

**CITY OF SAN GABRIEL
PLANNING COMMISSION
ADJOURNED MEETING AGENDA**

MONDAY, JANUARY 23, 2017 – 7:00 P.M.

**City Hall Council Chamber
425 South Mission Drive, San Gabriel, 91776**

Norman F. Garden
Chairman

Tom Klawiter
Vice Chair

Jingbo Lou
Commissioner

Camelia Vera
Commissioner

Vince Zawodny
Commissioner



Steven A. Preston
City Manager

Robert L. Kress
City Attorney

Eleanor K. Andrews
City Clerk

John Janosik, C.C.M.T.
City Treasurer

Materials Available for Inspection. The Community Development Department has on file copies of written documentation relating to each item of business on this Agenda available for public inspection. You may also view agenda items online at www.sangabrielcity.com. Materials related to an item on this agenda, submitted to the Planning Commission after distribution of the Agenda packet, are available for public inspection at the meeting or in the Community Development Department, located at City Hall, 425 South Mission Drive, San Gabriel, California, during regular office hours, Monday through Friday 8:00 a.m. to 5:00 p.m. except for Tuesdays until 6:30 p.m.

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Questions About This Agenda? Should any person have a question concerning any of the above agenda items prior to the meeting, please contact the Community Development Department in person or by telephone at (626) 308-2806 during regular office hours.

NOTE: CITY HALL IS AN ACCESSIBLE FACILITY PER THE AMERICANS WITH DISABILITIES ACT. Any person with a disability who requires a modification or accommodation in order to participate in a meeting should direct such a request to the Community Development Department at (626) 308-2806 at least 48 hours before the meeting, if possible.

**PLANNING COMMISSION AGENDA
JANUARY 23, 2017**

- **CALL TO ORDER**
- **PLEDGE OF ALLEGIANCE**
- **ROLL CALL:** Chairman Garden

1. PUBLIC COMMENT

This is the time set aside for members of the public to address the Planning Commission on items of interest that are not on the agenda, but are within the subject matter jurisdiction of the Planning Commission. Pursuant to the Brown Act, the Planning Commission cannot answer any questions or take any action until such time as the matter may appear as an item on a future agenda.

2. NEW BUSINESS

A. ZONE TEXT AMENDMENT TO CHAPTER 153 (ZONING CODE) OF THE SAN GABRIEL MUNICIPAL CODE RELATED TO THE EXISTING MASSAGE ORDINANCE (PLANNING CASE NO. PL-17-002).

Applicant: CITY OF SAN GABRIEL

Project Summary: The proposed Zone Text Amendment would impose a required 1,000-foot separation between massage establishments and establish a 150-foot buffer between massage establishments and residential zones. The proposed ordinance would additionally clarify that massage establishments, which are located within hotels and which qualify for a partial or complete exemption from the massage regulations, would be exempted from the distance provisions. These distance requirements would not apply to any massage establishment that already has a Conditional Use Permit. The Planning Commission is required to provide a recommendation to the City Council on this Ordinance.

The City is also proposing a second ordinance that would modify the massage regulations in Chapter 122 (Business Regulations; Massage Establishments) of the Municipal Code. The Planning Commission does not provide a recommendation on this Ordinance, but it will be part of the packet to provide a complete understanding of proposed changes.

Staff Recommendation: Staff recommends that the Planning Commission **RECOMMEND APPROVAL to the City Council.**

3. STAFF ITEMS

A. Community Development Goals for 2017 - Presentation by Community Development Director, Arminé Chaparyan.

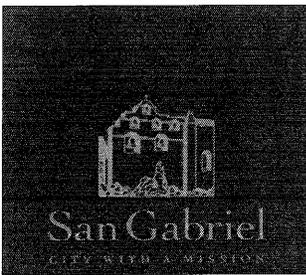
B. Election of Officers - The Planning Commission will elect a Chair and Vice-Chair for the 2017 calendar year.

4. COMMISSIONER COMMENTS AND CONFERENCE/MEETING REPORTS

Each Commissioner may address the Commission and public on matters of general information and/or concern. This is also the time for Commissioners to report on conferences and/or meetings they have attended.

5. ADJOURN PLANNING COMMISSION MEETING

TO A REGULAR MEETING ON MONDAY, FEBRUARY 13, 2017 AT 6:30 PM AT CITY HALL, 425 S. MISSION DRIVE, 2ND FLOOR, COUNCIL CHAMBERS.



City of San Gabriel **STAFF REPORT**

Date: January 23, 2017

To: Chairman Garden and Planning Commissioners

From: Massage Establishment Committee

By: Lisa Kranitz, Deputy City Attorney
Tracy Steinkruger, Planning Manager
Brian Kott, Police Lieutenant
Janet Sherman, Revenue Collection Administrator
Clayton Anderson, Neighborhood Improvement Services Manager

Subject: **Amendments to the San Gabriel Municipal Code Regulations Relating to Massage Establishments (Zone Text Amendment; PL-17-002)**

SUMMARY

On November 1, 2016, the Massage Establishment Committee provided an update to the City Council on AB 2194 and the status of massage establishments in the city of San Gabriel (Attachment A). The City Council directed that staff implement changes recommended in the memo, along with a 1,000-foot distance requirement between massage establishments and to look at additional distance requirements from sensitive uses. The changes are broken down into two ordinances. One applies to the changes to the zoning code, which imposes distance limitations. The second applies to the changes in the business regulations. While the Planning Commission does not make any recommendations on the business regulations, staff felt it would be beneficial for the Planning Commission to see all of the regulations pertaining to massage for a better understanding on the topic.

BACKGROUND

A. AB 2194

In 2016, the Governor signed AB 2194 into law, which provided a four-year extension on the Massage Therapy Act from January 1, 2017 through December 31, 2020. As you may

recall, the City's land use authority with regard to massage was taken away with the passage of SB 731, effective January 1, 2009 and land use authority was restored with the passage of AB 1147, effective January 1, 2015. The legislative reports for AB 2194 make clear that the California Chapter of the American Massage Association is very concerned about the restoration of land use authority as they feel that there are still cities that are still imposing restrictive requirements, such as distance requirements or requiring a Conditional Use Permit (CUP).

AB 2194 primarily amended the provisions relating to the California Massage Therapy Council's (CAMTC) operations. However, several amendments affect local government.

According to CAMTC, one of the biggest changes was to change the language relating to what a local government could do from specifying an intent to making the language directive. More specifically, former Business & Professions Code § 4600.5 provided that it was the **intent** of the Legislature that local governments impose and enforce only reasonable and necessary fees and regulations and being mindful of the need to protect legitimate business owners and massage professionals, particularly sole providers. This language was deleted. Similar language was added to new Business & Professions Code § 4603.1, but the language was revised to provide that local governments "**shall** impose and enforce only reasonable and necessary fees and regulations on massage businesses and massage establishments, in keeping with the requirements of existing law and being mindful of the need to protect legitimate business owners and massage professionals, particularly sole providers."

AB 2194 also amended the language of what a City cannot do with regard to massage regulations. Specifically, a City may not require a massage establishment to have a shower or bath, conduct a criminal background check, or require fingerprints for anyone who has a CAMTC certificate. These changes are not part of the Massage Therapy Act and do not sunset on December 31, 2020.

B. City Issues

Prior to the enactment of SB 731 the City had 32 massage establishments – 10 of which could do full body massage and 22 of which were limited to foot massages. By the time that land use authority was restored to the City, there were 57 massage establishments, all of which were authorized to do full body massage.

In April 2015, soon after local land use control was restored, the City Council reinstated the requirement that massage establishment businesses obtain a CUP in an attempt to

control the number of such businesses. Existing massage establishments were given until January 20, 2018 to apply for a CUP and the requirement applied immediately to any new business or to a change of ownership of an existing business.

It was anticipated that there would be some natural attrition due to competition. However, there are still 53 massage establishments in the City, only 13 of which have a CUP. Most of these had their CUP before the original changes in the law. Of the other existing businesses, there are currently eight CUP applications pending. Two of these applications were deemed complete applications as of December 31, 2016. A map of the existing massage establishments is located at Attachment B hereto.

On November 1, 2016, staff received direction from the City Council to draft an ordinance that imposed a 1,000-foot separation between massage establishments and to consider imposing distance requirements from sensitive uses. Additionally, the City Council supported other recommended changes that staff wanted to make to the business provisions for massage establishments.

ANALYSIS – ZONING CHANGES

The proposed changes to the Zoning Code are provided as Attachment C.

A. Distance Requirements

The number of massage establishments in the city has been a source of concern for both residents and staff. There has been an impact on City services due to the inordinate amount of time that Neighborhood Improvement Services (NIS), the Police Department, and the Finance Department have had to spend in processing, inspecting, and policing such businesses as compared to other types of personal service businesses. In addition to the 53 establishments that need to be inspected on a regular basis to ensure continual compliance, there are more than 150 individuals with Operator Permits. NIS has had to hire additional staff to help deal with the regular inspections of these businesses. According to NIS, many of the inspections result in some type of violation.

Although there are undoubtedly legitimate massage establishments and health benefits from massage, there are massage establishments throughout the entire country that have been tied to human trafficking and are a front for prostitution activities. This is true even for massage businesses that have obtained all required City permits and certificates and whose massage technicians are CAMTC certified. Staff has reported that due to the close proximity of massage establishments, businesses have tried to use one

operator for multiple locations at the same time. Additionally, there have been instances that when staff comes in for inspections or enforcement purpose, that those working at the business have run out the back door and into a neighboring establishment in order to avoid citation or arrest.

In addition to obvious concerns about massage establishments being an illegal front for prostitution and contributing to human trafficking, they also create negative impacts for adjacent residential uses. Unlike most other professional service businesses that generally close between 5 – 8 p.m., many massage establishments stay open until 10:00 p.m., when they are required to close by the San Gabriel Municipal Code. However, there have been instances of complaints from neighbors about businesses staying open past that time. Because of the close proximity between massage establishment businesses and residential uses, the businesses create noise impacts for neighboring residential uses, as well as spillover lighting impacts. In addition, it is common for commercial businesses to use neighboring residential streets if parking is in short supply on-site. This too becomes a problem when massage establishments are open late and the business is competing with the residential community for parking spots on public streets. These impacts, as well as a perception about a city that has an over-abundance of massage establishments, creates negative impacts on the residential housing market. Each of these concerns has been documented by public testimony at both Planning Commission and City Council meetings (Attachment D).

Additionally, the proliferation of massage establishments has economic impacts upon the City. Unlike retail sales or restaurants, massage establishments provide very limited income to the City, as there are no taxes provided to the City except for a small business license tax. The proliferation of massage establishments in a concentrated area makes the area less desirable for other types of businesses. Further, the proliferation of massage establishments has affected the ability of the City to achieve the goals of both its General Plan and the Valley Boulevard Specific Plan. Specifically, massage establishments interfere with the following:

GENERAL PLAN

- **Land Use Goal 1.6** – ensure that new development is appropriately and sensitively buffered from its neighbors.
 - As discussed above, massage establishments are not compatible with neighboring residential uses because of noise, light and parking concerns.

- **Land Use Goal 1.11** – Make Las Tunas Drive a more livable place to be by making it more pedestrian friendly, calming traffic and promoting quality urban design.
 - There are approximately 17 massage establishments on Las Tunas Drive. This use does not lend itself to creating a pedestrian friendly atmosphere and does not promote any synergy of uses that would create a pedestrian friendly environment.

- **Land Use Goal 1.12** – Transform Valley Boulevard into a vibrant, functional and quality environment.
 - There are 25 massage establishment on Valley Boulevard. This use does not create the sought after environment as it prevents the desired synergy from taking shape.

- **Economic Goal 4.1** – Create a vibrant business community.
 - More than 50 massage businesses, most of which are located on the City’s main commercial thoroughfares, do not provide the opportunity to create a vibrant business community as such businesses have no synergy with other businesses.

- **Economic Goal 4.2** – Stop sales tax leakage from San Gabriel to adjoining communities; and as specified in Action 4.2.1.4. – Increase the number of potential shoppers.
 - Massage establishments do not provide sales tax to the City; instead, the proliferation of such establishments takes up retail spaces that, if occupied by other businesses, would draw shoppers into the community. When space is taken away, shoppers leave the community to find the businesses that meet their shopping needs, which also increases the length of vehicle trips that residents must take to meet their needs.

- **Economic Goal 4.3** – Develop retail that will address the needs of the community.
 - Massage establishments take away retail space, which prevents businesses that address the needs of the community from locating in the City.

VALLEY BOULEVARD SPECIFIC PLAN – more than half of the City’s massage establishments lie within the Valley Boulevard Specific Plan area.

- The Valley Boulevard Specific Plan has a number of specific objectives, but the primary goal of the Specific Plan is to maintain and enhance quality of life for San Gabriel residents, particularly in the plan area.
 - The proliferation and concentration of massage establishments (31 in the Specific Plan area alone) is not consistent with this goal or with the vision of the Valley Boulevard corridor as a vibrant mix of retail, office and residential uses.

- The Plan seeks to foster a more compact community that concentrates major new commercial development at key centers along the corridors and reuses intervening areas for residential and mixed-use structures that integrate housing with retail and office use.
 - This integration and diversity of uses is thwarted by the overabundance of massage establishments in the Plan area.

- The Plan correctly notes that an economy of marginal businesses will not sustain high quality jobs, contribute revenue to support community services and environmental conservation programs, or meet basic needs for shopping and services.
 - With their low-skill, low-paying jobs and lack of tax-generating sales, massage establishments fail to provide the economic benefits to the community envisioned in the Plan.

- The Plan advocates concentrating and intensifying development in nodes along Valley Boulevard that are located in proximity to primary transit stops and corridors and at key intersections on parcels of sufficient size and configuration to support economically viable uses. This is intended to provide opportunities for the development of retail, office, and mixed-use structures that integrate housing with retail, office, and/or parking.
 - As noted previously, the proliferation of massage establishments both undermines their economic viability as well as fails to achieve the integration of a wide variety of commercial uses, to the detriment of the community at large.

- Finally, the plan supports the inclusion of uses that enliven the outdoor and pedestrian environment such as restaurants, newsstands, small retail vendors, and comparable uses.
 - Massage establishments by their nature are inconsistent with this vision.

The implementation of distance requirements in the Zoning Code would reduce the number of massage establishments that are located within the city. Although distance requirements are not all that common (of 195 ordinances examined by the State legislative committees, only 28 were found to have distance requirements), it should be noted that the large increase in the number of massage establishments experienced in San Gabriel is not necessarily a common experience among other California cities. While State law specifically prohibits regulating massage establishments as adult businesses, establishing a distance requirement is being recommended as a reasonable regulation to combat the issues presented above.

The proposed ordinance would impose a 1,000-foot spacing requirement between massage establishments and a 150-foot buffer from residential uses as a condition of receiving a CUP. The inability to comply with these distance requirements would mean the findings for CUP approval could not be made. The provisions would not apply to any business with an existing CUP or to any complete application as of February 7, 2017 – the date the ordinance is expected to be considered by the City Council and adopted as an urgency ordinance. Of the 13 businesses with a CUP, only two meet the 1,000-foot separation requirement. Massage establishments that are located within hotels and businesses that have less than 20 percent of their gross floor area devoted to massage would also be exempt from the distance provisions.

All massage establishments that legally existed when Ordinance No. 619-C.S. was adopted in April 2015 would still be allowed to operate until January 20, 2018 when CUP applications are required to be filed or until such application is acted upon.

For information, staff has come up with the following calculations as to the *theoretical maximum* number of locations for massage establishments under various scenarios; these numbers all include those establishments that already have a CUP:

Possible Restrictions	Maximum # of Establishments
Current Restrictions (None)	N/A
1,000' Spacing Requirement	34
1,000' Spacing Requirement & 150' Residential Buffer	21
1,000' Spacing Requirement & 300' Residential Buffer	17
500' Spacing Requirement	67
500' Spacing Requirement & 150' Residential Buffer	34

B. Other Zoning Matters

In addition to providing for the above distance limitations, the changes to the Zoning Code include revisions to the definitions of "Hotel" and "Motel." Section 153.003 currently cross-references the definition of adult hotels and motels. This would be changed to include the correct cross-reference. Additionally, language has been added which helps clarify the difference between a hotel and motel as only massage establishments within hotels would be exempt from the distance requirements.

The Zoning Code would also be amended to be consistent with the changes proposed in the business regulations set forth in Chapter 122 of the Municipal Code to provide that no CUP application would be determined to be complete and processed until the owners and identified manager(s) have obtained Operator Permits. In this way, applicants who do not qualify to own and operate a massage establishment business would not waste their money and staff resources on pursuing a CUP for a business that they could not own and operate.

ANALYSIS – BUSINESS REGULATION CHANGES

The Planning Commission does not make a recommendation on changes to the business regulations for massage contained in Chapter 122 of the SGMC. However, staff believed it would be beneficial for the Planning Commission to be provided with all of

the existing and proposed changes (land use and business regulations) in in order to have a better understanding of the comprehensive regulatory framework for massage establishments. The proposed ordinance, reflecting the changes described below, is provided as Attachment E. For ease to the reader, a clean version of the proposed ordinance (inclusive of all changes proposed) is provided as Attachment F.

In addition to the CUP requirement for massage establishments that run with the land, the City also requires that there be a Certificate of Operation, which authorizes the specific massage establishment business and requires that individuals who own or manage the massage establishment obtain an operator permit. The proposed ordinance recommends the following changes:

- A certificate of operation would not be provided for a business until the business has obtained a CUP and a business license.
- The provision for an automatic issuance and renewal of Operator Permits for CAMTC certificate holders would be eliminated. Instead, the language would make clear that the Chief of Police may consider any background information that is obtained from CAMTC.
- Operator Permits would only be good for one year instead of three.
- Based on recommendations of the San Gabriel Police Department, the City would eliminate the pre-appeal determination of whether a business may continue operating pending appeal. Although this would allow a business to remain in operation when a notice of suspension or revocation or non-renewal is provided during the appeal process, the Police Department believes that in the end it would speed up the ultimate decision and lead to enforcement that is more efficient.
- Staff had previously recommended that the City eliminate the partial exemption for businesses where less than 20% of the gross floor area is devoted to massage. However, upon further reexamination, staff believes that this requirement would be overly burdensome on businesses such as a beauty salon or barber shop that had a separate room for services such as facials or massages.

ENVIRONMENTAL REVIEW

This Ordinance is exempt from CEQA pursuant to CEQA Guidelines §15061(b)(3) under the general rule that CEQA does not apply to activities which can be seen with certainty to have no effect on the environment. Changing the regulations relating to Massage Establishments will not create any environmental impacts. Additionally, as a separate and independent ground, the Ordinance is further exempt from CEQA pursuant to CEQA Guidelines §15305 as a minor alteration to land use limitations: there is no area in which massage establishments are allowed which has a slope greater than 20% and the distance requirements for massage establishments do not result in any changes to land use or density.

PUBLIC NOTICE

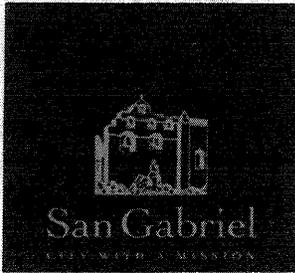
This public hearing was advertised in the *San Gabriel Sun* on January 12, 2017. Notice of the public hearing was additionally provided to all massage business owners, all massage operators, and all property owners on which a massage business is located, and to the staff at the CAMTC. The agenda for this meeting was posted in advance of the meeting at City Hall, the San Gabriel Public Library, and the San Gabriel Post Office.

RECOMMENDATION

Staff recommends that the Planning Commission recommend **APPROVAL** of the proposed Zone Text Amendment (PL-17-002) to the City Council, amending Section 153.003 and 153.162 of the San Gabriel Municipal Code relating to the Definitions of Hotels and Motels and Sections 153.151 and 153.242 relating to Massage Establishments, or with such modifications the Planning Commission deems appropriate, as both an urgency ordinance and as a regular ordinance.

ATTACHMENTS

- A. Memo to City Council (November 1, 2016 City Council Meeting)
- B. Map of Existing Massage Businesses
- C. Proposed Zoning Ordinance (Redline)
- D. Excerpts from Planning Commission and City Council minutes
- E. Proposed Business Regulation Ordinance (Redline)
- F. Proposed Business Regulation Ordinance (Clean)



City of San Gabriel
MEMORANDUM

DATE: November 01, 2016
TO: Steven A. Preston, City Manager (B)
FROM: Arminé Chaparyan, Community Development Director AC
BY: Clayton A. Anderson, Neighborhood Improvement Services Manager
SUBJECT: **Massage Update Cover Memo**

On October 12, 2016, Deputy City Attorney Lisa Kranitz provided a massage update memo to the City Council and City staff. After reviewing the memo, the City Council requested to add a massage discussion item to the November 01, 2016 City Council agenda.

Attached you will find an updated memo from Ms. Kranitz addressing massage bill AB 2194, San Gabriel's massage ordinance and its implementation, a possible moratorium, and suggested changes to the City's current ordinance.

ATTACHMENT A

ITEM NO. 5E

Wallin, Kress, Reisman & Kranitz, LLP

MEMO

from the desk of:
Lisa E. Kranitz

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To: Mayor Liao and City Council Members
CC: Marcella Marlowe, Armine Chaparyan, Larissa De La Cruz, Clayton Anderson, Janet Sherman, Brian Kott, Jeff Whitney, Bob Kress, Cary Reisman
From: Lisa Kranitz
Re: Massage Update
Date: October 18, 2016

This memo is to provide you with an update on massage issues, both on a Statewide level and within the City of San Gabriel.

AB 2194

On September 21, 2016 the Governor signed AB 2194 into law. AB 2194 provides a four-year extension on the Massage Therapy Law that was enacted by AB 1147, keeping it effective until January 1, 2021. Additionally, the bill makes some technical amendments, most of which have to do with CAMTC's operations:

- Business & Professions Code § 4600.5 - amended to include language to the effect that local governments should give strong consideration to registration programs that allow local government the ability to suspend or revoke massage businesses for specific violations.
- Business & Professions Code § 4600.5 - amended to delete the following language, which was inserted, almost verbatim, at new Business & Professions Code § 4603.1:

Old Language

It is the intent of the Legislature that local governments impose and enforce only reasonable and necessary fees and regulations, in keeping with the requirements of existing law and being mindful of the need to protect legitimate business owners and massage professionals, particularly sole providers, during the transition period after this act becomes law and thereafter for the sake of developing a healthy and vibrant local economy.

New Language

Local governments shall impose and enforce only reasonable and necessary fees and regulations on massage businesses and massage establishments, in keeping with the requirements of existing law and being mindful of the need to protect legitimate business owners and massage professionals, particularly sole providers.

- Business & Professions Code § 4604(g) – clarified that hours of instruction had to be from approved schools, not schools that were approved by CAMTC.
- Business & Professions Code § 4607 – added language that CAMTC can discipline an applicant for certification by CAMTC as well as an owner or operator for the conduct of individuals providing massage for compensation on the business premises.
- Business & Professions Code § 4610 – made amendments requiring CAMTC’s procedures for denial or discipline.
 - Most importantly, the statute clarifies that decisions can be based solely on written statements or declarations made under penalty of perjury.
 - Also clarifies that a certificate holder may have either an oral hearing, or consideration of a written statement, when a certificate is suspended.
 - Changes the time frame to bring a court action from one year to 90 days.
 - Provides that CAMTC certificates are not a fundamental vested right and therefore only the substantial evidence standard of review applies
- Business & Professions Code § 4620 – changes dates on which CAMTC must provide reports to policy committees from June 1, 2016 to January 1, 2017.
- Business & Professions Code § 4621 – amends effective date of chapter to expire on January 1, 2021.
- Government Code § 51034 – amends the language of what a City is not allowed to do with regard to massage establishments – THIS DOES NOT EXPIRE
 - Cannot require that a massage establishment have a shower or bath
 - Cannot do a criminal background check or require fingerprints for anyone who has a CAMTC certificate.

While AB 2194 provides good news in that it keeps our land use authority for at least another four years, it is important to note that the California Chapter of the American Massage Therapy Association has raised a number of issues. According to the report of the Senate Committee on Business, Professions and Economic Development, “[a]lthough AB 1147 was intended to strike a balance between professional regulation

and local control, it would appear as if many cities and counties have imposed several types of very restrictive requirements on the operation of massage businesses and establishments within their city boundaries.” The report goes on to provide that some of the areas of concern include: conditional use permits; high application and/or establishment fees; exclusionary zoning; distancing requirements from like businesses and/or sensitive uses; prohibiting mobile and home based massage; and additional background checks. A copy of the report is being sent concurrently with this memo.

City of San Gabriel

The massage team met at the beginning of September to discuss ongoing issues relating to massage establishments.

- The number of new businesses which wish to open in the City has greatly slowed down and no new business has tried to open in a new location in months. However, there are still a significant number of massage establishments in the City (54); virtually none of the existing businesses have come in to obtain a conditional use permit unless they were required to do so due to a change in ownership. When some of these businesses were reminded of the need for a conditional use permit upon change of ownership, they “change their mind.” City staff suspects that in many of these instances the ownership has actually changed. Of the 54 existing businesses, only 12 have conditional use permits and some of these were entitled before the changes in the massage law. The deadline for all existing businesses to apply for a conditional use permit is January 20, 2018.
- Staff raised the issue of whether the City should reconsider spacing requirements for massage establishments. According to the Senate Committee report referred to above, of 195 ordinances that were reviewed, only 28 had spacing requirements. From the few ordinances that could be examined prior to writing this memorandum, the distance limitations are generally between 500 and 1,000 feet; however, without corresponding information as to the size of the City and the areas in which massage establishments are allowed, it is difficult to draw comparisons with San Gabriel. As mentioned, distance limitations are one of the areas of concern for the California Chapter of the American Massage Therapy Association. The Massage Therapy Association will use restrictive ordinances as an argument for reducing local control when the current bill sunsets.
- The team desires to repeal the partial exemption for businesses which have less than 20% of gross floor area devoted to massage. This exemption has proved to be difficult to enforce. However, it does mean that businesses that offer massage in places such as hotels will be required to comply with all aspects of the City’s provisions relating to massage.
- The team decided that the Ordinance should be amended to require that an operator obtain a Massage Operator Permit before they can apply for a

conditional use permit. This will save staff time and public hearings when the Operator cannot qualify for the permit.

