



A G E N D A

GARDEN GROVE PLANNING COMMISSION

REGULAR MEETING

SEPTEMBER 3, 2015

COURTYARD CENTER
12732 MAIN STREET

REGULAR SESSION – 7:00 P.M. COURTYARD CENTER

ROLL CALL: CHAIR O'NEILL, VICE CHAIR KANZLER
COMMISSIONERS MAI, MARGOLIN, PAK, PAREDES, ZAMORA

Members of the public desiring to speak on any item of public interest, including any item on the agenda except public hearings, must do so during Oral Communications at the beginning of the meeting. Each speaker shall fill out a card stating name and address, to be presented to the Recording Secretary, and shall be limited to five (5) minutes. Members of the public wishing to address public hearing items shall do so at the time of the public hearing.

Any person requiring auxiliary aids and services due to a disability should contact the City Clerk's office at (714) 741-5035 to arrange for special accommodations. (Government Code §5494.3.2).

All revised or additional documents and writings related to any items on the agenda, which are distributed to all or a majority of the Planning Commissioners within 72 hours of a meeting, shall be available for public inspection (1) at the Planning Services Division during normal business hours; and (2) at the City Courtyard Center at the time of the meeting.

Agenda item descriptions are intended to give a brief, general description of the item to advise the public of the item's general nature. The Planning Commission may take legislative action it deems appropriate with respect to the item and is not limited to the recommended action indicated in staff reports or the agenda.

PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES OF AMERICA

- A. ORAL COMMUNICATIONS - PUBLIC
- B. APPROVAL OF MINUTES: August 20, 2015
- C. CONTINUED PUBLIC HEARING(S) (Authorization for the Chair to execute Resolution shall be included in the motion.)
 - C.1. VARIANCE NO. V-011-2015

APPLICANT: DAVID WEBBER

LOCATION: SOUTH SIDE OF GARDEN GROVE BOULEVARD,
WEST OF EUCLID STREET AT 11102 GARDEN
GROVE BOULEVARD

REQUEST: Variance approval to deviate from the required
number of parking spaces, Municipal Code Section

9.18.140.030 (Parking Spaces Required), and to reduce the required percentage of landscaping for surface parking lots, Municipal Code Section 9.18.140.070.b.1.a (Surface Parking Lot Landscaping), to allow the operation of a new 14,300 square foot restaurant/eating establishment, East Seafood Buffet. The site is at 11102 Garden Grove Boulevard in the CC-3 (Civic Center Core) zone. This project is exempt pursuant to CEQA Section 15301 - Existing Facilities and 15332 - In-Fill Development Projects.

STAFF RECOMMENDATION: Staff recommends that the Planning Commission either: (1) Adopt a Resolution approving Variance No. V-011-2015, (2) adopt a Resolution of Denial denying Variance No. V-011-2015, or (3) provide further direction to Staff.

D. PUBLIC HEARING(S) (Authorization for the Chair to execute Resolution shall be included in the motion.)

D.1. AMENDMENT NO. A-014-2015

APPLICANT: CITY OF GARDEN GROVE
LOCATION: CITYWIDE

REQUEST: A request by the City of Garden Grove for adoption of zoning text amendments to portions of Chapters 9.04 (Definitions), 9.16 (Commercial, Office Professional, Industrial, and Open Space Development Standards), and 9.18 (Mixed Use Regulations and Development Standards) of Title 9 of the Garden Grove Municipal Code to update the references, definitions, development standards, and operational conditions in the City's Land Use Code, pertaining to massage establishments and other types of uses at which massage services are provided, to be consistent with the City Massage Regulations set forth in Chapter 5.12 of the Garden Grove Municipal Code and the State Massage Therapy Act. Pursuant to the proposed Amendment, massage establishments would be treated as a separate commercial use, rather than as an adult entertainment business, and would be permitted to be located in the C-2 (Community Commercial), GGMU-1,2,3 (Garden Grove Boulevard Mixed Use), and NMU (Neighborhood Mixed Use) zones, subject to approval of a Conditional Use Permit, provided they are not located within 1000 feet of another massage establishment, meet specified development, operational, and minimum parking standards, possess a valid and current massage operator's permit issued by the

Police Chief, and comply with all other requirements of the City Massage Regulations in Chapter 5.12. Existing legally established and permitted massage establishments would be deemed legal nonconforming uses that are subject to the provisions of Chapter 5.12 (Massage Regulations) and Chapter 9.36 (Nonconformities) of the Garden Grove Municipal Code. The proposed Amendment would also update the definitions, references, conditions and standards applicable to Athletic and Health Clubs, Spas or Gyms that provide massage services, and would permit massage services to be provided as part of a salon, spa or similar facility located in, and incidental to the operation of, a Hotel that contains at least one hundred fifty (150) rooms located anywhere in the City. The Planning Commission will make a recommendation to the Garden Grove City Council regarding the proposed Amendment and a determination that it is exempt from the California Environmental Quality Act.

STAFF RECOMMENDATION: Recommend approval of Amendment No. A-014-2015 to City Council.

- E. MATTERS FROM COMMISSIONERS
- F. MATTERS FROM STAFF
- G. ADJOURNMENT

GARDEN GROVE PLANNING COMMISSION
Courtyard Center, 12732 Main Street, Garden Grove, CA 92840

Special Meeting Minutes
Thursday, August 20, 2015

CALL TO ORDER: 6:10 p.m.

ROLL CALL:

Chair O'Neill
Vice Chair Kanzler
Commissioner Mai
Commissioner Margolin
Commissioner Pak
Commissioner Paredes
Commissioner Zamora

Absent: Pak

PLEDGE OF ALLEGIANCE: Led by Chair O'Neill.

ORAL COMMUNICATIONS – PUBLIC: None.

AUGUST 6, 2015 MINUTES:

Action: Received and filed with an amendment.

Motion: Margolin Second: Paredes

Ayes: (6) Kanzler, Mai, Margolin, O'Neill, Paredes, Zamora

Noes: (0) None

Absent: (1) Pak

City Manager Scott Stiles joined the meeting at 7:05 p.m. and was introduced to the Planning Commission by Chair O'Neill.

STUDY SESSION – REVIEW OF THE GENERAL PLAN, ZONING, MIXED USE, AND ASSEMBLY BILL AB551.

Staff presented an overview of the General Plan, Zoning, Mixed Use, and Assembly Bill AB551 (Urban Agricultural Incentive Zones Legislation).

MATTERS FROM COMMISSIONERS: Commissioner Mai asked staff if graffiti removal on private property was also the responsibility of the City. Staff recommended that with any case of graffiti, to please call the City's graffiti line. Commissioner Mai expressed that he had called in regard to a particular location, but had no response. Staff stated they would have Public Works look into the matter.

Commissioner Paredes asked staff what was the biggest hurdle in preventing the hiring of City police personnel. Staff responded that every city was short on police personnel and that cities were hiring, though hiring was difficult due to many variables.

Chair O'Neill thanked his wife for twenty-nine years of marriage and mentioned that they had been married in Bixby Chapel.

MATTERS FROM STAFF: Staff gave a brief description of the items for the Thursday, September 3rd Planning Commission meeting.

ADJOURNMENT: At 8:00 p.m. to the next Regular Meeting of the Garden Grove Planning Commission on Thursday, September 3, 2015, at 7:00 p.m. in the Courtyard Center, 12732 Main Street, Garden Grove.

Motion:	Margolin	Second:	Kanzler
Ayes:	(6)	Kanzler, Mai, Margolin, O'Neill, Paredes, Zamora	
Noes:	(0)	None	
Absent:	(1)	Pak	

Judith Moore, Recording Secretary

COMMUNITY DEVELOPMENT DEPARTMENT PLANNING STAFF REPORT

AGENDA ITEM NO.: C.1.	SITE LOCATION: South side of Garden Grove Boulevard, west of Euclid Street, at 11100 and 11102 Garden Grove Boulevard
HEARING DATE: September 3, 2015	GENERAL PLAN: Civic Center Mixed Use
CASE NO.: Variance No. V-011-2015	ZONE: CC-3 (Civic Center Core)
APPLICANT: David Webber	CEQA DETERMINATION: Exempt
PROPERTY OWNER(S): Emerald Square II, LLC	APN: 099-105-40 & 42

REQUEST:

For the Planning Commission to consider the Applicant's request for Variance approval to deviate from the required number of parking spaces, Municipal Code Section 9.18.140.030 (Parking Spaces Required), to allow the operation of a new 14,300 square foot restaurant/eating establishment, East Seafood Buffet, at 11102 Garden Grove Boulevard.

BACKGROUND:

On June 18, 2015, the applicant requested to continue Variance No. V-011-2015 to the July 16, 2015, Planning Commission meeting, in order to work with the adjacent property owner and address their concerns. The Planning Commission opened the public hearing. No speakers from the public came forward. Letters of opposition to the proposed Variance were submitted. The Planning Commission voted to continue the item to the July 16, 2015, Planning Commission meeting.

A continued public hearing was held on July 16, 2015. At the public hearing, Costco Wholesale appeared and submitted a letter opposing the requested Variance. Following conclusion of the Public Hearing, the Planning Commission voted 3-2 (Commissioners O'Neill and Mai absent) to direct Staff to prepare a Resolution of Denial of the requested Variance for its consideration at the August 6, 2015 meeting, based on the inability of the Commission to make the following required finding for approval of a variance, based on the reasons stated by Costco Wholesale and articulated by the Planning Commissioners at the meeting:

"The granting of the requested Variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such vicinity and zone in which the property is located."

Subsequent to the July 16th meeting, the Applicant's representative provided Staff with an email containing additional information and conditions the Applicant would

be willing to accept if the Planning Commission would reconsider its decision to deny the Variance request. Staff was also advised that the Applicant and Costco were engaged in negotiations that could potentially result in Costco retracting its opposition.

At the August 6, 2015, Planning Commission meeting, Staff presented the Commission with a proposed Resolution of Denial per the Commission's July 16, 2015 direction, and the Planning Commission was advised that the Applicant was requesting a continuance so that the Public Hearing could be re-opened and additional information and/or a revised proposal addressing the previously raised concerns could be considered. Following discussion, the Planning Commission voted 6-0 (Commissioner Mai absent) to continue the case to a re-noticed date of the September 3, 2015, Planning Commission meeting in order to consider a revised proposal in regard to safety and parking concerns. Staff subsequently noticed a new Public Hearing for September 3, 2015.

DISCUSSION:

As noted in the original staff report for V-011-2015, dated July 16, 2015 (a copy has been attached to this report), the proposed 14,300 square foot restaurant, East Seafood Buffet, along with the downsized 15,700 square foot Office Depot retail store, requires a minimum of 222 parking spaces based on Code requirements; however, only 152 parking spaces are currently provided on the site. In its initial Variance request, the Applicant did not propose modifying the parking lot to add any parking spaces. Based on the existing 152 parking spaces that are currently provided, the proposed development would be deficient by seventy (70) parking spaces, which is equal to a thirty-two percent (32%) reduction. Planning Commission members previously expressed concerns that this was too large of a parking reduction.

In response, the Applicant has submitted a revised site plan, which includes modifications to the front and rear parking lot areas, of the subject site, in order to increase the total number of available parking spaces, and has proposed additional conditions of approval it believes will further mitigate parking and safety concerns.

PROPOSED REVISED SITE PLAN

The front parking area, facing Garden Grove Blvd., currently has 84 existing parking spaces – 31 compact parking spaces, 48 standard parking spaces, and 5 handicap parking spaces. Per the Applicant's proposed revised site plan, the front parking lot area would be modified to include a total of 87 parking spaces – 26 compact parking spaces, 55 standard parking spaces and 6 handicap parking spaces, per the submitted revised site plan. This would be an increase of three (3) total parking spaces in the front parking area. Additionally, all required drive aisle widths, sufficient vehicular circulation, and pedestrian access for this front parking lot area would be maintained.

The rear parking area, behind the subject building, currently has 68 existing parking spaces – 22 compact parking spaces, 45 standard parking spaces, and 1 handicap parking space. Per the Applicant's proposed revised site plan, the rear parking lot area would be modified to include a total of 91 parking spaces – 21 compact parking spaces and 70 standard parking spaces. This would be an increase of 23 parking spaces in the rear parking area. All required drive aisle widths, sufficient vehicular circulation, and pedestrian access for this rear parking lot area would be maintained. Additionally, per the revised site plan, sufficient truck maneuvering space for deliveries to the existing loading dock, as well as sufficient space for trash pick-ups to the existing trash/recycling disposal area, would be maintained.

In total, per the submitted revised site plan, the subject site would provide a *new* total of 178 parking spaces – 47 compact parking spaces, 125 standard parking spaces, and 6 handicap parking spaces, which is an increase of 26 parking spaces above the 152 existing parking spaces on-site. As a result, the initial 32% deficiency would be reduced to 19.8%.

The revised site plan also includes modifications to the existing landscaping on-site. For Surface Parking Lot Landscaping, the Municipal Code requires that a minimum of 10% of the total area of any surface parking lot shall be landscaped. For surface parking lots not visible from streets, the Municipal Code requires that a minimum of 5% of the total area of any surface parking lot shall be landscaped. Staff has reviewed the changes and finds that the revised site plan exceeds the minimum amount of landscaping required by Code for the front and rear parking lot areas, a minimum of 10% and 5%, respectively.

ADDITIONAL CONDITIONS OF APPROVAL

In order to further mitigate any potential parking issues that may arise, the Applicant has proposed a condition of approval that will require the applicant to implement a no-charge valet parking service to restaurant patrons, during periods of high parking demand including, but not limited to, hours between 12:00 p.m. to 3:00 p.m., on weekdays, and between 5:00 p.m. to 8:00 p.m., on weekend days (Friday, Saturday, Sunday) and holidays. All valet parking spaces will be located on the subject property. Additionally, the valet parking service will prioritize the use of parking spaces located in the rear parking lot area. The valet parking service will be utilized to increase the availability of parking on-site as well as to prevent any overflow and parking impacts to the adjacent properties.

To improve the safety of pedestrians, the applicant has proposed a condition of approval requiring it to install pedestrian crossing signage and flashing stop signs adjacent to the two (2) existing driveways which provide vehicular access to the subject site off Garden Grove Boulevard.

The proposed Conditions of Approval also incorporate the following Staff recommendations:

1. Ensure that the on-site circulation system is per the submitted detailed site plan.
2. Repaint the existing stop bar and the existing stop sign legend at the Project Access Driveway on Garden Grove Boulevard.
3. Provide on-site bicycle racks in easily accessible and highly visible locations to promote alternative modes of transportation.
4. Encourage management to display a poster/message board that promotes walking, bicycling, and public transit and provides information about these options within the neighborhood.
5. Encourage employees to use alternative modes of transportation, such as carpooling and public transit. Consider providing incentives for such usage.

STATUS OF AGREEMENT WITH COSTCO

On August 16, 2015, Staff was provided with a copy of letter from Costco Wholesale to the Applicant with an outline of conceptual terms of the conditions under which Costco would be prepared to support the Applicant's Variance request. These terms included amending the Reciprocal Easement and Access Agreement (REA) between the two property owners, the addition of parking spaces on the subject site, and implementation of valet parking for the restaurant. It is Staff's understanding that Costco and the Applicant have been continuing to negotiate a final agreement. As of the date this Staff Report was prepared, however, Staff is not aware that a final agreement between the parties has been reached. It is anticipated that additional information on the status of Costco's position on the Applicant's revised Variance request will be available at the September 3rd Public Hearing.

FINDINGS REQUIRED TO APPROVE VARIANCE:

Pursuant to State law and Garden Grove Municipal Code Section 9.32.030.D.6, in order to grant a property owner's request for a Variance, the Planning Commission must make each of the following five (5) findings:

1. That there are exceptional circumstances or conditions applicable to the property involved or to the intended use or development of the property that do not apply generally to other property in the same zone or neighborhood.
2. That such Variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same vicinity and zone, but which is denied to the subject property.

3. That the granting of a Variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such zone or neighborhood in which the property is located.
4. That the granting of such Variance will not adversely affect the City's General Plan.
5. That approval of the Variance is subject to such conditions as will assure that it does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is situated.

SUMMARY / CONCLUSION

At its meeting of July 16, 2015, a majority of the Planning Commission members present voted in favor of denying a proposed Variance based on a parking deficiency of 70 spaces, or 32%. Since then, the Applicant has revised its request. The Applicant is now proposing to make improvements and modifications that would reduce the parking deficiency for which it is requesting a Variance to 44 spaces, or 19.8%.

To further address concerns about a shortage of parking and safety in the shopping center, the Applicant has also agreed to additional Conditions of Approval requiring it to implement valet parking for the restaurant use during peak usage and to install new pedestrian crossing signage and flashing stop signs at the driveway entrances from Garden Grove Boulevard.

In addition, based on representations by the Applicant, it is possible that Costco Wholesale, which objected to the initial Variance request, may now be in position to support the Applicant's revised Variance request.

Depending on the Planning Commission's prerogative, Staff believes the record contains sufficient facts to support either approval or denial of the Applicant's revised Variance request. Accordingly, Staff has prepared for the Commission's consideration both: (1) a draft Resolution denying the proposed revised Variance request on the basis that, even as revised and conditioned, the granting of a Variance allowing a 19.8% reduction in required parking spaces will be materially detrimental to the public welfare or result in injury to the property or improvements in the same vicinity and zone as the subject Site, and (2) a draft Resolution approving the proposed revised Variance request, subject to specified Conditions of Approval (including the additional Conditions of Approval discussed above).

RECOMMENDATION:

Staff recommends that the Planning Commission either:

1. Adopt the proposed Resolution approving Variance No. V-011-2015, and authorize the Chair to execute the Resolution; or
2. Adopt the proposed Resolution denying Variance No. V-011-2015, and authorize the Chair to execute the Resolution; or
3. Provide further direction to Staff.

