



CITY OF MONTCLAIR
PLANNING COMMISSION AGENDA
CITY COUNCIL CHAMBERS
5111 Benito Street, Montclair, California 91763

REGULAR ADJOURNED MEETING
Tuesday, May 26, 2015
7:00 p.m.

It is respectfully requested that you please silence your cell phones and other electronic devices while the meeting is in session. Thank you.

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Chair Tenice Johnson, Vice Chair Luis Flores, Commissioner Manny Martinez, Commissioner Sergio Sahagun, and Commissioner Don Vodvarka

4. APPROVAL OF MINUTES

The minutes of the May 11, 2015 Planning Commission meeting are presented for consideration.

5. ORAL AND WRITTEN COMMUNICATIONS ON NON-AGENDA ITEMS

The public is invited to address the Planning Commission regarding any items that are not on the agenda. Comments should be limited to matters under the jurisdiction of the Planning Commission. It is respectfully requested that speakers limit their comments to no more than three minutes in length.

Any person wishing to address the Planning Commission on an agenda or non-agenda item should complete a speaker's card and submit it to the City Planner. Speaker's cards are available at the entrance to the Council Chambers.

6. AGENDA ITEMS

- a. PUBLIC HEARING - CASE NUMBER 2015-7
Project Address: Citywide
Project Applicant: City of Montclair
Project Planner: Steve Lustro, AICP,
Community Development Director
Request: Code amendment replacing Chapter 4.56
and amending Chapter 11.78 MMC
relating to massage establishments and
massage technicians
CEQA Assessment: Categorically Exempt (Section 15061(b)(3))
- b. PUBLIC HEARING - CASE NUMBER 2008-16 'A'
Project Address: 4250 Holt Boulevard
Project Applicant: Burntfish, Inc.
Project Planner: Steve Lustro, AICP,
Community Development Director
Request: Conditional Use Permit Amendment to
allow limited display of rental vehicles
and/or vehicles for sale
CEQA Assessment: Categorically Exempt (Section 15301)

7. INFORMATION ITEMS

Although the Planning Commission is prohibited from taking action on or discussing items not on the posted agenda, a member of the Planning Commission may ask for information, request a report back or to place a matter of business on the agenda for a subsequent meeting, ask a question for clarification, make a brief announcement, or briefly report on his or her own activities, provided the foregoing are related to, or within the jurisdiction of, the Planning Commission.

8. PUBLIC INSPECTION OF MATERIALS

Materials related to an item on this agenda submitted to the Commission after distribution of the agenda packet are available for public inspection at the Planning Division counter during normal business hours.

9. ADJOURNMENT

The City of Montclair Planning Commission is hereby adjourned to the regularly scheduled meeting of June 8, 2015 at 7:00 p.m. in the Council Chambers, 5111 Benito Street, Montclair, California.

CERTIFICATION OF AGENDA POSTING

I, Laura Embree, Administrative Secretary for the City of Montclair, hereby certify that a copy of this agenda was posted on the bulletin board adjacent to the north door of Montclair City Hall on May 21, 2015.

Report on Item Number 6.a

PUBLIC HEARING - CASE NUMBER 2015-7

APPLICATION TYPE(S)	Municipal Code Amendments (Chapters 4.56 and 11.78 MMC)
NAME OF APPLICANT	City of Montclair
LOCATION OF PROPERTY	Citywide
ENVIRONMENTAL DETERMINATION	Categorically Exempt (Section 15061(b)(3))
PROJECT PLANNER	Steve Lustro

Background

In September 2008, the Governor signed into law Senate Bill 731 (Oropeza), which added a new Chapter 10.5 to the California Business and Professions Code, providing for the formation of the nonprofit California Massage Therapy Council (CAMTC) to oversee a state-sanctioned program of voluntary certification for massage practitioners so that such persons could avoid being required to obtain local massage permits. The legislation also instituted relaxed requirements for the establishment and operation of massage businesses and removed what little land use authority local jurisdictions were previously able to exercise over the establishment of such businesses. In Montclair's case, the requirement for massage businesses to obtain approval of a Conditional Use Permit was eliminated. Put simply, SB 731 required cities to treat massage businesses no different than other businesses providing "personal services," such as barber shops, beauty salons or nail salons, all of which are allowed by-right in the City's Commercial zoning districts.

Since the approval of SB 731, many California cities, most notably San Gabriel, Huntington Beach and Thousand Oaks, have experienced a literal explosion in the number of massage businesses that have opened. Like many other cities, the majority of the establishments in Montclair are providing "services" other than traditional massage, up to and including various types of sex acts. This has been confirmed by multiple comments and reviews by patrons on websites that promote massage establishments offering these types of illegal services. Most of the massage businesses in Montclair are characterized by late business hours and storefront windows completely covered by drapes, blinds or other window coverings. Further, there have been multiple occasions when staff, in the course of performing site inspections for Zoning and Use Reviews, has encountered difficulty gaining access to certain establishments, observed alleged massage technicians dressed in less-than-professional attire, and in at least one case, an alleged massage technician bolting out the back door of a business when staff arrived to perform an inspection.

Assembly Bill 1147 (Bonilla), signed into law in September 2014, seeks to restore a significant amount of oversight to local jurisdictions with respect to the establishment and operation of massage businesses. The City Attorney has crafted a draft Ordinance,

which would replace Chapter 4.56 and amend Chapter 11.78 of the Montclair Municipal Code, to be consistent with the provisions of AB 1147. The Ordinance would restore the requirement for a Conditional Use Permit and proposes to set forth numerous detailed operational standards for massage establishments.

A copy of Ordinance No. 15-951 is included in the Commission packets for reference.

Analysis

Staff welcomes the long-overdue changes outlined in AB 1147. Unfortunately, it will take time to reverse the effects the thoughtlessly-crafted SB 731 has inflicted on California cities, including Montclair. While staff cannot immediately impose the CUP requirement retroactively to legally-established businesses, the operational standards *will* be imposed upon them within a reasonable timeframe as recommended by the City Attorney. For example, massage establishment operators and technicians will be required to comply with the following:

- The requirement to obtain a Certificate of Operation issued by the City's Finance Department, and an Operator Permit issued by the Police Department;
- All massage practitioners and therapists shall provide proof of a current license issued by the California Massage Therapy Council (CAMTC);
- Scaled floor plans of the massage businesses shall be required, showing the customer waiting area, all massage rooms, restrooms, and any ancillary areas;
- Operational standards, including, but not limited to, hours of operation, supervision, signage outlining services and the price for each service, permitted instruments and equipment, professional attire, and sanitation; and
- Unannounced inspections by authorized City staff.

The Ordinance does include a provision that amortizes all existing, nonconforming massage establishments over a two-year period. For establishments that are located in zoning or land use districts where they would be allowed with a CUP, that entitlement must be obtained within two years of adoption of the Ordinance. For massage establishments that are located in zoning or land use districts where such establishments are not allowed, those businesses will have two years to close or relocate to a conditionally permitted location.

The proposed Ordinance has been reviewed by the Code Enforcement/Public Safety Committee and has been recommended for City Council approval.

Public Notice and Comment from the Public

A notice of public review was advertised in the Inland Valley Daily Bulletin newspaper on May 8, 2015, inviting public comment. At the time this report was prepared, no comments or inquiries had been received by staff regarding this proposal.

Fiscal Impact

The cost to publish the public notice in the Inland Valley Daily Bulletin should not exceed \$400.00. Implementing the Ordinance would have minimal impact on City resources.

Environmental Determination

The Director has concluded that proposed Ordinance No. 15-951 is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the State CEQA Guidelines, under the general rule that CEQA does not apply to activities which can be seen with certainty to have no effect on the environment. Amending the regulations relating to massage establishments will not create any environmental impacts.

Findings

No findings of the Planning Commission or City Council are required for recommending approval of, or approving the proposed Municipal Code amendments.

Planning Division Recommendation

Staff finds the proposed Municipal Code amendments to be consistent with City policy and the Montclair Municipal Code. Accordingly, staff recommends approval of Case No. 2015-7 by taking the following actions:

- A. Move that, based upon evidence submitted, the Planning Commission has reviewed the Planning Division's determination of exemption, and based on its own independent judgment, concurs with the staff's determination of exemption and directs staff to prepare a Notice of Exemption and a DeMinimis finding of no effect on fish and wildlife; and
- B. Recommend the City Council adopt proposed Ordinance No. 15-951, replacing Chapter 4.56 and amending Chapter 11.78 of the Montclair Municipal Code regarding the establishment and operation of massage businesses as set forth in Planning Commission Resolution No. 15-1831.

Respectfully Submitted,



Steve Lusto, AICP
Community Development Director

Attachments - Planning Commission Resolution No. 15-1831
Draft Ordinance No. 15-951

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RESOLUTION NUMBER 15-1831

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MONTCLAIR RECOMMENDING CITY COUNCIL ADOPTION OF PROPOSED ORDINANCE NO. 15-951, REPEALING AND REPLACING CHAPTER 4.56 IN ITS ENTIRETY, AND AMENDING CHAPTER 11.78 OF THE MONTCLAIR MUNICIPAL CODE RELATED TO MASSAGE ESTABLISHMENTS AND MASSAGE TECHNICIANS (CASE NO. 2015-7)

A. Recitals.

WHEREAS, there is substantial research that indicates that the skillful practice of massage can provide many health benefits including relief of pain from disease, injury and other sources, and that massage can be a valuable component of a wellness program; and

WHEREAS, in 2008, the California Legislature passed SB 731 which added a new Chapter 10.5 to the California Business and Professions Code, which provided for the formation of the nonprofit California Massage Therapy Council (CAMTC) to oversee a state-sanctioned program of voluntary certification for massage practitioners so that such persons could avoid being required to obtain local massage permits; and

WHEREAS, SB 731 had a sunset date of January 2, 2015; and

WHEREAS, in September 2014, the Legislature adopted AB 1147, amending the laws enacted by SB 731 and the various amendments thereto; and

WHEREAS, the purpose of AB 1147 was to restore much of the local control and land use authority to local governments that had been usurped by SB 731 and the various amendments thereto; and

WHEREAS, the City has experienced a number of problems with illicit activities at massage establishments since the passage of SB 731; and

WHEREAS, the City Council desires to repeal and replace in its entirety Chapter 4.56 of the Montclair Municipal Code in order to make changes in its regulation of massage establishment businesses and the practice of massage in order to protect the public; and

WHEREAS, the City Council further desires to amend Chapter 11.78 of the Montclair Municipal Code, requiring that operators of all new massage establishments be required to obtain approval of a Conditional Use Permit by the Planning Commission and designating the zoning and land use districts where massage establishments would be conditionally permitted; and

WHEREAS, the adoption of this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) of the State CEQA Guidelines, under the general rule that CEQA does not apply to activities which can be seen with certainty to have no effect on the environment. While the code amendment, in and of itself, does not approve any construction activities, it sets forth detailed criteria and operational standards for the establishment, licensing, and operation of massage businesses pursuant to state law; and

WHEREAS, public notice of this item was advertised as a public hearing in the Inland Valley Daily Bulletin newspaper on May 8, 2015; and

WHEREAS, on May 26, 2015, commencing at 7:00 p.m. in the Council Chamber at Montclair City Hall, the Planning Commission conducted a public hearing at which time all persons wishing to testify in connection with said proposal were heard, and said application was fully studied.

