEQA review.

Consolidate Historic Regulations

Consistent with non-historic regulations in Title 17, application information for historic resources is located in the Applications chapter of Title 17. Development regulations for historic resources are found in code sections specific to the following chapters:

- General Development Standards
- Commercial Zones
- Mixed-Use Zones
- Overlay Districts
- Parking
- Nonconforming Structures and Uses

For example, exceptions for historic resources are found in Title 17 for increases in floor area, waivers of parking, and requirements for the Architectural and North Beach Parking Overlay Districts. After careful review of existing historic regulations, staff found that historic regulations are appropriately located in Title 17. No changes are proposed.

Update to be Consistent with the General Plan

The amendments proposed here would update Title 17 to be consistent with the General Plan. General Plan Historic Element Implementation Measure 12 requires the development and consideration of criteria for designating historic districts:

Develop and consider adopting criteria and procedures for designating historic districts and thematic historic districts.

The Zoning Ordinance Section 17.88.030 Definitions defines “historic district.” Historic district is a historic resource. Zoning Ordinance Section 17.16.160 contains procedures and criteria for designating historic resources and, thereby, designating historic districts. In addition, properties in a historic district would be eligible for incentives pursuant to existing Sections 17.16.175 and 17.16.180.

However, the Zoning Ordinance does not contain requirements for historic district preservation measures or criteria to determine contributing properties in a historic district. Each historic district will require unique measures and criteria. Therefore, staff recommends amending Section 17.16.160.F.1 - Designation of Historic Resources and Section 17.16.160.G.1 - Review Procedures to require that historic district designation include preservation measures appropriate for the historic district, and criteria for determining contributing properties in the historic district.

The proposed amendments would update existing Title 17 for designation of a historic district as required by General Plan Historic Element Implementation Measure 12.

Historic Preservation Incentives

This amendment would modify Section 17.16.175 - Historic Preservation Incentives, Historic Property Preservation (Mills Act) Agreement to be consistent with the current Historic Property Preservation Agreement program. Amendments reflect eligibility, periodic examination intervals, and procedures for processing the application and agreement. Proposed changes are shown in the redline text below for Section 17.16.175.

Projects that Require a Cultural Heritage Permit

Currently, commercial properties within 300 feet of the historic properties listed below do not require a Cultural Heritage Permit. Rather, development would require an Architectural Permit and, therefore, impacts to historic resources would not be considered.

- 7 W Avenida Junipero
- 116 E El Portal
- 119 W Canada
- 121 W Escalones
- 101 W Escalones
- 128 W Mariposa

Table 17.16.100(B) identifies development projects that require a Cultural Heritage Permit. While projects on residential sites within 300 feet of a City-designated Historic Landmark or Resource currently require a Cultural Heritage Permit, projects on nonresidential and mixed-use sites require an Architectural Permit. Staff proposes to change the permit type to ensure the City’s historic landmarks and resources are considered when development is proposed on nearby nonresidential and mixed-use sites. This change would affect the properties shown in Figure 1 below.

Figure 1. 300 Foot Buffer from Historic Structures



This amendment would modify Table 17.16.100(B) to require a Cultural Heritage Permit, instead of an Architectural Permit, for projects on nonresidential and mixed-use sites within 300 feet of residentially zoned buildings on the City’s Designated Historic Resources and Landmarks list and affect the properties within 300 feet of the six properties bulleted above.

PROPOSED CHANGES

Table 17.16.100(B)

Cultural Heritage and Minor Cultural Heritage Permits Required

Project Type	Cultural Heritage Permit Required	Minor Cultural Heritage Permit Required	Other/Exempt Projects
<p>A. Nonresidential and Mixed-Use Sites - This subsection applies to: 1) resources listed on the City's Designated Historic Resources and Landmarks Lists ¹; and 2) development within the Architectural Overlay District (Please refer to Section 17.56.020); and 3) sites within 300 feet of properties listed on the City's Designated Historic Resources and Landmarks Lists;</p>			
New Buildings	X		Some Minor Cultural Heritage Permits may be waived. Refer to Section 17.16.110 for eligible projects.
Additions	> 2,000 s.f. addition	≤ 2,000 s.f. addition	
New Accessory Structures and Expansions		X	Refer to subsection 17.16.100(C)(5) for exempt projects.
Minor Exterior Alterations		X	
<p>B. Residential Sites - This subsection shall be applied to: 1) resources listed on the City's Designated Historic Resources and Landmarks Lists ¹; 2) single-family homes and duplexes abutting sites listed on the City's Designated Historic Resources and Landmarks Lists; 3) sites with three or more dwelling units within 300 feet of residentially zoned buildings listed on the City's Designated Historic Resources and Landmarks Lists; and 4) development within the Architectural Overlay District (Please refer to Section 17.56.020).</p>			
New Buildings	X		Some Minor Cultural Heritage Permits may be waived for additions, accessory structures, and exterior alterations. Refer to Section 17.16.110 for eligible projects. Refer to subsection 17.16.100(C)(5) for exempt projects.
Additions	> 500 s.f. addition or 50 percent or greater	≤ 500 s.f. addition or less than 50 percent, whichever is smaller	
New Accessory Structures and Expansions		X	

Project Type	Cultural Heritage Permit Required	Minor Cultural Heritage Permit Required	Other/Exempt Projects
Minor Exterior Alterations		X	
C. Nonconforming Structures - This subsection shall be applied in conjunction with subsections A and B.			
Additions per Section 17.72.050(4i) .		X	Some Minor Cultural Heritage Permits may be waived for additions. Refer to Section 17.16.110 for eligible projects.
Historic structure and use exemption from requirements in Chapter 17.72 , Nonconforming Structure and Uses. Refer to Section 17.72.030(C) .	X		

Section 17.16.160 - Designation of Historic Resources and Landmarks.

F. Standards to be Applied in Designating or Deleting Historically Significant Resources and Landmarks.

1. Designation of Historic Resources. In designating any place, site, building, structure, object, or improvement, whether manmade or natural, in its natural setting as being of historical or cultural significance and worthy of protection under this section, the property shall have been found to have historical, cultural, or special character or interest for the general public and not be limited in interest to only a special group of persons.
 The criteria to be used in determining historical, cultural or special character or interest is that the place, site, building, structure, object, or improvement is at least 50 years old, or less than 50 years old with exceptional importance, possesses integrity of location, design, setting materials, and workmanship; and meets one or more of the following:
 - a. Is associated with events that have made a significant contribution to the pattern of local, state or national history.
 - b. Is associated with the lives of persons or with institutions significant in local, state or national history.
 - c. Embodies the distinctive characteristics of an architectural style, type, material or the use of indigenous materials or craftsmanship, or is the

work of an architect, designer or builder significant in local, state or national history.

- d. Retains character-determining architectural features and materials.
- e. Exhibits Spanish Colonial Revival architectural style.

In addition, when designating a historic district, the district shall include preservation measures appropriate for the historic district, and criteria for determining contributing properties in the historic district.

G. Review Procedures.

1. City's Designated Historic Resources List.

- a. Following receipt of a completed application or direction from the City Planner to list or remove a property on the City's Designated Historic Structures List, and completion of required environmental documentation, the Planning Division shall submit its report along with all applicable project documents to the Design Review Subcommittee of the Planning Commission. Consideration of amendments to the list by the Design Review Subcommittee shall be agendaized at least 72 hours in advance of the hearing. The Design Review Subcommittee shall review the request and make a recommendation to the Planning Commission to add and/or delete various properties from the City's Designated Historic Resources List. The City Planner shall forward the Design Review Subcommittee's recommendation to the Planning Commission.
- b. After the Design Review Subcommittee's recommendation for properties to be listed on or removed from the Historic Resources List, a public hearing before the Planning Commission shall be noticed and held in compliance with [Section 17.12.100](#), Public Hearing and Notification, of this title. At the Planning Commission hearing, the Planning Commission shall consider all evidence and adopt a resolution deleting, or adding, the subject properties from, or to, the City's Designated Historic Resources List, (or shall make a recommendation on the amendment to the City Council if the project is a concurrent project as defined in [Section 17.12.090](#)).
- ~~b-c.~~ In designating a historic district, the resolution shall incorporate preservation measures appropriate for the historic district, and criteria for determining contributing properties in the historic district.

