



City of Santa Ana
20 Civic Center Plaza, Santa Ana, CA 92701
Staff Report
June 6, 2023

TOPIC: Zoning Ordinance Amendment (ZOA) No. 2023-01 (Noxious Uses, Massage Establishments, CUP Suspension, and Other Edits to Address Internal Inconsistencies)

AGENDA TITLE

Public Hearing: Zoning Ordinance Amendment (ZOA) No. 2023-01: Amendments to Various Sections of Chapter 41 of the Santa Ana Municipal Code (SAMC) Related to Increasing the Conditional Use Permit (CUP) Separation Requirement of Noxious Uses from Sensitive Receptors, Update Massage Establishment Regulations, Establish a CUP Suspension Process, and Other Edits to Address Internal Inconsistencies.

RECOMMENDED ACTION

Approve first reading of an ordinance approving Zoning Ordinance Amendment No. 2023-01 to amend various sections of Chapter 41 (Zoning) of the SAMC.

EXECUTIVE SUMMARY

Following direction to address City Council points of discussion and requests to analyze increasing the separation requirements of noxious uses from sensitive receptors and creating additional regulations for massage establishments, staff has prepared Zoning Ordinance Amendment (ZOA) No. 2023-01, which proposes to amend sections of Chapter 41 (Zoning) of the Santa Ana Municipal Code (SAMC). The proposed amendments would increase the CUP separation requirement of noxious uses from sensitive receptors from 500 linear feet to 1,000 linear feet, provide updates to the City's massage ordinance to require a separation requirement from residentially zoned or used properties and regulations for legal nonconforming establishments, establish a CUP suspension process, and provide conforming, clarifying, and non-substantive edits to typographical errors and various internal inconsistencies.

Planning Commission Action

At its regular meeting on May 8, 2023, the Planning Commission voted 7:0 to recommend that the City Council adopt an ordinance approving Zoning Ordinance Amendment (ZOA) No. 2023-01. Following the Planning Commission's recommendation of approval, staff have added additional, minor clarifying edits to the noxious uses section to assist with implementation of the ordinance; the edits do not alter the substance of the Planning Commission's approval.

DISCUSSION

Background and Overview

At the December 20, 2022, and January 17, 2023, regularly scheduled City Council meetings, Council discussed evaluating increasing CUP requirements for noxious uses when located near sensitive receptors from 500 linear feet to 1,000 linear feet and exploring additional standards to regulate massage establishments and their proximity to sensitive land uses, respectively. Subsequently, staff analyzed and intend to address said points of discussion in the proposed ZOA.

In addition, further review of Chapter 41 has prompted the need to address various internal inconsistencies. These amendments include updating the article number utilized when referencing the off-street parking in various zoning districts, the terminology when referencing daycare centers, the sections referenced in the Change of a Nonconforming Use section, as well as updating notification requirements to be consistent with the requirements established by the Sunshine Ordinance in Section 2-153 of the SAMC.

The proposed amendments are as follows:

Table 1: ZOA No. 2023-01 Current and Proposed Text Regulations

Topic	Existing Zoning Code Regulations	Proposed Zoning Code Regulations
Noxious Uses	The SAMC requires approval of a conditional use permit for noxious uses that require a permit to discharge air contaminants or process or store regulated chemicals or substances when located within 500 feet of a sensitive land use (Sec. 41-199.4).	Update Sec. 41-199.4 to require a conditional use permit for noxious uses when located within 1,000 feet of a sensitive land use.
Massage Establishments – Separation and Buffers	Massage establishments are permissible in various commercial zoning districts subject to approval of a CUP.	Update Sec.41-1752 to require a 1,000-foot separation from between massage establishments and 500-foot separation from residentially zoned or used property.
Massage Establishments – Discontinuance of Legal Nonconforming Establishments	Article VI of Chapter 41 currently does not include standards for discontinuance of nonconforming massage establishments.	Proposed amendments include: 1. Message establishments which have a valid COO and Massage Establishment Certificate pursuant Chapter 22 would be deemed a legal nonconforming. 2. Subsequent applications requiring a new COO for any reason other than change in business name with no change in owner of the business would be required to conform to the provisions of Chapter 41. 3. If a nonconforming massage establishment is in violation of any

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		applicable federal, state, or local regulation for a period of 60 consecutive days, receives three noncompliant notices from a federal, state, or local regulatory agency in one-year period, or is in violation for a total of 90 days in a one-year period, the legal nonconforming status shall be lost and any subsequent use of the building shall conform in every respect to the provisions of Chapter 41.
Change of a Nonconforming Use	Sec. 41-685 does not reference section 41-683.6 or the proposed 41-483.7 which detail specific permissibility for noxious uses and massages establishments when changing a nonconforming use.	Amend the section to reference recently amended section 41-683.6 and proposed section 41-683.7.
Suspension of Conditional Use Permit, Variance, and Minor Exception Permits	Article V of Chapter 41 details the requirements for granting a conditional use permit, variance, or minor exception and for revoking those permits. However, it does not address suspension of such permits.	Add Sec. 41-650.5 to permit suspension of conditional use permit, variance, minor exception permits, and other land use entitlements for a period of up to 90 consecutive days when failing to comply with applicable regulations or conditions of approval.
Off-street parking in the Community Commercial (C1) zoning district	Sections 41-371, 41-206, 41-222, 41-302, 41-318, 41-383, 41-417, 41-478, and 41-577, currently incorrectly references Article IV, when the corresponding article number should be XV.	Update Sections 41-371, 41-206, 41-222, 41-302, 41-318, 41-383, 41-417, 41-478, and 41-577, to reference to the correct off-street parking article.
Daycare center	Sec. 41-150.5 provides a definition for schools and references "child day care," a term that was replaced by "daycare center."	Delete references to child day care in the definition for "schools" and replace with the new term "daycare center."
Notification Requirements	Various sections of the zoning code contain notification requirements ranging from 300 to 500 feet, which are inconsistent with the notification standards in Section 2-153 of the SAMC (Sunshine Ordinance).	Amend various sections (41-663 and 41-672) to require notifications pursuant to the Sunshine Ordinance requirements in Section 2-153 of the SAMC.