B. Resolution.

NOW, THEREFORE, it is hereby found, determined, and resolved by the Planning Commission of the City of Montclair as follows:

1. This Commission hereby specifically finds that all of the facts set forth in the Recitals, Part A, of this Resolution are true and correct.
2. This Commission recommends that the City Council adopt the finding that proposed Ordinance No. 15-951 is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the State CEQA Guidelines.
3. This Commission recommends the City Council adopt proposed Ordinance No. 15-951, repealing and replacing Chapter 4.56 in its entirety, and amending Chapter 11.78 of the Montclair Municipal Code related to massage establishments and massage technicians.

The Secretary to this Commission shall certify to the adoption of this Resolution.

APPROVED AND ADOPTED THIS 26TH DAY OF MAY, 2015.

PLANNING COMMISSION OF THE CITY OF MONTCLAIR, CALIFORNIA

By: _____
Tenice Johnson, Chair

ATTEST: _____
Steve Lustro, Secretary

I, Steve Lustro, Secretary of the Planning Commission of the City of Montclair, do hereby certify that the foregoing Resolution was duly and regularly introduced, passed, and adopted by the Planning Commission of the City of Montclair, at a regular meeting of the Planning Commission conducted on the 26th day of May, 2015, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

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ORDINANCE NO. 15-951

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF MONTCLAIR, CALIFORNIA
REPEALING AND REPLACING CHAPTER 4.56 AND
AMENDING CHAPTER 11.78 OF THE MONTCLAIR MUNICIPAL CODE
RELATING TO MASSAGE ESTABLISHMENTS AND MASSAGE TECHNICIANS**

WHEREAS, there is substantial research that indicates that the skillful practice of massage can provide many health benefits including relief of pain from disease, injury and other sources, and that massage can be a valuable component of a wellness program; and

WHEREAS, in 2008, the California Legislature passed SB 731, which added a new Chapter 10.5 to the California Business and Professions Code, which provided for the formation of the nonprofit California Massage Therapy Council (CAMTC) to oversee a state-sanctioned program of voluntary certification for massage practitioners so that such persons could avoid being required to obtain local massage permits; and

WHEREAS, SB 731 had a sunset date of January 2, 2015; and

WHEREAS, in September 2014, the Legislature adopted AB 1147, amending the laws enacted by SB 731 and the various amendments thereto; and

WHEREAS, the purpose of AB 1147 was to restore much of the local control and land use authority to local governments which had been usurped by SB 731 and the various amendments thereto; and

WHEREAS, the City has experienced a number of problems with illicit activities at massage establishments since the passage of SB 731; and

WHEREAS, the City Council desires to repeal and replace in its entirety Chapter 4.56 of the Montclair Municipal Code in order to make changes in its regulation of existing and new massage establishment businesses and the practice of massage in order to protect the public; and

WHEREAS, the City Council further desires to amend Chapter 11.78 of the Montclair Municipal Code, requiring that operators of all new massage establishments be required to obtain approval of a Conditional Use Permit by the Planning Commission and designating the zoning and land use districts where massage establishments would be conditionally permitted.

NOW, THEREFORE, the City Council of the City of Montclair does hereby resolve as follows:

SECTION I. Chapter 4.56 of the Montclair Municipal Code is hereby repealed and readopted in its entirety to read as follows:

Chapter 4.56

MESSAGE ESTABLISHMENTS AND MESSAGE TECHNICIANS

Sections:

4.56.010	Findings and purpose.
4.56.020	Definitions.
4.56.030	Exceptions.
4.56.040	Business license and other permits required.
4.56.050	Floor plans required.
4.56.060	CAMTC certificate required.
4.56.070	Certificate and permit requirement.
4.56.080	Operator permit.
4.56.090	Certificate of operation.
4.56.100	Suspension and revocation of permits and certificates.
4.56.110	Appeals to City Manager.
4.56.120	Notices.
4.56.130	Operational requirements.
4.56.140	Building and facility requirements.
4.56.150	Inspections.
4.56.160	Penalty.

4.56.010 Findings and purpose.

The City Council finds and declares as follows:

A. 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, while recognizing massage as a legitimate business interest that provides benefits to its patrons in a therapeutic setting.

B. This Chapter is enacted pursuant to the provisions of the State Constitution, California Government Code §§37100 and 51030 *et seq.*; California Business & Professions Code §§460, 4600 through 4620 and §16000; §13 of the Chiropractic Act (initiative measure approved by the electors November 7, 1922, as amended); and AB 1147 (2014).

C. There is a significant risk of injury to massage clients by persons improperly trained and/or educated in providing massage services, and this Chapter provides reasonable safeguards against injury and economic loss.

D. There is opportunity for acts of prostitution, lewdness, and other unlawful sexual activity to occur in massage establishments, as well as problems relating to human trafficking in massage establishments. Courts have long recognized massage as a pervasively regulated activity and that massage establishments are often brothels in disguise. The establishment of reasonable standards for issuance of permits and restrictions on operations would serve to reduce the risk of illegal activity and would thereby benefit the public health.

E. The provisions of this Chapter are intended to enhance the efficient processing of permits for massage establishments, owners and managers and the ongoing regulation of those permittees and certificate holders by the City of Montclair. The provisions of this Chapter in no way limit the authority of the City to inspect

massage establishments or conduct investigations to ensure permittees are complying with applicable rules and regulations.

F. The restrictions and requirements contained in this Chapter are intended to stop the practice of businesses quickly changing ownership in name upon the discovery of criminal activity by the City.

G. The restrictions and requirements contained in this Chapter are intended to be in addition to the requirement of a valid business license issued pursuant to Chapter 4.04 of the Montclair Municipal Code.

H. The regulations and restrictions contained in this Chapter are intended 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 within the confines allowed by state law.

I. The provisions of this Chapter are not intended to be exclusive and compliance therewith shall not excuse noncompliance with any state or local laws or regulations that are uniformly applied to other professional or personal service businesses.

J. The California Massage Therapy Council ("CAMTC") can better, and more efficiently, regulate massage technicians in order to best protect the public and it is in the public interest to require that all persons providing massage in the City have a certificate from the CAMTC.

4.56.020 Definitions.

For the purpose of this Chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

California Massage Therapy Council or CAMTC means the nonprofit organization created to regulate and issue massage practitioner and therapist certificates pursuant to California Business & Professions Code §4600 *et seq.*

CAMTC Certificate means a massage practitioner or massage therapist certificate issued by the CAMTC.

Certificate of Operation means the certificate issued by the Finance Director entitling a business to be operated as a massage establishment.

Chief of Police means the Chief of Police of the City of Montclair, or his or her designee.

City means the City of Montclair.

City Manager means the City Manager of the City of Montclair, or his or her designee.

Compensation means the payment, loan, advance, donation, contribution, deposit, exchange, or gift of money or anything of value.

Conviction or Convicted means a conviction following a guilty plea, nolo contendere plea, or judgment or verdict where the time for appeal has elapsed or conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under California Penal Code §1203.4 allowing the applicant to withdraw his or her plea of guilty or nolo contendere and to enter a plea of not guilty, or dismissing the accusation or information.

Employee means any person, other than a massage practitioner, massage therapist, or operator, who renders any service, with or without compensation, to the operator or agent of an operator of a massage establishment relating to the day-to-day

operation of the massage establishment whether as an employee or independent contractor.

Finance Director means the Finance Director of the City of Montclair, or his or her designee.

Main entry door means a door from the outside of the establishment leading into the reception area.

Manager means the person(s) designated by the Owner of the massage establishment to act as the representative and agent of the Owner in managing day-to-day operations with corresponding responsibilities. Evidence of management includes, but is not limited to, the ability of the individual to direct or hire and dismiss employees, control hours of operation, create policy or rules or purchase supplies, and ensure that the massage establishment complies with the requirements of this Code and of other laws. A Manager may also be an Owner as defined herein. A Manager must have a valid operator permit.

Massage means any method of treating the external parts of the body for remedial, health, hygienic, or relaxation purpose. Massage includes, but is not limited to, treatment by means of manual pressure, acupressure, friction, stroking, kneading, rubbing, tapping, pounding, vibrating, with or without the aid of or by means of any mechanical, electronic, or electrical apparatus or appliance, and with or without rubbing alcohol, liniments, aromatics, antiseptics, oils, powders, creams, lotions, ointments, or other similar preparations. Massage specifically includes the application of any of these methods to the scalp, neck, or feet of any individual. (Some persons practicing massage may be exempt from all or parts of the permit requirements pursuant to Section 4.56.030 herein).

Massage establishment means any enterprise or establishment having a fixed place of business where any person engages in, conducts, carries on, or permits to be engaged in, conducted, or carried on, any of the activities set forth in the definition of Massage in this Section.

Massage practitioner means a person who is certified as such by the CAMTC in accordance with the Massage Therapy Act.

Massage technician means a massage practitioner or massage therapist certified by CAMTC.

Massage therapist means a person who is certified as such by the CAMTC in accordance with the Massage Therapy Act.

Massage Therapy Act refers to Chapter 406 of the 2013-2014 Legislative Session, as the same may be amended from time to time.

Operator means all persons who own or manage a massage establishment.

