



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

REGULAR ADJOURNED MEETING
Monday, September 12, 2016
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. SPECIAL PRESENTATION

Montclair Chamber of Commerce to present a certificate.

4. ROLL CALL

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

5. APPROVAL OF MINUTES

The minutes of the August 8, 2016 Planning Commission meeting are presented for consideration.

6. 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.

7. AGENDA ITEMS

a. PUBLIC HEARING - CASE NUMBER 2016-10

(continued from the August 8, 2016 meeting)

Project Address: 5404 Moreno Street, Unit L

Project Applicant: JRMP II, LLC

Project Planner: Silvia Gutiérrez , Associate Planner

Request: Conditional Use Permit to allow the continued operation of an existing massage therapy business

CEQA Assessment: Categorically Exempt (Section 15301, Class 1)

8. 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.

9. PUBLIC INSPECTION OF MATERIALS

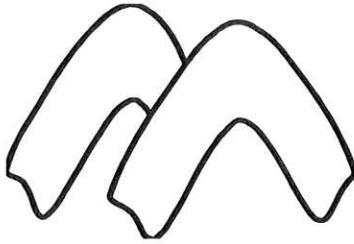
Materials related to an item on this agenda submitted to the Commission after distribution of the agenda packet are available for public inspection at the Planning Division counter during normal business hours.

10. ADJOURNMENT

The City of Montclair Planning Commission is hereby adjourned to the regularly scheduled meeting of September 26, 2016 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 and door and the bulletin board adjacent to the south door of Montclair City Hall on September 8, 2016.



CITY OF MONTCLAIR PLANNING COMMISSION

MEETING DATE: 09/12/16

AGENDA ITEM 6.a

Case No. 2016-10

Application: A Conditional Use Permit (CUP) application to allow the continued operation of an existing massage therapy business located within a 1,020 square foot lease space within an existing multiple tenant retail commercial center.

Project Address: 5404 Moreno Street, Unit L

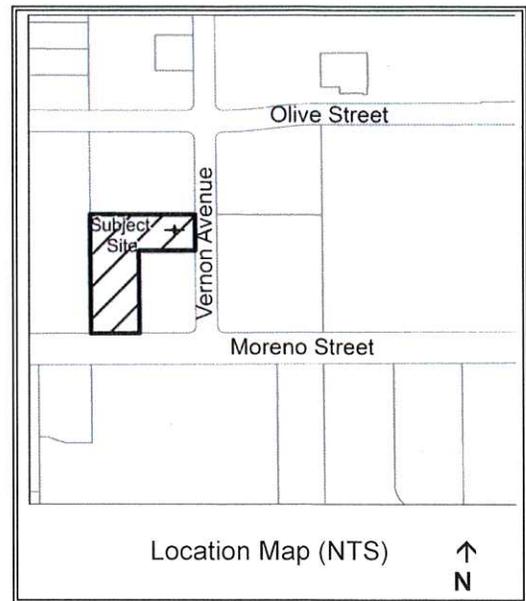
Assessor Parcel No: 1008-043-04

Property Owners: JR MP II LLC

General Plan: General Commercial

Zoning: "Commercial" per North Montclair Specific Plan (NMSP)

City/Public Utility Easements: None



Adjacent Land Use Designations and Existing Uses			
	<i>General Plan</i>	<i>Zoning</i>	<i>Existing Use of Property</i>
Site	Regional Commercial	"Commercial" NMSP North Montclair Specific Plan (NMSP)	Multi-tenant Commercial Center
North	Commercial	"Commercial" - NMSP	Self Storage Facility
East	Regional Commercial	"Commercial" - NMSP	Multi-tenant Commercial Center
South	Regional Commercial	"Commercial" - NMSP	Montclair Place Shopping Mall
West	Regional Commercial	"Commercial" - NMSP	Multi-tenant Commercial Center

