

ORDINANCE NO. NS-XXX

ZONING ORDINANCE AMENDMENT NO. 2023-01 – AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA ANA AMENDING VARIOUS SECTIONS OF CHAPTER 41 (ZONING) OF THE SANTA ANA MUNICIPAL CODE RELATING TO NOXIOUS USES, MASSAGE ESTABLISHMENTS, AND RELATED CONFORMING CLARIFYING EDITS; ADDING A SECTION RELATED TO SUSPENSION OF CONDITIONAL USE PERMITS, VARIANCES, AND MINOR EXCEPTIONS; AND MAKING OTHER NON-SUBSTANTIAL EDITS TO ADDRESS EXISTING INTERNAL INCONSISTENCIES

THE CITY COUNCIL OF THE CITY OF SANTA ANA HEREBY ORDAINS AS FOLLOWS:

Section 1. The City Council of the City of Santa Ana hereby finds, determines, and declares as follows:

- A. At the regularly scheduled City Council meetings held on December 20, 2022, and January 17, 2023, respectively, the City Council discussed and requested staff analyze increasing the separation requirements of noxious uses from sensitive receptors and creating additional regulations for massage establishments.
- B. The Planning and Building Agency routinely reviews its ordinances to incorporate best practices, reflect changes to State law, and address community needs.
- C. Following analysis of the City Council points of discussion, staff has prepared Zoning Ordinance Amendment (ZOA) No. 2023-01 to amend various sections of Chapter 41 (Zoning) of the Santa Ana Municipal Code (SAMC) to address increasing the separation requirements of noxious uses from sensitive receptors and creating additional regulation for massage establishments.
- D. Amendments to Chapter 41 are necessary to ensure uniform and legally consistent regulations as well as additions to enable the City to implement a regulatory framework that protect the health, safety, and welfare of the City.
- E. Zoning Ordinance Amendment No. 2023-01 amends and adds various sections to Chapter 41, including Section 41-199.4 (Noxious uses), Section 41-1752 (Permitted zones and locations), Section 41-683.7 (Discontinuance of nonconforming massage establishments), Section 41-685 (Change of a nonconforming use), Section 41-650.5 (Suspension of conditional use permits, variances, minor exception permits), Section 41-

651 (Revocation procedure for conditional use permits, variances, and minor exception permits), Section 41-663 (Notices), Section 41-672 (Hearing), Section 41-371, 41-206, 41-222, 41-302, 41-318, 41-383, 41-417, 41-478, and 41-577 (Off-street parking), and Section 41-150.5 (Schools).

- F. The proposed amendments to the Santa Ana Municipal Code (SAMC) support the objectives and policies of the City's General Plan.
- G. On May 8, 2023, the Planning Commission held a duly-noticed public hearing to consider this Ordinance, where all interested persons were given an opportunity to be heard, and recommended approval of the ordinance to the City Council. Following Planning Commission recommendation of approval, the Planning Division added additional non-substantive, clarifying edits to Section 41-199.4(a) to address implementation of the Ordinance.
- H. On June 6, 2023, the City Council held a duly-noticed public hearing to consider this Ordinance, where all interested persons were given an opportunity to be heard.

Section 2. The recitals above are each incorporated by reference and adopted as findings by the City Council.

Section 3. Section 41.199.4 (Noxious Uses) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-199.4. - Noxious uses.

- (a) Any use other than eating establishments listed in Section 41-472 or 41-472.5 of this chapter, regardless of the zoning district it is established or proposed to be established in, that requires a permit from a regional, state, or federal agency to handle, store, emit or discharge particulate materials; exhaust emissions; or handle, store, emit or discharge regulated compounds, hazardous materials, chemicals, or substances that is located within ~~five hundred (500)~~ one thousand (1,000) linear feet of a public park, school (K-12) as defined by Section 11362.768 of the Health and Safety Code, or property used or zoned for residential purposes requires approval of a conditional use permit.
- (b) The ~~five hundred (500)~~ one thousand (1,000) linear foot distance shall be measured from the outermost boundary of the subject property to the closest point of any public park, school, or property used or zoned for residential purposes.
- (c) The property owner or business operator of a business regulated by subsection (a) shall be responsible for notifying the City of any requirement to obtain a permit from a regional, state, or federal agency. Notification to the City must be made prior to obtaining any permit from a regional, state, or federal agency for the business activities listed in subsection (a).