Operator Permit means the permit issued by Chief of Police allowing a person to own or manage a massage establishment.

Out-call massage means any business or enterprise that engages in or performs massage for any form of consideration or in exchange for anything of value whatsoever at a location other than a massage establishment.

Owner means all of the following:

1. The sole proprietor of a massage establishment, i.e., where the Owner is the only person performing massage at that establishment;
2. In the case of a general business, each Owner of the business;
3. In the case of a corporation, each stockholder holding more than 10% of the corporation and each officer and director of the corporation;

4. In the case of a partnership, each partner, excluding limited partners owning less than 10% of the partnership, and where a partner is a corporation, the provisions pertaining to a corporate applicant in subsection (3) above apply.

Patron means an individual on the premises of a massage establishment for the purpose of receiving a massage.

Permit means an Operator Permit or Certificate of Operation, unless the context indicates otherwise.

Permittee means any person who has obtained a Certificate of Operation or Operator Permit from the City.

Person who has engaged in disqualifying conduct means a person who:

1. Within ten years preceding the date of filing of the application in question or, in the case of revocation proceedings, within ten years preceding the date of the revocation notice, has been convicted in a court of competent jurisdiction of any of the following:

a. A violation of any provision of law pursuant to which a person is required to register under the provisions of California Penal Code §290;

b. Conduct in violation of California Penal Code §§266h, 266i, 314, 315, 316, 318, 653.22, 653.23, or §647(a), (b) or (d);

c. An attempt to commit or conspiracy to commit any of the above mentioned offenses;

d. When the prosecution accepted a plea of guilty or nolo contendere to a charge of a violation of California Penal Code §§415, 602 or any lesser included or related offense, in satisfaction of, or as a substitute for, any of the previously listed crimes;

e. Any crime committed while engaged in the management or ownership of a massage establishment or the practice of massage;

f. A violation of California Health & Safety Code §11550 or any offense involving the illegal sale, distribution or possession of a controlled substance specified in California Health & Safety Code §§11054, 11055, 11056, 11057 or 11058; or

g. Any offense under a statute of any state or ordinance of any City or county, which is the equivalent of any of the aforementioned offenses, including California Business & Professions Code §4609(a).

2. Within ten years preceding the date of the filing of the application in question or, in the case of revocation proceedings, within ten years preceding the date of the revocation notice, has had any massage establishment, operator, technician, practitioner, therapist or trainee certificate, license or permit issued by any state, local agency or other licensing authority, including the CAMTC: denied, revoked or suspended for any reason other than lack of sufficient education; or has had to surrender such a certificate, license or permit as a result of pending criminal charges or administrative proceedings for suspension or revocation of any such certificate, license or permit.

3. Within five years preceding the date of filing of the application in question or, in the case of revocation proceedings, within five years preceding the date of the revocation notice, has been convicted in a court of competent jurisdiction of any of the following:

a. Any crime, other than an infraction or those listed above, involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

b. Any crime, other than an infraction or crimes relating to those offenses listed above, where the crime or act is substantially related to the management or ownership of a massage establishment or the practice of massage, including a violation of the Massage Therapy Act.

4. Has been subjected to a permanent injunction against the conducting or maintaining of a nuisance pursuant to California Penal Code §§11225 through 11235 as the same may be amended from time to time, or any similar provisions of law in a jurisdiction outside the State of California.

5. Has been found to be maintaining a nuisance in connection with the same or similar type of business.

6. Within five years preceding the date of filing of the application in question or, in the case of revocation proceedings, within five years preceding the date of the revocation notice:

a. Has engaged in the exposing of specified anatomical areas of oneself or of another person to view, or in touching the specified anatomical areas of oneself or of another person, while providing massage services or while within view of a customer or patron of the massage establishment; or

b. Has been the Owner, Manager, or other similar position, in an establishment where the conduct described in subsection 6.a above has occurred.

7. Disqualifying conduct does not include the failure to obtain a Certificate of Operation or Operator Permit without any prior oral or written notification by the City that such was required, provided that the business and/or person cease operations immediately upon notification.

Proof of bona fide employment means proof of an employer-employee relationship between the operator of the massage establishment and any person working at the massage establishment. Satisfactory proof of bona fide employment must be shown by written payroll documentation evidencing the employer's compliance with California Employment Development Department (EDD) requirements for the withholding of California income tax, unemployment insurance contributions and disability contributions from the employee and written payroll documentation of the employer's compliance with Internal Revenue Service (IRS) requirements for the withholding of federal income taxes, Social Security (FICA) and Medicare contributions from the employee. Such written documentation can include, but is not limited to, W-2 wage and tax statements.

Reception area means an area immediately inside the main entry door of the massage establishment dedicated to the reception and waiting of patrons and visitors of the massage establishment and which is not a massage room or otherwise used for the provision of massage services.

Residence address means the actual physical home address and shall not include a P.O. box, mailbox service, or other similar location.

Sole provider means a massage business where the 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 CAMTC Certificate, and has no other employees or independent contractors.

Spa means facilities such as mineral baths, salt rooms, mineral rooms, saunas, steam rooms, whirlpools and other therapeutic baths.

Specified anatomical areas means any of the following human anatomical areas: genitals, pubic area, buttocks, anus, or female breasts below a point

immediately above the top of the areolae, without a health care referral and written consent of the patron.

Visitor means a nonemployee who has entered the massage establishment for purposes other than receiving services.

4.56.030 Exceptions.

A. Complete exception. The requirements of this Chapter shall have no application and no effect upon and shall not be construed as applying to:

1. Any physician, surgeon, chiropractor, acupuncturist, osteopath, or physical therapist licensed to practice such profession in the State of California, within the scope of their license;

2. Any registered nurse or licensed vocational nurse, licensed to practice under the laws of the State of California, who is an employee of and working under the on-site direction of a physician, surgeon, chiropractor, osteopath, or physical therapist, duly licensed to practice their respective professions in this State.

3. Any other person providing massage services who is employed by a physician, surgeon, chiropractor, osteopath, or physical therapist, shall be required to have a valid CAMTC Certificate, as well as work under the adequate supervision of such physician, surgeon, chiropractor, osteopath, or physical therapist as required by State law or regulation. If no specific law or regulation applies, adequate supervision shall have the same meaning as set forth in 16 California Code of Regulations Section 312.

4. If a duly licensed acupuncturist wishes to provide massage therapy services to his or her clients by an individual(s) other than his- or her- self, said individual(s) must have a valid CAMTC Certificate and the office of the acupuncturist shall be subject to all the provisions of this Chapter, as well as any other applicable provisions of the Montclair Municipal Code.

5. Any person licensed to practice any healing art under the provisions of California Business & Professions Code, Division 2 (commencing with §500) when engaging in such practice within the scope of such license.

6. State-licensed hospitals, nursing homes, sanatoriums, or other health care facilities duly licensed by the State of California, and the employees of such facilities while working on the premises of such state-licensed facilities.

7. Accredited high schools, junior/community colleges, and colleges or universities whose coaches and trainers are acting within the scope of their employment.

8. Barbers, beauticians, or manicurists who are duly licensed by the State of California pursuant to the Barbering and Cosmetology Act set forth in California Business & Professions Code §§7300 *et seq.*, as the same may be amended from time to time, while engaging in practices within the scope of such license, except that this exemption applies solely for the massaging of the neck, face, and/or scalp of the customer or client of said barber or beautician or, in the case of a licensed manicurist, the massaging of the forearms, hands, calves, and/or feet at a State licensed facility. However, if a state licensed establishment also has a Certificate of Operation from the City to operate as a massage establishment, the business must also comply with all provisions of this Chapter.

9. Schools of cosmetology or barbering that comply with the requirements of California Business & Professions Code §§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 & Professions Code §7395.1.

10. Any other business or professions exempt by state law.

B. Partial exception.

1. Businesses offering massage services that are ancillary to the primary business shall only be required to comply with the provisions set forth in subsection (B)(2) of this Section. For purposes of this subsection, ancillary massage services shall be those services where less than 15% of the gross floor area of the business is devoted to massage.

2. Massage services provided under subsection (B)(1) of this Section shall be required to comply with the following:

a. Massage services must be performed by the holder of a valid CAMTC Certificate.

b. The business shall comply with the following provisions of this Chapter:

(1) Section 4.56.130.A.1 relating to hours;

(2) Section 4.56.130.C relating to instruments, equipment and personnel;

(3) Sections 4.56.130.D.1 through 4.56.130.D.3 relating to personnel lists;

(4) Section 4.56.130.E relating to prohibited conduct;

(5) Sections 4.56.140.A through 4.56.140.F relating to building and facility requirements;

(6) Section 4.56.150 relating to inspections.

C. Any person claiming exception under this Section shall furnish satisfactory evidence upon request that he or she is entitled to such exception, including, proof of bona fide employment, or if applicable, a citation to the particular provision of state law upon which that person relies.

4.56.040 Business license and other permits required.

A. Nothing herein relieves an individual or business from obtaining a City business license, conditional use permit in accordance with Chapter 11.78 of this Code, or other permit if otherwise required by law.

B. Any individual applying for a business license as a massage practitioner or a massage therapist shall provide proof of a current CAMTC Certificate before being issued a business license.

4.56.050 Floor plans required.

A. All massage establishments shall be required to submit a scaled floor plan as part of their application for a Certificate of Operation.

B. All businesses that claim a partial exemption from this Chapter pursuant to Section 4.56.030.B shall be required to submit scaled floor plans in order to verify the applicability of the exemption.

C. No changes may be made to the approved floor plan without written approval from the Community Development Department, which may require modification of the conditional use permit.

4.56.060 CAMTC Certificate required.

A. No person shall provide massage services, including out-call massage services, from any location in the City without having been issued a CAMTC Certificate, regardless of whether such person has an operator permit or the business has a Certificate of Operation.

B. Any person certified by the state who desires to operate a massage establishment must obtain an Operator Permit in accordance with Sections 4.56.070 through 4.56.120 herein.

C. No Operator of a massage establishment shall hire as an employee or utilize as an independent contractor any person to perform massage unless such person has been issued a massage certificate.

4.56.070 Certificate and permit required.

A. No person shall own or manage any massage establishment in any location within the City without first having obtained an Operator Permit.