Report on Item Number 6.a

PUBLIC HEARING – CASE NUMBER 2016-10

APPLICATION TYPE(S)	Conditional Use Permit
NAME OF APPLICANT	JR MP IT, LLC
LOCATION OF PROPERTY	5404 Moreno Street, Unit L
GENERAL PLAN DESIGNATION	Regional Commercial
ZONING DESIGNATION	C-3 (General Commercial) per North Montclair Specific Plan (NMSP)
EXISTING LAND USE	Existing Massage Establishment within Multiple Tenant Commercial Building
ENVIRONMENTAL DETERMINATION	Categorically Exempt (Section 15301)
PROJECT PLANNER	Silvia Gutiérrez

At staff's request, this item was continued from the August 8, 2016 Planning Commission meeting to September 12, 2016. The extra time afforded by the continuance allowed staff to further review the application in light of the last minute change in ownership of the business.

In 2015, the City Council approved Ordinance 15-951 (Massage Ordinance) that reestablished City control over the location and operation of massage establishments within City boundaries, including the requirement of a Conditional Use Permit (CUP) for all new and existing massage establishments. This CUP application is the first CUP application for a massage establishment since the adoption of the Massage Ordinance.

Project Description

The applicant is requesting approval of a Conditional Use Permit to allow the continued use of an existing massage establishment, known as Relax Spa operating within Unit L of the existing multi-tenant commercial shopping center. The subject lease space is approximately 1,020 square-feet in area and includes the following interior improvements:

- A 76-square foot front desk/reception area and waiting room.
- An open 396 square-foot massage room with two massage tables and two foot massage chairs.
- Two private massage rooms, measuring 88 square-feet each.
- A storage and laundry facility at the rear of the lease space behind a screen wall.
- A 56 square foot restroom.

The massage services provided by the business will be deep tissue massage, foot massage, hot oil massage, and Swedish massage. The business will be staffed with

two persons which include a massage technician (masseuse) and the business operator (manager) at all times during business hours. Business hours are proposed to be 10 am to 10 pm, seven (7) days a week.

A copy of the site plan and floor plan are included in the Commission packets.

Background

- In 2008, Governor Brown signed into law Senate Bill 731 (Oropeza), which also instituted relaxed requirements for the establishment and operation of massage establishments and removed what little land use authority local jurisdictions were previously able to exercise over the establishment of such businesses. The requirement for massage businesses to obtain approval of a Conditional Use Permit was eliminated. SB 731 required cities to treat massage establishments 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.
- In 2009, the current massage establishment at 5404 Moreno Street, Unit L was approved under the provisions of Senate Bill 731.
- In 2015, the City Council approved Ordinance 15-951 (Massage Ordinance) to reestablish the requirement for a Conditional Use Permit (CUP) for massage establishments within the City. The new ordinance set forth new locational zoning criteria and operational standards for massage establishments. As a result, all existing massage business in the City are required to comply with the new Massage Ordinance by no later than August 5, 2017.
- Montclair currently has sixteen (16) massage establishments operating with a City business license that were approved prior to the passage of the Massage Ordinance. Some massage establishments would no longer be able to remain at their respective locations (due to new zoning restrictions), while the other businesses would need to apply for and obtain approval of a CUP to remain at their current location.
- The multi-tenant commercial center was constructed in 1991 per Case No. 89-47 under Precise Plan of Design. The parcel on which the 5404 Moreno Street building is located contains fifty-six (56) parking spaces including five (5) handicap accessible spaces. The overall site contains one hundred and thirty six (136) parking spaces.
- All therapist employees (masseuses) are required to be certified by the California Massage Therapy Council (CAMTC). CAMTC certified massage therapists complete training and are required to meet the State's educational requirements and pass an extensive background check. These State certifications will be verified by the Montclair Police Department, Fire Department, and Community Development

Department (Planning, Building, and Code Enforcement) staff as part of the Massage Establishment Business License process.

Planning Division Comments

Staff is generally supportive of the proposed massage establishment application. The subject tenant space is located in the Montclair Towers Shopping Center and the Relax Spa establishment has operated in an appropriate manner since 2009. The existing lease space appears to be well maintained and does not have any reported negative impacts to the existing center or adjacent uses.

