

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: Joseph Fiss, Economic Development and Planning Manager 

DATE: November 9, 2016 (CC Meeting of 11/16/2016)

SUBJECT: Consider a Resolution Directing the Planning Commission to Study, Hold a Public Hearing, and Provide a Recommendation to the City Council on an Amendment to Chapter 17.20 (Uses by Zone) of Title 17 (Zoning) of the Moorpark Municipal Code to Address Massage Establishments, Electronic Cigarette (Vaping) Establishments, Hookah Lounges, Retail Tobacco and Electronic Cigarette (Vaping) Supply Sales from Stores Other than Tobacco Stores or Electronic Cigarette (Vaping) Establishments, Marijuana Cultivation, Check Cashing and Payday Loan Establishments, and Retail Establishments, Financial Institutions, and Restaurants with Drive-Through Facilities; and a Determination This Action Is Not a Project Approval Subject to the California Environmental Quality Act

BACKGROUND/DISCUSSION

Due to changes in State law and land use development patterns, staff is recommending several changes to the use matrix in the Zoning Ordinance to keep the review process relevant to local needs as follows:

Massage Establishments

On February 16, 2011, in response to Senate Bill (SB) 731, the City Council adopted Ordinance No. 398, replacing Chapter 5.48 Massage Establishments and Therapists, of Title 5 Business Taxes, Licenses and Regulations; and amending Section 17.08.010 Application of Definitions of Chapter 17.08 (Definitions), and Section 17.20.060 (Permitted Uses in Commercial and Industrial Zones) of Chapter 17.20 (Uses by Zone), of Title 17 Zoning, of the Moorpark Municipal Code.

SB 731, enacted by the state on September 27, 2008, provided for voluntary statewide certification of massage therapists and restricted local regulation of massage establishments and massage therapists or practitioners certified by the California

Massage Therapy Council (CAMTC). Local jurisdictions were still allowed to regulate uncertified massage establishments and massage therapists or practitioners. Prior to this, there was no statewide regulation of the massage industry. SB 731 was modified several times, but subsequently expired on January 1, 2015. For instance, in 2011, AB 619 provided that the only manner in which local government could exercise traditional land use restrictions on an individual certified by CAMTC or an establishment certifying CAMTC certified practitioners was if those same regulations were placed upon all other individuals and businesses providing “professional services”.

Due to the reduction of barriers to entry, this legislation created a substantial increase in the number of massage establishments within local jurisdictions, while at the same time law enforcement agencies throughout the State reported increased complaints concerning prostitution and human trafficking.

Prior to the sunset of SB 731, Governor Brown signed Assembly Bill (AB) 1147, expanding local agencies’ ability to regulate massage therapists and establishments within their jurisdictions, allowing them to impose reasonable zoning, business licensing and health and safety requirements for massage businesses, as well as requiring conditional use permits, and regulating hours of operation. This law divided responsibility for massage regulation between the State (regulating the certification of massage professionals through the CAMTC) and local governments (regulating massage businesses through their regulatory and land-use authority).

In anticipation of AB 1147 sunset on January 1, 2017, Governor Brown signed AB 2194 into law on September 22, 2016, providing some clean-up and extending its provisions to January 1, 2021. AB 2194 states that local governments shall impose and enforce only reasonable and necessary fees and regulations on massage businesses and massage establishments, in keeping with the requirements of existing law and being mindful of the need to protect legitimate business owners and massage professionals, particularly sole providers, and that local governments should give strong consideration to establishing a registration program that grants local governments the ability to either suspend or revoke a registration of massage business for specific violations.

Staff recommends an amendment to the list of permitted uses in Table 17.20.060 to require a Conditional Use Permit for new massage establishments, along with appropriate development standards in Chapter 5.48, Massage Establishments and Therapists, to ensure consistency with current State law.

Electronic Cigarette (Vaping) Establishments, Hookah Lounges, and Retail Tobacco and Electronic Cigarette (Vaping) Supply Sales from Stores Other than Tobacco Stores or Electronic Cigarette (Vaping) Establishments

With recent changes in State and Federal law that now regulate electronic cigarettes in a similar manner as other tobacco products, staff recommends that the Zoning

Ordinance treat land uses involving these products in a similar manner. Conditional Use Permits are required for tobacco stores; the same should be required for new electronic cigarette (vaping) establishments. Hookah lounges are presently not listed as a permitted use in any zone. A hookah lounge could not be permitted in a manner that would comply with the City's smoking regulations. Because staff does get questioned about permits for a hookah lounge from time to time, it is recommended that they be listed in the use matrix as a non-permitted use. Finally, the American Lung Association has recommended that Moorpark establish a discretionary review process for stores that sell tobacco products. At the present time, sales of tobacco products from general retail, convenience, or grocery stores do not require any special permits. Staff recommends that Administrative Permits be required for new stores other than tobacco stores or electronic cigarette (vaping) establishments that wish to sell tobacco or electronic cigarette (vaping) supplies.

Marijuana cultivation

In the event Proposition 64 passes, the City may no longer prohibit the indoor cultivation at each home of up to six marijuana plants for personal recreational use. The current Zoning Ordinance only allows cultivation of medical marijuana for personal use by a qualified patient that resides on the property. Staff would recommend adding language to permit recreational marijuana at the minimum level under Proposition 64, and that all cultivation of both recreational and medical marijuana may only take place indoors.