B. No massage establishment shall be allowed to operate within the City unless the business first obtains a Certificate of Operation. No Certificate of Operation shall be approved until each Operator identified in the application has obtained an Operator Permit.

C. Any person desiring to obtain a Certificate of Operation and/or an Operator Permit shall make application in accordance with the provisions of this subchapter, which application shall be accompanied by a nonrefundable fee in an amount established by resolution of the City Council.

D. All applications shall be dated and shall contain the following statements:

1. A certification under penalty of perjury that the information contained in the application is true and correct; and

2. An authorization for 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 all applicable provisions of law.

E. The provisions of Sections 4.56.050, 4.56.130, 4.56.140, 4.56.150 and 4.56.160 herein shall apply to any business that operates as a massage establishment, even if such business fails to obtain an Operator Permit or Certificate of Operation. The City may immediately order a business that fails to have a Certificate of Operation or an Operator Permit to cease operation.

F. Within 45 calendar days following receipt of a completed application, the Finance Director shall either issue the Certificate of Operation and the Chief of Police shall issue an Operator Permit or mail a written statement of the reasons for denial thereof. Notwithstanding the above, failure of the City to act upon a completed application within the time frame set forth above shall not be deemed approval of the application pursuant to this Chapter. Any Certificate of Operation or Operator Permit issued pursuant to this subsection shall be deemed conditional pending the City's receipt of the California Department of Justice report on the applicant's fingerprints. If the fingerprint report demonstrates that the applicant has made any false, misleading or fraudulent statement of material fact in the permit application or in any report or record required to be filed therewith, or discloses any disqualifying conduct, the permit(s) shall be subject to denial or revocation pursuant to this Chapter.

4.56.080 Operator Permit.

A. Application contents. Applicants for Operator Permits shall submit the following information to the Montclair Police Department on a form supplied by the Department:

1. The full true name of the applicant;

2. A complete statement listing and explaining any and all aliases and fictitious names used by the applicant within the ten years immediately preceding the application;

3. The current residence address and business address and current residence and business telephone number of the applicant;

4. A list of all previous residential and business addresses for a minimum of eight years immediately preceding the present address of the applicant and the dates of residence for each address;

5. The applicant's place of birth, and original documentation to verify both the applicant's identity and employment authorization (if applicable), as listed under 8 U.S.C. 1324a(b)(1) and 8 C.F.R. 274a.2(b)(1). Documentation to satisfy this requirement may include, but is not limited to, a California driver's license, California identification card, Social Security card, resident alien ("green") card, United States passport (unexpired or expired), unexpired foreign passport that contains a temporary I-551 stamp, or an unexpired employment authorization document issued by the United States Government in compliance with 8 C.F.R. 274a.2(b)(1)(v)(A);

6. The history of the applicant as to any similar business or occupation within ten years immediately preceding the filing of the application. Such information shall include, but not be limited to, the names and addresses of any other massage establishments or similar businesses the applicant has owned, managed, provided massage services at, or worked at, whether the applicant has had a permit or license to operate, manage, provide massage services at, or work at a massage establishment denied, revoked or suspended in any jurisdiction; the reasons for any such denial, revocation or suspension; and the business, activity or occupation the applicant engaged in subsequent to such denial, revocation or suspension;

7. All criminal convictions within the last ten years, excluding minor traffic violations, and the date and place of each such conviction and reason therefor;

8. Such other reasonable identification and information as the Chief of Police may require in order to discover the truth of the matter specified as required to be set forth in the application;

9. The applicant shall be photographed by the Montclair Police Department or otherwise supply a photograph as directed by the Department; and

10. An acknowledgement that by applying for an Operator Permit, the applicant understands that they are responsible for all violations of employees or independent contractors that may take place in the massage establishment that they own or manage and that such violations are grounds for revocation of the Operator Permit.

B. Once the information required by subsection (A) of this Section is submitted, the applicant shall have his or her fingerprints taken for a criminal history background (Livescan) check in the manner directed by the Montclair Police Department.

C. The Chief of Police shall issue the Operator Permit, unless after investigation he or she makes any of the following findings:

1. The applicant has failed to provide information, documentation and assurances required by this Chapter or by the Chief of Police; has failed to reveal any fact material to qualification; or has supplied information that is untrue or misleading as to a material fact pertaining to the qualification criteria; or

2. The applicant is a person who has engaged in disqualifying conduct; or

3. There is substantial evidence that the applicant has engaged in disqualifying conduct, even if there is no conviction for such conduct; or

4. The applicant has violated any provision of this Chapter, or any similar ordinance, law, rule, or regulation of any other public agency that regulates the operation of massage establishments; or

5. The applicant is not at least 18 years of age; or

6. The applicant is delinquent in paying City fees or penalties owed in relation to any permit issued pursuant to this Chapter.

D. Permits issued pursuant to this Section shall remain in effect, unless revoked, for a period of three years. Applications for the renewal of a permit shall be filed with the Montclair Police Department on a form supplied by the Police Department. Temporary permits shall not be issued and expired permits are not valid unless the permittee has a written receipt showing that the renewal application was filed at least thirty (30) days prior to expiration, without action having been taken by the Chief of Police. Renewal applications shall be signed under penalty of perjury and shall be accompanied by a nonrefundable filing fee established by resolution of the City Council. A permittee shall be required to update the information contained in his/her original permit application and provide any new and/or additional information as may be reasonably required by the Chief of Police in order to determine whether the permit should be renewed, including all information required by subsections (A) and (B) of this Section. Failure to provide this documentation shall be grounds for nonrenewal of the permit.

E. If the criminal history background check report demonstrates that the applicant has made any false, misleading or fraudulent statement of material fact in the permit application or in any report or record required to be filed therewith, or discloses any disqualifying conduct, the permit shall be subject to denial.

F. Automatic issuance and renewal for CAMTC Certificate holders.

1. Any person who holds a valid CAMTC Certificate shall only be required to provide the following information on a form that includes the statements set forth in Section 4.56.070.D herein:

a. The full true name of the applicant;

b. The current residence and business address and current residence and business telephone number of the applicant; and

c. The name and address of the massage establishment for which the Operator Permit is sought.

2. A copy of the applicant's CAMTC Certificate and identification shall be provided with the application, along with a fee in an amount set by resolution of the City Council.

3. The applicant shall be required to have his/her photograph taken as specified above.

4. The Operator Permit shall automatically be issued upon completion of the form and verification of the validity of the CAMTC Certificate by the Police Department. No background check shall be required.

5. Renewals shall be required in accordance with subsection (D) of this Section, but such renewals shall be automatic as long as the permittee maintains and provides a copy of his/her valid CAMTC Certificate.

G. Every person to whom a permit has been granted pursuant to this Chapter shall be issued an identification badge by the Montclair Police Department which shall contain the person's name, photograph, expiration date and any other information deemed necessary by the Chief of Police. The badge shall be worn so as to be readily visible at all times while on the premises of the massage establishment. The identification badge shall be surrendered to the Chief of Police or his/her designee upon request, upon any suspension or revocation pursuant to Section 4.56.100 herein.

H. Permits issued pursuant to this Chapter may not be assigned or transferred.

I. It is the duty of each Operator to notify the Finance Department whenever there is a change in information that was required to be submitted in the initial application for the Operator Permit. Such notification shall be in writing and made within ten business days of the change on a form provided by the City.

J. Each Operator of a massage establishment shall be responsible for the conduct of all employees and independent contractors working on the premises of the business. Failure of the employees or independent contractors to comply with this Chapter may result in the revocation of the Operator Permit.

K. The Operator of the massage establishment is responsible for verifying that all persons hold the appropriate CAMTC Certificate as required by this Chapter.

L. Any requirement of this Chapter applying to an Operator shall apply to each and every Operator of a massage establishment.

4.56.090 Certificate of Operation.

A. Applications for a Certificate of Operation shall be filed with the Finance Department and shall include the information set forth below:

1. The full name of the applicant;

2. The name under which the business is to be conducted, which name must match the name of the business under which the corresponding business license is issued under Chapter 4.04 of this Code. No massage establishment business shall operate under any business name or conduct business under any designation not specified in the Certificate of Operation. If the applicant is a corporation, the name shall be exactly as shown on the articles of incorporation or on a valid DBA ("doing business as");

3. The address of the proposed massage establishment;

4. A detailed description of the operation and type of services to be provided by the massage establishment, including other therapies to be provided, and other businesses to be operated on the same premises;

5. The full name of each Operator of the massage establishment;

6. A legal size copy of the floor plan approved as part of the conditional use permit, drawn to scale showing the following: entrances; exits; windows; interior doors; restrooms; all other separately enclosed rooms with dimensions, including, but not limited to, closets, storerooms, break rooms, and changing rooms; and location of massage tables and chairs;

7. The full name, address, and phone number of the legal owner of the property, if other than the applicant, on which the massage establishment is to be located, along with a copy of the signed lease and a notarized acknowledgement from the owner of the property that a massage establishment will be located on his or her property; and

8. The hours and days of operation.

B. The Finance Director shall issue a Certificate of Operation upon verification of the following:

1. The massage establishment will comply with all applicable laws, including, but not limited to, building, fire, zoning, health and safety regulations, as well as any conditions that have been imposed to comply with such laws; and

2. Each person identified as an Operator has obtained an Operator Permit.

C. Every massage establishment for which a Certificate of Operation has been granted pursuant to this Chapter shall display the Certificate in a conspicuous place so it may be readily seen by persons entering the premises.

D. A Certificate of Operation is not transferable to a separate location of the same business, to a different business at the same location, or to the same business under different ownership at the same location, or the same business under a different name.

E. It is the duty of each Operator to notify the Finance Department whenever there is a change in information that was required to be submitted in the initial application for the Certificate of Operation. Any sale or transfer of any reportable interest of an owner in a massage establishment, which interest would be required to be reported under subsection (A) of this Section in the first instance, shall render the Certificate of Operation temporarily suspended and subject to revocation in accordance with the provisions of this Chapter unless prior to the effective date of such sale or transfer, the new owner applies for and obtains an Operator Permit.