- At one point San Gabriel Police wanted to have the ability to immediately close down a massage operation pending any appeal on revocation. To insure that there was no violation of due process, the San Gabriel Code was amended to include a pre-appeal determination. In practice, this procedure has made it more cumbersome to revoke Operator Permits and Certificates of Operation. The Police are now recommending that this procedure be deleted. This will mean that massage businesses will stay open pending a hearing, but the procedure should move quicker.

NIS has recently added more Code Enforcement Officers which will allow for more regular inspections of massage establishments. NIS staff is conducting weekly massage inspections, including weekends and after hours. The first round of inspections should be complete by October 20th and after that time, it is NIS' plan to conduct random weekly inspection with an emphasis on problematic businesses, with the goal of inspecting each massage establishment at least once a month. Inspection objectives are: establish a consistent presence; address visible blight such as signage and window coverings; ensure compliance with the City's massage regulations, especially as to making sure of the presence of managers and that massages are being performed by those with CAMTC certificates. The results of the inspections will be used in evaluating whether a business should obtain a conditional use permit when it eventually applies.

CAMTC has used San Rafael as an example of a City that has been very successful in closing down problem massage establishments. Upon review, San Gabriel's ordinance is similar to San Rafael's in providing for revocable registrations. The difference appears to be that San Rafael has hired a private firm to do nothing but enforce the massage ordinance; there is a dedicated staff of 3 individuals at an annual cost of approximately \$100,000.

League Follow-up

During the League of California Cities Annual Meeting last week, both Mayor Liao and Council Member Pu spoke to members of CAMTC.

Mayor Liao spoke to Beverly May, the Government Affairs representative, about the possibility of a moratorium. In a follow-up discussion, Ms. May stated that while she indicated to Mayor Liao that a number of cities had adopted moratorium, it did prevent legitimate massage establishments from opening and it was a much hated provision by legitimate massage therapists. She also indicated that while no city has been sued on a moratorium, she believed it ran afoul of Business & Professions Code § 460. However, the League of California Cities has taken the position that cities may enact moratoriums.

Council Member Pu followed up with Rick McElroy who is Director of CAMTC's Professional Services Division regarding making an enforcement presentation to the City. Mr. McElroy has offered to make himself available to provide updated training.

Options/Follow-Up

There are several options which the City can take with regard to massage establishments at this point.

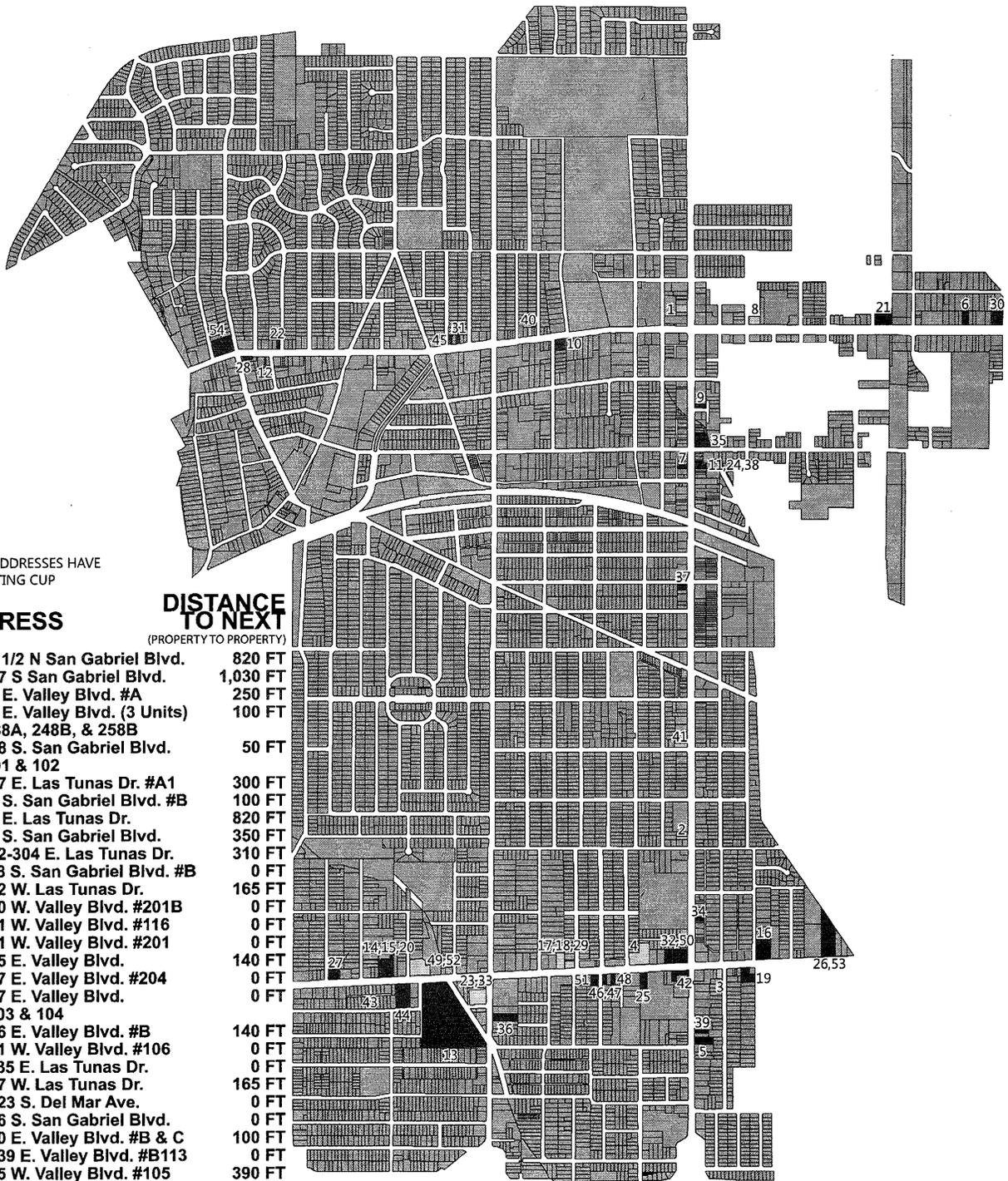
- Enact a moratorium on all new massage businesses in the City while the Community Development Department studies the issue and processes an ordinance through the Planning Commission. Issues to consider with regard to this option are:
 - May existing businesses still apply for a conditional use permit in accordance with the City Council's original direction; it is recommended that if such an action were to be taken, the businesses be allowed to proceed with a CUP application;
 - If the above answer is yes, may an existing business transfer its operations to a new owner during the moratorium and the new owner apply for a conditional use permit; it is recommended that if the moratorium option were taken, a transfer of business not be allowed.
- Impose a reasonable distance limitation between massage establishments in the City. Issues to consider with regard to this option are:
 - What is a reasonable distance limitation for San Gabriel – the following distance limitations would result in the following approximate number of businesses:
 - 300 foot radius – 79 businesses
 - 500 foot radius – 47 businesses
 - 1,000 foot radius – 23 businesses;
 - What to do about existing businesses that are located closer than the distance limitation as all such businesses were told they had until January 20, 2018 to apply for a conditional use permit. Existing businesses currently have distances of 0 – 1,190 feet between massage establishments;
 - What if two businesses with conditional use permits are closer than the distance limitation; massage establishments with existing CUPs range from 0 feet to 1,920 feet from each other. However, except for the two establishments with CUPs that are located next to each other, all other

establishments with CUPs are at least 500 feet from the closest massage establishment with a conditional use permit.

- This ordinance would have to be processed through the Planning Commission as well.
- Take no action to change the zoning provisions for massage at this time and see what the results are from more consistent enforcement and how many businesses apply for a conditional use permit in the next 15 months.

MESSAGE IN SAN GABRIEL

EXISTING ESTABLISHMENTS



*RED ADDRESSES HAVE AN EXISTING CUP

ADDRESS	DISTANCE TO NEXT (PROPERTY TO PROPERTY)
1 - 119 1/2 N San Gabriel Blvd.	820 FT
2 - 1237 S San Gabriel Blvd.	1,030 FT
3 - 828 E. Valley Blvd. #A	250 FT
4 - 529 E. Valley Blvd. (3 Units) #188A, 248B, & 258B	100 FT
5 - 1788 S. San Gabriel Blvd. #101 & 102	50 FT
6 - 1317 E. Las Tunas Dr. #A1	300 FT
7 - 315 S. San Gabriel Blvd. #B	100 FT
8 - 915 E. Las Tunas Dr.	820 FT
9 - 222 S. San Gabriel Blvd.	350 FT
10 - 302-304 E. Las Tunas Dr.	310 FT
11 - 318 S. San Gabriel Blvd. #B	0 FT
12 - 702 W. Las Tunas Dr.	165 FT
13 - 140 W. Valley Blvd. #201B	0 FT
14 - 301 W. Valley Blvd. #116	0 FT
15 - 301 W. Valley Blvd. #201	0 FT
16 - 905 E. Valley Blvd.	140 FT
17 - 327 E. Valley Blvd. #204	0 FT
18 - 327 E. Valley Blvd. #103 & 104	0 FT
19 - 856 E. Valley Blvd. #B	140 FT
20 - 301 W. Valley Blvd. #106	0 FT
21 - 1135 E. Las Tunas Dr.	0 FT
22 - 617 W. Las Tunas Dr.	165 FT
23 - 1623 S. Del Mar Ave.	0 FT
24 - 316 S. San Gabriel Blvd.	0 FT
25 - 600 E. Valley Blvd. #B & C	100 FT
26 - 1039 E. Valley Blvd. #B113	0 FT
27 - 425 W. Valley Blvd. #105	390 FT
28 - 102 S. Mission Dr.	115 FT
29 - 311 E. Valley Blvd. #108 & 109	0 FT
30 - 1381 E. Las Tunas Dr. #4	300 FT
31 - 133 W. Las Tunas Dr.	50 FT
32 - 625 E. Valley Blvd. #L	0 FT
33 - 1617-1619 S. Del Mar Ave.	0 FT
34 - 1446 S. San Gabriel Blvd. #B	390 FT
35 - 288 S. San Gabriel Blvd. #106	150 FT
36 - 1710 S. Del Mar Ave. #100B	155 FT
37 - 701 S. San Gabriel Blvd. #B	1,530 FT
38 - 315 S. San Gabriel Blvd.	0 FT
39 - 1728 S. San Gabriel Blvd. #B	50 FT
40 - 139 E. Las Tunas Dr.	310 FT
41 - 1051 S. San Gabriel Blvd. #B	1,190 FT
42 - 720 E. Valley Blvd.	100 FT
43 - 324 W. Valley Blvd. #A, B, & C	130 FT
44 - 250 W. Valley Blvd. #E & F	100 FT
45 - 205 W. Las Tunas Dr. #2	50 FT
46 - 502 E. Valley Blvd.	0 FT
47 - 504 E. Valley Blvd.	0 FT
48 - 512 E. Valley Blvd.	50 FT
49 - 227 W. Valley Blvd. #218A	0 FT
50 - 731 E. Valley Blvd.	0 FT
51 - 432 E. Valley Blvd. #E	60 FT
52 - 227 W. Valley Blvd. #258B & 268A	0 FT
53 - 1045 E. Valley Blvd. #A108	0 FT
54 - 835 W. Las Tunas Dr.	115 FT



0 0.25 0.5 Miles

Source: City of San Gabriel, SCAG 2012
Map Created October 5, 2016

CUP ADDRESSES

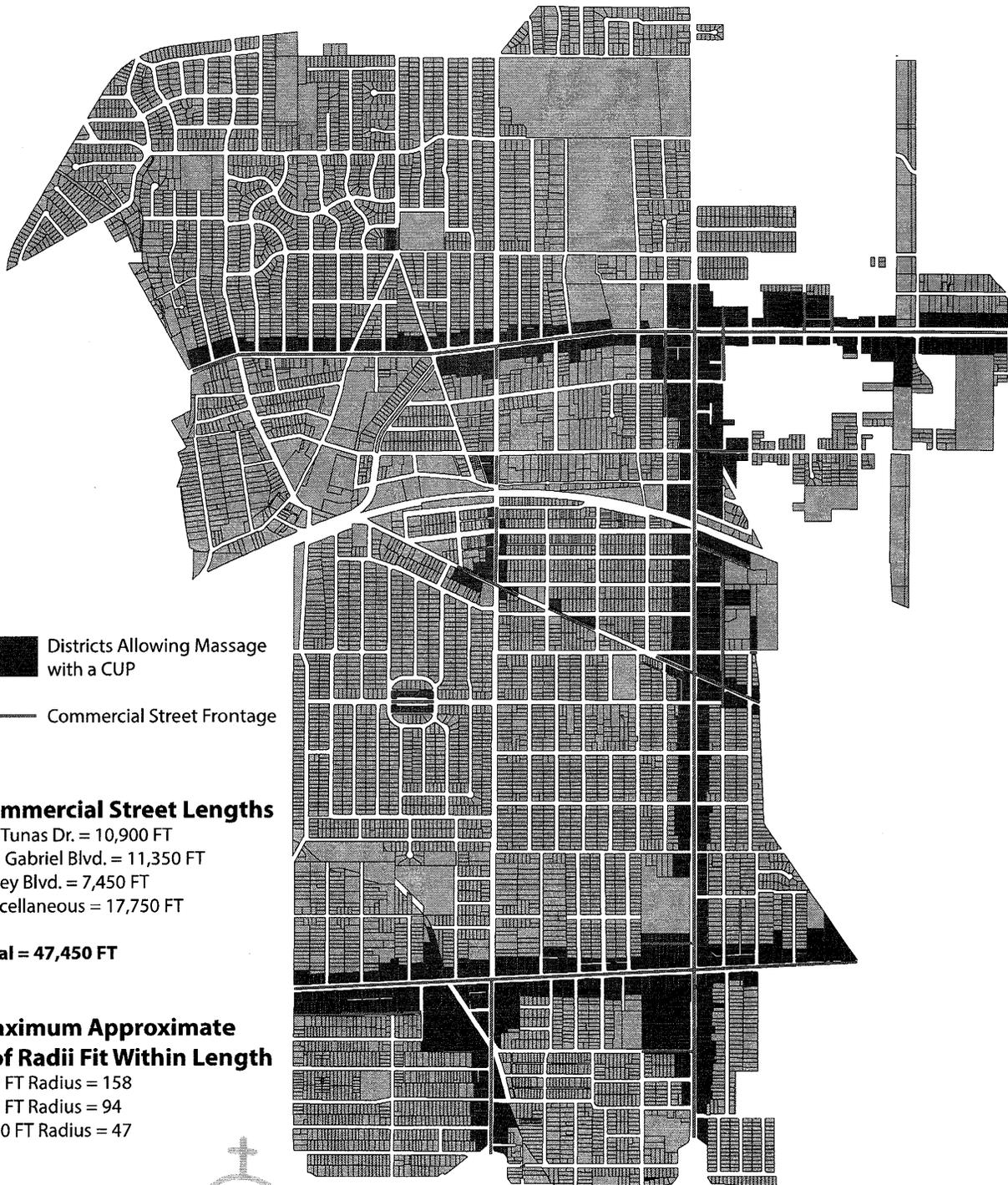
DISTANCE TO NEXT CUP

(PROPERTY TO PROPERTY)

1 - 119 1/2 N San Gabriel Blvd.	820 FT
2 - 1237 S San Gabriel Blvd.	1,190 FT
3 - 828 E. Valley Blvd. #A	890 FT
4 - 529 E. Valley Blvd. (3 Units) #188A	720 FT
8 - 915 E. Las Tunas Dr.	820 FT
18 - 327 E. Valley Blvd. #103 & 104	0 FT
29 - 311 E. Valley Blvd. #108 & 109	0 FT
33 - 1617-1619 S. Del Mar Ave.	555 FT
40 - 139 E. Las Tunas Dr.	1,920 FT
41 - 1051 S. San Gabriel Blvd. #B	1,190 FT
43 - 324 W. Valley Blvd. #A, B, & C	510 FT
52 - 227 W. Valley Blvd. #258B & 268A	510 FT

MESSAGE IN SAN GABRIEL

300 - 500 - 1000 FT RADIUS ALLOWANCES



■ Districts Allowing Message with a CUP
— Commercial Street Frontage

Commercial Street Lengths

Las Tunas Dr. = 10,900 FT
San Gabriel Blvd. = 11,350 FT
Valley Blvd. = 7,450 FT
Miscellaneous = 17,750 FT

Total = 47,450 FT

Maximum Approximate # of Radii Fit Within Length

300 FT Radius = 158
500 FT Radius = 94
1000 FT Radius = 47

San Gabriel

CITY WITH A MISSION



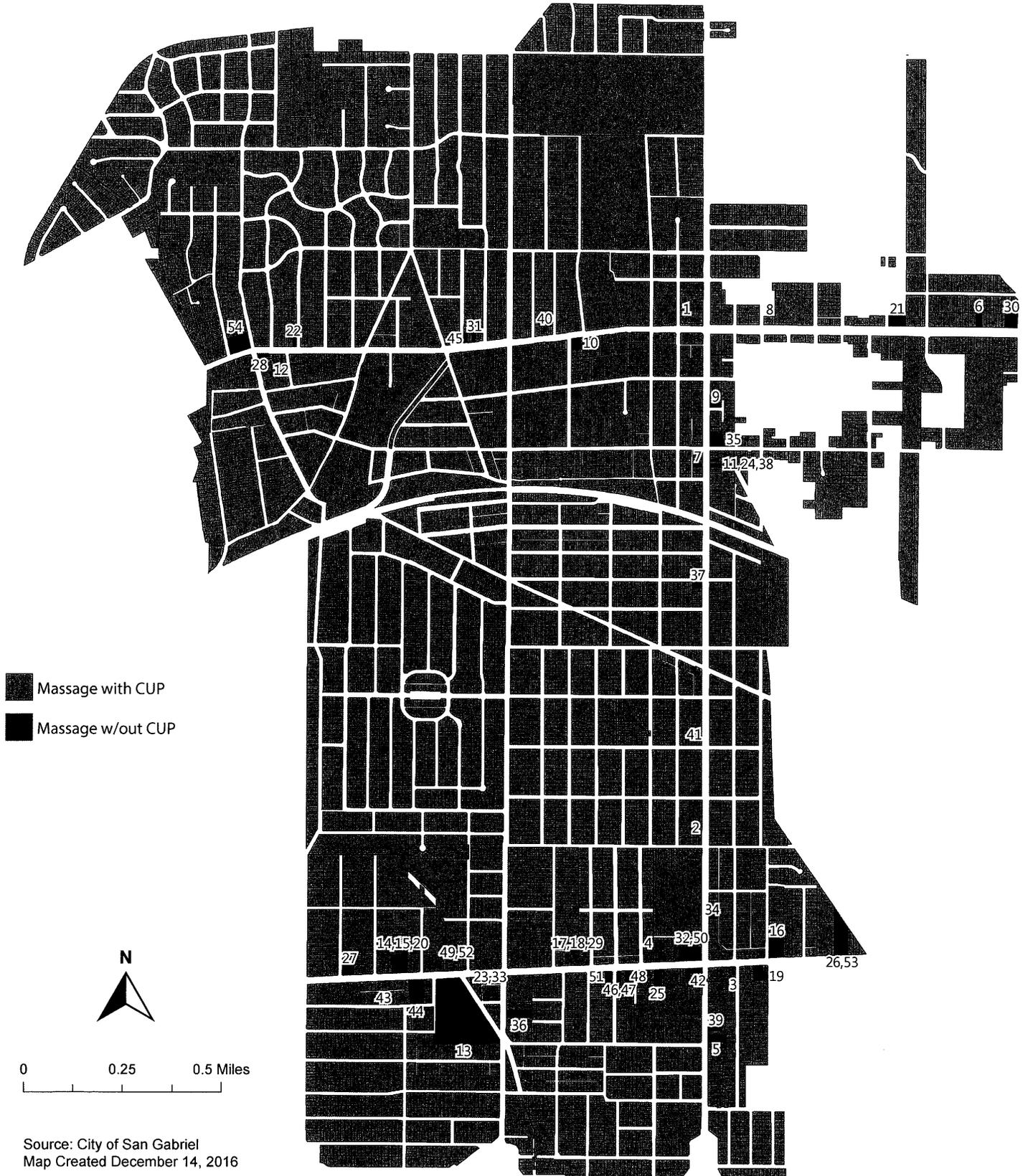
0 0.25 0.5 Miles

Source: City of San Gabriel, SCAG 2012
Map Created October 5, 2016

ATTACHMENT B

MESSAGE IN SAN GABRIEL

EXISTING ESTABLISHMENTS



ALL EXISTING ESTABLISHMENTS

*BLUE ADDRESSES HAVE
AN EXISTING CUP

ADDRESS	DISTANCE TO NEXT (PROPERTY TO PROPERTY)	ADDRESS	DISTANCE TO NEXT (PROPERTY TO PROPERTY)
1 - 119 1/2 N San Gabriel Blvd.	820 FT	29 - 311 E. Valley Blvd. #108 & 109	0 FT
2 - 1237 S San Gabriel Blvd.	1,030 FT	30 - 1381 E. Las Tunas Dr. #4	300 FT
3 - 828 E. Valley Blvd. #A (CLOSED)	250 FT	31 - 133 W. Las Tunas Dr.	50 FT
4 - 529 E. Valley Blvd. (3 Units) #188A, 248B, & 258B	100 FT	32 - 625 E. Valley Blvd. #L	0 FT
5 - 1788 S. San Gabriel Blvd. #101 & 102	50 FT	33 - 1617-1619 S. Del Mar Ave.	0 FT
6 - 1317 E. Las Tunas Dr. #A1	300 FT	34 - 1446 S. San Gabriel Blvd. #B	390 FT
7 - 315 S. San Gabriel Blvd. #B	100 FT	35 - 288 S. San Gabriel Blvd. #106	150 FT
8 - 915 E. Las Tunas Dr.	820 FT	36 - 1710 S. Del Mar Ave. #100B	155 FT
9 - 222 S. San Gabriel Blvd.	350 FT	37 - 701 S. San Gabriel Blvd. #B	1,530 FT
10 - 302-304 E. Las Tunas Dr.	310 FT	38 - 315 S. San Gabriel Blvd.	0 FT
11 - 318 S. San Gabriel Blvd. #B	0 FT	39 - 1728 S. San Gabriel Blvd. #B	50 FT
12 - 702 W. Las Tunas Dr.	165 FT	40 - 139 E. Las Tunas Dr.	310 FT
13 - 140 W. Valley Blvd. #201B	0 FT	41 - 1051 S. San Gabriel Blvd. #B	1,190 FT
14 - 301 W. Valley Blvd. #116	0 FT	42 - 720 E. Valley Blvd.	100 FT
15 - 301 W. Valley Blvd. #201	0 FT	43 - 324 W. Valley Blvd. #A, B, & C	130 FT
16 - 905 E. Valley Blvd.	140 FT	44 - 250 W. Valley Blvd. #E & F	100 FT
17 - 327 E. Valley Blvd. #204	0 FT	45 - 205 W. Las Tunas Dr. #2	50 FT
18 - 327 E. Valley Blvd. #103 & 104	0 FT	46 - 502 E. Valley Blvd.	0 FT
19 - 856 E. Valley Blvd. #B	140 FT	47 - 504 E. Valley Blvd.	0 FT
20 - 301 W. Valley Blvd. #106	0 FT	48 - 512 E. Valley Blvd.	50 FT
21 - 1135 E. Las Tunas Dr.	0 FT	49 - 227 W. Valley Blvd. #218A	0 FT
22 - 617 W. Las Tunas Dr.	165 FT	50 - 731 E. Valley Blvd.	0 FT
23 - 1623 S. Del Mar Ave.	0 FT	51 - 432 E. Valley Blvd. #E	60 FT
24 - 316 S. San Gabriel Blvd.	0 FT	52 - 227 W. Valley Blvd. #258B & 268A	0 FT
25 - 600 E. Valley Blvd. #B & C	100 FT	53 - 1045 E. Valley Blvd. #A108	0 FT
26 - 1039 E. Valley Blvd. #B113	0 FT	54 - 835 W. Las Tunas Dr.	115 FT
27 - 425 W. Valley Blvd. #105	390 FT		
28 - 102 S. Mission Dr.	115 FT		

EXISTING CUP ESTABLISHMENTS

CUP ADDRESSES	DISTANCE TO NEXT CUP (PROPERTY TO PROPERTY)	CUP ADDRESSES	DISTANCE TO NEXT CUP (PROPERTY TO PROPERTY)
1 - 119 1/2 N San Gabriel Blvd.	820 FT	29 - 311 E. Valley Blvd. #108 & 109	0 FT
2 - 1237 S San Gabriel Blvd.	1,190 FT	33 - 1617-1619 S. Del Mar Ave.	555 FT
3 - 828 E. Valley Blvd. #A	890 FT	40 - 139 E. Las Tunas Dr.	1,920 FT
4 - 529 E. Valley Blvd. (3 Units) #188A	720 FT	41 - 1051 S. San Gabriel Blvd. #B	1,190 FT
8 - 915 E. Las Tunas Dr.	820 FT	43 - 324 W. Valley Blvd. #A, B, & C	510 FT
18 - 327 E. Valley Blvd. #103 & 104	0 FT	52 - 227 W. Valley Blvd. #258B & 268A	510 FT
24 - 316 S. San Gabriel Blvd.	1940 FT		

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN GABRIEL, CALIFORNIA AMENDING SECTIONS 153.003 AND 153.162(G) OF THE SAN GABRIEL MUNICIPAL CODE RELATING TO THE DEFINITIONS OF HOTELS AND MOTELS AND SECTIONS 153.151 AND 153.242 RELATING TO MASSAGE ESTABLISHMENTS

WHEREAS, in 2008 the California Legislature passed SB 731 which added a new Chapter 10.5 to the California Business and Professions Code which provided for the formation of the nonprofit California Massage Therapy Council to oversee a state-sanctioned program of voluntary certification for massage practitioners so that such persons could avoid being required to obtain local massage permits; and

WHEREAS, the Massage Therapy Act has been amended several times since its original enactment, including by AB 1147 and AB 2194 which, among other things, restored local land use control and extended the Massage Therapy Act's effective date through December 31, 2020; and

WHEREAS, prior to SB 731, the City required conditional use permits for massage establishments and at the time of SB 731's effective date the City had 32 massage establishments consisting of 10 full body massage establishments and 22 foot massage establishments; and

WHEREAS, at the time that land use authority was restored to the City, the number of full body massage establishments in the City had grown to 57; and

WHEREAS, as of January 1, 2017 the City had 54 massage establishments, 13 of which have a conditional use permit and another eight applications are pending; and

WHEREAS, the proliferation of massage establishments has had many negative impacts in the City including but not limited to:

- The proliferation of a type of business which has been tied to human trafficking;
- The proliferation of businesses which have been a front for prostitution activities, even when they have obtained all required City permits and certificates;
- An impact on City services due to the inordinate amount of time that Police, Neighborhood Improvement Services, and the Finance Department have had to spend in processing,

inspecting, and policing such businesses as compared to other types of personal service businesses;

- Noise impacts on adjacent residential neighborhoods due to massage establishments being opened in the late evening hours;
- Parking impacts on adjacent residential neighborhoods due to the customers of massage establishments parking on local streets after normal working hours when people have returned home from work and need to utilize local residential street parking;
- Lighting impacts on adjacent residential neighborhoods due to spillover impacts from businesses;
- A loss of tax revenue to the City as commercial space has been overrun by massage establishments which do not provide sales tax to the City;
- A negative image of the City as the main commercial corridors are filled with massage establishments; and
- A lowering of residential property values as people do not desire to live near such establishments; and

WHEREAS, the number of massage establishments in the City is inconsistent with the City's General Plan as it interferes with the Land Use Goals of buffering development from neighbors (Goal 1.6) and improving Las Tunas and Valley Boulevards (Goals 1.11 and 1.12) and interferes with the Economic Goals of creating a vibrant business community (Goal 4.1), stopping sales tax leakage (Goal 4.2), and developing retail businesses to address community needs (Goal 4.3), all as more specifically set forth in the staff report; and

WHEREAS, the number of massage establishments that have located in the Valley Boulevard Specific Plan area is inconsistent with the synergy that was expected to be created in that area between various uses as more specifically set forth in the staff report; and

WHEREAS, the City has experienced problems with massage establishments being located in close proximity to each other as, during inspections, workers will run out the back door of a massage establishment and into the back door of an adjacent business, as well as problems with massage establishments trying to use a single Operator to manage a number of businesses that are next to each other; and

WHEREAS, the City Council believes that these problems can be addressed by imposing a distance limitation between massage establishments and between massage establishments and residential areas; and

WHEREAS, staff has determined that including the existing massage establishments with a conditional use permit, a total of 21 massage establishments can locate within the City with a 1,000 foot distance limitation between massage establishments and a 150 foot distance limitation from residential uses; and

WHEREAS, in reviewing the City's zoning provisions the City found that the general definitions of hotels and motels in Section 153.003 referred back to the definitions in the Adult Business chapter instead of to the definitions elsewhere in the San Gabriel Municipal Code; and

WHEREAS, the Planning Commission held a duly noticed public hearing on this Ordinance on January 23, 2017 at which time it recommended that the City Council adopt this Ordinance; and

WHEREAS, the City Council held a duly noticed public hearing on this Ordinance on February 7, 2017 at which time it considered all testimony, both written and oral; and

WHEREAS, the City Council desires to amend Chapter 153 of the San Gabriel Municipal Code and impose distance requirements between massage establishments and between massage establishments and residential uses in order to ameliorate the negative impacts of such businesses in order to protect the public as set forth in this Ordinance as well as revise the definitions of hotel and motel;

NOW, THEREFORE, the City Council of the City of San Gabriel does hereby ordain as follows:

SECTION 1. Findings.