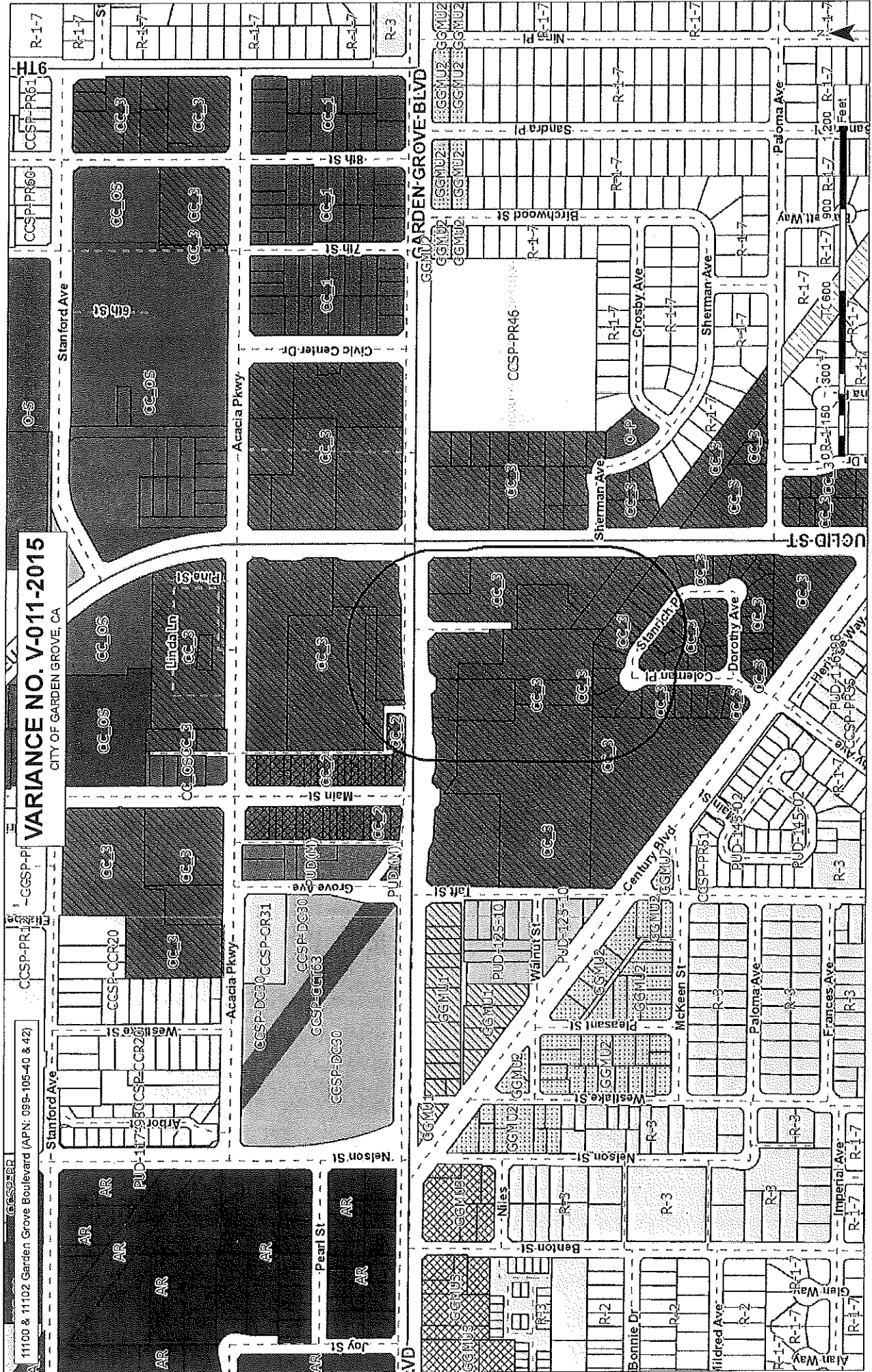


Karl Hill
Planning Services Manager



By: Chris Chung
Associate Planner

VARIANCE NO. V-011-2015
CITY OF GARDEN GROVE, CA



11100 & 11102 Garden Grove Boulevard (APN: 099-105-40 & 42)

CCSP-PR60

CCSP-DC30

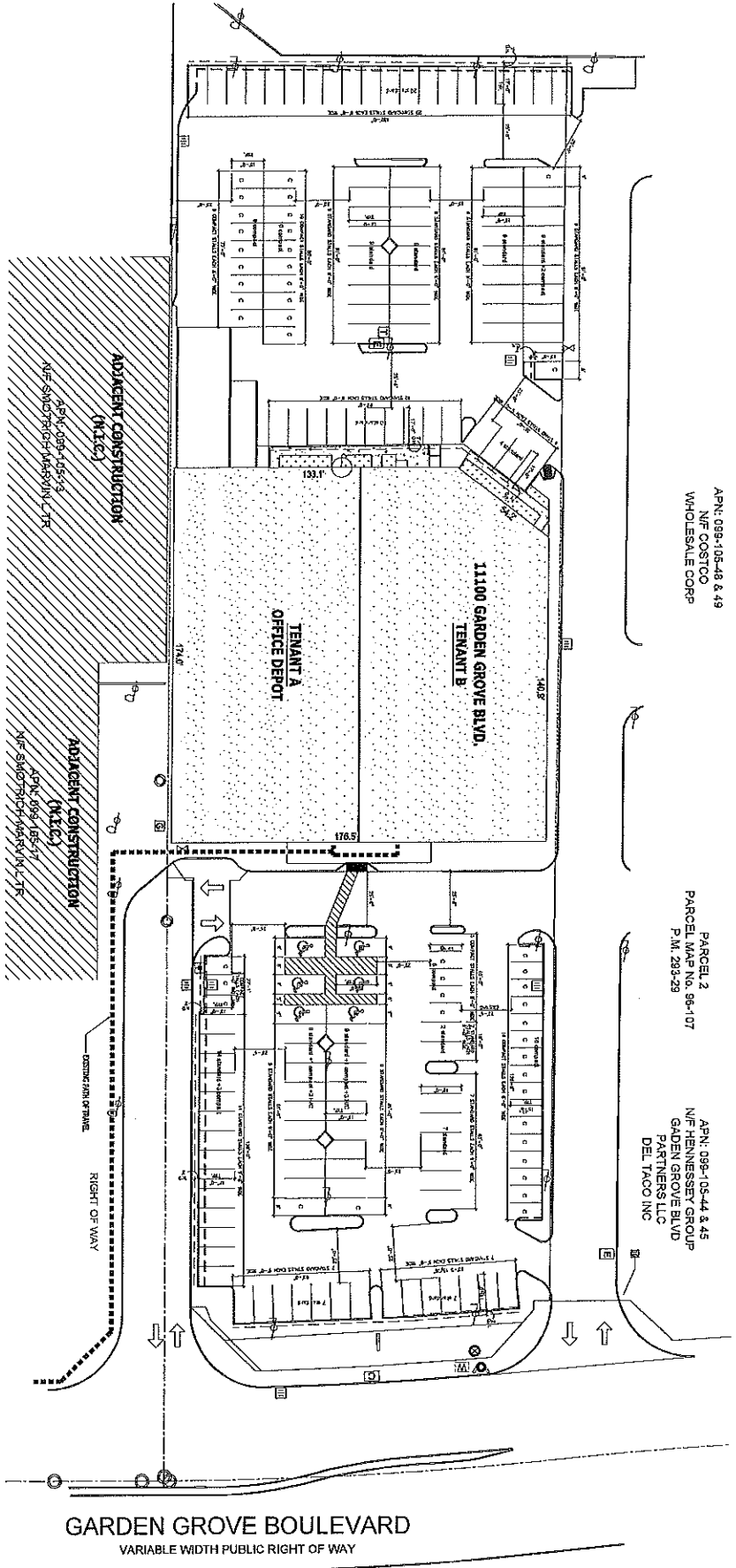
CCSP-CCR20

CCSP-CCR31

CCSP-CC103

CCSP-DC30

CCSP-CC103



1 SITE PLAN
SCALE: 1/8"=1'-0"

PARKING SUMMARY

EXISTING PARKING:
 STANDARD STALLS: 83 STALLS
 COMPACT STALLS: 63 STALLS
 COMPACT STALLS %: 41%
 HANDICAPPED STALLS: 6 STALLS
 TOTAL EXISTING PARKING STALLS: 152 STALLS

PROPOSED NEW PARKING LAYOUT:
 STANDARD STALLS: 125 STALLS
 COMPACT STALLS: 47 STALLS (16 STALL REDUCTION)
 COMPACT STALLS %: 28% (15% REDUCTION)
 HANDICAPPED STALLS: 6 STALLS
 TOTAL STALLS PER NEW PARKING LAYOUT: 178 STALLS (INCREASE OF 26 STALLS)

LANDSCAPE SUMMARY

PROPOSED NEW LANDSCAPING IMPROVEMENTS:
 FRONT DEVELOPABLE AREA: 36,241 S.F.
 REAR DEVELOPABLE AREA: 32,835 S.F.
 TOTAL DEVELOPABLE AREA: 69,076 S.F.

FRONT LANDSCAPING AREA: 3,904 S.F. OR 10.7%
 REAR LANDSCAPING AREA: 3,348 S.F. OR 10.1%
 TOTAL LANDSCAPING AREA: 7,250 S.F. OR 10.5%

GENERAL NOTE: DIMENSIONS SHOWN FOR ALLOWABLE AREA INCREASES PER CDS SECTION 500.2 SHALL BE PERMANENTLY MAINTAINED.



GARDEN GROVE BOULEVARD
 VARIABLE WIDTH PUBLIC RIGHT OF WAY

PARKING LOT IMPROVEMENTS
 11100 GARDEN GROVE BLVD.
 GARDEN GROVE, CA 92843

EMERALD SQUARE II, LLC

NO.	REVISION	DATE
1	ISSUE FOR PERMIT	08/15/2018
2	REVISION	
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RESOLUTION NO. 5848-15

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF GARDEN GROVE APPROVING VARIANCE NO. V-011-2015, FOR PROPERTIES LOCATED AT THE SOUTH SIDE OF GARDEN GROVE BOULEVARD, WEST OF EUCLID STREET, AT 11100 AND 11102 GARDEN GROVE BOULEVARD, ASSESSOR'S PARCEL NOS. 099-105-40 AND 42.

BE IT RESOLVED that the Planning Commission of the City of Garden Grove, in regular session assembled on September 3, 2015, approves Variance No. V-011-2015.

BE IT FURTHER RESOLVED in the matter of Variance No. V-011-2015, the Planning Commission of the City of Garden Grove does hereby report as follows:

1. The subject case was initiated by David Webber on behalf of the property owner, Emerald Square II, LLC ("Applicant").
2. Applicant is requesting Variance approval to deviate from the required number of parking spaces, Municipal Code Section 9.18.140.030 (Parking Spaces Required), to allow the operation of a new 14,300 square foot restaurant/eating establishment, East Seafood Buffet, at 11102 Garden Grove Boulevard.
3. Pursuant to the California Environmental Quality Act ("CEQA"), the City of Garden Grove has determined that the proposed project is categorically exempt from CEQA pursuant to Section 15301 (Existing Facilities) and Section 15332 (In-Fill Development Projects) of the CEQA Guidelines (14 Cal. Code Regs., Section 15301 and Section 15332).
4. The property has a General Plan Land Use designation of Civic Center Mixed Use, and is currently zoned CC-3 (Civic Center Core).
5. The Applicant is requesting Variance approval to deviate from the required number of parking spaces, Municipal Code Section 9.18.140.030 (Parking Spaces Required), to allow the operation of a new 14,300 square foot restaurant/eating establishment, East Seafood Buffet, in a newly created tenant space with an address of 11102 Garden Grove Boulevard, in conjunction with the operation of an Office Depot retail establishment in a newly modified smaller tenant space with the address of 11100 Garden Grove Boulevard. The Garden Grove Municipal Code requires a minimum of 222 parking spaces for the combined proposed two uses on the subject Site. Currently, there are only 152 parking spaces on the subject Site, and it is not feasible to add an additional 70 parking spaces. Therefore, the Applicant has requested a Variance from the required number of on-site parking spaces required in order to allow for the proposed combination of uses on the subject Site.

6. In order to approve the Variance, all of the findings required by California Government Code Section 65906 and set forth in Garden Grove Municipal Code Section 9.32.030.D.6 must be made.
7. Existing land use, zoning, and General Plan designation of property in the vicinity of the subject property have been reviewed.
8. Report submitted by City staff was reviewed.
9. Pursuant to a legal notice, a public hearing was opened on June 18, 2015, and duly continued to, and held on, July 16, 2015, and all interested persons were given an opportunity to be heard. The public hearing was closed on July 16, 2015.
10. Following the conclusion of the public hearing on July 16, 2015, and after giving due and careful consideration to the matter, the Planning Commission voted to direct City staff to prepare a Resolution denying the Applicant's requested Variance and continued the item to the Planning Commission meeting of August 6, 2015.
11. At the August 6, 2015 Planning Commission meeting, the Planning Commission voted to direct City Staff to notice a new public hearing to allow it to consider additional information, conditions, and potential modifications to the Applicant's request.
12. Pursuant to a legal notice, another public hearing was held on September 3, 2015, and all interested persons were given an opportunity to be heard.
13. The Planning Commission gave due and careful consideration to the matter during its meetings of June 18, 2015, July 16, 2015, August 6, 2015, and September 3, 2015.

BE IT FURTHER RESOLVED, FOUND AND DETERMINED that the facts and reasons supporting the conclusion of the Planning Commission, as required under Municipal Code Section 9.32.030 are as follows:

FACTS:

The subject two (2) properties (with Assessor's Parcel Nos. 099-105-40 & 42) have a gross lot area of approximately 2.5 acres, making up an integrated development, and are developed with an existing, approximately 30,000 square foot, building. The properties are zoned CC-3 (Civic Center Core) and have General Plan Land Use Designations of Civic Center Mixed Use. The properties abut CC-3 zoned properties to the north, across Garden Grove Boulevard, south, east, and west.

The existing 30,000 square foot building is located in the center with parking lots located at the front, fronting along Garden Grove Boulevard, and at the rear, behind the building, to the south. The site currently provides a total of 152 parking spaces, of which eighty-four (84) parking spaces are located in the front parking lot area, and the remaining sixty-eight (68) parking spaces are located in the rear parking lot area.

Office Depot previously occupied the entire existing 30,000 square foot building. In April of 2015, a building permit was issued for the construction of a demising wall, splitting the existing 30,000 square foot tenant space into a 15,700 square foot tenant space and a 14,300 square foot tenant space. Office Depot has downsized its operation and is now occupying the 15,700 square foot tenant space, with the address of 11100 Garden Grove Boulevard. Subject to approval of the Variance, the proposed East Seafood Buffet restaurant would occupy the newly created 14,300 square foot tenant space, which has a new address of 11102 Garden Grove Boulevard.

The subject Site is functionally part of a larger shopping center. To the west of the subject Site is an existing fast-food drive-thru eating establishment, Del Taco, and an existing large retail store, Costco Wholesale. A driveway runs along the westerly property line of the subject Site, which provides reciprocal access to the Del Taco and Costco Properties utilizing the existing driveways. A Reciprocal Easement Agreement (REA) exists between the owners of three (3) sites, which provides for reciprocal access and shared parking between the subject Site, the Costco, and Del Taco Properties.

For a retail commercial use, under 40,000 square feet in gross floor area, the Municipal Code ("Code") requires a minimum of one (1) parking space per 200 square feet of gross floor area. Prior to the subdivision of the existing 30,000 square foot Office Depot tenant space, Code required the existing Office Depot retail store to provide a minimum of 150 parking spaces. The existing site currently provides a total of 152 total parking spaces, which is a surplus of two (2) parking spaces.

Following the subdivision of the existing 30,000 square foot tenant space into two (2) tenant spaces, the Office Depot will occupy the 15,700 square foot tenant space. Based on the Code requirement of a minimum of one (1) parking space per 200 square feet of gross floor area for retail uses, a minimum of seventy-nine (79) parking spaces would thus be required by Code for the reduced-sized Office Depot retail store ($15,700/200 = 78.5$). For restaurant/eating establishment uses in this location, the Garden Grove Municipal Code requires a minimum of one (1) parking space per 100 square feet of gross floor area - or double the amount required for retail uses. Thus, the proposed East Seafood Buffet restaurant, which would occupy the newly created 14,300 square foot tenant space, would require a minimum of 143 parking spaces ($14,300/100 = 143$). Therefore, based on Code for restaurant and retail land use parking rates, a total of 222 parking spaces ($79 + 143$) would be

required for the subject Site for the proposed combination of restaurant and retail uses on the Site.

Since only 152 parking spaces are currently provided on the Site, there are seventy (70) (or approximately thirty-two percent (32%)) fewer parking spaces provided on the Site than would typically be required by Code. The Applicant initially requested approval of a Variance to deviate from the minimum number of required parking spaces and to allow it to operate its proposed combination of retail and restaurant uses with only the existing 152 spaces provided. In support of its initial request, the Applicant submitted an observed parking analysis report and traffic impact study prepared by licensed traffic engineers from RK Engineering Group, Inc. ("RK Engineering"). The observed parking analysis report evaluated the parking demand projected to be generated by the proposed new restaurant use and existing Office Depot use and concluded that, due to the unique operating characteristics of these specific uses in combination, the existing 152 on-site parking spaces would be sufficient to accommodate the projected parking demand. The traffic study evaluated the potential impact on nearby intersections due to the increased vehicle trips anticipated to be generated as a result of operation of the proposed new restaurant use and concluded that the impacts on existing level of service at these intersections would not be significant.

Following the July 16, 2015 Planning Commission meeting, the Applicant modified its request to include a proposal to make improvements and modifications to the parking lot that would reduce the parking deficiency for which it is requesting a Variance to 44 spaces, or 19.8%, and proposed additional conditions of approval it believes will further mitigate parking and safety concerns.

The front parking area of the subject Site, facing Garden Grove Boulevard, currently has 84 existing parking spaces – 31 compact parking spaces, 48 standard parking spaces, and 5 handicap parking spaces. Per the Applicant's proposed revised site plan, the front parking lot area would be modified to include a total of 87 parking spaces – 26 compact parking spaces, 55 standard parking spaces and 6 handicap parking spaces, per the submitted revised site plan. This would be an increase of three (3) total parking spaces in the front parking area. Additionally, all required landscaping, drive aisle widths, sufficient vehicular circulation, and pedestrian access for this front parking lot area would be maintained.

The rear parking area, behind the subject building, currently has 68 existing parking spaces – 22 compact parking spaces, 45 standard parking spaces, and 1 handicap parking space. Per the Applicant's proposed revised site plan, the rear parking lot area would be modified to include a total of 91 parking spaces – 21 compact parking spaces and 70 standard parking spaces. This would be an increase of 23 parking spaces in the rear parking area. All required landscaping, drive aisle widths, sufficient vehicular circulation, and pedestrian access for this rear parking lot area would be maintained. Additionally, per the revised site plan, sufficient truck maneuvering space for deliveries to the existing loading dock, as well as sufficient

space for trash pick-ups to the existing trash/recycling disposal area, would be maintained.

In total, per the submitted revised site plan, the subject site would provide a *new* total of 178 parking spaces - 47 compact parking spaces, 125 standard parking spaces, and 6 handicap parking spaces, which is an increase of 26 parking spaces above the 152 existing parking spaces on-site. As a result, the Applicant is now requesting a Variance to deviate by 44 parking spaces, or 19.8%, from the number of parking spaces required by the Municipal Code.

To mitigate any potential parking issues that may arise, Conditions of Approval have been included:

- to prohibit changes in the nature, character, or operating characteristics of the proposed combination of uses on the Site;
- to require parking lot improvements and circulation be made and maintained per the detailed submitted site plan;
- to require specified traffic control and pedestrian safety improvements be made at access points to the Site;
- to require the provision of on-site bicycle racks in easily accessible and highly visible locations to promote alternative modes of transportation;
- to require the posting of signage that promotes walking, bicycling, and public transit and provides information about these options within the neighborhood;
- to require implementation of a plan to encourage employees to use alternative modes of transportation, such as carpooling and public transit;
- to require the implementation of a no-charge valet parking service for restaurant patrons during periods of high parking demand including, but not limited to, hours between 12:00 p.m. to 3:00 p.m., on weekdays, and between 5:00 p.m. to 8:00 p.m., on weekend days (Friday, Saturday, Sunday) and holidays; and
- To require the implementation of a City approved Mitigation Plan in the event the number of on-site parking spaces provided for operation of the seafood buffet restaurant, Office Depot retail establishment, or any future use on the Site becomes inadequate to accommodate the operation of these uses, and/or if the operation of such uses results in increased traffic or circulation problems.

FINDINGS AND REASONS:**VARIANCE:**

1. There are exceptional or extraordinary circumstances or conditions applicable to the property or to the intended use that do not apply generally to other property or classes of use in the same vicinity or zone.

The East Seafood Buffet restaurant will be part of a multi-tenant mixed use development, which will include a restaurant use and a retail use (Office Depot). Other sites in the same vicinity, as well as in similarly zoned properties with similar uses, do not have a mix of uses, but rather, have an existing commercial use on a stand-alone lot. Furthermore, there are very few properties in the City with similar commercial uses such as the subject Office Depot retail store and the proposed East Seafood Buffet restaurant, which have unique operational characteristics. A "buffet-style restaurant", such as the proposed East Seafood Buffet restaurant, does not operate like a typical restaurant, because much of the square footage is required for the buffet customer queuing line. Also, the Office Depot sells a specific product and does not operate like a typical retail store. As demonstrated by the observed parking analysis conducted by RK Engineering, even when the Office Depot retail use occupied the entire 30,000 square feet of the building on the Site, it utilized just forty-six percent (46%) of the 152 available parking spaces on-site during their peak times. The existing Office Depot use did not generate a high parking demand when compared to other retail sites with similar uses. Additionally, the proposed project involves the Office Depot retail use downsizing its operation from 30,000 square feet to 15,700 square feet. However, the observed parking analysis took a conservative approach and applied the parking demand based on the original Office Depot tenant space size of 30,000 square feet. Even with the conservative approach, the observed parking analysis concluded that there would be a sufficient amount of parking spaces to accommodate the proposed East Seafood Buffet in conjunction with the Office Depot tenant, with an available surplus of parking spaces.