Section 17.16.170 - Demolition of Historic Properties

- C. **Applicability.** This section shall apply to all applications for or resulting in the demolition of any buildings, structures or other resources listed on the City's Designated Historic Resources List or listed or eligible for listing in the California Register of Historic Resources. Eligible for listing in the California Register of

Historic Resources means, as identified in San Clemente's Historic Resources Survey and as may be amended, one or more of the following:

- Associated with events that have made a significant contribution to the broad patterns of local or regional history or the cultural heritage of California or the United States, specifically the 1925-1936 Ole Hanson period or the 1950s and 1960s post-World War II period; or,
- Associated with the lives of persons important to local, California or national history, specifically the 1925-1936 Ole Hanson period, or buildings and structures associated with President Richard Nixon; or,
- Embodies the distinctive characteristics of a type, period, region or method of construction or represents the work of a master or possesses high artistic values. Periods for San Clemente with distinctive characteristics, as identified in the Historic Resources Survey, consist of: 1925-1936 Ole Hanson period of Spanish Colonial Revival; the 1937-1949 period for non-Spanish Colonial Revival; the 1950s and 1960s Mid-Century, Modern-style commercial buildings; and, 1950s buildings in general; or,
- Has yielded, or has the potential to yield, information important to the prehistory or history of the local area, California or the nation. See the Historic Resources Survey if amended to identify these resources for San Clemente.

17.16.175 - Historic Preservation Incentives, Historic Property Preservation (Mills Act) Agreements.

- A. **Purpose and Intent.** In order to preserve and protect the cultural, historical and architectural heritage of San Clemente, certain incentives are provided in various sections of this title to owners of designated historically significant properties. The purpose and intent of this section is to outline the process for obtaining property tax reduction incentives available through the execution of a voluntary Historic Property Preservation Agreement with the City of San Clemente. For other, regulatory incentives, see Sections [17.16.180](#), Waivers of Fees/Development Standards, Relocation of Historic Structures; [17.24.100](#), Increase in Floor Area Ratios; [17.64.120](#), Modifications and Waivers of Parking Requirements; and Table 17.16.100B. Please refer to the City's Building Division for additional provisions related to the use of the State Historical Building Code.
- B. **Authority.** The City Council is the final authority on the authorization and approval of Historic Property Preservation Agreements with owners of properties on the City's Designated Historic Resources List in accordance with Sections 50280 et seq. of the Government Code and Sections 439.2 et seq. of the Revenue and Taxation Code.

- C. **Applicability and Eligibility.** This section shall apply to all applications for property tax reductions through contracts between the City and the property owner, called Historic Property Preservation Agreements. In order to be eligible for an Historic Property Preservation Agreement, the property must be listed on the City's Designated Historic Resources List, and be an income-producing or owner-occupied property.
- D. **Mandatory Provisions of Historic Property Preservation Agreements.** State law mandates that, at a minimum, Historic Property Preservation Agreements provide for all of the following:
1. A perpetual 10-year term, with a minimum initial Agreement term period of 10 years, and one year added automatically to the term of the Agreement each year unless a Notice of Nonrenewal has been filed. If a notice of nonrenewal is filed, the Agreement will become null and void upon expiration of the 10-year term in effect at the time the Notice was filed.
 2. Preservation of the designated historically significant property throughout the term of the Agreement.
 3. Restoration and rehabilitation, as necessary, to conform to the rules and regulations of the Office of Historic Preservation of the State Department of Parks and Recreation.
 4. Periodic examinations, every 5 years consistent with State law as may be amended, of the interior and exterior of the property by the assessor, the State Department of Parks and Recreation, and the State Board of Equalization as may be necessary to determine the property owner's compliance with the terms of the Agreement. Although not mandated by the state, each Agreement will also provide for periodic inspections by City staff with advance notice.
 5. For the Agreement to be binding upon, and inure to the benefit of, all successors in interest of the property owner. Successors in interest shall have the same rights and obligations under the Agreement as the original owner who entered into the Agreement.
 6. Penalty of 12½ percent of the full market value if the Agreement is canceled in accordance with Subsection (J) of this section.
- E. **Initiation of Historic Property Preservation Agreements.** A request for approval of an Historic Property Preservation Agreement may be initiated by the filing of an application by the owner(s) or his/her (their) authorized agent(s) of a property on the City's Designated Historic Resources List.
After January 1, 1998, applications will be accepted on a quarterly basis (first come, first served) for the first three quarters of each calendar year. No more than five applications may be accepted by the City during each quarter.
- F. **Submittal Requirements.** Except as amended in this section, please refer to the submittal requirements in [Section 17.12.040](#), Filing an Application, and [Section 17.12.060](#), Applications Requiring Additional Information, of this title.

G. Review Procedures for Historic Property Preservation Agreement Requests.

1. All applications for Historic Property Preservation Agreements submitted within each quarter will be processed together in the quarter following the quarter in which the application was deemed to be complete. All approved Agreements must be executed on or before December 31 of each year in order to take effect for the following property tax year.
2. Agreements completed, but not executed, by December 31 of a given year will be carried over for execution and recording in the following year and will take effect in accordance with Subsection (G)(1) of this section.
3. Pre-application Review. Prior to submitting an application for an Historic Property Preservation Agreement, the owner shall schedule a pre-application review conference with the ~~City Planner~~Planning Division. The purpose of the pre-application review conference is to ensure that mandatory terms of the Agreement are understood and that the minimum submittal requirements are met. Applications may be submitted ~~during or~~ after the pre-application review conference.
4. Following receipt of a completed application, the ~~City Planner~~Planning Division shall schedule a meeting with the property owner at the subject property (the "site meeting"). The purpose and intent of the site meeting is to inspect the property to determine compliance with the criteria specified in Section 17.16.160~~(EF)~~ of this chapter and ~~to develop a list of review the proposed~~ improvements and maintenance items, if any, deemed necessary during the first 10-year period of the Agreement to restore the property's architectural and/or historical integrity. After the site meeting, a follow-up meeting may be scheduled by the City Planner with the property owner to estimate the potential property tax savings for the individual property. However, actual property tax savings will be calculated by the County Tax Assessor each tax year. The City's estimate is no more than a simple estimate and not intended by the City to represent the actual tax savings any person may experience. No person should rely on City representatives regarding the potential tax savings resulting from the execution of an Historic Property Preservation Agreement when such person is contemplating entering into such an agreement. Any person seeking to understand the tax consequences of entering into the Agreement should consult his/her tax expert.
5. Once the site meeting has been completed, the applicant and the Planning Division shall agree upon and a list of necessary improvements and maintenance items, if any, and the timeline for completion. ~~has been drafted for the property, the~~The City Planner~~Planning Division~~ shall forward the draft Agreement, and the proposed list of improvements, to the ~~Design Review~~Cultural Heritage Subcommittee for review. The Subcommittee shall consider the proposed list of improvements, may make recommendations for amendments to said list, and shall make a recommendation to the City Council regarding approval or denial of the Agreement together with the proposed list of improvements.