- (d) A business regulated by this section shall be in compliance with all provisions established by this Code and all applicable federal, state, or local regulations and conditions established by regulating and permitting agencies.

Section 4. Section 41-1752 (Permitted zones and locations) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-1752. - Permitted zones and locations.

- (a) A chair massage service may be located in commercial zoning districts where retail and service uses are permitted.
- (b) An ancillary massage establishment may only be located in zoning districts that permit health clubs, athletic clubs, gyms, hotels, or where medical services are permitted.
- (c) Massage establishments may be located within the following zoning districts subject to the issuance of a conditional use permit:
 - (1) Massage establishments may be permitted on parcels in the C1, C1-MD, C2, C4, C5, or C-SM zoning districts.
 - (2) Massage establishments may be permitted on a parcel within any Specific Plan or Specific Development zoning district in which massage establishments are defined and permitted.
 - (3) Massage establishments are not permitted in any other zoning district.
 - (4) No massage establishment shall be located within one thousand (1,000) feet of another massage establishment. The one thousand (1,000) foot separation requirement shall be measured from the primary entrance of the massage establishment to the primary entrance of the nearest massage establishment.
 - (5) No massage establishment shall be located on a parcel located within five hundred (500) feet of a property zoned or used for residential purposes. The five hundred (500) foot separation requirement shall be measured from the primary entrance of the massage establishment to the outermost boundary of the nearest residential parcel.

Section 5. Section 41-683.7 (Discontinuance of a nonconforming massage establishments) of Chapter 41 of the SAMC is hereby added to read as follows:

Sec. 41-683.7. - Discontinuance of nonconforming massage establishments.

- (a) All massage establishments that have a valid certificate of occupancy and a massage establishment permit pursuant to Chapter 22 (Massage

Establishments) of this Code, prior to the effective date of this section, shall be deemed a nonconforming massage establishment.

- (b) If a nonconforming massage establishment requires a new certificate of occupancy for any reason other than a change in business name with no change in ownership of the business, the nonconforming status shall be lost and any subsequent use must conform in every respect to the provisions of this chapter.
- (c) If a nonconforming massage establishment is in violation of any applicable federal, state, or local regulation for a period of sixty (60) consecutive days, receives three (3) noncompliant notices from a federal, state, or local regulatory agency in a one (1) year period, or is in violation of any applicable federal, state, or local regulation for a total of ninety (90) days in a one (1) year period, the nonconforming status shall be lost and any subsequent use of the building shall conform in every respect to the provisions of this chapter.

Section 6. Section 41-685 (Change of a nonconforming use) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-685. – Change of a nonconforming use.

- (a) The conversion of a residence in any commercial or industrial district to a use permitted in that district shall conform in every respect to all requirements and conditions set forth for such new use by this chapter.
- (b) Except as specified in section 41-685.5, 41-683.6, and 41-683.7, a commercial use in the M1 or M2 district which is a nonconforming use by reason of the absence of a conditional use permit may be changed to another commercial use without the necessity of obtaining a conditional use permit.

Section 7. Section 41-650.5 (Suspension of conditional use permits, variances, minor exception permits, and other land use entitlements) of Chapter 41 of the SAMC is hereby added in its entirety to read as follows:

Sec. 41-650.5. - Suspension of conditional use permits, variances, minor exception permits, and other land use entitlements.

- (1) The Executive Director of the Planning and Building Agency after notice by mail to the legal owner of the property and to the tenant of said property may immediately suspend a conditional use permit, variance, minor exception, or other land use entitlement on any one (1) or more of the following grounds:
 - (a) Failure to comply with conditions of approval, if granted subject to conditions.
 - (b) Evidence available at the time of review that was not available when the permit was granted that could not have been obtained with reasonable

diligence prior to the hearing, resulting in the findings made pursuant to Section 41-638(a)(1) no longer being valid.

(c) Violations of this Code or conditions of approval observed by a City official that are not corrected and abated to the satisfaction of the Executive Director of the Planning and Building Agency within (10) days of written notice by mail to the recorded owner of the property and to the tenant of said property if any.