A. The City Council hereby finds that all of the Whereas clauses set forth above are true and correct statements of fact.

B. The City Council further finds that regulations imposed herein are required based on actual experiences in San Gabriel and not because of any belief by the City Council of San Gabriel that massage establishments are an adult-oriented business.

C. The City Council specifically finds and acknowledges that there is substantial research that indicates that the skillful practice of massage can and does provide many health

benefits including relief from disease and injury and that massage can be a valuable component of a wellness program.

SECTION 2. The following definitions contained in Section 153.003 of the San Gabriel Municipal Code are hereby amended to read as follows:

HOTEL. This term shall have the same meaning as is set forth in § 121.01 of this code. See definition contained in § 153.162(G)(7) of this code.

MOTEL. This term shall have the same meaning as is set forth in § 121.01 of this code. See definition contained in § 153.162(G)(7) of this code.

SECTION 3. The use table contained in Section 153.151 of the San Gabriel Municipal Code is hereby amended by adding a cross reference to Section 153.242 of the San Gabriel Municipal Code for Massage Establishments.

Type of Use	Commercial		Light Manufacturing	Notes
	C-1	C-3	M-1	
<i>Personal Service Uses</i>				
Massage establishments, not otherwise subject to an exception under §122.03 of this Code.	C	C	X	*See Chapter 122 of the San Gabriel Municipal Code and <u>Section 153.242</u> of this Chapter.

SECTION 4. The definition of Hotel contained in Section 153.162(G) is hereby amended to read as follows:

HOTEL. A building or group of buildings in which there are six or more guest rooms where lodging, with or without meals, is provided for compensation. A **HOTEL** may provide space for shops or stores within its confines as is otherwise permitted in the zone in which the hotel is located. Dining facilities are recognized as a normal appurtenant use in hotels in any zone in which hotels are permitted. A **HOTEL** shall include one or more amenities for guests, including but not limited to: business center; on-site dining; exercise facilities; meeting rooms; spa; pool; lounge areas; bars; sundry/gift shops. A **HOTEL** shall not include jails, hospitals, asylums, sanatoriums, rest homes, orphanages, prisons, detention homes, or similar buildings where human beings are housed and detained under legal restraint.

SECTION 5. Section 153.242 is hereby amended to read as follows:

153.242 MASSAGE ESTABLISHMENT REQUIREMENTS

In addition to the other requirements pertaining to Conditional Use Permits, the following provisions shall apply to applications for a massage establishment:

A. The application shall include a detailed floor plan drawn to scale showing: entrances; exits; windows; interior doors; restrooms; all other separately enclosed rooms with dimensions, including but not limited to closets, storerooms, break rooms, and changing rooms; and location of massage tables and chairs. The floor plan shall be in feet and inches and be labeled in English. ~~;~~ and

B. Unless a massage establishment has a valid conditional use permit prior to February 7, 2017, no massage establishment shall be located: For purposes of considering a CUP the Planning Commission may take into account the number of other massage establishments in the vicinity as part of determining compatibility.

1. Within 1,000 feet of another massage establishment; or

2. Within 150 feet of the following zones: Single-Family Residence Zones (R-1), Limited Two-Family Residence Zones (R-1A); Low Density Multiple-Family Residence Zones (R-2), Multiple-Family Residence Zones (R-3), Residential Neighborhood Conservation Zones (RN/C), Villa Residential (R-1V), Grapevine Residential (R-2G), and Arroyo Residential (R-3A).

~~1.3.~~ The distance requirements set forth in Subsections 1 and 2 above shall not apply to a massage establishment located within a hotel or to any massage business that is subject to a complete or partial exception pursuant to Section 122.03 of this Code.

C. An application for a conditional use permit shall not be deemed complete ~~No conditional use permit shall be granted for any massage establishment~~ until the owners and any identified manager(s) have obtained an Operator Permit.

SECTION 6. Uncodified provisions.

A. The distance requirements in Subsection B shall not apply to any application that was complete as of February 7, 2017; such applications shall be processed under the previous version of this section which provided that the Planning Commission may take into account the number of other massage establishment in the vicinity as part of determining compatibility.

B. Nothing herein changes the previous requirement that all massage establishments have until January 20, 2018 to apply for a conditional use permit. However, the earlier a CUP application is filed, the greater the chance that there will not be another massage establishment within 1,000 feet.

SECTION 7. Impact on Valley Boulevard Specific Plan. The changes to the CUP requirements for massage establishments in the C-1 and C-3 zone will have corresponding changes to massage establishments in the Valley Boulevard Specific Plan which are conditionally allowed in the MU-T (Mixed-Use Transit Oriented Development), C-CT (Commercial Centers and Nodes), MU-C (Mixed-Use on Corridors), and MU-C/R (Mixed-Use, Commercial, or Multi-family Residential on Corridors) zones of the Valley Boulevard Specific Plan area.

SECTION 8. Impact on Mission District Specific Plan. The changes to the CUP requirements for massage establishments in the C-1 and C-3 zone will have corresponding changes to massage establishments in the Mission District Specific Plan which are conditionally allowed in the Mission District Village (MD) and Market Place (C-1M) zones of the Mission District Specific Plan area.

SECTION 9. This Ordinance is consistent with the City’s General Plan, the Valley Boulevard Specific Plan and the Mission District Specific Plan and is necessary to protect the public health, safety and welfare from both the problematic massage establishments as well as the over proliferation of massage establishments in the City.

SECTION 10. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase be declared unconstitutional.

SECTION 11. Certification. The City Clerk shall certify the passage of this ordinance and shall cause the same to be processed as required by law.

SECTION 12. This Ordinance is exempt from CEQA pursuant to section 15061(b)(3) under the general rule that CEQA does not apply to activities which can be seen with certainty to have no effect on the environment. Changing the regulations relating to Massage Establishments will not create any environmental impacts. Additionally, as a separate and independent ground, the Ordinance is further exempt from CEQA pursuant to section 15305 as a minor alteration to land use limitations: there is no area in which massage establishments are allowed which has a slope greater than 20% and the distance requirements for massage establishments do not result in any changes to land use or density.

SECTION 13. Effective Date. This ordinance shall become effective on the thirty-first day after passage.

Passed, approved, and adopted this _____ day of _____, 2017.

CHIN HO LIAO, MAYOR
CITY OF SAN GABRIEL

ATTEST:

ELEANOR K. ANDREWS, CITY CLERK
CITY OF SAN GABRIEL

1. David Yu, 1518 Palm Avenue, Unit C, asked how the owner can build so many units. He also expressed his concern regarding existing and future heavy traffic congestion and noise.
2. Diana Yu, 1518 Pam Avenue, Unit C, commented about future traffic problems, noise level and street safety.
3. Bob Jeffs, 307 E. Valley Blvd., expressed his concern regarding traffic caused by large delivery trucks accessing the alley that he shares with the property. He proposed to have the entrance to be on the north side instead of the south side to reduce noise in a commercial parking lot.

There being no additional speakers from the audience, Chairman Garden closed the public hearing portion of the meeting.

Commissioners' Discussion

Commissioner Adkins stated that this project will be a good buffer zone for the residents when the owner decides to build more residential units on site in the future.

Commissioner Kimbrough stated that it is good to have some use with the building instead of having it vacant. She also stated that she was satisfied having offices there rather than retail stores which would have all sorts of delivery trucks coming and going to the property. Whatever the office size would be, she didn't see any major problem with traffic that it doesn't really have. Office hours are normally during the day and majority of the residents are either at work or in school. Occupying and rehabilitating the building would be better for public safety.

Commissioner Zawodny stated that he didn't have a problem taking the zoning back to what it was originally zoned.

Vice-Chair Klawiter stated that the Commissioners heard concerns from the public tonight that were outside the scope of this application. He doesn't see how an office use for this property will impact negatively on traffic, noise and delivery schedules. He added that this is a tenant improvement project, not a development. It is about taking the property back to its original zone and that this is providing time economically so that it can support housing in the future. He also stated that he agrees with Commissioner Adkins that this is a good buffer zone.

Chairman Garden stated that the best buffer is an office. It is a depressed property and it will impact the neighborhood's property values as well if not rehabilitated.

Chairman Garden made the motion to recommend approval of the Negative Declaration for this project and approval to amend the Valley Boulevard Specific Plan zoning designation of Multi-Family Residential Corridor to Mixed-Use Transit Oriented Development to the City Council.

Ayes:	Garden, Klawiter, Kimbrough, Adkins, and Zawodny
Noes:	None
Abstain:	None

The motion carried on a 5-0 vote.

—————→ **START**

3. 139 E. Las Tunas Dr.
Planning Case No. PL-10-012 (Conditional Use Permit)
Applicant: John Pong (Joyful Spa)

3. 139 E. Las Tunas Dr.
Planning Case No. PL-10-012
(Conditional Use Permit)
Applicant: John Pong (Joyful
Spa)
Approved.

City Attorney Bob Kress announced that Commissioner Kimbrough received one of the public notices for this item because she lives within 500 feet from the project site. Therefore, she was asked to recuse herself and leave the dais and the Council Chambers until the Planning Commissioners finish discussing and voting on this item.

City Planner Mark Gallatin presented this report regarding a request to approve a Conditional Use Permit to allow a full body massage at an existing foot massage salon located in the C-1 (Retail Commercial) zone.

This report was reviewed and exempted for compliance with the California Environmental Quality Act (CEQA) per Guidelines Section 15301, Class 1 (Existing Facilities).

Applicant's Testimony

Mr. John Pong, applicant/owner, 139 E. Las Tunas Drive, came forward and stated that he has owned this business for about four years and is trying to make ends meet. By allowing him to provide full body massage services, he can increase his revenue during these tough economic times.

Applicant's Testimony

Chairman Garden stated that the Planning Commission received a letter from the neighbor indicating Mr. Poon's exterior lighting shines over the neighbor's property. He asked if the owner can provide deflectors or shield over them. Chairman Garden also added that there is a complaint filed about noise from the location in the evening. He proposed that staff to take a look at it later on.

Mr. Pong stated that he will comply with whatever the City asks him to do.

Chairman Garden asked if anyone from the audience would like to come forward to speak in favor or against this item. There being none, Chairman Garden closed the public hearing portion.

Commissioners' Discussion

Vice-Chair Klawiter stated that he was inclined to support the moratorium. However, City Attorney Kress said that the moratorium has provisions for hardships. Therefore, Vice-Chair Klawiter stated that will go along with staff's recommendation.

Commissioners' Discussion

Commissioner Adkins stated that she was concerned about the letter that the Planning Commissioners received regarding noise in the area. Staff or clients are out in the parking lot late at night and they create noise which disturbs the neighbors. She recommended that the owner should take care of this issue so that the residents would not be bothered and to take care of the deflecting the light from the business location to eliminate the reflection issue.

Chairman Garden made the motion to approve this item subject to the recommended conditions of approval and added two more conditions: 1) a six-month review for staff to do a field observation and, 2) identify what mitigating measures are made with respect to the lighting and noise concerns.

Vice-Chair Klawiter seconded the motion.

Ayes:	Garden, Klawiter, Adkins, and Zawodny
Noes:	None
Abstain:	Kimbrough

The motion carried on a 4-0 vote.

**4. 1047-1051 S. San Gabriel Blvd.
Planning Case No. PL-10-055 (Conditional Use Permit)
Applicant: Lu Chen) Liren International Group, Inc)**

City Planner Mark Gallatin presented this report regarding a request to approve a Conditional Use Permit to allow a full body massage at an existing foot massage salon located in the C-1 (Retail Commercial) zone.

This report was reviewed and exempted for compliance with the California Environmental Quality Act (CEQA) per Guidelines Section 15301, Class 1 (Existing Facilities).

Applicant's Testimony

Ms. Lu Chen, applicant/owner, came forward with her interpreter Mr. Fang Zhao. She thanked the Planning Commissioners for hearing her item and invited them to her store to see the improvements she has done. She also stated that she will follow all recommendations required of her.

Chairman Garden asked if anyone from the audience would like to come forward to speak in favor or against this item.

Testimony Not in Favor

1. Susan Jarvis, Pine Street, San Gabriel resident for 40 years, came forward and addressed her concerns regarding problems associated with massage places, especially prostitution. She stated that massage is not a health treatment and it is not something that absolutely needs to be done. It is not even healthcare and there is no need to have eight to ten massage parlors in the City. She also cited overcrowded parking and noise problems when people leave the location.

Testimony in Favor

1. Mary Yum, Hacienda Heights resident, stated that there are so many empty spaces on Valley Blvd, and that the owner is trying hard to do good business in the City. She often goes to the location for a massage and doesn't find problems with parking. She enjoys going there and lobbied to get the CUP granted for the owner.

At this point, Chairman Garden closed the public hearing portion for this item.

Commissioners' Discussion

Chairman Garden asked City Planner Gallatin to explain about the parking situation in the area.

Mr. Gallatin stated that on the corner of San Gabriel Blvd and Central, immediately west, is a single-family residence off of Central Ave. This commercial business has had no parking onside for many years. There is street parking available on San Gabriel Blvd and Central Ave. Patrons can park there without parking restrictions. He also added that it is not unusual to have a residence on the same property.

Commissioner Kimbrough recommends imposing a 2-hour parking limit like other retail places in other cities.

Chairman Garden inquired if the house adjacent to the business is vacant.

Ms. Chen stated that she lives there with her daughter for she sold her condo to be close to her business.

**4. 1047-1051 S. San Gabriel Blvd.
Planning Case No. PL-10-055
(Conditional Use Permit)
Applicant: Lu Chen) Liren International Group, Inc)
Approved.**

Applicant's Testimony

Testimony Not in Favor

Testimony in Favor

Commissioners' Discussion

City Attorney Kress advised the Planning Commissioners to not make parking a condition and let the City Engineer take a look at it. If it is a solution for the entire neighborhood, then they should be notified but if it is for individual parking spots or green curbs, those can be dealt with by Engineering and/or Public Works staff.

Commissioner Zawodny stated he is inclined to support staff's recommendations.

Vice-Chair Klawiter recommended a 6-month review. He stated that there are always parking issues since this is an old City without ample parking. He, too, supports staff recommendations.

Chairman Garden made the motion to approve this item subject to the recommended conditions of approval and a six-month review for staff to take a field observation.

Commissioner Adkins seconded the motion.

Ayes: Garden, Klawiter, Kimbrough, Adkins, and Zawodny
Noes: None
Abstain: None

The motion carried on a 5-0 vote.



5. Zoning Code Update – Quick Wins Strategy and Two Proposed Changes to the Zoning Code

Planning Manager Carol Barrett presented this item. She reported that staff will regularly bring to the Planning Commission Code revisions which will be referred to as “quick wins” as a new strategy to update the Zoning Code. These “quick wins” will address common and easy to solve problems with the current Code that will improve customer service in advance of a more comprehensive Code update. After the Planning Commission reviews and approves these “quick wins”, they will be bundled for quarterly Council consideration and adoption. This was the second in a series of proposals for code revisions addressing:

- A. Adding valet parking as a permitted option on private property,
- B. Allowing excess parking at service stations to be leased;
- C. Reducing parking requirements for office uses;
- D. Specifying a standard for back-up space for garages for single-family homes, and
- E. Allowing neon signs.

This item is exempt from compliance with CEQA as a specific exemption to the definition of project (15378 (b) 5) administrative activities of governments that will not result in direct or indirect physical changes in the environment.

Commissioners' Discussion

The Commissioners discussed the five proposed items for code revisions as presented.

Chairman Garden made the motion to recommend approval by the City Council of changes to the codes including provisions A and C and that items B, D, and E will be revised by Mrs. Barrett. These three items will be discussed again in detail at a future Planning Commission meeting. Commissioner Kimbrough seconded the motion.

Ayes: Garden, Klawiter, Kimbrough, Adkins, and Zawodny
Noes: None
Abstain: None

The motion carried on a 5-0 vote.

5. Zoning Code Update – Quick Wins Strategy and Two Proposed Changes to the Zoning Code

Commissioners' Discussion

**SAN GABRIEL CITY COUNCIL
MINUTES OF OCTOBER 1, 2013**

The regular meeting of the San Gabriel City Council convened on October 1, 2013 at 7:37p.m. in the Council Chambers at City Hall, 425 South Mission Drive, San Gabriel, California 91776.

1. CALL TO ORDER

The meeting was called to order by Mayor Costanzo

2. PLEDGE OF ALLEGIANCE

The pledge of allegiance was led by Vice Mayor John Harrington

3. ATTENDANCE

PRESENT: Mayor Costanzo, Vice Mayor Harrington, Councilmembers Liao, Pu and Sawkins; City Manager Preston, City Attorney Kress, and Acting Deputy City Clerk Eggehorn.

4. PRESENTATIONS

A. Recognition of Centenarian and Retired Fire Captain Harland Klecker

Fire Chief Nestor presented Retired Fire Captain Harland Klecker a certificate of recognition for his years of service with the City of San Gabriel and pinned him badge #100 for Mr. Klecker's 100th Birthday.

5. PUBLIC COMMENT: PURSUANT TO GOVERNMENT CODE SECTION 54954.3, THIS IS THE TIME PROVIDED FOR MEMBERS OF THE PUBLIC TO ADDRESS THE COUNCIL ON ITEMS OF INTEREST THAT ARE NOT ON THE AGENDA WITHIN THE SUBJECT MATTER JURISDICTION OF THE SAN GABRIEL CITY COUNCIL.

Steve Liu, a resident of San Gabriel, spoke of safety issues regarding the intersection of San Marino Ave. and Broadway.

Benjamin Agus, a resident of San Gabriel, addressed the Council regarding issues with citations he said he had received from the Community Development Department and same issues from last Council meeting.

→ Mary Ann Baldonado, a resident of San Gabriel, addressed the Council regarding the number of massage businesses in the City.

John Danpu, student at Gabrielino High School, addressed Council and was taking notes for school project.

6. CONSENT CALENDAR: ALL ITEMS LISTED UNDER THE CONSENT CALENDAR ARE CONSIDERED ROUTINE AND ENACTED IN ONE MOTION UNLESS A MEMBER OF THE CITY COUNCIL OR AUDIENCE REQUESTS SEPARATE DISCUSSION

Councilmember Sawkins moved to approve the consent calendar as presented; motion was seconded by Vice Mayor Harrington and passed by a vote on the board of 5/0.

A. MINUTES OF REGULAR COUNCIL MEETING OF AUGUST 20, 2013

SAN GABRIEL CITY COUNCIL MINUTES OF OCTOBER 15, 2013

The regular meeting of the San Gabriel City Council convened on October 15, 2013 at 7:33 p.m. in the Council Chambers at City Hall, 425 South Mission Drive, San Gabriel, California 91776.

1. **CALL TO ORDER**

The meeting was called to order by Mayor Costanzo

2. **PLEDGE OF ALLEGIANCE**

The pledge of allegiance was led by City Manager Preston

3. **ATTENDANCE**

PRESENT: Mayor Costanzo, Vice Mayor Harrington, Councilmembers Liao, Pu and Sawkins; City Manager Preston, City Attorney Kress, and Acting Deputy City Clerk Eggehorn.

4. **PRESENTATIONS**

A. **Introduction of Finance Department Accountant Cynthia Yiu**

Finance Director Tom Marston introduced to the Council newly hired Accountant Cynthia Yiu.

B. **Administration of Oath of Office - Lieutenant Alex Quijada, Sergeant Riki Nakamura and Sergeant Fabian Valdez**

Police Chief Lawton introduced Lieutenant Alex Quijada, Sergeant Riki Nakamura and Sergeant Fabian Valdez with Deputy City Clerk Eggehorn administering the Oath of Office.

5. **PUBLIC COMMENT: PURSUANT TO GOVERNMENT CODE SECTION 54954.3, THIS IS THE TIME PROVIDED FOR MEMBERS OF THE PUBLIC TO ADDRESS THE COUNCIL ON ITEMS OF INTEREST THAT ARE NOT ON THE AGENDA WITHIN THE SUBJECT MATTER JURISDICTION OF THE SAN GABRIEL CITY COUNCIL.**

Mary Cammarano, a resident of San Gabriel, informed the Council of the event "Sound of San Gabriel" at Mission High School and noted musical artists from the City and surrounding communities.

Mary Ann Baldonado, a resident of San Gabriel, spoke to Council regarding the massage businesses in San Gabriel and asked Council to impose a moratorium on massage businesses.

Brad Kale, informed the Council that he had heard that the Crowne Plaza Project was for sale. The City Manager responded that the City had no such information.

Councilmember Sawkins asked the Council to add an item on the next agenda regarding Massage businesses.

Benjamin Agus, a resident of San Gabriel, addressed the Council of parking issues and ticketing practices.

SAN GABRIEL CITY COUNCIL MINUTES OF NOVEMBER 19, 2013

The regular meeting of the San Gabriel City Council convened on November 19, 2013 at 7:35 p.m. in the Council Chambers at City Hall, 425 South Mission Drive, San Gabriel, California 91776.

1. **CALL TO ORDER**

The meeting was called to order by Mayor Costanzo.

2. **PLEDGE OF ALLEGIANCE**

The pledge of allegiance was led by Youth In Government Mayor Brandon Wong.

3. **ATTENDANCE**

PRESENT: Mayor Costanzo, Vice Mayor Harrington, Councilmembers Liao, Pu and Sawkins; City Manager Preston, City Attorney Kress, and Acting Deputy City Clerk Eggehorn.

4. **PRESENTATIONS**

A. **Introduction of Auto Shop Manager Victor Razo**

City Manager Preston introduced to the Council newly hired Auto Shop Manager Victor Razo.

B. **Joint Proclamation: Breast Cancer Awareness Month and Domestic Violence Prevention Month**

The City Council presented a proclamation to Miriam Harrington, a representative for the San Marino Soroptomist Club, declaring October as Breast Cancer Awareness Month and November as Domestic Violence Prevention Month.

5. **PUBLIC COMMENT: PURSUANT TO GOVERNMENT CODE SECTION 54954.3, THIS IS THE TIME PROVIDED FOR MEMBERS OF THE PUBLIC TO ADDRESS THE COUNCIL ON ITEMS OF INTEREST THAT ARE NOT ON THE AGENDA WITHIN THE SUBJECT MATTER JURISDICTION OF THE SAN GABRIEL CITY COUNCIL**

→ Margaret Sosa, representing neighbor Sien Pang, addressed the Council regarding Massage establishments and presented letters signed by residents.

→ Mary Ann Baldonado, a resident, addressed the Council regarding massage establishments and read a letter from Jeanne Raya, a business owner.

→ Anna Battaglia, a resident, addressed the Council regarding massage establishments.

→ Mike Chaisorn, a resident, addressed the Council regarding massage establishments.

Julie Sorensen, Librarian for the San Gabriel County Library, invited the Council to a book signing by retired Police Captain Rick Arnold.