Noxious Uses

Section 41-199.4 (Noxious uses) was adopted by Ordinance No. NS-3038 on February 7, 2023, in response to concerns related to environmental pollution and proximity of certain land uses to sensitive receptors. Currently, the section requires noxious uses that require a permit from a regional, state, or federal agency to emit or discharge regulated compounds, materials, or substances that are located within 500 linear feet of a public park, school (K-12) or property used or zoned for residential purposes to obtain a CUP. The California Air Resources Board's (CARB's) Air Quality and Land Use Handbook (Handbook) provides recommendations for the siting of uses such as these that are sources of air pollution. The Handbook states that noxious land uses similar to those regulated by Section 41-199.4 of the SAMC) may pose a health risk when located less than 1,000 feet of sensitive receptors. Therefore, consistent with the findings and recommendations in the Handbook, the proposed ordinance will increase the distance threshold to require a CUP for noxious uses from sensitive receptors from 500 linear feet to 1,000 linear feet, which would allow staff to review noxious uses and impose conditions of approval to mitigate potential impacts to surrounding properties, as well as provide community members in close proximity to these uses an opportunity to participate in the decision making process through the public hearing process.

Massage Establishments

Currently, massage establishments are permitted subject to approval of a CUP in various commercial zoning districts. 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 minimum 1,000-foot separation between massage establishments, and a minimum 500-foot separation requirement from a residentially zoned or used property. Additionally, all massage establishments which have a valid Certificate of Occupancy (COO) and a Massage Establishment Certificate pursuant Chapter 22 (Massage Establishments) of the SAMC, would be deemed legal nonconforming. Subsequent applications for a COO for any reason other than a change in business name with no change in owner of the business would be subject to CUP and separation requirements described above. Additionally, a nonconforming massage establishment would lose its nonconforming status if it is in violation of any applicable federal, state, or local regulations for a period of 60 consecutive days; or, it receives three noncompliant notices from a federal, state, or local regulatory agency within a one-year period; or, is in violation for a total of 90 days within a one-year period.

Entitlement Suspension

Article V of Chapter 41 currently outlines the process and required findings through which CUP, variance, and minor exception applications may be granted. Moreover, Article V also details the process through which such permits may be revoked; however, the SAMC remains silent on the means of suspending the land use entitlements for sites that do not

conform to the requirements of the SAMC or conditions of approval. Staff is proposing to establish a new section (Sec. 41-650.5) to establish a process to immediately suspend activity to allow the owner ninety (90) days to rectify any outstanding violations prior in lieu of having to immediately escalate to the City initiating a revocation process. The suspension process would provide an additional tool for the City to immediately address noncompliant sites and cease the operation of nuisance-generating uses while establishing criteria for suspension and a clear timeframe prior to initiating the revocation process.

Conforming, Clarifying, and Non-Substantive Edits

On February 7, 2023, the City Council adopted Ordinance No. 3038 establishing a definition for “Daycare center” and deleting “child day care.” However, the definition for “schools” (Sec. 41-150.5) continues to reference “child day care.” Therefore, staff is proposing clarifying edits to Section 41.150.5 to consistently reference the corresponding terminology.

Sections 41-371, 41-206, 41-222, 41-302, 41-318, 41-383, 41-417, 41-478, and 41-577 of the SAMC references the Article IV in directing to the Off-Street Parking standards. However, the SAMC off-street parking standards are listed under Article XV. Therefore, staff is proposing amending Sections 41-371, 41-206, 41-222, 41-302, 41-318, 41-383, 41-417, 41-478, and 41-577 to reference the correct article number.

Section 41-685, which addresses changes of commercial nonconforming uses in the Light Industrial (M1) and Heavy Industrial (M2) zoning district that are nonconforming by reason of absence of conditional use permit may be changed to another commercial use except as detailed in Section 41-685.5. On February 7, 2023, the City Council adopted Ordinance No. 3038, establishing Section 41-683.6 which specific perimeters for through which a legal nonconforming status may be maintained or lost in relation to noxious uses. Similarly proposed Section 41-683.7, which outlines how a nonconforming status may be maintained or lost in relation to massage establishments. Therefore, staff is proposing amendment to Section 41-685 to also reference Section 41-683.6 and 41-683.7.

Lastly, the proposed amendments would update the zoning code to reflect the notification requirements of the Sunshine Ordinance contained within Section 2-153 of the SAMC. This edit will eliminate internal inconsistencies within this section of the zoning code.

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 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

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a “project,” as defined in Section 15378 of the CEQA Guidelines. As a result, a Notice of Exemption, Environmental Review (ER) No. 2023-38 for ZOA No. 2023-01, will be filed upon adoption of these ordinances.

FISCAL IMPACT

There is no direct fiscal impact associated with the adoption of this ordinance.

EXHIBIT(S)

1. Ordinance for ZOA No. 2023-01

Submitted By: Minh Thai, Executive Director of Planning and Building Agency

Approved By: Kristine Ridge, City Manager