As a Condition of Approval of the Variance, the Applicant will be required to make improvements per the submitted revised site plan, which includes modifications to the front and rear parking lot areas, of the subject Site, in order to increase the total number of available parking spaces. In total, per the submitted revised site plan, the subject site will provide a *new* total of 178 parking spaces – 47 compact parking spaces, 125 standard parking spaces, and 6 handicap parking spaces, which is an increase of 26 parking spaces. The added spaces should be more than sufficient to accommodate the parking demand generated by the unique mix of uses proposed for the Site.

2. The Variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same vicinity and zone, but which is denied to the property in question.

There are other similar commercial properties in the immediate vicinity, within the same zone, or other similarly zoned properties throughout the City, that provide less parking than required by current Code requirements. Most of these properties were developed prior to current Code requirements, and were not required to provide the minimum number of on-site parking spaces as would be required today. Due to their unique operating characteristics, the peak parking demand from the combination of the proposed seafood buffet restaurant and Office Depot retail uses on the Site is projected to be significantly less than what the Municipal Code requires, and based on the parking analysis report submitted by the Applicant and other evidence presented at the Public Hearing, the proposed 178 parking spaces will be sufficient to satisfy this parking demand. Accordingly, it would be unfair to deny the property owner the right to use its property in the manner proposed based on the deficiency in the number of parking spaces provided from that technically required by the Municipal Code. Approval of the proposed Variance will not set a precedent and will allow the applicant to enjoy a substantial property right possessed by other property owners located in other similar commercial properties in the immediate vicinity, within the same zone, and other similarly zoned properties throughout the City.

3. The Variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such vicinity and zone in which the property is located.

Due to their unique operating characteristics, the peak parking demand from the combination of the proposed seafood buffet restaurant and Office Depot retail uses on the Site is projected to be significantly less than what the Municipal Code requires, and based on the parking analysis report submitted by the Applicant and other evidence presented at the Public Hearing, the proposed 178 parking spaces to be provided will be sufficient to satisfy this parking demand. In addition, several Conditions of Approval have been included to ensure that adequate parking is maintained during times of peak parking demand, to mitigate potential circulation and pedestrian safety concerns from additional vehicles visiting the Site, and to prevent parking by customers of the uses on the subject Site from adversely affecting other uses within the integrated shopping center and general area.

Approval of this Variance will allow the site to be improved, meet the intended use of the zone, and provide an additional amenity to the community as a family-style sit-down restaurant. Provided that the project complies with the conditions of approval, the approval of the Variance will not

create an adverse effect on the public welfare or to properties or improvements in such vicinity and zone in which the property is located.

4. The granting of the Variance will not adversely affect the General Plan.

The proposed use is consistent with the intent of the General Plan and the zoning classification as restaurants are permitted in the CC-3 (Civic Center Core) zone. The proposed Variance request will not cause an adverse effect on the City's General plan since the Municipal Code is a tool used to implement goals of the General Plan. The proposed East Seafood Buffet restaurant will improve a vacant tenant space, will complement the neighboring uses, and will further a goal of the General Plan to develop underutilized properties with a suitable development. Based on the findings of the observed parking analysis and the traffic impact study, Goal CIR-1 of the General Plan, which strives to provide a transportation system that maximizes freedom of movement and maintains a balance between mobility, safety, cost of efficiency of maintenance, and the quality of the City's environment, will also be met.

5. Approval of the Variance is subject to such conditions as will assure that it does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is situated.

The Conditions of Approval require that a minimum of 178 parking spaces be provided at all times, require certain site improvements be made to improve circulation and safety, require the applicant to take certain actions to encourage customers and employees to utilize alternative modes of transportation that will not impact on-site parking, and require implementation of an approved parking mitigation plan in the event actual parking or circulation problems nonetheless occur. Provided that the conditions are adhered to, approval of the subject Variance will not grant a special privilege that is inconsistent with the limitations upon other properties located within the vicinity or zone in which the subject property is situated. In addition, pursuant to Condition of Approval No. 2, the rights granted the applicant pursuant to Variance No. V-011-2015 shall continue in effect for only so long as the nature and character of the two uses operating in the 30,000 square foot building on the Site remain the same as at the time of approval the Variance. In the event the nature or character of either of the two uses occupying the building materially changes, Variance No. V-011-2015 shall cease to be effective or to grant the applicant any rights to continue to operate the described uses on the Site. Any future uses on the Site different from the current described uses will be required to comply with all then applicable standards of the Garden Grove Municipal Code, and the applicant may not rely on this Variance as a basis for satisfying the required number of parking spaces associated with such future uses.

INCORPORATION OF FACTS AND FINDINGS SET FORTH IN STAFF REPORT

In addition to the foregoing, the Commission incorporates herein by this reference, the facts and findings set forth in the staff report.

BE IT FURTHER RESOLVED that the Planning Commission does conclude:

1. The Variance possesses characteristics that would indicate justification of the request in accordance with Municipal Code Section 9.32.030.
2. In order to fulfill the purpose and intent of the Municipal Code, and, thereby, promote the health, safety, and general welfare, the following conditions of approval, attached as "Exhibit A," shall apply to Variance No. V-011-2015.

RESOLUTION NO. 5848-15

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF GARDEN GROVE DENYING CASE NO. VARIANCE NO. V-011-2015, A REQUEST FOR A VARIANCE TO DEVIATE FROM THE REQUIRED NUMBER OF PARKING SPACES FOR PROPERTIES LOCATED AT THE SOUTH SIDE OF GARDEN GROVE BOULEVARD, AT 11100 AND 11102 GARDEN GROVE BOULEVARD, PARCEL NOS. 099-105-40 AND 42.

BE IT RESOLVED that the Planning Commission of the City of Garden Grove, in regular session assembled on September 3, 2015, does hereby deny Case No. Variance No. V-011-2015.

BE IT FURTHER RESOLVED in the matter of Variance No. V-011-2015, the Planning Commission of the City of Garden Grove does hereby report as follows:

1. The subject case was initiated by David Webber on behalf of the property owner, Emerald Square II, LLC ("Applicant").
2. The subject Site is located on the South side of Garden Grove Boulevard at 11100 and 11102 Garden Grove Boulevard and consists of two properties identified as Assessor's Parcel Numbers 099-105-40 and 099-105-42. The two properties have a combined gross area of approximately 2.5 acres, make up an integrated development, and are developed with an existing approximately 30,000 square foot building and 152 on-site surface parking spaces. The 30,000 square foot building has recently been divided into two separate tenant spaces.
3. The property has a General Plan Land Use designation of Civic Center Mixed Use, and is currently zoned CC-3 (Civic Center Core).
4. The Applicant is requesting Variance approval to deviate from the required number of parking spaces, Municipal Code Section 9.18.140.030 (Parking Spaces Required), to allow the operation of a new 14,300 square foot restaurant/eating establishment, East Seafood Buffet, in a newly created tenant space with an address of 11102 Garden Grove Boulevard, in conjunction with the operation of an Office Depot retail establishment in a newly modified smaller tenant space with the address of 11100 Garden Grove Boulevard. The Garden Grove Municipal Code requires a minimum of 222 parking spaces for the combined proposed two uses on the subject Site. Currently, there are only 152 parking spaces on the subject Site, and it is not feasible to add an additional 70 parking spaces. Therefore, the Applicant has requested a Variance from the required number of on-site parking spaces required in order to allow for the proposed combination of uses on the subject Site.
5. In order to approve the Variance, all of the findings required by California Government Code Section 65906 and set forth in Garden Grove Municipal Code Section 9.32.030.D.6 must be made.

6. Existing land use, zoning, and General Plan designation of property in the vicinity of the subject property have been reviewed.
7. Reports submitted by City staff were reviewed.
8. Pursuant to a legal notice, a public hearing was opened on June 18, 2015, and duly continued to, and held on, July 16, 2015, and all interested persons were given an opportunity to be heard. The public hearing was closed on July 16, 2015.
9. Following the conclusion of the public hearing on July 16, 2015, and after giving due and careful consideration to the matter, the Planning Commission voted to direct City staff to prepare a Resolution denying the Applicant's requested Variance and continued the item to the Planning Commission meeting of August 6, 2015.
10. At the August 6, 2015 Planning Commission meeting, the Planning Commission voted to direct City Staff to notice a new public hearing to allow it to consider additional information, conditions, and potential modifications to the Applicant's request.
11. Pursuant to a legal notice, another public hearing was held on September 3, 2015, and all interested persons were given an opportunity to be heard.
12. The Planning Commission gave due and careful consideration to the matter during its meetings of June 18, 2015, July 16, 2015, August 6, 2015, and September 3, 2015.
13. Because the application is denied, the Project is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to the provisions of Article 19, Section 15270(a) of the CEQA Guidelines.

BE IT FURTHER RESOLVED, FOUND AND DETERMINED that the facts and reasons supporting the conclusion of the Planning Commission, as required under Municipal Code Section 9.32.030 are as follows:

FACTS:

The subject two (2) properties (with Assessor's Parcel Nos. 099-105-40 & 42) have a gross lot area of approximately 2.5 acres, making up an integrated development, and are developed with an existing approximately 30,000 square foot building. The properties are zoned CC-3 (Civic Center Core) and have General Plan Land Use Designations of Civic Center Mixed Use. The properties abut CC-3 zoned properties to the north, across Garden Grove Boulevard, south, east, and west.

The existing 30,000 square foot building is located in the center with parking lots located at the front, fronting along Garden Grove Boulevard, and at the rear, behind the building, to the south. The Site currently provides a total of 152 parking spaces, of which eighty-four (84) parking spaces are located in the front parking lot area, and the remaining sixty-eight (68) parking spaces are located in the rear parking lot area.

Office Depot previously occupied the entire existing 30,000 square foot building. In April of 2015, a building permit was obtained for the construction of a demising wall, splitting the existing 30,000 square foot tenant space into a 15,700 square foot tenant space and a 14,300 square foot tenant space. Office Depot has downsized its operation and is now occupying the 15,700 square foot tenant space, with the address of 11100 Garden Grove Boulevard. If the Variance were approved, the proposed East Seafood Buffet restaurant would occupy the newly created 14,300 square foot tenant space, which has a new address of 11102 Garden Grove Boulevard.

For a retail commercial use under 40,000 square feet in gross floor area, the Garden Grove Municipal Code ("Code") requires a minimum of one (1) parking space per 200 square feet of gross floor area. Thus, prior to the division of the existing 30,000 square foot Office Depot tenant space, Code required a minimum of 150 parking spaces for the Office Depot retail use. The existing site currently provides a total of 152 total parking spaces, which is a surplus of two (2) parking spaces above the minimum required if the entire building contained retail uses.

Following the division of the existing 30,000 square foot tenant space into two (2) tenant spaces, the Office Depot will occupy the 15,700 square foot tenant space. Based on the Code requirement of a minimum of one (1) parking space per 200 square feet of gross floor area for retail uses, a minimum of seventy-nine (79) parking spaces would thus be required by Code for the reduced-sized Office Depot retail store ($15,700/200 = 78.5$). For restaurant/eating establishment uses in this location, the Garden Grove Municipal Code requires a minimum of one (1) parking space per 100 square feet of gross floor area – or double the amount required for retail uses. Thus, the proposed East Seafood Buffet restaurant, which would occupy the newly created 14,300 square foot tenant space, would require a minimum of 143 parking spaces ($14,300/100 = 143$). Therefore, based on Code for restaurant and retail land use parking rates, a total of 222 parking spaces ($79 + 143$) would be required for the subject Site for the proposed combination of restaurant and retail uses on the Site.

Since only 152 parking spaces are currently provided on the Site, there are seventy (70) (or approximately thirty-two percent (32%)) fewer parking spaces provided on the Site than would typically be required by Code. The Applicant initially requested approval of a Variance to deviate from the minimum number of required parking spaces and to allow it to operate its proposed combination of retail and restaurant uses with only the existing 152 spaces provided. Following the July 16, 2015

Planning Commission meeting, the Applicant modified its request to include a proposal to make improvements and modifications to the parking lot that would reduce the parking deficiency for which it is requesting a Variance to 44 spaces, or 19.8%.

The subject Site is functionally part of a larger shopping center. To the west of the subject Site is an existing fast-food drive-thru eating establishment, Del Taco, and an existing large retail store, Costco Wholesale. A driveway runs along the westerly property line of the subject Site, which provides reciprocal access to the Del Taco and Costco Properties utilizing the existing driveways. A Reciprocal Easement Agreement (REA) exists between the owners of three (3) sites, which provides for reciprocal access and shared parking between the subject Site, the Costco, and Del Taco Properties. The REA also purports to provide for a specified number of parking spaces to be maintained on each of the properties subject to the REA according to the types of uses located on the properties.

Evidence was introduced during the public hearing that parking, circulation, and traffic congestion and problems already exist within the integrated shopping center, particularly in the portion of the parking field near Costco; that Costco customers utilize the subject Site's parking lot; that customers of the proposed restaurant/retail uses on the subject Site may take up existing parking spaces currently utilized by Costco customers; that operation of the proposed more intense restaurant use will result in further reduced availability of parking spaces for Costco's customers and exacerbate the current parking challenges within the integrated shopping center, and potentially result in loss of business for neighboring businesses; and that approval of the Variance would result in more traffic problems and congestion in the area in which the subject Site is located and would be detrimental to the surrounding neighborhood. Evidence was also introduced that the proposed combination of retail and restaurant uses on the subject Site would violate the terms of the existing REA between the owners of the Costco Property, the Del Taco Property, and the subject Site due to the increased number of parking spaces required for a restaurant use.

California Government Code Section 65906 places express limitations on the granting of variances. In addition to these minimum standards for variances imposed by State law, Garden Grove Municipal Code Section 9.32.030.D.6 contains additional findings that must be made in order to grant a property owner's request for a variance.

FINDINGS AND REASONS:

In order to approve the Variance, all of the findings required by California Government Code Section 65906 and set forth in Garden Grove Municipal Code Section 9.32.030.D.6 must be made. In this case, based on the totality of information provided, the Planning Commission finds that for the following reasons,

the following required finding for approval of the requested Variance cannot be made:

Required Finding:

The granting of the requested Variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such vicinity and zone in which the property is located.

Reasons Required Finding Cannot Be Made:

The Applicant is proposing to operate a restaurant in a portion of the 30,000 square foot building that was previously occupied entirely by an Office Depot retail use. The parking demand generated by the proposed restaurant use is anticipated to be significantly greater than the parking demand generated for a retail use in the same tenant space. As a result, the Applicant is requesting a variance to allow it to offer 44 (or 19.8%) fewer parking spaces on the subject Site than would otherwise be required by the Municipal Code for the combination of uses proposed.

The subject Site is functionally part of a larger shopping center with a Reciprocal Easement Agreement (REA) providing for reciprocal access and parking between the subject Site and the adjacent properties occupied by Costco Wholesale and Del Taco. As indicated by the testimony and evidence provided at the public hearing, observed parking and circulation challenges already exist in this shopping center. Because the proposed new restaurant use would generate more parking demand than the retail use that previously occupied the same tenant space, granting of the requested Variance to permit operation of the proposed restaurant will result in an overall reduction in available parking for the shopping center as a whole, thus potentially exacerbating the existing parking and circulation challenges in the shopping center.

Evidence was presented that granting of the requested Variance, which would allow for the operation of a restaurant use that has a higher parking demand than a retail use, would result in a reduction in the perceived availability of parking for customers of other businesses within the shopping center, which would result in a loss of sales and harm to these businesses. Significant loss of sales, reduction in property values, or other harm to these adjacent businesses would be contrary to the City's interests and detrimental to the overall public welfare. The evidence provided by the Applicant and/or in the record does not sufficiently demonstrate that granting of the requested Variance to allow operation of the proposed combination of restaurant and retail uses on the Site without the addition of even more additional parking spaces will not adversely affect the neighboring properties or exacerbate the existing parking and circulation issues in the area, even with the

Conditions of Approval proposed.

For these reasons, the Planning Commission concludes that it is unable to affirmatively make the required finding that the granting of the requested variance would not be materially detrimental to the public welfare or result in injury to the property or improvements in the same vicinity and zone as the subject Site.

RELIANCE ON THE RECORD

Unless otherwise provided, each and every one of the findings and conclusions in this Resolution are based on the competent and substantial evidence, both oral and written, contained in the entire record relating to the requested Variance. The findings and conclusions constitute the independent findings and conclusions of the Planning Commission in all respects and are fully and completely supported by substantial evidence in the record as a whole. Unless otherwise provided, all summaries of information in this Resolution are based on the substantial evidence in the record. The absence of any particular fact from any such summary is not an indication that a particular finding is not based in part on that fact.

BE IT FURTHER RESOLVED that the Planning Commission does conclude:

1. The requested Variance does not possess characteristics that would justify the request in accordance with Municipal Code Section 9.32.030.D.6 (Variance).
2. The applicant's request for Variance No. V-011-2015 is denied in its entirety.

EXHIBIT "A"

Variance No. V-011-2015

11100 and 11102 Garden Grove Boulevard

REVISED CONDITIONS OF APPROVAL

General Conditions

1. Each owner of the property shall execute, and the applicant shall record, a "Notice of Discretionary Permit Approval and Agreement with Conditions of Approval," as prepared by the City Attorney's Office, on the property within 30 days of approval. This Variance runs with the land and is binding upon the property owner, his/her/its heirs, assigns, and successors in interest. Notwithstanding the foregoing, approval of this Variance shall not be construed to address, affect, or waive the rights or obligations of the applicant or other property owners pursuant to any easement, reciprocal easement agreement or other agreement affecting the subject Site, which easements or agreements shall continue to be enforceable by the parties thereto in accordance with their terms, notwithstanding approval of this Variance.

2. All Conditions of Approval set forth herein shall be binding on and enforceable against each of the following, and whenever used herein, the term "applicant" shall mean and refer to each of the following: the project applicant, the developer of the project, the owner(s) and tenants(s) of the property, and each of their respective successors and assigns. All Conditions of Approval are required to be adhered to for the life of the project, regardless of property ownership. Except as otherwise expressly provided, any changes of the Conditions of Approval require approval by the Planning Commission. All Conditions of Approval herein shall apply to Variance No. V-011-2015. The rights granted the applicant pursuant to Variance No. V-011-2015 shall continue in effect for only so long as the nature and character of the uses operating in the 30,000 square foot building on the Site remain the same as at the time of approval the Variance. As of the date of approval of Variance No. V-011-2015, the building on the Site to which this Variance relates is occupied by (1) an Office Depot retail establishment in a 15,700 square foot tenant space and (2) a seafood buffet restaurant in a 14,300 square foot tenant space. Variance No. V-011-2015 was approved, in part, based on the operating characteristics of these two specific uses. In the event the nature or character of either of the two uses occupying the building (as described in the applicant's application, the June 18, 2015 and September 3, 2015 Planning Commission Staff Reports and accompanying materials, and the approving Resolution) materially changes, Variance No. V-011-2015 shall cease to be effective or to grant the applicant any rights to continue to operate the described uses on the Site. Any future uses on the Site different from the current described uses shall require compliance with all then

applicable standards of the Garden Grove Municipal Code, and the applicant may not rely on this Variance as a basis for satisfying the required number of parking spaces associated with such future uses.

3. Approval of this Variance shall not be construed to mean any waiver of applicable and appropriate zoning and other regulations; and wherein not otherwise specified, all requirements of the City of Garden Grove Municipal Code shall apply. Minor modifications to these Conditions of Approval which do not materially change the scope or intent of the project or the Planning Commission's approval may be approved by the Community Development Director, in his or her discretion. Proposed modifications to the project and/or these Conditions of Approval determined by the Community Development Director not to be minor in nature shall be subject to approval of new and/or amended land use entitlements by the applicable City hearing body.
4. If major modifications are made to the approved floor plan, site plan, or other related changes that result in the intensification of the project or create impacts that have not been previously addressed, the proper entitlements shall be obtained reflecting such changes.
5. All conditions of approval shall be implemented at the applicant's expense, except where specified in the individual condition.

