

Agenda Report

TO: CITY COUNCIL

DATE: FEBRUARY 4, 2008

FROM: CITY MANAGER

SUBJECT: ZONING CODE AMENDMENT: MESSAGE ESTABLISHMENTS

CITY MANAGER'S RECOMMENDATION:

It is recommended that the City Council, following a public hearing:

1. Adopt the Initial Study and the Negative Declaration (Attachment 1) for the proposed Zoning Code Amendments and acknowledge the No Effect Determination by the Department of Fish and Game (Attachment 2);
2. Find that the adoption of the Zoning Code Amendments related to Massage Establishments is consistent with the goals, objectives and policies of the General Plan as outlined at the end of this report;
3. Approval of the proposed Zoning Code Amendments as contained in this report, and
4. Direct the City Attorney's office to prepare an ordinance codifying these amendments and return within 60 days for first reading.

PLANNING COMMISSION RECOMMENDATION:

On September 12, 2007, the Planning Commission considered the proposed Zoning Code amendments on Massage Establishments. The Commission approved staff's recommendation with the addition that the 250-foot distance separation requirement for new Massage Establishments from residentially zoned properties to include those establishments that will be located in the Central District Specific Plan. Staff's recommendation includes the additional recommendation from the Planning Commission.

EXECUTIVE SUMMARY:

With the emergence of various therapeutic massage and bodywork professions as recognized health and wellness modalities, along with the potential negative secondary effects of the Massage Establishment uses on adjacent residentially zoned properties, the City Council has asked staff to examine and make recommendations for amendments to the Zoning Code by distinguishing between the types of massage

services and implement requirements and definitions associated with the use.

BACKGROUND:

On April 2, 2007, the City Council called for review Conditional Use Permit CUP #4810, which was an application to establish a Personal Services, Restricted (massage services) use at 2030 E. Foothill Blvd. On April 30, 2007, the City Council approved an interim urgency ordinance temporarily prohibiting the issuance of permits for massage establishments. On June 11, 2007, the initial 45-day moratorium was extended for 10 months and 15 days. During this moratorium, staff has been instructed by the City Council to initiate a Zoning Code Amendment to review the potential secondary effect of massage uses on adjacent residentially zoned properties and to consider the creation of a distance separation requirement between massage establishments and residential uses. The Council suggested that the Central District could be treated differently from other commercial districts.

On July 18, 2007, staff presented information regarding massage establishments to the Public Safety Committee. At that meeting, a list of standardized conditions developed by the Zoning and Police staff were provided to the Committee. These conditions regulated the operation of massage uses. The Committee asked if these conditions could be incorporated into the Municipal Code as operational standards for existing and new Massage Establishments. The City Attorney advised the Committee that this was possible. The proposed standards are in Attachment 3 and will be incorporated into the Municipal Code with the Zoning Code amendments.

ANALYSIS OF CURRENT ZONING REGULATIONS:

The Zoning Code classifies a massage services or parlors as a "Personal Services, Restricted" land use along with check-cashing services and tattoo, piercing and similar services. These uses are subject to a Conditional Use Permit (CUP) review in the General Commercial (CG), General Industrial (IG) districts, Central District sub-districts 1, 4 and 6 and in the CG and IG portions of the East Colorado, Fair Oaks/Orange Grove and East Pasadena Specific Plans. This requirement was established in the 2005 Zoning Code.

Prior to 2005, a CUP was not required to establish a massage use. The 2005 Zoning Code established additional requirements for Personal Services, Restricted and Pawnshops uses. These requirements include a 500-foot distance requirement from other Personal Services, Restricted and Pawnshops uses. Upon submittal of a CUP application for a Personal Services Restricted use (massage use), the application is routed to applicable departments for review and comment. The Police Department is included in this routing list and this review.

The focus of the CUP process is on the compatibility of the proposed massage use with adjacent uses as well as to ensure that all Zoning Code requirements are being met. Such an approval runs with the land, so if the business is sold, the new owner must continue to meet all of the conditions of approval. The City requires a separate permit for persons who work or operate a massage use. This process is different from the

CUP process and was established to provide a process for a background check on the persons operating or working in a massage establishment. These permits do not run with the land and if there is a change in ownership or staff, then a new permit is required.

