



City of Santa Ana
20 Civic Center Plaza, Santa Ana, CA 92701
Planning Commission Staff Report
December 12, 2022

TOPIC: Zoning Ordinance Amendment No. 2022-03 – Updates to various sections of Chapter 41 (Zoning) of the Santa Ana Municipal Code (SAMC).

AGENDA TITLE:

Zoning Ordinance Amendment No. 2022-03 – Updates to various sections of Chapter 41 (Zoning) of the Santa Ana Municipal Code (SAMC) related to family daycare, regional planned sign program regulations, massage establishments, medical offices operated in the professional zone, retail uses in industrial zones, trash bin enclosures, Urban Lot Split and Two-Unit Developments standards, various use definitions, regulation of noxious uses, regulation of electric fences, and clarifications to permitting standards for light processing facilities.

RECOMMENDED ACTION

Recommend that the City Council adopt an ordinance approving Zoning Ordinance Amendment No. 2022-03 to amend various sections of Chapter 41 (Zoning) of the Santa Ana Municipal Code (SAMC).

EXECUTIVE SUMMARY

Staff is proposing to amend several sections of Chapter 41(Zoning) of the SAMC to comply with changes in state law, clarify and revise standards, respond to current economic trends, and begin a series of zoning code revisions consistent with actions adopted in the General Plan Update. Staff is requesting amendments to various sections of Chapter 41 pertaining to family daycare, regional planned sign program regulations, massage establishments, medical offices operated in the professional zone, retail uses in industrial zones, trash bin enclosure Urban Lot Split and Two-Unit Development standards, various use definitions, regulation of noxious uses, regulation of electric fences, and clarifications to permitting standards for light processing facilities. The proposed amendments are described in further detail in the Discussion section of this report.

DISCUSSION

Various sections within Chapter 41 of the SAMC have been revised periodically over the last several years to respond to changes in development and business practices, to adopt new permitting procedures, and to comply with changes to state and federal laws. In a continuing effort to comply with changes to state law, establish high-quality development standards, create a user friendly environment for residents and the business community, and to commence the work of enacting the various policies and actions set forth in the General Plan, the Planning Division is proposing revisions to various sections of the Zoning Code.

Table 1 below and on the following pages illustrates the existing and proposed regulations. The amendments identified are the first of several amendments that will be made to the Zoning Code leading up to the comprehensive update of the Zoning Code. The proposed changes would apply citywide.

Table 1: ZOA No. 2022-03 Current and Proposed Text Regulations

| Topic | Existing Zoning Code Regulations | Proposed Zoning Code Regulations |
|--------------------------------|---|---|
| Family Daycare Facilities | <ol style="list-style-type: none"> Definition for “Child Care Facility” (Sec. 41-42.5). Uses permitted in the Single-Family Residence (R1) section (Sec. 41-232) requires approval of a land use certificate for a large family daycare facility. Child care facility permitted in the Professional (P), Community Commercial (C1), Community Commercial—Museum District (C1-MD), Arterial Commercial (C5), Light Industrial (M1), and South Main Street Commercial District (C-SM). | <ol style="list-style-type: none"> Update definitions to conform to state definition: Family daycare and Daycare center, respectively. Delete references to child care facilities in various Zoning Code sections in which residential uses are permitted, and create a new section (Sec. 41-192.6) allowing small and large family daycare in residential districts Delete references to child care facilities in various commercial and industrial zoning district sections and replace with new term “Daycare center.” |
| Regional Planned Sign Programs | Regional institutions such as hospitals and institutions of higher learning do not benefit from the sign regulation flexibility afforded by the Zoning Code’s regulations on regional planned sign programs (Sec. 41-885). | Add definition for “regional institution,” such as hospitals and institutions of higher learning, to afford such uses the same benefits as regional commercial centers, automobile dealerships, and attractions for the purposes of flexible on-premises signage. |
| Massage Establishments | The SAMC currently allows massage establishments in commercial zoning districts and plan areas where service uses are permitted by right. | <ol style="list-style-type: none"> Revise the uses subject to a conditional use permit sections of the Community Commercial (C1), Community Commercial—Museum District (C1-MD), General Commercial (C2), Planned Shopping Center (C4), Arterial Commercial (C5), and South Main Street Commercial District (C-SM) to require a conditional use permit for massage establishments. Revise massage ordinance (Sec. 41-1752) to require conditional use for massage establishments. Revise massage ordinance definitions (Sec. 41-1751) to create distinct definitions for chair massage and ancillary massage establishment, allowing them to be regulated separately from massage establishments. |