11, 1 2013

November 12, 2013

CITY OF SAN GABRIEL

Attention: Steve Preston, San Gabriel City Manager

In response to the Staff Report dated November 5, 2013, please respond to further questions relating to the overconcentration of massage establishments in our City:

1. As residents, we are concerned about the 54 massage establishments doing business in our City. We are even more alarmed to learn that our neighboring cities like Alhambra reports only six such establishments for a population nearly double the size of San Gabriel, Arcadia, at 11 square miles, has 30 and Pasadena, a city of 140,000, has 60. **What have these cities done to limit such massage businesses from operating in such large numbers in their cities?**
2. Under the Land Use designation in the City Municipal code, Massage businesses fall under the Personal Service Uses (*defined as "high volume traffic generators"*). **What is the parking standard (*required number of parking spaces*) per the City Municipal Code? Can the parking standard be changed to be more stringent for Personal Use businesses, including massage parlors, to accommodate the high-volume traffic?**
3. In reading the research done by the Pasadena Star News, it cites that "Ahmos Netanel, CEO of the CAMTC, said the Massage Therapy Law does not take away regulation powers from the city. Cities can pass zoning and other restrictions on businesses, as long as they apply it to *other* licensed professionals, which include doctors and chiropractors". **Why has San Gabriel avoided stricter regulations or moratoriums to reduce the overconcentration of massage establishments?**
4. The Staff Report states "At least half of the prostitution problems in the City come from locations other than massage establishments". **With specificity, what other "locations" are you referring to? How many arrests have there been? What enforcement practices are in place to identify and control such criminal activity?**

We urge that City Staff aggressively develop plans to reduce the proliferations and impact massage businesses are having in our Community.

Resident Name and address:

Margaret Sosa

Cc:

Juli Costanzo, Mayor
John Harrington, Vice Mayor
Chin Ho Liao, Councilmember
Jason Pu, Councilmember
Kevin Sawkins, Councilmember

*205 E. Broadway St
San Gabriel, Ca 91776*

CITY OF SAN GABRIEL

MINUTES OF THE REGULAR PLANNING COMMISSION MEETING

January 11, 2016

The regular meeting of the Planning Commission of the City of San Gabriel was held in the City Council Chambers at City Hall, 425 S. Mission Drive, San Gabriel, California, on Monday, January 11, 2016.

Chairman Garden called the meeting to order at 6:30 p.m. and led the pledge of allegiance.

Meeting Called to Order;
Pledge of Allegiance

ROLL CALL

ROLL CALL

PRESENT:

Chairman Norman Garden, Vice-Chair Thomas Klawiter, Commissioner Jingbo Lou, Commissioner Camelia Vera and Commissioner Vince Zawodny

ABSENT:

None

STAFF PRESENT:

City Attorney Robert L. Kress, Senior Planner Larissa De La Cruz, and Planning Commission Secretary Jackie Wong

CONSENT ITEMS

Minutes of the regular meeting on December 14, 2015.

Vice-Chair Klawiter moved to approve the minutes. Commissioner Lou seconded the motion. There being no objections, the minutes were approved.

CONSENT ITEMS

Minutes of the regular Planning Commission meeting on December 14, 2015
Approved.

PUBLIC COMMENTS

Chairman Garden asked that speakers come forward who wish to address the Planning Commission on non-agenda items.

PUBLIC COMMENTS

None.

No one came forward to speak; therefore, he closed this portion of the meeting.

EXPLANATION OF PUBLIC HEARING PROCEDURES

City Attorney Kress explained the public hearing procedures for the items on this evening's agenda.

EXPLANATION OF PUBLIC HEARING PROCEDURES

Explained by City Attorney Kress

PUBLIC HEARING ITEM

- 1. 801 E. Valley Blvd., Unit #102
Planning Case No. PL-15-123
Applicant: William Duong (I Health Spa)

START

PUBLIC HEARING ITEMS

- 1. 801 E. Valley Blvd.,
Unit #102
Planning Case No. PL-15-123
Applicant: William Duong (I Health Spa) Denied.

This item was presented by Senior Planner Larissa De La Cruz about a Conditional Use Permit (CUP) request to operate an existing massage business due to a change of ownership. The original business owner was not required to have a CUP when it first opened. With the City's new massage ordinance, the new owners are now required to obtain one.

ENVIRONMENTAL DETERMINATION: The project was reviewed and exempted for compliance with the California Environmental Quality Act (CEQA) requirements, per Guidelines Section 15301, Class 1 (Existing Facilities).

RECOMMENDATION: Staff recommended approval of Planning Case No. PL-15-123 subject to the recommended conditions of approval.

Testimonies Not in Favor

1. Charles Sances, 1808 S. California St., San Gabriel, voiced his concern about having too many massage establishments (58 total) in the City and suggested limiting these numbers. He also stated that there is not enough stringent enforcement to those who have violations.
2. Suzanne Paine, 458 S. San Gabriel Blvd., San Gabriel, voiced her concerns about parking problems or lack thereof, and parking signage. She also stated that the applicant came before the Planning Commission in August, 2015 for a tutoring center located in the same area, and was concerned about excessive signage. Chairman Garden clarified that the applicant is the business owner's representative and is the building landlord.
3. Anna Battaglia, resident on Bilton Way, San Gabriel, echoed the concerns mentioned above. She added that there was inadequate notification about this item, and that is why not too many people were able to attend tonight's meeting.

Ms. De La Cruz stated that public notices are regularly advertised on the newspaper. She also added that while the legal requirement for notifications is within 300 feet radius of the proposed project, staff sent notices within 500 feet radius. Notices are also posted at the post office, city hall and the City's website.

Commissioners' Discussion

The Planning Commissioners discussed the project and were concerned about two CUP findings, wherein the Commissioners determined that the proposed use is not compatible with surrounding properties and uses, and that the proposed use is detrimental to the public health, safety and general welfare.

Chairman Garden made the motion to deny PL-15-123 based on the two CUP findings discussed. Vice-Chair Klawiter seconded the motion.

Ayes: Garden Klawiter, Lou, Vera and Zawodny
Noes: None

5-0 vote. Motion carried to deny this item.

STAFF ITEM

1. Presentation by City Manager Steven A. Preston.

City Manager Steven A. Preston came before the Planning Commission provided an overview of matters of interest, received inquiries, and offered an opportunity to discuss issues and goals the Commission would like to relay to the city council.

Mr. Preston thanked the Commissioners for their gift of time and service to the City. He informed them about the upcoming Biennial Commissioner Recognition Dinner in April; gave a status report about the City's current projects and staffing; and asked the Commissioners what they would like to see and what they would expect from the city council.

PLANNING COMMISSION ITEM

1. Election of Officers

City Attorney Kress opened the floor for nominations for the Chair position of the Planning Commission. Commissioner Lou motioned to nominate Chairman Garden to continue as Chair. Commissioner Zawodny seconded the motion. No more additional nominations were received. Chairman Garden was unanimously reelected as Chairman of the Planning Commission with a 4:0 vote.

Testimonies Not in Favor

Commissioners' Discussion

STAFF ITEM

1. **Presentation by City Manager Steven A. Preston**
No action required.

PLANNING COMMISSION ITEM

1. **Election of Officers.**
Chairman Garden and Vice-Chair Klawiter reelected to their current positions.

→ STOP

No one from the public came forward to speak; therefore, Chairman Garden closed the public hearing portion of the meeting.

Commissioners' Discussion

The Planning Commissioners conceptualized and discussed the project. They recommended adding a condition that the applicant would provide a 10-foot landscape buffer at the rear of the property. They also requested staff to review the project for compliance six months after occupancy.

Chairman Garden made the motion to approve PL-15-133 subject to the recommended conditions of approval and adding a condition for a 10-foot landscape buffer at the rear of the property. Commissioner Vera seconded the motion.

Ayes: Garden, Klawiter, Vera and Zawodny
Noes: None

4-0 vote. Motion carried.

PUBLIC HEARING ITEMS

1. 1237 S. San Gabriel Blvd.
Planning Case No. PL-16-001
Applicant: Shyn Hae Wu/Xue Wen Ma (Angel Massage, Inc.)

This report was presented by Associate Planner Jo-Anne Burns regarding a CUP to allow an existing massage establishment to continue operating with new ownership. This business has been in operation since 2009.

ENVIRONMENTAL DETERMINATION: The project was reviewed and exempted for compliance with the California Environmental Quality Act (CEQA) requirements, per Guidelines Section 15301, Class 1 (Existing Facilities).

RECOMMENDATION: Staff recommended that the Planning Commission approve Planning Case No. PL-16-001.

Mr. Xue Wen Ma, applicant, stated that he has read and agrees with all of the recommended conditions of approval.

NIS staff confirmed that previous violations were taken care of. However, the Planning Commissioners requested that the neon signs on the property must be removed and that an encroachment permit is needed from Public Works for their existing stand-alone signs.

Testimonies

1. Charles Sances, 1808 S. California St., expressed his concern about overabundance of massage businesses along San Gabriel Blvd. He pointed out that this one in particular is near Gabrielino High School.
2. Anna Battaglia, 1140 Bilton Way, expressed the same concern as Mr. Sances, having 12 massage business on San Gabriel Blvd. alone.

Chairman Garden explained that there are ordinances that specify minimum distances from schools but they only apply to adult businesses; massage businesses are not included.

At this point, Chairman Garden closed the public hearing portion of the meeting.

Commissioners' Discussion

The Planning Commission conceptualized and discussed the project. Vice-Chair Klawiter and Commissioner Vera expressed their concern about the business' proximity to schools and how the owners have not complied with all of the conditions of approvals since 2009. Commissioner

Commissioners' Discussion

PUBLIC HEARING ITEMS

1. 1237 S. San Gabriel Blvd.
Planning Case No.
PL-16 001
Applicant: Shyn Hae
Wu/Xue Wen Ma (Angel
Massage, Inc.)
Public Hearing to be
reopened and continued
to the June 13, 2016
Planning Commission
Meeting.

Testimonies

Commissioners' Discussion

Zawodny would like all the signage cleaned up. Chairman Garden stated he did not find anything wrong in the staff report and that the oversaturation of massage businesses is a larger issue that needs to be addressed with the City Council.

Chairman Garden made the motion to approve PL-16-001 subject to the recommended conditions of approval. Commissioner Zawodny seconded the motion.

Ayes: Garden and Zawodny
Noes: Klawiter and Vera

2-2 vote. No action was taken. Public hearing for this item will be reopened and continued to the June 13, 2016 Planning Commission meeting.

→ STOP

2. 529 E. Valley Blvd., #108-B
Planning Case No. PL-16-033
Applicant: Shao Peng Dong (Yummy BBQ)

2. 529 E. Valley Blvd., #108-B
Planning Case No. PL-16-033
Applicant: Shao Peng Dong (Yummy BBQ)
Approved.

This item was presented by Associate Planner Jo-Anne Burns regarding a CUP to allow the sale of beer and wine within an existing restaurant located in a Mixed Use Transit Oriented zone.

ENVIRONMENTAL DETERMINATION: The project was reviewed and exempted for compliance with the California Environmental Quality Act (CEQA) requirements, per Guidelines Section 15301, Class 1 (Existing Facilities).

RECOMMENDATION: Staff recommended that the Planning Commission approve Planning Case No. PL-16-033.

Ms. Dong, applicant, stated that he has read and agrees with all of the recommended conditions of approval.

No one from the public came forward to speak; therefore, Chairman Garden closed the public hearing portion of the meeting.

Commissioners' Discussion

The Planning Commissioners conceptualized. They discussed parking spaces, which the business has enough of, and recommended to clean up and reduce signage.

Commissioners' Discussion

Chairman Garden made the motion to approve PL-16-033. Vice-Chair Klawiter seconded the motion.

Ayes: Garden, Klawiter, Vera and Zawodny
Noes: None

4-0 vote. Motion carried.

ADJOURNMENT

There being no further business to discuss, Chairman Garden moved to adjourn to the Regular Meeting of the Planning Commission on Monday, June 13, 2016 at 6:30 p.m. in the Council Chambers, City Hall, 2nd Floor, 425 S. Mission Drive, San Gabriel, CA.

ADJOURNMENT

* * * * *

The Design Review Commission adjourned to a special meeting on June 20, 2016 at 7:00 p.m. at City Hall, 425 S. Mission Drive, Second Floor, San Gabriel, CA.

PUBLIC HEARING ITEMS: OLD BUSINESS

START

1. 1237 S. San Gabriel Blvd.

Planning Case No. PL-16-001

Applicant: Shyn Hae Wu/Xue Wen Ma (Angel Massage, Inc.)

This item was continued from the May 9, 2016 Planning Commission meeting. This report was presented by Associate Planner Jo-Anne Burns regarding a request for a CUP to allow an existing massage establishment to continue operating with new ownership. This location has been occupied by a massage business since 2009.

ENVIRONMENTAL DETERMINATION: The project was reviewed and exempted for compliance with the California Environmental Quality Act (CEQA) requirements, per Guidelines Section 15301, Class 1 (Existing Facilities).

RECOMMENDATION: Staff recommended that the Planning Commission approve Planning Case No. PL-16-001.

Mr. Xue Wen Ma, applicant, spoke using a friend to translate for him. He stated that he has read and agrees with all of the recommended conditions of approval. He also briefly shared that it is his dream to own his own business after coming from another country and has worked hard to making it come true.

Commissioner Lou was provided a recording of last month's meeting and listened to the entire meeting. He stated that he understands the issues and questions about the item.

Commissioner Vera asked about CUP timelines.

Testimonies

1. Applicant's translator – stated that she's a regular customer and that the establishment is always kept clean and is pleased with their service.
2. Charles Sances, 1808 S. California St., stated his concerns regarding:
 - Compliance
 - Past violations such as excessive signs, badges not worn

Chairman Garden clarified that those minor violations have all been fixed in 2015.

3. Isella Bowles, 1038 Kendall, stated her concerns regarding:
 - Oversaturation of massage businesses in the City
 - Noisy environment in massage parlors based on online customer reviews
 - Many massage parlors are places that often have lewd activities
4. Suzanne Paine, resident, stated her concerns regarding:
 - Proximity to school(s)
 - Oversaturation of massage businesses in the City

At this point, Chairman Garden closed the public hearing portion of the meeting.

**PUBLIC HEARING ITEMS:
OLD BUSINESS**

1. 1237 S. San Gabriel Blvd.

Planning Case No. PL-16-001

**Applicant: Shyn Hae Wu/Xue Wen Ma (Angel Massage, Inc.)
Approved.**

Testimonies

Commissioners' Discussion

Commissioner Lou stated that he understands the residents' concerns. However, he stated that the business has been there for some time and its past violations were not severe enough to punish the applicant. He added that he would support this item.

Commissioner Vera voiced her concern regarding oversaturation of massage businesses within close proximity to each other. She feels that the Planning Commissioners should listen to the will of the people and are failing to implement the General Plan if they don't do that.

Commissioner Zawodny stated that this is a moral issue where one person comes to this country and realize his dream. He stated that he appreciates the applicant working hard to achieve his dream in opening his own business. However, he stated that he's not too keen with oversaturation of massage businesses in the City.

Vice-Chair Klawiter expressed his concern about the oversaturation of massage businesses in the City.

Chairman Garden stated that he understands the concerns brought up but also understands the therapeutic benefits of massages. He added that with Police and Code Enforcement staff working together that they will be able to catch future violations. The violations that were mentioned were past violations that were already taken care of. He stated that the community is transforming where immigrants are learning English and are working to get better at it. He said that staff did their job and recommended staff to review this item in three months.

Chairman Garden made the motion to approve PL-16-033. Commissioner Lou seconded the motion.

Ayes: Garden, Lou, and Zawodny
Noes: Vera and Klawiter

3-2 vote. Motion carried.

PUBLIC HEARING ITEMS: NEW BUSINESS

1. 1045 E. Valley Blvd., Unit A215
Planning Case No. PL-15-121
Applicant: Gui Qiang Cao

This item was presented by Associate Planner Jo-Anne Burns regarding a CUP to allow a new massage establishment in a Mixed-Use Corridor zone within the Valley Boulevard Specific Plan.

ENVIRONMENTAL DETERMINATION: The project was reviewed and exempted for compliance with the California Environmental Quality Act (CEQA) requirements, per Guidelines Section 15301, Class 1 (Existing Facilities).

RECOMMENDATION: Staff recommended that the Planning Commission DENY Planning Case No. PL-15-121

Mr. Cao, spoke using his friend to translate for him. He stated that he has been working as a massage parlor manager for seven years and would like to open his own massage business. He added that he has a license and would only employ male employees.

Testimonies

1. Suzanne Payne, resident, was concerned about the proximity of this business to another massage business in the area.

Chairman Garden stated that he lives in this City, too, and that there's a massage parlor

Commissioners' Discussion

**PUBLIC HEARING ITEMS:
NEW BUSINESS**

1. 1045 E. Valley Blvd.,
Unit A215
Planning Case No.
PL-15-121
Applicant: Gui Qiang
Cao
Denied.

Testimonies

within 200 feet from his house. As Planning Commissioners, he said that they are here to do the right thing under the law.

2. Charles Sances, 1808 S. California St., suggested that the City should publish a list of all massage parlors twice a year so he doesn't have different numbers each time.
3. Isella Bowles, 1038 Kendall, was concerned about property values in the City depreciating due to oversaturation of massage parlors and that many people she knows agree with her.

Chairman Garden encouraged Ms. Bowles and the other speakers opposing the project to talk to the City Council about their concerns.

Ms. Bowles stated that she has done so during the Massage Ordinance hearing but the City Council wasn't supportive. She wants the Commissioners to listen to what the people want. She added that she's in favor of immigrants but also wants San Gabriel to be a better City.

At this point, Chairman Garden closed the public hearing portion of the meeting.

Commissioners' Discussion

Commissioner Lou stated that the building where the massage business is located is meant to be used as an office building. He feels that it's not suited for this purpose. It also has visibility challenges from the outside. He added that Commissioners can't change the law and that citizens should voice their concerns to the City Council. He also said that it is hard for him to support another new massage business in the City.

Commissioner Vera commented on the individual room setup and feels that it is not conducive to what that building is meant to be. She pointed out that there are already five massage parlors and an acupuncturist in the area.

Both Vice-Chair Klawiter and Commissioner Zawodny stated that they agreed with the staff report proposed findings.

Chairman Garden made the motion to DENY PL-15-121 based on finding #4 of the CUP, which is incompatibility and oversaturation of use in that property. Vice-Chair Klawiter seconded the motion.

Ayes: Garden, Klawiter, Vera, Lou and Zawodny
Noes: None

5-0 vote. Motion carried to DENY.

STAFF ITEM

1. **2015-2016 through 2019-2020 Capital Improvement Program**
Planning Case No. PL-16-083
Applicant: City of San Gabriel

This item was presented by Public Works Director Daren Grilley. He explained about the City's Capital Improvement Program (CIP) which identifies the capital improvements and special projects to be undertaken over a five-year horizon. He also explained that the CIP indicates potential funding sources for those projects. The draft CIP scheduled for Council adoption this month covers fiscal years 2015-16 through 2019-20. California State law requires that the proposed projects in the CIP be found consistent with the City's General Plan before they may be approved.

Commissioners' Discussion

→ STOP

STAFF ITEM

1. **2015-2016 through 2019-2020 Capital Improvement Program**
Planning Case No. PL-16-083
Applicant: City of San Gabriel
Approved.

SAN GABRIEL CITY COUNCIL
MINUTES OF THE SPECIAL JOINT MEETING
CITY COUNCIL, PLANNING AND DESIGN REVIEW COMMISSIONS
TUESDAY, SEPTEMBER 13, 2016

- CALL TO ORDER

Mayor Liao called the Special Joint meeting of the San Gabriel City Council, Planning and Design Review Commissions to order at 5:35 p.m. on Tuesday, September 13, 2016, in the Padillo Room at the Adult Recreation Center, 324 South Mission Drive, San Gabriel, California, 91776.

- CITY COUNCIL: Mayor Liao, Vice Mayor Sawkins, Council Members Costanzo, Harrington and Pu.

Present: Mayor Liao, Vice Mayor Sawkins, Council Member Costanzo, Council Member Harrington, Council Member Pu, City Manager Preston, Assistant City Manager Marlowe, City Attorney Kress, Community Development Director Chaparyan, Associate Planner Burns, Assistant Planner Bezanson, Senior Planner De La Cruz, Planning Manager Gallatin, Assistant City Clerk Isbell.

- PLANNING COMMISSION: Chair Garden, Vice-Chair Klawiter, Commissioners Lou, Vera and Zawodny.

Present: Chair Garden, Vice Chair Klawiter, Commissioners Lou, Vera, and Zawodny.

- DESIGN REVIEW COMMISSION: Chair Nadolney, Commissioner Cheng.

Present: Chair Nadolney and Commissioner Cheng.

1. SPECIAL JOINT MEETING: CITY COUNCIL AND PLANNING AND DESIGN REVIEW COMMISSIONS

This meeting is an opportunity for the City Council to have a dialogue with the Commissions to discuss progress, address any concerns raised by the Commissions, and receive an update on the status of the City's Strategic Plan.

Community Development Director Chaparyan introduced the item.

City Manager Preston provided background on the item.

Senior Planner De La Cruz reviewed the survey results and explained the procedure.

Open dialogue ensued regarding the survey results, high density development, economic development, and massage establishments among City Council, Planning and Design Review Commissioners.

Mayor Liao left the meeting at 7:05 p.m.

Mayor Liao returned to the meeting at 7:25 p.m.

2. PUBLIC COMMENT

Pursuant to provisions of Government Code §54957, this is the time provided for members of the public to address the City Council regarding matters on this agenda.

Suzanne Paine, resident, expressed her concerns regarding massage establishments and neon sign usage.

Isela Bowles, resident, spoke on her concerns regarding massage establishments.

D. MEASURE M – RESOLUTION NO. 16-22 SUPPORTING THE LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY'S MEASURE M ON THE NOVEMBER 8, 2016 BALLOT

The City Council will consider Resolution No. 16-22 supporting the Los Angeles County Metropolitan Transportation Authority's Measure M which will place a sales tax increase on the November 8, 2016 ballot. This tax increase will generate at least \$860 million per year for street repairs, highway improvements, and new rail construction, including extension of the Gold Line to Claremont.

Recommended Action: Staff recommends that the City Council discuss Measure M and consider Resolution No. 16-22.

RESOLUTION NO. 16-22

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN GABRIEL, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, OF SUPPORT FOR THE LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY SALES TAX MEASURE M ON THE NOVEMBER 8, 2016 BALLOT TO GENERATE ADDITIONAL REVENUES FOR TRANSPORTATION IMPROVEMENTS IN LOS ANGELES COUNTY.

Mayor Liao opened the discussion.

Drue Lawlor, resident, expressed her opposition to the adoption of Resolution No. 16-22.

Discussion ensued among the City Council.

Council Member Harrington moved, seconded by Council Member Costanzo, to reject Resolution No. 16-22. Motion failed by a vote of 2 ayes, 3 noes, 0 abstentions, with Mayor Liao, Vice Mayor Sawkins, and Council Member Pu opposing.

Council Member Pu moved, seconded by Vice Mayor Sawkins, to adopt Resolution No. 16-22. Motion passed by a vote of 3 ayes, 2 noes, 0 abstentions, with Council Members Costanzo and Harrington opposing.

START →

E. MESSAGE REGULATIONS – AB2194

The City Council will receive a report from the City Attorney's office and discuss issues relating to massage businesses. Council may choose to provide direction concerning additional restrictions for massage establishments, including potential distance limitations and a possible moratorium.

Deputy City Attorney Lisa Kranitz presented the report.

Charles Sances, resident, spoke on his concerns regarding massage regulations in the City of San Gabriel.

Discussion ensued among the City Council.

Council Member Pu moved, seconded by Vice Mayor Sawkins, to direct staff to bring forward changes to the existing massage ordinance and add a distance limitation. Motion passed by a vote of 5 ayes, 0 noes, 0 abstentions.

6. CITY MANAGER ITEMS - NONE

ORDINANCE NO. ----

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF SAN GABRIEL, AMENDING CHAPTER 122
OF THE SAN GABRIEL MUNICIPAL CODE RELATING TO
MESSAGE ESTABLISHMENTS**

**THE CITY COUNCIL OF THE CITY OF SAN GABRIEL DOES HEREBY
ORDAIN AS FOLLOWS:**

Section 1. **Findings.** The City Council does hereby find as follows:

A. In 2008 the California Legislature passed SB 731 which added a new Chapter 10.5 to the California Business and Professions Code which provided for the formation of the nonprofit California Massage Therapy Council to oversee a state-sanctioned program of voluntary certification for massage practitioners so that such persons could avoid being required to obtain local massage permits.

B. The Massage Therapy Act has been amended several times since its original enactment, including by AB 1147 and AB 2194 which, among other things, restored local land use control and extended the Massage Therapy Act's effective date through December 31, 2020.

C. After the adoption of SB 731 the City enacted massage regulations which require that owners and managers obtain an Operator Permit and the business obtains a Certificate of Operation.

D. When the City's land use authority was restored with the passage of AB 1147, the City reinstated the requirement that massage establishment businesses obtain a conditional use permit and provided a deadline of January 20, 2018 to apply for such permit.

E. The City has continued to have issues with massage establishments complying with the City's regulations.

F. It has been the experience of City staff that Operators leave an establishment and the City is not kept informed as required by the Ordinance; requiring the Operator Permit to be renewed every year instead of every three years will provide a better opportunity to monitor massage establishments and keep City records up to date.

G. The City has experienced problems with Operators trying to manage more than one massage establishment at the same time when businesses are located next to each other.

H. The suspension and revocation process will be streamlined by eliminating the pre-appeal determination process.

I. It will be beneficial for an Operator Permit to be obtained before an application is deemed complete for a conditional use permit to prevent the possibility of having gone through the entire conditional use permit process only to find out that the person is not qualified to own the massage establishment.

J. It is in the best interests of the public health, safety and welfare to make additional changes in the business license regulations to address the issues listed above as well other clean-up issues.

SECTION 2. Chapter 122 of the San Gabriel Municipal Code is hereby amended to read as follows:

GENERAL PROVISIONS

§ 122.01 FINDINGS AND PURPOSE.