Although the business has been purchased by a new operator, the husband and wife applicants have passed required background checks and have the appropriate State and City certifications in place to operate. At this point, the business will be operated by these two individuals. If business picks up, additional masseuses might be added subject to City review requirements.

In late August 2016, a joint inspection of the Relax Spa establishment by the Code Enforcement Division and the Montclair Police Department was conducted. The result of the inspection indicated that the business was being generally operated in an appropriate manner with only minor issues being identified. The two main concerns identified by the inspection, were that the business was being operated by only one person and excessive window coverage. Pursuant to the Massage Ordinance (MMC 4.56) the massage facility must employ a massage manager that must work along with massage technician during businesses hours. Also, curtains and window tint that block visibility into the interior reception and waiting area must be removed to allow the interior of the business to be plainly visible from the exterior of the business by passing vehicles and pedestrians. Conditions of approval have been added to the proposed resolution to address the situation. Moreover, staff is supportive of this CUP application so long as the massage establishment is operated in a professional manner and in compliance with the provisions of the adopted Massage Ordinance.

Specific parking requirements for massage establishments have not been specified in the municipal code, but staff does not find any significant difference between this small massage use operation and general retail uses. Based on the submitted floor plan, staff has calculated that the massage use will require a minimum of six (6) (at 1:250 s.f.) of the one hundred and thirty six (136) available on-site parking spaces in the center. Staff's observation of the center indicates general availability of parking and does not expect this to change with this approval.

Conditional Use Permit Findings

Staff believes that the required findings for granting a Conditional Use Permit (CUP) to allow the continued operation of the existing massage establishment 5404 Moreno Street, Unit L (Relax Spa) can be made as follows:

- A. The massage establishment is essential or desirable to the public convenience and public welfare, in that the proposed request allows an existing massage establishment to continue to operate and provide desired professional massage services to members of the community.
- B. That granting the permit will not be materially detrimental to the public welfare and to other property in the vicinity, in that massage establishment has operated at this locations with no known problems or nuisances. Conditions of approval have been added to address identified concerns and ensure expected compliance with the requirements of the City's Massage Ordinance.
- C. That such use in such location conforms to good zoning practice, in that the C-3 General Commercial zoning district per the North Montclair Specific Plan allows the massage establishments subject to CUP approval. 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 that professional operated massage establishments provide benefits to its patrons in a therapeutic setting.
- D. The General Plan supports business development and variety to serve the needs of the city's residents. The General Plan also encourages the development of viable commercial properties to attract and retain business in the community.

Public Notice and Comments from the Public

This item was published as a public hearing in the Inland Valley Daily Bulletin newspaper on July 28, 2016, as prescribed by law for this discretionary land use entitlement. Public hearing notices were mailed to all property owners within 300 feet from the boundaries of the subject property and courtesy notices were distributed to tenants within the adjacent portion of the center in which the property is located. No public comments have been received regarding this application.

Environmental Assessment

The Planning Division has determined that the massage establishment use is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Class 1) in that the project involves the leasing of an existing tenant space and no expansion of the existing use.

Planning Division Recommendation

Staff recommends that the Planning Commission take the following action(s):

- A. Move that, based upon evidence submitted, the Planning Commission finds and recommends that the proposed CUP application for the continued use of the massage establishment at 5404 Moreno Street, Unit L is categorically exempt

from the requirements of the California Environmental Quality Act (CEQA), pursuant to Section 15301 (Class 1) of the State CEQA Guidelines.

- B. Approve a Conditional Use Permit request under Case No. 2016-10 to allow the continued use of the massage establishment at 5404 Moreno Street, Unit L, as described in the staff report and subject to the findings and conditions of approval in Planning Commission Resolution No. 16-1871.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Michael Diaz", written over a white background.

