

Planning Commission Regular Meeting Agenda Packet

VIRTUAL MEETING

April 26, 2021

5:30 P.M.

In light of COVID-19, this meeting will be conducted in a virtual environment. There will be no in-person meeting location for the community to attend public meetings.

Meetings will be held in virtual setting via Zoom.

Join from your computer: <https://zoom.us/j/95849584523>

Join from your mobile phone via Zoom App. **Meeting ID:** [95849584523](https://zoom.us/j/95849584523)

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For viewing only: www.youtube.com/cityofsantaanavideos/live

For detailed participation and commenting options, please review the instructions provided at the end of this agenda.

To download or view each item, select either Download PDF or View Item Details to the right of the agenda title.



MARK McLOUGHLIN
Ward 4 Representative

ERIC M. ALDERETE
Citywide Representative

BAO PHAM
Ward 1 Representative

MIGUEL CALDERON
Ward 2 Representative

ISURI S. RAMOS
Ward 3 Representative

ALAN WOO
Ward 5 Representative

THOMAS MORRISSEY
Ward 6 Representative

MinhThai
Executive Director

John Funk
Legal Counsel

Ali Pezeshkpour, AICP
Principal Planner

Sarah Bernal
Recording Secretary



In compliance with the Americans with Disabilities Act (ADA), if you need special assistance to participate in this Meeting, contact Michael Ortiz, City ADA Program Coordinator, at (714) 647-5624. Notification 48 hours prior to the Meeting will enable the City to make reasonable arrangements to assure accessibility to this meeting. The City Council agenda and supporting documentation can be found on the City's website – www.santaana.org/citymeetings.

CALL TO ORDER

Commissioners:

**Mark McLoughlin, Chair
Thomas Morrissey, Vice Chair
Eric M. Alderete
Miguel Calderon
Bao Pham
Isuri S. Ramos
Alan Woo**

**Executive Director
Senior Asst. City Attorney
Principal Planner
Recording Secretary**

**Minh Thai
John Funk
Ali Pezeshkpour
Sarah Bernal**

ROLL CALL

PLEDGE OF ALLEGIANCE

PUBLIC COMMENTS (non agenda items)

CONSENT CALENDAR ITEMS

1. Minutes

Recommended Action: Approve Minutes from the April 12 meeting.

2. Excused Absences

Recommended Action: Excuse absent commissioners.

PUBLIC HEARING

The Planning Commission decision on Conditional Use Permits, Variances, Tentative Tract and Parcel Maps, Minor Exceptions, Site Plan Review, and Public Convenience or Necessity Determinations are final unless appealed within 10 days of the decision by any interested party or group (refer to the Basic Meeting Information page for more information). The Planning Commission recommendation on Zoning and General Plan amendments, Development Agreements, Specific Developments, and Specific Plans will be forwarded to the City Council for final determination. For item no. 1, legal notice was

published in the OC Reporter on March 31 and notices were mailed on said date. For item no. 2, legal notice was published in the OC Reporter on April 14 and notices were mailed on said date. For item no. 3, legal notice was published in the OC Register on April 14.

3. Conditional Use Permit No. 2021-06 – Jerry Guevara, Case Planner.

This matter was continued from the April 12, 2021 meeting. The Applicant has requested the matter be continued to the next regular meeting.

Location: 2106 North Tustin Avenue located in the Arterial Commercial (C5) zoning district.

Proposed Project: The applicant is requesting approval of a conditional use permit to allow after-hours operations until 2:00 a.m., daily, at an existing restaurant.

Environmental Impact: The Planning Commission will consider a determination that the project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 of the CEQA Guidelines – Class 1/Existing Facilities. Notice of Exemption, Environmental Review No. 2021-24 will be filed for this project.

Recommended Action: Continue the matter until May 10, 2021.

4. Conditional Use Permit No. 2021-05 – Gissel Enriquez, Case Planner

Location: 400 E. 17th Street located in the Community Commercial (C-1) zoning district.

Proposed Project: The applicant is requesting approval of Conditional Use Permit No. 2021-05 to allow an existing retail market (Chevron Extra Mile) to operate 24 hours per day, seven days per week.

Environmental Impact: The Planning Commission will consider a determination that the project is categorically exempt from California Environmental Quality Act CEQA Guidelines pursuant to 15301 of the CEQA Guidelines - Class 1/Existing Facilities. Notice of Exemption, Environmental Review No. 2021-23 will be filed for this project.

Recommended Action: Adopt a resolution approving Conditional Use Permit No. 2021-05 as conditioned.

5. Zoning Ordinance Amendment No. 2021-02 – Ali Pezeshkpour, Case Planner.

Location: Citywide

Proposed Project: The City is requesting adoption of Zoning Ordinance Amendment No. 2021-02 -to amend various sections of Chapter 41 (Zoning) of the Santa Ana Municipal Code (SAMC) relating to lodging-related land use definitions and reasonable accommodations.

Environmental Impact: The Planning Commission will consider a determination that the project is exempt from CEQA review pursuant to Sections 15060(c)(2) and 15060(c)(3) of the State CEQA Guidelines – General Rule. Notice of Exemption/Environmental Review No. 2021-40 will be filed for this project.

Recommended Action: Recommend that the City Council approve ZOA No. 2021-02 to amend various sections of Chapter 41 (Zoning) of the Santa Ana Municipal Code relating to lodging-related land use definitions and reasonable accommodations.

BUSINESS CALENDAR

6. Commission discussion regarding Call for Election of the Office of Chairperson

Recommended Action: Discuss the request. If the Planning Commission desires, it can exercise the process authorized under Section 12(b) of the Bylaws to conduct a Preliminary Review and to conduct the election for the office of Chairperson at the next regular meeting. The initial step of calling for the Preliminary Review of a matter not otherwise before the Commission requires three (3) affirmative votes by the members of the Planning Commission. In the event of three votes, the matter will be scheduled for the next regularly scheduled meeting, in accordance with Section 12(b) of the Bylaws.

STAFF COMMENTS

COMMISSIONER COMMENTS

ADJOURNMENT

The next virtual meeting of the Planning Commission will be on May 10, 2021 at 5:30 PM.

FUTURE AGENDA ITEMS

- Conditional Use Permit No. 20313-15 to modify an existing CUP to upgrade license from Type 41 to Type 47 for the property located at 305 E. 4th Street #200
- Variance No. 2021-01 to exceed sign code standards for the property located at 3630 Westminster Avenue
- Conditional Use Permit No. 2021-04 to allow the sale of beer and wine for on-premises consumption at an existing restaurant for the property located at 3950 S. Bristol Street

MEETING INFORMATION

If you would like to learn how to use Zoom before the meeting, visit [Zoom Video Tutorials](#).

1. Connecting directly from your computer:

- Click on the link on top of this agenda OR
- Go to [Zoom.us](#) and click "Join a Meeting" at the top. Enter the Meeting ID. The Meeting ID is listed at the top of this agenda.

To speak during the meeting: When you wish to comment on an item that is being is

discussed, click on the button next to your name to virtually raise your hand and let us know you wish to speak. You will have 3 minutes.

2. Connecting via the Zoom App:

- Download the free Zoom Cloud Meetings app from your favorite app store.
- Launch the app and click on the blue Join a Meeting button. Enter the Meeting ID, your name, and the blue Join button. The Meeting ID is listed at the top of this agenda.

To speak during the meeting: When you wish to comment on an item that is being discussed, click on the button next to your name to virtually raise your hand and let us know you wish to speak. You will have 3 minutes.

3. Dialing in from a mobile phone or landline:

- Dial (669) 900-9128. When prompted, enter the meeting ID. The Meeting ID is listed at the top of this agenda.

To speak during the meeting: When you wish to comment on an item that is being discussed, press *9 on your phone to virtually raise your hand. You will have 3 minutes.

Submit a written comment

You are invited to submit a written comment in one of the following ways:

Visit the City's [Public Portal](#)

- Scroll down to the list of meetings and locate the meeting you are interested in.
- Select the COMMENT icon to the right of "Meeting Title" (under the Options tab) and follow the prompt

E-mail PBAComments@santa-ana.org and reference the topic in the subject line.

Mail to Sarah Bernal, Recording Secretary, City of Santa Ana, 20 Civic Center Plaza – M20, Santa Ana, CA 92701.

Deadline to submit written comments is 5:00 p.m. on the day of the meeting. Comments received after the deadline may not be distributed to the Commission but will be made part of the record.

APPEAL INFORMATION

The formal action by the Planning Commission shall become effective after the ten-day appeal period, unless the City Council in compliance with section 41-643, 41-644 or 41-645 holds a public hearing on the matter, then the formal action will become effective on the day following the hearing and decision by the City Council. An appeal from the decision or requirement of the Planning Commission may be made by any interested party, individual, or group. The appeal must be filed with the Clerk of the Council, accompanied by the required filing fee, and a copy sent to the Planning Department, within ten days of the date of the

Commission's action, by 5:00 p.m. If the final day to appeal falls on a City Hall observed holiday or a day when City hall is closed, the final day to appeal shall be extended to the next day City Hall is open for public business. Please note: Under California Government Code Sec. 65009, if you challenge in court any of the matters on this agenda for which a public hearing is to be conducted, you may be limited to raising only those issues which you (or someone else) raised orally at the public hearing or in written correspondence received by the Planning Commission or City Council at or before the hearing.

Planning Commission Regular Meeting Agenda Minutes

April 12, 2021

VIRTUAL MEETING
5:30 P.M.



MARK McLOUGHLIN
Chair, Ward 4 Representative

ERIC ALDERETE
Citywide Representative

MIGUEL CALDERON
Ward 2 Representative

ALAN WOO
Ward 5 Representative

BOA PHAM
Ward 1 Representative

ISURI S. RAMOS
Ward 3 Representative

THOMAS MORRISSEY
Vice Chair,
Ward 6 Representative

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CALL TO ORDER
ATTENDANCE

Commissioners: Eric M. Alderete
Miguel Calderon
Mark McLoughlin, Chair
Thomas Morrissey, Vice Chair
Bao Pham
Isuri S. Ramos
Alan Woo

Executive Director Minh Thai
Senior Asst. City Attorney John Funk
Principal Planner Ali Pezeshkpour
Recording Secretary Sarah Bernal

ROLL CALL

PLEDGE OF ALLEGIANCE

PUBLIC COMMENTS (non agenda items)

CONSENT CALENDAR ITEMS

a. Minutes

Recommended Action: Approve Minutes from the March 22, 2021 meeting.

Moved by Commissioner Morrissey, seconded by Commissioner Woo to Approve.

YES: 7 – Tom Morrissey, Mark McLoughlin, Bao Pham, Isuri Ramos, Miguel Calderon, Alan Woo, Eric Alderete

NO: 0 – **ABSTAIN:** 0 – **ABSENT:** 0 – **Status:** 7 – 0 – 0 – 0 – **Pass**

PUBLIC HEARING

The Planning Commission decision on Conditional Use Permits, Variances, Tentative Tract and Parcel Maps, Minor Exceptions, Site Plan Review, and Public Convenience or

Necessity Determinations are final unless appealed within 10 days of the decision by any interested party or group (refer to the Basic Meeting Information page for more information). The Planning Commission recommendation on Zoning and General Plan amendments, Development Agreements, Specific Developments, and Specific Plans will be forwarded to the City Council for final determination. Legal notice was published in the OC Reporter on March 31, 2021 and notices were mailed on said date.

1. Conditional Use Permit No. 2021-01 – Jerry Guevara, Case Planner

Location: 1209 East Wakeham Avenue located in the Light Industrial (M1) zoning district.

Proposed Project: The applicant is requesting approval of Conditional Use Permit No. 2021-01 to renew the entitlements of an existing 60-foot high major wireless communications facility disguised as a mono-pine.

Environmental Impact: The Planning Commission will consider a determination that the project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 of the CEQA Guidelines – Class 1/Existing Facilities. Notice of Exemption, Environmental Review No. 2021-18 will be filed for this project.

Recommended Action: Adopt a resolution approving Conditional Use Permit No. 2021-01 as conditioned.

Minutes: *The Chair opened the Public Hearing. The applicant spoke in support in the matter. There were no other speakers and the Public Hearing was closed.*

Moved by Commissioner Calderon, seconded by Commissioner Woo to Approve with the condition that the surrounding landscape and parking lot be improved as determined feasible by staff. Commissioner Pham introduced a friendly amendment requesting the Building Official review the plans for seismic safety. The friendly amendment was accepted.

YES: 7 – Tom Morrissey, Mark McLoughlin, Bao Pham, Isuri Ramos, Miguel Calderon, Alan Woo, Eric Alderete

NO: 0 – **ABSTAIN:** 0 – **ABSENT:** 0 – **Status:** 7 – 0 – 0 – 0 – **Pass**

2. Conditional Use Permit No. 2021-06 – Jerry Guevara, Case Planner.

The Applicant has requested this item be continued.

Location: 2106 North Tustin Avenue located in the Arterial Commercial (C5) zoning district.

Proposed Project: The applicant is requesting approval of Conditional Use Permit No. 2021-06 to allow after-hours operations until 2:00 a.m., daily, at an existing restaurant (Chiles and Beer Restaurant).

Environmental Impact: The Planning Commission will consider a determination that the project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 of the CEQA Guidelines – Class 1/Existing Facilities. Notice of Exemption, Environmental Review No. 2021-24 will be filed for this project.

Recommended Action: Continue the matter to the April 26, 2021 meeting.

Moved by Commissioner Alderete, seconded by Commissioner Woo to Continue the item to April 26, 2021.

YES: 6 – Tom Morrissey, Mark McLoughlin, Bao Pham, Miguel Calderon, Alan Woo, Eric Alderete

NO: 0 – **ABSTAIN:** 1 – Isuri Ramos

ABSENT: 0 – **Status:** 6 – 0 – 1 – 0 – **Pass**

Minutes: *Commissioner Ramos abstained due to the project's proximity to her residence.*

3. Conditional Use Permit No. 2021-04 – Ivan Orozco, Case Planner.

Staff has requested this item be continued to a future date.

Location: 3950 South Bristol Street located in the Commercial Residential (CR) zoning district.

Proposed Project: The applicant is requesting approval of Conditional Use Permit No. 2021-04 to allow a Type 41 Alcoholic Beverage Control (ABC) license for the sale of beer and wine for on-premises consumption at an existing restaurant (Euro Caffe).

Environmental Impact: The Planning Commission will consider a determination that the project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 of the CEQA Guidelines – Class 1/Existing Facilities. Notice of Exemption, Environmental Review No. 2021-15 will be filed for this project.

Recommended Action: Continue the matter to a date uncertain.

Moved by Commissioner Ramos, seconded by Commissioner Woo to Continue the item to a future date.

YES: 7 – Tom Morrissey, Mark McLoughlin, Bao Pham, Isuri Ramos, Miguel Calderon, Alan Woo, Eric Alderete

NO: 0 – **ABSTAIN:** 0 – **ABSENT:** 0 – **Status:** 7 – 0 – 0 – 0 – **Pass**

BUSINESS CALENDAR

4. General Plan Update – Melanie McCann

Minutes: *Principal Planner McCann provided a PowerPoint presentation.*

STAFF COMMENTS

COMMISSIONER COMMENTS

ADJOURNMENT

The next virtual meeting of the Planning Commission will be on April 26, 2021 at 5:30 PM.

APPEAL INFORMATION

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City of Santa Ana
20 Civic Center Plaza, Santa Ana, CA 92701
Planning Commission Staff Report
April 26, 2021

Topic: CUP No. 2021-05 - Chevron Extra Mile

RECOMMENDED ACTION

Adopt a resolution approving Conditional Use Permit No. 2021-05 as conditioned.

EXECUTIVE SUMMARY

Alex Cuevas with AGC Design Concept, Inc., on behalf of property owner Zafar Ahmed, is requesting approval of Conditional Use Permit (CUP) No. 2021-05 to allow an existing convenience store to operate after-hours at 400 East 17th Street. Pursuant to Section 41-365.5 (f) of the Santa Ana Municipal Code (SAMC), retail markets having less than 20,000 square feet of floor proposing to operate any time between the hours of 12:00 a.m. (midnight) and 5:00 a.m. require approval of a CUP. Staff is recommending approval of the CUP to enhance service at the existing convenience store and to facilitate revitalization of an existing service station located at one of Santa Ana's gateway intersections. Furthermore, the project will not negatively impact the surrounding community as the project has been designed to minimize impacts to any nearby sensitive land uses and is compatible with surrounding land uses.