Police Department

6. In the event security problems occur, and at the request of the Police Department, the permittee, at his own expense, shall provide a California licensed, uniformed security guard(s) on the premises during such hours as requested by the Police Department.
7. Any violations or noncompliance with the conditions of approval may result in the issuance of an Administrative Citation up to \$1,000 pursuant to GGMC 1.22.010(a).

Fire Department

8. The project shall comply with the requirements of the current applicable California Fire Code.

Public Works Engineering Division

9. The applicant shall be subject to Traffic Mitigation Fees and other duly adopted City fees, as applicable.

Public Works Water Services Division

10. Commercial food use of any type requires the installation of an approved grease interceptor, according to Garden Grove Sanitary District's Ordinance No. 6 (Fats, Oil and Grease Control Regulations Applicable to Food Service Establishments). In the event that an approved grease interceptor is not already installed, a properly sized grease interceptor shall be installed on the sewer lateral and be maintained by the property owner. There shall be a separate sanitary waste line that will connect to the sewer lateral downstream of the grease interceptor. All other waste lines shall be drained through the grease interceptor. Grease interceptor shall be located outside of the building and accessible for routine maintenance. Owner shall maintain comprehensive grease interceptor maintenance records and shall make them available to the City of Garden Grove upon demand.
11. Food grinders (garbage disposal devices) are prohibited per Ordinance 6 of the Garden Grove Sanitary District Code of Regulations. Any existing units are to be removed.

Community Development Department

12. The approved site plan and floor plan are an integral part of the decision approving this Variance. There shall be no additional changes in the design of the site plan or floor plan without the approval of the Community Development Department, Planning Division. Any additional changes in the approved floor plan, which have the effect of expanding or intensifying the present use, shall require obtaining the proper entitlement(s).
13. The applicant/property owner shall maintain a minimum of 178 parking spaces on the site, per the submitted revised site plan for Variance No. V-011-2015.
14. If the number of on-site parking spaces provided for operation of the seafood buffet restaurant, Office Depot retail establishment, or any future use on the Site becomes inadequate to accommodate the operation of these uses, and/or if the operation of such uses results in increased traffic or circulation problems, as determined in the reasonable discretion of the City's Traffic Engineer and/or Community Development Director, the applicant and/or property owner shall prepare a plan to mitigate the parking, traffic, and/or circulation issues identified by the City (the "Mitigation Plan"). The Mitigation Plan shall be approved by the City's Traffic Engineer and/or Community Development Director and shall include such solution or combination of solutions as are needed to adequately mitigate the identified issue(s). Such solutions may include, without limitation: reducing the hours of operation, limiting the number of customers within the establishment(s), limiting the number of seats and customer dining area within the restaurant establishment, instituting an off-site parking arrangement, and/or

- maintaining on-site parking control personnel. Any such Mitigation Plan approved by the City shall be enforceable by the City in the same manner as other Project Conditions of Approval. In addition, failure by the applicant to prepare an acceptable Mitigation Plan on a timely basis and/or to implement an approved Mitigation Plan shall be grounds for revoking the Variance.
15. The existing stop bar and the existing stop sign legend at the Project Access Driveway on Garden Grove Boulevard, located just west of the subject building, shall be repainted.
 16. Bicycle racks shall be provided on-site in easily accessible and highly visible locations to promote alternative modes of transportation. The bicycle racks shall accommodate a minimum of sixteen (16) bicycles.
 17. A poster/message board shall be displayed in a prominent/visible location adjacent to the entrance of the subject building that promotes walking, bicycling, and public transit and provides information about these options within the neighborhood.
 18. The operators of the subject businesses on-site shall implement a plan to encourage employees to use alternative modes of transportation, such as carpooling and public transit.
 19. No outside display of merchandise shall be permitted at any time.
 20. There shall be no pool tables, arcade and/or coin-operated games at any time, as outlined in City Code Sections 8.20.010 and 8.20.050, on the premises at any time.
 21. There shall be no customers or patrons in or about the premises when the establishments are closed
 22. No live entertainment, i.e., dancing, karaoke, live music, sport bar or disc-jockey entertainment, etc., including amplified music, shall be permitted on the premises of the proposed restaurant establishment.
 23. The loading area at the rear of the restaurant shall be kept free from all debris and trash. No outside storage shall be permitted in this area.
 24. The owner/developer shall provide adequate trash enclosures with receptacles to accommodate the uses on the site along with adequate pick-ups during the week. All trash enclosures shall match the color and material of the buildings or block wall on the site and be Code compliant. The trash bins shall be kept inside the trash enclosure, and the gates shall remain closed at all times except during disposal and pick-up. The trash shall be picked up as needed to accommodate the use; the owner/developer shall increase the number of pick-ups as required.

25. A prominent, permanent sign, stating "NO LOITERING IS ALLOWED ON OR IN FRONT OF THE PREMISES," shall be posted in a place that is clearly visible to patrons of the licensee. The sign lettering shall be four (4) to six (6) inches high with black letters on a white background. The sign shall be displayed near or at the entrance, and shall also be visible to the public.
26. There shall be no uses or activities of an adult-oriented nature permitted as outlined in City Code Section 9.08.070.
27. There shall be no deliveries to or from the premises between the hours of 10:00 p.m. and 8:00 a.m., seven days a week.
28. Litter shall be removed daily from the premises, including adjacent public sidewalks, and from all parking areas under the control of the licensee. These areas shall be swept or cleaned, either mechanically or manually, on a weekly basis, to control debris.
29. Graffiti shall be removed from the premises and all parking lots under the control of the applicant, property owner, and/or any tenant, within 120 hours of notification.
30. The applicant is advised that the establishment is subject to the provisions of State Labor Code Section 6404.5 (ref: State Law AB 13), which prohibits smoking inside the establishment as of January 1, 1995.
31. Any satellite dish antennas installed on the premises shall be screened, subject to approval by the Community Development Department, Planning Division. No advertising material shall be placed thereon.
32. Exterior advertisements displays or exterior wall advertisements shall not be allowed.
33. The applicant / property owner shall comply with the adopted City Noise Ordinance.
34. The building plans, including grading and development plans and all construction activity shall comply with the current editions of the California Building Regulations as found in the California Code of Regulations (CCR), Title 24, Parts 2 through 12 as adopted by the City of Garden Grove.
35. As a part of the finalized working drawings for Planning Division, Engineering Division and Building Plan Check, the developer shall submit a detailed and dimensioned plot plan, floor plans, exterior elevations, and landscape plans that reflect the conditions of approval.
36. All lighting structures shall be placed so as to confine direct rays to the subject property. All exterior lights shall be reviewed and approved by the

Planning Services Division. Lighting adjacent to residential properties shall be restricted to low, decorative type, wall-mounted lights, or ground lighting system. Lighting in the common and parking areas shall be directed, positioned or shielded in such manner so as not to unreasonably illuminate the window area of nearby residences. Parking area lighting shall be provided during the hours of darkness the establishment is open at a minimum of two-foot candles of light, and one-foot candle of light during all other hours of darkness.

37. No exterior piping, plumbing, roof top access ladders, or mechanical ductwork shall be permitted on any exterior facade and/or be visible from any public right-of-way or adjoining property.
38. Signs shall comply with the City of Garden Grove sign requirements. No more than 15% of the total window area and clear doors shall bear advertising or signs of any sort. No signs advertising alcoholic beverages shall be placed on the windows. Any opaque material applied to the store front, such as window shall count toward the maximum window coverage area.
39. Any modifications to existing signs or the installation of new signs shall require approval by the Community Development Department, Planning Services Division prior to issuance of a building permit.
40. Any and all correction notice(s) generated through the plan check and/or inspection process is/are hereby incorporated by reference as conditions of approval and shall be fully complied with by the owner, applicant and all agents thereof.
41. A copy of the resolution, including the conditions approving Variance No. V-011-2015, shall be kept on the premises at all times.
42. The permittee shall submit a signed letter acknowledging receipt of the decision approving Variance No. V-011-2015, and his/her agreement with all conditions of the approval.
43. The applicant shall, as a condition of project approval, at its sole expense, defend, indemnify and hold harmless the City, its officers, employees, agents and consultants from any claim, action, or proceeding against the City, its officers, agents, employees and/or consultants, which action (i) seeks to set aside, void, annul or otherwise challenge any approval by the City Council, Planning Commission, or other City decision-making body, or City staff action concerning Variance No. V-011-2015, or (ii) concerns any easement, reciprocal easement agreement, or other agreement affecting the Site. The applicant shall pay the City's defense costs, including attorney fees and all other litigation related expenses, and shall reimburse the City for court costs, which the City may be required to pay as a result of such defense. The

- applicant shall further pay any adverse financial award, which may issue against the City including, but not limited, to any award of attorney fees to a party bringing such a claim, action, or proceeding. The City shall retain the right to select its counsel of choice in any action referred to herein.
44. The applicant shall implement a no-charge valet parking service to restaurant patrons, during periods of high parking demand including, but not limited to, hours between 12:00 p.m. to 3:00 p.m., on weekdays, and between 5:00 p.m. to 8:00 p.m., on weekend days (Friday, Saturday, Sunday) and holidays. All valet parking spaces shall be located on the subject property. Additionally, the valet parking service shall prioritize the use of parking spaces located in the rear parking lot area. The valet parking service shall be utilized to increase the availability of parking on-site as well as to prevent any overflow and parking impacts to the adjacent properties. The drop-off and pick-up location for the valet service, and the operation of such, shall be subject to the approval of the City.
 45. The applicant shall install pedestrian crossing signage and flashing stop signs adjacent to the two (2) existing driveways which provide vehicular access to the subject site off Garden Grove Boulevard. The location and placement of said signage shall be subject to the approval of the City.

COMMUNITY DEVELOPMENT DEPARTMENT PLANNING STAFF REPORT

AGENDA ITEM NO.: D.1.	SITE LOCATION: Citywide
HEARING DATE: September 3, 2015	GENERAL PLAN: N/A
CASE NO.: Amendment No. A-014-2015	ZONE: N/A
APPLICANT: City of Garden Grove	
OWNER: N/A	CEQA DETERMINATION: Exempt

REQUEST:

Recommend approval to the City Council of a City-initiated zoning text amendment to portions of Chapters 9.04 (Definitions), 9.16 (Commercial, Office Professional, Industrial, and Open Space Development Standards), and 9.18 (Mixed Use Regulations and Development Standards) of Title 9 of the City of Garden Grove Municipal Code to update the references, definitions, development standards, and operational conditions pertaining to massage establishments and other types of uses at which massage services are provided to be consistent with the City Massage Regulations set forth in Chapter 5.12 of the Garden Grove Municipal Code and the State Massage Therapy Act.

BACKGROUND:

Historically, the City of Garden Grove has regulated massage establishments and the business of massage both through a Police Department permitting process under Chapter 5.12 of the Garden Grove Municipal Code ("GGMC") and through zoning provisions in Title 9 of the GGMC imposing development standards on massage establishments and limiting the zoning districts in which they could be located. Prior to 2008, the City classified massage businesses as an adult entertainment uses for zoning purposes, which required massage businesses to be in the C-2 zone, to comply with strict distance separations from sensitive uses, and to obtain approval of a Conditional Use Permit.

In 2008, the California legislature adopted Senate Bill (SB) 731, known as the California Massage Therapy Act, which restricted local land use control on massage businesses. SB 731 established a voluntary certification process through the newly formed California Massage Therapy Council (CAMTC) for massage professionals and restricted local regulation of CAMTC-certified massage therapists and massage businesses employing only CAMTC-certified massage therapists. The role of CAMTC's was to certify individual massage professionals, conduct background checks, and investigate schools offering massage. Under SB 731, massage establishments who employed CAMTC-certified massage therapists were now classified as a professional service business, and jurisdictions had to treat these massage businesses similar to other professional services uses. Local jurisdictions

could not impose stricter restrictions than those imposed on similar professional service businesses located within the same zone. SB 731 essentially preempted the City from enforcing its existing zoning regulations on massage establishments.

To comply with SB 731, the City of Garden Grove established a policy that classified massage establishments as a medical use. Under the new policy, massage businesses were allowed to operate in any commercial zone where medical uses were permitted provided the use met the parking requirements for a new medical use, and the operator obtained a Massage Operator's Permit from the Police Department pursuant to the regulations of Title 5.12 of the Municipal Code.

Prior to the implementation of SB 731, Garden Grove had one business, Imperial Health Spa, that offered incidental massage services as part of its health spa operation. After implementation of SB 731, the City saw an increase to the number of massage establishments, and today has a total of 22 massage establishments operating in the City.

While some massage establishments operate as reputable and legitimate facilities, there are other massage establishments known to operate as fronts for prostitution and human trafficking in commercial storefronts licensed as massage businesses with CAMTC-certified massage therapists. While CAMTC is responsible for the certification of massage professionals, it does not have the authority to regulate or investigate massage businesses or the operators, as this is left to each jurisdiction to enforce. Through advocacy from the League of California Cities and local jurisdictions who were being impacted negatively from SB 371, in 2014, the state legislature adopted Assembly Bill (AB) 1147 (the Massage Therapy Act), which became effective on January 1, 2015, that restored local land use control to regulate massage establishments within parameters stipulated in the law.

AB 1147 prohibits local jurisdictions from: (1) defining massage establishments as adult entertainment; (2) requiring a massage establishment to have windows or walls that do not extend from floor to ceiling; (3) imposing client draping requirements beyond the covering of genitalia and female breasts; (4) prohibiting a massage establishment from locking its external doors if the massage establishment is a business entity owned by one individual with one or no employees; (5) requiring a massage establishment to post any notice that may be viewed by clients that contains explicit language describing sexual acts; (6) requiring a massage therapist licensed by CAMTC to take any test, medical exam, or background check beyond what is required by the statute; (7) requiring a CAMTC-certified massage therapist (other than a sole business owner) to obtain any other local license, permit, certificate, or other authorization to provide massage for compensation; (8) imposing a dress code requirement in excess of the requirements imposed by the statute; or (9) prohibiting a CAMTC-certified massage therapist from performing massage on gluteal muscles, or other massage techniques recognized by CAMTC, or other restrictions on professional practice beyond those included in the statute.

On May 26, 2015, the Garden Grove City Council adopted Ordinance No. 2856 amending Chapter 5.12 (Massage Regulations) of the City of Garden Grove Municipal Code to update the City's Massage Regulations in accordance with the Massage Therapy Act (AB 1147). The new Ordinance allows the Police Department to effectively regulate massage establishments in the City. The Ordinance requires all persons performing massage for compensation in the City to be CAMTC-certified. It also requires owners and operators of massage establishments to maintain a City massage establishment operator's permit and to adhere to extensive standards of conduct and conditions of operation. A copy of Chapter 5.12 is provided as Attachment 1 for the Planning Commission's reference. Significant elements of the updated massage regulations in Chapter 5.12 include the following:

- All massage practitioners must be CAMTC-certified
- A massage establishment must obtain an Operator's Permit from the City in order to commence operation.
- Permit applications may be denied if the owner(s) or employees have been previously convicted of prostitution or certain drug offenses.
- All massage establishments must comply with specified requirements for signage, lighting, and sanitation.
- Hours of operation are limited to 7:00 a.m. to 10:00 p.m.
- Massage establishments must notify the City of the employment of new massage practitioners.
- No alcoholic beverages are permitted onsite.
- Sexual conduct for compensation is prohibited in the provision of Massage Services.
- Operation Permits may be suspended or revoked for violation of the massage regulations.

Chapter 5.12's new regulatory and operational standards for massage establishments are already in effect and apply to all existing and future massage establishments. However, it is also necessary to adopt new zoning regulations for massage-related uses that are consistent with Chapter 5.12 and AB 1147 and that identify where in the City newly established massage establishments will be permitted to locate.

DISCUSSION:

AB 1147 prohibits massage establishments from being classified and regulated as an adult entertainment use. The proposed amendment will amend sections of the adult entertainment code to eliminate all references of massage parlors from each of the corresponding sections as identified in the draft City Council Ordinance (see Exhibit "A" of proposed Planning Commission Resolution No. 5849-15).

The proposed amendment will also introduce new definitions for massage, massage services, and massage establishments; identify the zones where massage businesses will be permitted; and establish parking and special operating conditions

for massage as discussed below, and as contained in the draft City Council Ordinance:

Massage Definitions:

The proposed amendment will introduce new definitions for "Massage," "Massage Services," and "Massage Establishments." The proposed definitions will be consistent with the definitions recently adopted by the City Council in Chapter 5.12 of the Municipal Code, and in summary, will define "Massage" and "Massage Services" as any method that involves manipulation of the body either by hand or with the aid of a mechanical or electrical device, and "Massage Establishment" as a business that offers any combination of massage services and bath facilities, including showers, baths, wet and dry heat rooms, pools and hot tubs.

Proposed Zones for Massage Establishments and Special Operating Conditions:

The proposed amendment will identify the zones where new massage establishments will be allowed with a Conditional Use Permit. Prior to adoption of AB 1147, massage businesses were permitted in all zones where medical uses were allowed, including the C-2, GGMU, and NMU zones. Currently, there are several massage businesses operating in the C-2 and GGMU zones. The C-2, GGMU, and NMU zones are located along major arterials in the City, with some properties forming part of larger commercial shopping centers. Also, prior to adoption of the mixed use zones in 2008, the majority of the GGMU and NMU properties were zoned C-2. Conditionally permitting massage establishments in the C-2, GGMU, and NMU zones is consistent with the former City policy that allowed massage establishments in these zones.

The proposed amendment will introduce specific operating conditions for massage businesses that includes requiring new massage establishments to maintain a 1,000 foot distance separation from existing massage establishments, and requiring massage establishments to be oriented toward a principal, major, or primary arterial street, and away from residential uses. In addition, no live entertainment or alcoholic beverages will be permitted in massage establishments.

Parking

The proposed amendment will establish separate parking standards for massage establishments. Currently, the parking requirements for massage businesses is listed under the adult entertainment section of the parking code. In order to comply with AB 1147, the parking standards for massage must be identified as a separate use. The parking for massage establishments will continue to be at a rate of 1 space per 200 square feet of gross building area.

Massage in Athletic and Health Clubs, Spas or Gyms and Hotels

The Municipal Code allows massage in conjunction with health clubs and gyms in the C-2 zone and in the mixed use zones, with a Conditional Use Permit. In order

to provide consistency with the proposed zoning for massage establishments, the Municipal Code will be amended to allow massage in health clubs and gyms in the same zones as massage establishments. Health clubs and gyms with massage will be continued to be allowed in the C-2 zone with a Conditional Use Permit, and in the GGMU, and NMU zones with a Conditional Use Permit. The operating conditions for health clubs and gyms with massage will also be updated to reference the provisions of Title 5.12.

The proposed Code Amendment would also allow massage in hotels with at least 150 rooms that offer an on-site spa facility. Currently, the hotels with 150 or more rooms are located along Harbor Boulevard in the City's resort district. These hotels are located in special Planned Unit Development zones that allow for massage facilities.

Existing Massage Establishments:

Currently, there are 23 massage businesses operating in the City with a business license. Only one of the 23 massage businesses, Imperial Health Spa, currently operates with a Conditional Use Permit for the health spa with incidental massage. Upon adoption of the proposed Code Amendment, the remaining 22 massage businesses will become legal non-conforming uses, meaning these establishments will be allowed to continue to operate in the same tenant space, provided they continue to operate in compliance with the provisions of Title 5.12 of the Municipal Code.