Michael Diaz
City Planner

Attachments: Exhibit A – Site Plan and Floor Plan

Z:\COMMDEV\SG\CASES\2016-10\5404 MORENO STREET, UNIT L\2016-10 PC RPT FINAL

C: Andy Marquez and Jieying Liu owners of Relax Spa, 241 San Marcos Street, Unit N San Gabriel, CA 91763
Joseph Ramani, JRMP II, LLC., c/o Pac West Management , 3415 South Sepulveda, Blvd., Suite 650, Los Angeles, CA 90034

RESOLUTION NO. 16-1871

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MONTCLAIR APPROVING A CONDITIONAL USE PERMIT NO. 2016-10, TO ALLOW A MASSAGE BUSINESS TO CONTINUE TO OPERATE IN THE C-3 GENERAL COMMERCIAL ZONING DISTRICT OF THE NORTH MONTCLAIR SPECIFIC PLAN WITHIN A LEASE SPACE OF A MULTIPLE TENANT COMMERCIAL CENTER LOCATED AT 5404 MORENO STREET, UNIT L (APN NO. 1008-043-04)

WHEREAS, June 22, 2016, JR MP II, LLC, property owner, filed an application for a Conditional Use Permit to allow the continued operation of an existing 1,020 square foot massage business (Relax Spa) at 5404 Moreno Street, Unit L; and

WHEREAS, the subject site is located within the C-3 General Commercial zoning district of the North Montclair Specific Plan where massage uses are conditional allowed subject to the approval of a Conditional Use Permit by the planning Commission; and

WHEREAS, the Montclair Police Department, Building, Code Enforcement Divisions conducted an inspection of the premises at Relax Spa as part of this review and no code violations were observed with respect to Chapters 4.56 of the Montclair Municipal Code pertaining to massage establishments, massage owners, and massage technicians.

WHEREAS, based upon the facts and information contained in the application, together with all written and oral reports included for the environmental assessment for the application, the Planning Commission finds that no subsequent or supplemental environmental document is required pursuant to the California Environmental Quality Act (CEQA) in connection with the review and approval of this application based upon the following findings and determinations; and

WHEREAS, this item was advertised as a public hearing in the Inland Valley Daily Bulletin newspaper on July 28, 2016. Public hearing notices were also 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; and

WHEREAS, a notice of public hearing was duly given and posted in the manner and for the time frame prescribed by law; and

WHEREAS, on August 8, 2016 at the request of the staff, the Planning Commission continued the public hearing of the item to September 12, 2016; and

WHEREAS, on September 12, 2016 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 CUP were heard, and said CUP was fully studied.

SECTION 1. RECITALS. The Planning Commission hereby finds that that the foregoing recitals are true and correct and incorporated herein as substantive findings of this Resolution.

SECTION 2. FINDINGS FOR CONDITION USE PERMIT.

Conditional Use Permit Findings

Staff believes that the required findings for granting a Conditional Use Permit to allow the the continued operation of the massage use in the C-3 General Commercial zoning district of the North Montclair Specific Plan can be made as follows:

- A. The massage establishment is essential or desirable to the public convenience and public welfare, in that the proposed request allows for massage establishments to continue with operational requirements to ensure that they are continually operation in a professional manner.
- B. That granting the permit will not be materially detrimental to the public welfare and to other property in the vicinity, in that massage establishment has operated at this locations with no known nuisances. Conditions of approval have been added to benefit the public health. Additional, if the business operation were to begin to create adverse impacts, enforcement powers under MMC 4.56, and or the potential for renovation of the conditional use permit through a public hearing before the Planning can be used to achieve compliance.
- C. That such use in such location conforms to good zoning practice, in that the C-3 General Commercial zoning district per the North Montclair Specific Plan allows the continuation of massage uses subject to CUP approval. 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.
- D. The General Plan encourages private investment for the development of commercial properties to attract and retain business in the community.

SECTION 3. APPROVAL OF AND CONDITIONAL USE PERMIT. Based upon the substantial evidence presented to the Planning Commission during the above-referenced hearing on August 12, 2016, including written and oral staff reports together

with public testimony, the Planning Commission hereby finds the proposal to be consistent with the overall objectives of the City of Montclair General Plan, the Nortyh Montclair Specific Plan, the Montclair Municipal Code, and good planning principles, and approves the proposed CUP application subject to each and every condition set forth below.