DISCUSSION

Project Description

The applicant is proposing to remodel the existing convenience store by removing the automobile service bay and expanding the convenience store area to contain a total of 1,580 square feet. Pursuant to SAMC Section 41-681, the proposed expansion of the retail area requires that the site be brought into compliance with all SAMC requirements. Because the store currently operates 24 hours per day without a CUP, approval of a new CUP is required to meet the requirements of Section 41-365.5(h).

As part of the application, the applicant intends to remodel and upgrade the site with new storefront finishes, architectural improvements, lighting, and landscaping. Specifically, the applicant will construct a 1,580-square foot, which includes a sales area, bathroom, cooler, freezer, and office area.

Table 1: Project and Location Information

Item	Information	
Project Address & Council Ward	400 East 17 th Street	
Nearest Intersection	17 th Street and French Street	
General Plan Designation	General Commercial (GC)	
Zoning Designation	Community Commercial (C1)	
Surrounding Land Uses	North	Commercial
	East	Penn Way/Santa Ana (I-5) Freeway
	South	Office
	West	Commercial
Property Size	0.55 Acres	
Existing Site Development	The site is currently developed as a service station, service bay, and convenience store.	
Unit Size	1,580 square feet	
Use Permissions	After-Hours operation subject to approval of a CUP	
Zoning Code Sections Affected	Uses	SAMC Sections 41-365(a), 41-365(q), 41-365.5(h)
	Operational Standards	SAMC Section 41-366

Project Background

The existing Chevron service station with service bay and retail store was constructed in 1968 with 24-hour-per-day operations. No major changes to the site have occurred on the property. Plans for the remodel of the convenience store that is under separate review were submitted in December 2019. The applicant intends to construct those improvements as part of this CUP application.

Project Analysis

CUP requests are governed by Section 41-638 of the SAMC. CUPs may be granted when it can be shown that the proposed project will not adversely impact the community. If these findings can be made, then it is appropriate to grant the CUP. Conversely, the inability to make these findings would result in a denial. The purpose of regulating retail markets having less than 20,000 square feet of floor area operating between the hours of 12:00 a.m. and 5:00 a.m. is to minimize potential impacts to surrounding areas. Staff has reviewed the applicant’s request to extend 24-hour operations with the remodeled and expanded store and determined that the after-hours operations at the subject site will not be detrimental to the health, safety, and welfare of the community.

A CUP is required for after-hours operations in order to ensure preservation of the surrounding community’s characteristics and minimize any potential negative impacts. The subject site is surrounded by commercial uses to the north (across 17th Street) and west (across French Street), an office building to the south, and the I-5 freeway to the east. To minimize potential nuisance impacts to the surrounding uses, staff is recommending conditions of approval, which include the air/water machine be shut-off between the hours of 10:00 p.m. and 7:00 a.m.; installation of an alarm system and

security cameras around the property; silent armed robbery alarm, additional lighting across the site, and recordation of a Property Maintenance Agreement. These measures will help improve the safety and quality of the project. Moreover, the proposed parking lot and site improvements will enhance the visual aesthetic and experience along the arterial street, and the safety improvement such as site lighting will enhance the site security.

The proposed hours of operation are consistent with other convenience stores and service stations along 17th Street such as World Oil at 1702 North Broadway and 76 at 617 East 17th Street. The proposed after-hours operations will provide convenient services to patrons who work late night shifts or are early morning commuters. In addition, this promotes a balance of land uses that assist in enhancing the City's economic and fiscal viability. The expanded retail market will be offering more food and drink selections, and the service station will be available at all hours. Furthermore, the expansion of the convenience store will help activate and enhance the area and will generate property and sales tax revenue for the City.

Approval of the CUP will be consistent with several policies of the General Plan. Policy 2.2 of the Land Use Element encourages land uses that accommodate the City's needs for goods and services. The proposed use will provide a one-stop shop for all day and night necessities for Santa Ana residents and visitors. Furthermore, Policy 2.9 of the Land Use Element supports developments that create a business environment that is safe and attractive. The conditions of approval for this CUP will help maintain a safe and attractive environment in the neighborhood by incorporating security measures and site improvements. Finally, Policy 5.5 of the Land Use Element encourages development that is compatible with and supportive of surrounding land uses. The Chevron Extra Mile service station and convenience store is located on a major arterial thoroughfare near residential uses and its operations will be consistent with similar commercial uses in the vicinity.

Police Department Analysis

The Police Department reviews conditional use permit applications for after-hours operations in order to ensure that potential crime or nuisance behaviors associated with such a use are mitigated to the greatest extent possible. For after-hours operations, the Police Department analyzes the crime rate in the area by matching the location of the subject site's census tract to the corresponding Police Grid. The City of Santa Ana contains 102 police reporting grids. The Police Department generates an annual report, the Citywide Incident Ranking report, which ranks these reporting grids based on police activity. The Police Department then compares the number of such crimes in the reporting district as compared to the number of crimes in other reporting districts. In keeping with the standard used by the State Business and Professions Code, should the Police Department determine that the reporting district has a 20 percent greater number of reported crimes than the average number found in all reporting districts, the Police Department would consider this information in making its recommendation.

Table 3: Police Department Analysis and Criteria for Recommendation

Police Department Analysis and Criteria for Recommendation	
Police Grid No. and Rank	Police Grid No. 184; ranked 10 out of 102 Police Reporting Grids
Threshold for High Crime	This reporting district is above the 20 percent threshold established by the State for high crime.
Police Department Recommendation	The Police Department is satisfied that the proposed conditions of approval for the after-hours operations will address any potential impacts to the surrounding community and does not oppose the granting of a CUP.

The Police Department reviewed Police related activity for the location and the entire block on which the site is located for the last year and found that the subject site has received 32 calls for service, with none rising to the level of a non-criminal report. The majority of the calls for service in the area are attributed to the site containing a service station, which is often a safe and convenient location from which motorists may report incidents. The Police Department is satisfied that the operational standards applicable to after-hours and drive-through activity will mitigate any potential impacts to the surrounding community and therefore does not oppose the granting of the CUPs.

Public Notification

Public notifications were posted, published, and mailed in accordance with City and State regulations. Copies of the public notice, including a 500-foot notification radius map, and the site posting are provided in Exhibit 7. In addition to these measures, representatives of the Logan, Santa Ana Triangle, and French Court Neighborhood Associations were contacted to identify any areas of concern due to the proposed request. At the time this report was printed, no issues of concern were raised regarding the proposed CUP.

ENVIRONMENTAL IMPACT

Pursuant to the California Environmental Quality Act (CEQA) and the CEQA Guidelines, the project is exempt from further review pursuant to Section 15301 of the CEQA Guidelines (Class 1/Existing Facilities) because the project involves negligible expansion of an existing use. Based on this analysis, Notice of Exemption, Environmental Review No. 2021-23 will be filed for this project.

FISCAL IMPACT

There is no fiscal impact associated with this action.

EXHIBIT(S)

1. Resolution
 2. ~~Vicinity Zoning and Aerial View~~
- City Council

CUP No. 2021-05 – Chevron Extra Mile
April 26, 2021
Page 5

3. Site Photo
4. Site Plan
5. Floor Plan
6. Elevations
7. Copy of public notices

Submitted By:
Gissel Enriquez, Planning Technician

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

RESOLUTION NO. 2021-XXX

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SANTA ANA APPROVING CONDITIONAL USE PERMIT NO. 2021-05 AS CONDITIONED TO ALLOW 24-HOUR OPERATIONS AT AN EXISTING CONVENIENCE STORE AND SERVICE STATION LOCATED AT 400 EAST SEVENTEENTH STREET

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SANTA ANA AS FOLLOWS:

Section 1. The Planning Commission of the City of Santa Ana hereby finds, determines and declares as follows:

- A. Alex Cuevas with AGC Design Concept, Inc. ("Applicant"), representing Zafar Ahmed ("Property Owner"), is requesting approval of Conditional Use Permit No. 2021-05 to allow an existing convenience store and service station to operate 24 hours per day, seven days per week, at the property located at 400 East Seventeenth Street.
- B. Santa Ana Municipal Code ("SAMC") Section 41-365.5(h) requires approval of a conditional use permit for retail markets having less than twenty thousand (20,000) square feet of floor area that operate between the hours of 12:00 a.m. (midnight) and 5:00 a.m.
- C. Applicant is proposing to continue 24-hour per day, 7-day per week operation as part of a remodeling project, which pursuant to SAMC Section 41-681 triggers the need to apply for a new Conditional Use Permit (CUP).
- D. Pursuant to SAMC Section 41-638, the Planning Commission is authorized to review and approve the conditional use permit for this project as set forth by the SAMC.
- E. On April 26, 2021, the Planning Commission held a duly noticed public hearing on CUP No. 2021-05.
- F. The Planning Commission of the City of Santa Ana has considered the information and determines that the following findings, which must be established in order to grant CUP No. 2021-05 to operate between the hours of 12:00 a.m. and 5:00 a.m., have been established as required by SAMC Section 41-638:

1. That the proposed use will provide a service or facility which will contribute to the general well being of the neighborhood or community.

The subject site has operated with 24-hour operation since 1968, and the store is now proposing a remodeling project, requiring full conformance with SAMC standards as required by Section 41-688 of the SAMC. By allowing the business hours to remain extended after the proposed store's remodeling is complete, the site will to be convenient for patrons wishing to have an early coffee and/or meal along with gasoline sales and service. It will create a one-stop shop location for residents and commuters as the site's location is in close proximity of the freeway and residential neighborhoods. The site will also be improved to include additional landscaping, architectural façade treatments, and parking lot enhancements. The overall improvements will generate and attract desired business activity and beautify the street corner.

2. That the proposed use will not, under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity.

The proposed after-hours operations will not be detrimental to the health, safety or welfare of those residing or working in the vicinity. Conditions have been placed on the CUP that will mitigate any potential negative impacts to the surrounding community including security cameras, silent armed robbery alarm, and additional lighting across the site. Chevron Extra Miles is an established convenience store chain with policies and procedures that include an employee training program focused on security and minimizing calls for service.

3. The proposed use will not adversely affect the present economic stability or future economic development of properties surrounding the area.

The approval of a 24-hour operation for the establishment at this location will improve the economic stability of the property and will diversify the products and services offered within the general area. Further, this will allow Chevron Extra Mile to remain competitive with similar uses in the area which offer similar goods found in convenience stores.

4. That the proposed use will comply with the regulations and conditions specified in Chapter 41 for such use.

The proposed conditional use permit will be in compliance with all applicable regulations of Chapter 41 of the SAMC regarding

establishments that operate on a 24-hour basis. The service station with convenience store are permitted and will continue to provide retail services to the community. Approval of the CUP will bring the use into compliance with operational standards and conditions of approval will mitigate any potential impacts to the general vicinity.

5. That the proposed use will not adversely affect the General Plan of the city or any specific plan applicable to the area of the proposed use.

The proposed project will not adversely affect the General Plan. The General Plan land use designation of the subject site is General Commercial (GC) which allows for commercial uses such as retail, service and eating establishments. The granting of CUP No. 2021-05 supports several policies contained in the General Plan. Policy 2.2 of the Land Use Element encourages land uses that accommodate the City's needs for goods and services. The proposed use will continue to provide gasoline services and expand convenience store goods and services to surrounding residents and visitors. Policy 2.9 supports developments that create a business environment that is safe and attractive. A condition of approval to provide a maintenance agreement will ensure property improvements are adequately maintained for a safe and attractive environment for the community and patrons to the business. Policy 5.5 of the Land Use Element encourages development that is compatible with and supporting of surrounding land uses. The proposed use is located along a commercial corridor and freeway ramp, consistent with commercial uses, and its service operation is compatible with the surrounding neighborhood, as conditioned.

Section 2. In accordance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines, the project is categorically exempt from further review per Section 15301 (Class 1 – Existing Facilities). Class 1 exemption applies to the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. Based on this analysis, a Notice of Exemption, Environmental Review No. 2021-23, will be filed for this project.

Section 3. The Applicant shall indemnify, protect, defend and hold the City and/or any of its officials, officers, employees, agents, departments, agencies, authorized volunteers, and instrumentalities thereof, harmless from any and all claims, demands, lawsuits, writs of mandamus, and other and proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute

resolution procedures (including, but not limited to arbitrations, mediations, and such other procedures), judgments, orders, and decisions (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, any action of, or any 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 the City) for or concerning the project, whether such Actions are brought under the Ralph M. Brown Act, California Environmental Quality Act, the Planning and Zoning Law, the Subdivision Map Act, Code of Civil Procedure sections 1085 or 1094.5, or any other federal, state or local constitution, statute, law, ordinance, charter, rule, regulation, or any decision of a court of competent jurisdiction. It is expressly agreed that the City shall have the right to approve the legal counsel providing the City's defense, and that Applicant shall reimburse the 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 Applicant in the defense of the Action.

Section 4. The Planning Commission of the City of Santa Ana, after conducting the public hearing, hereby approves Conditional Use Permit No. 2021-05, as conditioned in Exhibit A, attached hereto and incorporated herein, for the project located at 400 East Seventeenth Street. This decision is based upon the evidence submitted at the above-referenced hearing, including but not limited to: The Request for Planning Commission Action dated April 26, 2021, and exhibits attached thereto; and the public testimony, written and oral, all of which are incorporated herein by this reference.

ADOPTED this 26th day of April, 2021.

AYES: Commissioners:
NOES: Commissioners:
ABSENT: Commissioners:
ABSTENTIONS: Commissioners:

Mark McLoughlin
Chairperson

APPROVED AS TO FORM:
Sonia R. Carvalho, City Attorney

By: John M. Funk
John M. Funk
Senior Assistant City Attorney

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, SARAH BERNAL, Commission Secretary, do hereby attest to and certify the attached Resolution No. 2021-XXX to be the original resolution adopted by the Planning Commission of the City of Santa Ana on April 26, 2021.

Date: _____

Commission Secretary
City of Santa Ana

EXHIBIT A

Conditions of Approval for Conditional Use Permit No. 2021-05

Conditional Use Permit No. 2021-05 for after-hours operations 24 hours per day, 7 days per week is approved subject to compliance, to the reasonable satisfaction of the Planning Manager, with applicable sections of the Santa Ana Municipal Code, the California Administrative Code, the California Building Standards Code, and all other applicable regulations. In addition, the Applicant shall meet the following conditions of approval:

The Applicant must comply with each and every condition listed below prior to exercising the rights conferred by this conditional use permit.

The Applicant must remain in compliance with all conditions listed below throughout the life of the conditional use permit. Failure to comply with each and every condition may result in the revocation of the conditional use permit.

1. Any amendment to this conditional use permit must be submitted to the Planning Division for review. At that time, staff will determine if administrative relief is available or if the conditional use permit must be amended.
2. All existing and new perimeter walls shall be painted or coated in anti-graffiti coating, and vines shall be planted along all such walls.
3. The air/water machine must provide an automatic shut-off component to cease operation between the hours of 10:00 p.m. and 7:00 a.m.
4. Within 90 days of adoption of this resolution, a Property Maintenance Agreement must be recorded against the property. The agreement will be subject to review and applicability by the Planning and Building Agency, the Community Development Agency, the Public Works Agency, and the City Attorney to ensure that the property and all improvements located thereupon are properly maintained. Applicant (and the owner of the property upon which the authorized use and/or authorized improvements are located if different from the Applicant) shall execute a maintenance agreement with the City of Santa Ana which shall be recorded against the property and which shall be in a form reasonably satisfactory to the City Attorney. The maintenance agreement shall contain covenants, conditions and restrictions that establish a “good neighbor policy” relating to the following:
 - a. Compliance with operational conditions applicable during any period(s) of construction or major repair (e.g., proper screening and securing of the construction site; implementation of proper erosion control, dust control and noise mitigation measure; adherence to approved project phasing etc.).