	Zone	Business Name	Business Address	Suite
1	C-1	777 Spa Massage	10022 Imperial Ave	F
2	C-1	Lel Palace Massage	10951 Westminster Ave	
3	C-1	P & C Wellness Spa Inc	8907 Westminster Ave	
4	C-1	Air Massage/Young Zi Health Clinic Inc	10242 Westminster Ave	
5	C-1	5 Star Body & Foot Massage	14324 Brookhurst St	
6	C-1	VIP Health Care Center Inc	11021 Magnolia St	
7	C-1	Lucky Massage (Chiropractor)	8895 Westminster Ave	
8	C-2	Imperial Health Center/Beom & Eum Investment LLC (Health Spa)	8251 Garden Grove Blvd	
9	C-2	Kim Van Day Spa (Beauty Salon)	10892 Westminster Ave	
10	C-2	Harbor Foot & Body Massage	13957 Harbor Blvd	
11	C-2	Brookhurst Foot & Body	13902 Brookhurst St	A
12	O-P	Asian West Massage Therapy/Thoc LLC	12570 Brookhurst St	3
13	O-P	Alma's Beauty Salon (Beauty Salon)	10542 Katella Ave	
14	GGMU2	Blessing Morality Full Massage	8862 Garden Grove Blvd	105/106
15	GGMU3	GGBody & Foot Massage	8851 Garden Grove Blvd	104
16	GGMU3	Royal Women Fitness (Bathhouse)	9858 Garden Grove Blvd	
17	GGMU3	Mimosa Massage Spa	9926 Garden Grove Blvd	
18	CC-3	Relax And Unwind Spa (Beauty Salon)	13272 Euclid St	103
19	BCSP-BCC	Relaxing Time Massage	12140 Brookhurst St	
20	CCSP-DC	Golden Star Body & Foot Massage	12079 Euclid St	
21	PUD-121-98	Delight Foot Spa	12871 Harbor Blvd	M2
22	PUD-104-81	Zennova Inc (Beauty Salon)	14351 Euclid St	1A/B/C
23	PUD-101-80	Health in Balance	13876 Harbor Blvd	3B

RECOMMENDATION:

Staff recommends that the Planning Commission:

1. Adopt the proposed Resolution recommending approval of Amendment No. A-014-2015 to the City Council.



KARL HILL
Planning Services Manager



By: Maria Parra
Urban Planner

ORDINANCE NO. 2856

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE
AMENDING CHAPTER 5.12 OF TITLE 5 OF THE GARDEN GROVE MUNICIPAL CODE
RELATING TO MASSAGE REGULATIONS

City Attorney Summary

This Ordinance would amend Chapter 5.12 of Title 5 of the Garden Grove Municipal Code to update the City's massage regulations to comport with the Massage Therapy Act. Effective January 1, 2015, Assembly Bill 1147, also referred to as the "Massage Therapy Act," restores local control over massage establishments, allowing local governments to use their regulatory authority, as in the case with other businesses, to ensure the public's safety, reduce human trafficking, and enforce local standards for the operation of the business of massage therapy, subject to specific limitations. This Ordinance requires all persons performing massage for compensation in the city to be certified by the California Massage Therapy Council (CAMTC) and requires all owners and operators of massage establishments to maintain a City massage establishment operator's permit and to adhere to specified standards of conduct and conditions of operation.

THE CITY COUNCIL OF THE CITY OF GARDEN GROVE HEREBY ORDAINS AS FOLLOWS:

SECTION 1: Chapter 5.12 of Title 5 of the Garden Grove Municipal Code is hereby amended in its entirety to read as set forth in Exhibit "A" attached hereto and incorporated herein.

SECTION 2: The City Council finds that the proposed Ordinance is not subject to the California Environmental Quality Act ("CEQA"; Cal. Pub. Resources Code Section 21000 et seq.) pursuant to Section 15061(b)(3) of the State CEQA Guidelines (Cal. Code of Regs., Title 14, Section 15000 et seq.) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

SECTION 3: If any section, subsection, subdivision, sentence, clause, phrase, word, 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 hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, words or portions thereof be declared invalid or unconstitutional.

SECTION 4: The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published and posted pursuant to the provisions of law and this Ordinance shall take effect thirty (30) days after adoption.

The foregoing Ordinance was passed by the City Council of the City of Garden Grove on the 26 day of May 2015.

ATTEST:

/s/ BAO NGUYEN
MAYOR

/s/ KATHLEEN BAILOR, CMC
CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS:
CITY OF GARDEN GROVE)

I, TERESA POMEROY, Deputy City Clerk of the City of Garden Grove, do hereby certify that the foregoing Ordinance was introduced for first reading and passed to second reading on May 12, 2015, with a vote as follows:

AYES: COUNCIL MEMBERS: (5) BEARD, BUI, JONES, PHAN, NGUYEN
NOES: COUNCIL MEMBERS: (0) NONE
ABSENT: COUNCIL MEMBERS: (0) NONE

and was passed on May 26, 2015, by the following vote:

AYES: COUNCIL MEMBERS: (5) BEARD, BUI, JONES, PHAN, NGUYEN
NOES: COUNCIL MEMBERS: (0) NONE
ABSENT: COUNCIL MEMBERS: (0) NONE

/s/ KATHLEEN BAILOR, CMC
CITY CLERK

EXHIBIT "A"

CHAPTER 5.12. MASSAGE REGULATIONS

5.12.010	Findings and Purpose
5.12.020	Definitions
5.12.030	State Certification and Operator's Permit Required
5.12.040	Application for Operator's Permit
5.12.050	Issuance or Denial of Operator's Permit
5.12.060	Requirements of Operation
5.12.070	Inspection by City Officials
5.12.080	Issuance of Notice of Violation
5.12.090	Duration of Operator's Permits and Transfers
5.12.100	Out-Call Massage
5.12.110	Exemptions
5.12.120	Operator's Permit Suspension or Revocation
5.12.130	Administrative Hearings
5.12.140	Burden of Proof at Hearings
5.12.150	Resubmission after Denial or Revocation
5.12.160	Judicial Review
5.12.170	No Refund of Business License Taxes
5.12.180	Violations, Penalties, and Enforcement Remedies
5.12.190	Authority

SECTION 5.12.010: Findings and Purpose

The City Council finds and declares as follows:

- (1) 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.
- (2) The City is authorized to regulate massage establishments pursuant to California Business and Professions Code Sections 460(c), 4612(b) and 16000, California Government Code Section 51030 *et seq.*, and Section 7 of Article XI of the California Constitution.
- (3) There is a significant risk of injury to massage clients by improperly trained and/or educated massage practitioners and this Chapter provides reasonable safeguards against injury and economic loss.
- (4) There is opportunity for acts of prostitution and other unlawful sexual activity to occur in massage establishments. Courts have long recognized massage as a pervasively regulated activity and that some massage establishments are brothels

in disguise. The establishment of reasonable standards and restrictions on operations will serve to reduce the risk of illegal activity.

- (5) The City Council recognizes that massage establishments may have a serious deleterious effect upon adjacent areas, as well as the areas in which they are located, when illegal activities such as pandering or prostitution occur thereat.
- (6) The City Council understands that illegal activities occurring in massage establishments often incorporate the exploitation of women and new immigrants to this country.
- (7) The regulations and restrictions contained in this Chapter tend 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.

SECTION 5.12.020: Definitions

The following definitions of words shall apply to this Chapter:

- (1) "Acupressure" means the act of applying manual pressure to parts of the body with the intention of treating illness and/or disease or relieving pain.
- (2) "Applicant" means an applicant for an Operator's Permit.
- (3) "City" means the City of Garden Grove.
- (4) "CAMTC" means the California Massage Therapy Council, a non-profit organization formed pursuant to California Business and Professions Code Section 4600 *et seq.*
- (5) "Certified Massage Practitioner" means any individual certified by CAMTC as a certified massage practitioner or as a certified massage therapist pursuant to California Business and Professions Code Section 4600 *et seq.*
- (6) "City Manager" means the City Manager of the City or his/her designee.
- (7) "Employee" includes every owner, partner, operator, manager, supervisor, person and worker, whether paid or not, full-time or part-time, who renders personal services of any nature or is otherwise employed in support of the operation of a Massage Establishment. For purposes of this Chapter, the term Employee shall also include Certified Massage Practitioners who provide Massage Services, whether as independent contractors or otherwise, in or for a Massage Establishment.

- (8) "Manager" means a person or persons designated or permitted by the Owner or Operator of the Massage Establishment to act as the agent of the Owner or Operator in managing day-to-day operations. Evidence of management may include, but is not limited to, evidence that the individual has power to direct or hire and dismiss employees, control hours of operation, create policy or rules, or purchase supplies. A Massage Establishment may have more than one Manager.
- (9) "Massage" or "Massage Services" means any method of applying pressure on, causing friction against, stroking, kneading, rubbing, tapping, pounding, vibrating, acupressure, stimulating, compression on or movement of the external parts of the human body of another, either directly *via* the use of hands or some other body part, with or without the aid of or by means of any mechanical or electrical apparatus, or other appliance or device, for money or any form of consideration. Massage may incorporate supplementary aids such as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment or other similar preparations commonly used in this practice.
- (10) "Massage Establishment" means any business or establishment with a fixed location where any individual, firm, association, partnership, limited liability company, corporation, or combination of individuals, offers, engages in, conducts, carries on or permits to be engaged in, conducted or carried on, Massage Services within the City, including the residence or business office of a Sole Provider who provides Massage Services at such residence or business office. Any type of business or establishment at which Massage Services are provided shall be considered a Massage Establishment for purposes of this Chapter, regardless if the business holds itself out as something other than a Massage Establishment and/or also offers or provides other types of products or services. Any business or establishment that offers any combination of Massage Services and bath facilities, including, but not limited to, showers, baths, wet and dry heat rooms, pools and hot tubs, shall be deemed a Massage Establishment under this Chapter. The residence or business office of a Sole Provider who only engages in Out-Call Massage and does not provide Massage Services at such residence or business office shall not be considered a Massage Establishment.
- (11) "Operator's Permit" means a permit issued to any Person desiring to operate a Massage Establishment by the City upon submission of satisfactory information and satisfaction of the requirements pursuant to the provisions of this Chapter.
- (12) "Out-Call Massage" shall mean the provision of Massage Services at a location other than at a Massage Establishment. Such locations may include, but are not limited to, hotel rooms, offices, or patron residences.

- (13) "Owner" or "Operator" means any and all Persons who have an ownership interest in a Massage Establishment and/or responsibility, in whole or in part, for its ongoing operations including, but not limited to, any of the following Persons: the sole proprietor of a sole proprietorship, any general or limited partner of a general or limited partnership, any shareholder of a corporation, any member or manager of a limited liability company, or any person who has an ownership interest in a Massage Establishment, whether as an individual, corporation, limited liability company, general partner, limited partner, shareholder, member or otherwise.
- (14) "Person" means any individual or combination of individuals, sole proprietor, firm, association, partnership, corporation, limited liability company, joint venture, or other entity.
- (15) "Police Chief" means the City's Police Chief, or his/her designee, who is responsible for promulgating rules, regulations, and requirements consistent with the provisions of this Chapter and all other laws in connection with the issuance of an Operator's Permit.
- (16) "Sole Provider" means any legal form of business organization where the business owner owns 100 percent of the business, is the only person who provides Massage Services for compensation for that business pursuant to a valid and active State Certificate, and has no other employees or independent contractors.
- (17) "State Certification" or "State Certificate" means a valid and current certificate issued by CAMTC pursuant to California Business and Professions Code Section 4600 *et seq.*, as may be amended from time to time.

SECTION 5.12.030: State Certification and Operator's Permit Required

- (A) Except as otherwise provided in Section 5.12.110, no individual shall engage in, conduct, carry on, practice or perform Massage Services within the city without first obtaining and thereafter maintaining State Certification and presenting proof of such State Certification, in accordance with the provisions of this Chapter.
- (B) Except as otherwise provided in Section 5.12.110, no Person shall engage in, conduct or carry on, or permit to be engaged, conducted, or carried on in or upon any premises within the city, the operation of a Massage Establishment without first obtaining and thereafter maintaining an Operator's Permit pursuant to this Chapter, and without otherwise complying with the provisions of this Chapter.
- (C) No Owner, Operator or Manager shall employ or retain any individual to conduct, carry on, practice or perform Massage Services within the city unless such individual has a State Certificate. For purposes of this Chapter, an Owner, Operator or Manager employs or retains a person if (1) that individual is a directly paid employee of the Massage

Establishment, (2) that individual's association with the Massage Establishment is that of an independent contractor who receives compensation for Massage Services provided to patrons of the Massage Establishment, or (3) that individual receives a patron referral(s) from the Massage Establishment for Massage Services and arranges in any way for compensation relating to such services to flow to such Owner, Operator, Manager or Massage Establishment.

SECTION 5.12.040: Application for Operator's Permit

- (A) An application for an Operator's Permit shall be filed on forms provided by the Police Chief, and submitted under penalty of perjury. The application shall include, without limitation, the following information, documents, and fees:
- (1) The type of legal entity or entities owning the proposed Massage Establishment, i.e., whether a sole proprietorship, partnership, limited liability company, corporation, or otherwise. If the Applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation or charter together with the state and date of incorporation and the names and residence addresses of each of its current officers and directors, and of each shareholder or other person who has an ownership interest in the corporation. If the Applicant is a limited liability company, the name of the limited liability company shall be set forth exactly as shown in its articles or organization or other organizational document together with the state and date of organization and the names and residence addresses of each of its current officers and directors, and of each member or other person who has an ownership interest in the limited liability company. If the Applicant is a partnership, the application shall set forth the name and residence addresses of each of the partners, including limited partners. If it is a limited partnership, it shall furnish a copy of its certificate of limited partnership filed with the Secretary of State. If one or more of the partners is a corporation or limited liability company, the provisions of this subsection pertaining to corporations and limited liability companies shall apply. An Applicant that is a corporation, limited liability company or partnership shall designate one of its officers, members, managers, or general partners to act as its responsible managing officer. Such designated individual shall complete and sign all application forms required for an individual Applicant under this Chapter, but only one application fee shall be charged.
 - (2) The precise name under which the Massage Establishment is to be conducted.
 - (3) The present or proposed address and telephone numbers of the Massage Establishment.

- (4) The tax identification number used for income tax reporting for the Massage Establishment.
- (5) A complete description of all services to be provided at the proposed Massage Establishment.
- (6) A complete current list of the names and residence addresses of all current or proposed Employees of the Massage Establishment and the name and residence address of each current or proposed Manager(s) proposed to be principally in charge of the operation of the Massage Establishment.
- (7) True and correct copies of the current State Certificate and CAMTC-issued identification card for each Employee who will be providing Massage Services at the Massage Establishment.
- (8) A description of any other business to be operated on the same premises as the Massage Establishment.
- (9) The name, address, and description of any other business within the City or the State which is owned, wholly or in part, or operated by the Applicant.
- (10) A statement signed by the Applicant authorizing 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 the applicable provisions of law.
- (11) A statement signed by the Applicant confirming that the Massage Establishment shall employ and only permit Certified Massage Practitioners to provide Massage Services at the Massage Establishment.
- (12) A statement signed by the Applicant confirming that the Massage Establishment shall ensure that all independent contractors who provide Massage Services at the Massage Establishment shall be in possession of a valid and current City business tax certificate at all times when Massage Services are provided.
- (13) A statement signed by the Applicant acknowledging that the Applicant, Owner(s), Operator(s) and Manager(s) shall each be responsible for the conduct of all Employees on the premises of the Massage Establishment and that failure to comply with this Chapter, or any local, state or federal law, including California Business and Professions Code section 4600 *et seq.*, may result in the revocation of the Operator's Permit and civil, administrative, or criminal penalties.
- (14) The following personal information concerning the Applicant and each Owner, Operator, and Manager of the Massage Establishment:

- a. Full complete name and all aliases or fictitious names used within the last ten (10) years.
 - b. A valid and current driver's license and/or identification card issued by a state or federal government agency or other photographic identification bearing a bona fide seal by a foreign government.
 - c. Current and all previous residential addresses for the last eight (8) years.
 - d. Date of Birth.
 - e. Height, weight, color of hair, eyes, and sex.
 - f. Two front faced portrait photographs at least two inches by two inches in size taken within thirty (30) days of submission of the application.
 - g. The complete business, occupation, and employment history for eight (8) years preceding the date of application, including, but not limited to, the massage or similar business history and experience of the Applicant and each Owner, Operator, and Manager.
 - h. The complete massage permit history of the Applicant and each Owner, Operator, and Manager; whether such person has ever had any permit or license issued by any agency, board, city, county, territory, or state; the date of issuance of each such a permit or license; whether any such permit or license was ever denied, revoked, suspended or refused to be renewed, and the reasons therefore.
 - i. All criminal convictions, including pleas of nolo contendere, within the last ten (10) years including those dismissed or expunged pursuant to California Penal Code Section 1203.4, but excluding minor traffic violations, and the date and place of each such conviction and reason therefor.
 - j. A complete set of fingerprints taken by the Police Department, subject to a fee to cover actual costs.
- (15) The name and address of the owner and lessor of the real property upon or in which the Massage Establishment is to be conducted. In the event the Applicant is not the legal owner of the property, the application must be accompanied by a copy of the lease and a notarized acknowledgment from the owner of the property that a Massage Establishment will be located on his or her property, and that the Massage Establishment shall be subject to this Chapter.

- (16) Such other identification and information as the Police Chief may reasonably require in order to discover the truth of the matters herein specified and as required to be set forth in the application.
- (17) A written statement signed and dated by the Applicant that he or she certifies under penalty of perjury that all information contained in the application is true and correct.
- (B) An application for an Operator's Permit shall be accompanied by a non-refundable application fee in an amount established by resolution of the City Council.
- (C) If, at any time during the application process or during the term of an Operator's Permit, any of the information provided in the application for an Operator's Permit on file with the City changes, for example by a change in Employees or Manager(s), the Owner or Operator shall notify the Police Chief in writing of such change within ten (10) business days after such change.

SECTION 5.12.050: Issuance or Denial of Operator's Permit

- (A) Upon receipt of a complete application for an Operator's Permit, the Police Chief shall conduct an investigation to ascertain whether such permit should be issued as requested. The Police Chief shall, within sixty (60) days of receipt of a complete application, approve, conditionally approve, or deny the application. The sixty (60) day period may be extended by the Police Chief for up to thirty (30) additional days to complete the investigation. The Police Chief shall issue such permit unless he or she makes any of the following findings:
 - (1) Any Owner, Operator, Manager or Employee of the Massage Establishment has been convicted of a violation of Section 266i, 315, 316, 318, or subdivision (b) of Section 647 of the California Penal Code, or has been convicted in any other state of any offense that, if committed or attempted in the State of California, would have been punishable as one or more of the above-mentioned offenses.
 - (2) Any Owner, Operator, Manager or Employee of the Massage Establishment has been convicted of any felony offense involving the sale of a controlled substance specified in Section 11054, 11055, 11056, 11057, or 11058 of the California Health and Safety Code, or has been convicted in any other state of any offense that, if committed or attempted in the State of California, would have been punishable as one or more of the above-mentioned offenses.
 - (3) Any Owner, Operator, Manager or Employee of the Massage Establishment is required to register under the provisions of Section 290 of the California Penal Code.

- (4) Any Owner, Operator, or Manager of the Massage Establishment has within eight (8) years preceding the date of the application:
 - a. Engaged in conduct in another jurisdiction which, if it had occurred within the city, would have been a violation of law and/or would constitute grounds for denial, suspension, or revocation of an Operator's Permit under this Chapter.
 - b. Been subjected to a permanent injunction against the conducting or maintaining of nuisance pursuant to Sections 11225 through 11235 of the California Penal Code, or any similar provisions of law in a jurisdiction outside the state.
 - c. Engaged in conduct which would constitute an offense as described in Subsection (A)(1) of this Section.
 - d. Been convicted of an act involving dishonesty, fraud, deceit or moral turpitude or an act of violence, which act or acts are related to the qualifications, functions, or duties of the Owner, Operator, or Manager.
 - e. Had a massage operator or massage technician permit or other similar license or permit denied, suspended, revoked, or refused to be renewed for cause by a licensing authority or by any city, county, or state.
- (5) The Applicant has made a false, misleading, or fraudulent statement or omission of fact to the City in the permit application process.
- (6) The Application does not contain all of the information required by Section 15.12.040 of this Chapter.
- (7) The Massage Establishment as proposed by the Applicant does not comply with all requirements of this Chapter and all other applicable laws, including, but not limited to, health, zoning, fire and safety requirements and standards.
- (8) Within a twenty-four (24) month period prior to the submittal of the application, the location of the proposed Massage Establishment (i) has been the site of a violation of this Chapter, or any similar criminal or civil ordinance, law, rule, or regulation of the State of California or any other public agency related to the operation of Massage Establishments, or (ii) has been the site of a Massage Establishment that was closed due to criminal activity. For purposes of this Subsection, closure due to criminal activity includes voluntary closure of a Massage Establishment after there have been arrests at the location or other notices relating to criminal activity.