Planning

1. This approval shall be for the following:
 - a. To operate a massage establishment specializing in body and foot massage within an existing 1,020 square foot lease space located at 5404 Moreno Street, Unit L.
2. Any substantial changes to the operation, increase in the existing 1,020 square feet of floor area of the demised space, or physical location shall require prior City approval. Any discontinuation or substantial changes to the full service restaurant without City approval shall be a violation of this CUP and may be cause for revocation. Upon transfer, sale or re-assignment of the restaurant to another individual or entity, the applicant shall make full disclosure of the CUP requirements and restrictions to future buyers, transferees or assignees.
3. CUP approval shall be valid for a period of six months (180 calendar days) from the date of Planning Commission approval and shall automatically expire on the six-month anniversary date of Planning Commission action, unless the applicant is diligently pursuing implementation of all conditions of approval as required for the lawful operation of the massage establishment. The applicant and/or property owner shall be responsible to apply for a time extension at least 30 days prior to the approval's expiration date. No further notice from the City will be given regarding the project's CUP expiration date.
4. No changes to the approved set of plans, including the exterior design and materials/finishes, shall be permitted without prior City review and approval. Any modification, intensification, or expansion of the use and design plan beyond that which is specifically approved with this approval shall require further review and approval by the Planning Commission.
5. Within five (5) days of approval by the Planning Commission, the applicant shall submit the following payments to the Planning Division:
 - a. A check in the amount of **\$50.00**, payable to "Clerk of the Board of Supervisors," to cover the fee for filing a Notice of Exemption for the project as required by the California Environmental Quality Act (CEQA).

- b. A check in the amount of **\$454.68** made payable to the "City of Montclair," to cover the actual cost of publishing a Notice of Public Hearing in a newspaper of general circulation (Inland Valley Daily Bulletin) as required by state law.
6. The applicant and property owner shall sign an Affidavit of Acceptance form and submit the document to the Planning Division within 30 days of receipt of the Planning Commission Resolution.
7. This decision or any aspect of this decision may be appealed to the City Council within 15 days from the date of Planning Commission action, subject to filing the appropriate forms and related fees.
8. The applicant and/or property owner shall ensure that a copy of the Planning Commission Resolution, including all conditions of approval, be reproduced on the first page of the construction drawings and shall be distributed to all design professionals, contractors, and subcontractors participating in the construction phase of the project.
9. Prior to the commencement of business activities, the business owner shall apply for and obtain a City of Montclair Business License, and shall maintain a valid City business license at all times. Should such licensing be denied, expire or lapse at any time in the future, this permit shall become considered a violation of this condition and the use shall be subject to revocation proceedings.
10. Massage establishment hours of operation shall be limited to 10:00 AM to 10:00 PM. daily; however, the business operator may open the business later and/or close the business earlier within the stated range of operating hours.
11. 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.
12. 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 of the Montclair Municipal Code.
13. 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.
14. No person shall own or manage any massage establishment in any location within the City without first having obtained an operator permit.

15. 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.
16. 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.
17. 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.
18. 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.
 - c. Minors will be allowed to receive massage services only when accompanied by a legal guardian.
19. The massage establishment shall be supervised during all hours of operation by a manager (in addition to a licensed massage technician) 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.
20. 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.
21. A recognizable and legible sign shall be posted at the main entrance identifying the establishment as a massage establishment.

22. 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.
23. Any posted signs that are in a language other than English shall also be posted in English.
24. 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.
25. 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.
26. 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.
27. 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.
28. 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.
29. 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.

30. 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.
31. 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.
32. All massage tables shall be at least two feet away from all walls at all times.
33. Within seven 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.
34. 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 calendar days of such change.
35. 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 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.
36. 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.
37. 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.
38. No storage or sale of condoms or spermicides shall be permitted within the massage establishment.
39. 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.
40. 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.
41. 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.

42. 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 Chapter 4.56 of the Montclair Municipal Code
43. The building, or unit within the building where the massage establishment is located, shall comply with all applicable building code requirements.
44. 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.
45. 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.
46. 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.
47. The walls in all rooms where water or steam baths are given shall have a washable, mold-resistant surface.
48. 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.