F. Notwithstanding any other provision of this Code to the contrary, where a Notice of Intent to suspend or revoke, or a notice of suspension or revocation has been issued regarding a massage establishment, or the business has otherwise been required to close because of suspension or revocation proceedings against the Operator, the Finance Department shall not process or issue a new application for a Certificate of Operation for said location unless or until the revocation or suspension proceedings are dismissed or a final determination is made that the current Certificate of Operation should not be suspended or revoked, or a two-year period has passed since the occurrence of the activity which gave rise to the suspension or revocation proceedings or other criminal actions.

G. Notwithstanding any other provision of this Code to the contrary, when a massage establishment has been closed due to criminal activity and such decision is final, no new massage establishment may open in such location and no Certificate of Operation shall be issued for such location for a period of two years from the date of such final determination. For purposes of this Section, closure due to criminal activity includes voluntary closure of the business after there have been arrests at the location or other notices relating to criminal activity or notices relating to suspension or revocation proceedings. This provision is not meant to prohibit the issuance of a Certificate of Operation to a business which initially failed to obtain a Certificate of Operation without any prior oral or written notification by the City that such was required.

H. Where the applicant for the Certificate of Operation is not the record owner as shown on the latest county assessment roll, then upon issuance of the Certificate, the City shall send written notice to the property owner advising of the issuance of the Certificate and the regulations applicable to the massage establishment and the property pursuant to this Chapter; this may be accomplished by including a copy of this Chapter with the notice.

4.56.100 Suspension and revocation of permits and certificates.

A. Subject to the procedures set forth in this Section, the Chief of Police may suspend or revoke an Operator Permit issued pursuant to this Chapter whenever the Chief of Police determines that any of the following has occurred:

1. The permittee, or an employee or independent contractor working on the premises, is conducting operations in a manner contrary to the provisions of this Code;
2. The permittee, or an employee or independent contractor working on the premises, is conducting operations in a manner which constitutes a public nuisance;

3. The permittee, or an employee or independent contractor working on the premises, is conducting operations in a manner which is detrimental to the health, safety or welfare of the City or its inhabitants;

4. There is substantial evidence of prostitution or other unlawful activity;

5. The permittee, or any employee or independent contractor working on the premises, has engaged in disqualifying conduct; or

6. The Chief of Police makes any of the findings that would have justified denying the application in the first instance.

B. If, in the discretion of the Chief of Police, an alleged violation is minor and capable of correction, then prior to suspension or revocation, a written notice shall be given to the Permittee of the alleged violation(s) involved to allow a period of time to correct the alleged violation(s), which period shall not exceed five (5) business days, at the end of which period, an inspection shall be conducted to determine whether the alleged violation(s) has been corrected. For purposes of this Section, written notice shall include either a Notice of Violation or an administrative citation.

C. If the Chief of Police determines that an alleged violation is not minor or capable of correction, that an alleged violation(s) continues without correction, or that there have been previous violations of this Chapter, even if for different reasons, then the Chief of Police may issue a Notice of Intent to suspend or revoke, along with an administrative or criminal citation. Examples of a violation that will be determined by the Chief of Police to be not capable of correction include, but are not limited to, substantial evidence of prostitution activity on the massage establishment premises or an immediate threat to public health, safety or welfare.

D. Notice of Intent to Suspend or Revoke. A Notice of Intent to Suspend or Revoke shall contain a statement of an alleged violation(s) that constitutes the basis for the suspension or revocation, notice of the right of the Permittee to respond to the charges in writing to the Chief of Police for a pre-appeal determination, notice of the right to appeal to the City Manager, and notice that a failure to respond in the time specified shall constitute a waiver of the right to respond, but not the right to appeal. If an alleged violation is capable of correction, the notice shall also advise the Permittee to correct the alleged violation(s) within the time to respond.

E. Response to Notice of Intent/Pre-appeal Determination.

1. The time to respond and request a pre-appeal determination shall be five (5) business days from the date of service of the notice, regardless of whether the materials upon which the Notice of Intent is based are provided to the Permittee at that time.

2. If there is no response, the Operator Permit shall be considered suspended or revoked upon the expiration of time in which to respond and request a pre-appeal hearing.

3. If there is a response, the Operator Permit shall remain in effect until a determination is made by the Chief of Police. In no event shall a hearing be conducted until at least five (5) business days have passed from the time the City provides the materials upon which the Notice of Intent is issued to the Permittee.

F. Suspension or Revocation.

1. If, after consideration of the Permittee's response, the Chief of Police determines that the Notice of Intent to Suspend or Revoke should be upheld, then the Chief of Police shall issue a Notice of Suspension or Revocation and serve it upon the Permittee as well as any other interested person requesting a copy of the same. Where all massage activity is required to cease, notice shall also be served on the owner of

the property if different from the Operator or Certificate holder. The notice shall include information about the right to appeal.

2. Upon issuance of a Notice of Suspension or Revocation of a Certificate of Operation, all massage activity at the massage establishment shall cease and no activity for which the Certificate of Operation is required shall be conducted while any appeal may be pending.

3. Upon issuance of a Notice of Suspension or Revocation of an Operator Permit, the Operator must cease all work at the massage establishment. If there is no other person who has an Operator Permit who is not the subject of a suspension or revocation proceeding, then all massage activity at the massage establishment shall also cease and no massage activity shall be conducted while any appeal may be pending.

G. Surrender of Certificate of Operation and Permits. Any Permittee shall immediately surrender his or her Operator Permit or Certificate of Operation to the Chief of Police upon its suspension or revocation. The Operator shall immediately surrender the Certificate of Operation upon revocation of an Operator Permit if there is no other permitted Operator.

4.56.110 Appeals to City Manager.

A. Appeals.

1. Appeals shall be in writing and filed with the City Clerk within the following time frames:

a. Appeals from any decision of the Chief of Police or Finance Director to deny a permit shall be in writing, shall clearly state the applicable basis for the appeal, and shall be filed not later than ten (10) calendar days following the giving of the Notice of Denial.

b. Appeals from a Notice of Intent to Suspend or Revoke a Permit where no response is filed in accordance with Section 4.56.100.E above shall be filed not later than ten (10) calendar days following the expiration of the response period.

c. Appeals from a Notice of Suspension or Revocation issued after a response is filed in accordance with Section 4.56.100.E above shall be filed not later than ten (10) calendar days following the giving of the Notice of Suspension or Revocation.

2. The City Clerk shall not accept an appeal from a decision of the Chief of Police, and no hearing shall be conducted, unless the appellant has paid a filing fee in an amount set by resolution of the City Council, to defray the cost of such appeal. Any appeal without the timely payment of fees shall be considered to be untimely.

3. The scope of the appeal hearing pursuant to this Section shall be limited to those issues raised by the appellant in the written appeal, as submitted pursuant to subsection (A)(1) of this Section.

B. City Manager Action.

1. Upon receipt of a timely filed appeal, the City Clerk shall set the matter for hearing before the City Manager. The hearing shall be held not fewer than ten (10) calendar days nor more than thirty (30) calendar days from the date of the appeal request. The hearing may be continued from time to time upon the mutual consent of the parties. For the purposes of this Section, "City Manager" may include a hearing officer appointed by the City Manager, who shall then act in the City Manager's place.

2. The appellant shall be provided with notice of the time and place of the appeal hearing, as well as a copy of all relevant materials at least seven (7) calendar days prior to the hearing.

3. At the time of such hearing, the City Manager shall review the records and files relating to the decision.

a. The City Manager shall permit any interested person to present any relevant evidence bearing on the issues involved in the matter.

b. In conducting the hearing, technical rules relating to evidence and witnesses shall not apply. Any relevant evidence may be admitted if it is material and if it is evidence customarily relied upon by responsible persons in the conduct of their affairs regardless of the existence of any common law or statutory rule that might make admission of such evidence improper over objection in civil actions. Hearsay evidence may be admissible if it is the sort upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The rules of privilege shall be applicable to the extent they are now, or are hereafter permitted in civil actions. Irrelevant, collateral, and repetitious testimony shall be excluded.

c. In determining whether a person should be disqualified for meeting the definition of a person who has engaged in disqualifying conduct as set forth in Section 4.56.020 herein, the City Manager may consider: the nature and severity of the act(s) or crime(s); whether there were any additional subsequent act(s) or crime(s); the number of act(s) or crime(s); and how recent the act(s) or crime(s) occurred.

4. The appellant shall have the burden of proving that he or she meets the requirements for issuing the Permit or Certificate in the first instance; the City shall have the burden of proving that grounds exist for revoking or failing to renew a permit.

5. Based upon the evidence presented at the hearing, the City Manager shall determine whether the decision should be affirmed, modified or reversed.

6. The City Manager's decision shall be communicated in writing to the appellant within ten (10) working days after the close of the hearing and submission of the matter to the City Manager for decision. The City Manager's decision shall state whether the decision is affirmed, modified or reversed and shall state the reasons therefor.

7. The decision of the City Manager shall include notice that the decision is final and conclusive, that judicial review may be sought therefrom pursuant to California Code of Civil Procedure §1094.5, and that any action filed in the Superior Court shall be filed within 90 days following the City Manager's notice pursuant to California Code of Civil Procedure §1094.6.

4.56.120 Notices.

A. All notices required to be given pursuant to this Chapter shall be served on the responsible party (i.e., permittee, applicant, appellant, or a representative thereof) either by personal delivery or by deposit in the United States mail in a sealed envelope, postage prepaid, addressed to such responsible party as the name and address appear in the most recent application on file with the City. Service by mail shall be deemed to have been completed on the date deposited in the mail. Notices shall include information regarding appeal rights and a statement that the failure to file an appeal shall constitute a failure to exhaust administrative remedies.

B. In all cases where the Certificate holder is not the property owner, notices shall also be sent to the property owner of record where the notice relates to possible closure of the business due to suspension or revocation.

4.56.130 Operational requirements.

A. Hours and conditions of operation.

1. No massage establishment shall operate nor shall any massage be administered in any massage establishment between the hours of 10:00 p.m. and 8:00 a.m. A massage begun any time before 10:00 p.m. must nevertheless terminate at 10:00 p.m. The hours of operation shall be displayed in a conspicuous public place in the lobby within the massage establishment and in any front window clearly visible from outside of the massage establishment. These hours of operation may be modified pursuant to a conditional use permit.

2. During hours of operation, no person other than a valid permit holder under this Chapter, a massage practitioner, a massage therapist, or a patron shall be allowed beyond the reception area of the massage establishment.