- (B) Prior to commencing operations pursuant to an Operator's Permit issued by the Police Chief pursuant to this Chapter, Applicants shall obtain a business tax certificate pursuant to Title 5 of the Garden Grove Municipal Code and any and all appropriate zoning or land use approvals required pursuant to Title 9 of the Garden Grove Municipal Code, including any amendments thereto.
- (C) An Operator's Permit issued pursuant to this Chapter does not authorize the Owner or Operator to operate a Massage Establishment until the Owner or Operator has complied with all applicable business licensing or tax requirements, zoning requirements, building requirements, and all other applicable federal, state, and City laws and regulations.

SECTION 5.12.060: Requirements of Operation

Each Owner, Operator and Manager of a Massage Establishment shall be responsible for ensuring compliance with each of the requirements of operation, which shall apply to all Massage Establishments.

- (A) Facilities.
 - (1) Subject to applicable provisions of the City's codes, a recognizable and legible sign shall be posted at the main entrance identifying the business as a Massage Establishment.
 - (2) No Massage Establishment located in a building or structure with exterior windows fronting a public street, highway, walkway, or parking area, shall, during business hours, block visibility into the interior reception and waiting area through the use of curtains, closed blinds, or any other material that obstructs, blurs or darkens the view into the premises.
 - (3) The hours of operation shall be displayed in a conspicuous place in the reception area and in any front window clearly visible from outside of the Massage Establishment. Patrons and visitors shall be permitted in the Massage Establishment only during the posted hours of operation.
 - (4) Front doors used for patron access shall remain unlocked during business hours unless the Massage Establishment is a business entity owned by one individual with one or no employees or independent contractors.
 - (5) Minimum lighting shall be provided in accordance with the City's electrical code and, in addition, at least one artificial light of not less than forty (40) watts shall be provided in each room or enclosure where massage services are performed and shall be activated at all times while a patron is in such room or enclosure.

- (6) Closed cabinets or other covered space shall be provided and utilized for the storage of clean linens, and receptacles acceptable to the City shall be provided for the deposit of soiled linen.
- (7) The walls in all rooms where water or steam baths are given shall have a washable, mold-resistant surface.
- (8) A minimum of one toilet and one separate wash basin shall be provided for patrons in each Massage Establishment, which basin shall provide soap or detergent and hot running water at all times. A permanently installed soap dispenser, filled with soap, and a single service towel dispenser shall be provided at the restroom handwash sink. A trash receptacle shall be provided in each toilet room. Showers may be provided at the operator's option.
- (9) All Massage Establishments shall have clean and sanitary towels, sheets and linens in sufficient quantity to meet the requirements of this Chapter. Reuse of towels, sheets and linens is prohibited unless the same have first been laundered. Heavy white paper may be substituted for sheets, provided that such paper is used only once and then discarded into a sanitary receptacle.
- (10) All walls, ceilings, floors, pools, showers, bathtubs, steam rooms and all other physical facilities including appliances and apparatuses for the Massage 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.
- (11) Disinfecting agents and sterilizing equipment shall be provided for any instruments used in performing acts of Massage and the instruments shall be disinfected and sterilized after each use.
- (12) A massage table shall be provided in each massage room or enclosure and the Massage shall be performed on this massage table. The tables must have a minimum height of eighteen (18) inches. Two (2) inch thick foam pads with a maximum width of four (4) feet may be used on a massage table and must be covered with durable, washable plastic or other waterproof material. Beds, mattresses, waterbeds, futons, sofa beds, or any type of portable or convertible beds are not permitted on the premises.
- (13) No part of the Massage Establishment shall be used for residential or sleeping purposes.

(B) Operations.

- (1) No Massage Establishment shall be open for business or operated between the hours of ten (10:00) p.m. and seven (7:00) a.m.
- (2) (a) A register of all Certified Massage Practitioners who are currently providing, or who have previously provided, Massage Services on the premises, showing the names, nicknames, and aliases used by such Employees, along with the dates of their employment and termination, if applicable, and (b) copies of each Certified Massage Practitioner's current State Certificate and CAMTC-issued identification card, shall be maintained on file on the premises of each Massage Establishment, and shall be made available upon request to any individual, including but not limited to, any duly authorized official of the City.
- (3) Within ten (10) business days of a Massage Establishment hiring or contracting with a new Certified Massage Practitioner to provide Massage Services, written notice of the name and residential address of the new Employee and copies of his or her current State Certificate and CAMTC identification card shall be filed with the Police Chief.
- (4) Written notice shall be provided to the Police Chief within five (5) days of the expiration, revocation, suspension, or surrender of an Employee's State Certification, and no Employee whose State Certification is expired, revoked, suspended, or surrendered shall be permitted to provide Massage Services at the Massage Establishment until and unless valid State Certification have been reestablished and notice and copies of such Employee's current State Certificate and CAMTC identification card have been provided to the Police Chief.
- (5) All documents or information pertaining to a Certified Massage Practitioner that is required to be maintained or provided pursuant to this Section 5.12.060(B) shall be maintained at the Massage Establishment for a minimum of two (2) years following the date that the Certified Massage Practitioner ceases providing Massage Services at the Massage Establishment.
- (6) A Manager shall be present on the premises at all times the Massage Establishment is open. A written statement designating the person or persons with power to act as a Manager shall be filed with the Police Chief prior to commencement of operation of the Massage Establishment and within ten (10) days of any managerial change.
- (7) The name of each on-duty Manager and each on-duty Certified Massage Practitioner shall be posted in a conspicuous public place in the lobby of the Massage Establishment on a daily basis.

- (8) No Massage Establishment shall be open for business without having at least one (1) Certified Massage Practitioner on the premises and on-duty.
- (9) Any and all Employees providing Massage Services shall carry and have on their persons, visible for the patron to see, a current and valid CAMTC-issued identification card that was issued to them.
- (10) Any and all changes of address or ownership of a Massage Establishment shall be reported immediately to the Police Chief. Operator's Permits are issued to specific Owners and for specific locations only. A new Operator's Permit shall be obtained prior to the proposed relocation of a Massage Establishment, the opening of another location, or a change in ownership of the Massage Establishment.
- (11) No Massage Establishment shall operate as a school of Massage, or use the same facilities as that of a school of Massage.
- (12) Each service offered, the price thereof, and the minimum length of time such service shall be performed shall be posted in an open and conspicuous public location in each Massage Establishment. All letters and numbers shall be capitals, and not less than one (1) inch in height. 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. All arrangements for services to be performed shall be made in a room in the Massage Establishment which is not used for administration of Massages, baths or health treatments, unless no other room exists in the Massage Establishment.
- (13) Any posted signs which are in a language other than English shall also be posted in English.
- (14) The Operator's Permit issued to the Massage Establishment shall at all times be displayed in an accessible and conspicuous place, visible from the entrance and/or reception and waiting area of the Massage Establishment.
- (15) Copies of the current State Certificates held by the Employees providing Massage Services at the Massage Establishment shall at all times be displayed in an accessible and conspicuous place in clear view of the public.
- (16) No alcoholic beverages or controlled substances shall be sold, served, furnished, kept, consumed, or possessed on the premises of any Massage Establishment.
- (17) A notice substantially similar to the notice required by Section 52.6 of the California Civil Code shall be posted in a conspicuous place near the public entrance of each Massage Establishment or in another conspicuous location in clear view of the public and Employees where similar notices are customarily posted.

(C) Prohibited Conduct.

- (1) Each Owner, Operator and Manager shall be responsible for the conduct of all Employees providing Massage Services while such Employees are on the premises of the Massage Establishment. Any act or omission of any Employee constituting a violation of this Chapter shall be deemed the act or omission of each of the Owners, Operators, and Manager(s) for purposes of determining (a) compliance with this Chapter, and (b) whether the Operator's Permit, business tax certificate, and/or any other permit required by the City shall be revoked, suspended, denied or renewed.
- (2) No Owner, Operator or Manager shall hire, employ or allow an individual to perform Massage Services unless such individual possess a valid and current State Certificate. Each Owner, Operator and Manager of a Massage Establishment shall have a continuing obligation to verify that all Employees providing Massage Services hold the State Certification required by this Chapter.
- (3) 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 of other sounds in the Massage rooms or enclosures, without the prior written consent of the patron.
- (4) No Employee shall violate the provisions of Section 647(b) of the California Penal Code, or any other state law involving a crime of moral turpitude.
- (5) No Employee shall engage in any form of unprofessional conduct as defined by Section 4609(a)(1) of the California Business and Professions Code, as may be amended from time to time, including without limitation:
 - a. Engaging in any form of sexual activity on the premises of a Massage Establishment.
 - b. Engaging in sexual activity while providing Massage Services for compensation.
 - c. Providing Massage of the genitals or anal region.
 - d. Providing Massage of female breasts without the written consent of the person receiving the Massage and a referral from a licensed California health care provider for such Massage.
- (6) No Employee shall dress, while engaged in the practice of Massage, or while visible to patrons in the Massage Establishment, in any of the following:

- a. Attire that is transparent, see-through, or substantially exposes the person's undergarments.
 - b. Swim attire, if not providing a water-based massage modality approved by CAMTC.
 - c. A manner that exposes the Employee's breast, buttocks, or genitals.
 - d. A manner that constitutes indecent exposure in violation of Section 314 of the California Penal Code.
- (7) No Employee shall expose their genitals, pubic region, buttocks, anus, or in the case of a female, her breasts below a point immediately above the top of the aureole, to the view of a Massage Establishment Patron.
- (8) A Massage Establishment patron's genitals, anus, and in the case of a female, her breasts, must be fully covered at all times while a Certified Massage Practitioner or other Employee is present in the same room as the patron.

SECTION 5.12.070: Inspection by City Officials

Any duly authorized official of the City, including but not limited to, the City police, designated representatives, code enforcement officers, health officials and building and fire inspectors, shall have the right to enter any Massage Establishment premises from time to time during regular business hours prior to the issuance of an Operator's Permit and subsequently thereafter for the purposes of making reasonable inspections to ensure compliance with this Chapter and other applicable laws, including building, fire, electrical, plumbing or health and safety regulations.

SECTION 5.12.080: Issuance of Notice of Violation

Whenever a City official makes an inspection of a Massage Establishment and finds that any provision of this Chapter or any other applicable provision of this Code has been violated, the City official may give notice of such violation by means of an inspection report or other written notice, including, but not limited to, issuing a citation for each and every violation of this Chapter or other applicable provision of this Code. In any such notification, the investigating official shall:

- (1) Set forth the specific violation or violations found;
- (2) If appropriate, establish a specific and reasonable period of time for the correction of the violation or violations. If the investigating official determines that the violation or violations are minor in nature, the investigating official may issue a warning to the Massage Establishment Owner and/or Operator that any further

violation of this Chapter or other applicable provision of this Code may result in revocation or suspension of the Operator's Permit. No time to correct need be given in the event of health and safety violations or violation of criminal law; and

- (3) State that failure to comply with any notice issued in accordance with the provisions of this Chapter or other applicable provision of this Code may result in revocation or suspension of the Operator's Permit.

Nothing in this Section shall preclude the investigating official from initiating suspension, revocation or other legal proceedings, or issuing a criminal or administrative citation, if he/she deems it appropriate based on the violation(s) found to exist, rather than first issuing a warning or a notice of violation.

SECTION 5.12.090: Duration of Operator's Permits and Transfers

- (A) No Operator's Permit issued hereunder shall be transferable to any other Person, Owner, location, or Massage Establishment. A new and/or separate Operator's Permit shall be obtained for each separate Massage Establishment and/or location and in the event of any change in ownership of a Massage Establishment. Any attempt to transfer an Operator's Permit to another Person or location is hereby declared invalid and the Operator's Permit shall automatically become void effective the date of such attempted transfer.
- (B) An Operator's Permit shall be good for and expire in twelve (12) months from the date of issuance, unless suspended or revoked.
- (C) Renewal applications with required application fee shall be filed with the Police Chief no later than thirty (30) days prior to the expiration of the twelve (12) month permit term.
- (D) Each Applicant for renewal shall file such information as may be reasonably required by the Police Chief.

SECTION 5.12.100: Out-Call Massage

- (A) No Person shall perform an Out-Call Massage in the city without possessing a valid and current State Certificate.
- (B) Notwithstanding any other provision of this Chapter, an Operator's Permit shall be required for any Massage Establishment with a fixed place of business providing Out-Call Massage.

SECTION 5.12.110: Exemptions

The provisions of this Chapter shall not apply to the following:

- (1) Treatment or services administered or provided in good faith by healing arts professionals who are duly licensed pursuant to the California Business and Professions Code or any other law of the State of California, including, but not limited to, physicians, surgeons, dentists, chiropractors, osteopaths, podiatrists, acupuncturists, physical therapists, physician assistants, or nurses, or by cosmetologists, barbers, estheticians, or manicurists who are duly licensed pursuant to California Barbering and Cosmetology Act, California Business and Professions Code section 7300 *et seq.*, while in the course of engaging in practices within the scope of their respective professional licenses. This exemption shall not be construed to apply or extend to treatments or services constituting "Massage," as defined in this Chapter, that are administered or provided by any Person acting as an independent contractor to one of the foregoing types of licensed professionals, if such Person is engaged in, or is purported to be engaged in, the business of Massage.
- (2) Chair Massages administered by fully clothed individuals to fully clothed patrons in office or public locations.
- (3) Hospitals, nursing homes, sanatoriums, or other health facilities duly licensed by the State of California, or activities engaged in by employees of such facilities in the course of their employment while working on the premises of such State-licensed facilities.
- (4) The activities of coaches or trainers employed by accredited junior high schools, high schools, junior colleges, colleges, or universities, while acting within the scope of such employment.
- (5) Massage therapy or health treatment involving Massage provided by trainers of amateur, semi-professional, or professional athletes or athletic teams, or at athletic facilities or events, while acting within the scope of their employment, so long as such Persons do not provide Massage Services as their primary occupation at any location where they provide such services within the city.
- (6) Schools of cosmetology or barbering which comply with the requirements of California Business and Professions Code Section 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 California Business and Professions Code Section 7395.1.

SECTION 5.12.120: Operator's Permit Suspension or Revocation

- (A) After an investigation, notice and opportunity to respond, an Operator's Permit may be revoked or suspended by the Police Chief where any of the following is found:
- (1) The business conducted is not substantially the same as that which was permitted under the Operator's Permit.
 - (2) The Massage Establishment is being operated in violation of any provision of this Chapter, Business and Professions Code Section 4600 *et seq.*, or any other laws which would have been grounds for denial of the Operator's Permit.
 - (3) The Applicant, Owner, Operator or Manager has engaged in fraud, or made a material omission or misrepresentation in obtaining or maintaining an Operator's Permit.
 - (4) The Massage Establishment has continued to operate after the applicable Operator's Permit has been suspended.
 - (5) The Applicant, Owner, Operator, or Manager of the Massage Establishment has acted in a manner detrimental to the public health, safety or welfare with regard to Massage Services.

SECTION 5.12.130: Administrative Hearings

- (A) All administrative hearings regarding a denial, nonrenewal, suspension, or revocation of a Massage Establishment Operator's Permit shall occur in accordance with this Section.
- (B) Upon determining that grounds for denial, nonrenewal, revocation, or suspension of an Operator's Permit exists, the Police Chief shall furnish written notice of a denial, nonrenewal, or proposed revocation or suspension of an Operator's Permit to the affected Applicant or Owner (hereinafter the "Appellant"). Such notice shall state the reasons for the denial, nonrenewal or proposed revocation or suspension and shall state that the a written request for an administrative hearing may be filed within fifteen (15) calendar days of the date of the notice. The notice shall be personally served, or sent by certified mail, postage prepaid, to the address provided by the Appellant and shall be mailed by the City within twenty-four (24) hours of the date of the notice. In the case of a proposed suspension or revocation of an Operator's Permit, the notice shall also be delivered by posting the notice at the location of the Massage Establishment. Any request for an administrative hearing shall be filed with the City Clerk along with a filing fee, in an amount set by resolution of the City Council, to defray the cost of such hearing. The request along with the filing fee must be received by the City Clerk within fifteen (15) calendar days of the date of the City's notice or, if required, the posting of the notice, whichever date is later. The written request for an administrative hearing shall state in detail each basis on which

the request is made and include copies of all documents in support of the appeal. If the request for a hearing is received by the City Clerk within fifteen (15) calendar days of the later of the date of the notice or, if required, the posting of the notice referred to herein, the City Clerk shall transmit the request to the City Manager, and a hearing shall be provided. If a written request is not received by the City Clerk within such period, the Police Chief's action shall be deemed to be the final decision.

- (C) Upon timely receipt of a written request for an administrative hearing, the City Manager shall conduct a hearing. Absent a timely request by the Appellant for a continuance, which request is granted, the City Manager shall conduct the hearing within thirty (30) calendar days of the City's receipt of the request for the hearing. Notice of time and place of the hearing shall be given by personal service or via certified mail, postage prepaid, at least fifteen (15) calendar days in advance of the date set for the hearing. At the hearing, the Appellant and the City shall be entitled to present relevant evidence and call witnesses who shall testify under oath and be subject to cross-examination. The scope of the hearing pursuant to this Section shall be limited to those issues raised in writing by the Appellant, as submitted pursuant to subsection (B) of this Section. The City Manager shall not be bound by the statutory rules of evidence in the conduct of the hearing. Technical rules relating to evidence and witnesses shall not apply to hearings provided for in this Chapter. Any relevant evidence may be admitted if it is material and of a type that is 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 testimony may be admissible and used for the purpose of supplementing or explaining any evidence given in direct examination, but shall not be sufficient in itself to support a finding unless such testimony would be admissible over objection in civil actions. The rules of privilege shall be applicable to the extent permitted in civil actions. Irrelevant, collateral, undue, and repetitious testimony shall be excluded.
- (D) At the conclusion of the hearing, the City Manager shall decide whether grounds for denial, nonrenewal, revocation or suspension exist and shall uphold, modify or overturn the decision of the Police Chief, stating factual findings, and his/her conclusion. The decision of the City Manager shall be final.
- (E) In the event that an Operator's Permit is suspended, revoked or expires, the Massage Establishment shall surrender the Operator's Permit to the Police Chief no later than the end of the third (3rd) business day after the suspension or revocation decision becomes final or the expiration occurs.

SECTION 5.12.140: Burden of Proof at Hearings

Unless otherwise specifically provided by law, the burden of proof shall be on the City in any administrative hearing under this Chapter to establish by a preponderance of the evidence that (a)

an application for an Operator's Permit shall be denied or (b) an Operator's Permit shall be suspended, revoked, or not renewed.

SECTION 5.12.150: Resubmission after Denial or Revocation

In the event an Operator's Permit for a proposed or existing Massage Establishment is denied or revoked pursuant to this Chapter, the Owner or Operator of such Massage Establishment may not resubmit an application for an Operator's Permit for a period of one (1) year from the effective date of such denial or revocation, unless accompanied by sufficient evidence that the grounds for denial or revocation of the Operator's Permit no longer exist. For purposes of this Section, the effective date of a denial or revocation of an Operator's permit shall be the later of (a) the date written notice of denial or revocation of the Operator's Permit by the Police Chief pursuant to Section 5.12.130(B) is deposited in the United States mail or (b) the date of the decision of the City Manager following an administrative hearing pursuant to Section 5.12.130(D) becomes final.

SECTION 5.12.160: Judicial Review

Judicial review of any decision of the City Manager may be made pursuant to Section 1094.5 of the California Code of Civil Procedure only if the petition for writ of mandate is filed no later than the ninetieth (90th) day following the date on which the decision becomes final. If the date is not otherwise specified, the decision is final on the date it is made. In issuing a final decision, the City Manager shall provide notice to the Appellant (as defined in Section 5.12.130) that the time within which judicial review must be sought is governed by Section 1094.6 of the California Code of Civil Procedure.