PROPOSED ZONING CODE AMENDMENTS:

The amendment will exclude massage services from the definition of Personal Services, Restricted (land use). It is proposed to create a new land use category of "Massage Establishments". Definitions associated with the new land use category along with specific requirements will be added (i.e. distance separation requirements) to reduce secondary effect of potentially illegitimate Massage Establishments on adjacent residentially zoned properties. The new definitions will assist in differentiating Massage Establishments from day/health spas. These new definitions are identified in Attachment 4 of this report. The new Massage Establishments land use category will continue to be subject to a Conditional Use Permit and only in those districts where it currently is a conditionally permitted use. All new Massage Establishments will continue to be subject to the 500-foot distance separation requirement from other Massage Establishments and Personal Services, Restricted uses (check-cashing services, pawnshops, and tattoo/piercing and similar services).

Massage Establishments

The new Massage Establishments land use category will be defined as any premises, place of business or membership club where there is conducted business or activity of furnishing, providing or giving for a fee or other form of consideration of a massage, fomentation, bath, manipulation of the body, electric or magnetic treatment, alcohol rub or other similar massage service or procedure where 20 percent or more of the establishment (gross floor area) is designated (permanently or temporarily) as massage/treatment rooms (partially or fully enclosed). In addition, the amended Zoning Code will list specific exemptions to the massage use classification. These include physicians, doctors, barbers, etc. A list of these exemptions is identified in Attachment 4 of this report.

Uses with Accessory Massage Component

The current Zoning Code does not distinguish businesses that offer ancillary massage services such as a Day/Health Spa use. In an effort to differentiate between the types of Massage Establishments, staff analyzed two types of massage businesses: massage parlors that may have negative secondary effects on adjacent residentially zoned properties and professional day spas or health clubs. Staff found that a number of uses have a massage component to the business but the use is not devoted exclusively to massages. This includes: day spas, health and physical fitness clubs, and beauty/nail salons. In some cases the massage activity occurs in a private room while in other cases it occurs out in the open as part of a beauty treatment. In discussions with the Police Department, Day/Health Spa uses should be differentiated from Massage Establishments use for it does not generate complaints or problems as those Massage Establishments that are exclusively Massage Establishments. Thus staff reviewed the existing day spas in the City to determine what percentage of the

floor area was devoted to massage purposes. Staff chose day spas because they are most likely to have the largest amount of floor area devoted to massage uses. Staff found that all but one of the day spas devotes less than 22 percent of their overall floor area to massage uses (see Attachment 5). As a result of this study, the recommendation is that a use with accessory massage that is less than 20 percent of the gross floor area of the use shall not be considered a massage establishment but would be considered a Personal Services (land use).

Distance Separation Analysis

The goal of implementing a distance separation requirement is to reduce secondary effects of Massage Establishments on adjacent residentially zoned properties in terms of crime rates, property values, and the quality of the City's neighborhoods. Staff reviewed a series of studies related to the secondary impacts of Massage Uses. These studies focused primarily on Massage Establishments and their impact when they operate near sexually oriented businesses. The conclusion of these studies is that Massage Uses do have a potential for secondary impacts when conducted in an area with sexually oriented businesses.

Staff with the aid of a consultant analyzed the issue to determine the appropriate distance separation between Massage Establishments and residentially zoned properties. A full summary is included in Attachment 6.

Staff assessed two different distance separation requirements (250 feet or 500 feet) in order to determine a reasonable distance requirement that would balance allowing the use with protecting residential neighborhoods. Staff has determined that Sexually Oriented Businesses (SOB) is subject to a 250-foot distance separation from residentially zoned properties. This distance was determined by several studies and legal cases. The studies conducted for SOB's found that at a distance of approximately 200 feet, the potential impact of the use is reduced. Secondary effects of massage uses on adjacent residentially zoned properties have the potential to be similar to secondary effects of SOB uses. The number of sites available for massage uses that are 250 feet from a residential district is 896 parcels with 644 parcels (72 percent) within the Central District. The number of sites available for massage uses that are 500 feet from a residential district is 653 parcels with 543 parcels (83 percent) available within the Central District. Massage uses are also allowed in the Industrial General (IG) zoning district, which is typically not adjacent to residential districts.