ZOA No. 2022-03 – Zoning Code Amendments and Updates

December 12, 2022

Page 3

| | | |
|---|--|--|
| Medical Offices in the Professional Zoning District | The Professional (P) zoning district permits medical and dental offices by right. However, the zoning district does not currently permit medical uses operated by government, government-subsidized, not-for-profit, or philanthropic entities. | Revise the uses permitted subject to a conditional use permit section of the Professional (P) zoning district to require a conditional use permit for medical offices operated by government, government-subsidized. |
| Retail Use in Industrial Zoning Districts | Industrial zoning districts currently allow retail uses occupying up to five percent of tenant space as an ancillary use (Sec. 41-472.1). | Update the uses permitted section in Light Industrial (M1) district to allow retail uses by right on properties that front arterial streets (Sec. 41-472). |
| Change of Use Parking Exceptions | The SAMC (Sec. 41-1309.1) permits change of use in tenant spaces under two thousand five hundred (2,500) square feet without requiring additional parking and loading spaces. | Update the Zoning Code to extend change of use parking exception to industrial properties along arterial streets when converted to retail if retail component is equal to or less than 50 percent the gross square footage of the tenant space (Sec. 41-1309.1). |
| Trash Bin Enclosures | The SAMC (Sec. 41-623) provides trash bin enclosure standards. However, standards have not been updated in some time and no longer align with changes to state law related to waste collection. | Update the trash enclosure standards to align with CalGreen and SB 1383 requirements and provide use and maintenance standards (Sec. 41-623). |
| Urban Lot Splits and Two-Unit Developments (SB 9) | The City adopted its Urban Lot Split and Two-Unit Development standards (Sec. 41-2105 et seq.) in December of 2021 in response to California Senate Bill 9, the California Housing Opportunity and More Efficiency (HOME) Act. The intent was to require all new units created through the ordinance be made affordable. However, the adopted ordinance lacks clarity on the total number of affordable units required and affordability levels. | Provide clarity on the number of units and affordability level required for each type of project/product. Require all net new units created through provision of the ordinance be affordable: rental products shall be affordable to very low or low income households; for-sale products shall be affordable to moderate income households (Sec. 41-2109 and Sec. 41-2115). |
| Noxious Uses | The SAMC regulates industrial and noxious land uses through permitting them in industrial zoning districts. However, the SAMC does not provide additional regulation for uses that have a regional, state, or federal permit to emit or store or process hazardous waste that are in close proximity to sensitive land uses. | <ol style="list-style-type: none"> 1. Create new “noxious uses” section to require approval of a conditional use permit for industrial type uses located within 500 feet of a sensitive land use that requires a permit to discharge air contaminants or process or store regulated chemicals or substances (Sec. 41-199.4). 2. Update the Non-Conforming section of the Zoning Code to require a conditional use permit for noxious uses whenever an existing non-conforming business changes ownership and requires a new certificate of occupancy. Additionally, require businesses with these type of permits to remain in compliance with applicable laws or lose their |