6. Following receipt of a recommendation on the Agreement together with the proposed list of improvements, the City Council shall conduct a public hearing in compliance with [Section 17.12.100](#), Public Hearing and Notification, of this title.
 7. After completion of the public hearing, the City Council shall either approve, conditionally approve or disapprove the request.
 8. Once an Historic Property Preservation Agreement has been approved by the City Council, the property owner shall pay the fee for processing the application to the City Planning Division at the time the application is submitted. Once the applicable fee has been paid, the approved Agreement shall be executed by the property owner(s) and the City with notarized signatures. The City shall forward all Agreements properly executed during a given calendar year to the County Recorder's office for recordation within 20 days after the execution date. The recorded copy will be returned to the City for submission to the County Tax Assessor's office for implementation. In accordance with state law, no properly executed Historic Property Preservation Agreement may take effect until it has been recorded and submitted to the County Tax Assessor's office. Each Historic Property Preservation Agreement recorded before January 20 of a calendar year will take effect for property tax reduction purposes in the tax year beginning July of that calendar year.
- H. **Approval Runs with the Land.** The approval of an Historic Property Preservation Agreement shall run with the land, and shall continue to be valid upon a change of ownership of the site to which it applies. The Planning Division will send a letter to the property owner every year requesting property status information, including any completed improvements required by the Historic Preservation Agreement and any changes to primary property owner contact information.
- I. **Notice of Nonrenewal.** Either party to an Historic Property Preservation Agreement may file a notice of nonrenewal at any time after entering into the Agreement. The effect of the Notice of Nonrenewal is that the Agreement will become null and void upon expiration of the 10-year term in effect at the time the Notice is filed.
- J. **Cancellation of Agreement.**
1. The City Council may cancel an Historic Property Preservation Agreement if the City Council determines that the property owner has breached any of the terms of the Agreement, or has allowed the property to deteriorate to the extent that it no longer meets the criteria in [Section 17.16.160\(EE\)](#)(1).
 2. Following completion of the Enforcement of Agreement procedures contained within each Historic Property Preservation Agreement and prior to the cancellation of an Historic Property Preservation Agreement, the City Council may initiate and review cancellation of an Agreement in the same manner as revocation of a Site Plan Permit, as described in ~~Section 17.12.180 Section 17.12.175, Initiating Review of a Site Plan Permit and~~

Review Procedures City Initiated Changes of Revocation of Approved Applications.

3. If the City Council cancels an Agreement, the property owner shall pay a penalty of 12½ percent of the full market value of the property, as determined by the County Tax Assessor, to the State.

Subject Area: State & Federal

INTRODUCTION

The State & Federal Area considers amendments to address the following:

- Allowing large and small family home daycares in all zones and lessening restrictions on standards
- Determining permitted zones for body art establishments and policies regulations to define these uses
- Update General Landscaping guidelines to include State of California water conservation policies
- Approvals of a Home Occupation Permit to establish a home-based business

Family Home Daycare

State law requirement. Senate Bill 234, enacted January 1, 2020, clarifies and makes changes to the California Child Day Care Facilities Act affecting family child care providers and home day care centers in California and preempts local zoning, building, and fire codes and regulations that conflict with its provisions. The amendment to state law requires modifications to Chapter 17 in the Municipal Code.

Removal of zoning permit. The State law now prohibits jurisdictions from enforcing requirements to Small-family and Large-family home daycares that do not apply to all other homes in the zoning district. The proposed amendment to the zoning ordinance would make Home Day Care regulations consistent with State law by removing the requirement of a zoning permit or business license for small-family and large-family home day care centers. The amendment would also clarify that family childcare homes are permitted by-right in a detached single-family dwelling, townhouse, dwelling unit within a dwelling unit, or dwelling unit within a covered multifamily dwelling in which the underlying zoning allows for residential use and within any legal nonconforming residential uses in nonresidential zoning districts. Daycare homes licensed by the Community Care Licensing Division under the California Department of Social Services must still meet all state health and safety requirements, and fire safety requirements.

Changes to the code include an update to use tables for all zones and removes the previously required Home Daycare Permit.

Body Art Establishments

State and Federal rulings. State and Federal court rulings determined tattoo parlors and other body art establishments must be regulated with less restrictive measures than those typically applied by municipalities. The proposed amendment would update San Clemente’s Zoning Ordinance to be consistent with the State and Federal court rulings. Consistent with first amendment rights and anti-discriminatory practices, the proposed amendment establishes permitted zones for body art establishments, which include tattoo parlors and body piercing studios.

New regulations and policies. The City has traditionally categorized tattoo parlors and body piercing studios as a medical use when determining the permitted zones, parking standards, and other land use regulations. The proposed update adds Section 17.28.325, Body Art Establishments, detailing policies consistent with state and federal law and defines Tattoo Parlor and Body Piercing Studio. The update includes a new “Personal Services” use category permitting barber, beauty, nail, and tanning services. Section 17.28.325 establishes new requirements and regulations consistent with court ruling decisions in *Buehrle v. City of Key West* and *Anderson v. City of Hermosa Beach* which ruled that tattoos, the process of tattooing, and the business of tattooing are fully protected by the First Amendment in the United States Constitution and AB 1168, California Safe Body Art Act.

MWELO

State law requirements. This amendment would update General Landscaping guidelines to include the City’s enforcement and compliance of AB 1881, existing State of California water conservation policies and water efficiency landscape standards.

Establishing state policies for AB1881 compliance. The City put in place an application process in 2019 to comply with the California State Model Water Efficiency Ordinance (MWELO), which requires annual reporting on the number of square feet and details of new and rehabilitated landscape on both public and private land. The update to the general landscape regulations modifies the water conservation use requirements and includes the oversight of public lots.

Home Occupations

State law requirements. Assembly Bill No. 1616 allows some types of low-risk non-hazardous food products to be prepared or packaged at a private home for sale (direct and indirect) to consumers. Furthermore, Zoning Ordinance Section 17.16.140(C) currently requires the approval of a Home Occupation Permit to establish a home-based business. Business licenses are currently required to establish home-based businesses and the business licensing process has been effective in allowing staff to ensure applications meet zoning requirements. The proposed amendment would eliminate the requirement for a separate Home Occupation Permit.

Allowing preparation and sale of food products in residential homes. Section 17.28.160.D, Cottage Food Operations, was added to comply with Assembly Bill No. 1616 (California Homemade Food Act). The state law became effective in January 2013 and allows some types of low-risk non-hazardous food products to be prepared or packaged at a private home for sale (direct and indirect) to consumers. Cottage Food Operations in the City are regulated as a home occupation with additional minimum standards to be met. This amendment would establish standards for cottage food operations and permit cottage food operations without a Home Occupation Permit.

PROPOSED CHANGES

17.12.020 - Review Authorities.

Table 17.12.020

Review Authority for Permits and Entitlements

Permit Application	Final Authority ¹	Public Hearings
Home Occupation Permit	City Planner	No

~~**17.16.140 – Home Occupation Permits.**~~

- ~~A. **Purpose and Intent** . The purpose of the Home Occupation Permit process is to provide for review of requests for incidental and accessory uses to be established in residential neighborhoods under conditions that will ensure their compatibility with the primary residential use. The process is intended to allow residents to engage in home businesses that are harmonious with a residential environment.~~
- ~~B. **Authority** . The City Planner is the final authority on Home Occupation Permits, subject to the appeal provisions of Section 17.12.140, Appeals of an Action, of this title and the provisions for Home Occupations Permits found in Section 17.28.160, Home Occupations. The City Planner has the discretion to refer applications to the Zoning Administrator for review and final action. If an application is referred to the Zoning Administrator, a public hearing and notification is required per Section 17.12.100.~~
- ~~C. **Applicability** . A Home Occupation Permit is required for any business operated in a dwelling unit legally existing in any zone.~~
- ~~D. **General Regulations** . For the general regulations for Home Occupation Permits, please refer to Section 17.28.160(C), Minimum Standards.~~
- ~~E. **Submittal Requirements** . Please refer to the submittal requirements in Section 17.12.040, Filing an Application, and Section 17.12.060, Applications Requiring Additional Information.~~
- ~~F. **Review Procedures** . The City Planner shall approve, conditionally approve, or deny the application, subject to the requirements for Home Occupation Permits found in Section 17.28.160(C), Minimum Standards, within 15 days following receipt of a completed application. If an application is not acted upon within 30 days, the application shall be put on the agenda for the next regularly scheduled Zoning Administrator meeting as a New~~