49. 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.
50. 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.
51. There shall be no buzzer, alarm, or intercom system to be used on premises.
52. 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 percent of any window pane. The interior of the business shall be plainly visible from the exterior of the business by passing vehicles and pedestrians.
53. 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.
54. The massage establishment 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 MASSAGE ESTABLISHMENT AND THE MASSAGE ROOMS DO NOT PROVIDE COMPLETE PRIVACY AND ARE SUBJECT TO

INSPECTION BY CITY AND HEALTH OFFICIALS WITHOUT PRIOR NOTICE.

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

55. 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 Condition No. 51 at any time.
56. 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 Chapter 4.56 of the Montclair Municipal Code.
57. Any violation of Chapter 4.56 of the Montclair Municipal Code 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.
58. In addition to the above, any massage establishment operated, conducted or maintained contrary to the provisions of Chapter 4.56 of the Montclair Municipal Code 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 Chapter 4.56 of the Montclair Municipal Code. 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.
59. Any violation of the provisions of Chapter 4.56 of the Montclair Municipal Code shall constitute a separate offense for each and every day during which such violation is committed or continued.
59. 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 within 30 days of the granting of the CUP.

60. 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.

Building

62. Submit four complete sets of plans including the following:
- a. Site/Plot Plan;
 - b. Floor Plan;
 - c. Reflected Ceiling Plan;

Engineering

63. Discharge of wastewater into the sewer collection system shall conform to all requirements of the Montclair Municipal Code.

Environmental

64. All new business occupant(s) of the building shall complete a Wastewater Discharge survey prior to plan review. Contact Nicole deMoet, Environmental Manager, at (909) 625-9446 for more information.
65. All wastewater discharged to the City of Montclair Sanitary Sewer System from the subject facility shall be in compliance with Montclair Municipal Code Section 9.20.610 – Local Concentration Limitations. For more information contact Nicole deMoet, Environmental Manager, at (909) 625-9446.

Fire

66. Maintain the fire alarm in good working order.
67. Provide fire extinguishers per Fire Inspector requirements.
68. In those structures covered by CAC Title 19, all drapes, hangings, curtains, drops, and all other decorative material shall be made from non-flammable material, or shall be treated and maintained in a flame-retardant condition, by means of a flame retardant solution or process approved by the State Fire Marshal.

Police

69. Within 30 days of the issuance of this Conditional Use Permit the applicant shall install and maintain a closed circuit video surveillance (CCVS) system. The applicant shall setup an appointment with the Planning Division and designated Police Department representative to inspect said system. The system shall, at minimum, be capable of monitoring all entrances/exits to the premises and be positioned so as to allow for identification of patron facial features and physical characteristics. A minimum of one camera shall be placed in a position to monitor the parking lot of the premises, positioned in a manner which allows for the widest view from the entrance, without significant lens distortion. Typical acceptable camera angles range from 50-130 degrees. Cameras shall be capable of no less a resolution than 1920x1080 pixels, otherwise known as 1080p. IR (night vision) is preferred, however cameras shall at minimum be capable of low-light operation.

Audio recording is desirable, but not a requirement. Camera footage shall be retained for a period no less than 90 days. To conserve storage space, cameras may be motion activated. When active, cameras shall record no less than 30 frames per second. Motion sensors shall be configured to activate properly in all areas covered including the parking area. Motion sensors may be configured to prevent incidental activation from hanging

or moving displays. Depending on the nature of the premises, additional cameras may be required, but not limited to areas such as cash registers, or access to restroom areas.

70. Alarm systems are encouraged to compliment the CCVS system. Current responsible party information shall be on file with the Police Department for appropriate response and notifications.

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

APPROVED AND ADOPTED THIS 12TH DAY OF SEPTEMBER, 2016.

PLANNING COMMISSION OF THE CITY OF MONTCLAIR, CALIFORNIA

By: _____
Tenice Johnson, Chair

ATTEST: _____
Michael Diaz, Secretary

I, Michael Diaz, 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 12th day of September 2016, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

Z:\COMMDEV\SGUTIERREZ\CASES\2016\CASES\2016-10 PC RESOLUTION