| | | |
|--|--|---|
| | | nonconforming status (Sec. 41-683 and Sec. 41-683.6). |
| Counseling Services - Definition | The SAMC does not currently define counseling services. | Create “counseling services” definition in Division 2 (Definitions), Article I of the Zoning Code (Sec. 41-44.6). |
| Medical Office - Definition | The SAMC does not currently define medical office. | <ol style="list-style-type: none"> 1. Create “medical office” definition in Division 2 (Definitions), Article I of the Zoning Code (Sec. 41-121). 2. Update the permitted uses sections of the Professional (P), Community Commercial (C1), Community Commercial—Museum District (C1-MD), Arterial Commercial (C5), and South Main Street Commercial District (C-SM) to consistently use “medical office.” |
| Professional, Business, and Administrative Office - Definition | The SAMC does not currently define professional, business, and administrative office. | <ol style="list-style-type: none"> 1. Create “professional, business, and administrative office” definition in Division 2 (Definitions), Article I of the Zoning Code (Sec.41-127.5) 2. Update the permitted uses sects of the Professional (P), Community Commercial (C1), Community Commercial—Museum District (C1-MD), Arterial Commercial (C5), and South Main Street Commercial District (C-SM) to consistently use “professional, business, and administrative office.” |
| Electric Fences | The SAMC is currently silent on electric fences. The SAMC neither defines nor regulates electric fences, which have become more widely used as a means to secure property from theft and/or vandalism. | <ol style="list-style-type: none"> 1. Create “electric fence” definition in Division 2 (Definitions), Article I of the Zoning Code (Sec. 41-54.5) 2. Add new section to regulate zones and properties where electric fences are permitted (M1 and M2, where abutting a rail right-of-way) subject to a minor exception (Sec. 41-610.5). |
| Light Processing Facilities | The SAMC (Sec. 41-472 and Sec. 41-472.5) requires a conditional use permit for light processing facilities in the Light Industrial (M-1) zoning district. Section 41-1251 (Permits required) in Article XIV. – Recycling Facilities does not explicitly state that a conditional use permit is required for a light processing facility. | Amend Section 41-1251 to explicitly list and require a conditional use permit for light processing facilities, consistent with Section 41-472 and Section 41-472.5. |
| Landscaping – Synthetic Turf | The SAMC (Sec. 41-100 and Sec. 41-609) currently requires landscape areas be maintained with live plant material and other decorative elements. The code is silent on allowance of synthetic turf for projects where the Water Efficiency Landscape Standards do not apply. | Amend Section 41-100 and Section 41-609 to permit use of synthetic turf for projects that are not subject to the Water Efficiency Landscape Standards, provided they comply with landscape guidelines and permitting requirements established by the Director of the Planning and Building Agency. |

Family Daycare Facilities

Under the California Child Day Care Facilities Act, the State Department of Social Services licenses and regulates family daycare homes. In Santa Ana, a small family daycare home, which may provide care for up to eight children, is considered a residential use of property for purposes of all local ordinances. Large family daycare homes, which provide care for up to 14 children, require approval of a permit.

Senate Bill (SB) 234, effective January 1, 2020, now requires a large family daycare facility to be treated as a residential use of property for purposes of all local ordinances. SB 234 also prevents local jurisdictions from requiring any form of a permit, license, tax, fee, or other clearance to operate a large day care facility on a residential property. Family daycare facilities must be allowed on any property where a residential use is allowed, including single-family residences, duplexes and triplexes, townhomes, and multiple-family dwellings (apartments), according to Section 1596.78 of the Health and Safety Code.

The text of various zoning district regulations in the Zoning Code currently require approval of a land use certificate (LUC) application and accompanying fee to operate a large family daycare facility. In addition, SAMC Section 41-42.5 contains a definition for “Child Care Facilities.” The proposed ordinance would delete references to child care facilities in various Zoning Code sections where residential uses are permitted, and would create a new Section 41-192.6 allowing small and large family daycare as an accessory use to residential uses. The proposed ordinance would also create new definitions for “Family Daycare Facilities” and “Daycare Centers,” and replace any reference to “Child Care Facilities” in the permitted uses sections in the commercial and industrial zoning districts with “Daycare Centers.” The changes would update the Zoning Code to be consistent with state law.