~~Business item. The Zoning Administrator shall approve, approve with modifications, or deny the Home Occupation Permit.~~

~~G. **Required Findings** . Prior to the approval of an application for a Home Occupation Permit, a finding shall be made that the application complies with the minimum standards for home occupations in accordance with Section 17.28.160(C), Minimum Standards.~~

~~H. **Appeals** . An appeal of the decision on a Home Occupation Permit shall be reviewed in accordance with Section 17.12.140, Appeals of an Action.~~

~~I. **Modifications Requested by the Applicant** . Modifications to approved Home Occupation Permits shall be reviewed in accordance with Section 17.12.180, Modifications of an Approved Application.~~

~~J. **Modifications and/or Revocations Initiated by the City** . The City may make changes or revoke the approval of applications when conditions of approval are violated, it is necessary to resolve a nuisance, and/or when the application contained incorrect, false, or misleading information. Refer to Section 17.12.175 for related procedures and required findings. In addition to the general findings in Section 17.12.175, the City may revoke or modify a Home Occupation Permit if one or more of the following findings are made:~~

~~1. The provisions of Section 17.28.160(C), Minimum Standards, for Home Occupation Permits, are being violated or are not being satisfied.~~

~~2. The home occupation for which the permit was granted has ceased or has been suspended for six calendar months.~~

~~3. The conditions of the premises, or the surrounding district or areas have changed so that the home occupation may no longer be justified under the meaning or intent of this section.~~

~~K. **Other Review Requirements** . For other general requirements related to the review of applications, such as time limits on approvals and requests for extensions of approvals, please refer to Chapter 17.12, Development Review Process.~~

~~L. **Approval Runs with the Applicant/Location** . A Home Occupation Permit remains valid as long as the applicant complies with all conditions and remains at the specific address for which the permit was established.~~

17.28.160 - Home occupations.

A. **Purpose and Intent.** The purpose of this section is to ensure that incidental and accessory home occupation uses are compatible with surrounding residential development. This section is intended to protect the rights of residents to engage in certain home occupations that are harmonious with a residential environment and to protect neighborhoods from the negative impacts that home occupations may have on a residential area.

B. **Review Requirements.**

1. General Review Requirements. ~~Home Occupation Permits, in accordance with Section 17.16.140, Home Occupation Permits of this title, and~~ City business licenses are required when businesses are conducted as an accessory use to a primary residential use in any zone. Please refer to Chapter 5.04, Business Licenses Generally, of this code for information regarding business licenses.
 2. Home Occupation Conducted Outside Enclosed Structure. A Conditional Use Permit, in accordance with Section 17.16.060, Conditional Use Permits, of this title, may be requested to conduct a home occupation in other than an enclosed structure.
 - a. Exceptions:
 - i. A home occupation consisting of swimming instruction for up to ~~three students~~three students at one time may be conducted in an outdoor pool without a Conditional Use Permit.
 - ii. Refer to Section 17.28.340, Food Cottages, of this title for regulations on the sale and manufacturing of food products outside enclosed structures.
- C. **Minimum Standards.** Any business licensed with the City shall comply with the following minimum standards. See Section 17.28.340, Cottage Food Operations, for minimum standards for businesses conducting the sale and manufacturing of food goods.
1. Employees. Only the residents of the dwelling unit may be employed in the home occupation.
 2. Equipment. Electrical or mechanical equipment which creates visible or audible interference in radio, television or telephone or causes fluctuations in line voltage outside the dwelling unit shall be prohibited.
 3. Location. Home occupations are allowed within legal residential dwelling units in all zones.
 4. Noise. The home occupation shall not create noise or odors in excess of that normally associated with a residential use. No motor power, other than electrically operated motors, shall be used in connection with home occupation, and the total combined horsepower of such electrical motors shall not exceed two horsepower.
 5. Parking. The home occupation may be conducted in the garage but shall not use any space required for off-street parking.
 6. Sales. No direct sale to customers of any item or service related to a home occupation shall occur on the premises. Indirect sales such as telephone sales, catalog sales, or sales of services to be performed away from the premises may be allowed. Exceptions from this requirement are available for individual instruction in subjects which meet both of the following criteria:
 - a. The instruction is of a self-improvement nature; and
 - b. The instruction is related to the arts such as music (nonamplified), painting, crafts and dance.

7. **Setting.** The home occupation shall be conducted in an enclosed structure; either the primary dwelling unit or a secondary structure on site. The appearance of the structure or premises shall not be altered to the extent that the structure or premises no longer resembles part or all of a residential structure. A Conditional Use Permit may be requested to conduct a home occupation in other than an enclosed structure. Exception: A home occupation consisting of swimming instruction for up to three students at one time may be conducted in an outdoor pool without a Conditional Use Permit.
8. **Signs.** No signs for the home occupation shall be allowed.
9. **Storage.** No goods, supplies, equipment, materials or product related to a home occupation shall be stored outside, or be visible from the outside of any structure or unit conducting a home occupation.
10. **Traffic.** The dwelling unit shall not be the point of customer pickup or delivery, nor involve the use of commercial vehicles for delivery (except for commercial carriers), nor shall the home occupation cause an increase in vehicular traffic in the neighborhood.
11. **Transferability.** A home occupation granted in accordance with the provisions of this title shall not be transferred, assigned or used by a person other than the permittee, nor be transferred to any location other than the one for which the permit was granted.
12. **Use.** The home occupation shall be an incidental and accessory use and shall not change the principal character of the dwelling unit. The home occupation shall not involve more than 20 percent of the habitable dwelling floor area. A commercial or occupational use of a residential dwelling unit that involves more of the habitable dwelling floor area is prohibited unless specifically authorized by the code.
13. **Utilities.** The home occupation shall not involve the connection of utilities or use of community facilities other than customary for residential purposes.

D. Cottage Food Operations. Notwithstanding any of the provisions above, a cottage food operation as defined by the State of California under the provisions and allowances of Assembly Bill 1616 shall be allowed in any legally established residential unit in the City of San Clemente provided the following requirements are met:

1. General Regulations.

- a. Cottage food operations shall conform to all county, state, and federal laws and regulations.
- b. Cottage food operations are subject to all residential zoning requirements set forth in this code, so long as such zoning requirements are not in conflict with the provisions of this chapter.
- c. Cottage food operations may not create noise levels in excess of those allowed by this code in the applicable zone in which the dwelling unit is located.
- d. The proposed home occupation shall not create levels of new light and glare inconsistent with existing amounts of light and glare within the surrounding residential neighborhood.

- e. The proposed home occupation shall not generate vibration, obnoxious odors, dust, heat, fumes, solid waste, electrical interference or other characteristics in excess of that customarily associated with similar residential uses in the surrounding neighborhood.
- f. Additional conditions relating to concentration, traffic control, parking, and noise control may be imposed as deemed necessary by the Planning Division.

2. Registration.

- a. Cottage food operations shall be registered as "Class A" or "Class B" cottage food operations and shall meet the respective health and safety standards set forth in Section 114365 et seq. of the California Health and Safety Code.
- b. A cottage food home occupation business is permitted to produce foods that are defined as "non-potentially hazardous" by the State of California Department of Public health. A current list of approved cottage food products is limited to those listed by the California Department of Public Health.
- c. Gross annual sales shall not exceed the amount specified in California Health and Safety Code Section 113758.