- b. Compliance with ongoing operational conditions, requirements and restrictions, as applicable (including but not limited to hours of operation, security requirements, the proper storage and disposal of trash and debris, enforcement of the parking management plan, and/or restrictions on certain uses.
 - c. Ongoing compliance with approved design and construction parameters, signage parameters and restrictions as well as landscape designs, as applicable.
 - d. Ongoing maintenance, repair and upkeep of the property and all improvements located thereupon (including but not limited to controls on the proliferation of trash and debris on and in the immediate vicinity of the property; the proper and timely removal of graffiti; the timely maintenance, repair and upkeep of damaged, vandalized and/or weathered buildings, structures and/or improvements; the timely maintenance, repair and upkeep of exterior paint, parking striping, lighting and irrigation fixtures, walls and fencing, publicly accessible bathrooms and bathroom fixtures, landscaping and related landscape improvements and the like, as applicable).
 - e. If Applicant and the owner of the property are different (e.g., if the Applicant is a tenant or licensee of the property or any portion thereof), both the Applicant and the owner of the property shall be signatories to the maintenance agreement and both shall be jointly and severally liable for compliance with its terms.
 - f. The maintenance agreement shall further provide that any party responsible for complying with its terms shall not assign its ownership interest in the property or any interest in any lease, sublease, license or sublicense, unless the prospective assignee agrees in writing to assume all of the duties, obligations and responsibilities set forth under the maintenance agreement.
 - g. The maintenance agreement shall contain provisions relating to the enforcement of its conditions by the City and shall also contain provisions authorizing the City to recover costs and expenses which the City may incur arising out of any enforcement and/or remediation efforts which the City may undertake in order to cure any deficiency in maintenance, repair or upkeep or to enforce any restrictions or conditions upon the use of the property. The maintenance agreement shall further provide that any unreimbursed costs and/or expenses incurred by the City to cure a deficiency in maintenance or to enforce use restrictions shall become a lien upon the property in an amount equivalent to the actual costs and/or expense incurred by the City.
5. The Applicant shall be responsible for maintaining the premises free of graffiti. All graffiti shall be removed within 24 hours of occurrence.

6. The cash register must be visible from the street at all times and shall not be obstructed at any time by temporary or permanent signage.
7. Window displays and racks must be kept at a maximum height of three (3) feet including merchandise and cannot obstruct the cashier's view to the outside.
8. A timed-access cash controller or a money drop safe capable of easily providing the cashier the ability to quickly deposit money into it must be installed.
9. A silent armed robbery alarm shall be installed prior to issuance of building permit.
10. Security cameras shall be installed prior to issuance of prior to issuance of building permit.
11. There shall be no coined-operated games maintained on the premises at any time.
12. Pay telephones shall be removed prior to the issuance of building permit.
13. "No Loitering/Trespass" signs/placards shall be posted in the parking lot area. The posted signs must conform to Penal Code Section 602.
14. Clearly distinguishable height markers shall be installed on the inside door jamb of all doors used by the public to access the store. Horizontal marks, one-inch wide by three-inches long, in different colors, and in a contrasting color to the background, shall be placed every six inches beginning at five feet and ending at six feet six inches.
15. All new and existing exterior lighting shall be shielded and/or directed away from residential areas with the installation of light shields.
16. Goods and fuel deliveries shall not occur between 10:00 p.m. and 7:00 a.m.
17. The use shall be conducted, at all times, in a manner that will allow the quiet enjoyment of the surrounding neighborhood. The Applicant and/or business owner shall institute appropriate security and operational measures necessary to comply with this requirement.
18. A copy of the conditions of approval shall be kept on premises and presented to any authorized City official upon request.
19. The sale of alcoholic beverages shall be prohibited, unless a conditional use permit is reviewed and approved by the Planning Commission.
20. The outdoor storage or display of boxes, equipment, materials, merchandise, and other similar items shall be prohibited.

21. The business shall post in a conspicuous location at the entry to the building the contact information for the responsible onsite manager, including full name, phone number, and emergency or backup phone number, in case of noise and related operational complaints.

CUP No. 2021- 05 - Chevron Extra Mile 400 East 17th Street

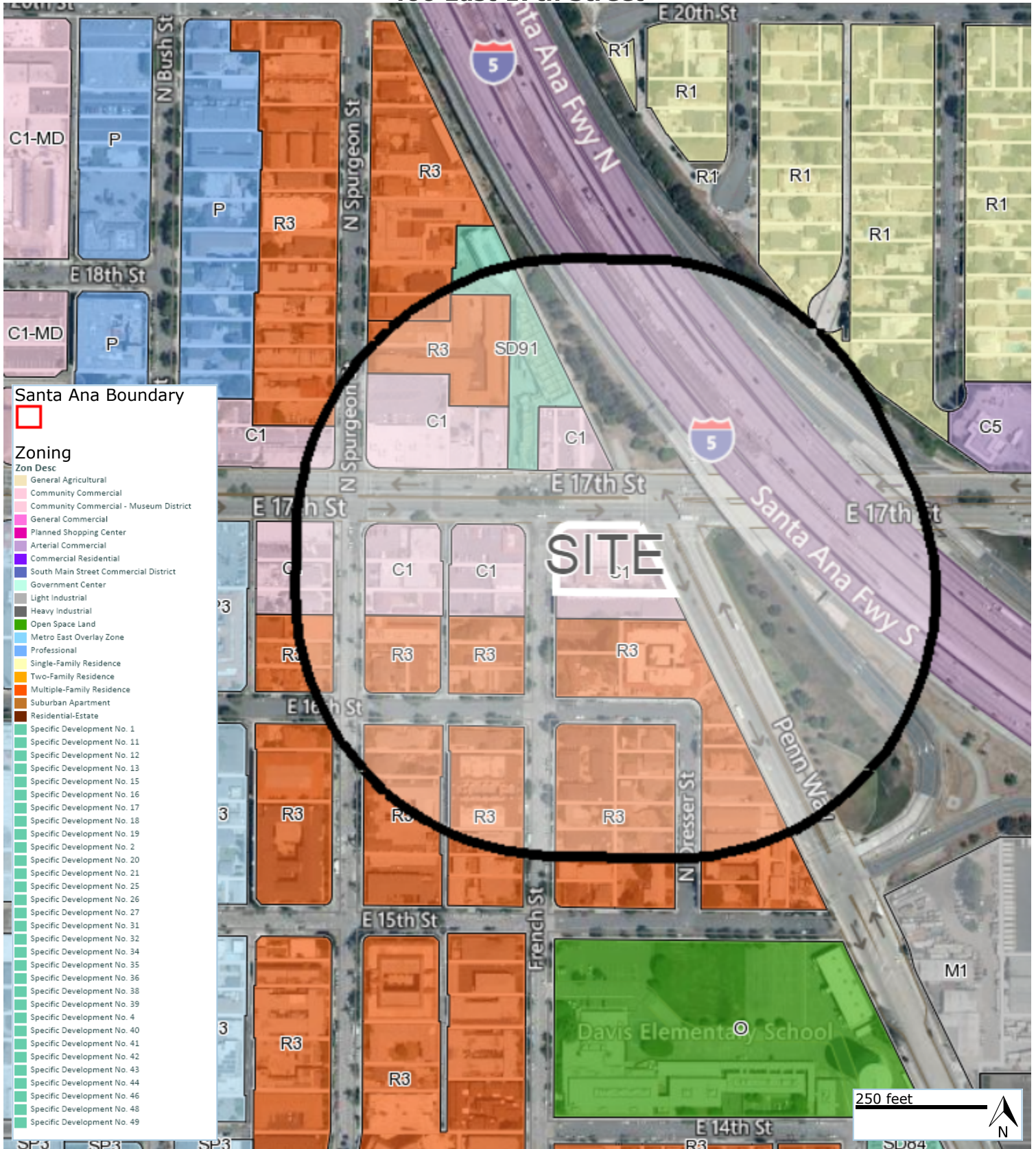


Exhibit 2 – Vicinity Zoning and Aerial View



CUP 2021-05 – Chevron Extra Mile

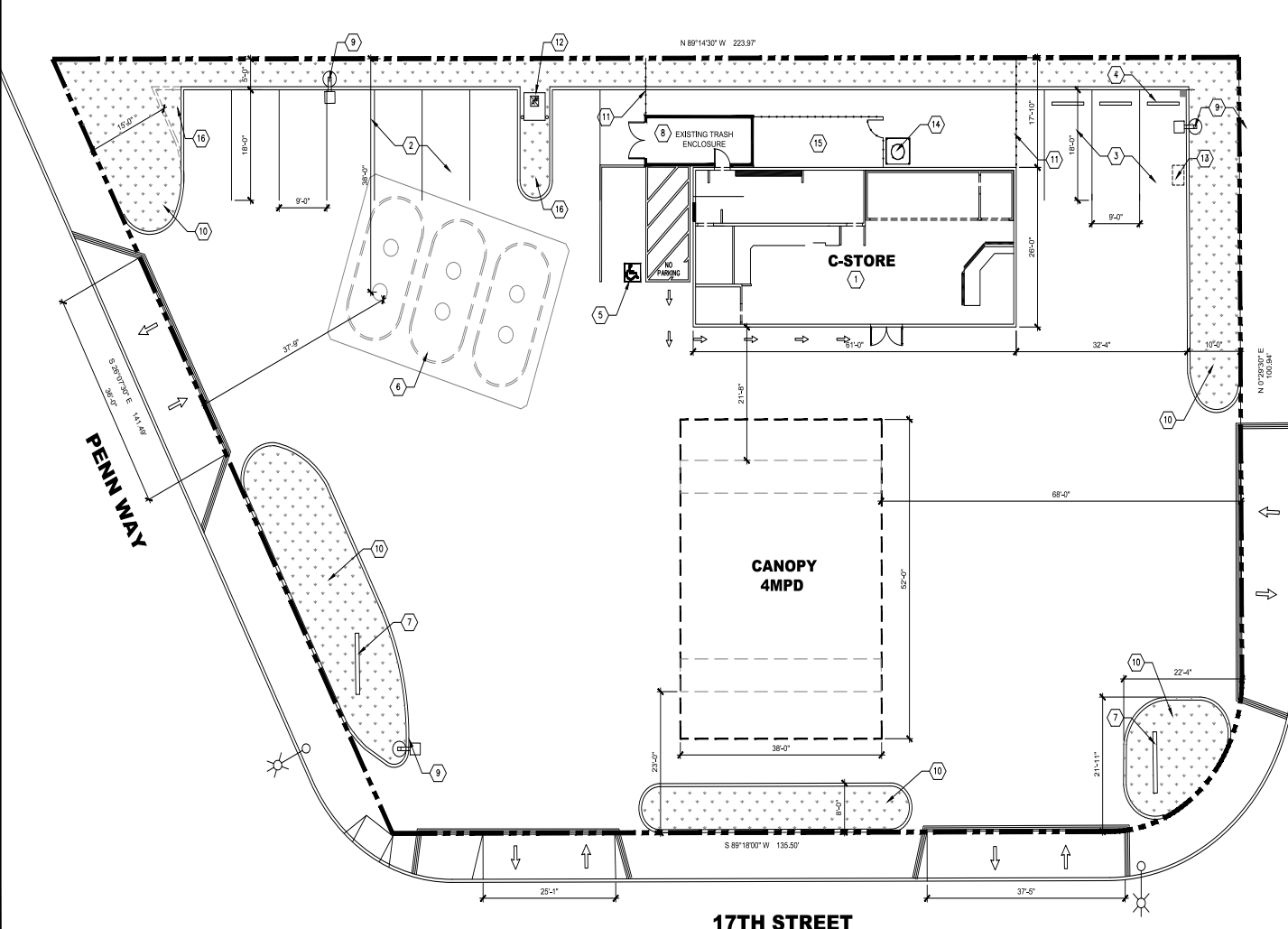
400 East 17th Street



Exhibit 3 – Site Photo

NOTES

NO ALCOHOL WILL BE SOLD AT THE SITE
EXTRA MILE CONVENIENCE STORE WILL BE OPEN 24 HOURS



SHEET INDEX

AS-1	SITE PLAN
A-1	EXISTING FLOOR PLAN
A-2	FLOOR PLAN
A-3	ROOF PLAN
A-4	BUILDING ELEVATIONS
A-5	PHOTOGRAPHS

PROJECT DATA

- PROJECT: TENANT IMPROVEMENT
- ADDRESS: 400 EAST 17TH STREET, SANTA ANA, CA
- PROPERTY TYPE: COMMERCIAL INDUSTRIAL
- APPLICANT: AGDC DESIGN CONCEPT
- ARCHITECT: DANIEL L. CLINE
- BLDG HEIGHT: 20'-0"
- No STORY: 1

SCOPE OF WORK

- CONVERT THE EXISTING BUILDING (CASHIER, C-STORE AND LUBE BAYS) INTO A CHEVRON EXTRA MILE CONVENIENCE STORE.
- NO ALCOHOL WILL BE SOLD AT THE SITE.
- RE-STRIPING PARKING LOT.

SITE INFORMATION

GROSS AREA	24,116 S.F.
DEDICATIONS, EASEMENTS, RIGHT OF WAY	
NET SITE AREA	10.55
ACRE	0.55
ZONING	ZONE
ASSESSORS PARCEL NUMBER	396-142-01

LANDS

DESCRIPTION	PERCENT	AREA
LANDSCAPE PROVIDED (ON-SITE)	13.45%	3,244 S.F.

STRUCTURES

DESCRIPTION	SIZE	OCCUPANCY	CONS. TYPE	AREA
C-STORE	61'-0"X28'-0"	M	V-B	1,580 S.F.
CANOPY	38'-0"X52'-0"	B	IL-B	1,976 S.F.
TOTAL BUILDING AREA:				3,556 S.F.

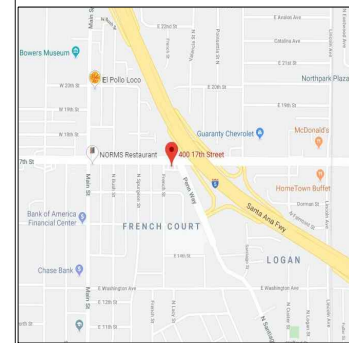
LOT COVERAGE: BUILDING AREA 1,580 S.F. NET SITE AREA 24,116 S.F. = (6.5%)

PARKING

DESCRIPTION (REQUIRED PARKING)	RATIO	REQD. #
C-STORE	1 SPACE / 200 SQ. FT.	8
TOTAL PARKING SPACES REQUIRED: 8 SPACES		

DESCRIPTION (PROVIDED PARKING)	SIZE	PROVIDED
STANDARD (VEHICLE)	9'-0"X18'-0"	11
ACCESSIBLE SPACE	17'-0"X18'-0"	1
TOTAL PARKING SPACES PROVIDED: 12 - SPACES		

VICINITY MAP



01 EXISTING SITE PLAN
SCALE: 1"=10'

KEY NOTES

- 1 EXISTING C-STORE (TENANT IMPROVEMENTS) 1,580 S.F.
- 2 EXISTING STANDARD PARKING WILL BE REPAINTED WITH DOUBLE STRIPPED AS PER CITY STANDARDS
- 3 NEW STANDARD PARKING 9'X18' PAINTED WITH DOUBLE STRIPPED AS PER CITY STANDARDS
- 4 NEW WHEEL STOP
- 5 EXISTING ACCESSIBLE PARKING
- 6 EXISTING UNDERGROUND TANK
- 7 EXISTING MONUMENT SIGN
- 8 EXISTING TRASH ENCLOSURE
- 9 EXISTING YARD LIGHTS
- 10 EXISTING LANDSCAPING
- 11 EXISTING FENCE
- 12 NEW AIR/WATER
- 13 EXISTING TELEPHONE TO BE REMOVED
- 14 EXISTING HEALY TANK
- 15 NEW CONDENSER AND AC UNITS EQUIPMENT INSIDE EXISTING SCREENED AREA
- 16 NEW LANDSCAPING

KEY LEGEND

- PROPERTY LINE
- EXISTING STREET LIGHT
- YARD LIGHT
- LANDSCAPED

City Council

4-17

4/26/2021



AGC DESIGN CONCEPT, INC.
28524 Constellation Rd
Santa Ana, CA 92705
Phone: 681.205.8111