3. Patrons and visitors shall only be permitted in the massage establishment during the hours of operation as follows:

a. Visitors shall only be permitted in the reception area of the massage establishment.

b. Patrons shall only be permitted in massage treatment areas if at least one massage technician is on the premises.

4. The massage establishment shall be supervised during all hours of operation by a Manager who is one of the Operators specified in the permit application. The name and photograph (minimum size of four inches by six inches) of the on-duty Manager shall be posted in a conspicuous public place in the lobby of the massage establishment at all times that the business is open. This provision shall not apply to Sole Providers.

5. No massage establishment shall be used for residential purposes. There shall be no massage tables, cots, or beds in the establishment other than as shown on the approved floor plan. Locker facilities shall be provided for all employees and independent contractors and all personal items of the employees and independent contractors shall be kept in the lockers while at the massage establishment.

B. Posting requirements. In addition to any other requirements for posting set forth in this Chapter, the following shall also apply:

1. A recognizable and legible sign complying with the requirements of this Code shall be posted at the main entrance identifying the establishment as a massage establishment.

2. Each service offered, the price thereof, and the minimum length of time such service shall be performed shall be posted in English and such other languages as may be convenient to communicate such service, in a conspicuous public location in each massage establishment. 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.

3. Any posted signs that are in a language other than English shall also be posted in English.

C. Instruments, equipment, and personnel.

1. Disinfecting agents and sterilizing equipment shall be provided for any instruments used in performing acts of massage and said instruments shall be disinfected and sterilized after each use.

2. Unless otherwise approved by a conditional use permit, massages shall be administered only on standard or portable massage tables or chairs that are covered with a durable, washable plastic or other acceptable waterproof material. Beds, mattresses, water beds, futons, sofa beds, any type of portable or convertible

beds, and foam pads more than four inches thick or with a width of more than four feet shall not be permitted in the establishment.

3. No massage technician shall massage the genitals or anal area of any patron nor shall any Operator of a massage establishment allow or permit such a massage to the above-specified areas.

4. No massage technician shall massage the breasts of a female patron without the written consent of the person receiving the massage and a referral from a licensed California health care provider, nor shall any operator of a massage establishment allow or permit such a massage to the above-specified area.

5. A massage shall not be given and no patron shall be in the presence of any massage establishment staff unless the patron's genitalia and, if a female patron, the female patron's breasts, are fully covered by a fully opaque, nontransparent covering.

6. Persons providing services in the massage establishment shall not be dressed in attire that is: transparent, see-through, substantially exposes the massage technician's undergarments, or exposes the massage technician's breasts, buttocks, or genitals in a manner which has been deemed by CAMTC to constitute unprofessional attire based on the custom and practice of the profession in California; or in swim attire unless such person is providing a water-based massage modality which has been approved by CAMTC.

7. All massage establishments shall be so equipped, maintained and operated as to effectively control the entrance, harborage, and breeding of vermin, including flies. When flies or other vermin are present effective control measures shall be instituted for their control or elimination.

8. Clean and sanitary towels, sheets and linens shall be provided for each patron of the establishment. No common use of towels or linens shall be permitted. Heavy white paper may be substituted for sheets; provided, that such paper is used once for each person and then discarded into a sanitary receptacle.

9. All massage tables shall be at least two (2) feet away from all walls at all times.

D. Personnel lists.

1. Within seven (7) calendar days of receiving a Certificate of Operation, the Operator shall provide the Police Department with a complete list of all massage technicians who are working or will work, be employed, or provide massage services in the massage establishment along with a copy of their CAMTC certificate and identification card, as well as with the name and residence address of the Manager principally in charge of the operation of the massage establishment and of any other Manager.

2. The Operator shall have a continuing obligation to notify the Chief of Police in writing of any changes in massage technicians and managers within seven (7) calendar days of such change.

3. The Operator shall maintain copies of each massage technician's CAMTC Certificate and identification card on file on the premises of the massage establishment, which shall be available to any individual upon request, including, but not limited to, employees of the City. Additionally, the Operator shall be required to file copies of each CAMTC Certificate and identification card with the Police Department within seven (7) days of a massage technician commencing work at the massage establishment. Information required by this Section shall be maintained at the massage establishment for a minimum of two years following the date that the person ceases providing services/employment at the massage establishment.

4. The Operator shall maintain on the premises of the massage establishment a register of all non-state certified persons employed, working or providing other services at the massage establishment. The register shall be maintained for a minimum of two years following the time that the person ceases providing services/employment at the massage establishment. The Operator shall make the register immediately available for inspection upon demand of a representative of the Police Department, any health officer, or any other official charged with enforcement of this Chapter. The register shall include, but is not limited to, the following information:

- a. Name, nicknames and/or aliases;
- b. Home address and relevant phone number, including, but not limited to, home, cellular and pager numbers;
- c. Age, date of birth, gender, height, weight, color of hair and eyes;
- d. The date of employment, and termination, if any;
- e. The duties of each person; and
- f. In a separate portion of the register, Social Security numbers, which shall only be available for review by the Montclair Police Department or other law enforcement personnel, but not health officers or other officials charged with the enforcement of this Chapter.

E. Prohibited conduct.

1. No alcoholic beverages shall be sold, served, or furnished on the premises of any massage establishment without a valid alcoholic beverage license from the California Department of Alcoholic Beverage Control (ABC) and a conditional use permit from the City.

2. No storage or sale of condoms or spermicides shall be permitted within the massage establishment.

3. No Operator shall hire, employ or allow a person to perform massage services unless such person possesses a valid CAMTC Certificate. Each Operator of a massage establishment shall verify that all persons hold the appropriate CAMTC Certificate required by this Chapter. Nothing herein prevents an Operator from hiring, employing, or allowing a person to perform services allowed by such person's cosmetology or barber license, if the business has a state establishment license in addition to a Certificate of Operation.

4. No person shall use or possess, nor shall there be any storage of, any sexually-oriented implements or paraphernalia that are designed or marketed primarily for the stimulation of human genital organs or sadomasochistic activity.

5. 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 other sounds in the massage rooms, without the knowledge and written consent of the patron.

6. No Operator of a massage establishment shall place, publish or distribute or allow or cause to be placed, published or distributed any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective patrons or clients that any service is available other than those services described in this Chapter and posted on the premises as required in this Chapter, nor shall any massage establishment employ language in the text of any advertising that would reasonably suggest to a prospective patron that any service is available other than those services described in this Chapter and posted on the premises as required by this Chapter.

4.56.140 Building and facility requirements.

A. The building, or unit within the building where the massage establishment is located, shall comply with all applicable building code requirements.

B. All massage rooms and dressing rooms shall be screened off by hinged doors that can open inward. Swinging doors that can open inward, draw drapes, curtain enclosures, or accordion-pleated closures in lieu of doors are acceptable on all inner dressing rooms and massage therapy rooms or cubicles. Except for bathroom doors, interior doors may not have locks on them.

C. All rooms in which massages are being provided shall be lit with a minimum of one light fixture emitting at least 210 lumens for every 150 square feet of space during the administration of such services, with the light fixtures being spread throughout the space. No dimmer switches, strobe lights, flashing lights, colored light, or any coverings or other apparatus, other than a lampshade, which changes or darkens the color of the primary light source, shall be used in any room in which massage services are being provided.

D. Any locker facilities provided for the use of patrons shall be fully secured for the protection of the patron's valuables and the patron shall be given control of the key or other means of access.

E. The walls in all rooms where water or steam baths are given shall have a washable, mold-resistant surface.

F. All walls, ceilings, floors, pools, showers, bathtubs, steam rooms and all other physical facilities for the establishment shall 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.

G. One main entry that enters into the reception area shall be provided for patron use. All patrons, and any persons other than those providing services at the massage establishment, shall be required to enter and exit through the front door of the establishment.

H. All exterior doors (except rear exterior doors used only for employee entrance to and exit from the massage establishment) shall remain unlocked during business hours, and the establishment shall comply with the provisions of the Montclair Municipal Code pertaining to the posting of signs stating that doors shall remain unlocked during business hours. Exits for fire safety purposes may be allowed where deemed necessary by the appropriate public safety agency. Notwithstanding the above, the front door may be locked if there is no staff available to assure security for the clients and massage staff who are behind closed doors, provided that the massage establishment is owned by one individual with one or no employees or independent contractors.

I. There shall be no buzzer, alarm or intercom system.

J. No massage business located in a building or structure with exterior windows fronting a public street, highway, walkway, or parking area shall block visibility into the interior reception and waiting area through the use of curtains, closed blinds, tints, painted signs, decals, graphics, or any other material that obstructs or darkens the view into the premises or by signs that cover more than 25% of any window pane. The interior of the business shall be plainly visible from the exterior of the business by passing vehicles and pedestrians.

4.56.150 Inspections.

A. Representatives of the City's Police Department, Fire Department, Community Development Department, and Finance Department, and agents for the City from the County Health Department and representatives of any state or local agencies with regulatory authority over massage establishments, shall have the right to enter massage establishments from time to time, during regular business hours or at any time that the massage establishment is occupied or open for business, to verify the massage establishment is in compliance with all applicable laws without the need for an inspection or abatement warrant.

B. The operator shall cause to be conspicuously posted so that the same may be readily visible to persons in the reception area of the massage establishment, in letters that are a minimum of one inch in height, a notice in English that provides substantially as follows:

THIS MESSAGE ESTABLISHMENT AND THE MESSAGE ROOMS DO NOT PROVIDE COMPLETE PRIVACY AND ARE SUBJECT TO INSPECTION BY CITY AND HEALTH OFFICIALS WITHOUT PRIOR NOTICE

In addition, Operators are encouraged to post this notice in language(s) that are best understood by the customers of the massage establishment.

C. No person shall refuse to permit, cause delay of, or interfere with, a lawful inspection or compliance check of the premises by the officials listed in subsection (A) of this Section at any time.

4.56.160 Penalty.

A. It is unlawful for any person to engage in conduct that violates any provision of this Chapter, to engage in conduct which fails to meet the standards set forth in this Chapter, or to own, manage, or operate a massage establishment that is not fully in compliance with the operational standards set forth in this Chapter.

B. Any violation of this Chapter shall be a misdemeanor unless, in the sole discretion of the City Prosecutor, it is charged as, or reduced to, an infraction. Citations and warning notices may be utilized as determined appropriate to the circumstances by the enforcing personnel.