3. Operation.

- a. The operator of a cottage food operation shall reside within the residential unit used for such activity as their primary residence.
- b. No dwelling shall be built or altered for the purpose of conducting the cottage food operation in such a manner as to change the residential character and appearance of the dwelling, or in such a manner as to cause the structure to be recognized as a place where a cottage food operation is conducted such as the inclusion of any display, sale or advertising signage.
- c. No equipment, materials or products associated with the cottage food operation shall be stored or displayed where visible from off the premises.
- d. Direct sales from the home shall not be conducted from an attached garage, accessory structure, or any place outside of the residential dwelling.
- e. On-site dining and customer loitering is prohibited other than the brief sampling of the cottage food products produced on the premise. No more than one customer may be allowed at the site at any given time.
- f. Between the hours of 7:00 p.m. one day and 8:00 a.m. the following day, no cottage food operation shall sell or offer for sale from the residence food items prepared from that residence.
- g. Commercial delivery of items used in a cottage food operation shall be prohibited between the hours of 7:00 p.m. one day and 8:00 a.m. the following day.

4. Employees and Operator allowed.

- a. The cottage food operator must be a primary resident of the home where the cottage food home occupation business operates. A maximum of one (1) full-time employee, exclusive of family/household members, may be employed by the cottage food home occupation business at the residence.
- b. Where any cottage food operation employs an individual other than the primary operator, all local, county, state and federal labor laws shall apply and be conformed with.

5. Maintenance.

- a. Where a cottage food operation is conducted from any residential unit, the operator of the cottage food operation shall police, clean and maintain the property with regard to discarded items that may result from the cottage food operation.
- b. The cottage food operator shall contact the local waste disposal company to ascertain whether additional trash removal services shall be required for the level of food production being created. The cottage food operator shall provide to the City comments from the local waste disposal company that adequate trash removal shall occur for the level of activities added by the Cottage Food Operation.

6. Parking.

- a. Delivery and loading vehicles shall not illegally park or sit idling, and shall not impede vehicular traffic or circulation at any time.
- b. At least one (1) parking space is required to accommodate customers and deliveries. This required parking space shall not impede vehicular traffic or circulation, and shall not block a driveway or sidewalk. A residential driveway space of an appropriate size and/or a designated guest parking space within a multi-family development may satisfy this requirement.
- c. Operation of the cottage food home occupation business shall not occupy any required parking for the residential dwelling i.e., required garage parking.
- d. No vehicles, trailers (including pick-up trucks and vans) or other equipment, except those normally incident to the residential use, may be kept on the site or in the near vicinity in a manner that obstructs the free flow of traffic, or violates the provisions of this code applicable to parking in residential zones.
- e. On-site parking in an apartment complex or other multi-family residence requires written consent from the property owner, landlord, homeowners association or property manager.

7. Revocation. A cottage food operation issued in accordance with the provisions of this chapter may be revoked if the Planning Division finds that any of the following conditions exist:

- a. Any violation of this Section or of Section 114365 et seq. of the California Health and Safety Code.

- b. That the cottage food operation has become detrimental to the public health or safety, or constitutes a nuisance.
- c. That the cottage food operation no longer maintains a valid Class A or Class B Permit.

Table 17.32.030 - Residential Zone Uses

Use	RVL	RL	RML	RM	RH
Day Care Facilities, Children's: ⁴					
a. Small-Family Day Care Home ⁵	P	P	P	P	P
b. Large-Family Day Care Home ⁵	PM	PM	PM	PM	PM
c. Day Care Center			C	C	C
Home Occupations Permits ⁹	P	P	P	P	P

Footnotes:

- 1 Refer to Section 17.28.060, Animals, Commercial Grazing and Raising of Large Species, of this title, for special provisions for the commercial grazing of large species
- 2 Refer to Section 17.28.090, Bed and Breakfast Inns, of this title, for special provisions for bed and breakfast inns
- 3 Refer to Section 17.28.110, Congregate Care Facilities, of this title for special provisions for congregate care facilities.
- 4 Refer to Section 17.28.100, Child Day Care Facilities, of this title for special provisions for day care facilities.
- 5 Small-family and Large-family day care homes are permitted in a detached single-family dwelling, a townhouse, a dwelling unit within a dwelling, or a dwelling unit within a covered multifamily dwelling in which the underlying zoning allows for residential uses, or a legal non-conforming single family dwelling unit in non-residential zone. single-family homes. A Minor Conditional Use Permit is required to allow small-family day care homes in multi-family residential dwellings. Small-family day care and Large-family daycare homes only shall operate in buildings that were lawfully constructed.

6 Refer to Section 17.28.220, Parking Lots, of this title for special provisions for single-use parking lots.

7 Refer to Section 17.28.230, Public Park Facilities, of this title for review requirements for parks.

8 Refer to Section 17.28.240, Public Utilities, of this title for review requirements for public utilities/buildings.

9 Refer to Section 17.28.160, Home Occupations, of this title for special provisions for Home Occupations ~~Permits~~.

**Table 17.36.020
Commercial Zone Uses**

Use	Zones										
1. Commercial	NC 1.1	NC 1.2	NC 1.3	NC 2	NC 3	CC 1	CC 2	CC 3	CC 4	RMF 1	NOTE
Barber Shops	P	P	P	P	P	P	P	P	P		

Use	Zones										
<u>4. Personal Services</u>	<u>NC 1.1</u>	<u>NC 1.2</u>	<u>NC 1.3</u>	<u>NC 2</u>	<u>NC 3</u>	<u>CC 1</u>	<u>CC 2</u>	<u>CC 3</u>	<u>CC 4</u>	<u>RMF 1</u>	<u>NOTE</u>
<u>Barber, beauty, nail, and tanning services</u>	P	P	P	P	P	P	P	P	P		
<u>Body Art Establishments</u>											
<u>Body Piercing Studios</u>	P	P	P	P	P	P	P	P	P		
<u>Tattoo Parlors</u>	P	P	P	P	P	P	P	P	P		

ATTACHMENT 11

Use	Zones										
54. Professional Offices, Financial Institutions and Related Uses	NC 1.1	NC 1.2	NC 1.3	NC 2	NC 3	CC 1	CC 2	CC 3	CC 4	RMF 1	NOTE

Use	Zones										
65. Public/Quasi Public and Institutional Uses	NC 1.1	NC 1.2	NC 1.3	NC 2	NC 3	CC 1	CC 2	CC 3	CC 4	RMF 1	NOTE
a. Small- <u>Family</u> -Day Care Homes	P		6								
b. Large- <u>Family</u> -Day Care Homes	PM		<u>6</u>								
c. Day Care Centers	C	C	C	C	C	C	C	C	C		

Use	Zones										
76. Residential Uses	NC 1.1	NC 1.2	NC 1.3	NC 2	NC 3	CC 1	CC 2	CC 3	CC 4	RMF 1	NOTE

Use	Zones										
87. Restaurants and bars	NC 1.1	NC 1.2	NC 1.3	NC 2	NC 3	CC 1	CC 2	CC 3	CC 4	RMF 1	NOTE

Use	Zones										
98. Unclassified Uses	NC 1.1	NC 1.2	NC 1.3	NC 2	NC 3	CC 1	CC 2	CC 3	CC 4	RMF 1	NOTE

Use	Zones										
109. Vehicle-Related Uses	NC 1.1	NC 1.2	NC 1.3	NC 2	NC 3	CC 1	CC 2	CC 3	CC 4	RMF 1	NOTE

Footnotes:

1. Refer to Chapter 17.28, Special Uses, of this title for special provisions for the referenced land use.
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 and large-family day care homes are permitted ~~in a detached single-family dwelling, a townhouse, a dwelling unit within a dwelling, or a dwelling unit within a covered multifamily dwelling in which the underlying zoning allows for residential uses, or a legal non-conforming single family dwelling unit in a non-residential zone. single-family homes. A Minor Conditional Use Permit is required to allow small family day care homes in other residential dwellings.~~ Small-family and large-family day care homes only shall operate in buildings that were lawfully constructed.
7. A group-counseling use is conditionally permitted in an RMF 1 zone only if it is integrated into, and secondary in nature to, a Hospital facility. The group-counseling use must serve the primary use of the site as a general Hospital that serves the broader community.