Regional Planned Sign Programs

The Zoning Code currently affords regional commercial centers, automobile dealerships, and attractions flexibility with their on-premises signage without the need for approval of a variance application. Instead, SAMC Sec. 41-885 provides for approval of a regional planned sign program (RSPG) by the Planning Commission; the RSPG contains all location, design, and installation specifications for signage within the scope of a regional commercial centers, automobile dealerships, or attractions. Examples of such regional facilities in Santa Ana with approved RSPGs include MainPlace, Discovery Cube Orange County, McFadden Place, Hutton Centre, and Tom’s Truck Center. These regional facilities are approved for a combination of wall signs, banners, monument (freestanding) signs, mimetic signs, and digital signs for on-premises advertising.

Staff is proposing to amend SAMC Section 41-885 to define and allow a “regional institution” to submit an application for an RSPG for staff review and subsequent approval by the Planning Commission. This amendment is a proactive response to the effects of the global Covid-19 pandemic, during which many hospitals and institutions of higher learning began installing community-oriented signage to recognize the contributions of educational and

hospital staff during a critical time. As with any other regional facility as defined by SAMC Section 41-885, these types of facilities would seek Planning Commission approval of an RSPG before installing such signage, along with any other permanent advertising signage they may contemplate in the RSPG package.

Massage Establishments

On March 16, 2009, the City adopted Ordinance Amendment No. 2008-02 and Zoning Ordinance Amendment No. 2008-01 to amend Chapter 22 (Massage Establishments) and Chapter 41 (Zoning) of the SAMC to regulate massage establishments and massage technicians in response to concerns relating to the impacts of massage establishments and the potential establishment of new locations in the city. Past amendments to Chapter 41 included requirements for a conditional use permit (CUP) for massage establishments, an LUC for ancillary massage uses, implemented separation criteria similar to adult entertainment uses, and created operational standards specific to the massage use.

Subsequently, in September of 2009, California Senate Bill 731 (SB 731) became effective, which restricted local governments' ability to regulate massage establishments and massage technicians. The passage of SB 731 exempted massage technicians that possessed a massage technician certificate issued by the California Massage Therapy Council (CAMTC), a nonprofit public benefit corporation, from regulations and permit requirements that were previously adopted by the City. The new law required that massage establishments and other professional service uses be regulated in a uniform manner, prohibiting local governments from requiring restrooms, showers, or other facilities not required of other professional services. The changes to state law preempted City regulations and made several provisions of the Code inconsistent with state law and resulted in the City being unable to enforce the massage ordinance, and establishments and technicians were able to operate within the City without obtaining a CUP, LUC, or massage establishment permit. The passage of SB 731 had unintended consequences that resulted in the proliferation of massage establishments that engaged in unlawful activity that local governments had to deal with.

On January 1, 2015, California Assembly Bill (AB) 1147 (AB 1147) became effective, amending several sections of the Business and Professions Code and of the Government Code relating to massage establishments. By adopting AB 1147, the State Legislature returned broad control over land use in regulating massage establishments to local governments, provided only reasonable and necessary fees and regulations were enacted. Subsequently, the City adopted Ordinance No. NS-2903, which made changes to Chapter 22 and Chapter 41 of the SAMC, establishing a by-right massage establishment permitting program. The program allowed the establishment and operation of massage establishments with approval of a Certificate of Occupancy issued by the Planning and Building Agency and an annual massage establishment permit issued by the Police Department, provided operating and permit requirements were met.

Despite the existing requirements and development standards in place, massage establishments have proven to present opportunities for acts of prostitution, human trafficking, and the use and sale of illegal drugs, resulting in increased enforcement actions. Staff proposes to amend Chapter 41 of the SAMC to require a CUP for massage establishments, which would allow the City to more closely regulate this use and adopt conditions of approval to avoid or mitigate any impacts this use may have on the surrounding properties. The amendments distinguish ancillary massage establishments (i.e., commonly part of a spa in a hotel, athletic club, or gym), chair massage (i.e., massage business providing seated massages in an open area), from a massage establishment business. Ancillary massage establishments and chair massage businesses would not require a CUP. The proposed amendments will reduce the burdens on the City's enforcement agencies and permit the deployment of services to other matters.