BY: _____

NO. DATE _____

REVISIONS _____

TENANT IMPROVEMENT
400 E 17TH ST.
SANTA ANA, CA
SITE PLAN

consultant job# _____

master release date _____

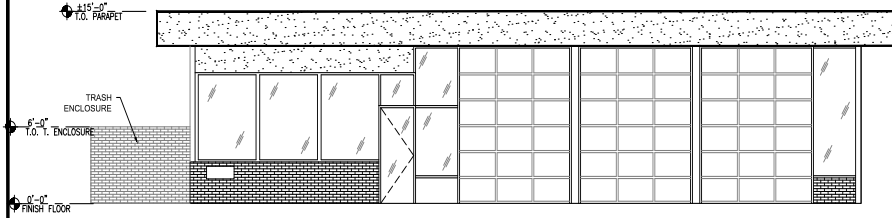
project
exe date _____ master
drawn by _____

filename AGC 0580

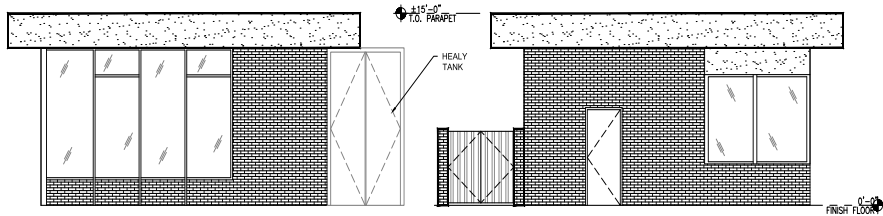
Facility/Project _____

sheet name
AS-1

EXISTING

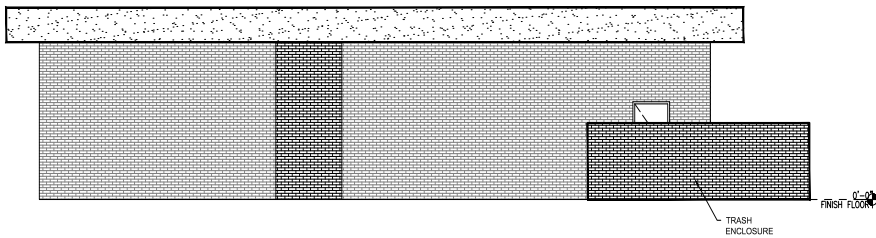


01 BUILDING ELEVATION (NORTH)
SCALE: 3/16"=1'-0"



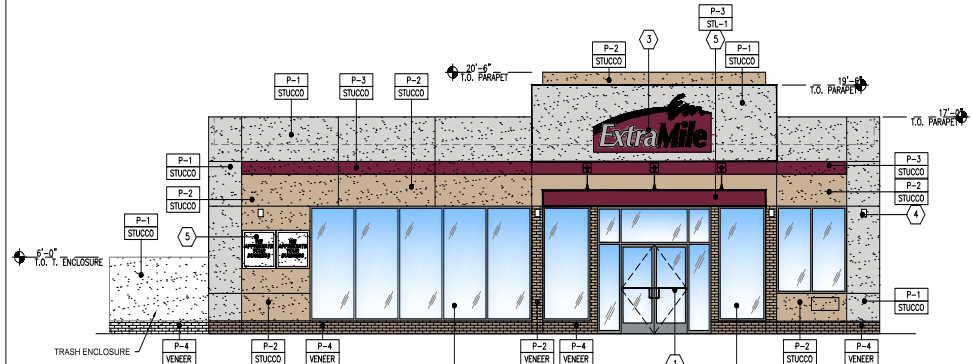
02 BUILDING ELEVATION (WEST)
SCALE: 3/16"=1'-0"

03 BUILDING ELEVATION (EAST)
SCALE: 3/16"=1'-0"

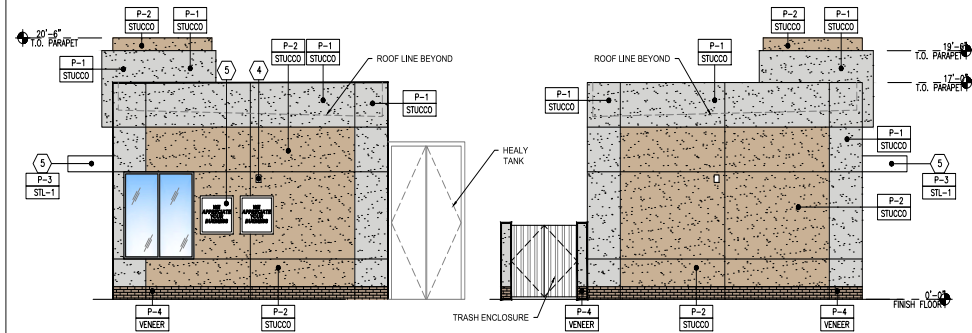


04 BUILDING ELEVATION (SOUTH)
SCALE: 3/16"=1'-0"

PROPOSED

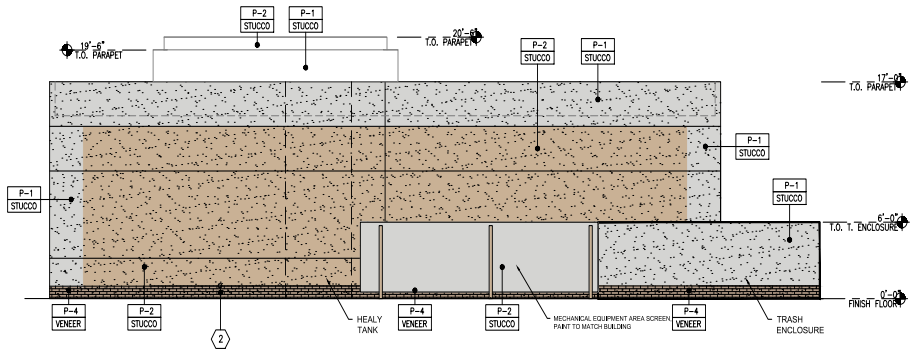


01 BUILDING ELEVATION (NORTH)
SCALE: 3/16"=1'-0"



02 BUILDING ELEVATION (WEST)
SCALE: 3/16"=1'-0"

03 BUILDING ELEVATION (EAST)
SCALE: 3/16"=1'-0"



04 BUILDING ELEVATION (SOUTH)
SCALE: 3/16"=1'-0"

GENERAL NOTES

- A. REVEAL LOCATIONS IN FINISH SYSTEM SHOWN ARE TO ALIGN AS CLOSELY AS POSSIBLE TO ELEVATIONS.
- B. A SEPARATED SIGN PERMIT WILL BE SUBMITTED FOR ALL EXTERIOR WALL SIGNS

COLOR LEGEND

- P-1 CAFE AU LAIT
- P-2 NUTMEG
- P-3 CHILLED MINE-R
- P-4 MOCHA

KEYED NOTES

- 1 ADMINISTRATION ENTRANCE AND STOREFRONT SYSTEM
- 2 OVERFLOW DRAIN
- 3 INTERNALLY ILLUMINATED SURFACE MOUNTED WALL SIGN (SEPARATE PERMIT)
- 4 WALL MOUNTED LED FIXTURE
- 5 CANOPY

MATERIAL LEGEND

- STL-1 STEEL AWNING
- VENEER MATCH TO EXISTING OR SIMILAR
- STUCCO 3/8" CEMENT PLASTER, INSTALLED PER MFG. SPECIFICATIONS; TEXTURE: FINE SAND FINISH

4/26/2021



AGC DESIGN CONCEPT, INC.

28824 Constitution Rd
San Diego, CA 92124
Phone: 619.255.8111

BY: _____
DATE: _____
NO. _____

TENANT IMPROVEMENT
400 E 17TH ST.
SANTA ANA, CA
BUILDING ELEVATIONS

consultant job# _____
master release date _____
project _____ master drawn by _____
exe date _____
filename AGC 0580
Facility/Project _____
sheet name _____
A-4

ORANGE COUNTY REPORTER

~SINCE 1921~

Mailing Address : 600 W SANTA ANA BLVD, SANTA ANA, CA 92701
Telephone (714) 543-2027 / Fax (714) 542-6841
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CITY OF SANTA ANA PLANNING
SANTA ANA/PLANNING & BUILDING
20 CIVIC CENTER PLAZA 2ND FLR
SANTA ANA, CA 92702

COPY OF NOTICE

Notice Type: GPN GOVT PUBLIC NOTICE

Ad Description
400 E. 17th Street

To the right is a copy of the notice you sent to us for publication in the ORANGE COUNTY REPORTER. Thank you for using our newspaper. Please read this notice carefully and call us with any corrections. The Proof of Publication will be filed with the County Clerk, if required, and mailed to you after the last date below. Publication date(s) for this notice is (are):

04/14/2021

The charge(s) for this order is as follows. An invoice will be sent after the last date of publication. If you prepaid this order in full, you will not receive an invoice.

Publication	\$127.10
Total	\$127.10

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LOS ANGELES DAILY JOURNAL, LOS ANGELES	(213) 229-5300
SAN FRANCISCO DAILY JOURNAL, SAN FRANCISCO	(800) 640-4829
SAN JOSE POST-RECORD, SAN JOSE	(408) 287-4866
THE DAILY RECORDER, SACRAMENTO	(916) 444-2355
THE DAILY TRANSCRIPT, SAN DIEGO	(619) 232-3486
THE INTER-CITY EXPRESS, OAKLAND	(510) 272-4747

OR# 3460888

NOTICE OF PUBLIC HEARING BEFORE THE SANTA ANA PLANNING COMMISSION

The City of Santa Ana encourages the public to participate in the decision-making process. We encourage you to contact us prior to the Public Hearing if you have any questions.

Planning Commission Action : The Planning Commission will hold a Public Hearing to receive public testimony, and will take action on the item described below. Decision on this matter will be final unless appealed within 10 calendar days of the decision by any interested party or group.

Project Location: 400 E. 17th Street located in the Community Commercial (C-1) zoning district.

Project Applicant: Alex Cuevas with AGC Design Concept, Inc., on behalf of property owner Zafar Ahmed.

Proposed Project: The applicant is requesting approval of Conditional Use Permit No. 2021-05 to allow an existing retail market (Chevron Extra Mile) to operate 24 hours per day, seven days per week.

Environmental Impact: The Planning Commission will consider a determination that the project is categorically exempt from California Environmental Quality Act CEQA Guidelines pursuant to 15301 of the CEQA Guidelines - Class 1/Existing Facilities. Notice of Exemption, Environmental Review No. 2021-23 will be filed for this project.

Meeting Details: This matter will be heard on **Monday, April 26, 2021 at 5:30 p.m.** In light of COVID-19, this meeting will be conducted in a virtual environment. For the most up to date information on how to participate virtually in this meeting, please visit <https://www.santa-ana.org/pb/planning-and-building-meetings/planning-and-building-meeting-participation>.

Written Comments: If you are unable to participate in the virtual meeting, you may send written comments by e-mail to PBACComments@santa-ana.org (reference the Agenda Item # in the subject line) or mail to Sarah Bernal, Recording Secretary, City of Santa Ana, 20 Civic Center Plaza – M20, Santa Ana, CA 92701. Deadline to submit written comments is 5:00 p.m. on the day of the meeting. Comments received after the deadline may not be distributed to the Commission but will be made part of the record.

Where To Get More Information: Additional details regarding the proposed action(s), including the full text of the discretionary item, may be found on the City website 72 hours prior to the public hearing at: www.santa-ana.org/cc/city-meetings

Who To Contact For Questions: Should you have any questions, please contact Gissel Enriquez with the Planning and

Building Agency at GEnriquez@santa-ana.org or 714-667-2708.

Note: If you challenge the decision on the above matter, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Planning Commission or City Council of the City of Santa Ana at, or prior to, the public hearing.

Si tiene preguntas en español, favor de llamar a Nardcedalia Perez al (714) 667-2260.

Nếu cần liên lạc bằng tiếng Việt, xin điện thoại cho Tony Lai số (714) 565-2627.

4/14/21

OR-3460888#





CITY OF SANTA ANA Planning and Building Agency

20 Civic Center Plaza • P.O. Box 1988
Santa Ana, California 92702
www.santa-ana.org/pba

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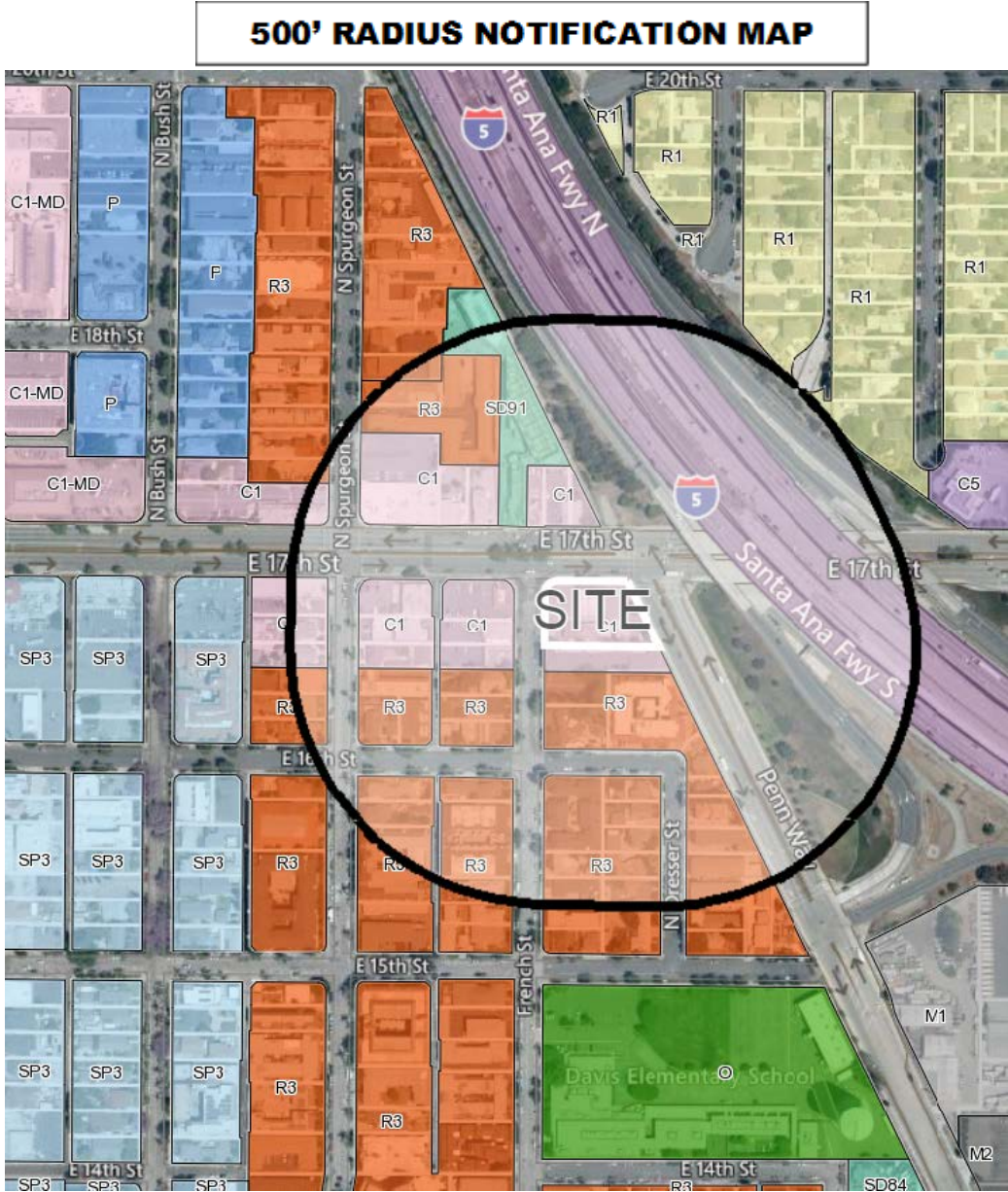
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Nếu cần liên lạc bằng tiếng Việt, xin điện thoại cho Tony Lai số (714) 565-2627.



Publish: OC Reporter – Legal Section
Date: April 14, 2021



**CUP No. 2021-05 Chevron Extra Mile
400 East 17th Street**



City of Santa Ana
20 Civic Center Plaza, Santa Ana, CA 92701
Staff Report
April 26, 2021

TOPIC: Zoning Ordinance Amendment (ZOA) No. 2021-02 – Lodging-Related Land Use Definitions and Reasonable Accommodations

AGENDA TITLE:

Zoning Ordinance Amendment (ZOA) No. 2021-02 to amend various sections of Chapter 41 (Zoning) of the Santa Ana Municipal Code (SAMC) relating to lodging-related land use definitions and reasonable accommodations.

RECOMMENDED ACTION

Recommend that the City Council approve ZOA No. 2021-02.

EXECUTIVE SUMMARY

In order to further the purposes of the Fair Housing Act (FHA), the Americans with Disabilities Act (ADA), the California Fair Employment and Housing Act (FEHA) and the Lanterman Development Disabilities Act (Lanterman Act), and to preserve the residential neighborhoods of the City, the Planning and Building Agency (PBA) of the City of Santa Ana is recommending approval of several amendments to the City's Zoning Code relating to lodging-related land use definitions and reasonable accommodation process.