**Table 17.40.030
Mixed-Use Zone Uses**

USE	ZONES							
1. Commercial Uses	MU 1	MU 2	MU 3.0	MU 3.1	MU 3.2	MU 3.3	MU 5	NOTE
Barber Shops	P	P	P	P	P	P	P	

Use	Zones							
<u>3. Personal Services</u>	<u>MU 1</u>	<u>MU 2</u>	<u>MU 3.0</u>	<u>MU 3.1</u>	<u>MU 3.2</u>	<u>MU 3.3</u>	<u>MU 5</u>	<u>NOTE</u>
<u>Barber, beauty, nail, and tanning services</u>	P	P	P	P	P	P	P	
<u>Body Art Establishments</u>								
<u>Body Piercing Studios</u>	O	P	O	P	P	P	P	3
<u>Tattoo Parlors</u>	O	MC	O	MC	MC	MC	MC	3

USE	ZONES							
<u>43. Professional Offices, Financial Institutions and Related Uses</u>	MU 1	MU 2	MU 3.0	MU 3.1	MU 3.2	MU 3.3	MU 5	NOTE

USE	ZONES							
<u>54. Public/Quasi Public and Institutional Uses</u>	MU 1	MU 2	MU 3.0	MU 3.1	MU 3.2	MU 3.3	MU 5	NOTE

ATTACHMENT 11

a. Small Day Care Homes	<u>PQ</u>	6						
b. Large Day Care Homes	<u>PMC</u>	<u>6</u>						
c. <u>Child</u> Day Care Centers	C	C	C	C	C	C	C	
Transportation Facilities	C	C	C	C	C	C	C	

USE	ZONES							
<u>65</u> . Residential Uses	MU 1	MU 2	MU 3.0	MU 3.1	MU 3.2	MU 3.3	MU 5	NOTE

USE	ZONES							
<u>76</u> . Restaurants and bars	MU 1	MU 2	MU 3.0	MU 3.1	MU 3.2	MU 3.3	MU 5	NOTE

USE	ZONES							
<u>87</u> . Unclassified Uses	MU 1	MU 2	MU 3.0	MU 3.1	MU 3.2	MU 3.3	MU 5	NOTE

USE	ZONES							
<u>98</u> . Vehicle-Related Service	MU 1	MU 2	MU 3.0	MU 3.1	MU 3.2	MU 3.3	MU 5	NOTE

Footnotes:

6 Small-family and large-family day care homes are permitted in a detached single-family dwelling, a townhouse, a dwelling unit within a dwelling, or a dwelling unit within a covered multifamily dwelling in which the underlying zoning allows for residential uses, or a legal non-conforming single family dwelling unit in a non-residential zone. Small-family and large-family

~~day care homes only shall operate in buildings that were lawfully constructed. 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.~~

Table 17.48.020

Permitted and Conditional Uses Within Public Zones

Use	CVC	P	INST
1. Public/Quasi Public and Institutional Uses			
Small-Family Day Care Home ⁸	P	P	For permitted and conditional uses for the institutional zones found in the Marblehead Inland Master Plan area, please refer to the Master Plan.
Large-Family Day Care Home ⁸	PMG	PMG	
Day Care Center	C	C	

Footnotes:

1 Refer to Section 17.28.180, Child Day Care Facilities, of this title, for special provisions for ~~Child Day Care Centers~~.

~~8 Small-family and large-family day care homes are permitted in a detached single-family dwelling, a townhouse, a dwelling unit within a dwelling, or a dwelling unit within a covered multifamily dwelling in which the underlying zoning allows for residential uses, or a legal non-conforming single family dwelling unit in a non-residential zone. Small-family and large-family day care homes only shall operate in buildings that were lawfully constructed.~~

(Ord. 1314 §§ 52—55, 2006; Ord. 1172 § 3 (part), 1996)

(Ord. No. 1575, § 3(Exh. A, § 11), 12-3-2013; Ord. No. 1585, § 2(Exh. A), 9-2-2014)

17.64.050 - Off-Street Parking Requirements by Land Use.

Table 17.64.050 - Number of Parking Spaces Required

Use	Number of Parking Spaces Required
1. Commercial Uses	

Beauty Shops or Barbershops	One per 200 square feet
<u>4. Personal Services</u>	
<u>Barber, beauty, nail, and tanning services</u>	<u>One per 200 square feet</u>
<u>Body Art Establishments</u>	
<u>Body Piercing Studios</u>	<u>One per 200 square feet</u>
<u>Tattoo Parlors</u>	<u>One per 200 square feet</u>

17.28.100 - Child Day Care Facilities.

A. **Purpose and Intent.** The purpose of this section is to ensure that ~~large family day care homes and~~ child day care centers do not adversely impact the adjacent neighborhood, particularly when they are located in residential neighborhoods. While San Clemente residents need ~~large family day care homes and~~ child day care centers in close proximity to residences and businesses, potential traffic, noise and safety impacts generated by these uses must be regulated. It is also the intent of this section to allow family day care homes in residential surroundings to give children a home environment that is conducive to healthy and safe development. This section is intended to comply with State law, Government Code Section 1597.46.

B. Review Requirements.

1. Application Required. Please refer to the permitted and conditional use tables in Chapters 17.32, Residential Zones and Standards, through 17.48, Public Zones and Standards, of this title.
2. Review Procedures. Applications for ~~large family day care homes and~~ child day care centers shall be processed as specified in the permitted and conditional use tables in Chapters 17.32, Residential Zones and Standards, through 17.48, Public Zones and Standards, of this title, ~~with the exception that large family day care homes shall be processed as follows:~~
 - ~~a. Public Notice Hearing. Not less than 10 days prior to the date on which the decisions will be made regarding the application, the decision making body shall give notice of the proposed use by mail to all required property owners within the required radius for the subject application, as listed in Table 17.12.100, Public Hearing Requirements, of this title. The public notice shall indicate that no public hearing on the application will be held unless a hearing is requested by the applicant or other interested party. If a request for public hearing is made prior to a decision being made on the application, then the~~

~~application shall be scheduled for a public hearing and public notice shall be provided as required by Section 17.12.100, Public Hearing and Notification, of this title.~~

~~b. Public Hearing. No public hearing on the application will be held unless a hearing is requested by the applicant or other interested party. The request must be received by the decision making authority prior to the decision on the application.~~

~~c. Consideration and Approval of the Application. The application for large family day care home shall be granted if the request complies with standards for large family day care homes in the Zoning Ordinance.~~

~~d. All other review and processing requirements shall be as prescribed in Chapters 17.12, Development Review Process and 17.16, Applications, of this title.~~

~~C. Minimum Standards for Large Family Day Care Homes and Child Day Care Centers in Residential Zones.~~

~~1. Concentration of Uses. No large family day care homes shall be located within 300 feet of another such use.~~

~~2. Hours of Operation. For the purpose of noise abatement, large family day care homes may operate Monday through Saturday, between the hours of 6:00 a.m. and 7:00 p.m.~~

~~3. Outdoor Activity. For the purposes of noise abatement, outdoor activities for large family day care homes may only be conducted between the hours of 8:00 a.m. and 7:00 p.m.~~

~~4. Other. Please refer to the minimum standards for large family day care homes and child day care centers in all zones.~~

~~CD. Minimum Standards for Large Family Day Care Homes and Child Day Care Centers in All Zones.~~

1. Lighting. Lighting shall be stationary, directed away from adjacent properties and public rights-of-way, except passenger loading areas, and of an intensity compatible with the residential neighborhood.

2. Location. Please refer to the permitted and conditional use tables in Chapters 17.32, Residential Zones and Standards, through 17.48, Public Zones and Standards, of this title.

3. Noise. The decision-making body having authority to issue the permit ~~for the large family day care home~~ shall consider whether additional noise abatement measures should be required, such as:

a. A six-foot high solid fence or wall on the side and/or rear property lines of the parcel, in compliance with City standards; and/or

b. A fence or wall in the front yard which complies with City standards.