Retail Uses in Industrial Zoning Districts

The global Covid-19 pandemic has resulted in impacts to local communities and businesses alike. It has also resulted in novel business concepts and the manner and types of spaces in which they operate to change. The Chapter 41 of the SAMC currently permits retail uses in the Light Industrial (M1) zoning district and Heavy Industrial (M2) zoning districts when they are ancillary to a primary industrial use and occupy no more than five percent of the gross square footage of the tenant space. To respond to changing business practices and needs, and to allow additional flexibility to allow business to thrive, staff is proposing to amend Section 41-472 of the SAMC to permit retail uses in the M1 zoning district on properties that front an arterial street.

Change of Use Parking Exceptions

In September of 2017, the City approved Ordinance No. NS-2923 amending Chapter 41 of the SAMC to permit a change of use exception to allow the change of certain uses within an existing building up to 2,500 square feet in size without the need to provide additional parking and loading spaces. For example, a tenant space may change from retail (five (5) parking spaces per 1,000 gross square feet) to a restaurant use (eight (8) spaces per 1,000 gross square feet) without providing additional parking. The adopted ordinance allowed more flexibility and facilitated the re-tenanting of commercial, professional, and industrial centers by removing barriers to permit the change in use. Staff is proposing amending Section 41-1309.1 of the SAMC to extend that flexibility and facilitate the change of use in existing industrial centers that front arterial streets from industrial uses to retail when the retail component is equal to or less than 50 percent of the gross square footage of the tenant space. Changes in use that exceed the proposed threshold would be required to provide the minimum off-street parking required by Chapter 41 of the SAMC.

Trash Enclosures

In response to SB 1383, also known as the Short-lived Climate Pollutant Reduction Act of 2016, and other changes to state law related to recycling and waste collection, the City updated Article II (Solid Waste Collection Regulations) of Chapter 16 (Garbage, Trash, and Weeds) of the SAMC April of 2022. Staff is proposing amending Section 41-623 of the SAMC to update the trash bin enclosure and maintenance standards to reflect and be consistent with the new regulations in Chapter 16.

Urban Lot Splits and Two-Unit Developments (SB 9)

The City adopted its Urban Lot Split and Two-Unit Development standards (Sec. 41-2105 et seq.) December of 2021 in response to SB 9, also known as the California Housing Opportunity and More Efficiency (HOME) Act. The intent of the ordinance was to require all new units created through its provisions be deed restricted as affordable. Currently, Chapter 41 of the SAMC requires at least one unit created under the ordinance be deed restricted as affordable. The existing code does not explicitly state the required affordability level of the unit. Additionally, existing code lacks clarity on the total number of affordable units that are required when an urban lot split is proposed. Staff is proposing amending Section 41-2105 to clarify that any net new units created through the provisions of Division 2 or Division 3 of Article XX be made affordable at the following levels: rental products shall be made affordable to very low or low income households; for-sale products shall be made affordable to moderate income households. Lastly, staff is proposing to correct a typographical error related to front yard setbacks. The existing code states that at least a twenty-five (25) foot setback is required, when it should have read twenty (20), consistent with the Single Family (R1) zoning district standards.

Noxious Uses

In response to community concerns related to environmental pollution and the proximity of certain industrial uses in relation to homes, schools, and parks, the City adopted numerous environmental justice policies and actions in its General Plan to amend use regulations and development standards in the Zoning Code. A majority of the actions in the General Plan related to use, buffers, and development standards will be analyzed and addressed through the comprehensive Zoning Code Update. However, staff will continue to analyze and propose amendments concurrent with the work taking place to comprehensively update the Zoning Code in an effort to immediately address pressing matters. To that end, staff is proposing to create a new Section 41-199.4 (Noxious uses) to require a CUP for industrial uses that require a permit to handle, store, emit or discharge regulated compounds, materials, chemicals, or substances from a regional, state, or federal agency when located within 500 feet of a public park, school, or a property used or zoned for residential purposes. Additionally, staff proposes to create a new Section 41-683.6 (Discontinuance of nonconforming noxious use) to require these types of businesses that do not have a CUP and are nonconforming to comply with development standards and CUP requirements when a business changes ownership, requires a new Certificate of Occupancy, or is in violation of any applicable federal, state, or local

regulation for a period of sixty (60) consecutive days, receives three noncompliant notices, or is in violation for a total of ninety (90) days in a one year period.