The City Council finds and declares as follows:

(A) The ~~permit~~ requirements and restrictions imposed by this chapter are reasonably necessary to protect the health, safety and welfare of the citizens of the ~~city~~City, while recognizing massage as a legitimate business interest that provides benefits to its patrons in a therapeutic setting.

(B) This chapter is enacted pursuant to the provisions of the State Constitution, Cal. Gov't Code §§ 37100, 51030 et seq., Cal. Bus. & Prof. Code §§ 460, 4600 through 4620 (The Massage Therapy Act) and § 16000, and § 13 of the Chiropractic Act (initiative measure approved by the electors November 7, 1922, as amended) ~~and AB 1147 (2014)~~.

(C) There is a significant risk of injury to massage clients by persons improperly trained and/or educated in providing massage services, and this chapter provides reasonable safeguards against injury and economic loss.

(D) There is opportunity for acts of prostitution, lewdness, and other unlawful sexual activity to occur in massage establishments, as well as problems relating to human trafficking in massage establishments. Courts have long recognized massage as a pervasively regulated activity and that massage establishments are often brothels in disguise. The establishment of reasonable standards for issuance of permits and restrictions on operations would serve to reduce the risk of illegal activity and would thereby benefit the public health.

(E) The provisions of this chapter are intended to enhance the efficient processing of permits for massage establishments, owners and managers and the ongoing regulation of those permittees and certificate holders by the ~~city~~City. The provisions of this chapter in no way limit the authority of the ~~city~~City to inspect massage establishments or conduct investigations to ensure permittees are complying with applicable rules and regulations.

(F) The restrictions and requirements contained in this chapter are intended, in part, to stop the practice of businesses quickly changing ownership in name upon the discovery of criminal activity by the ~~city~~City.

(G) The restrictions and requirements contained in this chapter are intended to be in addition to the requirement of a valid business license issued pursuant to Title XI, Chapter 110 of the San Gabriel Municipal Code and the requirement to obtain a conditional use permit pursuant to Chapter 153.

(H) The regulations and restrictions contained in this chapter are intended to discourage massage establishments from degenerating into houses of prostitution, and the means utilized in this chapter bear a reasonable and rational relationship to the goals sought to be achieved within the confines allowed by state law.

(I) The provisions of this chapter are not intended to be exclusive and compliance therewith shall not excuse noncompliance with any state or local laws or regulations that are uniformly applied to other professional or personal service businesses.

(J) The California Massage Therapy Council (“CAMTC”) can better, and more efficiently, regulate massage technicians in order to best protect the public and it is in the public interest to require that all persons providing massage in the ~~city~~City have a certificate from the CAMTC. However, in order to protect the public health, safety and welfare of the residents and visitors to the City of San Gabriel, it is necessary for the City to additionally regulate Massage Establishment businesses.

§ 122.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CALIFORNIA MASSAGE THERAPY COUNCIL or **CAMTC.** The nonprofit organization created to regulate and issue massage practitioner and therapist certificates pursuant to Cal. Bus. & Prof. Code §§ 4600 et seq.

CAMTC CERTIFICATE. A massage practitioner or massage therapist certificate issued by the CAMTC.

CERTIFICATE OF OPERATION. The certificate issued by the Finance Director entitling a business to be operated as a massage establishment.

CHIEF OF POLICE. The Chief of Police of the City of San Gabriel, or his or her designee.

CITY. The City of San Gabriel.

CITY MANAGER. The City Manager or his or her designee, including a hearing officer.

COMPENSATION. The payment, loan, advance, donation, contribution, deposit, exchange, or gift of money or anything of value.

CONVICTION or **CONVICTED.** A conviction following a guilty plea, nolo contendere plea, or judgment or verdict where the time for appeal has elapsed or conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Cal. Penal Code § 1203.4 allowing the applicant to withdraw his or her plea of guilty or nolo contendere and to enter a plea of not guilty, or dismissing the accusation or information.

EMPLOYEE. Any person, other than a massage practitioner, massage therapist, or Operator, who renders any service, with or without compensation, to the Operator or agent of an Operator of a massage establishment relating to the day-to-day operation of the massage establishment whether as an employee or independent contractor.

FINANCE DIRECTOR. The Finance Director of the ~~city~~City, or his or her designee.

MAIN ENTRY DOOR. A door from the outside of the establishment leading into the reception area.

MANAGER. The person(s) designated by the owner of the massage establishment to act as the representative and agent of the owner in managing day-to-day operations with corresponding responsibilities. Evidence of management includes, but is not limited to, the ability of the individual to direct or hire and dismiss employees, control hours of operation, create policy or rules or purchase supplies, and ensure that the massage establishment complies with the requirements of this code and of other laws. A **MANAGER** may also be an owner. A **MANAGER** must have a valid Operator Permit.

MASSAGE. Any method of treating the external parts of the body for remedial, health, hygienic, or relaxation purpose. **MASSAGE** includes, but is not limited to, treatment by means of manual pressure, acupressure, friction, stroking, kneading, rubbing, tapping, pounding, vibrating, with or without the aid of or by means of any mechanical, electronic, or electrical apparatus or appliance, and with or without rubbing alcohol, liniments, aromatics, antiseptics, oils, powders, creams, lotions, ointments, or other similar preparations. **MASSAGE** specifically includes the application of any of these methods to the scalp, neck, or feet of any individual. (Some persons practicing massage may be exempt from all or parts of the permit requirements; please consult § 122.03).

MASSAGE ESTABLISHMENT. Any enterprise or establishment having a fixed place of business where any person engages in, conducts, carries on, or permits to be engaged in, conducted, or carried on, any of the activities set forth in the definition of **MASSAGE** in this section.

MASSAGE PRACTITIONER. A person who is certified as such by the CAMTC in accordance with the Massage Therapy Act.

MASSAGE TECHNICIAN. A massage practitioner or massage therapist certified by CAMTC.

MASSAGE THERAPIST. A person who is certified as such by the CAMTC in accordance with the Massage Therapy Act.

MASSAGE THERAPY ACT. Chapter 406 of the 2013-2014 Legislative Session, as the same may be amended from time to time.

OPERATOR. All persons who own or manage a massage establishment.

OPERATOR PERMIT. The permit issued by the Chief of Police allowing a person to own or manage a massage establishment.

OUT-CALL MASSAGE. Any business or enterprise that engages in or performs massage for any form of consideration or in exchange for anything of value whatsoever at a location other than a massage establishment.

OWNER. All of the following:

- (1) The sole proprietor of a massage establishment, i.e., where the owner is the only person performing massage at that establishment;
- (2) In the case of a general business, each owner of the business;
- (3) In the case of a corporation, each stockholder holding more than 10% of the corporation and each officer and director of the corporation;
- (4) In the case of a partnership, each partner, excluding limited partners owning less than 10% of the partnership, and where a partner is a corporation, the provisions pertaining to a corporate applicant in division (3) above apply.

PATRON. An individual on the premises of a massage establishment for the purpose of receiving a massage.

PERMIT. An Operator Permit or Certificate of Operation, unless the context indicates otherwise.

PERMITTEE. Any person who has obtained a Certificate of Operation or Operator Permit from the cityCity.

PERSON WHO HAS ENGAGED IN DISQUALIFYING CONDUCT. A person who:

- (1) Within ten years preceding the date of filing of the application in question or, in the case of revocation proceedings, within ten years preceding the date of the revocation notice, has been convicted in a court of competent jurisdiction of any of the following:
 - (a) A violation of any provision of law pursuant to which a person is required to register under the provisions of Cal. Penal Code § 290;
 - (b) Conduct in violation of Cal. Penal Code §§ 266h, 266i, 314, 315, 316, 318, 653.22, 653.23, or § 647(a), (b), or (d);
 - (c) An attempt to commit or conspiracy to commit any of the above mentioned offenses;
 - (d) When the prosecution accepted a plea of guilty or nolo contendere to a charge of a violation of Cal. Penal Code §§ 415, 602, or any lesser included or related offense, in satisfaction of, or as a substitute for, any of the previously listed crimes;
 - (e) Any crime committed while engaged in the management or ownership of a massage establishment or the practice of massage;
 - (f) A violation of Cal. Health & Safety Code § 11550 or any offense involving the illegal sale, distribution or possession of a controlled substance specified in Cal. Health & Safety Code §§ 11054, 11055, 11056, 11057 or 11058; or

(g) Any offense under a statute of any state or ordinance of any cityCity or county, which is the equivalent of any of the aforementioned offenses, including Business & Professions Code § 4609(a).

(2) Within ten years preceding the date of the filing of the application in question or, in the case of revocation proceedings, within ten years preceding the date of the revocation notice, has had any massage establishment, Operator, technician, practitioner, therapist, or trainee certificate, license, or permit issued by any state, local agency, or other licensing authority, including the CAMTC: denied, revoked, or suspended for any reason other than lack of sufficient education; or has had to surrender such a certificate, license, or permit as a result of pending criminal charges or administrative proceedings for suspension or revocation of any such certificate, license, or permit;

(3) Within five years preceding the date of filing of the application in question or, in the case of revocation proceedings, within five years preceding the date of the revocation notice, has been convicted in a court of competent jurisdiction of any of the following:

(a) Any crime, other than an infraction or those listed above, involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or another, or substantially injure another;

(b) Any crime, other than an infraction or crimes relating to those offenses listed above, where the crime or act is substantially related to the management or ownership of a massage establishment or the practice of massage, including a violation of the Massage Therapy Act;

(4) Has been subjected to a permanent injunction against the conducting or maintaining of a nuisance pursuant to Cal. Penal Code §§ 11225 through 11235 of the Penal Code as the same may be amended from time to time, or any similar provisions of law in a jurisdiction outside the State of California; or

(5) Has been found to be maintaining a nuisance in connection with the same or similar type of business; or

(6) Within five years preceding the date of filing of the application in question or, in the case of revocation proceedings, within five years preceding the date of the revocation notice,

(a) Has engaged in the exposing of specified anatomical areas of oneself or of another person to view, or in touching the specified anatomical areas of oneself or of another person, while providing massage services or while within view of a customer or patron of the massage establishment; or

(b) Has been the owner, manager, or other similar position, in an establishment where the conduct described in division (6)(a) above has occurred.

(7) **DISQUALIFYING CONDUCT** does not include the failure to obtain a certificate of operation or Operator Permit without any prior oral or written notification by the cityCity that such was required, provided that the business and/or person cease operations immediately upon notification.

PROOF OF BONA FIDE EMPLOYMENT. Proof of an employer-employee relationship between the Operator of the massage establishment and any person working at the massage establishment. Satisfactory **PROOF OF BONA FIDE EMPLOYMENT** must be shown by written payroll documentation evidencing the employer's compliance with California Employment Development Department (EDD) requirements for the withholding of California income tax, unemployment insurance contributions, and disability contributions from the employee and written payroll documentation of the employer's compliance with Internal Revenue Service (IRS) requirements for the withholding of federal income taxes, Social Security (FICA) and Medicare contributions from the employee. Such written documentation can include, but is not limited to, W-2 wage and tax statements.

RECEPTION AREA. An area immediately inside the main entry door of the massage establishment dedicated to the reception and waiting of patrons and visitors of the massage establishment and which is not a massage room or otherwise used for the provision of massage services.

RESIDENCE ADDRESS. The actual physical home address and shall not include a P.O. Box, mailbox service, or other similar location.

SOLE PROVIDER. A massage business where the owner owns 100% of the business, is the only person who provides massage services for compensation for that business pursuant to a valid and active CAMTC Certificate, and has no other employees or independent contractors.

SPA. Facilities such as mineral baths, salt rooms, mineral rooms, saunas, steam rooms, whirlpools and other therapeutic baths.

SPECIFIED ANATOMICAL AREAS. Any of the following human anatomical areas: genitals; pubic area; buttocks; anus; or female breasts below a point immediately above the top of the areolae, without a health care referral and written consent of the patron.

VISITOR. A nonemployee who has entered the massage establishment for purposes other than receiving services.

§ 122.03 EXCEPTIONS.

(A) *Complete exception.* The requirements of this chapter shall have no application and no effect upon and shall not be construed as applying to:

(1) Any physician, surgeon, chiropractor, acupuncturist, osteopath, or physical therapist licensed to practice such profession in the State of California, within the scope of their license;

(2) Any registered nurse or licensed vocational nurse, licensed to practice under the laws of the State of California, who is an employee of and working under the on-site direction of a physician, surgeon, chiropractor, osteopath, or physical therapist, duly licensed to practice their respective professions in this state.

(a) Any other person providing massage services that is employed by a physician, surgeon, chiropractor, osteopath, or physical therapist, shall be required to have a valid CAMTC certificate, as well as work under the adequate supervision of such physician, surgeon, chiropractor, osteopath, or physical therapist as required by state law or regulation. If no

specific law or regulation applies, adequate supervision shall have the same meaning as set forth in 16 California Code of Regulations § 312.

(b) If a duly licensed acupuncturist wishes to provide massage therapy services to his or her clients by an individual(s) other than his- or her- self, said individual(s) must have a valid CAMTC certificate and the office of the acupuncturist shall be subject to all the provisions of this Chapter 122, as well as any other applicable provisions of the San Gabriel Municipal Code.

(3) Any person licensed to practice any healing art under the provisions of Cal. Bus. & Prof. Code Div. 2 (commencing with § 500) when engaging in such practice within the scope of such license.

(4) State-licensed hospitals, nursing homes, sanatoriums, or other health care facilities duly licensed by the State of California, and the employees of such facilities while working on the premises of such state-licensed facilities.

(5) Accredited high schools, junior colleges, and colleges or universities whose coaches and trainers are acting within the scope of their employment.

(6) Barbers, beauticians, or manicurists who are duly licensed by the State of California pursuant to the Barbering and Cosmetology Act set forth in Cal. Bus. & Prof. Code §§ 7300 et seq., as the same may be amended from time to time, while engaging in practices within the scope of such license, except that this exemption applies solely for the massaging of the neck, face, and/or scalp of the customer or client of said barber or beautician or, in the case of a licensed manicurist, the massaging of the forearms, hands, calves, and/or feet at a state licensed facility. However, if a state licensed establishment also has a certificate of operation from the ~~city~~City to operate as a massage establishment, the business must also comply with all provisions of this Chapter 122.

(7) Schools of cosmetology or barbering which comply with the requirements of Cal. Bus. & Prof. Code §§ 7362 et seq. when instructors are acting within the scope of their employment or when students are working as unpaid externs pursuant to the requirements of Cal. Bus. & Prof. Code § 7395.1.

(8) Any other business or professions exempt by state law.

(B) *Partial exception.*

(1) Businesses that offer massage services that are ancillary to the primary business shall only be required to comply with the provisions set forth in division (B)(2) of this section. For purposes of this division, ancillary massage services shall be those services where less than 20% of the gross floor area of the business is devoted to massage.

(2) Massage services provided under division (B)(1) of this section shall be required to comply with the following:

(a) Massage services must be performed by the holder of a valid CAMTC certificate.

(b) The business shall comply with the following provisions of this chapter:

1. Section 122.50(A)(1) relating to hours;
2. Section 122.50(C) relating to instruments, equipment and personnel;
3. Section 122.50(D)(1) through (3) relating to personnel lists;
4. Section 122.50(E) relating to prohibited conduct;
5. Section 122.51(A) through (F) relating to building and facility requirements;
6. Section 122.52 relating to inspections.

(C) *Evidence of entitlement to exception.* Any person claiming exception under this section shall furnish satisfactory evidence upon request that he or she is entitled to such exception, including, proof of bona fide employment, or if applicable, a citation to the particular provision of state law upon which that person relies.

§ 122.04 BUSINESS LICENSE AND OTHER PERMITS REQUIRED.

(A) Nothing herein relieves an individual or business from obtaining a ~~city~~City business license, conditional use permit in accordance with Chapter 153 of this Code, or other permit if otherwise required by law.

(B) Any individual applying for a business license as a ~~massage technician/practitioner or a massage therapist~~ shall provide proof of a current CAMTC certificate before being issued a business license.

§ 122.05 FLOOR PLANS REQUIRED.

(A) All massage establishments shall be required to submit a scaled floor plan as part of their application for a certificate of operation, which floor plan must be approved by the City as part of the conditional use permit process.

(B) All businesses that claim a partial exemption from this chapter pursuant to § 122.03(B) shall be required to submit scaled floor plans in order to verify the applicability of the exemption.

(C) No changes may be made to the approved floor plan without written approval from the Community Development Department, which may require modification of the conditional use permit by the Planning Commission.

MESSAGE PRACTITIONERS AND MESSAGE THERAPISTS

§ 122.15 CAMTC CERTIFICATE REQUIRED.

(A) No person shall provide massage services, including out-call massage services, from any location in the ~~city~~City without having been issued a CAMTC certificate, regardless of whether such person has an Operator Permit or the business has a certificate of operation.

(B) Any person certified by the state who desires to ~~operate own or manage~~ a massage establishment, must additionally obtain an Operator Permit in accordance with §§ 122.30 through 122.35 the provisions of this Chapter.

(C) No Operator of a massage establishment shall hire as an employee or utilize as an independent contractor any person to perform massage unless such person has been issued a ~~massage~~ CAMTC certificate.

CERTIFICATES OF OPERATION AND OPERATOR PERMITS

§ 122.30 CERTIFICATE OF OPERATION AND OPERATOR PERMIT REQUIREMENT.

(A) No person shall own or manage any massage establishment in any location within the ~~city~~City without first having obtained an Operator Permit. An Operator Permit must be obtained for each owner of a business or proposed business, and any identified manager, in order for an application for a conditional use permit for such business to be complete.

(B) No massage establishment shall be allowed to operate within the ~~city~~City unless the business first obtains a certificate of operation. No certificate of operation shall be approved until each Operator identified in the application has obtained an Operator Permit. A certificate of operation shall not be granted until such time as a conditional use permit has been obtained for the location.

(C) Any person desiring to obtain a certificate of operation and/or an Operator Permit shall make application in accordance with the provisions of this subchapter, which application shall be accompanied by a nonrefundable fee in an amount established by resolution of the City Council.

(D) All applications shall be dated and shall contain the following statements:

(1) A certification under penalty of perjury that the information contained in the application is true and correct; ~~and~~

(2) An authorization for the ~~city~~City, its officers, agents and employees, to seek information and conduct an investigation into the truth of the statements set forth in the application and to ensure continual compliance with all applicable provisions of law; ~~and~~

(3) An acknowledgement that by applying for an Operator Permit, the applicant understands that he or she is responsible for having a working knowledge of the City's regulations relating to massage establishment operations, be responsible for the day-to-day operations of the business and be responsible for all violations of employees and independent contractors that may take place in the massage establishment which such person owns or manages and that such violations are grounds for revocation of the Operator Permit.

(E) The provisions of §§ 122.05, 122.50, 122.51, 122.52 and 122.99 shall apply to any business that operates as a massage establishment, even if such business fails to obtain Operator Permits or certificates of operation. The ~~city~~City may immediately order a business that fails to

have a certificate of operation or a permitted Operator on the premises to cease operation until such failures have been resolved.

(F) Within 30 working days following receipt of a completed application, the Finance Director shall either issue the certificate of operation and the Chief of Police shall issue an Operator Permit or mail a written statement of the reasons for denial thereof. Notwithstanding the above, failure of the ~~city~~City to act upon a completed application within the time frame set forth above shall not be deemed approval of the application pursuant to this chapter. Any certificate of operation or permit issued pursuant to this division (F) shall be deemed conditional pending the ~~city~~City's receipt of the California Department of Justice report on the applicant's fingerprints. If the fingerprint report demonstrates that the applicant has made any false, misleading, or fraudulent statement of material fact in the permit application or in any report or record required to be filed therewith, or discloses any disqualifying conduct, the permit shall be subject to denial or revocation pursuant to this chapter.

§ 122.31 OPERATOR PERMIT.

(A) It shall be the responsibility of each and every Operator to have a working knowledge of the City's regulations relating to massage establishment operations and be responsible for the day-to-day operation of the business.

(B) *Application; contents.* Applicants for Operator Permits shall submit the following information to the Police Department on a form supplied by the Department:

- (1) The full true name of the applicant;
- (2) A complete statement listing and explaining any and all aliases and fictitious names used by the applicant within the ten years immediately preceding the application;
- (3) The current residence address and business address and current residence and business telephone number of the applicant;
- (4) The name and address of the massage establishment for which the Operator Permit is sought;

~~A list of all previous residential and business addresses for a minimum of eight years immediately preceding the present address of the applicant and the dates of residence for each address;~~

(5) A list of all previous residential and business addresses for a minimum of eight years immediately preceding the present address of the applicant and the dates of residence for each address;

(6) The applicant's place of birth, and original documentation to verify both the applicant's identity and employment authorization (if applicable), as listed under 8 U.S.C. 1324a(b)(1) and 8 C.F.R. part 274a.2(b)(1). Documentation to satisfy this requirement may include, but is not limited to, a California driver's license, California identification card, social security card, resident alien ("green") card, United States passport (unexpired or expired), unexpired foreign passport that contains a temporary I-551 stamp, or an unexpired employment

authorization document issued by the United States Government in compliance with 8 C.F.R. part 274a.2(b)(1)(v)(A);

(76) The history of the applicant as to any similar business or occupation within ten years immediately preceding the filing of the application. Such information shall include, but not be limited to, the names and addresses of any other massage establishments or similar businesses the applicant has owned, managed, provided massage services at, or worked at, whether the applicant has had a permit or license to operate, manage, provide massage services at, or work at a massage establishment denied, revoked, or suspended in any jurisdiction; the reasons for any such denial, revocation, or suspension; and the business, activity, or occupation the applicant engaged in subsequent to such denial, revocation, or suspension;

(87) All criminal convictions within the last ten years, excluding minor traffic violations, and the date and place of each such conviction and reason therefor;

(98) Such other reasonable identification and information as the Chief of Police may require in order to discover the truth of the matter specified as required to be set forth in the application;

~~(C)~~ (109) The applicant shall have his or her picture taken by the Police Department or otherwise supply a photograph as directed by the Department; and

~~(10) An acknowledgement that by applying for an Operator Permit, the applicant understands that they are responsible for all violations of employees or independent contractors that may take place in the massage establishment which they own or manage and that such violations are grounds for revocation of the Operator Permit.~~

~~(DE)~~ Once the information required by division (A) of this section is submitted, the applicant shall have his or her fingerprints taken for a criminal history background (Livescan) check in the manner directed by the Police Department.

~~(ED)~~ The Chief of Police shall issue the Operator Permit, unless after investigation he or she makes any of the following findings:

(1) The applicant has failed to provide information, documentation, and assurances required by this chapter or by the Chief of Police; has failed to reveal any fact material to qualification; or has supplied information that is untrue or misleading as to a material fact pertaining to the qualification criteria; or

(2) The applicant is a person who has engaged in disqualifying conduct; or

(3) There is substantial evidence that the applicant has engaged in disqualifying conduct, even if there is no conviction for such conduct; or

(4) The applicant has violated any provision of this chapter, or any similar ordinance, law, rule, or regulation of any other public agency which regulates the operation of massage establishments; or

(5) The applicant is not at least 18 years of age; or

(6) The applicant is delinquent in paying city fees or penalties owed in relation to any permit issued pursuant to this chapter.

~~(FEF)~~ If the criminal history background check report demonstrates that the applicant has made any false, misleading, or fraudulent statement of material fact in the permit application or in any report or record required to be filed therewith, or discloses any disqualifying conduct, the permit shall be subject to denial.

(GF) For any person that has a valid CAMTC certificate, the applicant shall only be required to provide the information specified in subsection (B)(1)-(4) and have his or her picture taken or provide a photograph as specified in subsection (CB)(10) above. No independent background check shall be conducted, but in determining whether to issue the Operator Permit, the Chief of Police may rely on information supplied by CAMTC.

(HE) Permits issued pursuant to this section shall remain in effect, unless revoked, for a period of ~~three years~~ one year. Applications for the renewal of a permit shall be filed on a form supplied by the ~~city~~ City with the Chief of Police. Temporary permits shall not be issued and expired permits are not valid unless the permittee has a written receipt showing that the renewal application was filed at least 30 days prior to expiration, without action having been taken by the Chief of Police. Renewal applications shall be signed under penalty of perjury and shall be accompanied by a nonrefundable filing fee established by resolution of the City Council. A permittee shall be required to update the information contained in his or her original permit application and provide any new and/or additional information as may be reasonably required by the Chief of Police in order to determine whether the permit should be renewed, including all information required by division (BA) or (GF) of this section. If requested, a new photograph shall be supplied. Failure to provide this documentation shall be grounds for nonrenewal of the permit in addition to those items set forth in § 122.33 below. It is the Operator's obligation to keep track of when the renewal is due and to renew in a timely fashion.

~~—(F) If the criminal history background check report demonstrates that the applicant has made any false, misleading, or fraudulent statement of material fact in the permit application or in any report or record required to be filed therewith, or discloses any disqualifying conduct, the permit shall be subject to denial.~~

(IHG) Any decision to deny or not renew an Operator Permit shall be made in writing and shall set forth the reasons for the decision. The notice shall include a statement of appeal rights pursuant to § 122.34 below.

~~—(F) Automatic issuance and renewal for CAMTC certificate holders.~~

~~—(1) Any person who holds a valid CAMTC certificate shall only be required to provide the following information on a form that includes the statements set forth in § (D):~~

~~—(a) The full true name of the applicant;~~

~~—(b) The current residence and business address and current residence and business telephone number of the applicant; and~~

~~shall automatically be issued upon completion of the form and verification of the validity of the CAMTC certificate by the Police Department. No background check shall be required.~~

~~—(5) Renewals shall be required in accordance with division (D) of this section, but such renewals shall be automatic as long as the permittee maintains and provides a copy of his or her valid CAMTC certificate.~~

(~~JH~~) Every person to whom an Operator P-permit has been granted pursuant to this chapter shall be issued an identification badge by the Police Department which shall contain the person's name, photograph, expiration date, and any other information deemed necessary by the Chief of Police. The badge shall be worn so as to be readily visible at all times while on the premises of the massage establishment.

(~~KJ~~) Permits issued pursuant to this chapter may not be assigned or transferred.

(~~LK~~) It is the duty of each Operator to notify the Finance Department whenever there is a change in information which was required to be submitted in the application for the Operator Permit in the first instance. Such notification shall be in writing and made within ten business days of the change on a form provided by the ~~city~~City.