Materials, textures, colors, and design of any fence or wall shall be compatible with on-site development and adjacent properties. All fences or walls shall provide for safety with controlled points of entry.

4. Outdoor Play Area. The provisions of the California Health and Safety Code governing child day care facilities shall provide the basic requirements for an outdoor play area. Stationary play equipment shall not be located in a required setback area.
5. Passenger Loading. A passenger loading plan shall be approved by the decision-making body having authority over the permit. ~~for the large family day care home.~~
6. State and Other Licensing. All child day care centers shall be State licensed and shall be operated according to all applicable State and local regulations.

(Ord. 1172 § 3 (part), 1996)

17.28.325 – Body Art Establishments.

- A. **Purpose and Intent.** The purpose of regulating tattoo and body piercing parlors is to prevent community-wide adverse impacts that can be brought about by the concentration of tattoo and body piercing parlors and their location near sensitive uses and to ensure compatibility of such uses with surrounding uses and properties and to avoid any impacts associated with such uses.
- B. **Definitions.** For purposes of this section, the following definitions shall apply:
 1. "Body art" means tattooing, permanent cosmetics and body piercing.
 2. "Body art operator" means any individual who is a practitioner of tattooing, permanent cosmetics and body piercing, including conducting body art procedures on another individual or technically advising the body art procedures performed by another individual.
 3. "Body piercing" means the creation of an opening in the human body for the purpose of inserting jewelry or other decoration. This includes but is not limited to: lip, tongue, nose or eyebrow. This procedure can either be done by cutting an opening using a needle (usually a hollow medical needle) or scalpel. This does not include ear piercings.
 4. "Body Piercing Studio" means a business establishment where a person can obtain a body piercing and does not include beauty salons or cosmetology businesses involving ear piercings or permanent eye and lip lining.
 5. "Tattoo Parlor" means a business establishment where a person can obtain a tattoo and/or body piercing, and excludes businesses where a person can only obtain a body piercing and not a tattoo. Tattoo Parlor does not include beauty salons or cosmetology businesses involving ear piercings or permanent eye and lip lining.
 6. "Tattoo" means any indelible design or mark that is placed on or under the skin with ink or colors by the aid of needles or other instruments and that cannot be removed without a surgical procedure or any design, letter, scroll, figure or symbol or other mark done by scarring on or under the skin.

7. "Tattooing" means to insert pigment under the surface of the skin of a human being by pricking with a needle or otherwise to produce an indelible mark or figure visible through the skin.

C. **Applicability.** The standards and criteria established in this section shall apply to body art establishments on private property, and as defined in subsection 17.28.325(B), which engage in tattooing and/or body piercing. All other body art establishments not deemed similar by the City Planner shall be prohibited on private property.

D. **Review Requirements.** The review procedures for body art establishments allowed by this section are specified for each use in the permitted and conditional use tables in Chapter 17.36, Commercial Zones and Standards, and Chapter 17.40, Mixed Use Zones and Standards, of this title.

1. A business license shall not be authorized unless sufficient evidence is provided that proprietors of the tattoo parlor and/or body piercing studio have registered with the Orange County Health Department pursuant to Section 119303 of the California Health and Safety Code, and that the proposed location has complied with all provisions of this chapter.

2. Tattoo Parlors. All proposed tattoo parlors, unless permitted by-right, shall obtain approval of a Minor Conditional Use Permit in accordance with Section 17.16.070, Minor Conditional Use Permits, of this title, and shall comply with the regulations contained in this chapter prior to obtaining a certificate of occupancy or business license for the use.

E. **Minimum Standards for Body Art Establishments in All Zones.** The following minimum restrictions shall apply to body art establishments in all zones.

1. Location.

For the purposes of this section, all distances shall be measured in a straight line, without regard to intervening structures, from the nearest point of the property line in which the use is conducted to the nearest property line of any land use, land use district, or zone, or to the nearest point of the building or structure if less than the entire structure is occupied by or proposed to be occupied by a body art establishment in which an existing body art establishment is located.

a. All body art establishments shall be in a permanent location. Temporary and mobile facilities will not be permitted.

b. The use shall not be located within one thousand (1,000) feet of any other tattoo parlor and/or body piercing studio.

c. The use shall not be located within one thousand (1,000) feet of any existing sexually oriented business.

d. The use shall not be located within five hundred (500) feet of any church, religious institution, public or private school, boys club, girls' club, or similar existing youth organization, public park or recreation area, or any public facility regularly frequented by children such as a library or community center.

- e. The use shall not be within two hundred fifty (250) feet of any business selling alcoholic beverages for off-site consumption.
- f. The use shall not be located within 500 feet of any existing residential zone or residential use, excluding residential uses in mixed use zoning districts.

2. Hours of Operation.

- a. The hours of operation shall be no earlier than 7:00 a.m. and no later than 10:00 p.m.

3. Regulations.

- a. All permitted establishments shall be responsible for individuals conducting body art within the permitted facility.
- b. All body art establishments shall keep a chronological log of every individual that receives body art services, consisting of the following information:
 - i. Customer full name;
 - ii. Address;
 - iii. Date of birth;
 - iv. Type of body art received;
 - v. Date body art received.
- c. No tattoo shall be applied to any person under eighteen years of age regardless of parental consent.
- d. No person under the age of eighteen years of age may receive body piercing unless their parent or guardian accompanies them. The parent or guardian shall have valid picture identification. Nipple and genital piercing is prohibited on minors regardless of parental consent.
- e. All body art operators must be a minimum of eighteen years of age.
- f. All Body Art Establishments shall comply with state health standards.
- g. All body art facilities and facility employees are required to report infections or complications or diseases resulting from body art activity within twenty-four hours to the Count Health Department.
- h. There shall be no on-site consumption, sale and/or possession of alcoholic beverages.
- i. There shall be no on-site smoking or sale of tobacco products.
- j. All tattoo and body piercing parlors shall have signs posted inside the business with following messages:
 - i. No One Under 18 Allowed Unless Accompanied By an Adult
 - ii. No Smoking Allowed
 - iii. No Alcoholic Beverages Allowed

k. The body art establishment shall have posted at all times a legible sign, at least one inch in letter height that provides the following information so as to be clearly visible to patrons entering the establishment:

“Nipple and genital piercing shall not be performed on any person under eighteen years of age. Tattoos and permanent cosmetics shall not be applied to any person under eighteen years of age, except when authorized by a physician and performed with the consent and in the presence of the person’s parent or guardian. Persons under eighteen years of age may receive body piercing to body parts other than nipples or genitalia provided the body piercing is performed with the consent and in the presence of the person’s parent or guardian. For any procedure restricted under this section to persons age eighteen years of age or under or requiring the presence and consent of the person’s parent or guardian, both the minor and his or her parent or guardian shall provide a valid picture identification, provide proof of parentage or legal guardianship and complete a consent form which conforms with the requirements established in departmental regulations.”

4. Development.

a. Adequate security and lighting shall be provided to ensure the safety of persons at all times.

b. The parking area for a body art establishment shall be developed in accordance with Section 17.65.050 of this code, which regulates off-street parking.

F. **Conditions.** As specified in Subsection (C), Review Requirements, of this section, in approving a Minor Conditional use permit to establish a Tattoo Parlor, the review authority may impose conditions deemed necessary to ensure that the permit will be in accordance with the standards prescribed in this section and the findings required for the Discretionary Permit. These conditions may include, but are not limited to:

1. Regulation of operating hours and days;

2. Provision for sanitary and medical facilities;

3. Provisions for security and safety measures;

4. Provision for solid, hazardous and toxic waste collection and disposal; and

5. Regulations of nuisance factors such as, but not limited to, the introduction of new light, noise, or traffic near a neighboring sensitive land use, including residences, businesses, schools, childcare, or pre-school facilities, that is beyond normal circumstances in that location.