C. In addition to the above, any massage establishment operated, conducted or maintained contrary to the provisions of this Chapter shall be and is declared to be unlawful and a public nuisance and the City may, in addition to or in lieu of prosecuting a criminal action under this Chapter, commence an action or actions, proceeding or proceedings, for the abatement, removal and enjoinder thereof, in the manner provided by law, including any code enforcement procedures established pursuant to the laws of the State of California or the City of Montclair; and may take such other steps and may apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such massage establishments and restrain and enjoin any person from operating, conducting or maintaining a massage establishment contrary to the provisions of this Chapter. If an injunction is sought, attorney's fees and costs will be assessed at the discretion of the court against the party subject to said injunction.

D. Any violation of the provisions of this Chapter shall constitute a separate offense for each and every day during which such violation is committed or continued.

SECTION II. Section 11.78.030.H of the Montclair Municipal Code is hereby amended to read as follows:

7. Massage establishments (C-3, MIP; C within HBSP; C-3 and MIP within NMSP).

SECTION III. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase be declared unconstitutional.

SECTION IV. Environmental Review.

This Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) under the general rule that CEQA does not apply to activities which can be seen with certainty to have no effect on the environment. Changing the regulations relating to massage establishments will not create any environmental impacts.

SECTION V. Effective Date.

This Ordinance shall be in full force and effect thirty (30) days after passage.

SECTION VI. Posting.

The Deputy City Clerk shall certify to the passage of this Ordinance and cause the same to be posted pursuant to Government Code Section 36933.

APPROVED AND ADOPTED this XX day of XX, 2015.

Mayor

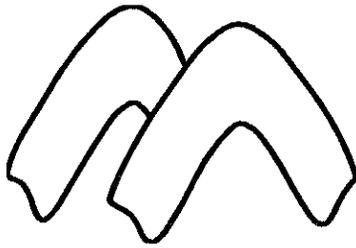
ATTEST:

Deputy City Clerk

I, Andrea M. Phillips, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 15-951 of said City, which was introduced at a regular meeting of the City Council held on the XX day of XX, 2015, and finally passed not less than five (5) days thereafter on the XX day of XX, 2015, by the following vote, to-wit:

AYES: XX
NOES: XX
ABSTAIN: XX
ABSENT: XX

Andrea M. Phillips
Deputy City Clerk



CITY OF MONTCLAIR
PLANNING COMMISSION

MEETING DATE: 05/26/15

AGENDA ITEM 6.b

CASE NUMBER: 2008-16 'A'

Application: Conditional Use Permit Amendment to allow display of a maximum of three (3) rental trucks and/or vehicles for sale within existing parking spaces on the south side of the building

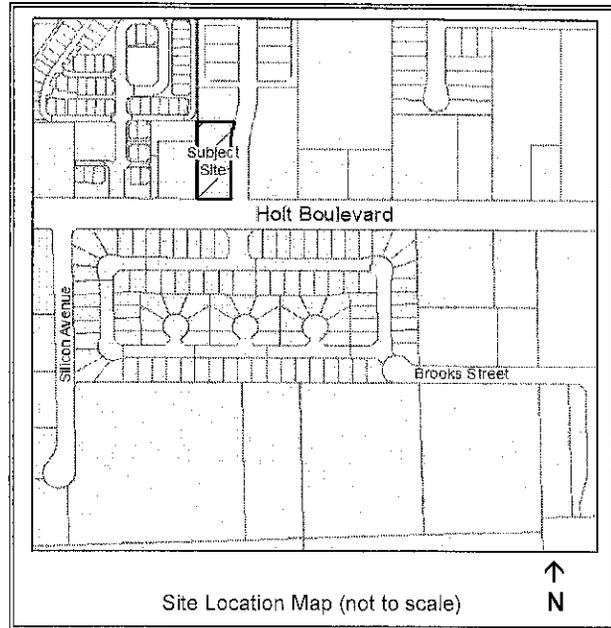
Project Address: 4250 Holt Boulevard

Assessor Parcel No.: 1009-511-26

Property Owner: Burntfish, Inc.

General Plan: General Commercial

Zoning: "Commercial" per Holt Boulevard Specific Plan



ADJACENT LAND USE DESIGNATIONS AND USES

	General Plan	Zoning	Existing Use of Property
Site	General Commercial	"Commercial" per Holt Boulevard Specific Plan	Auto parts / tire shop / truck rentals
North	General Commercial	R-3 (Multiple-Family Residential) / 10 du/ac	Single-family residential
East	General Commercial	"Commercial" per Holt Boulevard Specific Plan	Vacant lot
South	Planned Development	R-1(SL) (Single-Family Residential, Small-Lot Overlay	Single-family residential
West	General Commercial	"Commercial" per Holt Boulevard Specific Plan	Multi-tenant commercial center (Arirang Plaza)

Report on Item Number 6.b

PUBLIC HEARING - CASE NUMBER 2008-16 'A'

APPLICATION TYPE(S)	Conditional Use Permit Amendment
NAME OF APPLICANT	Burntfish, Inc.
LOCATION OF PROPERTY	4250 Holt Boulevard
GENERAL PLAN DESIGNATION	General Commercial
ZONING DESIGNATION	"Commercial" per Holt Boulevard Specific Plan
EXISTING LAND USE	Auto parts/tire shop/truck rentals
ENVIRONMENTAL DETERMINATION	Categorically Exempt (Section 15301)
PROJECT PLANNER	Steve Lustro

Applicant's Proposal

The applicant is requesting approval of a Conditional Use Permit (CUP) amendment to allow the incidental display of a maximum of three (3) rental trucks and/or vehicles for sale within three (3) existing parking spaces on the south side of the existing commercial building at the northwest corner of Holt Boulevard and Amherst Avenue. The applicant currently has a contract with U-Haul to rent light- and medium-duty moving trucks to customers and would like the ability to display vehicles in a prominent location to increase visibility to passersby. Additional rental vehicles would be parked at the rear of the property within the existing parking lot on the north side of the building.

No truck repair or maintenance occurs or would occur on the site. The business is open Monday through Saturday between the hours of 8:00 a.m. to 6:00 p.m. No sign changes or building modifications are proposed in conjunction with this request.

Background

- The project site is approximately 28,314 square feet (.65 acres) in area. The existing, 5,000 square-foot building was originally developed to accommodate an auto diagnostic repair business in 1972. The building was modified into its current configuration (service bays on the west and commercial/retail space on the east) in the late 1980s. The site has 23 striped parking spaces, distributed among the north, west and south sides of the property.
- The commercial building is divided into two tenant spaces with a tire shop in Unit A and an auto parts store in Unit B. The truck rental business is operated from the auto parts store. At the front of the property (facing Holt Boulevard) is an unusually shaped drive aisle with three angled parking spaces.
- In July 2008, the Planning Commission approved a Conditional Use Permit under Case No. 2008-16, allowing the applicant to establish the existing truck rental

business, including incidental vehicle sales. As part of that approval, rental vehicles were required to be parked only in the north parking lot of the property.

Planning Division Comments

Staff believes that the request to allow the incidental display of up to a maximum of three rental trucks and/or vehicles for sale on the south side of the subject site is reasonable, given the parking lot layout and internal circulation on the property. Access from Amherst Avenue to the east-west drive aisle in front of the building is blocked by a vehicular gate that is locked closed on a daily basis, so it is somewhat impractical for the three parking spaces off this drive aisle to be used for customer parking. Allowing the applicant to use the three spaces to display light- or medium-duty trucks will better identify the business as a location to rent a moving truck. Any additional trucks in inventory would be required to be parked in the rear parking lot, where there are 13 standard parking spaces and one compact space.

Subsequent to the approval of the original Conditional Use Permit in 2008, the applicant completed a number of improvements to the property, including the installation of new landscaping, new fencing, crack sealing and slurry coating the parking lot, reorganization of the parking lot, and removing excess storage and a nonconforming sign.

Staff notes, however, that a condition of approval imposed in 2008 requiring the construction of a trash enclosure to City standards has never been completed. This requirement has again been included as a condition of approval of the requested entitlement. The applicant shall work with staff to determine the optimal design and location for the trash enclosure.

Public Comment from Adjoining Property Owners

Notice of this item was advertised as a public hearing in the Inland Valley Daily Bulletin newspaper on May 15, 2015, and notice of the public hearing was mailed to property owners within a 300-foot radius of the exterior boundaries of the project site in accordance with State law for consideration of this discretionary zoning entitlement. At the time this report was prepared, no comments or inquiries had been received by staff regarding the proposal.

Conditional Use Permit Findings

Staff believes that the necessary findings to support the proposed request can be made as follows:

- A. The proposed use is desirable to the public convenience and public welfare, in that it will continue to provide local residents and businesses a nearby and convenient option to consider when short-term rental of moving trucks is needed.

The incidental display of vehicles at the front of the property will make passersby aware of the availability of rental trucks.

- B. That granting this permit will not be materially detrimental to the public welfare and other property in the vicinity, in that the incidental display of vehicles as requested will not detract from the appearance of the property nor will it negatively impact visibility to adjacent properties on Holt Boulevard.
- C. The existing use would continue to be consistent with the underlying "Commercial" land use designation for the property, which conditionally permits a vehicle rental business as currently operated by the applicant. The site is adequate in size, located on a corner with frontages on a fully developed major street and local street, and has been zoned and consistently used for automotive-related uses for over 40 years. Given the limited scope of the truck rental business, the proposed use can be adequately accommodated at the subject site, with appropriate conditions of approval.
- D. The proposed use at the subject location is not contrary to the objectives of any part of the adopted General Plan, or the Holt Boulevard Specific Plan, as both documents envision a variety of commercial uses in the area where the property is located and promote the orderly development and maintenance of commercial properties within the City.

Environmental Assessment

Staff has determined that this project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to Section 15301 of the CEQA Guidelines. The proposed project is on a fully developed site and involves negligible changes to the existing business operation and thus, could not have any significant environmental impacts.