(~~ML~~) Each Operator of a massage establishment shall be responsible for the conduct of all employees and independent contractors working on the premises of the business. Failure of the employees or independent contractors of a massage establishment to comply with this chapter may result in the revocation of the Operator's permit.

(~~NM~~) The Operator of the massage establishment is responsible for verifying that all persons hold the appropriate CAMTC certificate as required by this chapter.

(~~ON~~) Any requirement of this chapter applying to an Operator shall apply to each and every Operator of a massage establishment.

§ 122.32 CERTIFICATE OF OPERATION.

(A) Applications for a certificate of operation shall be filed with the Finance Department and shall include the information set forth below:

(1) The full name of the applicant;

(2) The name under which the business is to be conducted, which name must match the name of the business under which the corresponding business tax certificate is issued under Chapter 110. No massage establishment business shall operate under any business name or conduct business under any designation not specified in the certificate of operation. If the applicant is a corporation, the name shall be exactly as shown on the articles of incorporation or on a valid DBA ("doing business as");

(3) The address of the proposed massage establishment;

(4) A detailed description of the operation and type of services to be provided by the massage establishment, including other therapies to be provided, and other businesses to be operated on the same premises;

(5) The full legal name and residence address of each owner of the massage establishment and of the -manager(s) who will be in charge of the operation of the massage establishment if other than the owner(s);

(6) A legal size copy of the floor plan approved as part of the conditional use permit, drawn to scale with measurements in feet and inches and labeled in English. The floor plan shall show: entrances; exits; windows; interior doors; restrooms; all other separately enclosed rooms

with dimensions, including, but not limited to closets, storerooms, break rooms, and changing rooms; and location of massage tables and chairs;

(7) The full name, address, and phone number of the legal owner of the property, if other than the applicant on which the massage establishment is to be located, along with a copy of the signed lease and a notarized acknowledgement from the owner of the property that a massage establishment will be located on his or her property; and

(8) The hours and days of operation.

(B) The Finance Director shall issue a certificate of operation upon verification of the following:

(1) The massage establishment will comply with all applicable laws, including, but not limited to building, fire, zoning, health, and safety regulations, as well as any conditions which have been imposed to comply with such laws; ~~and~~

(2) Each person identified as an Operator, i.e., the owner(s) and manager(s), has obtained an Operator Permit; and

(3) A conditional use permit, if required, has been obtained.

(4) Any decision to deny the Certificate of Operation shall be made in writing and shall set forth the reasons for the decision. The notice shall include a statement of appeal rights pursuant to § 122.34 below.

(C) Every massage establishment for which a certificate of operation has been granted pursuant to this chapter shall display the certificate in a conspicuous place so it may be readily seen by persons entering the premises.

(D) A certificate of operation is not transferable to a separate location of the same business, to a different business at the same location, or to the same business under different ownership at the same location, or the same business under a different name.

(E) It is the duty of each Operator to notify the Finance Department whenever there is a change in information which was required to be submitted in the application for the certificate of operation in the first instance. Any sale or transfer of any reportable interest of an owner in a massage establishment, which interest would be required to be reported under division (A) of this section in the first instance, shall render the certificate of operation temporarily suspended and subject to revocation in accordance with the provisions of this chapter unless prior to the effective date of such sale or transfer, the new owner applies for and obtains an Operator Permit.

(F) Notwithstanding any other provision of this code to the contrary, where a notice of ~~intent to suspend or revoke, or a notice of suspension or revocation,~~ has been issued regarding a massage establishment, or the business has otherwise been required to close because of suspension or revocation proceedings against the Operator, the Finance Department shall not process or issue a new application for a certificate of operation for said location unless or until the revocation or suspension proceedings are dismissed or a final determination is made that the current certificate of operation should not be suspended or revoked, or a two-year period has passed since the occurrence of the activity which gave rise to the suspension or revocation proceedings or other criminal actions.

(G) Notwithstanding any other provision of this code to the contrary, when a massage establishment has been closed due to criminal activity and such decision is final, no new massage establishment may open in such location and no certificate of operation shall be issued for such location for a period of two years from the date of such final determination. For purposes of this section, closure due to criminal activity includes voluntary closure of the business after there have been arrests at the location or other notices relating to criminal activity or notices relating to suspension or revocation proceedings. This provision is not meant to prohibit the issuance of a certificate of operation to a business which initially failed to obtain a certificate of operation without any prior oral or written notification by the ~~city~~City that such was required.

(H) Where the applicant for the certificate of operation is not the record owner, as shown on the latest county assessment roll, then upon issuance of the certificate, the ~~city~~City shall send written notice to the property owner advising of the issuance of the certificate and the regulations applicable to the massage establishment and the property pursuant to this chapter; this may be accomplished by including a copy of this chapter with the notice.

§ 122.33 SUSPENSION, AND REVOCATION AND NONRENEWAL OF OPERATOR PERMITS AND CERTIFICATES OF OPERATION.

(A) Subject to the procedures set forth in this section, the Chief of Police may suspend or revoke a permit, or determine not to renew an Operator Permit, issued pursuant to this chapter whenever the Chief of Police determines that any of the following has occurred:

(1) The permittee, or an employee or independent contractor working on the premises, is conducting operations in a manner contrary to the provisions of this code;

(2) The permittee, or an employee or independent contractor working on the premises, is conducting operations in a manner which constitutes a public nuisance;

(3) The permittee, or an employee or independent contractor working on the premises, is conducting operations in a manner which is detrimental to the health, safety, or welfare of the ~~city~~City or its inhabitants;

(4) There is substantial evidence of prostitution;

(5) The permittee, or any employee or independent contractor working on the premises, has engaged in disqualifying conduct; or

(6) The Chief of Police makes any of the findings that would have justified denying the application in the first instance.

(B) If, in the discretion of the Chief of Police, an alleged violation is minor and capable of correction and there have not been previous violations by the Operator or the massage establishment, then prior to suspension or revocation a written notice ~~shall~~ may be given to the permittee of the alleged violation(s) involved to allow a period of time to correct the alleged violation(s). ~~Such, which~~ period shall not exceed five business days, at the end of which period, an inspection shall be conducted to determine whether the alleged violation(s) has been corrected. For purposes of this section, written notice shall include ~~either~~ a notice of violation, ~~or~~ an administrative citation, or a criminal citation.

(C) If the Chief of Police determines that an alleged violation is not minor or capable of correction, that an alleged violation(s) continues without correction, or that there have been previous violations of this chapter, even if for different reasons, then the Chief of Police may issue a notice of ~~intent to suspend or revoke~~suspension or revocation, along with an administrative or criminal citation. Examples of a violation which will be determined by the Chief of Police to be not capable of correction include but are not limited to substantial evidence of prostitution activity on the massage establishment premises or an immediate threat to public health, safety, or welfare.

(D) Notice of ~~intent to suspend or revoke~~suspension, revocation or non-renewal. A notice of ~~intent to suspend or revoke~~suspension or revocation, or a notice of ~~non-renewal of an Operator Permit~~, shall contain a statement of ~~thean alleged~~an alleged violation(s) which constitutes the basis for the suspension or revocation, ~~notice of the right of the permittee to respond to the charges in writing to the Chief of Police for a pre-appeal determination~~, notice of the right to appeal to the City Manager in accordance with § 122.34, and notice that a failure to appeal shall constitute a failure to exhaust administrative remedies. ~~respond in the time specified shall constitute a waiver of the right to respond, but not the right to appeal~~. If an alleged violation is capable of correction, the notice shall also advise the permittee to correct the alleged violation(s) within the time to respond.

(E) Unless the notice provides otherwise, the effective date of the suspension or revocation shall be the deadline to file an appeal, or, if an appeal is filed, the date that notice of a decision suspending or revoking a permit is served.

~~—(E) Response to notice of intent/pre-appeal determination.~~

~~—(1) The time to respond and request a pre-appeal determination shall be five business days from the date of service of the notice, regardless of whether the materials upon which the notice of intent is based are provided to the permittee at that time.~~

~~—(2) If there is no response, the permit shall be considered suspended or revoked upon the expiration of time in which to respond and request a pre-appeal hearing.~~

~~—(3) If there is a response, the permit shall remain in effect until a determination is made by the Chief of Police. In no event shall the Chief hold a hearing until at least five business days have passed from the time the city provides the materials upon which the notice of intent is issued to the permittee.~~

~~—(F) Suspension or revocation.~~

~~—(1) If, after consideration of the permittee's response, the Chief of Police determines that the notice of intent to suspend or revoke should be upheld, then the Chief of Police shall issue a notice of suspension or revocation and serve it upon the permittee as well as any other interested person requesting a copy of the same. Where all massage activity is required to cease, notice shall also be served on the owner of the property if different from the Operator or certificate holder.~~

(G) The notice shall include information about the right to appeal.

~~— (a) Upon issuance of a notice of suspension or revocation of a certificate of operation, all massage activity at the massage establishment shall cease and no activity for which the certificate of operation is required shall be conducted while any appeal may be pending.~~

~~— (b) Upon issuance of a notice of suspension or revocation of an Operator Permit, the Operator must cease all work at the massage establishment. If there is no other person who has an Operator Permit which is not the subject of a suspension or revocation proceeding, then all massage activity at the massage establishment shall also cease and no massage activity shall be conducted while any appeal may be pending.~~

(HG) Surrender of certificate of operation and permits. Any permittee shall immediately surrender his or her permit ~~or certificate~~ to the Chief of Police upon the effective date of its suspension or revocation. The Operator shall immediately surrender the certificate of operation upon revocation of an Operator Permit if there is no other permitted Operator for the massage establishment.

§ 122.34 APPEALS TO CITY MANAGER.

(A) Appeals.

(1) Appeals from any decision of the Chief of Police or Finance Director under this chapter shall be in writing, shall clearly state the applicable basis for the appeal and shall be filed with the City Clerk no later than ten calendar days following the date of the notice, shall be in writing and filed with the City Clerk within the following time frames:

~~— (a) Appeals from any decision of the Chief of Police or Finance Director to deny a permit shall be in writing, shall clearly state the applicable basis for the appeal, and shall be filed not later than ten calendar days following the giving of the notice of denial.~~

~~— (b) Appeals from a notice of intent to suspend or revoke a permit where no response is filed in accordance with § (E) above shall be filed not later than ten calendar days following the expiration of the response period.~~

~~— (c) Appeals from a notice of suspension or revocation issued after a response is filed in accordance with § (E) above shall be filed not later than ten calendar days following the giving of the notice of suspension or revocation.~~

(2) The City Clerk shall not accept an appeal ~~from a decision of the Chief of Police~~, and no hearing shall be held, unless the appellant has paid a filing fee, in an amount set by resolution of the City Council, to defray the cost of such appeal. Any appeal without the timely payment of fees shall be considered to be untimely.

(3) The scope of the appeal hearing pursuant to this section shall be limited to those issues raised by the appellant in the written appeal, as submitted pursuant to division (A)(1) of this section.

(B) City Manager action.

(1) Upon receipt of a timely filed appeal, the City Clerk shall set the matter for hearing before the City Manager. The hearing shall be held not fewer than ten calendar days nor more than ~~30~~45 calendar days from the date of the appeal request. The hearing may be continued from time to time upon the mutual consent of the parties. ~~For the purposes of this section, “City~~

Manager” may include a hearing officer appointed by the City Manager, who shall then act in the City Manager’s place.

(2) The appellant shall be provided with notice of the time and place of the appeal hearing, as well as a copy of all relevant materials at least seven calendar days prior to the hearing.

(3) At the time of such hearing, the City Manager shall review the records and files relating to the decision.

(a) The City Manager shall permit any interested person to present any relevant evidence bearing on the issues involved in the matter.

(b) In conducting the hearing, technical rules relating to evidence and witnesses shall not apply. Any relevant evidence may be admitted if it is material and if it is evidence customarily relied upon by responsible persons in the conduct of their affairs regardless of the existence of any common law or statutory rule which might make admission of such evidence improper over objection in civil actions. Hearsay evidence may be admissible if it is the sort upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The rules of privilege shall be applicable to the extent they are now, or are hereafter permitted in civil actions. Irrelevant, collateral, and repetitious testimony shall be excluded.

(c) In determining whether a person should be disqualified for meeting the definition of **PERSON WHO HAS ENGAGED IN DISQUALIFYING CONDUCT** as set forth in § 122.02, the City Manager may consider: the nature and severity of the act(s) or crime(s); whether there were any additional subsequent act(s) or crime(s); the number of act(s) or crime(s); and how recent the act(s) or crime(s) were.

(4) The appellant shall have the burden of proving that he or she meets the requirements for issuing the permit or certificate in the first instance; the cityCity shall have the burden in proving that grounds exist for suspending, revoking or failing to renew a permit.

(5) Based upon the evidence presented at the hearing, the City Manager shall determine whether the decision should be affirmed, modified, or reversed.

(6) The City Manager shall issue his decision within ten business days after the close of the hearing. ~~’s decision shall be communicated in writing to the appellant within ten working days after the close of the hearing and submission of the matter to the City Manager for decision. The City Manager’s decision shall include a statement of state whether the decision is affirmed, modified, or reversed and shall state the reasons therefor.~~

(7) The decision of the City Manager shall include notice that the decision is final and conclusive, that judicial review may be sought therefrom pursuant to Cal. Civil Proc. Code § 1094.5, and that any action filed in the superior court shall be filed within 90 days following the City Manager’s notice pursuant to Cal. Civil Proc. Code § 1094.6.

§ 122.35 NOTICES.

(A) All notices required to be given pursuant to this chapter shall be served on the responsible party (i.e., permittee, applicant, appellant, or a representative thereof) either by personal delivery or by deposit in the United States mail in a sealed envelope postage prepaid addressed to such

responsible party as the name and address appear in the most recent application on file with the city. Service by mail shall be deemed to have been completed on the date deposited in the mail. Notices shall include information regarding appeal rights and a statement that the failure to file an appeal shall constitute a failure to exhaust administrative remedies.

(B) In all cases where the certificate holder is not the property owner, notices shall also be sent to the property owner of record where the notice relates to possible closure of the business due to suspension or revocation.

OPERATION AND FACILITY REQUIREMENTS

§ 122.50 OPERATIONAL REQUIREMENTS.

(A) *Hours and conditions of operation.*

(1) No massage establishment shall operate nor shall any massage be administered in any massage establishment between the hours of 10:00 p.m. and 8:00 a.m. A massage begun any time before 10:00 p.m. must nevertheless terminate at 10:00 p.m. The hours of operation must be displayed in a conspicuous public place in the lobby within the massage establishment and in any front window clearly visible from outside of the massage establishment. These hours of operation may be modified pursuant to a conditional use permit.

(2) During hours of operation, no person other than a valid permit holder under this chapter, a massage practitioner, a massage therapist, or a patron shall be allowed beyond the reception area of the massage establishment.

(3) Patrons and visitors shall only be permitted in the massage establishment during the hours of operation.

(a) Visitors shall only be permitted in the reception area of the massage establishment.

(b) Patrons shall only be permitted in massage treatment areas if at least one massage technician is on the premises.

(4) The massage establishment shall be supervised during all hours of operation by a manager who is one of the authorized Operators specified in the permit application for the massage establishment.

(a) An Operator may not manage more than one massage establishment at any given time.

(b) The name and photograph (minimum size of four inches by six inches) of the on-duty manager-Operator shall be posted in a conspicuous public place in the lobby of the massage establishment at all times that the business is open. This provision shall not apply to sole providers. Regardless of the number of Operators that may be approved for the location, only one Operator may be identified as the on-duty Operator at a time.

(5) No massage establishment shall be used for residential purposes. There shall be no massage tables, cots, or beds in the establishment other than as shown on the approved floor

plan. Locker facilities shall be provided for all employees and independent contractors and all personal items of the employees and independent contractors shall be kept in the lockers while at the massage establishment.

(B) *Posting requirements.* In addition to any other requirements for posting set forth in this chapter, the following shall also apply:

(1) A recognizable and legible sign complying with the requirements of this code shall be posted at the main entrance identifying the establishment as a massage establishment.

(2) Each service offered, the price thereof, and the minimum length of time such service shall be performed shall be posted in English and such other languages as may be convenient to communicate such service, in a conspicuous public location in each massage establishment. No services shall be performed and no sums shall be charged for such services other than those posted. Nothing herein prohibits a voluntary tip from being paid by the patron.

(3) Any posted signs which are in a language other than English shall also be posted in English.

(C) *Instruments, equipment, and personnel.*

(1) Disinfecting agents and sterilizing equipment shall be provided for any instruments used in performing acts of massage and said instruments shall be disinfected and sterilized after each use.

(2) Unless otherwise approved by a conditional use permit, massages shall be administered only on standard or portable massage tables or chairs which are covered with a durable, washable plastic or other acceptable waterproof material. Beds, mattresses, water beds, futons, sofa beds, any type of portable or convertible beds, and foam pads more than four inches thick or with a width of more than four feet shall not be permitted in the establishment.

(3) No massage technician shall massage the genitals or anal area of any patron nor shall any Operator of a massage establishment allow or permit such a massage to the above-specified areas.

(4) No massage technician shall massage the breasts of a female patron without the written consent of the person receiving the massage and a referral from a licensed California health care provider, nor shall any Operator of a massage establishment allow or permit such a massage to the above-specified area.

(5) A massage shall not be given and no patron shall be in the presence of any massage establishment staff unless the patron's genitalia and, if a female patron, the female patron's breasts, are fully covered by a fully opaque, nontransparent covering.

(6) Persons providing services in the massage establishment shall not be dressed in attire that is: transparent, see-through, substantially exposes the massage technician's undergarments, or exposes the massage technician's breasts, buttocks, or genitals; in a manner which has been deemed by CAMTC to constitute unprofessional attire based on the custom and practice of the profession in California; or in swim attire unless such person is providing a water-based massage modality which has been approved by CAMTC.

(7) All massage establishments shall be so equipped, maintained and operated as to effectively control the entrance, harborage, and breeding of vermin, including flies. When flies or other vermin are present effective control measures shall be instituted for their control or elimination.

(8) Clean and sanitary towels, sheets, and linens shall be provided for each patron of the establishment. No common use of towels or linens shall be permitted. Heavy white paper may be substituted for sheets; provided, that such paper is used once for each person and then discarded into a sanitary receptacle.

(9) All massage tables shall be at least two feet away from all walls at all times.

(D) *Personnel lists.*

(1) Within seven calendar days of receiving a certificate of operation, the Operator shall provide the Police Department with a complete list of all massage technicians who are working or will work, be employed, or provide massage services in the massage establishment along with a copy of their CAMTC certificate and identification card, as well as with the name and residence address of the manager principally in charge of the operation of the massage establishment and of any other manager.

(2) The Operator shall have a continuing obligation to notify the Chief of Police in writing of any changes in massage technicians and managers within seven calendar days of such change.

(3) The Operator shall maintain copies of each massage technician's CAMTC certificate and identification card on file on the premises of the massage establishment which shall be available to any individual upon request, including but not limited to employees of the ~~city~~City. Additionally, the Operator shall be required to file copies of each CAMTC certificate and identification card with the Police Department within seven days of a massage technician beginning to work at the massage establishment. Information required by this section shall be maintained at the massage establishment for a minimum of two years following the date that the person ceases providing services/employment to the massage establishment.

(4) The Operator shall maintain on the premises of the massage establishment a register of all non-state certified persons employed, working or providing other services at the massage establishment. The register shall be maintained for a minimum of two years following the time that the person ceases providing services/employment to the massage establishment. The Operator shall make the register immediately available for inspection upon demand of a representative of the Police Department, any health officer, or any other official charged with enforcement of this chapter. The register shall include but is not limited to the following information:

- (a) Name, nicknames, and/or aliases;
- (b) Home address and relevant phone number, including but not limited to home, cellular, and pager numbers;
- (c) Age, date of birth, gender, height, weight, color of hair and eyes;

(d) ~~The date of such person began employment or providing services, and the date such person ended employment or stopped providing services~~termination, if any;

(e) The duties of each person; and

(f) In a separate portion of the register, Social Security numbers, which shall only be available for review by the Police Department or other law enforcement personnel, but not health officers or other officials charged with the enforcement of this chapter.

(E) *Prohibited conduct.*

(1) No alcoholic beverages shall be sold, served, or furnished on the premises of any massage establishment without a valid alcoholic beverage license from the state and conditional use permit from the ~~city~~City.

(2) No storage or sale of condoms or spermicides shall be permitted within the massage establishment.

(3) No Operator shall hire, employ, or allow a person to perform massage services unless such person possesses a valid CAMTC certificate. Each Operator of a massage establishment shall verify that all persons hold the appropriate CAMTC certificate required by this chapter. Nothing herein prevents an Operator from hiring, employing, or allowing a person to perform services allowed by such person's cosmetology or barber license, if the business has a state establishment license in addition to a certificate of operation.

(4) No person shall use or possess, nor shall there be, any storage of, any sexually-oriented implements or paraphernalia which are designed or marketed primarily for the stimulation of human genital organs or sadomasochistic activity.

(5) No electrical, mechanical, or artificial device shall be used by any massage establishment staff for audio and/or video recording or for monitoring the performance of a massage, of the conversation or other sounds in the massage rooms, without the knowledge and written consent of the patron.

(6) No Operator of a massage establishment shall place, publish, or distribute or allow or cause to be placed, published or distributed any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective patrons or clients that any service is available other than those services described in this chapter and posted on the premises as required in this chapter, nor shall any massage establishment employ language in the text of any advertising that would reasonably suggest to a prospective patron that any service is available other than those services described in this chapter and posted on the premises as required by this chapter.

§ 122.51 BUILDING AND FACILITY REQUIREMENTS.

(A) The building, or unit within the building where the massage establishment is located, shall comply with all applicable building code requirements.

(B) All massage rooms and dressing rooms shall be screened off by hinged doors that can open inward. Swinging doors that can open inward, draw drapes, curtain enclosures, or accordion-pleated closures in lieu of doors are acceptable on all inner dressing rooms and

massage therapy rooms or cubicles. Except for bathroom doors, interior doors may not have locks on them.

(C) In addition to the minimum lighting required by the provisions of Chapter 150 of the San Gabriel Municipal Code, all rooms in which massages are being provided shall be lit with a minimum of one light fixture emitting at least 210 lumens for every 150 square feet of space during the administration of such services, with the light fixtures being spread throughout the space. No dimmer switches, strobe lights, flashing lights, colored light, or any coverings or other apparatus, other than a lampshade, which changes or darkens the color of the primary light source shall be used in any room in which massage services are being provided.

(D) Any locker facilities provided for the use of patrons shall be fully secured for the protection of the patron's valuables and the patron shall be given control of the key or other means of access.

(E) The walls in all rooms where water or steam baths are given shall have a washable mold-resistant surface.

(F) All walls, ceilings, floors, pools, showers, bathtubs, steam rooms, and all other physical facilities for the establishment must be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms, or steam or vapor cabinets, shower compartments, and toilet rooms shall be thoroughly cleaned and disinfected each day the business is in operation. Bathtubs shall be thoroughly cleaned and disinfected after each use.

(G) One main entry that enters into the reception area shall be provided for patron use. All patrons, and any persons other than those providing services at the massage establishment, shall be required to enter and exit through the front door of the establishment.

(H) All exterior doors (except rear exterior doors used only for employee entrance to and exit from the massage establishment) shall remain unlocked during business hours, and the establishment shall comply with the provisions of the San Gabriel Municipal Code pertaining to the posting of signs stating that doors shall remain unlocked during business hours. Exits for fire safety purposes may be allowed where deemed necessary by the appropriate public safety agency. Notwithstanding the above, the front door may be locked if there is no staff available to assure security for the clients and massage staff who are behind closed doors, provided that the massage establishment is owned by one individual with one or no employees or independent contractors.

(I) There shall be no buzzer, alarm, or intercom system.

(J) No massage business located in a building or structure with exterior windows fronting a public street, highway, walkway, or parking area shall block visibility into the interior reception and waiting area through the use of curtains, closed blinds, tints, or any other material that obstructs or darkens the view into the premises or by signs that cover more than 25% of any windowpane. The interior of the business shall be plainly visible from the exterior of the business by passing vehicles and pedestrians.

§ 122.52 INSPECTIONS.

(A) Representatives of the cityCity's Police Department, Fire Department, Community Development Department, and Finance Department, and agents for the cityCity from the County Health Department and representatives of any state or local agencies with regulatory authority over massage establishments shall have the right to enter massage establishments, from time to time, during regular business hours, or at any time that the massage establishment is occupied or open for business, to verify the massage establishment is in compliance with all applicable laws without the need for an inspection or abatement warrant.

(B) Posting of Notices.

(1) The Operator shall cause to be conspicuously posted so that the same may be readily visible to persons in the reception area of the massage establishment, in letters that are a minimum of one inch in height, a notice in English which provides substantially as follows:

THIS MESSAGE ESTABLISHMENT AND THE MESSAGE ROOMS DO NOT PROVIDE COMPLETE PRIVACY AND ARE SUBJECT TO INSPECTION BY CITY AND HEALTH OFFICIALS WITHOUT PRIOR NOTICE

(2) In addition, Operators are encouraged to post this notice in language(s) that are best understood by the customers of the massage establishment.

(C) No person shall refuse to permit, cause delay of, or interfere with, a lawful inspection or compliance check of the premises by the officials listed in division (A) of this section at any time.

§ 122.99 PENALTY.

(A) It is unlawful for any person to engage in conduct that violates any provision of this chapter, to engage in conduct which fails to meet the standards set forth in this chapter, or to own, manage, or operate a massage establishment that is not fully in compliance with the operational standards set forth in this chapter.

(B) Any violation of this chapter shall be a misdemeanor unless, in the sole discretion of the City Prosecutor, it is charged as, or reduced to, an infraction. Citations and warning notices may be utilized as determined appropriate to the circumstances by the enforcing personnel.

(C) In addition to the above, any massage establishment operated, conducted, or maintained contrary to the provisions of this chapter shall be and is declared to be unlawful and a public nuisance and the cityCity may, in addition to or in lieu of prosecuting a criminal action under this chapter, commence an action or actions, proceeding or proceedings, for the abatement, removal, and enjoinder thereof, in the manner provided by law, including any code enforcement procedures established pursuant to the laws of the State of California or the City of San Gabriel; and may take such other steps and may apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such massage establishments and restrain and enjoin any person from operating, conducting or maintaining a massage establishment contrary to the provisions of this chapter. If an injunction is sought, attorney's fees and costs will be assessed at the discretion of the court against the party subject to said injunction.