Check Cashing and Payday Loan Establishments

Currently grouped with banks and other financial institutions, check cashing and payday loan establishments are allowed by right in all commercial zones and with Administrative Permits in all industrial zones. Staff recommends limiting new check cashing and payday loan establishments to only the Commercial Planned Development (CPD) zone with Administrative Permits required. This would further economic development goals in the Old Town Commercial, Commercial Office, Neighborhood Commercial, and Industrial Zones by supporting the higher quality uses that already exist in these zones.

Retail Establishments, Financial Institutions, and Restaurants with Drive-Through Facilities

Restaurants with drive-through facilities are currently allowed with Conditional Use Permits in all commercial and industrial zones except for the Commercial Office (CO) Zone. Drive-through facilities for retail establishments and financial institutions would be reviewed as part of a Planned Development Permit for a project. Staff is recommending limiting all new drive-through facilities for any uses to the Commercial Planned Development (CPD) Zone, where sufficient land for queueing is generally more available than other zones and to further economic development goals in all commercial zones.

It should be noted that California Government Code 65090(d) states: "Whenever a local agency considers the adoption or amendment of policies or ordinances affecting drive-through facilities, the local agency shall incorporate, where necessary, notice procedures to the blind, aged, and disabled communities in order to facilitate their participation." Such notice procedures will be incorporated at such time public hearings are held for the applicable code amendments.

The Municipal Code calls for a resolution of the City Council to initiate an amendment to the Zoning Ordinance. The attached draft resolution, if adopted by City Council, would direct staff and the Planning Commission to study and provide a recommendation to the City Council on the attached draft amendment to Chapter 17.20. If the City Council adopts the attached resolution, staff intends to bring a proposed ordinance on this matter to the Planning Commission and City Council in the next couple months.

ENVIRONMENTAL DETERMINATION

The action of the City Council at this time is not a "project approval" subject to the California Environmental Quality Act as it is only seeking the recommendation of the Planning Commission. The level of environmental review on such an ordinance will be determined prior to Planning Commission recommendation.

FISCAL IMPACT

None.

STAFF RECOMMENDATION

Adopt Resolution No. 2016-_____.

Attachment:
Resolution No. 2016-_____

RESOLUTION NO. 2016-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, DIRECTING THE PLANNING COMMISSION TO STUDY, HOLD A PUBLIC HEARING, AND PROVIDE A RECOMMENDATION TO THE CITY COUNCIL ON AN AMENDMENT TO CHAPTER 17.20 (USES BY ZONE) OF TITLE 17 (ZONING) OF THE MOORPARK MUNICIPAL CODE TO ADDRESS MESSAGE ESTABLISHMENTS, ELECTRONIC CIGARETTE (VAPING) ESTABLISHMENTS, HOOKAH LOUNGES, RETAIL TOBACCO AND ELECTRONIC CIGARETTE (VAPING) SUPPLY SALES FROM STORES OTHER THAN TOBACCO STORES OR ELECTRONIC CIGARETTE (VAPING) ESTABLISHMENTS, MARIJUANA CULTIVATION, CHECK CASHING AND PAYDAY LOAN ESTABLISHMENTS, AND RETAIL ESTABLISHMENTS, FINANCIAL INSTITUTIONS, AND RESTAURANTS WITH DRIVE-THROUGH FACILITIES AND DETERMINATION THAT THIS ACTION IS NOT A PROJECT APPROVAL SUBJECT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, Section 17.44.050 of the Municipal Code provides that the City Council may initiate proceedings to consider amendments to the Zoning Ordinance by the adoption of a resolution of intent; and

WHEREAS, the City Council wishes to initiate proceedings to consider a Zoning Ordinance Amendment that would amend Chapter 17.20 (Uses by Zone) of Title 17 (Zoning) of the Moorpark Municipal Code to Address Massage Establishments, Electronic Cigarette (Vaping) Establishments, Hookah Lounges, Retail Tobacco and Electronic Cigarette (Vaping) Supply Sales from Stores Other than Tobacco Stores or Electronic Cigarette (Vaping) Establishments, Marijuana Cultivation, Check Cashing and Payday Loan Establishments, and Retail Establishments, Financial Institutions, and Restaurants with Drive-Through Facilities; and

WHEREAS, the Community Development Director has determined that the initiation of proceedings for a Zoning Ordinance Amendment is not a project approval subject to the California Environmental Quality Act.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. ENVIRONMENTAL DETERMINATION: The City Council concurs with the determination of the Community Development Director that the initiation of proceedings for a Zoning Ordinance Amendment is not a project approval subject to the California Environmental Quality Act.

SECTION 2. INITIATION OF PROCEEDINGS: The City Council hereby authorizes the initiation of proceedings to consider a Zoning Ordinance Amendment that would amend Chapter 17.20 (Uses by Zone) of Title 17 (Zoning) of the Moorpark

Municipal Code to Address Massage Establishments, Electronic Cigarette (Vaping) Establishments, Hookah Lounges, Retail Tobacco and Electronic Cigarette (Vaping) Supply Sales from Stores Other than Tobacco Stores or Electronic Cigarette (Vaping) Establishments, Marijuana Cultivation, Check Cashing and Payday Loan Establishments, and Retail Establishments, Financial Institutions, and Restaurants with Drive-Through Facilities.

SECTION 3. DIRECTION TO PLANNING COMMISSION: The Planning Commission is hereby directed to study, hold a public hearing, and provide a recommendation to the City Council on this matter.

SECTION 4. CITY CLERK CERTIFICATION AND FILING: The City Clerk shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the book of original resolutions.

PASSED AND ADOPTED this 16th day of November, 2016.

Janice S. Parvin, Mayor

ATTEST:

Maureen Benson, City Clerk