(d) The holder of the conditional use permit, variance, minor exception, or other land use entitlement is exercising the entitlement in a manner that is inconsistent with the original approval and its scope.

(2) The suspension of a conditional use permit, variance, minor exception permit, or other land use entitlement shall only be lifted until such time that observed violations of this Code or conditions of approval have been abated and corrected to the satisfaction of the Executive Director of the Planning and Building Agency.

(3) The person whose conditional use permit, variance, minor exception, or other land use entitlement has been suspended by the Executive Director of the Planning and Building Agency may appeal the decision in writing to the Planning Commission within ten (10) days after such decision. The Planning Commission, after public hearing may affirm, change, or modify the original decision by the Executive Director.

(4) If the legal owner or person granted the permit fails to abate and correct the observed violations within ninety (90) days of suspension of the permit, the City may elect to commence revocation procedures outlined in Section 41-651 of this chapter.

Section 8. Section 41-651 (Revocation procedure for conditional use permits, variances, and minor exception permits) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-651. - Revocation procedure for conditional use permits, variances, and minor exception permits, and other land use entitlements.

The planning commission may, after twenty (20) days notice by mail to the record owner of the property and to the tenant of said property, if any, and after a public hearing, revoke a conditional use permit, a variance, ~~or~~ a minor exception permit, and other land use entitlements on any one (1) or more of the following grounds:

- (1) That the conditional use permit, variance, ~~or~~ minor exception permit, or other land use entitlement was obtained by fraud or misrepresentation.
- (2) That the conditional use permit, variance, ~~or~~ minor exception permit, or other land use entitlement has been exercised by the person granted the ~~conditional use permit, variance, or minor exception permit~~ entitlement, or his representative, successors, or assigns, contrary to the terms or conditions of approval, or in

violation of any statute, ordinance, law or regulation not excused by the conditional use permit, variance, or minor exception permit.

- (3) That the use permitted by the conditional use permit, variance, or minor exception permit, or other land use entitlement is being or has been so exercised as to be detrimental to the public health, welfare, or safety or so as to constitute a nuisance.

The person whose conditional use permit, variance, or minor exception permit, or other land use entitlement has been revoked by the planning commission may appeal the decision of the planning commission in writing to the city council within ten (10) days after such decision by the planning commission. The city council, after public hearing, may affirm, reverse, change or modify the original decision of the planning commission. In the event a conditional use permit, variance, minor exception permit, or other land use entitlement has been revoked and said revocation is in effect, an application for another conditional use permit, variance, minor exception permit, or other land use entitlement of the same or substantially similar use or scope may not be filed for at least twelve (12) consecutive months from the date of revocation.

Section 9. Section 41-663 (Notices) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-663. - Notices.

Following the receipt in proper form of any such application, the director of planning shall fix a time and place of public hearing thereon. The date of such public hearing and location of the property and nature of the request shall be given in a manner consistent with Section 2-153 of this Code.~~in the following manner:~~

- ~~(a) By publishing at least once and not less than ten (10) days before the date of the hearing in a newspaper of general circulation.~~
- ~~(b) The planning commission may further require posting, not less than five (5) days prior to said hearings, placards on such property and for a distance of not less than three hundred (300) feet in each direction from the exterior limits of such property.~~

Section 10. Section 41-672 (Hearing) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-672. - Hearing.

- (a) Except as provided in subsection (c) of this section, whenever approval of plans for a development project will constitute a substantial or significant deprivation of property rights of other landowners, the director of planning and development services shall set the matter for public hearing ~~and provide notice of the time and place of the hearing to all persons, including businesses, corporations, or other public or private entities, shown on the last equalized assessment roll, as owning real property within three hundred (300) feet of the property which is the subject of the application~~ pursuant to Section 2-153 of this Code. ~~The notice shall be~~

given by direct mailing to the owners at least five (5) days prior to the date of the hearing.