(D) Any violation of the provisions of this chapter shall constitute a separate offense for each and every day during which such violation is committed or continued.

SECTION 3. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase be declared unconstitutional.

SECTION 4. Certification. The City Clerk shall certify the passage of this ordinance and shall cause the same to be processed as required by law.

SECTION 5. This Ordinance is exempt from CEQA pursuant to section 15061(b)(3) under the general rule that CEQA does not apply to activities which can be seen with certainty to have no effect on the environment. Changing the regulations relating to Massage Establishments will not create any environmental impacts. Additionally, as a separate and independent ground, the Ordinance is further exempt from CEQA pursuant to section 15305 as a minor alteration to land use limitations: there is no area in which massage establishments are allowed which has a slope greater than 20% and the distance requirements for massage establishments do not result in any changes to land use or density.

SECTION 6. Effective Date. This ordinance shall become effective on the thirty-first day after passage.

Passed, approved, and adopted this _____ day of _____, 2017.

CHIN HO LIAO, MAYOR
CITY OF SAN GABRIEL

ATTEST:

ELEANOR K. ANDREWS, CITY CLERK
CITY OF SAN GABRIEL

ORDINANCE NO. ----

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF SAN GABRIEL, AMENDING CHAPTER 122
OF THE SAN GABRIEL MUNICIPAL CODE RELATING TO
MESSAGE ESTABLISHMENTS

THE CITY COUNCIL OF THE CITY OF SAN GABRIEL DOES HEREBY
ORDAIN AS FOLLOWS:

Section 1. **Findings.** The City Council does hereby find as follows:

A. In 2008 the California Legislature passed SB 731 which added a new Chapter 10.5 to the California Business and Professions Code which provided for the formation of the nonprofit California Massage Therapy Council to oversee a state-sanctioned program of voluntary certification for massage practitioners so that such persons could avoid being required to obtain local massage permits.

B. The Massage Therapy Act has been amended several times since its original enactment, including by AB 1147 and AB 2194 which, among other things, restored local land use control and extended the Massage Therapy Act's effective date through December 31, 2020.

C. After the adoption of SB 731 the City enacted massage regulations which require that owners and managers obtain an Operator Permit and the business obtains a Certificate of Operation.

D. When the City's land use authority was restored with the passage of AB 1147, the City reinstated the requirement that massage establishment businesses obtain a conditional use permit and provided a deadline of January 20, 2018 to apply for such permit.

E. The City has continued to have issues with massage establishments complying with the City's regulations.

F. It has been the experience of City staff that Operators leave an establishment and the City is not kept informed as required by the Ordinance; requiring the Operator Permit to be renewed every year instead of every three years will provide a better opportunity to monitor massage establishments and keep City records up to date.

G. The City has experienced problems with Operators trying to manage more than one massage establishment at the same time when businesses are located next to each other.

H. The suspension and revocation process will be streamlined by eliminating the pre-appeal determination process.

I. It will be beneficial for an Operator Permit to be obtained before an application is deemed complete for a conditional use permit to prevent the possibility of having gone through the entire conditional use permit process only to find out that the person is not qualified to own the massage establishment.

J. It is in the best interests of the public health, safety and welfare to make additional changes in the business license regulations to address the issues listed above as well other clean-up issues.

SECTION 2. Chapter 122 of the San Gabriel Municipal Code is hereby amended to read as follows:

GENERAL PROVISIONS

§ 122.01 FINDINGS AND PURPOSE.

The City Council finds and declares as follows:

(A) The requirements and restrictions imposed by this chapter are reasonably necessary to protect the health, safety and welfare of the citizens of the City, while recognizing massage as a legitimate business interest that provides benefits to its patrons in a therapeutic setting.

(B) This chapter is enacted pursuant to the provisions of the State Constitution, Cal. Gov't Code §§ 37100, 51030 et seq., Cal. Bus. & Prof. Code §§ 460, 4600 through 4620 (The Massage Therapy Act) and 16000, and § 13 of the Chiropractic Act (initiative measure approved by the electors November 7, 1922, as amended).

(C) There is a significant risk of injury to massage clients by persons improperly trained and/or educated in providing massage services, and this chapter provides reasonable safeguards against injury and economic loss.

(D) There is opportunity for acts of prostitution, lewdness, and other unlawful sexual activity to occur in massage establishments, as well as problems relating to human trafficking in massage establishments. Courts have long recognized massage as a pervasively regulated activity and that massage establishments are often brothels in disguise. The establishment of reasonable standards for issuance of permits and restrictions on operations would serve to reduce the risk of illegal activity and would thereby benefit the public health.

(E) The provisions of this chapter are intended to enhance the efficient processing of permits for massage establishments, owners and managers and the ongoing regulation of those permittees and certificate holders by the City. The provisions of this chapter in no way limit the authority of the City to inspect massage establishments or conduct investigations to ensure permittees are complying with applicable rules and regulations.

(F) The restrictions and requirements contained in this chapter are intended, in part, to stop the practice of businesses quickly changing ownership in name upon the discovery of criminal activity by the City.

(G) The restrictions and requirements contained in this chapter are intended to be in addition to the requirement of a valid business license issued pursuant to Title XI, Chapter 110 of the San

Gabriel Municipal Code and the requirement to obtain a conditional use permit pursuant to Chapter 153.

(H) The regulations and restrictions contained in this chapter are intended to discourage massage establishments from degenerating into houses of prostitution, and the means utilized in this chapter bear a reasonable and rational relationship to the goals sought to be achieved within the confines allowed by state law.

(I) The provisions of this chapter are not intended to be exclusive and compliance therewith shall not excuse noncompliance with any state or local laws or regulations that are uniformly applied to other professional or personal service businesses.

(J) The California Massage Therapy Council (“CAMTC”) can better, and more efficiently, regulate massage technicians in order to best protect the public and it is in the public interest to require that all persons providing massage in the City have a certificate from the CAMTC. However, in order to protect the public health, safety and welfare of the residents and visitors to the City of San Gabriel, it is necessary for the City to additionally regulate Massage Establishment businesses.

§ 122.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CALIFORNIA MASSAGE THERAPY COUNCIL or **CAMTC**. The nonprofit organization created to regulate and issue massage practitioner and therapist certificates pursuant to Cal. Bus. & Prof. Code §§ 4600 et seq.

CAMTC CERTIFICATE. A massage practitioner or massage therapist certificate issued by the CAMTC.

CERTIFICATE OF OPERATION. The certificate issued by the Finance Director entitling a business to be operated as a massage establishment.

CHIEF OF POLICE. The Chief of Police of the City of San Gabriel, or his or her designee.

CITY. The City of San Gabriel.

CITY MANAGER. The City Manager or his or her designee, including a hearing officer.

COMPENSATION. The payment, loan, advance, donation, contribution, deposit, exchange, or gift of money or anything of value.

CONVICTION or **CONVICTED**. A conviction following a guilty plea, nolo contendere plea, or judgment or verdict where the time for appeal has elapsed or conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Cal. Penal Code § 1203.4 allowing the applicant to withdraw his or her plea of guilty or nolo contendere and to enter a plea of not guilty, or dismissing the accusation or information.

EMPLOYEE. Any person, other than a massage practitioner, massage therapist, or Operator, who renders any service, with or without compensation, to the Operator or agent of an Operator

of a massage establishment relating to the day-to-day operation of the massage establishment whether as an employee or independent contractor.

FINANCE DIRECTOR. The Finance Director of the City, or his or her designee.

MAIN ENTRY DOOR. A door from the outside of the establishment leading into the reception area.

MANAGER. The person(s) designated by the owner of the massage establishment to act as the representative and agent of the owner in managing day-to-day operations with corresponding responsibilities. Evidence of management includes, but is not limited to, the ability of the individual to direct or hire and dismiss employees, control hours of operation, create policy or rules or purchase supplies, and ensure that the massage establishment complies with the requirements of this code and of other laws. A **MANAGER** may also be an owner. A **MANAGER** must have a valid Operator Permit.

MASSAGE. Any method of treating the external parts of the body for remedial, health, hygienic, or relaxation purpose. **MASSAGE** includes, but is not limited to, treatment by means of manual pressure, acupressure, friction, stroking, kneading, rubbing, tapping, pounding, vibrating, with or without the aid of or by means of any mechanical, electronic, or electrical apparatus or appliance, and with or without rubbing alcohol, liniments, aromatics, antiseptics, oils, powders, creams, lotions, ointments, or other similar preparations. **MASSAGE** specifically includes the application of any of these methods to the scalp, neck, or feet of any individual. (Some persons practicing massage may be exempt from all or parts of the permit requirements; please consult § 122.03).

MASSAGE ESTABLISHMENT. Any enterprise or establishment having a fixed place of business where any person engages in, conducts, carries on, or permits to be engaged in, conducted, or carried on, any of the activities set forth in the definition of **MASSAGE** in this section.

MASSAGE PRACTITIONER. A person who is certified as such by the CAMTC in accordance with the Massage Therapy Act.

MASSAGE TECHNICIAN. A massage practitioner or massage therapist certified by CAMTC.

MASSAGE THERAPIST. A person who is certified as such by the CAMTC in accordance with the Massage Therapy Act.

MASSAGE THERAPY ACT. Chapter 406 of the 2013-2014 Legislative Session, as the same may be amended from time to time.

OPERATOR. All persons who own or manage a massage establishment.

OPERATOR PERMIT. The permit issued by the Chief of Police allowing a person to own or manage a massage establishment.

OUT-CALL MASSAGE. Any business or enterprise that engages in or performs massage for any form of consideration or in exchange for anything of value whatsoever at a location other than a massage establishment.

OWNER. All of the following:

- (1) The sole proprietor of a massage establishment, i.e., where the owner is the only person performing massage at that establishment;
- (2) In the case of a general business, each owner of the business;
- (3) In the case of a corporation, each stockholder holding more than 10% of the corporation and each officer and director of the corporation;
- (4) In the case of a partnership, each partner, excluding limited partners owning less than 10% of the partnership, and where a partner is a corporation, the provisions pertaining to a corporate applicant in division (3) above apply.

PATRON. An individual on the premises of a massage establishment for the purpose of receiving a massage.

PERMIT. An Operator Permit or Certificate of Operation, unless the context indicates otherwise.

PERMITTEE. Any person who has obtained a Certificate of Operation or Operator Permit from the City.

PERSON WHO HAS ENGAGED IN DISQUALIFYING CONDUCT. A person who:

- (1) Within ten years preceding the date of filing of the application in question or, in the case of revocation proceedings, within ten years preceding the date of the revocation notice, has been convicted in a court of competent jurisdiction of any of the following:
 - (a) A violation of any provision of law pursuant to which a person is required to register under the provisions of Cal. Penal Code § 290;
 - (b) Conduct in violation of Cal. Penal Code §§ 266h, 266i, 314, 315, 316, 318, 653.22, 653.23, or § 647(a), (b), or (d);
 - (c) An attempt to commit or conspiracy to commit any of the above mentioned offenses;
 - (d) When the prosecution accepted a plea of guilty or nolo contendere to a charge of a violation of Cal. Penal Code §§ 415, 602, or any lesser included or related offense, in satisfaction of, or as a substitute for, any of the previously listed crimes;
 - (e) Any crime committed while engaged in the management or ownership of a massage establishment or the practice of massage;
 - (f) A violation of Cal. Health & Safety Code § 11550 or any offense involving the illegal sale, distribution or possession of a controlled substance specified in Cal. Health & Safety Code §§ 11054, 11055, 11056, 11057 or 11058; or
 - (g) Any offense under a statute of any state or ordinance of any City or county, which is the equivalent of any of the aforementioned offenses, including Business & Professions Code § 4609(a).

(2) Within ten years preceding the date of the filing of the application in question or, in the case of revocation proceedings, within ten years preceding the date of the revocation notice, has had any massage establishment, Operator, technician, practitioner, therapist, or trainee certificate, license, or permit issued by any state, local agency, or other licensing authority, including the CAMTC: denied, revoked, or suspended for any reason other than lack of sufficient education; or has had to surrender such a certificate, license, or permit as a result of pending criminal charges or administrative proceedings for suspension or revocation of any such certificate, license, or permit;

(3) Within five years preceding the date of filing of the application in question or, in the case of revocation proceedings, within five years preceding the date of the revocation notice, has been convicted in a court of competent jurisdiction of any of the following:

(a) Any crime, other than an infraction or those listed above, involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or another, or substantially injure another;

(b) Any crime, other than an infraction or crimes relating to those offenses listed above, where the crime or act is substantially related to the management or ownership of a massage establishment or the practice of massage, including a violation of the Massage Therapy Act;

(4) Has been subjected to a permanent injunction against the conducting or maintaining of a nuisance pursuant to Cal. Penal Code §§ 11225 through 11235 of the Penal Code as the same may be amended from time to time, or any similar provisions of law in a jurisdiction outside the State of California; or

(5) Has been found to be maintaining a nuisance in connection with the same or similar type of business; or

(6) Within five years preceding the date of filing of the application in question or, in the case of revocation proceedings, within five years preceding the date of the revocation notice,

(a) Has engaged in the exposing of specified anatomical areas of oneself or of another person to view, or in touching the specified anatomical areas of oneself or of another person, while providing massage services or while within view of a customer or patron of the massage establishment; or

(b) Has been the owner, manager, or other similar position, in an establishment where the conduct described in division (6)(a) above has occurred.

(7) **DISQUALIFYING CONDUCT** does not include the failure to obtain a certificate of operation or Operator Permit without any prior oral or written notification by the City that such was required, provided that the business and/or person cease operations immediately upon notification.

PROOF OF BONA FIDE EMPLOYMENT. Proof of an employer-employee relationship between the Operator of the massage establishment and any person working at the massage establishment. Satisfactory **PROOF OF BONA FIDE EMPLOYMENT** must be shown by written payroll documentation evidencing the employer's compliance with California Employment Development Department (EDD) requirements for the withholding of California

income tax, unemployment insurance contributions, and disability contributions from the employee and written payroll documentation of the employer's compliance with Internal Revenue Service (IRS) requirements for the withholding of federal income taxes, Social Security (FICA) and Medicare contributions from the employee. Such written documentation can include, but is not limited to, W-2 wage and tax statements.

RECEPTION AREA. An area immediately inside the main entry door of the massage establishment dedicated to the reception and waiting of patrons and visitors of the massage establishment and which is not a massage room or otherwise used for the provision of massage services.

RESIDENCE ADDRESS. The actual physical home address and shall not include a P.O. Box, mailbox service, or other similar location.

SOLE PROVIDER. A massage business where the owner owns 100% of the business, is the only person who provides massage services for compensation for that business pursuant to a valid and active CAMTC Certificate, and has no other employees or independent contractors.

SPA. Facilities such as mineral baths, salt rooms, mineral rooms, saunas, steam rooms, whirlpools and other therapeutic baths.

SPECIFIED ANATOMICAL AREAS. Any of the following human anatomical areas: genitals; pubic area; buttocks; anus; or female breasts below a point immediately above the top of the areolae, without a health care referral and written consent of the patron.

VISITOR. A nonemployee who has entered the massage establishment for purposes other than receiving services.

§ 122.03 EXCEPTIONS.

(A) *Complete exception.* The requirements of this chapter shall have no application and no effect upon and shall not be construed as applying to:

(1) Any physician, surgeon, chiropractor, acupuncturist, osteopath, or physical therapist licensed to practice such profession in the State of California, within the scope of their license;

(2) Any registered nurse or licensed vocational nurse, licensed to practice under the laws of the State of California, who is an employee of and working under the on-site direction of a physician, surgeon, chiropractor, osteopath, or physical therapist, duly licensed to practice their respective professions in this state.

(a) Any other person providing massage services that is employed by a physician, surgeon, chiropractor, osteopath, or physical therapist, shall be required to have a valid CAMTC certificate, as well as work under the adequate supervision of such physician, surgeon, chiropractor, osteopath, or physical therapist as required by state law or regulation. If no specific law or regulation applies, adequate supervision shall have the same meaning as set forth in 16 California Code of Regulations § 312.

(b) If a duly licensed acupuncturist wishes to provide massage therapy services to his or her clients by an individual(s) other than his- or her- self, said individual(s) must have a valid CAMTC certificate and the office of the acupuncturist shall be subject to all the provisions

of this Chapter 122, as well as any other applicable provisions of the San Gabriel Municipal Code.

(3) Any person licensed to practice any healing art under the provisions of Cal. Bus. & Prof. Code Div. 2 (commencing with § 500) when engaging in such practice within the scope of such license.

(4) State-licensed hospitals, nursing homes, sanatoriums, or other health care facilities duly licensed by the State of California, and the employees of such facilities while working on the premises of such state-licensed facilities.

(5) Accredited high schools, junior colleges, and colleges or universities whose coaches and trainers are acting within the scope of their employment.

(6) Barbers, beauticians, or manicurists who are duly licensed by the State of California pursuant to the Barbering and Cosmetology Act set forth in Cal. Bus. & Prof. Code §§ 7300 et seq., as the same may be amended from time to time, while engaging in practices within the scope of such license, except that this exemption applies solely for the massaging of the neck, face, and/or scalp of the customer or client of said barber or beautician or, in the case of a licensed manicurist, the massaging of the forearms, hands, calves, and/or feet at a state licensed facility. However, if a state licensed establishment also has a certificate of operation from the City to operate as a massage establishment, the business must also comply with all provisions of this Chapter 122.

(7) Schools of cosmetology or barbering which comply with the requirements of Cal. Bus. & Prof. Code §§ 7362 et seq. when instructors are acting within the scope of their employment or when students are working as unpaid externs pursuant to the requirements of Cal. Bus. & Prof. Code § 7395.1.

(8) Any other business or professions exempt by state law.

(B) *Partial exception.*

(1) Businesses that offer massage services that are ancillary to the primary business shall only be required to comply with the provisions set forth in division (B)(2) of this section. For purposes of this division, ancillary massage services shall be those services where less than 20% of the gross floor area of the business is devoted to massage.

(2) Massage services provided under division (B)(1) of this section shall be required to comply with the following:

(a) Massage services must be performed by the holder of a valid CAMTC certificate.

(b) The business shall comply with the following provisions of this chapter:

1. Section 122.50(A)(1) relating to hours;
2. Section 122.50(C) relating to instruments, equipment and personnel;
3. Section 122.50(D)(1) through (3) relating to personnel lists;
4. Section 122.50(E) relating to prohibited conduct;

5. Section 122.51(A) through (F) relating to building and facility requirements;

6. Section 122.52 relating to inspections.

(C) *Evidence of entitlement to exception.* Any person claiming exception under this section shall furnish satisfactory evidence upon request that he or she is entitled to such exception, including, proof of bona fide employment, or if applicable, a citation to the particular provision of state law upon which that person relies.

§ 122.04 BUSINESS LICENSE AND OTHER PERMITS REQUIRED.

(A) Nothing herein relieves an individual or business from obtaining a City business license, conditional use permit in accordance with Chapter 153 of this Code, or other permit if otherwise required by law.

(B) Any individual applying for a business license as a massage technician shall provide proof of a current CAMTC certificate before being issued a business license.

§ 122.05 FLOOR PLANS REQUIRED.

(A) All massage establishments shall be required to submit a scaled floor plan as part of their application for a certificate of operation, which floor plan must be approved by the City as part of the conditional use permit process.

(B) All businesses that claim a partial exemption from this chapter pursuant to § 122.03(B) shall be required to submit scaled floor plans in order to verify the applicability of the exemption.

(C) No changes may be made to the approved floor plan without written approval from the Community Development Department, which may require modification of the conditional use permit by the Planning Commission.

MESSAGE PRACTITIONERS AND MESSAGE THERAPISTS

§ 122.15 CAMTC CERTIFICATE REQUIRED.

(A) No person shall provide massage services, including out-call massage services, from any location in the City without having been issued a CAMTC certificate, regardless of whether such person has an Operator Permit or the business has a certificate of operation.

(B) Any person certified by the state who desires to own or manage a massage establishment, must additionally obtain an Operator Permit in accordance with the provisions of this Chapter.

(C) No Operator of a massage establishment shall hire as an employee or utilize as an independent contractor any person to perform massage unless such person has been issued a CAMTC certificate.

CERTIFICATES OF OPERATION AND OPERATOR PERMITS

§ 122.30 CERTIFICATE OF OPERATION AND OPERATOR PERMIT REQUIREMENT.

(A) No person shall own or manage any massage establishment in any location within the City without first having obtained an Operator Permit. An Operator Permit must be obtained for each owner of a business or proposed business, and any identified manager, in order for an application for a conditional use permit for such business to be complete.

(B) No massage establishment shall be allowed to operate within the City unless the business first obtains a certificate of operation. No certificate of operation shall be approved until each Operator identified in the application has obtained an Operator Permit. A certificate of operation shall not be granted until such time as a conditional use permit has been obtained for the location.

(C) Any person desiring to obtain a certificate of operation and/or an Operator Permit shall make application in accordance with the provisions of this subchapter, which application shall be accompanied by a nonrefundable fee in an amount established by resolution of the City Council.

(D) All applications shall be dated and shall contain the following statements:

(1) A certification under penalty of perjury that the information contained in the application is true and correct;

(2) An authorization for the City, its officers, agents and employees, to seek information and conduct an investigation into the truth of the statements set forth in the application and to ensure continual compliance with all applicable provisions of law; and

(3) An acknowledgement that by applying for an Operator Permit, the applicant understands that he or she is responsible for having a working knowledge of the City's regulations relating to massage establishment operations, be responsible for the day-to-day operations of the business and be responsible for all violations of employees and independent contractors that may take place in the massage establishment which such person owns or manages and that such violations are grounds for revocation of the Operator Permit.

(E) The provisions of §§ 122.05, 122.50, 122.51, 122.52 and 122.99 shall apply to any business that operates as a massage establishment, even if such business fails to obtain Operator Permits or certificates of operation. The City may immediately order a business that fails to have a certificate of operation or a permitted Operator on the premises to cease operation until such failures have been resolved.

(F) Within 30 working days following receipt of a completed application, the Finance Director shall either issue the certificate of operation and the Chief of Police shall issue an Operator Permit or mail a written statement of the reasons for denial thereof. Notwithstanding the above, failure of the City to act upon a completed application within the time frame set forth above shall not be deemed approval of the application pursuant to this chapter. Any certificate of operation or permit issued pursuant to this division (F) shall be deemed conditional pending the City's receipt of the California Department of Justice report on the applicant's fingerprints. If the

fingerprint report demonstrates that the applicant has made any false, misleading, or fraudulent statement of material fact in the permit application or in any report or record required to be filed therewith, or discloses any disqualifying conduct, the permit shall be subject to denial or revocation pursuant to this chapter.

§ 122.31 OPERATOR PERMIT.

(A) It shall be the responsibility of each and every Operator to have a working knowledge of the City's regulations relating to massage establishment operations and be responsible for the day-to-day operation of the business.

(B) *Application; contents.* Applicants for Operator Permits shall submit the following information to the Police Department on a form supplied by the Department:

- (1) The full true name of the applicant;
- (2) A complete statement listing and explaining any and all aliases and fictitious names used by the applicant within the ten years immediately preceding the application;
- (3) The current residence address and business address and current residence and business telephone number of the applicant;
- (4) The name and address of the massage establishment for which the Operator Permit is sought;
- (5) A list of all previous residential and business addresses for a minimum of eight years immediately preceding the present address of the applicant and the dates of residence for each address;
- (6) The applicant's place of birth, and original documentation to verify both the applicant's identity and employment authorization (if applicable), as listed under 8 U.S.C. 1324a(b)(1) and 8 C.F.R. part 274a.2(b)(1). Documentation to satisfy this requirement may include, but is not limited to, a California driver's license, California identification card, social security card, resident alien ("green") card, United States passport (unexpired or expired), unexpired foreign passport that contains a temporary I-551 stamp, or an unexpired employment authorization document issued by the United States Government in compliance with 8 C.F.R. part 274a.2(b)(1)(v)(A);
- (7) The history of the applicant as to any similar business or occupation within ten years immediately preceding the filing of the application. Such information shall include, but not be limited to, the names and addresses of any other massage establishments or similar businesses the applicant has owned, managed, provided massage services at, or worked at, whether the applicant has had a permit or license to operate, manage, provide massage services at, or work at a massage establishment denied, revoked, or suspended in any jurisdiction; the reasons for any such denial, revocation, or suspension; and the business, activity, or occupation the applicant engaged in subsequent to such denial, revocation, or suspension;
- (8) All criminal convictions within the last ten years, excluding minor traffic violations, and the date and place of each such conviction and reason therefor;

(9) Such other reasonable identification and information as the Chief of Police may require in order to discover the truth of the matter specified as required to be set forth in the application;

(C) The applicant shall have his or her picture taken by the Police Department or otherwise supply a photograph as directed by the Department; and

(D) Once the information required by division (A) of this section is submitted, the applicant shall have his or her fingerprints taken for a criminal history background (Livescan) check in the manner directed by the Police Department.

(E) The Chief of Police shall issue the Operator Permit, unless after investigation he or she makes any of the following findings:

(1) The applicant has failed to provide information, documentation, and assurances required by this chapter or by the Chief of Police; has failed to reveal any fact material to qualification; or has supplied information that is untrue or misleading as to a material fact pertaining to the qualification criteria; or

(2) The applicant is a person who has engaged in disqualifying conduct; or

(3) There is substantial evidence that the applicant has engaged in disqualifying conduct, even if there is no conviction for such conduct; or

(4) The applicant has violated any provision of this chapter, or any similar ordinance, law, rule, or regulation of any other public agency which regulates the operation of massage establishments; or

(5) The applicant is not at least 18 years of age; or

(6) The applicant is delinquent in paying City fees or penalties owed in relation to any permit issued pursuant to this chapter.

(F) If the criminal history background check report demonstrates that the applicant has made any false, misleading, or fraudulent statement of material fact in the permit application or in any report or record required to be filed therewith, or discloses any disqualifying conduct, the permit shall be subject to denial.