DISCUSSION

The City of Santa Ana, like many other cities in California, has experienced a rise in the number of group living arrangements within single family residential neighborhoods. The proliferation of alternative group living arrangements has led to an increasingly amount of code enforcement complaints and police calls for service from residents and neighborhood association representatives relating to secondary impacts associated with such uses. Since 2016, the City's Code Enforcement Division has received 50 complaints regarding such uses. Reported impacts of group living arrangements include excessive amounts of noise, loitering, second-hand smoke, trash and debris, and increased parking demands within residential neighborhoods. Of particular concern, is how these alternative group living arrangements (often collectively referred to as group homes) are slowly changing the character of the City's single family neighborhoods.

Background

The Federal FHA, ADA and the California FEHA, prohibit discrimination against individuals on the basis of race, color, religion, sex, national origin, family status and disability through zoning or other land uses practices. Because of these laws, cities cannot develop zoning or land use regulations that would discriminate against individuals with disabilities. As

defined by the FAH and FEHA, persons with disabilities are individuals with mental or physical impairments that substantially limit one or more major life activities. Such disabilities include but are not limited to blindness, mobility impairment, mental illness, learning disabilities, and alcoholism and drug addiction.

State Licensing and Requirements

The State has established a licensing system for certain group homes that provide certain type of care and supervision. These State licensed facilities are designed to accommodate individuals who may require 24-hour supervision but who do not need extensive medical care. These facilities provide services to a diverse group of individuals and vary in size and capacity. Such facilities include intermediate care facilities for the developmentally disabled, community care facilities, residential care facilities for the elderly, residential care facilities for the chronically ill, alcoholism and drug abuse facilities, pediatric day health and respite care facilities, residential health care facilities(including congregate living health facilities), family care homes, foster homes, and group homes for the mentally disordered or otherwise disabled persons or dependent and neglected children.

These type of licensed facilities are regulated by the Department of Social Services (DSS), Department of Health Care Services (DHCS) or Department of Public Health (CDPH), which fall under the supervision of the Health and Human Services Agency (CHHS) of the State of California. Each department has its own review and application process and such facilities are inspected annually. In addition, the State requires a 300-foot separation between most community care facilities, but this separation can be waived by the State in special circumstances. Such separation requirement does not apply to foster homes, transitional shelter care facilities, elderly facilities, health facilities, and Alcoholism or Drug Abuse Treatment Facilities (ADP). A 1,000-foot separation between licensed congregated living health facilities is also required. Congregated living health facilities provide onsite medical care, have medical professional staff onsite to administer care, and can write and administer medicinal prescriptions.

State law makes it clear that cities cannot regulate state licensed group homes that provide care and services to six (6) or fewer individuals. In addition, cities cannot regulate living arrangements in which the occupants operate as a “single housekeeping unit.” Licensed group homes and single housekeeping units must be treated like single-family residences for zoning purposes. Therefore, these types of facilities must be permitted in all residential zones in which single-family residences are allowed, with the same development and parking standards of a single-family residence. In addition, no conditional use permit or special use permit can be required for these facilities unless the same permit is required for a single-family residence. However, local jurisdictions do have the ability to regulate (subject to some state and federal limitations) unlicensed group homes and licensed residential care facilities that care for seven (7) or more individuals. Exhibit 3 contains a short but informative report on how group homes are defined and regulated at the State and Federal level.

Present Status in Santa Ana

The City's ability to limit the impacts of group homes on the community are regulated by State and Federal legislation. Current provisions of the SAMC do not clearly define group homes and do not regulate the external impacts of such uses. In addition, the SAMC does not expressly identify or allow these uses; rather, the SAMC only specifies residential uses in general terms and such facilities have been approved in residential zones without any type of zoning permit approval. Because of this, the City's Code Enforcement Division has encountered challenges in its efforts to regulate group homes. Furthermore, the City has witnessed an increasing amount of clustered group homes locating within the City's residential neighborhoods that are functioning similarly to that of an institutionalized facility which can disrupt the neighborhood character envisioned by the City's General Plan.

Based on State and City data, there are approximately 113 groups homes in Santa Ana, of which 72 are licensed facilities and 41 are unlicensed facilities. Included in those 72 licensed facilities, 38 are adult residential care facilities, 15 are adult alcoholism or drug recovery or treatment facilities, 9 are residential care facilities for the elderly, 7 are social rehabilitation facilities, and 3 are residential health facilities. The unlicensed 41 facilities are assumed to be sober living facilities, but because of their unlicensed status, their operations are not certain. These estimations do not include facilities located within the City's commercial zoning districts and foster and family day care facilities, which amount to an additional 213 facilities.

Amendment Analysis

In order to preserve the public health, welfare and safety of Santa Ana residents and visitors, and to comply with the Fair Housing laws, the proposed ordinance provides new and/or strengthens definitions relating to lodging-related land uses. These definitions will allow the City to better categorize group homes, since the current Zoning Code lacks definitions that hinder the City's abilities to identify such facilities and enforce its relevant ordinances. The amendments would also delete the current reasonable accommodation process from Chapter 41 and will be relocated to Chapter 1 of the SAMC as part of Ordinance Amendment (OA) No. 2021-01. The proposed ordinance follows a similar regulatory approach as adopted by the cities of Aliso Viejo, Lake Forest, San Clemente, and San Juan Capistrano.

Table 1 below illustrates the amendments proposed by both ZOA No. 2021-02 and by OA No. 2021-01. The City is requesting that the Planning Commission recommend approval of ZOA No. 2021-02 to the City Council, while OA No. 2021-01 will be scheduled for City Council on a separate but concurrent path. The amendments proposed in OA No. 2021-01, outside the Zoning Code, are not under the purview of the Planning Commission. However, the background and analyses in the subsequent sections of this staff report are intended to provide holistic background on these topics, which are closely related.

Table 1: ZOA No. 2021-02 and OA No. 2021-01 Comparison

Topic	ZOA No. 2021-02 (Requires Planning Commission Recommendation to the City Council)	OA No. 2021-01 (Requires City Council Review)
Definitions	Deletes, updates, and/or establishes new definitions addressing lodging-related land uses	Establishes new definitions in Chapter 1 of the SAMC pertaining to reasonable accommodations
Reasonable Accommodations	Deletes existing reasonable accommodations provisions from the Zoning Code	Updates the reasonable accommodations ordinance, including application and review process, by adding a new article to Chapter 1 of the SAMC

ENVIRONMENTAL IMPACT

Pursuant to the California Environmental Quality Act (“CEQA”) and the state CEQA Guidelines, the adoption of this Ordinance is exempt from CEQA review pursuant to Sections 15060(c)(2) and 15060(c)(3) of the State CEQA Guidelines because it will not result in a direct or reasonably foreseeable indirect physical change in the environment, as there is no possibility it will have a significant effect on the environment and it is not a "project", as defined in Section 15378 of the CEQA Guidelines. As a result, a Notice of Exemption, Environmental Review No. 2021-40 will be filed upon adoption of this ordinance.

FISCAL IMPACT

There is no direct fiscal impact associated with this action.

EXHIBIT(S)

1. Ordinance for ZOA No. 2021-02
2. Ordinance for OA No. 2021-01
3. Summary of State & Federal Regulations
4. Copy of Public Notice

Submitted By:

Ali Pezeshkpour, AICP, Principal Planner
 Jerry Guevara, Assistant Planner I

Approved By: Minh Thai, Executive Director

ORDINANCE NO. NS-XXX

ZONING ORDINANCE AMENDMENT NO. 2021-02 – AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA ANA AMENDING PORTIONS OF CHAPTER 41 (ZONING) OF THE SANTA ANA MUNICIPAL CODE RELATING TO LODGING-RELATED LAND USE DEFINITIONS AND REASONABLE ACCOMMODATIONS

THE CITY COUNCIL OF THE CITY OF SANTA ANA HEREBY ORDAINS AS FOLLOWS:

Section 1. The City Council of the City of Santa Ana hereby finds, determines and declares as follows:

- A. The Federal Fair Housing Amendments Act of 1988 and California Fair Employment and Housing Act require local jurisdictions to establish a process by which persons with disabilities can request reasonable accommodations to the jurisdiction's codes, rules, policies, practices or services, necessary to afford persons with disabilities an equal opportunity to use or enjoy a dwelling.
- B. In tandem with the separate creation of updated protocols for requests for reasonable accommodations in the general application of the City's programs, including its zoning and land-use regulations, it is necessary to amend certain land-use definitions to clarify the circumstances under which reasonable accommodations may be sought for purposes that exceed those definitions, including group living scenarios.
- C. State law otherwise requires the City to treat group living situations as a single-family residential use if they are licensed by the state or have six or fewer disabled residents. Beyond these circumstances, reasonable accommodations may be sought in accordance with state and federal disability laws and city policy.
- D. Concurrent with Zoning Ordinance Amendment (ZOA) No. 2021-02, the City is seeking approval of Ordinance Amendment (OA) No. 2021-01 to establish a new Reasonable Accommodation Ordinance in Chapter 1 of the Santa Ana Municipal Code.
- E. OA No. 2021-01 updates the Reasonable Accommodation Ordinance in full accordance with California Government Code section 65583 and the Federal Fair Housing Amendments Act of 1988 and California Fair Employment and Housing Act.
- F. OA No. 2021-01 and ZOA No. 2021-02 are consistent with various goals and policies of the General Plan. Specifically, these actions are consistent with Housing Element (HE) Goal 2 (A diversity of quality housing, affordability levels, and living experiences that accommodate Santa Ana's residents and workforce of all

household types, income levels, and age groups to foster an inclusive community), Policy HE-2.4 (diverse housing types), and Goal 4 (Adequate rental and ownership housing opportunities and supportive services for seniors, people with disabilities, families with children, and people needing emergency, transitional, or supportive housing), Policies HE-4.3 and HE-4.7 (provide housing for disabled people and provide regulatory oversight).

- G. On April 26, 2021, the Planning Commission held a duly-noticed public hearing and considered the staff report, recommendations by staff, and public testimony concerning ZOA No. 2021-02. The Planning Commission recommended that the City Council adopt the proposed ordinance.
- H. On May 18, 2021, the City Council held a duly-noticed public hearing and considered the staff report, recommendations by staff, and public testimony concerning ZOA No. 2021-02.

Section 2. The City Council finds and determines that this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the State CEQA Guidelines because it will not result in a direct or reasonably foreseeable indirect physical change in the environment, as there is no possibility it will have a significant effect on the environment and it is not a "project", as defined in Section 15378 of the CEQA Guidelines.

Section 3. Section 41-27.3 (Boarding House) of Chapter 41 of the SAMC is hereby added to read as follow:

Sec. 41-27.3. – Boarding House.

A residence or dwelling unit, or portion(s) thereof, where two or more of its occupants are subject to separate rental agreements, leases or subleases, either written, oral, or implied; or the occupants do not operate as a single housekeeping unit.

Section 4. Section 41-41.5 (Care Home) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-41.5. – Care Home Reserved.

~~A care home is any facility, place, or building, social rehabilitation facility or similar facility which is maintained and operated to provide living accommodations for and twenty-four-hour nonmedical care to persons in need of personal services, supervision, assistance, guidance, or training essential for sustaining the activities of daily living or for the protection of the individual, such as the elderly, convalescents, invalids, dependent or neglected children, or physically handicapped, mentally impaired or incompetent persons.~~

Section 5. Section 41-51 (Dwelling, One-Family) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-51. – Dwelling, one-family.

~~A residential building containing one (1) or more habitable rooms with only one (1) kitchen, designed for occupancy by one (1) independent household unit with common access to, and common use of all living, kitchen and bathroom areas~~ The use of a structure or portion thereof approved for and used for human habitation by a single housekeeping unit.

Section 6. Section 41-51.1 (Dwelling, One-Family) of Chapter 41 of the SAMC is hereby added to read as follows:

Sec. 41-51.1. – Dwelling, One-Family.

A residential building approved for and containing one (1) dwelling.

Section 7. Section 41-52 (Dwelling, Two-Family) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-52. – Dwelling, Two-Family.

~~A two-family dwelling is a single building containing not more than two (2) families living independently of each other in separate living areas, which has a common roof and common interior or party walls, and which contains no more than two (2) kitchens wherein the occupants of each individual unit are living and functioning together as a single housekeeping unit.~~ A residential building approved for and containing two (2) dwellings.

Section 8. Section 41-53 (Dwelling, Multi-Family) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-53. – Dwelling, Multi-Family.

~~For definitions of multiple-family dwelling see definition of apartment house~~ A residential building approved for and containing three (3) or more dwellings.

Section 9. Section 41-59.5 (Family) of Chapter 41 of the SAMC is hereby added to read as follows:

Sec. 41-59.5. – Family.

One or more persons who are functioning as a single-housekeeping unit.

Section 10. Section 41-77 (Hotel / Motel) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41 – 77. – Hotel/Motel.

A hotel/motel is any building, or portion of a building, ~~other than a care home, which~~ that is designed, occupied, used or intended to be used, rented or hired out as temporary or overnight accommodations for tourists or transients. Such hotel/motel shall contain more than five (5) guest rooms. A hotel/motel that contains a kitchen (as defined in Section 310.7(3) of the California Building Code) in guest rooms shall be deemed to be a long-

term stay business hotel. A hotel/motel that meets the criteria of Section 41-139 of this Code shall be deemed to be a transient/residential hotel.

Section 11. Section 41-78 (Reserved) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-78. – Reserved Household.

Household means all the individuals occupying a dwelling.

Section 12. Section 41-103 (Lodging House) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-103. – Lodging House Reserved.

~~A lodging house is any building, or portion of a building, other than a care home or motel, containing not more than five guest rooms which are used by not more than five (5) guests in total, where lodging which does not include an individual kitchen, but which may or may not include the provision of meals, is provided for compensation; except that the rental of a room in a residential dwelling unit to not more than one person in addition to the family in occupancy of such dwelling shall be permitted as an incidental subordinate residential use of such dwelling, and shall not be deemed to constitute use of such dwelling as a boardinghouse.~~

Section 13. Section 41-141 (Reasonable Accommodation) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-141. – Reserved.

~~A modification or exception to the standards, regulations, policies, and procedures contained in this title for the siting, development, and use of housing or housing-related facilities, that would eliminate regulatory barriers and provide an individual with a disability equal opportunity for the use and enjoyment of housing of their choice, and that does not impose undue financial or administrative burdens on the city or require a fundamental or substantial alteration of the city's planning and zoning programs.~~

Section 14. Section 41-145 (Rooming House) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-145. – Rooming House Reserved.

~~For definition of rooming house see definition of boarding house.~~

Section 15. Section 41-152.5 (Single Housekeeping Unit) of Chapter 41 of the SAMC is hereby added to read as follows:

Sec. 41-152.5. – Single Housekeeping Unit.

Single housekeeping unit means a household whose members are an interactive group of persons jointly occupying a dwelling unit, including joint access to and use of all common areas including living, kitchen, and eating areas within the dwelling unit, and sharing household activities and responsibilities such as meals, chores, expenses and maintenance, and whose makeup is determined by the members of the unit rather than by the landlord, property manager, or other third party. If the unit is rented, all residents over the age of 18 have chosen to jointly occupy the entire premises of the dwelling unit, under a single written lease with joint use and responsibility of the premises. Additional indicia that a household is not operating as a single housekeeping unit include but are not limited to: the occupants do not share a lease agreement or ownership of the property; members of the household have separate, private entrances from other members; members of the household have locks on their bedroom doors; members of the household have separate food storage facilities, such as separate refrigerators.

Section 16. Section 41-158.5 (Supportive Housing) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-158.5. – Supportive Housing~~Reserved~~.

~~Housing with no limit on length of stay, that is occupied by persons and families who were homeless when approved for tenancy in the supportive housing project in which they currently reside, and that is linked to onsite or offsite services that assist the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community; as defined by Section 50675.14 of the Health and Safety Code.~~

Section 17. Section 41-163. (Transitional Housing) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-163. – Transitional Housing~~Reserved~~.

~~A building or buildings configured as rental housing developments, but operated under program requirements that call for the termination of assistance and recirculation of the assisted unit to another eligible program recipient at some predetermined future point in time, which shall be no less than six (6) months; as defined in Section 50675.2 of the Health and Safety Code. Transitional Housing does not include state licensed residential care facilities, also referred to as care homes.~~

Section 18. Section 41-247.5 (Uses subject to a conditional use permit in the R2 district) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-247.5 – Uses subject to a conditional use permit in the R2 district.