While these numbers may appear to be high, the number of available site is much lower in all districts. For example, the Commercial General (CG) zoning district has only 26 available parcels that are outside the 250 feet distance requirement from residential districts. With the addition of the 500-foot distance separation requirement between other Massage Establishments and Personal Services Restricted uses (check-cashing businesses, pawnshops, and tattoo parlors), along with the 250-foot distance separation requirement from residentially zoned properties, the number of available parcels is further reduced to 13 parcels. Thus the 250-foot distance requirement from residential districts along with the 500-foot separation requirement work together to reduce the

number of available sites and protect adjacent residential districts. If the distance requirement was increased to 500-feet from residential districts and use in conjunction with the 500-foot separation requirement from personal services - restricted uses, then there would no available sites in the CG District.

The recommendation is to require a 250-foot distance separation requirement for Massage Establishments from residentially zoned properties because:

1. At approximately a 200 foot distance, the potential for an impact on an adjacent residential district is reduced;
2. Based on Police Department's analysis, unlike SOB's, the majority of Massage Establishments are predominately legitimate uses;
3. Massage Establishments will continue to be subject to the distance separation requirement from Massage Establishments and Personal Services Restricted uses (500 feet) thus reducing the number of potential sites for massage establishments; and
4. The majority of the sites available for massage establishments will be in the Central District which does not abut single-family districts and only abuts multi-family districts along Arroyo Parkway.

Off-Street Parking Requirements for Massage Establishments

The proposed Zoning Code amendment will not result in any changes to the off-street parking requirement for Personal Services, Restricted and Massage Establishments uses. The parking requirement for Massage Establishments land use category will be the same as the current off-street parking requirement for Personal Services, Restricted land use category at 3 spaces per 1,000 square feet of gross floor area.

ENVIRONMENTAL DETERMINATION:

An Initial Environmental Study has been prepared for the project. The determination for the proposal is a Negative Declaration (Attachment 1). The comment period for the Initial Study ran from August 24, 2007 through September 12, 2007. No public comment was received. The Negative Declaration was adopted by the Planning Commission at the September 12, 2007 hearing. Based on a review of the Project as proposed, the Department of Fish and Game has determined that for purposes of the assessment of CEQA filing fees [F&G Code 711.4(c)] the project has no potential effect on fish, wildlife and habitat and the project as described does not require payment of a CEQA filing fee (Attachment 2).

GENERAL PLAN CONSISTENCY:

1. The proposed revisions to the Zoning Code are consistent with the following objectives and policies of the General Plan:

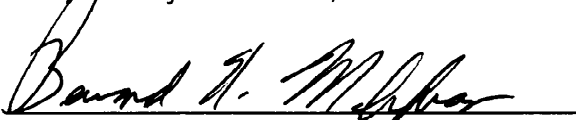
Objective 7 – Residential Neighborhoods: Preserve the character and scale of Pasadena’s established residential neighborhoods.

2. The proposed amendment would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City because the proposed amendment will further protect residential districts from the secondary impacts of massage uses by adopting a distance requirement for massage uses from residential districts

FISCAL IMPACT:

There will be no fiscal impact as a result of the proposed Zoning Code amendments on Massage Establishments. The new Massage Establishments land use will be subject to the review and approval of a Conditional Use Permit. Permitting fees will be collected for processing the Conditional Use Permits, which will cover the costs incurred from staff time required for project review. The ordinance will also amend applicable sections of the Zoning Code pertaining to Massage Establishments and Services. No new development is proposed, rather revisions and code amendments only.


Respectfully submitted,


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Approved by:


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- Attachment 1: Initial Study and Negative Declaration
- Attachment 2: No Effect Determination by the Department of Fish and Game
- Attachment 3: Conditions of Approval – Title 5 Amendment Reference
- Attachment 4: Proposed Zoning Code Amendments
- Attachment 5: Massage Establishments/Day Spa Floor Area Analysis
- Attachment 6: Distance Separation Analysis