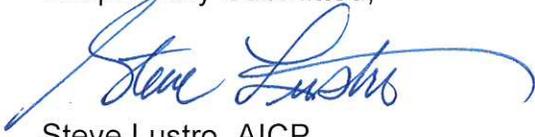
Planning Division Recommendation

Staff finds the proposed use to be consistent with the Montclair Municipal Code, Holt Boulevard Specific Plan, and adopted General Plan. Therefore, staff recommends approval of Case No. 2008-16 'A' by taking the following actions:

- A. Move that based on the evidence presented, there will be no significant impact on the environment as a result of the display of a maximum of three (3) vehicles at the front of the subject business on the subject site. The Planning Commission has reviewed the Planning Department's determination of exemption, and based on its own independent judgment, concurs in the staff's determination of exemption.
- B. Move to grant the Conditional Use Permit amendment request to allow the incidental display of a maximum of three (3) rental trucks and/or vehicles for sale

within the three (3) existing parking spaces on the south side of the building at 4250 Holt Boulevard, per the submitted plans and as described in the staff report, subject to the conditions in Planning Commission Resolution No. 15-1832.

Respectfully Submitted,



Steve Lustro, AICP
Community Development Director

Attachments: Draft Resolution of Approval for Case No. 2008-16 'A'

c: Burntfish, Inc., 4250 Holt Boulevard, Montclair, CA 91763

Z:\COMMDEV\SL\2008\2008-16 'A' PC RPT

RESOLUTION NUMBER 15-1832

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MONTCLAIR APPROVING A CONDITIONAL USE PERMIT AMENDMENT TO ALLOW INCIDENTAL VEHICLE DISPLAY IN CONJUNCTION WITH A TRUCK RENTAL BUSINESS IN THE "COMMERCIAL" LAND USE DISTRICT OF THE HOLT BOULEVARD SPECIFIC PLAN AT 4250 HOLT BOULEVARD (APN 1009-511-26) (CASE NO. 2008-16 'A')

A. Recitals.

WHEREAS, Jon Raft, on behalf of the property owner, Burntfish, Inc., filed an application for a Conditional Use Permit (CUP) Amendment to allow incidental vehicle display in conjunction with an existing truck rental business at 4250 Holt Boulevard on March 23, 2015; and

WHEREAS, ON July 14, 2008, the Planning Commission approved a Conditional Use Permit (Case No. 2008-16) on the subject site allowing a truck rental business to be established in conjunction with the existing auto parts store; and

WHEREAS, Condition No. 4 of Case No. 2008-16 specifically required that all rental trucks be parked in the north (rear) parking lot of the subject property; and

WHEREAS, the applicant now seeks to amend the original CUP approval to allow a maximum of three (3) rental vehicles or vehicles for sale to be displayed in the parking lot immediately south of the building, pursuant to Condition No. 7 of the original CUP approval; and

WHEREAS, staff has determined that the incidental display of vehicles in conjunction with the existing truck rental business meets the intent and requirements of the Municipal Code and the applicable development standards of the "Commercial" land use district of the Holt Boulevard Specific Plan; and

WHEREAS, staff finds and determined that the subject proposal to be categorically exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to Section 15301 of the State CEQA Guidelines and has prepared a Notice of Exemption and a DeMinimis finding of no effect on fish and wildlife; and

WHEREAS, public notice of this item was advertised as a public hearing in the Inland Valley Daily Bulletin newspaper on May 15, 2015, and notice of the public hearing was mailed out to property owners within a 300-foot radius of the project site boundaries; and

WHEREAS, on May 26, 2015, commencing at 7 p.m. in the Council Chamber at Montclair City Hall, the Planning Commission conducted a public hearing at which time all persons wishing to testify in connection with said CUP amendment were heard, and said CUP was fully studied.

B. Resolution.

NOW, THEREFORE, it is hereby found, determined, and resolved by the Planning Commission of the City of Montclair as follows:

1. This Commission hereby specifically finds that all of the facts set forth in the Recitals, Part A, of this Resolution are true and correct.
2. Based upon substantial evidence presented to this Commission during the above-referenced public hearing on May 26, 2015, including written and oral staff reports, together with public testimony, this Commission hereby finds as follows:
 - A. The proposed use is desirable to the public convenience and public welfare, in that it will continue to provide local residents and businesses a nearby and convenient option to consider when short-term rental of moving trucks is needed. The incidental display of vehicles at the front of the property will make passersby aware of the availability of rental trucks.
 - B. That granting this permit will not be materially detrimental to the public welfare and other property in the vicinity, in that the incidental display of vehicles as requested will not detract from the appearance of the property nor will it negatively impact visibility to adjacent properties on Holt Boulevard.
 - C. The existing use would continue to be consistent with the underlying "Commercial" land use designation for the property, which conditionally permits a vehicle rental business as currently operated by the applicant. The site is adequate in size, located on a corner with frontages on a fully developed major street and local street, and has been zoned and consistently used for automotive-related uses for over 40 years. Given the limited scope of the truck rental business, the proposed use can be adequately accommodated at the subject site, with appropriate conditions of approval.
 - D. The proposed use at the subject location is not contrary to the objectives of any part of the adopted General Plan, or the Holt Boulevard Specific Plan, as both documents envision a variety of commercial uses in the area where the property is located and promote the orderly development and maintenance of commercial properties within the City.

C. Conditions of Approval.

Based upon the findings and conclusions set forth in the paragraphs above, this Commission hereby approves the application subject to each and every condition set forth below.

Planning

1. The approved truck rental business shall continue to operate from Unit B at 4250 Holt Boulevard.
2. The incidental sales of vehicles from the premises shall be allowed only in conjunction with a properly licensed truck rental business. All vehicle sales shall cease when and if the truck rental businesses ceases operations at the site.
3. This CUP Amendment approval shall be valid for six months (180 days) from the date of Planning Commission action. Failure to initiate the approved use prior to the end of the six-month period shall result in the termination of and automatically void the approval.
4. No more than three (3) rental moving trucks shall be parked in the three striped parking spaces on the south side of the building at any time. No more than ten (10) additional rental moving trucks shall be parked on the site at any time. Trucks not parked at the front of the property shall be neatly parked at the rear of the property only and not within required parking spaces along the west side of the property required to support the existing businesses.
5. No maintenance or repair (including oil changes, and washing) of trucks shall be permitted on site at any time. Rinsing of vehicles shall only be permitted with the use of a de-ionized (DI) water system or service as approved by the City of Montclair Environmental Manager. Further, the washing of trucks is subject to the requirements of the National Pollutant Discharge Elimination System (NPDES) Permit, including, but not limited to, the requirement to install a wash bay or other on-site water treatment method. Failure to comply with NPDES requirements is subject to citation and fines.
6. All moving trucks parked on site as part of the approved business shall be operable, lawfully registered, and maintained in a clean condition at all times.
7. Any modification, intensification, or expansion of the use beyond that which is specifically approved with the original Conditional Use Permit or

this Conditional Use Permit Amendment shall require review and approval by the Planning Commission.

8. Within 12 months from the date of this CUP Amendment approval, the applicant shall submit plans to the City Planner for construction of a permanent trash enclosure, which shall then be constructed within six (6) months from the date of the City Planner's approval. The construction of such trash enclosure shall conform to the City's standard drawing, including a solid roof cover.
9. The property owner/applicant shall routinely inspect and maintain in good condition the property (e.g., structures, equipment, fences/walls, landscaping, hardscape, and pavement) in a clean and presentable manner at all times. All trash, debris, weeds (in landscape areas and in asphalt parking areas), graffiti, etc. shall be promptly and/or continually removed.
10. Temporary promotional signs shall comply with Chapter 11.72 of the Montclair Municipal Code, including, but not limited to the following:
 - a. Temporary banners for the purpose of announcing the grand opening or advertising promotions shall require banner permits from the Planning Division prior to installation.
 - b. Promotional window signs shall not occupy more than 25 percent of the aggregate window area.
 - c. Portable flags, pennants, spinners, painted-on signs or the like shall be prohibited.
 - d. No trailer-mounted electronic sign/message boards or other similar types of portable signs shall be permitted on the property at any time.
11. No pay telephones or vending machines shall be located on the exterior of the building on the subject property.
12. No outdoor storage of any kind shall be permitted without approval of a Conditional Use Permit by the Planning Commission.
13. The use of razor tape, barbed wire or other similar security deterrents shall not be permitted.
14. Any new ground or roof mounted equipment (including but not limited to HVAC, satellite, or microwave) and associated component parts (including wiring or conduit), shall be concealed on all sides from public view in a

manner that is compatible with the architectural design of the building and to the satisfaction of the City Planner.

15. To ensure compliance with the provisions of this Planning Commission approval, a final inspection is required from the Planning Division when work has been completed. The applicant shall inform the Planning Division and schedule an appointment for such an inspection.
16. The applicant shall indemnify, protect, defend, and hold harmless, the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, from any and all claims, demands, law suits, writs of mandamus, and other actions and proceedings (whether legal, equitable, declaratory, administrative, or adjudicatory in nature), and alternative dispute resolutions procedures (including, but not limited to arbitrations, mediations, and other such procedures), (collectively "Actions"), brought against the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void or annul, the any action of, or permit or approval issued by the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities, thereof (including actions approved by the voters of City), for or concerning the project, whether such Actions, are brought under the California Environmental Quality Act, the Planning and Zoning Law, the Subdivision Map Act, Code of Civil Procedure Section 1085 or 1094.5, or any decision of a court of competent jurisdiction. It is expressly agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the City's defense, and that applicant shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the applicant of any action brought and City shall cooperate with the applicant in the defense of the Action.

Fire

17. All Fire Department access and fire lanes shall be clearly posted as "No Parking, Fire Lane." Signs shall be designed and mounted in accordance with Montclair Fire Department standards.

The Secretary to this Commission shall certify to the adoption of this Resolution.

APPROVED AND ADOPTED THIS 26TH DAY OF MAY, 2015.

PLANNING COMMISSION OF THE CITY OF MONTCLAIR, CALIFORNIA

By: _____
Tenice Johnson, Chair

ATTEST: _____
Steve Lustro, Secretary

I, Steve Lustro, Secretary of the Planning Commission of the City of Montclair, do hereby certify that the foregoing Resolution was duly and regularly introduced, passed, and adopted by the Planning Commission of the City of Montclair, at a regular meeting of the Planning Commission conducted on the 26th day of May, 2015, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

Z:\COMMDEV\SL\2008\2008-16 'A' RESO 15-1832