The following uses may be permitted in the R2 district subject to the issuance of a conditional use permit:

- (a) Any use which may be permitted in the R1 district subject to the issuance of a conditional use permit pursuant to Section 41-232.5 may likewise be permitted in the R2 district subject to a conditional use permit.

- ~~(b) Care homes, as defined by section 41-41.5 of this Code, which previously were permitted pursuant to a validly issued conditional use permit and subsequently lost the permitted use pursuant to the provisions of this Code.~~

Section 19. Section 41-259.5 (Uses subject to a conditional use permit in the R3 district) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-259.5. – Uses subject to a conditional use permit in the R3 district.

The following uses may be permitted in the R3 district subject to the issuance of a conditional use permit:

- (a) Any use which may be permitted in the R2 district subject to the issuance of a conditional use permit pursuant to Section 41-247.5.
- ~~(b) Lodging house, care homes, fraternity houses, and sorority houses.~~
- (b) Sanitariums and hospitals.

Section 20. Section 41-292.5 (Uses subject to a conditional use permit in the R4 district) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-292.5. – Uses subject to a conditional use permit in the R4 district.

The following uses may be permitted in the R4 district subject to the issuance of a conditional use permit:

- (a) Any use that may be permitted in the R1 district subject to the issuance of a conditional use permit pursuant to Section 41-232.5.
- ~~(b) Care homes.~~

Section 21. Section 41-365.5 (Uses subject to a conditional use permit in the C1 district) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-365.5. – Uses subject to a conditional use permit in the C1 district.

The following uses may be permitted in the C1 district subject to the issuance of a conditional use permit:

- (a) Clubs.
- (b) Outdoor and indoor recreational or entertainment uses other than those set forth in Section 41-365.
- ~~(c) Hotels, and motels, lodging houses, care homes, fraternity houses and sorority houses.~~

- (d) Thrift shops, purchase and loan, pawn shops.
- (e) Eating establishments with drive-through window service.
- (f) Eating establishments open at any time between the hours of 12:00 a.m. and 5:00 a.m. and located within one hundred fifty (150) feet of residentially zoned or used property, measured from property line to property line.
- (g) Laundromats, subject to the development and performance standards set forth in Section 41-199.
- (h) Retail markets having less than twenty thousand (20,000) square feet of floor area which are open at any time between the hours of 12:00 midnight and 5:00 a.m.
- (i) Check cashing facilities, as defined by Section 41-42.7.
- (j) Banquet facilities, subject to development and operational standards set forth in Section 41-199.1.
- (k) Banquet facilities as an ancillary use, subject to development and operational standards set forth in Section 41-199.1.
- (l) Adult day care facilities.
- (m) Superstores.
- (n) Tattoo and/or body art establishments open at any time between the hours of 12:00 a.m. and 7:00 a.m., subject to the development and operational standards set forth in Section 41-199.3.

Section 22. Section 41-412.5 (Uses subject to a conditional use permit in the C4 district) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-412.5. – Uses subject to a conditional use permit in the C4 district.

The following uses may be permitted in the C4 district subject to the issuance of a conditional use permit:

- (a) ~~Hotels, and motels, lodging houses, care homes, fraternity houses and sorority houses.~~
- (b) Indoor swap meets, bulk merchandise stores, and home improvement warehouse stores.
- (c) Eating establishments with drive-through window service.
- (d) Eating establishments open at any time between the hours of 12:00 a.m. and 5:00 a.m. and located within one hundred fifty (150) feet of residentially zoned or used property, measured from property line to property line.

- (e) Laundromats, subject to the development and performance standards set forth in Section 41-199.
- (f) Retail markets having less than twenty thousand (20,000) square feet of floor area which are open at any time between the hours of 12:00 midnight and 5:00 a.m.
- (g) Check cashing facilities, as defined by Section 41-42.7 of this Code.
- (h) Banquet facilities, subject to development and operational standards set forth in section 41-199.1.
- (i) Banquet facilities as an ancillary use, subject to development and operational standards set forth in Section 41-199.1.
- (j) Adult day care facilities.
- (k) Superstores.
- (l) Tattoo and/or body art establishments open at any time between the hours of 12:00 a.m. and 7:00 a.m., subject to the development and operational standards set forth in Section 41-199.3.

Section 23. Section 41-424.5 (Uses subject to a conditional use permit in the C5 district) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-424.5. – Uses subject to a conditional use permit in the C5 district.

The following uses may be permitted in the C5 district subject to the issuance of a conditional use permit:

- (a) ~~Hotels, and motels, lodging houses, care homes, fraternity houses, and sorority houses.~~
- (b) Dwelling units when erected above the ground floor of a commercial structure when the ground floor is devoted exclusively to nonresidential uses.
- (c) Hospitals.
- (d) Public utility structures, including electric distribution and transmission substations.
- (e) Eating establishments with drive-through or walk-up window service.
- (f) Service stations and automobile servicing.
- (g) Car wash establishments, provided they are wholly enclosed.

- (h) Laundries.
- (i) Indoor swap meets, bulk merchandise stores, and home improvement warehouse stores.
- (j) Eating establishments open at any time between the hours of 12:00 a.m. and 5:00 a.m. and located within one hundred fifty (150) feet of residentially zoned or used property, measured from property line to property line.
- (k) Laundromats, subject to the development and performance standards set forth in Section 41-199.
- (l) Retail markets having less than twenty thousand (20,000) square feet of floor area which are open at any time between the hours of 12:00 midnight and 5:00 a.m.
- (m) Banquet facilities, subject to development and operational standards set forth in Section 41-199.1.
- (n) Banquet facilities as an ancillary use, subject to development and operational standards set forth in section 41-199.1.
- (o) Adult day care facilities.
- (p) Superstores.

Section 24. Section 41-442.5 (Uses subject to a conditional use permit in the CR district) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-442.5. – Uses subject to a conditional use permit in the CR district.

The following uses may be permitted in the CR district subject to the issuance of a conditional use permit:

- (a) ~~Hotels, and motels, lodging houses, care homes, fraternity houses and sorority houses.~~
- (b) Service stations, provided they are integrated into a larger development site and accessible only by limited access ways serving the larger site as a whole.
- (c) Indoor swap meets, bulk merchandise stores, and home improvement warehouse stores.
- (d) Eating establishments open at any time between the hours of 12:00 a.m. and 5:00 a.m. and located within one hundred fifty (150) feet of residentially zoned or used property, measured from property line to property line.

- (e) Retail markets having less than twenty thousand (20,000) square feet of floor area which are open at any time between the hours of 12:00 midnight and 5:00 a.m.
- (f) Banquet facilities, subject to development and operational standards set forth in Section 41-199.1.
- (g) Banquet facilities as an ancillary use, subject to development and operational standards set forth in Section 41-199.1.

Section 25. Section 41-522 (Uses subject to a conditional use permit in the C-SM district) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-522. – Uses subject to a conditional use permit in the C-SM district.

The following uses may be permitted in the C-SM district subject to the issuance of a conditional use permit:

- (a) Clubs, lodges and fraternal organizations.
- (b) Outdoor and indoor recreational or entertainment uses including night clubs, other than those set forth in Section 41-521.
- (c) ~~Hotels, and motels, lodging houses, care homes, fraternity houses and sorority houses.~~
- (d) Thrift and resale stores, antique shops and collectable stores, excluding pawn shops and auction houses.
- (e) Eating establishments open at any time between the hours of 12:00 midnight and 5:00 a.m. and located within one hundred fifty (150) feet of residentially zoned or used property, measured from property line to property line.
- (f) Laundromats.
- (g) Ancillary outdoor dining facilities located in the front yard area.
- (h) Banquet facilities, subject to development and operational standards set forth in section 41-199.1.
- (i) Banquet facilities as an ancillary use, subject to development and operational standards set forth in section 41-199.1.
- (j) Automobile repair and automobile servicing.
- (k) Retail markets having less than twenty thousand (20,000) square feet of floor area which are open at any time between the hours of 12:00 midnight and 5:00 a.m.

- (l) Churches and accessory church buildings.

Section 26. Section 41-601.5 (Uses Prohibited) of Chapter 41 of the SAMC is hereby added to read as follows:

Sec. 41-601.5. – Uses Prohibited.

In accordance with Section 41-190 (a) and for the purpose of conserving public health, safety and general welfare, land uses listed in this section are prohibited within any zone in the City. These uses shall be prohibited outright and not subject to Section 41-601 (c) of this Article. The following land uses and business activities are prohibited in all zones within the City:

- (a) Boarding Houses
- (b) Cyber Cafés
- (c) Hookah Parlors

Section 27. Section 41-603 (Area – Generally) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-603. - Area—Generally.

- (a) Any lot shown upon an official subdivision map duly approved by the city council and recorded in the office of the county recorder, or any lot for which a recorded contract of sale was in full force and effect prior to June 3, 1954, and the deed is so recorded in the office of the county recorder, may be used as a legal building site, subject to the conditions, limitations, and restrictions governing the district in which it is located.
- (b) The following exception to yard requirements shall be applied with respect to all buildings, structures, and uses permitted in the A1, RE, R1, R2, R3, and P districts: Where forty (40) per cent or more of the lots along any block, excluding reverse corner lots and key lots, are developed with buildings, the required front yard for any new building or alteration to an existing building shall be not less than the arithmetical average of the front yards of said buildings. In computing said average front yard, main buildings situated entirely on the rear one-half (½) of any lot along said block shall not be included. Notwithstanding this subsection, no front yard shall be less than twenty (20) feet from a front property line.
- (c) In any commercial district, the front and side yards required for dwellings, apartments, ~~and hotels and boardinghouses~~ may be waived when such uses are erected above the ground floor of a building when said ground floor has no required front and side yard.

Section 28. Sections 41-652, 41-653, 41-654, and 41-655 of Chapter 41 of the SAMC are hereby repealed in their entirety.

~~Sec. 41-652. – Reasonable accommodation—Application process.~~

- ~~(a) — *Notice to the public of availability of accommodation process.* The agency shall prominently display in both city hall and the planning and building agency a notice advising those with disabilities or their representatives that they may request a reasonable accommodation in accordance with the procedures established in this division.~~
- ~~(b) — *Applicability.* To make specific housing available to an individual with a disability, any person may request reasonable accommodation under this division to modify a land use or zoning standard, regulation, policy, and procedure of the city as may be necessary to afford the individual with a disability equal opportunity to the use and enjoyment of their dwelling. A request for reasonable accommodation shall be made by filing an application under this section.~~
- ~~(c) — *Application.* An application for reasonable accommodation shall be submitted on a form prescribed by the executive director of the planning and building agency, or in the form of a letter addressed to the executive director.~~
- ~~(d) — *Privacy.* Any information related to a disability status and identified by an applicant as confidential shall be retained in a manner so as to respect the privacy rights of the applicant and shall not be made available for public inspection.~~
- ~~(e) — *Assistance.* If an individual needs assistance in making the request for reasonable accommodation, the city will provide assistance to ensure that the process is accessible.~~
- ~~(f) — *Timing.* A request for reasonable accommodation may be filed at any time that the accommodation may be necessary to ensure equal access to housing. A reasonable accommodation does not affect an individual's obligations to comply with other applicable regulations not at issue in the requested accommodation.~~
- ~~(g) — *Filing fees.* There shall be no fee imposed in connection with a request for reasonable accommodation under the provisions of this division.~~

~~Sec. 41-653. – Same—Review.~~

- ~~(a) — *Executive director review.* An application for reasonable accommodation shall be reviewed by the executive director of the planning and building agency, or his or her designee, as appropriate.~~
- ~~(b) — *Decision.* Within sixty (60) days of acceptance of the application as complete, the executive director shall issue a written decision to grant, grant with modifications, or deny an application for reasonable accommodation in~~

~~accordance with section 41-654 and shall notify the applicant of the decision. The written decision shall explain in detail the basis of the decision, including the executive director's findings on the factors stated in section 41-654. If necessary to reach a determination on the request for reasonable accommodation, the executive director may request additional information from the applicant consistent with the Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act, specifying in detail the information that is required. If a request for additional information is made, the sixty-day period to issue a decision is stayed until the applicant responds to the request.~~

- ~~(c) *Referral to other reviewing authority.* The executive director shall have the authority, upon his or her sole discretion, to refer any reasonable accommodation application to any other reviewing authority, including, but not limited to, the planning commission, the zoning administrator, or the historic resources commission, to review the reasonable accommodation application and make a determination on the same in accordance with the applicable sections.~~

~~**Sec. 41-654. Same Standards.**~~

- ~~(a) *Findings.* The decision to grant, grant with modifications, or deny an application for reasonable accommodation shall be based on a finding of consistency with the Acts and shall take into consideration all of the following factors:~~
- ~~1. Whether the housing or housing related facilities, which are the subject of the request, will be used by an individual with a disability under the Acts.~~
 - ~~2. Whether the request for reasonable accommodation is necessary to make specific housing available to an individual with a disability under the Acts.~~
 - ~~3. Whether the requested reasonable accommodation would impose an undue financial or administrative burden on the city.~~
 - ~~4. Whether the requested reasonable accommodation would require a fundamental alteration in the nature of a city program or law, including but not limited to land use and zoning.~~
 - ~~5. Whether the requested reasonable accommodation would be contrary to the public health, safety, or welfare, or be injurious to the property or improvements of adjacent properties.~~
 - ~~6. Whether the requested reasonable accommodation adequately considers the physical attributes of the property and structures.~~

~~7. Whether alternative reasonable accommodations could provide an equivalent level of benefit.~~

~~8. Whether the property is in compliance with the then existing laws and regulations otherwise applicable to the property that is the subject of the request. If any non-compliance is through no fault of the applicant or unrelated to the request for reasonable accommodation, the executive director may waive this requirement. However, such a waiver shall not preclude the city from requiring that the existing violations be corrected in accordance with the Santa Ana Municipal Code.~~

~~(b) *Conditions of approval.* In granting a request for reasonable accommodation, the executive director of the planning and building agency may impose any conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation will comply with the findings required by this section. Conditions may be imposed to ensure that any removable structures or physical design features that are constructed or installed in association with the reasonable accommodation be removed once those structures or physical design features are unnecessary to afford the individual with a disability for whom the reasonable accommodation was granted the use and enjoyment of the dwelling.~~

~~(c) *Restrictive covenant.* When applicable, the city shall enter into a restrictive covenant with the owner of the property which provides that prior to any sale, transfer, lease or other conveyance of the property, or at the time the need for the reasonable accommodation is no longer necessary, that the owner of the property shall bring the property into conformance with the city's zoning code to the extent that relief was provided under the zoning code as part of the request for reasonable accommodation. The restrictive covenant shall be recorded against the property being granted the reasonable accommodation. The restrictive covenant shall provide that the reasonable accommodation does not run with the land and shall terminate upon any sale, transfer, lease or other conveyance of the property. Upon submittal of a new application for a successor in interest to the property, the executive director may consider a continuation of the reasonable accommodation if it is consistent with and does not extend the original approval.~~

~~Sec. 41-655. -- Same -- Miscellaneous provisions.~~

~~(a) *Time extension; voidance; revocation.* Any reasonable accommodation approved in accordance with the terms of this article may be extended, voided, or revoked for the same reasons and in the same manner as a conditional use permit, as detailed in article V of this chapter, or for any violations of this article, or for any violations of the terms and conditions of the reasonable accommodation, or if any law is violated in connection with the use of the reasonable accommodation.~~

- ~~(b) *Resubmittal of applications.* No request for reasonable accommodation that has been denied in whole or in part shall be filed again within six (6) months from the date of such denial except upon proof of changed conditions or by permission of the executive director of the planning and building agency.~~
- ~~(c) *Modifications.* A request to modify an approved reasonable accommodation shall be treated as a new application, unless in the opinion of the executive director the requested modification results in only a minor change, is within the authority of the executive director to approve, and is consistent with the original approval.~~
- ~~(d) *Appeals.* The applicant requesting the accommodation may appeal an adverse determination or any conditions or limitations imposed in the written determination as provided in Chapter 3 of this Code.~~

Section 29. Sections 41-1323 (Care Homes) and 41-1324 (Lodging Houses) of Chapter 41 of the SAMC are hereby amended to read as follows:

Sec. 41-1323 – 41-1324. - Care Homes Reserved.