- (b) Whenever a public hearing is required pursuant to subsection (a) of this section, the applicant may be required to provide the director of planning and development services with a list of the names and addresses of the property owners entitled to notice under said subsection (a).
- (c) If the development project requires a discretionary approval in order to proceed, and if the application for such discretionary approval requires a public hearing by the planning commission or the city council, then no hearing need be held on the development plan separate and apart from the hearing on the application for the discretionary approval; provided, however, in such event:
 - (1) The notice of hearing on the application for the discretionary approval shall meet the requirements of subsection (a) of this section;
 - (2) Any approval of the development project plans by the director of planning and development services shall be subject to the condition that such plans be subsequently approved by the planning commission or city council following the hearing;
 - (3) The hearing shall extend to and include all issues relevant to development project plan approval under this division; and
 - (4) The planning commission or city council shall approve, conditionally approve, or disapprove the plans for the development project following the hearing.

Section 11. Section 41-371 (Off-street parking) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-371. - Off-street parking.

Off-street parking shall be provided in the manner prescribed in Article ~~IV~~ XV of this chapter.

Section 12. Section 41-206 (Off-street parking) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-206. - Off-street parking.

Off-street parking shall be provided in the manner prescribed in Article ~~IV~~ XV of this chapter.

Section 13. Section 41-222 (Off-street parking) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-222. - Off-street parking.

Off-street parking shall be provided in the manner prescribed in Article ~~IV~~ XV of this chapter.

Section 14. Section 41-302 (Off-street parking) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-302. - Off-street parking.

Off-street parking shall be provided in the manner prescribed in Article ~~IV~~ XV of this chapter. However, of the off-street parking required by Article ~~IV~~ XV, at least one parking space per unit shall be within a garage or carport. All additional parking stalls may be uncovered.

Section 15. Section 41-318 (Off-street parking) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-318. - Off-street parking.

Off-street parking shall be provided in the manner prescribed in Article ~~IV~~ XV of this chapter.

Section 16. Section 41-383 (Off-street parking) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-383. - Off-street parking.

Off-street parking shall be provided in the manner prescribed in Article ~~IV~~ XV of this chapter.

Section 17. Section 41-417 (Off-street parking) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-417. - Off-street parking.

Off-street parking shall be provided in the manner prescribed in Article ~~IV~~ XV of this chapter.

Section 18. Section 41-478 (Off-street parking) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-478. - Off-street parking.

Off-street parking shall be provided in the manner prescribed in Article ~~IV~~ XV of this chapter.

Section 19. Section 41-577 (Off-street parking) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-577. - Off-street parking.

Off-street parking and loading shall be provided in the manner and number prescribed by article ~~IV~~ XV of this chapter. However, of the off-street parking required by article ~~IV~~ XV, not less than one (1) parking space per dwelling unit shall be a covered parking stall; that is, said stall shall be in a carport or garage.

Section 20. Section 41-150.5 (Schools) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-150.5. - Schools.

A school means any public, charter, or private educational facility for elementary, middle, junior high, and high school, serving kindergarten through twelfth grade students, including denominational and sectarian, boarding schools, and military academies, but does not include ~~preschools and child day care~~ daycare centers uses as defined in Section ~~41-42.5~~ 41.47.5.

Section 21. The City Council finds and determines that this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the State CEQA Guidelines because it will not result in a direct or reasonably foreseeable indirect physical change in the environment, as there is no possibility it will have a significant effect on the environment, and it is not a “project,” as defined in Section 15378 of the CEQA Guidelines.

Section 22. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Santa Ana hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

Section 23. This Ordinance shall become effective thirty (30) days after its adoption.

Section 24. The Clerk of the Council shall certify the adoption of this ordinance and shall cause the same to be published as required by law.

ADOPTED this _____ day of _____, 2023.

Valerie Amezcua
Mayor

APPROVED AS TO FORM
Sonia R. Carvalho, City Attorney

By: John M. Funk
John M. Funk
Chief Assistant City Attorney

AYES: Councilmembers: _____

NOES: Councilmembers: _____

ABSTAIN: Councilmembers: _____

NOT PRESENT: Councilmembers: _____

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, _____, City Clerk, do hereby attest to and certify that the attached Ordinance No. NS-_____ to be the original ordinance adopted by the City Council of the City of Santa Ana on _____, 2023 and that said ordinance was published in accordance with the Charter of the City of Santa Ana.

Date: _____

Jennifer L. Hall
City Clerk
City of Santa Ana