G. **Required Findings for Approval.** Prior to the approval of a Body Art Establishment, the review authority shall make the following findings in addition to the findings required for a Minor Conditional Use Permit:

1. A permit may be granted for the establishment if it appears to the review authority that the statements contained in the application are true and that the sanitary conditions

prevailing upon the premises comply County Health regulations and the provisions of State law.

2. Following the planning commission's review and approval, and before commencement of operation within the city, a body art establishment shall obtain, maintain and comply with all terms and conditions of a body art establishment permit and any other associated and required permits from the Orange County Department of Public Health.
3. The operator and business owner of the tattoo parlor shall comply with all applicable state and local laws as they may be amended from time to time, including Health and Safety Code Section 1193000 et seq. (California Safe Body Art Act), Penal Code Section 653, and County of Orange Department of Environmental Health regulations.

CHAPTER 17.68 - LANDSCAPE STANDARDS

17.68.010 - Purpose and intent.

The purpose of this chapter is to establish landscaping standards for private property that enhance the appearance of developments, increase the compatibility between different land uses, reduce the heat and glare generated by development, and protect public health, safety and welfare by minimizing the impacts of soil erosion, ~~and~~ visual pollution, ~~and~~ promoting water conservation on private and public land.

(Ord. 1172 § 3 (part), 1996)17.68.020 - Applicability.

A. Applicability of Standards.

1. New Development. The standards in this chapter apply to all nonresidential, mixed-use, and residential development proposed after the effective date of this title, March 21, 1996, with the exception of those projects exempted from this title in accordance with Section 17.04.030(C), Exempt Projects.
2. Existing Development. All development existing prior to the effective date of this title, March 21, 1996, shall comply with the maintenance requirements in Section 17.68.060, Maintenance Requirements. Existing development shall comply with the standards in Section 17.68.040, General Landscaping Requirements, and Section 17.68.050, Landscaping Requirements for Specific Zones, in the following manner:
 - a. Existing Development Requiring Zoning Administrator, Planning Commission or City Council Review. Existing development which requests improvements or a change of use through a discretionary process shall be reviewed for compliance with the general and specific standards contained in Sections 17.68.040, General Landscaping Requirements, and 17.68.050, Landscaping Requirements for Specific Zones, of this chapter. Through the discretionary review process, compliance or

partial compliance may be required by the City when the improvements or change of use are significant enough to warrant landscape improvements.

- b. Existing Development Requiring Administrative Review. Existing development which requests improvements or a change of use through an administrative process shall be reviewed for compliance with the general and specific standards contained in Sections 17.68.040, General Landscaping Requirements, and 17.68.050, Landscaping Requirements for Specific Zones, of this chapter, if the owner of a property is adding square footage onto an existing building in excess of 50 percent of the building's existing square footage or causing a change of use for the property.
- c. Other Existing Development. Other development shall be exempt from compliance with the standards contained in Sections 17.68.040, General landscaping requirements, and 17.68.050, Landscaping Requirements for Specific Zones, of this chapter.

B. Requirements for Landscape Plans. Preliminary and comprehensive landscape plans are required for specific types of projects receiving discretionary review. Please refer to the Planning Division's application checklists to determine whether or not a discretionary application requires a preliminary landscape plan. While the standards contained in this chapter pertain only to landscaping on private property, the City also has requirements for landscaping in the public right-of-way [and water efficiency regulations for public property](#). The Planning Division and the City's Beaches, Parks and Recreation Department should be consulted regarding landscaping [and water efficiency](#) standards for the public right-of-way [and public property](#). Landscape plans must include the public rights-of-way, as well as private property. The following are the two types of landscaping plans required for some discretionary projects:

1. Preliminary Landscaping Plans. A preliminary landscaping plan shall be submitted as part of a discretionary application for development, in accordance with Section 17.12.040, Filing an Application, of this title.
2. Comprehensive Landscaping Plans. A comprehensive landscaping plan shall be prepared and submitted for all projects requiring a preliminary landscape plan, concurrent with the application for Building Permits. Please refer to the City of San Clemente, Guidelines and Specifications for Landscape Development, for submittal requirements for comprehensive landscape plans.

(Ord. 1314 §§ 58—59, 2006; Ord. 1172 § 3 (part), 1996)

17.68.040 - General landscaping requirements.

This section contains general landscaping requirements for all new development and improvements to existing development warranting landscape improvements, as determined through the City's review process. The requirements contained in this chapter are for

landscaping on private property while water efficiency standards in this section apply to both private and public property. ~~and do not include landscape requirements for public property.~~ The Planning Division and the Beaches, Parks and Recreation Department should be consulted for general landscape requirements for public property.

The following are general landscaping requirements for new development and improvements to existing development warranting landscape improvements:

- A. **Living Plant Materials.** Landscaping shall consist primarily of drought tolerant living plant material. Hardscape improvements shall not be counted toward fulfilling the required landscape.
- B. **Landscaping on Private Property.** Only landscaping on private property shall count toward the landscaping requirements of this chapter. Landscaping for parking areas and signs, provided in accordance with Section 17.64.060(C), Landscaping, and Section 17.84.020(B)(3), Landscaping, shall count toward the landscaping requirements of this chapter.
- C. **California Native Species.** California Native plant species shall be planted in at least 60 percent of required landscaped areas.
- D. **Interference from Landscaping.** Trees and shrubs planted on private property shall be planted so that at maturity they do not interfere with service lines, traffic safety visibility area and basic property rights of adjacent property owners.
- E. **Physical Damage from Landscaping.** Trees planted (on private property) near public bicycle trails or curbs shall be of a species and installed in a manner which prevents physical damage to sidewalks, curbs, gutters and other public improvements. Root control barriers shall be utilized.
- F. **Irrigation Systems.** All landscaping for nonresidential, mixed-use, and multifamily residential projects shall have automatic irrigation systems. Duplexes and single-family residential projects need not have automatic irrigation systems, but shall have a permanent means of irrigating landscaping. Low precipitation and drip-type systems are encouraged.
- G. **State Model Water Ordinance.** The State Model Water Efficiency Landscape Ordinance (MWELo), in accordance with provisions established in present-day State Assembly (AB 325) shall ~~Bill, shall~~ apply to all new and rehabilitated public and private projects, as specified in the City of San Clemente guidelines and specifications for landscape developments ~~specifications for WELo compliance~~.
- H. **Utilities.** Utilities may occur within required landscaped areas, but only if underground utilities will not preclude appropriate planting of trees, and the utility facilities are screened from public view.
- I. **More Restrictive Provision Shall Apply.** Should any provision of this chapter conflict with any other provisions of this title or any adopted specific or Master Plans, the more restrictive requirements shall apply.

(Ord. 1172 § 3 (part), 1996)

(Ord. No. [1652](#), § 4, 5-15-2018)

17.68.060 - Maintenance requirements.

The following standards shall be required of all development, new and existing:

- A. **Maintenance of Landscape.** All landscaped areas shall be maintained in an orderly, attractive and healthy condition. This shall include proper pruning, mowing of turf areas, weeding, removal of litter, fertilization, replacement of plants when necessary, and the regular application of appropriate quantities of water to all landscaped areas.
- B. **Irrigation Systems Maintenance.** All irrigation systems shall be maintained in proper operating condition and, if applicable, adhere to the City's approved maximum applied water allowance. Waterline breaks, head/emitter ruptures, overspray or runoff conditions and other irrigation system failures shall be repaired immediately

17.88 – Definitions.

“Body Art Establishments” means any structure or venue, whether permanent or temporary, where body art is performed.

“Cottage Food Home Occupation” means an occupation or business enterprise which produces approved cottage food products (as defined by the California Department of Public Health per AB 1616) produced entirely within the kitchen of a residential dwelling unit by the resident(s) thereof, which is clearly incidental and secondary to the residential use of the dwelling unit. Cottage food home occupations are operated by a cottage food operator, who is a resident of the home.