SECTION 5.12.170: No Refund of Business Licenses Taxes

No refund or rebate of business licenses taxes shall be allowed by reason of the fact that the Massage Establishment discontinues an activity for which a business license tax is required, or because the Operator's Permit is suspended or revoked.

SECTION 5.12.180: Violations, Penalties, and Enforcement Remedies

- (A) Violations of this Chapter shall be a misdemeanor. Any Person violating any provision of this Chapter shall be subject to criminal and/or administrative citations or civil actions, pursuant to Chapters 1.04 and 1.22 of the Garden Grove Municipal Code.
- (B) Injunctive relief may be instituted by the City Attorney, in addition to or separate from, criminal and/or administrative sanctions, pursuant to Garden Grove Municipal Code Section 1.04.090.
- (C) In addition to the above-described remedies, the City Council hereby authorizes the following administrative abatement process with respect to Massage Establishments conducted in violation of this Chapter.
- (1) The City Council hereby finds and declares that the conducting of a Massage Establishment in violation of any provision of this Chapter to be detrimental to the public health, safety, and general welfare of the community, and therefore a public nuisance as defined by Civil Code Section 3480.
 - (2) Whenever the Police Chief determines that any Massage Establishment, premises or property is operated in violation of any provision of this Chapter, the Police Chief may give notice to the responsible party stating the violation of this Chapter and the conditions that constitute a public nuisance. The notice shall set a reasonable date, not less than ten (10) business days from date of service, for a public hearing to be held by the City Council as to why the business should not be closed, or otherwise subjected to special conditions regarding further operation of the business. The notice shall be personally served or mailed by certified mail to the responsible party.
 - (3) After the conduct of the hearing by the City Council, the City Council shall make a determination as to whether a public nuisance exists. The City Council may adopt an abatement order with written findings in support of its determination. If a public nuisance finding is made, the City Council shall issue an abatement order to close the business or otherwise impose operating conditions on the business so as to bring the business in compliance with this Chapter. The order shall then be served by first-class mail on the responsible party.
 - (4) If such nuisance is not abated as directed in the abatement order, then the City Attorney may file a civil action to enjoin further operation of the business.
- (D) Nothing in this Section shall preclude the City from pursuing any other legally available enforcement remedies.

SECTION 5.12.190: Authority

- (A) The Police Chief shall have the power and authority to promulgate rules, regulations, and requirements consistent with the provisions of this Chapter and other law in connection with the issuance of an Operator's Permit. The Police Chief may designate an employee of his or her department to make decisions, investigate, or take any other action permitted or required under this Chapter.

- (B) Pursuant to California Business and Professions Code Section 4614(b), as it may be amended from time to time, the Police Chief is authorized to transmit to CAMTC copies of any final action of denial of an Operator's Permit application, or revocation or suspension of an Operator's Permit occurring pursuant to this Chapter. The Police Chief is also authorized to transmit information to CAMTC concerning: (1) any information related to criminal activity or unprofessional conduct allegedly engaged in by any Certified Massage Practitioner or any other Person providing Massage Services in the city, including, but not limited to, police reports and declarations of conduct.

RESOLUTION NO. 5849-15

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF GARDEN GROVE RECOMMENDING APPROVAL OF AMENDMENT NO. A-014-2015, TO AMEND PORTIONS OF CHAPTERS 9.04 (DEFINITIONS), 9.16 (COMMERCIAL, OFFICE PROFESSIONAL, INDUSTRIAL, AND OPEN SPACE DEVELOPMENT STANDARDS), AND 9.18 (MIXED USE REGULATIONS AND DEVELOPMENT STANDARDS) OF TITLE 9 OF THE CITY OF GARDEN GROVE MUNICIPAL CODE PERTAINING TO MASSAGE ESTABLISHMENTS AND OTHER TYPES OF USES AT WHICH MASSAGE SERVICES ARE PROVIDED.

BE IT RESOLVED that the Planning Commission of the City of Garden Grove, in regular session assembled on September 3, 2015 does hereby recommend approval of Amendment No. A-014-2015 to the City Council.

BE IT FURTHER RESOLVED in the matter of Amendment No. A-014-2015, the Planning Commission of the City of Garden Grove does hereby report as follows:

1. The case was initiated by the City of Garden Grove.
2. The City of Garden Grove is proposing a zoning text amendment to portions of Chapters 9.04 (Definitions), 9.16 (Commercial, Office Professional, Industrial, and Open Space Development Standards), and 9.18 (Mixed Use Regulations and Development Standards) of Title 9 of the Garden Grove Municipal Code pertaining to massage establishments and other types of uses at which massage services are provided.
3. The Planning Commission recommends the City Council find that the proposed amendment is not subject to the California Environmental Quality Act ("CEQA"; Cal. Pub. Resources Code Section 21000 et seq.) pursuant to Section 15061(b)(3) of the State CEQA Guidelines (Cal. Code of Regs., Title 14, Section 15000 et seq.) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.
4. Pursuant to legal notice, a public hearing was held on September 3, 2015, and all interested persons were given an opportunity to be heard.
5. Report submitted by City staff was reviewed.
6. The Planning Commission gave due and careful consideration to the matter during its meeting of September 3, 2015; and

BE IT FURTHER RESOLVED, FOUND AND DETERMINED that the facts and reasons supporting the conclusion of the Planning Commission are as follows:

FACTS:

The proposed Code Amendment will make text amendments to portions of Chapters 9.04 (Definitions), 9.16 (Commercial, Office Professional, Industrial, and Open Space Development Standards), and 9.18 (Mixed Use Regulations and Development Standards) of Title 9 of the Garden Grove Municipal Code to update the references, definitions, development standards, and operational conditions pertaining to massage establishments and other types of uses at which massage services are provided to be consistent with the City Massage Regulations set forth in Chapter 5.12 of the Garden Grove Municipal Code and the State Massage Therapy Act. Pursuant to the proposed Code Amendment, massage establishments will be treated as a separate commercial use, rather than as an adult entertainment business, and may be located in the C-2 (Community Commercial), GGMU (Garden Grove Mixed Use), and NMU (Neighborhood Mixed Use) zones, subject to approval of a Conditional Use Permit, provided they are not located within 1000 feet of another massage establishment, meet specified development, operational, and minimum parking standards, possess a valid and current massage operator's permit issued by the Police Chief, and comply with all other requirements of the City Massage Regulations in Chapter 5.12. Existing legally established and permitted massage establishments will be deemed legal nonconforming uses that are subject to the provisions of Chapter 5.12 (Massage Regulations) and Chapter 9.36 (Nonconformities) of the Garden Grove Municipal Code.

The proposed Code Amendment would also update the definitions, references, conditions and standards applicable to Athletic and Health Clubs, Spas or Gyms that provide massage services, and permit massage services to be provided as part of a salon, spa or similar facility located in, and incidental to the operation of, a Hotel that contains at least one hundred fifty (150) rooms located anywhere in the City.

FINDINGS AND REASONS:

1. The Amendment is internally consistent with the goals, objectives and elements of the City's general plan.

The proposed Code Amendment is internally consistent with the goals, policies, and elements of the General Plan. Pursuant to the proposed Amendment, massage establishments and athletic and health clubs, spas or gyms with massage would be permitted, subject to conditional use permit approval, in the C-2 (Community Commercial), GGMU-1, 2, 3 (Garden Grove Boulevard

Mixed Use), and NMU (Neighborhood Mixed Use) zones, subject to approval of a Conditional Use Permit, provided they are not located within 1000 feet of another massage establishment, meet specified development, operational, and minimum parking standards, possess a valid and current massage operator's permit issued by the Police Chief, and comply with all other requirements of the City Massage Regulations set forth in Chapter 5.12 of the Garden Grove Municipal Code. The C-2 zoning district implements the Light Commercial (LC) land use designation of the General Plan's Land Use Element, which is intended to allow a range of commercial activities, such as retail service establishments, that serve local residential neighborhoods and the larger community. The GGMU-1, 2, 3 and NMU zoning districts implement the Residential/Commercial Mixed Use land use designations of the General Plan's Land Use Element, which are intended to provide for a mix of residential and commercial uses. The operation of commercial uses incorporating massage services in the prescribed zones is thus consistent with the intent of the General Plan land use districts in which they would be located. Goal LU-4 / Policy LU-4.5 of the General Plan Land Use Element directs the City to develop uses that are compatible with one another, while requiring that commercial developments be adequately screened and buffered from residential uses. The proposed Amendment is designed to ensure compatibility with other uses by limiting massage establishments and other uses incorporating massage services to the proposed zones, requiring conditional use permit approval, and imposing specified development standards and concentration limits.

2. The Amendment will promote the public interest, health, safety and welfare.

The proposed Code Amendment will promote the public health, safety and welfare. Pursuant to the proposed Amendment, massage establishments and athletic and health clubs, spas or gyms with massage would be permitted only in certain locations with a conditional use permit and will be required to meet specified development, operational, and minimum parking standards, possess a valid and current massage operator's permit issued by the Police Chief, and comply with all other requirements of the City Massage Regulations set forth in Chapter 5.12 of the Garden Grove Municipal Code. These zoning and development standards will ensure that massage-related uses do not create a nuisance to the public, adjacent uses, or nearby properties.

INCORPORATION OF FACTS AND FINDINGS SET FORTH IN STAFF REPORT:

In addition to the foregoing the Planning Commission incorporates herein by this reference, the facts and reasons set forth in the staff report.

BE IT FURTHER RESOLVED that the Planning Commission does conclude:

1. Amendment No. A-014-2015 possesses characteristics that would indicate justification of the request in accordance with Municipal Code Section 9.32.030.D.1 (Code Amendment).
2. The Planning Commission recommends that the City Council approve Amendment No. A-014-2015 and adopt the draft Ordinance attached hereto as Exhibit "A".

Exhibit "A"

ORDINANCE NO. ___

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE APPROVING AMENDMENT NO. A-014-2015, A ZONING TEXT AMENDMENT TO PORTIONS OF CHAPTERS 9.04, 9.16, AND 9.18 OF TITLE 9 OF THE GARDEN GROVE MUNICIPAL CODE PERTAINING TO MASSAGE ESTABLISHMENTS AND OTHER USES AT WHICH MASSAGE SERVICES ARE PROVIDED.

City Attorney Summary

This Ordinance approves text amendments to portions of Chapters 9.04 (Definitions), 9.16 (Commercial, Office Professional, Industrial, and Open Space Development Standards), and 9.18 (Mixed Use Regulations and Development Standards) of Title 9 of the Garden Grove Municipal Code to update the references, definitions, development standards, and operational conditions pertaining to massage establishments and other types of uses at which massage services are provided to be consistent with the City Massage Regulations set forth in Chapter 5.12 of the Garden Grove Municipal Code and the State Massage Therapy Act. Pursuant to this Ordinance, massage establishments are treated as a separate commercial use, rather than as an adult entertainment business, and may be located in the C-2 (Community Commercial), GGMU (Garden Grove Mixed Use), and NMU (Neighborhood Mixed Use) zones, subject to approval of a Conditional Use Permit, provided they are not located within 1000 feet of another massage establishment, meet specified development, operational, and minimum parking standards, possess a valid and current massage operator's permit issued by the Police Chief, and comply with all other requirements of the City Massage Regulations in Chapter 5.12. Existing legally established and permitted massage establishments will be deemed legal nonconforming uses that are subject to the provisions of Chapter 5.12 (Massage Regulations) and Chapter 9.36 (Nonconformities) of the Garden Grove Municipal Code. This Ordinance also updates the definitions, references, conditions and standards applicable to Athletic and Health Clubs, Spas or Gyms that provide massage services, and permits massage services to be provided as part of a salon, spa or similar facility located in, and incidental to the operation of, a Hotel that contains at least one hundred fifty (150) rooms located anywhere in the City.

THE CITY COUNCIL OF THE CITY OF GARDEN GROVE FINDS AND DETERMINES AS FOLLOWS:

WHEREAS, Amendment No. A-014-2015 was initiated by the City of Garden Grove and is a zoning text amendment to portions of Chapters 9.04 (Definitions), 9.16 (Commercial, Office Professional, Industrial, and Open Space Development Standards), and 9.18 (Mixed Use Regulations and Development Standards) of Title 9 of the Garden Grove Municipal Code pertaining to massage establishments and other types of uses at which massage services are provided; and

WHEREAS, effective January 1, 2015, Assembly Bill 1147, also referred to as the "Massage Therapy Act," restored local land use and regulatory control over massage establishments, subject to specific limitations; and

WHEREAS, on May 26, 2015, the Garden Grove City Council adopted Ordinance No. 2856 amending Chapter 5.12 (Massage Regulations) of the Garden Grove Municipal Code to update the City's Massage Regulations in accordance with the Massage Therapy Act; and

WHEREAS, pursuant to the Massage Regulations of Chapter 5.12, all owners and operators of massage establishments in the City are required to maintain a City massage establishment operator's permit issued by the Police Chief and to adhere to specified standards of conduct and conditions of operation; and

WHEREAS, the proposed Amendment would amend the City's Land Use Code (Title 9) to update the references, definitions, development standards, and operational conditions applicable to massage establishments and other types of land uses at which massage services are provided to be consistent with the City Massage Regulations in Chapter 5.12 and the Massage Therapy Act; and

WHEREAS, following a public hearing held on September 3, 2015, the Planning Commission adopted Resolution No. 5849-15 recommending approval of Amendment No. A-014-2015; and

WHEREAS, pursuant to a legal notice, a Public Hearing regarding the proposed adoption of this Ordinance was held by the City Council on _____, 2015, and all interested persons were given an opportunity to be heard; and

WHEREAS, the City Council gave due and careful consideration to the matter;

WHEREAS, the City Council hereby makes the following findings regarding Amendment No. A-014-2015:

A. The proposed Code Amendment is internally consistent with the goals, policies, and elements of the General Plan. Pursuant to the proposed Amendment, massage establishments and athletic and health clubs, spas or gyms with massage would be permitted, subject to conditional use permit approval, in the C-2 (Community Commercial), GGMU (Garden Grove Mixed Use), and NMU (Neighborhood Mixed Use) zones, subject to approval of a Conditional Use Permit,

provided they are not located within 1000 feet of another massage establishment, meet specified development, operational, and minimum parking standards, possess a valid and current massage operator's permit issued by the Police Chief, and comply with all other requirements of the City Massage Regulations set forth in Chapter 5.12 of the Garden Grove Municipal Code. The C-2 zoning district implements the Light Commercial (LC) land use designation of the General Plan's Land Use Element, which is intended to allow a range of commercial activities, such as retail service establishments, that serve local residential neighborhoods and the larger community. The GGMU and NMU zoning districts implement the Residential/Commercial Mixed Use land use designations of the General Plan's Land Use Element, which are intended to provide for a mix of residential and commercial uses. The operation of commercial uses incorporating massage services in the prescribed zones is thus consistent with the intent of the General Plan land use districts in which they would be located. Goal LU-4 / Policy LU-4.5 of the General Plan Land Use Element directs the City to develop uses that are compatible with one another, while requiring that commercial developments be adequately screened and buffered from residential uses. The proposed Amendment is designed to ensure compatibility with other uses by limiting massage establishments and other uses incorporating massage services to the proposed zones, requiring conditional use permit approval, and imposing specified development standards and concentration limits.

B. The proposed Code Amendment will promote the public health, safety and welfare. Pursuant to the proposed Amendment, massage establishments and athletic and health clubs, spas or gyms with massage would be permitted only in certain locations with a conditional use permit and will be required to meet specified development, operational, and minimum parking standards, possess a valid and current massage operator's permit issued by the Police Chief, and comply with all other requirements of the City Massage Regulations set forth in Chapter 5.12 of the Garden Grove Municipal Code. These zoning and development standards will ensure that massage-related uses do not create a nuisance to the public, adjacent uses, or nearby properties.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GARDEN GROVE DOES ORDAIN AS FOLLOWS:

SECTION 1: The above recitals are true and correct.

SECTION 2: The City Council finds that the proposed Ordinance is not subject to the California Environmental Quality Act ("CEQA"; Cal. Pub. Resources Code Section 21000 et seq.) pursuant to Section 15061(b)(3) of the State CEQA Guidelines (Cal. Code of Regs., Title 14, Section 15000 et seq.) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

SECTION 3: Amendment No. A-014-2015 is hereby approved pursuant to the findings set forth herein and the facts and reasons stated in Planning Commission Resolution No. ___, a copy of which is on file in the Office of the City Clerk, and which

is incorporated herein by reference with the same force and effect as if set forth in full.

SECTION 4: The definition of "Adult Entertainment Business" in Subsection 1 of Subdivision C of Section 9.04.060 (Definitions) of Chapter 9.04 (General Provisions) of Title 9 of the Garden Grove Municipal Code is hereby amended as follows to remove "massage parlor or bathhouse" from said definition (deletions shown in ~~strikethrough~~, additions shown in ***bold-italics***):

"Adult Entertainment Businesses." Adult Entertainment Businesses shall be defined as follows:

- a. "Adult Bookstore" means an establishment having, as a substantial or significant portion of its stock in trade, books, magazines or other periodicals, prerecorded motion picture film or videotape, whether contained on an open reel or in cassette form, and other materials that are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, or an establishment with a segment or section devoted to the sale, display, or viewing of such materials.
- b. "Adult Motion Picture Theater" means an enclosed building with a capacity of fifty or more persons used for presenting material distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.
- c. "Adult Mini Motion Picture Theater" means an enclosed building with a capacity of less than fifty persons used for presenting materials distinguished or characterized by an emphasis on matter depicting or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.
- d. "Adult Hotel or Motel" means a hotel or motel where material is presented that is distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.
- e. "Adult Motion Picture Arcade" means any establishment required to obtain a permit under Chapter 5.60 of this code, or any other place to which the public is permitted or invited, wherein coin, token, or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas.

- f. "Cabaret" means a nightclub, theater or other establishment that features live performances by topless and bottomless dancers, "go-go" dancers, exotic dancers, strippers, or similar entertainers, where such performances are distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.
- g. "Escort Bureau and Introductory Services" means any establishment required to obtain a permit pursuant to Chapter 5.55 of this code.
- ~~h. "Massage Parlor or Bathhouse" means any establishment required to obtain a permit pursuant to Chapter 5.12 of this code, where, for any form of consideration or gratuity, massage, alcohol rub, administration of fomentations, electric or magnetic treatments, or any other treatment or manipulation of the human body occurs.~~
- ih. "Model Studio" means any business where, for any form of consideration or gratuity, figure models who display specified anatomical areas are provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by persons paying such consideration or gratuity.
- jj. "Sexual Encounter Center" means any business, agency or person who, for any form of consideration or gratuity, provides a place where three or more persons, not all members of the same family, may congregate, assemble or associate for the purpose of engaging in specified sexual activities or exposing specified anatomical areas.
- kj. Any other business or establishment that offers its patrons services, products, or entertainment characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas can also be defined as an adult entertainment business.
- lk. For purposes of the above definitions, "emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas" is found to be in existence when one or more of the following conditions exist:
 - 1. The area devoted to merchandise depicting, describing or relating to specified sexual activities or specified anatomical areas exceeds more than fifteen percent of the total display or floor space area open to the public, or is not screened and controlled by employees;
 - 2. One of the primary purposes of the business or establishment is to operate as an adult entertainment establishment, as

evidenced by the name, signage, advertising or other public promotion utilized by said establishment;

3. One of the primary purposes of the business or establishment is to operate as an adult entertainment establishment, as demonstrated by its services, products or entertainment constituting a regular and substantial portion of total business operations and/ or a regular and substantial portion of total revenues received; where such services, products or entertainment are characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas. For purposes of this section, "regular and substantial portion" is defined to mean greater than fifteen percent of total operations or revenues received.
4. Certain types of "adult merchandise" are displayed or merchandised. For purposes of this section, "adult merchandise" means adult, sexually-oriented implements and paraphernalia, such as, but not limited to: dildos, auto sucks, sexually oriented vibrators, edible underwear, benwa balls, inflatable orifices, anatomical balloons with orifices, simulated and battery operated vaginas, and similar sexually-oriented devices."