~~The minimum off street parking requirements for care homes are as follows: one (1) space for each three (3) beds.~~

Sec. 41-1324. -- Lodging houses.

~~The minimum off street parking requirements for lodging houses are as follows: one (1) space for each guest room or one (1) space for each one hundred fifty (150) square feet of sleeping area, whichever is greater, plus two (2) enclosed spaces for use by the operator of the lodging house and two (2) guest spaces.~~

Section 30. Section 41-1327 (Fraternity and Sorority Houses and Dormitories) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-1327. - Fraternity and sorority houses and dormitories Reserved.

~~The minimum off street parking requirements for fraternity and sorority houses and dormitories are as follows: one (1) space for each two (2) beds or one (1) space for each eighty (80) square feet of sleeping area, whichever is greater.~~

Section 31. Table 2A of Section 41-2007 (Use Standards) of the Transit Zoning Code (Specific Development No. 84) is hereby amended as per Exhibit A of this Ordinance.

Section 32. Table 3-2 of (Permitted Uses) of the Harbor Mixed Use Transit Corridor Specific Plan (Specific Plan No. 2) is hereby amended as per Exhibit B of this Ordinance.

Section 33. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Santa Ana hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

Section 34. The City Council of the City of Santa Ana hereby adopts an ordinance amending various sections of Chapter 41 (Zoning) of the Santa Ana Municipal Code pertaining to lodging-related land use definitions and deleting the reasonable accommodation ordinance from Chapter 41 of the SAMC. This approval was based upon the evidence submitted at the above said hearing, which includes, but is not limited to: the Request for City Council Action dated May 18, 2021, and exhibits attached thereto; and the public testimony, all which are incorporated herein by reference.

Section 35. This ordinance shall become effective thirty (30) days after its adoption.

Section 36. The Clerk of the Council shall certify the adoption of this ordinance and shall cause the same to be published as required by law.

ADOPTED this _____ day of _____, 2021.

Vicente Sarmiento
Mayor

APPROVED AS TO FORM
Sonia R. Carvalho, City Attorney

By: John M. Funk
John M. Funk
Sr. Assistant City Attorney

AYES: Councilmembers: _____

NOES: Councilmembers: _____

ABSTAIN: Councilmembers: _____

NOT PRESENT: Councilmembers: _____

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, DAISY GOMEZ, Clerk of the Council, do hereby attest to and certify that the attached Ordinance No. NS-_____ to be the original ordinance adopted by the City Council of the City of Santa Ana on _____, and that said ordinance was published in accordance with the Charter of the City of Santa Ana.

Date: _____

Clerk of the Council
City of Santa Ana

Sec. 41-2007. Uses Permitted.

(a) Allowable Land Use Types. A parcel or building within the Specific Development area shall be occupied by only the land uses allowed by the table entitled Use Standards (hereinafter Use Standards Table) within the zone applied to the site by the Regulating Plan.

(b) Garage sales are allowed in compliance with Section 41-193.

(c) Temporary outdoor activities are allowed in compliance with Section 41-195.5.

(d) Youth amusement rides are permitted in compliance with Section 41-366 for C1 districts.

(e) Drive-through facilities shall not be permitted.

Sec. 41-2008. Operational Standards.

(a) All property shall be maintained in a safe, sanitary and attractive condition including, but not limited to, structures, landscaping, parking areas, walkways, and trash enclosures.

(b) All business activities shall be conducted and located within an enclosed building, except as allowed by Section 41-195 of the SAMC and except that the following business activities may be conducted outside of an enclosed building:

- (1) Newsstands
- (2) Flower Stands

(c) There shall be no manufacturing, processing, compounding, assembling or treatment of any material or product, other than that which is clearly incidental to a particular retail and service general enterprise, and where such goods are sold on the premises.

(d) There shall be no work inside of a structure that generates noise that exceeds 60 dB CNEL measured at the exterior wall of the unit.

(e) Storage of goods and supplies shall be limited to those sold at retail on the premises or utilized in the course of business.

(f) Public utility structures, including electric distribution and transmission substations shall be screened by a solid wall at least eight (8) feet high, except as restricted by Sections 36-45, 36-46, and 36-47.

(g) Any activity permitted shall be conducted in such a manner as not to have a detrimental effect on permitted adjacent uses by reason of refuse matter, noise, light, or vibration.

(h) Small scale industry uses shall require a solid wall or fence not less than eight (8) feet in height along any rear or side lot line.

(i) All business activities, including, but not limited to, compounding, processing, packaging or assembly of articles of merchandise and treatment of products shall be conducted within a completely enclosed building. No ancillary vehicle maintenance or repair shall be allowed on site.

(j) Loading areas shall not be visible from streets. Loading areas not facing a street shall be setback at least thirty-five (35) feet from the property line.

Table 2A - Use Standards						
Land Use Type	Permit Required by Zone					
	TV	DT	UC	CDR	UN-2	UN-1

Refer to Key to Zone Symbols table on following page for zone description and use notations

RESIDENTIAL

Live-Work Use / Joint living-working quarters	P (2)	P (2)	P (2)	P (2)	CUP	CUP
Care Homes	CUP ---	CUP ---	CUP ---	CUP ---	CUP ---	CUP ---
Single Dwelling	---	---	---	---	P	P
Multi-Family Dwellings	P (1)	P (1)	P (1)	P (1)	P	P

RECREATION, EDUCATION AND ASSEMBLY

Community assembly	P(1)	P (1)	P (1)	P	CUP	CUP
Health/fitness facility	P	P	P	P	CUP	---
Library, museum	P	P	P	P	P	CUP
Schools	P (1)	P (1)	P (1)	P	CUP	CUP
Studio	P	P	P	P	CUP	CUP
Theater, cinema or performing arts	P	P	P	P	---	---
Commercial Recreation (Indoor)	CUP	CUP	CUP	---	---	---

RETAIL

General retail, except with any of the following features	P	P	P	P	P(2)	---
• Floor area over 20,000 per tenant	CUP	CUP	P	---	CUP	---
Eating establishments	P	P	P	P	P(2)	---
Auto or motor vehicle service	---	---	P	P	---	---

SERVICE GENERAL

Banquet facility/catering-sub. to 41.199.1(a) through (d)	CUP	CUP	CUP	CUP(1)	---	---
Child day care - more than 8 and up to 14 children	P (3)	P (3)	P	P	LUC(2)	LUC
Child day care center	P (3)	P (3)	P	P	CUP	CUP
Adult day care center-subject to 41.199.2 of the SAMC	P (3)	P (3)	P	P	P	---
Hotel, excl. transient residential hotel and long term stay	P	P	P	P	---	---
Mortuaries, funeral homes	---	---	CUP	P	---	---
Personal services	P	P	P	P	P(2)	P (2)
Personal services - restricted	---	---	CUP	CUP	CUP	---
Tattoo/Body Art Establishments - subject to 41.1993 of the SAMC	P	P	P	P	---	---



Permitted Uses

Table 3-2 shall regulate land uses within the Harbor Corridor Plan area. The table provides uses by district. The uses are indicated by abbreviation: permitted (P), not permitted (N), permitted by Conditional Use Permit (CUP), permitted by Land Use Certificate (LUC), and permitted through Site Plan Review (SPR). The Transit Node District is divided into two areas based on their proximity to the transit stops.

Transit Node | North: Permitted uses shall apply to properties in the Transit Node District adjacent to the North Transit Stop as depicted in Figure 3-1.

Transit Node | South: Permitted uses shall apply to properties in the Transit Node District adjacent to the South Transit Stops as depicted in Figure 3-1.

Table 3-2. Permitted Uses

LAND USE TYPE	TRANSIT NODE		CORRIDOR	NEIGH TRANSITIONAL	OPEN SPACE
	NORTH	SOUTH			
RESIDENTIAL					
Joint living-working quarters	P (1)	P	P (2)	CUP	N
Care homes	N	N	CUP <u>N</u>	CUP <u>N</u>	N
Single family dwelling	N	N	P	P	N
Multi-family dwellings (in building types other than a House or Live-Work)	P (1)	P (1)	P	P	N
RECREATION, EDUCATION, AND ASSEMBLY					
Community assembly or religious facility	P (1)	P (1)	P	CUP	N
Library, museum	P	P	P	P	SPR
Park or recreation facility (outdoor)	P	P	P	P	P
Commercial recreation/health/fitness (indoor)	CUP	CUP	N	N	P
School	P (1)	P (1)	P	CUP	N
Studio	P (3)	P	P	CUP	N
Theater, cinema or performing arts	P	P	P	N	N
RETAIL					
General retail	P (3)	P	P	P (2)	N
Grocery, food market	P (3)	P	P (3)	P (2)	N
Eating establishment	P (3)	P	P	P (2)	N
Auto or motor vehicle sales	N	N	CUP	N	N
SERVICE: GENERAL					
Auto or motor vehicle service	N	N	CUP	N	N
Banquet facility/catering - subject to 41.199.1 of the SAMC	CUP (1)	CUP (1)	CUP (1)	N	N
Child day care - more than 8 and up to 14 children	P (1)	P	P	LUC	N
Child day care center (15 or more children)	P (1)	P	P	CUP	N
Hotel, excluding transient residential hotel and long-term stay	P	P	P	N	N
Personal services	P (3)	P	P	P (2)	N
Personal services - restricted	N	N	CUP	CUP	N
SERVICE: BUSINESS/FINANCIAL/PROFESSIONAL					
Bank, financial services	P (3)	P	P	N	N
Clinic, urgent care	N	N	P	N	N
Doctor, dentist, chiropractor office	P (1)	P	P	N	N
Professional/administrative/service office	P (1)	P	P	P (2)	N
TRANSIT, COMMUNICATION, INFRASTRUCTURE					
Parking facility - public or commercial (stand-alone parking structures are prohibited) (4)	P	P	SPR	N	N
Transit station or terminal	P	P	P	N	SPR
Public utility structure, excluding wireless communication facilities	N	N	N	CUP	SPR
MISCELLANEOUS/OTHER					
Any structure over three (3) stories in height	SPR	SPR	SPR	SPR	SPR
Businesses operating between 12 am and 7 am	CUP	CUP	CUP	CUP	N
Alcoholic beverage sales or consumption	CUP	CUP	CUP	CUP	N
Adult business	N	N	N	N	N
Light or heavy industrial	N	N	N	N	N

- (1) Use permitted only on second or upper floors, or behind retail or service ground floor use.
- (2) Permitted use as part of a vertical mixed use program, with upper floor residential
- (3) Permitted only as part of a mixed use project with a commercial or residential component
- (4) Parking facilities must comply with building frontage standards

- P Use is permitted subject to compliance with all applicable provisions of the Santa Ana Municipal Code
- LUC Use is permitted subject to the approval of a Land Use Certificate
- CUP Use is permitted subject to the approval of a Conditional Use Permit
- SPR Use is permitted subject to the approval of a Site Plan Review

ORDINANCE NO. NS-XXX

ORDINANCE AMENDMENT NO. 2021-01 – AN
ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
SANTA ANA ESTABLISHING VARIOUS NEW SECTIONS IN
CHAPTER 1 OF THE SANTA ANA MUNICIPAL CODE
READOPTING AND UPDATING REGULATIONS AND
ADMINISTRATIVE PROCEDURES FOR REVIEWING AND
APPROVING REASONABLE ACCOMMODATION
REQUESTS

THE CITY COUNCIL OF THE CITY OF SANTA ANA HEREBY ORDAINS AS
FOLLOWS:

Section 1. The City Council of the City of Santa Ana hereby finds, determines and declares as follows:

A. The Federal Fair Housing Amendments Act of 1988 and California Fair Employment and Housing Act require local jurisdictions to establish a process by which persons with disabilities can request reasonable accommodations to the jurisdiction's codes, rules, policies, practices or services, necessary to afford persons with disabilities an equal opportunity to use or enjoy a dwelling.

B. Under California Government Code section 65583, each city must analyze in its housing element the special needs of disabled persons. Each housing element also must analyze governmental constraints to the development and maintenance of housing for disabled persons, and include a program to provide reasonable accommodations from zoning and land use regulations to allow for the development of housing for disabled persons.

C. On March 21, 2011, the City Council adopted Ordinance NS-2813, thereby creating a Reasonable Accommodations Ordinance and establishing an application process and standards by which the City may evaluate requests for reasonable accommodations by individuals with disabilities.

D. In addition to the foregoing statutes, other state and federal disability laws require a city to provide reasonable accommodations for disabled persons in the application of city programs, including but not limited to the city's land-use, zoning, and building regulations, as well as other programs, policies, practices and procedures.

E. By adopting this Ordinance, the City desires to amend its municipal code to update the process by which persons with disabilities can request such reasonable accommodations in full accordance with state and federal laws.

F. The protection of public health, safety and welfare is a primary objective of the Santa Ana General Plan.

G. Concurrent with this effort, the Planning Commission, following a duly-noticed public hearing on April 26, 2021, approved Zoning Ordinance Amendment No. 2021-02 to delete and add certain definitions and sections pertaining to group living in the Zoning Code.

H. Ordinance Amendment No. 2021-01 is consistent with various goals and policies of the General Plan. Specifically, it is consistent with Housing Element Goal 2 (A diversity of quality housing, affordability levels, and living experiences that accommodate Santa Ana's residents and workforce of all household types, income levels, and age groups to foster an inclusive community), Policy HE-2.4 (diverse housing types), and Goal 4 (Adequate rental and ownership housing opportunities and supportive services for seniors, people with disabilities, families with children, and people needing emergency, transitional, or supportive housing), Policies HE-4.3 and HE-4.7 (provide housing for disabled people and provide regulatory oversight).

I. On May 18, 2021, the City Council held a duly-noticed public hearing and considered the staff report, recommendations by staff, and public testimony concerning OA No. 2021-01.

Section 2. The City Council finds and determines that this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the State CEQA Guidelines because it will not result in a direct or reasonably foreseeable indirect physical change in the environment, as there is no possibility it will have a significant effect on the environment and it is not a "project", as defined in Section 15378 of the CEQA Guidelines.

Section 3. Article I of Chapter 1 of the Santa Ana Municipal Code is hereby established to read in full as follows and shall include present Sections 1-1 through 1-21.9 in their entirety:

Article I. – In General

Section 4. Article II of Chapter 1 of the Santa Ana Municipal Code is hereby established to read in full as follows:

Article II. – Reasonable Accommodations

Section 1-22. - Purpose and Intent.

It is the policy of the City to make, as provided in this Article, reasonable accommodation in the application of its programs, including its zoning and land-use laws in Chapter 41 of the Santa Ana Municipal Code (Zoning), for disabled persons, to the extent required under federal and state disability laws. The purpose of this article is to establish a process

for disabled persons to submit and for the City to review a request for reasonable accommodation.

Section 1-23. - Definitions.

For the purposes of this Article, unless otherwise apparent from the context, certain words or phrases used in this section are defined as follows:

1. “Person or Persons with a disability” means: a person or persons who have a physical or mental impairment that makes achievement of a major life activity difficult, as defined by state and federal disability laws; anyone who is regarded as having such impairment; or anyone with a record of such impairment.
2. “Reasonable accommodation” means providing a person with disability a flexibility in the application of City programs, including City land-use, zoning and building regulations, policies, practices and procedures, or waiving certain requirements when it is necessary to provide meaningful access to City programs or to eliminate barriers to housing opportunities for persons with disabilities.

Section 1-24. - Review Authority.

The Executive Director or a designee of the Executive Director of the Planning and Building Agency is the final authority on a Request for Reasonable Accommodation. Regardless of who the initial review authority is, a denial of a request may be appealed by the requestor to a hearing officer. The hearing officer’s decision shall be final.

Section 1-25. - Applicability.

1. Eligible Applicants.
 - a. A Request for Reasonable Accommodation may be made by any person with a disability, his or her representative, or a developer or provider of housing or other services for persons with disabilities, when the application of a City program, including a City land-use or building regulation, policy, practice or procedure, acts as a barrier to meaningful access to City programs or to fair-housing opportunities for persons with disabilities.
 - b. Federal and state disability laws afford no protection to persons with or without disabilities whose tenancy presents a direct threat to the persons or property of others. Determining whether someone’s tenancy poses such a direct threat must be made on an individualized basis, however, and may not be based on general assumptions or speculation about the nature of a disability.

2. Eligible Request. A Request for Reasonable Accommodation may include a modification or exception to the practices, rules, or standards for a City program or for the development, siting, and use of housing or housing-related facilities that would eliminate regulatory barriers and provide a person with a disability with meaningful access to City programs and equal opportunity to housing of the person's choice.