Professional, Business, and Administrative Office; Counseling Services; Medical Offices

Chapter 41 of the SAMC currently does not provide a definition for “professional, business, and administrative office,” and zoning districts where the use is permitted utilize inconsistent terminology. Staff is proposing to create a new Section 41-127.5 to define “professional, business, and administrative office” and to amend the uses permitted sections of various zoning districts where the use is permitted to utilize consistent terminology and provide clarity.

Chapter 41 of the SAMC currently permits “counseling services” in the General Commercial (C2) zoning district subject to a CUP, but Chapter 41 does not provide a definition for the use. As such, businesses offering counseling services have attempted to operate in zoning districts where the use is not permitted under the impression that the use could be classified as a “professional, business, and administrative office” or a “medical office.” To provide clarity to prospective businesses, staff is proposing to create a new Section 41-44.6 to define “counseling services.”

Chapter 41 of the SAMC currently does not provide a definition for “medical office,” and zoning districts where the use is permitted utilize inconsistent terminology. The lack of a definition and utilization of inconsistent terminology, staff spends an inordinate amount of time providing members of the public and prospective business operators clarification on what business uses are categorized as a medical office and where the use is permitted. Staff is proposing to create a new Section 41-121 to define “medical office” and to amend the uses permitted sections of various zoning districts where the use is permitted to provide consistency in terminology and clarity. The amendments would also permit medical offices operated by government, government-subsidized, not-for-profit, or philanthropic entities subject to approval of a CUP.

Electrified Security Fences

The State of California approved AB 358 August of 2021. The bill authorized property owners that meet specified requirements to install and operate electrified fences on their property to protect and secure commercial or industrial property where a local agency has adopted an ordinance to permit them. To provide property and business owners another option to protect their property from theft or vandalism, staff is proposing to amend Section 41-610.5 (Walls and fences) of the SAMC to permit electric fences in the Light Industrial (M1) and Heavy Industrial (M2) zoning districts, respectively, on properties that abut a railroad right-of-way subject to the issuance of a minor exception. Additionally, staff is proposing a number of development standards such as minimum distance from residential properties, screening requirements, and accessibility requirements to ensure community compatibility, aesthetic considerations, and emergency responder access are addressed and maintained.

Light Processing Facilities

On July 6, 2021, the City Council adopted an Ordinance No. NS-3007 amending sections 41-472 and 41-472.5 of the SAMC to require a CUP for light processing facilities in the Light Industrial (M1) zoning district. While sections 41-472 and 41-472.5 were amended to require a CUP, Section 41-1251 (Permits required) in Article XIV. – Recycling Facilities was not updated to expressly require a CUP for light processing facilities. Staff is proposing to amend Section 41-1251 to explicitly list and require a CUP for light processing facilities, consistent with sections 41-472 and 41-472.5.

Landscaping – Synthetic Turf

In response to the extreme drought conditions throughout California, staff is proposing to amend Section 41-100 and Section 41-609 to include synthetic turf as a permissible material and to require compliance with landscape guidelines on file with the Planning and Building Agency. The proposed amendments will allow those properties and projects not subject to the Water Efficient Landscape Standards the ability to install synthetic turf as part of the required landscaping and the flexibility needed to adapt guidelines to address the evolving water crisis.

ENVIRONMENTAL IMPACT

Pursuant to the California Environmental Quality Act (“CEQA”) and the CEQA Guidelines, the adoption of this Ordinance is exempt from CEQA review pursuant to sections 15060(c)(2) and 15060(c)(3) of the 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. As a result Environmental Review No. 2022-73 will be filed upon adoption of this ordinance.

FISCAL IMPACT

There is no direct fiscal impact associated with this action.

EXHIBIT(S)

1. Ordinance for ZOA No. 2022-03
2. Copy of Public Notice

Submitted By:
Ricardo Soto, AICP, Principal Planner

Approved By: Minh Thai, Executive Director