(G) For any person that has a valid CAMTC certificate, the applicant shall only be required to provide the information specified in subsection (B)(1)-(4) and have his or her picture taken or provide a photograph as specified in subsection (C) above. No independent background check shall be conducted, but in determining whether to issue the Operator Permit, the Chief of Police may rely on information supplied by CAMTC.

(H) Permits issued pursuant to this section shall remain in effect, unless revoked, for a period of one year. Applications for the renewal of a permit shall be filed on a form supplied by the City with the Chief of Police. Temporary permits shall not be issued and expired permits are not valid unless the permittee has a written receipt showing that the renewal application was filed at least 30 days prior to expiration, without action having been taken by the Chief of Police. Renewal applications shall be signed under penalty of perjury and shall be accompanied by a nonrefundable filing fee established by resolution of the City Council. A permittee shall be required to update the information contained in his or her original permit application and provide

any new and/or additional information as may be reasonably required by the Chief of Police in order to determine whether the permit should be renewed, including all information required by division (B) or (G) of this section. If requested, a new photograph shall be supplied. Failure to provide this documentation shall be grounds for nonrenewal of the permit in addition to those items set forth in § 122.33 below. It is the Operator's obligation to keep track of when the renewal is due and to renew in a timely fashion.

(I) Any decision to deny or not renew an Operator Permit shall be made in writing and shall set forth the reasons for the decision. The notice shall include a statement of appeal rights pursuant to § 122.34 below.

(J) Every person to whom an Operator Permit has been granted pursuant to this chapter shall be issued an identification badge by the Police Department which shall contain the person's name, photograph, expiration date, and any other information deemed necessary by the Chief of Police. The badge shall be worn so as to be readily visible at all times while on the premises of the massage establishment.

(K) Permits issued pursuant to this chapter may not be assigned or transferred.

(L) It is the duty of each Operator to notify the Finance Department whenever there is a change in information which was required to be submitted in the application for the Operator Permit in the first instance. Such notification shall be in writing and made within ten business days of the change on a form provided by the City.

(M) Each Operator of a massage establishment shall be responsible for the conduct of all employees and independent contractors working on the premises of the business. Failure of the employees or independent contractors of a massage establishment to comply with this chapter may result in the revocation of the Operator's permit.

(N) The Operator of the massage establishment is responsible for verifying that all persons hold the appropriate CAMTC certificate as required by this chapter.

(O) Any requirement of this chapter applying to an Operator shall apply to each and every Operator of a massage establishment.

§ 122.32 CERTIFICATE OF OPERATION.

(A) Applications for a certificate of operation shall be filed with the Finance Department and shall include the information set forth below:

(1) The full name of the applicant;

(2) The name under which the business is to be conducted, which name must match the name of the business under which the corresponding business tax certificate is issued under Chapter 110. No massage establishment business shall operate under any business name or conduct business under any designation not specified in the certificate of operation. If the applicant is a corporation, the name shall be exactly as shown on the articles of incorporation or on a valid DBA ("doing business as");

(3) The address of the proposed massage establishment;

(4) A detailed description of the operation and type of services to be provided by the massage establishment, including other therapies to be provided, and other businesses to be operated on the same premises;

(5) The full legal name and residence address of each owner of the massage establishment and of the manager(s) who will be in charge of the operation of the massage establishment if other than the owner(s);

(6) A legal size copy of the floor plan approved as part of the conditional use permit, drawn to scale with measurements in feet and inches and labeled in English. The floor plan shall show: entrances; exits; windows; interior doors; restrooms; all other separately enclosed rooms with dimensions, including, but not limited to closets, storerooms, break rooms, and changing rooms; and location of massage tables and chairs;

(7) The full name, address, and phone number of the legal owner of the property, if other than the applicant on which the massage establishment is to be located, along with a copy of the signed lease and a notarized acknowledgement from the owner of the property that a massage establishment will be located on his or her property; and

(8) The hours and days of operation.

(B) The Finance Director shall issue a certificate of operation upon verification of the following:

(1) The massage establishment will comply with all applicable laws, including, but not limited to building, fire, zoning, health, and safety regulations, as well as any conditions which have been imposed to comply with such laws;

(2) Each person identified as an Operator, i.e., the owner(s) and manager(s), has obtained an Operator Permit; and

(3) A conditional use permit, if required, has been obtained.

(4) Any decision to deny the Certificate of Operation shall be made in writing and shall set forth the reasons for the decision. The notice shall include a statement of appeal rights pursuant to § 122.34 below.

(C) Every massage establishment for which a certificate of operation has been granted pursuant to this chapter shall display the certificate in a conspicuous place so it may be readily seen by persons entering the premises.

(D) A certificate of operation is not transferable to a separate location of the same business, to a different business at the same location, or to the same business under different ownership at the same location, or the same business under a different name.

(E) It is the duty of each Operator to notify the Finance Department whenever there is a change in information which was required to be submitted in the application for the certificate of operation in the first instance. Any sale or transfer of any reportable interest of an owner in a massage establishment, which interest would be required to be reported under division (A) of this section in the first instance, shall render the certificate of operation temporarily suspended and subject to revocation in accordance with the provisions of this chapter unless prior to the effective date of such sale or transfer, the new owner applies for and obtains an Operator Permit.

(F) Notwithstanding any other provision of this code to the contrary, where a notice of suspension or revocation has been issued regarding a massage establishment, or the business has otherwise been required to close because of suspension or revocation proceedings against the Operator, the Finance Department shall not process or issue a new application for a certificate of operation for said location unless or until the revocation or suspension proceedings are dismissed or a final determination is made that the current certificate of operation should not be suspended or revoked, or a two-year period has passed since the occurrence of the activity which gave rise to the suspension or revocation proceedings or other criminal actions.

(G) Notwithstanding any other provision of this code to the contrary, when a massage establishment has been closed due to criminal activity and such decision is final, no new massage establishment may open in such location and no certificate of operation shall be issued for such location for a period of two years from the date of such final determination. For purposes of this section, closure due to criminal activity includes voluntary closure of the business after there have been arrests at the location or other notices relating to criminal activity or notices relating to suspension or revocation proceedings. This provision is not meant to prohibit the issuance of a certificate of operation to a business which initially failed to obtain a certificate of operation without any prior oral or written notification by the City that such was required.

(H) Where the applicant for the certificate of operation is not the record owner, as shown on the latest county assessment roll, then upon issuance of the certificate, the City shall send written notice to the property owner advising of the issuance of the certificate and the regulations applicable to the massage establishment and the property pursuant to this chapter; this may be accomplished by including a copy of this chapter with the notice.

§ 122.33 SUSPENSION, REVOCATION AND NONRENEWAL OF OPERATOR PERMITS AND CERTIFICATES OF OPERATION.

(A) Subject to the procedures set forth in this section, the Chief of Police may suspend or revoke a permit, or determine not to renew an Operator Permit, issued pursuant to this chapter whenever the Chief of Police determines that any of the following has occurred:

(1) The permittee, or an employee or independent contractor working on the premises, is conducting operations in a manner contrary to the provisions of this code;

(2) The permittee, or an employee or independent contractor working on the premises, is conducting operations in a manner which constitutes a public nuisance;

(3) The permittee, or an employee or independent contractor working on the premises, is conducting operations in a manner which is detrimental to the health, safety, or welfare of the City or its inhabitants;

(4) There is substantial evidence of prostitution;

(5) The permittee, or any employee or independent contractor working on the premises, has engaged in disqualifying conduct; or

(6) The Chief of Police makes any of the findings that would have justified denying the application in the first instance.

(B) If, in the discretion of the Chief of Police, an alleged violation is minor and capable of correction and there have not been previous violations by the Operator or the massage establishment, then prior to suspension or revocation a written notice may be given to the permittee of the alleged violation(s) involved to allow a period of time to correct the alleged violation(s). Such period shall not exceed five business days, at the end of which period, an inspection shall be conducted to determine whether the alleged violation(s) has been corrected. For purposes of this section, written notice shall include a notice of violation, an administrative citation, or a criminal citation.

(C) If the Chief of Police determines that an alleged violation is not minor or capable of correction, that an alleged violation(s) continues without correction, or that there have been previous violations of this chapter, even if for different reasons, then the Chief of Police may issue a notice of suspension or revocation, along with an administrative or criminal citation. Examples of a violation which will be determined by the Chief of Police to be not capable of correction include but are not limited to substantial evidence of prostitution activity on the massage establishment premises or an immediate threat to public health, safety, or welfare.

(D) Notice of suspension, revocation or non-renewal. A notice of suspension or revocation, or a notice of non-renewal of an Operator Permit, shall contain a statement of the violation(s) which constitutes the basis for the suspension or revocation, notice of the right to appeal to the City Manager in accordance with § 122.34, and notice that a failure to appeal shall constitute a failure to exhaust administrative remedies. If an alleged violation is capable of correction, the notice shall also advise the permittee to correct the alleged violation(s) within the time to respond.

(E) Unless the notice provides otherwise, the effective date of the suspension or revocation shall be the deadline to file an appeal, or, if an appeal is filed, the date that notice of a decision suspending or revoking a permit is served.

(F) Where all massage activity is required to cease, notice shall also be served on the owner of the property if different from the Operator or certificate holder.

(G) The notice shall include information about the right to appeal.

(H) Surrender of certificate of operation and permits. Any permittee shall immediately surrender his or her permit to the Chief of Police upon the effective date of its suspension or revocation. The Operator shall immediately surrender the certificate of operation upon revocation of an Operator Permit if there is no other permitted Operator for the massage establishment.

§ 122.34 APPEALS TO CITY MANAGER.

(A) *Appeals.*

(1) Appeals from any decision of the Chief of Police or Finance Director under this chapter shall be in writing, shall clearly state the applicable basis for the appeal and shall be filed with the City Clerk no later than ten calendar days following the date of the notice.

(2) The City Clerk shall not accept an appeal, and no hearing shall be held, unless the appellant has paid a filing fee, in an amount set by resolution of the City Council, to defray the cost of such appeal. Any appeal without the timely payment of fees shall be considered to be untimely.

(3) The scope of the appeal hearing pursuant to this section shall be limited to those issues raised by the appellant in the written appeal, as submitted pursuant to division (A)(1) of this section.

(B) *City Manager action.*

(1) Upon receipt of a timely filed appeal, the City Clerk shall set the matter for hearing before the City Manager. The hearing shall be held not fewer than ten calendar days nor more than 45 calendar days from the date of the appeal request. The hearing may be continued from time to time upon the mutual consent of the parties.

(2) The appellant shall be provided with notice of the time and place of the appeal hearing, as well as a copy of all relevant materials at least seven calendar days prior to the hearing.

(3) At the time of such hearing, the City Manager shall review the records and files relating to the decision.

(a) The City Manager shall permit any interested person to present any relevant evidence bearing on the issues involved in the matter.

(b) In conducting the hearing, technical rules relating to evidence and witnesses shall not apply. Any relevant evidence may be admitted if it is material and if it is evidence customarily relied upon by responsible persons in the conduct of their affairs regardless of the existence of any common law or statutory rule which might make admission of such evidence improper over objection in civil actions. Hearsay evidence may be admissible if it is the sort upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The rules of privilege shall be applicable to the extent they are now, or are hereafter permitted in civil actions. Irrelevant, collateral, and repetitious testimony shall be excluded.

(c) In determining whether a person should be disqualified for meeting the definition of ***PERSON WHO HAS ENGAGED IN DISQUALIFYING CONDUCT*** as set forth in § 122.02, the City Manager may consider: the nature and severity of the act(s) or crime(s); whether there were any additional subsequent act(s) or crime(s); the number of act(s) or crime(s); and how recent the act(s) or crime(s) were.

(4) The appellant shall have the burden of proving that he or she meets the requirements for issuing the permit or certificate in the first instance; the City shall have the burden in proving that grounds exist for suspending, revoking or failing to renew a permit.

(5) Based upon the evidence presented at the hearing, the City Manager shall determine whether the decision should be affirmed, modified, or reversed.

(6) The City Manager shall issue his decision within ten business days after the close of the hearing. The City Manager's decision shall include a statement of the reasons therefor.

(7) The decision of the City Manager shall include notice that the decision is final and conclusive, that judicial review may be sought therefrom pursuant to Cal. Civil Proc. Code § 1094.5, and that any action filed in the superior court shall be filed within 90 days following the City Manager's notice pursuant to Cal. Civil Proc. Code § 1094.6.

§ 122.35 NOTICES.

(A) All notices required to be given pursuant to this chapter shall be served on the responsible party (i.e., permittee, applicant, appellant, or a representative thereof) either by personal delivery or by deposit in the United States mail in a sealed envelope postage prepaid addressed to such responsible party as the name and address appear in the most recent application on file with the City. Service by mail shall be deemed to have been completed on the date deposited in the mail. Notices shall include information regarding appeal rights and a statement that the failure to file an appeal shall constitute a failure to exhaust administrative remedies.

(B) In all cases where the certificate holder is not the property owner, notices shall also be sent to the property owner of record where the notice relates to possible closure of the business due to suspension or revocation.

OPERATION AND FACILITY REQUIREMENTS

§ 122.50 OPERATIONAL REQUIREMENTS.

(A) Hours and conditions of operation.

(1) No massage establishment shall operate nor shall any massage be administered in any massage establishment between the hours of 10:00 p.m. and 8:00 a.m. A massage begun any time before 10:00 p.m. must nevertheless terminate at 10:00 p.m. The hours of operation must be displayed in a conspicuous public place in the lobby within the massage establishment and in any front window clearly visible from outside of the massage establishment. These hours of operation may be modified pursuant to a conditional use permit.

(2) During hours of operation, no person other than a valid permit holder under this chapter, a massage practitioner, a massage therapist, or a patron shall be allowed beyond the reception area of the massage establishment.

(3) Patrons and visitors shall only be permitted in the massage establishment during the hours of operation.

(a) Visitors shall only be permitted in the reception area of the massage establishment.

(b) Patrons shall only be permitted in massage treatment areas if at least one massage technician is on the premises.

(4) The massage establishment shall be supervised during all hours of operation by an authorized Operator for the massage establishment.

(a) An Operator may not manage more than one massage establishment at any given time.

(b) The name and photograph (minimum size of four inches by six inches) of the on-duty Operator shall be posted in a conspicuous public place in the lobby of the massage establishment at all times that the business is open. This provision shall not apply to sole providers. Regardless of the number of Operators that may be approved for the location, only one Operator may be identified as the on-duty Operator at a time.

(5) No massage establishment shall be used for residential purposes. There shall be no massage tables, cots, or beds in the establishment other than as shown on the approved floor plan. Locker facilities shall be provided for all employees and independent contractors and all personal items of the employees and independent contractors shall be kept in the lockers while at the massage establishment.

(B) *Posting requirements.* In addition to any other requirements for posting set forth in this chapter, the following shall also apply:

(1) A recognizable and legible sign complying with the requirements of this code shall be posted at the main entrance identifying the establishment as a massage establishment.

(2) Each service offered, the price thereof, and the minimum length of time such service shall be performed shall be posted in English and such other languages as may be convenient to communicate such service, in a conspicuous public location in each massage establishment. No services shall be performed and no sums shall be charged for such services other than those posted. Nothing herein prohibits a voluntary tip from being paid by the patron.

(3) Any posted signs which are in a language other than English shall also be posted in English.

(C) *Instruments, equipment, and personnel.*

(1) Disinfecting agents and sterilizing equipment shall be provided for any instruments used in performing acts of massage and said instruments shall be disinfected and sterilized after each use.

(2) Unless otherwise approved by a conditional use permit, massages shall be administered only on standard or portable massage tables or chairs which are covered with a durable, washable plastic or other acceptable waterproof material. Beds, mattresses, water beds, futons, sofa beds, any type of portable or convertible beds, and foam pads more than four inches thick or with a width of more than four feet shall not be permitted in the establishment.

(3) No massage technician shall massage the genitals or anal area of any patron nor shall any Operator of a massage establishment allow or permit such a massage to the above-specified areas.

(4) No massage technician shall massage the breasts of a female patron without the written consent of the person receiving the massage and a referral from a licensed California health care provider, nor shall any Operator of a massage establishment allow or permit such a massage to the above-specified area.

(5) A massage shall not be given and no patron shall be in the presence of any massage establishment staff unless the patron's genitalia and, if a female patron, the female patron's breasts, are fully covered by a fully opaque, nontransparent covering.

(6) Persons providing services in the massage establishment shall not be dressed in attire that is: transparent, see-through, substantially exposes the massage technician's undergarments, or exposes the massage technician's breasts, buttocks, or genitals; in a manner which has been deemed by CAMTC to constitute unprofessional attire based on the custom and practice of the

profession in California; or in swim attire unless such person is providing a water-based massage modality which has been approved by CAMTC.

(7) All massage establishments shall be so equipped, maintained and operated as to effectively control the entrance, harborage, and breeding of vermin, including flies. When flies or other vermin are present effective control measures shall be instituted for their control or elimination.

(8) Clean and sanitary towels, sheets, and linens shall be provided for each patron of the establishment. No common use of towels or linens shall be permitted. Heavy white paper may be substituted for sheets; provided, that such paper is used once for each person and then discarded into a sanitary receptacle.

(9) All massage tables shall be at least two feet away from all walls at all times.

(D) *Personnel lists.*

(1) Within seven calendar days of receiving a certificate of operation, the Operator shall provide the Police Department with a complete list of all massage technicians who are working or will work, be employed, or provide massage services in the massage establishment along with a copy of their CAMTC certificate and identification card, as well as with the name and residence address of the manager principally in charge of the operation of the massage establishment and of any other manager.

(2) The Operator shall have a continuing obligation to notify the Chief of Police in writing of any changes in massage technicians and managers within seven calendar days of such change.

(3) The Operator shall maintain copies of each massage technician's CAMTC certificate and identification card on file on the premises of the massage establishment which shall be available to any individual upon request, including but not limited to employees of the City. Additionally, the Operator shall be required to file copies of each CAMTC certificate and identification card with the Police Department within seven days of a massage technician beginning to work at the massage establishment. Information required by this section shall be maintained at the massage establishment for a minimum of two years following the date that the person ceases providing services/employment to the massage establishment.

(4) The Operator shall maintain on the premises of the massage establishment a register of all non-state certified persons employed, working or providing other services at the massage establishment. The register shall be maintained for a minimum of two years following the time that the person ceases providing services/employment to the massage establishment. The Operator shall make the register immediately available for inspection upon demand of a representative of the Police Department, any health officer, or any other official charged with enforcement of this chapter. The register shall include but is not limited to the following information:

(a) Name, nicknames, and/or aliases;

(b) Home address and relevant phone number, including but not limited to home, cellular, and pager numbers;

- (c) Age, date of birth, gender, height, weight, color of hair and eyes;
- (d) The date such person began employment or providing services, and the date such person ended employment or stopped providing services, if any;
- (e) The duties of each person; and
- (f) In a separate portion of the register, Social Security numbers, which shall only be available for review by the Police Department or other law enforcement personnel, but not health officers or other officials charged with the enforcement of this chapter.

(E) *Prohibited conduct.*

(1) No alcoholic beverages shall be sold, served, or furnished on the premises of any massage establishment without a valid alcoholic beverage license from the state and conditional use permit from the City.

(2) No storage or sale of condoms or spermicides shall be permitted within the massage establishment.

(3) No Operator shall hire, employ, or allow a person to perform massage services unless such person possesses a valid CAMTC certificate. Each Operator of a massage establishment shall verify that all persons hold the appropriate CAMTC certificate required by this chapter. Nothing herein prevents an Operator from hiring, employing, or allowing a person to perform services allowed by such person's cosmetology or barber license, if the business has a state establishment license in addition to a certificate of operation.

(4) No person shall use or possess, nor shall there be, any storage of, any sexually-oriented implements or paraphernalia which are designed or marketed primarily for the stimulation of human genital organs or sadomasochistic activity.

(5) No electrical, mechanical, or artificial device shall be used by any massage establishment staff for audio and/or video recording or for monitoring the performance of a massage, of the conversation or other sounds in the massage rooms, without the knowledge and written consent of the patron.

(6) No Operator of a massage establishment shall place, publish, or distribute or allow or cause to be placed, published or distributed any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective patrons or clients that any service is available other than those services described in this chapter and posted on the premises as required in this chapter, nor shall any massage establishment employ language in the text of any advertising that would reasonably suggest to a prospective patron that any service is available other than those services described in this chapter and posted on the premises as required by this chapter.

§ 122.51 BUILDING AND FACILITY REQUIREMENTS.

(A) The building, or unit within the building where the massage establishment is located, shall comply with all applicable building code requirements.

(B) All massage rooms and dressing rooms shall be screened off by hinged doors that can open inward. Swinging doors that can open inward, draw drapes, curtain enclosures, or

accordion-pleated closures in lieu of doors are acceptable on all inner dressing rooms and massage therapy rooms or cubicles. Except for bathroom doors, interior doors may not have locks on them.

(C) In addition to the minimum lighting required by the provisions of Chapter 150 of the San Gabriel Municipal Code, all rooms in which massages are being provided shall be lit with a minimum of one light fixture emitting at least 210 lumens for every 150 square feet of space during the administration of such services, with the light fixtures being spread throughout the space. No dimmer switches, strobe lights, flashing lights, colored light, or any coverings or other apparatus, other than a lampshade, which changes or darkens the color of the primary light source shall be used in any room in which massage services are being provided.

(D) Any locker facilities provided for the use of patrons shall be fully secured for the protection of the patron's valuables and the patron shall be given control of the key or other means of access.

(E) The walls in all rooms where water or steam baths are given shall have a washable mold-resistant surface.

(F) All walls, ceilings, floors, pools, showers, bathtubs, steam rooms, and all other physical facilities for the establishment must be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms, or steam or vapor cabinets, shower compartments, and toilet rooms shall be thoroughly cleaned and disinfected each day the business is in operation. Bathtubs shall be thoroughly cleaned and disinfected after each use.

(G) One main entry that enters into the reception area shall be provided for patron use. All patrons, and any persons other than those providing services at the massage establishment, shall be required to enter and exit through the front door of the establishment.

(H) All exterior doors (except rear exterior doors used only for employee entrance to and exit from the massage establishment) shall remain unlocked during business hours, and the establishment shall comply with the provisions of the San Gabriel Municipal Code pertaining to the posting of signs stating that doors shall remain unlocked during business hours. Exits for fire safety purposes may be allowed where deemed necessary by the appropriate public safety agency. Notwithstanding the above, the front door may be locked if there is no staff available to assure security for the clients and massage staff who are behind closed doors, provided that the massage establishment is owned by one individual with one or no employees or independent contractors.

(I) There shall be no buzzer, alarm, or intercom system.

(J) No massage business located in a building or structure with exterior windows fronting a public street, highway, walkway, or parking area shall block visibility into the interior reception and waiting area through the use of curtains, closed blinds, tints, or any other material that obstructs or darkens the view into the premises or by signs that cover more than 25% of any windowpane. The interior of the business shall be plainly visible from the exterior of the business by passing vehicles and pedestrians.

§ 122.52 INSPECTIONS.

(A) Representatives of the City's Police Department, Fire Department, Community Development Department, and Finance Department, and agents for the City from the County Health Department and representatives of any state or local agencies with regulatory authority over massage establishments shall have the right to enter massage establishments, from time to time, during regular business hours, or at any time that the massage establishment is occupied or open for business, to verify the massage establishment is in compliance with all applicable laws without the need for an inspection or abatement warrant.

(B) Posting of Notices.

(1) The Operator shall cause to be conspicuously posted so that the same may be readily visible to persons in the reception area of the massage establishment, in letters that are a minimum of one inch in height, a notice in English which provides substantially as follows:

THIS MASSAGE ESTABLISHMENT AND THE MASSAGE ROOMS DO NOT PROVIDE COMPLETE PRIVACY AND ARE SUBJECT TO INSPECTION BY CITY AND HEALTH OFFICIALS WITHOUT PRIOR NOTICE

(2) In addition, Operators are encouraged to post this notice in language(s) that are best understood by the customers of the massage establishment.

(C) No person shall refuse to permit, cause delay of, or interfere with, a lawful inspection or compliance check of the premises by the officials listed in division (A) of this section at any time.

§ 122.99 PENALTY.

(A) It is unlawful for any person to engage in conduct that violates any provision of this chapter, to engage in conduct which fails to meet the standards set forth in this chapter, or to own, manage, or operate a massage establishment that is not fully in compliance with the operational standards set forth in this chapter.

(B) Any violation of this chapter shall be a misdemeanor unless, in the sole discretion of the City Prosecutor, it is charged as, or reduced to, an infraction. Citations and warning notices may be utilized as determined appropriate to the circumstances by the enforcing personnel.

(C) In addition to the above, any massage establishment operated, conducted, or maintained contrary to the provisions of this chapter shall be and is declared to be unlawful and a public nuisance and the City may, in addition to or in lieu of prosecuting a criminal action under this chapter, commence an action or actions, proceeding or proceedings, for the abatement, removal, and enjoinder thereof, in the manner provided by law, including any code enforcement procedures established pursuant to the laws of the State of California or the City of San Gabriel; and may take such other steps and may apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such massage establishments and restrain and enjoin any person from operating, conducting or maintaining a massage establishment contrary to the provisions of this chapter. If an injunction is sought, attorney's fees and costs will be assessed at the discretion of the court against the party subject to said injunction.

(D) Any violation of the provisions of this chapter shall constitute a separate offense for each and every day during which such violation is committed or continued.

SECTION 3. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase be declared unconstitutional.

SECTION 4. Certification. The City Clerk shall certify the passage of this ordinance and shall cause the same to be processed as required by law.

SECTION 5. This Ordinance is exempt from CEQA pursuant to section 15061(b)(3) under the general rule that CEQA does not apply to activities which can be seen with certainty to have no effect on the environment. Changing the regulations relating to Massage Establishments will not create any environmental impacts. Additionally, as a separate and independent ground, the Ordinance is further exempt from CEQA pursuant to section 15305 as a minor alteration to land use limitations: there is no area in which massage establishments are allowed which has a slope greater than 20% and the distance requirements for massage establishments do not result in any changes to land use or density.

SECTION 6. Effective Date. This ordinance shall become effective on the thirty-first day after passage.

Passed, approved, and adopted this ____ day of _____, 2017.

CHIN HO LIAO, MAYOR
CITY OF SAN GABRIEL

ATTEST:

ELEANOR K. ANDREWS, CITY CLERK
CITY OF SAN GABRIEL