SECTION 5: Sub-subsection g of Subsection 2 (Required Performance Standards) of Subdivision C (Conditional Use Requirement) of Section 9.16.020.070 (Adult Entertainment Uses) of Chapter 9.16 (Commercial, Office Professional, Industrial, and Open Space Development Standards) of Title 9 of the Garden Grove Municipal Code is hereby amended as follows to delete the reference to "massage parlors" in the list of performance standards applicable to adult entertainment uses (deletions shown in ~~strikethrough~~, additions shown in ***bold-italics***):

"g. It is unlawful to permit patrons or employees under the age of 18 in a structure occupied by an adult business, including adult arcades, adult bookstores, adult cabarets, adult motels, adult motion picture theaters, adult theaters, escort-dating services, ~~massage parlors~~ or sexual encounter establishments."

SECTION 6: Subdivision I of Section 9.18.050.070 (Required Performance Standards) of Section 9.18.050 (Adult Entertainment Uses) of Chapter 9.18 (Mixed Use Regulations and Development Standards) of Title 9 of the Garden Grove Municipal Code is hereby amended as follows to delete the reference to "massage parlors" in the list of performance standards applicable to adult entertainment uses (deletions shown in ~~strikethrough~~, additions shown in ***bold-italics***):

"I. It shall be unlawful to permit patrons or employees under the age of 18 in a structure occupied by an adult business, including adult arcades, adult bookstores, adult cabarets, adult motels, adult motion picture theaters, adult theaters, escort dating services, ~~massage parlors~~ or sexual encounter establishments."

SECTION 7: The existing definition of "Athletic and Health Clubs, Spas or Gyms with Massage and/or Bathhouse" in Subsection 1 of Subdivision C of Section 9.04.060 (Definitions) of Chapter 9.04 (General Provisions) of Title 9 of the Garden Grove Municipal Code is hereby amended as follows (deletions shown in ~~strikethrough~~, additions shown in ***bold-italics***):

"Athletic and Health Clubs, Spas or Gyms with Massage ~~and/or Bathhouse~~" means an establishment which is open to the public and provides recreational activities for health and fitness, which also ***provides*** includes massage services ~~and/or a bathhouse~~.

SECTION 8: Subsection 13 of Subdivision C of Section 9.04.060 (Definitions) of Chapter 9.04 (General Provisions) of Title 9 of the Garden Grove Municipal Code is hereby amended as follows to delete the existing definition of "Massage Parlor or Bathhouse" in its entirety and to add new definitions for "Massage" and "Massage Establishment," to be placed in alphabetical order (deletions shown in ~~strikethrough~~, additions shown in ***bold-italics***):

~~"Massage Parlor or Bathhouse" means any establishment required to obtain a permit pursuant to Chapter 5.12 of this code, where, for any form of consideration or gratuity, massage, alcohol rub, administration of fomentations, electric or magnetic treatments, or other treatment or manipulation of the human body occurs, excepting therefrom massage or bathhouse facilities in conjunction with an athletic club, health club, health spa or gym approved through a Conditional Use Permit pursuant to the provisions of Section 9.16.20.050.~~

"Massage" or "Massage Services" shall have the same meaning as prescribed in Chapter 5.12 of this Code and includes, without limitation, any method of applying pressure on, causing friction against, stroking, kneading, rubbing, tapping, pounding, vibrating, acupuncture, stimulating, compression on or movement of the external parts of the human body of another, either directly via the use of hands or some other body part, with or without the aid of or by means of any mechanical or electrical apparatus, or other appliance or device, for money or any form of consideration, with or without the incorporation of supplementary aids such as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment or other similar preparations commonly used in this practice. Except as otherwise provided by State law, for purposes of compliance with Title 9, Massage Services subject to Chapter 5.12 may only be provided in conjunction with legally authorized Massage Establishments or Athletic and Health Clubs, Spas or Gyms with Massage, or as part of a salon, spa or similar facility located in, and incidental to the operation of, a Hotel located anywhere in the City that contains at least one hundred fifty (150) rooms.

"Massage Establishment" means any business or establishment required to obtain an Operator's Permit pursuant to Chapter 5.12 of this Code and shall have the same meaning as prescribed in Chapter 5.12. Unless otherwise defined in Chapter 5.12, a Massage Establishment includes, without limitation, any business or establishment with a fixed location where any individual, firm, association, partnership, limited liability company, corporation, or combination of individuals, offers, engages in, conducts, carries on or permits to be engaged in, conducted or carried on, Massage within the City. Any type of business or establishment at which Massage services are provided shall be considered a Massage Establishment, regardless if the business holds itself out as something other than a Massage Establishment and/or also offers or provides other types of products or services. Any business or establishment that offers any combination of Massage services and bath facilities, including, but not limited to, showers, baths, wet and dry heat rooms, pools and hot tubs, shall be deemed a Massage Establishment. Notwithstanding the foregoing, for purposes of this Title 9 only, neither (i) Hotels containing at least one hundred fifty (150) rooms that offer Massage Services as part of a salon, spa or similar facility located in, and incidental to the operation of, the Hotel, nor (ii) Athletic and Health Clubs, Spas or Gyms with Massage facilities that are expressly authorized to offer incidental Massage services pursuant to an approved Conditional Use Permit, shall be considered "Massage Establishments."

SECTION 9: Table 1 entitled "City of Garden Grove Land Use Matrix" of Section 9.16.020.030 (Uses Permitted) of Section 9.16.020 (Permitted Uses in Commercial, Office Professional, Industrial, and Open Space) of Chapter 9.16 (Commercial, Office Professional, Industrial, and Open Space Development Standards) of Title 9 of the Garden Grove Municipal Code is hereby amended as follows to update the description of the "Athletic and Health Clubs, Spas, or Gyms with Massage" use listed in Table 1 and to add "Massage Establishment" as a new separate conditionally permitted use in the C-2 (Community Commercial) zone, to be placed in alphabetical order in the list of Personal Service uses in Table 1 (deletions shown in ~~strikethrough~~, additions shown in ***bold-italics***):

Table 1 CITY OF GARDEN GROVE LAND USE MATRIX

COMMERCIAL							
Personal Service	O-P	C-1	C-2	C-3	M-1	M-P	O-S
...
Athletic and Health Clubs, Spas, and or Gyms with Massage and/or Bathhouse			C*				
...
Massage Establishment			C*				
...

SECTION 10: Subdivision E of Section 9.16.020.050 (Special Operating Conditions and Development Standards) of Section 9.16.020 (Permitted Uses in Commercial, Office Professional, Industrial, and Open Space) of Chapter 9.16 (Commercial, Office Professional, Industrial, and Open Space Development Standards) of Title 9 of the Garden Grove Municipal Code establishing special operating standards and conditions for Athletic and Health Clubs, Spas, and Gyms with Massage and/or Bathhouse Facilities is hereby amended as follows to update the name of the use and to establish new and revised operating standards and conditions (deletions shown in ~~strikethrough~~; additions shown in **bold-italics**):

- E. Athletic and Health Clubs, Spas, and **or** Gyms with Massage and/or Bathhouse Facilities. **Such uses shall require** Subject to a conditional use permit and **shall be subject to** the following conditions:
 - ~~1. Facilities where massage and/or bathhouse services are proposed shall be subject to the following:~~
 - ~~a. The operator and each masseur or masseuse shall obtain a permit as required in Chapter 5.12;~~
 - ~~b. Minimum occupancy shall be 15,000 square feet;~~
 - ~~c. No alcoholic beverage control license shall be issued for the premises;~~
 - ~~d. No entertainment shall be permitted on the premises;~~
 - ~~e. Operation of the facility shall not be permitted before 6:00 a.m. or after 10:00 p.m.;~~
 - ~~f. The establishment shall be open to the public, and shall provide facilities for men and women; except the massage and bathhouse areas shall be segregated by gender;~~
 - ~~g. No one under 18 years of age shall be permitted within the establishment unless accompanied by a parent;~~
 - ~~h. Specified anatomical areas, as stated in Section 9.16.020.070, shall be clothed with opaque material at all times in the massage and bathhouse areas;~~

- ~~i. A conditional use permit for an athletic or health club, spa or gym with massage and/or a bathhouse shall be considered to be null and void if the establishment ceases operation for 30 or more consecutive days;~~
- ~~j. All conditional use permits shall expire three years after issuance unless, upon application, a conditional use permit is extended by the hearing body upon finding that the use has been operated in compliance with all conditions of approval and applicable codes, and is not a nuisance to surrounding properties.~~

- 1. The facility, each owner, operator and manager thereof, and each person providing massage services on the premises shall comply with all provisions of Chapter 5.12 (Massage Regulations) of this Code at all times.**
- 2. Each person engaged in the business of massage on the premises shall obtain and maintain an Operator's Permit from the Police Chief pursuant to Chapter 5.12. No massage services may be provided on the premises without a current and valid Operator's Permit for the premises.**
- 3. Permitted hours of operation of that portion of the facility in which massage services are provided may not exceed those set forth in Chapter 5.12.**
- 4. No alcoholic beverages or controlled substances shall be sold, served, furnished, kept, consumed, or possessed on the premises at any time.**
- 5. No live entertainment shall be permitted on the premises.**
- 6. The establishment shall be open to the public, and shall provide facilities for men and women.**

SECTION 11: Section 9.16.020.050 (Special Operating Conditions and Development Standards) of Section 9.16.020 (Permitted Uses in Commercial, Office Professional, Industrial, and Open Space) of Chapter 9.16 (Commercial, Office Professional, Industrial, and Open Space Development Standards) of Title 9 of the Garden Grove Municipal Code is hereby amended (a) to add the following new Subdivision establishing special operating conditions and development standards for Massage Establishments, to be placed in alphabetical order following "Mail Address/Business Operations Tax Certificate" and before "Meat Market," and (b) to re-letter the subsequent Subdivisions accordingly:

"AM. Massage Establishment. All massage establishment uses shall require a conditional use permit and shall be subject to the following conditions:

1. No massage establishment shall be located closer than 1,000 feet from any other massage establishment.
2. Unless infeasible due to existing structural or physical constraints and otherwise authorized in conjunction with approval of a Conditional Use Permit, the entrance to a massage establishment shall be oriented, accessed, and visible from a principal, major, or primary arterial street, as defined in the General Plan Circulation Element. In no case shall the entrance to a massage establishment be oriented toward a residential street or toward residential uses.
3. The massage establishment, each owner, operator and manager thereof, and each person providing massage services on the premises shall comply with all provisions of Chapter 5.12 (Massage Regulations) of this Code at all times.
4. Each person engaged in the business of massage on the premises shall obtain and maintain an Operator's Permit from the Police Chief pursuant to Chapter 5.12. No massage services may be provided on the premises without a current and valid Operator's Permit for the premises.
5. Permitted hours of operation may not exceed those set forth in Chapter 5.12."

SECTION 12: The Table in Section 9.16.040.150 (Parking Spaces Required) of Section 9.16.040 (Commercial/Office, Industrial Development Standards) of Chapter 9.16 (Commercial, Office Professional, Industrial, and Open Space Development Standards) of Title 9 of the Garden Grove Municipal Code is hereby amended as follows to include parking requirements for a "Massage Establishment" as a stand-alone commercial use and to eliminate the separate parking requirements for a "Massage Parlor" as an adult entertainment use (deletions shown in ~~strikethrough~~; additions shown in ***bold-italics***):

USE	REQUIRED MINIMUM PARKING SPACES
...	...
B. Commercial Uses.	
...	...
13. Massage establishment	1 space per 200 sq. ft. of gross floor area
...	...
F. Commercial Recreation.	
...	...
13. Adult entertainment uses	
a. Adult bookstores including video rental and video arcade	1 space per 90 sq. ft.
b. Adult motion picture theater/mini picture theater	1 space per 3 seats, plus 5 spaces for employees
c. Cabaret	1 space per 25 sq. ft. of gross floor area
d. Massage parlor	1 space per 200 sq. ft. of gross floor area
e.d. Escort bureau / introductory services	1 space per 200 sq. ft. of gross floor area

SECTION 13: Table 9.18-1 entitled "Use Regulations for the Mixed Use Zones" of Section 9.18.020.030 (Uses Restricted to Indoor) of Section 9.18.020 (Uses Permitted) of Chapter 9.18 (Mixed Use Regulations and Development Standards) of Title 9 of the Garden Grove Municipal Code is hereby amended as follows to delete the existing comment pertaining to "Athletic and Health Clubs, Gyms," and to add "Athletic and Health Clubs, Spas, or Gyms with Massage" and "Massage Establishment" as separate conditionally permitted uses in the GGMU (Garden Grove Mixed Use) and NMU (Neighborhood Mixed Use) zones, to be placed in alphabetical order in the Table (deletions shown in ~~strikethrough~~, additions shown in **bold-italics**):

**TABLE 9.18-1
Use Regulations for the Mixed Use Zones**

Permitted Uses	Zones						AR	Additional Regulations and Comments
	GGMU	CC				NMU		
	-1, -2, and -3	-1	-2	-3	-OS			
Commercial/Office								
Personal/Service								
Athletic and Health Clubs, Gyms								See Section 9.18.030.055 (Athletic and Health Clubs, Spas, and Gyms with Massage and/or Bathhouse facilities) where use includes massage and/or bathhouse facilities.
1,500 sf and smaller	P	P	P	P	-	P	P	
Larger than 1,500 sf	C	-	-	C	-	C	C	
<i>Athletic and Health Clubs, Spas, or Gyms with Massage</i>	<i>C*</i>	-	-	-	-	<i>C*</i>	-	<i>See Section 9.18.030.055 (Athletic and Health Clubs, Spas, or Gyms with Massage).</i>
...
<i>Massage Establishment</i>	<i>C*</i>	-	-	-	-	<i>C*</i>	-	<i>See Section 9.18.030.245 (Massage Establishment).</i>
...

SECTION 14: Section 9.18.030.055 (Athletic and Health Clubs, Spas, and Gyms with Massage and/or Bathhouse Facilities) of Section 9.18.030 (Specific Uses – Special Operating Conditions and Development Standards) of Chapter 9.18 of Title 9 of the Garden Grove Municipal Code is hereby amended as follows to update the name of the use and to establish new and revised operating standards and conditions (deletions shown in ~~strikethrough~~; additions shown in **bold-italics**):

9.18.030.055 Athletic and Health Clubs, Spas, and ~~or~~ Gyms with Massage ~~and/or Bathhouse Facilities~~.

Such uses shall require a conditional use permit and shall be subject to the following conditions:

A. ~~Facilities where massage and/or bathhouse services are proposed shall be subject to the following:~~

- ~~1. The operator and each masseur or masseuse shall obtain a permit as required in Chapter 5.12 (Massage Regulations);~~
- ~~2. Minimum occupancy shall be 15,000 square feet;~~
- ~~3. No alcoholic beverage control license shall be issued for the premises;~~
- ~~4. No entertainment shall be permitted on the premises;~~
- ~~5. Operation of the facility shall not be permitted before 6:00 a.m. or after 10:00 p.m.;~~
- ~~6. The establishment shall be open to the public, and shall provide facilities for men and women; except the massage and bathhouse areas shall be segregated by gender;~~
- ~~7. No one under 18 years of age shall be permitted within the establishment unless accompanied by a parent;~~
- ~~8. Specified anatomical areas, as stated in Section 9.16.020.070 (Specified Sexual Activities and Anatomical Areas), shall be clothed with opaque material at all times in the massage and bathhouse areas;~~
- ~~9. A conditional use permit for an athletic or health club, spa or gym with massage and/or a bathhouse shall be considered to be null and void if the establishment ceases operation for 30 or more consecutive days;~~
- ~~10. All conditional use permits shall expire three years after issuance unless, upon application, a conditional use permit is extended by the hearing body upon finding that the use has been operated in compliance with all conditions of approval and applicable codes, and is not a nuisance to surrounding properties.~~

A. The facility, each owner, operator and manager thereof, and each person providing massage services on the premises shall comply with all provisions of Chapter 5.12 (Massage Regulations) of this Code at all times.

B. Each person engaged in the business of massage on the premises shall obtain and maintain an Operator's Permit from the Police Chief pursuant to Chapter 5.12. No massage services may be provided on the premises without a current and valid Operator's Permit for the premises.

C. Permitted hours of operation of that portion of the facility in which massage services are provided may not exceed those set forth in Chapter 5.12.

D. No alcoholic beverages or controlled substances shall be sold, served, furnished, kept, consumed, or possessed on the premises at any time.

E. No live entertainment shall be permitted on the premises.

F. The establishment shall be open to the public, and shall provide facilities for men and women.

SECTION 15: New Section 9.18.030.245 establishing special operating conditions and development standards for Massage Establishments is hereby added to Section 9.18.030 (Specific Uses-Special Operating Conditions and Development Standards) of Chapter 9.18 (Mixed Use Regulations and Development Standards) of Title 9 of the Garden Grove Municipal Code to read as follows:

"9.18.030.245. Massage Establishment.

All massage establishment uses shall require a conditional use permit and shall be subject to the following conditions:

- A. No massage establishment shall be located closer than 1,000 feet from any other massage establishment.
- B. Unless infeasible due to existing structural or physical constraints and otherwise authorized in conjunction with approval of a Conditional Use Permit, the entrance to a massage establishment shall be oriented, accessed, and visible from a principal, major, or primary arterial street, as defined in the General Plan Circulation Element. In no case shall the entrance to a massage establishment be oriented toward a residential street or toward residential uses.
- C. The massage establishment, each owner, operator and manager thereof, and each person providing massage services on the premises shall comply with all provisions of Chapter 5.12 (Massage Regulations) of this Code at all times.
- D. Each person engaged in the business of massage on the premises shall obtain and maintain an Operator's Permit from the Police Chief pursuant to Chapter 5.12. No massage services may be provided on the premises without a current and valid Operator's Permit for the premises.
- E. Permitted hours of operation may not exceed those set forth in Chapter 5.12."

SECTION 16: Table 9.18-11 entitled "Required Parking Spaces" of 9.18.140.030 (Parking Spaces Required) of Section 9.18.140 (Parking) of Chapter 9.18 (Mixed Use Regulations and Development Standards) of Title 9 of the Garden Grove Municipal Code is amended to include parking requirements for a "Massage

Establishment” as a stand-alone commercial use, to be placed in alphabetical order within the list of Commercial Uses in said Table (deletions shown in ~~strikethrough~~; additions shown in ***bold-italics***):

**Table 9.18-11
Required Parking Spaces**

Use	Required Minimum Parking Spaces
...	...
Commercial Uses	
...	...
<i>Massage establishment</i>	<i>1 space per 200 sq. ft. of gross floor area</i>
...	...

SECTION 17: Any land use constituting a “Massage Establishment” or an “Athletic and Health Club, Spa, or Gym with Massage,” as defined in Sections 7 and 8 of this Ordinance, respectively, that was legally established and operating with a valid business license, a valid operator’s permit issued pursuant to Chapter 5.12 of the Garden Grove Municipal Code, and all other required City permits or approvals prior to the effective date of this Ordinance, and that is made nonconforming by this Ordinance because no approved Conditional Use Permit for the use exists, the use is not located in a zoning district in which such a use is permitted pursuant to the provisions adopted or amended by this Ordinance, and/or the use does not comply with locational restrictions or development standards adopted or amended pursuant to this Ordinance, shall be considered a nonconforming use subject to the provisions of Chapter 9.36 (Nonconformities) of Title 9 of the Garden Grove Municipal Code; provided, however, that all such nonconforming uses shall be subject to the requirements of Chapter 5.12 of the Garden Grove Municipal Code, as amended.

SECTION 18: If any section, subsection, subdivision, sentence, clause, phrase, word, 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 hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, words or portions thereof be declared invalid or unconstitutional.

SECTION 19: The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published and posted pursuant to the provisions of law and this Ordinance shall take effect thirty (30) days after adoption.