Section 1-26. - Application.

1. Requirements. Application for a Request for Reasonable Accommodation shall be made to the Review Authority pursuant to Section 1-24 of this article on forms approved by the Review Authority and shall be full and complete, including such data as may be prescribed by the Review Authority to assist in determining the validity of the request. Incomplete applications shall not be accepted for filing. Minimum application components must include the following:
 - a. Property location
 - b. Legal owner information
 - c. Applicant information
 - d. Request and reasoning
 - e. Legal owner and applicant signatures
 - f. Any other relevant information deemed necessary by the City to evaluate the Request for Reasonable Accommodation
2. Assistance with Application. Upon request, the City will provide assistance to a person needing assistance in making the Request for Reasonable Accommodation to ensure that the process is accessible to persons with disabilities.

Section 1-27. - Review and Processing.

1. Application Review. The Review Authority will approve, approve with conditions, or deny a Request for Reasonable Accommodation in accordance with the required findings in Section 1-28 (Required Findings).
2. Decision.
 - a. Decision Timing and Content. The Review Authority will issue a written decision on a Request for Reasonable Accommodation within 30 days of receipt of a complete application. The written decision shall explain in detail the basis of the decision under the required findings in Section 1-28 (Required Findings), give notice of the applicant's right to appeal the decision, and be sent to the applicant by certified or registered mail.

- b. Request for Further Information. If necessary to reach a decision on Request for Reasonable Accommodation, the Review Authority may request further information from the applicant consistent with state and federal disability laws and this article, specifying in detail the further information required. In the event that a request for additional information is made, the 30-day period to issue a decision under this section is stayed until the applicant responds to the request.
3. Compliance with other Regulations. An approved Request for Reasonable Accommodation does not affect any person's obligations to comply with all other applicable regulations not at issue in the requested accommodation.
4. Confidentiality. Any information identified by an applicant as confidential shall be retained in a manner so as to respect the privacy rights of the applicant and shall not be made available for public inspection, unless disclosure is otherwise required by state or federal law.

Section 1-28. - Required Findings.

Prior to approval of a Request for Reasonable Accommodation, the following findings must be made consistent with federal and state disability laws:

1. When housing is the subject of the request for reasonable accommodation, the housing will be used by a person with disabilities protected under fair housing laws.
2. As applicable, the requested accommodation is necessary to make housing available to a person with disabilities protected under the fair housing laws.
3. The requested accommodation would not impose an undue financial or administrative burden on the City.
4. The requested accommodation would not require a fundamental alteration in the nature of the City's policies, practices or procedures, including consideration of alternatives which may provide an equal level of benefit.
5. The requested accommodation will not result in a direct and significant threat to the health or safety of other persons or substantial physical damage to the property of others.

Section 1-29. - Appeals.

1. The action of the Review Authority is final unless appealed to within 10 working days. The notice of appeal must be in writing and, upon receipt and filing of the appropriate appeal fee, the Review Authority shall schedule the

appeal to be heard by a hearing officer within 30 days. The decision of the hearing officer is final.

2. Assistance with Appeal. Upon request, the City will provide assistance to a person needing assistance in filing an appeal to ensure that the appeals process is accessible to persons with disabilities.

Section 1-30. - Modifications Requested by the Applicant.

The applicant may request modifications to an approved request for reasonable accommodation. The application for modification shall be submitted, processed, and reviewed in the same manner as a new application.

Section 1-31. - Modifications or Revocations Initiated by the City.

1. Review Authority and Findings. The Review Authority may make changes or revoke the approval of applications when conditions of approval are violated, it is necessary to resolve a nuisance, or when the application contained incorrect, false, or misleading information.
2. Procedures. The Review Authority will notify the applicant of the change or revocation of the approval by mail no later than the next business day after the Review Authority decision. The applicant may appeal the Review Authority's decision to as provided in Section 1-29.

Section 5. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Santa Ana hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

Section 6. This ordinance shall become effective thirty (30) days after its adoption.

Section 7. The Clerk of the Council shall certify the adoption of this ordinance and shall cause the same to be published as required by law.

ADOPTED this _____ day of _____, 2021.

Vicente Sarmiento
Mayor

APPROVED AS TO FORM
Sonia R. Carvalho, City Attorney

By: John M. Funk
John M. Funk
Sr. Assistant City Attorney

AYES: Councilmembers: _____
NOES: Councilmembers: _____
ABSTAIN: Councilmembers: _____
NOT PRESENT: Councilmembers: _____

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, DAISY GOMEZ, Clerk of the Council, do hereby attest to and certify that the attached Ordinance No. NS-_____ to be the original ordinance adopted by the City Council of the City of Santa Ana on _____, and that said ordinance was published in accordance with the Charter of the City of Santa Ana.

Date: _____

Clerk of the Council
City of Santa Ana

Select California Laws Relating to Residential Recovery Facilities and Group Homes

State Bar of California
Real Property Law Section
Fair Housing and Public Accommodations Section

Third Annual Fair Housing and Public Accommodations Symposium
Golden Gate University
April 22, 2011

Presented by:

Barbara Kautz
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1300 Clay Street, Ninth Floor
Oakland, CA 94612
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I. Introduction

This paper summarizes California statutes and case law regarding planning and zoning requirements applicable to group homes and supportive housing that impose limitations on local governments beyond those imposed by the federal Fair Housing Act and state Fair Employment and Housing Act. The paper first reviews state statutes that protect certain *licensed* group homes and describes provisions of State Planning and Zoning Law that are applicable more generally to both licensed and unlicensed homes. It then explains California case law relating to the right of privacy, which prevents local governments from discriminating between households containing related persons and those comprised of unrelated individuals. It concludes by discussing local regulations that appear to be permissible under State law and fair housing law.

II. Statutes Protecting Licensed Facilities

A complex set of statutes requires that cities and counties treat small, licensed group homes like single-family homes. Inpatient and outpatient psychiatric facilities, including residential facilities for the mentally ill, must also be allowed in certain zoning districts.

A. California Licensing Laws

California has adopted a complicated licensing scheme in which group homes providing certain kinds of care and supervision must be licensed. Some licensed homes cannot be closer than 300 feet to each other, while other licensed homes have no separation requirements. All licensed facilities serving six or fewer persons must be treated like single-family homes for zoning purposes.

While this section discusses some of the most common licensed facilities, it does not include every type of license or facility regulated in this complex area of law.

1. Community Care Facilities

Community care facilities must be licensed by the California Department of Social Services (CDSS).¹ A "community care facility" is a facility where non-medical care and supervision are provided for children or adults in need of personal services.² Facilities serving adults typically provide care and supervision for persons between 18-59 years of age who need a supportive living environment. Residents are usually mentally or developmentally disabled. The services provided may include assistance in dressing and bathing; supervision of client activities; monitoring of food intake; or oversight of the client's property.³

CDSS separately licenses residential care facilities for the elderly and residential care facilities for the chronically ill. Residential care facilities for the elderly provide varying levels of non-

¹ Cal. Health & Safety Code 1500 *et seq.*

² Cal. Health & Safety Code 1502(a).

³ 22 Cal. Code of Regulations 80001(c)(2).

medical care and supervision for persons 60 years of age or older.⁴ Residential care facilities for the chronically ill provide treatment for persons with AIDS or HIV disease.⁵

2. Drug and Alcohol Treatment Facilities

The State Department of Drug and Alcohol Programs ("ADP") licenses facilities serving six or fewer persons that provide residential non-medical services to adults who are recovering from problems related to alcohol or drugs and need treatment or detoxification services.⁶ Individuals in recovery from drug and alcohol addiction are defined as disabled under the Fair Housing Act.⁷ This category of disability includes both individuals recovering in licensed detoxification facilities and recovering alcoholics or drug users who may live in "clean and sober" living facilities.

3. Health Facilities

The State Department of Health Services and State Department of Mental Health license a variety of residential health care facilities serving six or fewer persons.⁸ These include "congregate living health facilities" which provide in-patient care to no more than six persons who may be terminally ill, ventilator dependent, or catastrophically and severely disabled⁹ and intermediate care facilities for persons who need intermittent nursing care.¹⁰ Pediatric day health and respite care facilities with six or fewer beds are separately licensed.¹¹

B. Protection from Land Use Regulations for Certain Licensed Facilities

Small facilities licensed under these sections of California law and serving six or fewer residents must be treated by local governments identically to single-family homes. Additional protection from discrimination is provided to certain psychiatric facilities. However, some group homes may be subject to spacing requirements.

1. Limitations on Zoning Control of Small Group Homes Serving Six or Fewer Residents

Licensed group homes serving six or fewer residents must be treated like single-family homes or single dwelling units for zoning purposes.¹² In other words, a licensed group home serving six or fewer residents must be a permitted use in all residential zones in which a single-family home is

⁴ Cal. Health & Safety Code 1569.2(k).

⁵ 22 Cal. Code of Regulations 87801(a)(5).

⁶ Cal. Health & Safety Code 11834.02.

⁷ 24 C.F.R. 100.201.

⁸ Cal. Health & Safety Code 1265 – 1271.1.

⁹ Cal. Health & Safety Code 1250(i).

¹⁰ Cal. Health & Safety Code 1250(e) and 1250(h).

¹¹ Cal. Health & Safety Code 1760 – 1761.8.

¹² This rule appears to apply to virtually all licensed group homes. Included are facilities for persons with disabilities and other facilities (Welfare & Inst. Code 5116), residential health care facilities (Health & Safety Code 1267.8, 1267.9, & 1267.16), residential care facilities for the elderly (Health & Safety Code 1568.083 - 1568.0831, 1569.82 – 1569.87), community care facilities (Health & Safety Code 1518, 1520.5, 1566 - 1566.8, 1567.1, pediatric day health facilities (Health & Safety Code 1267.9; 1760 – 1761.8), and facilities for alcohol and drug treatment (Health & Safety Code 11834.23).

permitted, with the same parking requirements, setbacks, design standards, and the like. No conditional use permit, variance, or special permit can be required for these small group homes unless the same permit is required for single-family homes, nor can parking standards be higher, nor can special design standards be imposed. The statutes specifically state that these facilities cannot be considered to be boarding houses or rest homes or regulated as such.¹³ Staff members and operators of the facility may reside in the home in addition to those served.

Homeowners' associations and other residents also cannot enforce restrictive covenants limiting uses of homes to "private residences" to exclude group homes for the disabled serving six or fewer persons.¹⁴

The Legislature in 2006 adopted AB 2184 (Bogh) to clarify that communities may fully enforce local ordinances against these facilities, including fines and other penalties, so long as the ordinances do not distinguish residential facilities from other single-family homes.¹⁵

Because there are no separation requirements for drug and alcohol treatment facilities, ADP has in practice been willing to issue separate licenses for 'small' drug and alcohol treatment facilities whenever a dwelling unit or structure has a separate address. For instance, ADP has issued a separate license for each apartment in one multifamily building, for each single-family home in a six-home compound, and for each cottage in a hotel, in each case creating facilities that in fact serve many more than six residents. No local effort to regulate these facilities as 'large' residential care facilities has been successful in a published case; in other contexts, the courts have determined that the State has completely preempted local regulation of small residential care facilities.¹⁶

2. Facilities Serving More Than Six Residents

Because California law only protects licensed facilities serving six or fewer residents, many cities and counties restrict the location of facilities housing seven or more clients. They may do this by requiring use permits, adopting special parking and other standards for these homes, or prohibiting these large facilities outright in certain zoning districts. While this practice may raise fair housing issues, no published California decision prohibits the practice. Some cases in other federal circuits have found that requiring a conditional use permit for large group homes violates the federal Fair Housing Act.¹⁷ However, the federal Ninth Circuit, whose decisions are binding in California, found that requiring a conditional use permit for a building atypical in size and bulk for a single-family residence does not violate the Fair Housing Act.¹⁸

¹³ For example, *see* Health & Safety Code 1566.3 & 11834.23.

¹⁴ Government Code 12955; Hall v. Butte Home Health Inc., 60 Cal. App. 4th 308 (1997); Broadmoor San Clemente Homeowners Assoc. v. Nelson, 25 Cal. App. 4th 1 (1994).

¹⁵ Health & Safety Code 1566.3; Chapter 746, Statutes of 2006.

¹⁶ City of Los Angeles v. Department of Health, 63 Cal. App. 3d 473, 479 (1976).

¹⁷ ARC of New Jersey v. New Jersey, 950 F. Supp. 637 (D. N.J. 1996); Assoc. for Advancement of the Mentally Handicapped v. City of Elizabeth, 876 F. Supp. 614 (D. N.J. 1994).

¹⁸ Gamble v. City of Escondido, 104 F.3d 300, 304 (9th Cir. 1997); *see also* United States v. Village of Palatine, 104 F.3d 300, 304 (9th Cir. 1997).

A city or county cannot require an annual review of a group home's operations as a condition of a use permit. The Ninth Circuit has held that an annual review provision adopted as a condition of a special use permit was not consistent with the Fair Housing Act.¹⁹

In 2006, the Legislature passed a bill (SB 1322) sponsored by State Senator Cedillo that would have required all communities to designate sites where licensed facilities with seven or more residents could locate either as a permitted use or with a use permit. It was motivated by newspaper reports of suburban communities' "dumping" the mentally ill and homeless in big cities. Although SB 1322 was vetoed by the Governor, changes were later made in Housing Element law to protect certain transitional and supportive housing, as discussed further below.

3. Siting of Inpatient and Outpatient Psychiatric Facilities

Cities must allow health facilities for both inpatient and outpatient psychiatric care and treatment in any area zoned for hospitals or nursing homes, or in which hospitals and nursing homes are permitted with a conditional use permit.²⁰ "Health facilities" include residential care facilities for mentally ill persons. This means that if a zoning ordinance permits hospitals or nursing homes in an area, it must also permit all types of mental health facilities, regardless of the number of patients or residents. This is important because most cities are supportive of hospitals and nursing zones and may allow them in areas where they would normally not wish to allow large facilities for the mentally ill.

In one case, a residential care facility for 16 mentally ill persons was refused a permit in an R-2 zoning district where "rest homes" and "convalescent homes" were permitted, but not "nursing homes." Since the zoning district did not permit "nursing homes" or hospitals, the City believed that it was able to forbid the use in that zoning district. However, the court found that the City's definitions of "rest homes" and "convalescent homes" were very similar to its definition of "nursing homes"—rest homes and convalescent homes were, in effect, nursing homes—and so held that the City must allow the residential facility for mentally ill persons within that zoning district.²¹

4. Separation Requirements for Certain Licensed Facilities

CDSS must deny an application for certain group homes if the new facility would result in "overconcentration." For community care facilities,²² intermediate care facilities, and pediatric day health and respite care facilities,²³ "overconcentration" is defined as a separation of less than 300 feet from another licensed "residential care facility," measured from the outside walls of the structure housing the facility. Congregate living health facilities must be separated by 1,000 feet.²⁴

¹⁹ Turning Point, Inc. v. City of Caldwell, 74 F.3d 941 (9th Cir. 1996).

²⁰ Cal. Wel. & Inst. Code 5120.

²¹ City of Torrance v. Transitional Living Centers, 30 Cal. 3d 516 (1982).

²² Cal. Health & Safety Code 1520.5.

²³ Cal. Health & Safety Code 1267.9.

²⁴ Cal. Health & Safety Code 1267.9(b)(2).

These separation requirements do *not* apply to residential care facilities for the elderly, drug and alcohol treatment facilities, foster family homes, or "transitional shelter care facilities," which provide immediate shelter for children removed from their homes. None of the separation requirements have been challenged under the federal Fair Housing Act, although separation requirements have been challenged in other states.²⁵

CDSS must submit any application for a facility covered by the law to the city where the facility will be located. The city may request that the license be denied based on overconcentration or may ask that the license be approved. CDSS cannot approve a facility located within 300 feet of an existing facility (or within 1,000 feet of a congregate living health facility) unless the city approves the application. Even if there is adequate separation between the facilities, a city or county may ask that the license be denied based on overconcentration.²⁶

These separation requirements apply only to facilities with the same type of license. For instance, a community care facility would not violate the separation requirements even if located next to a drug and alcohol treatment facility.

C. Facilities That Do Not Need a License

Housing in which some services are provided to persons with disabilities may not require licensing. In housing financed under certain federal housing programs, including Sections 202, 221(d)(3), 236, and 811, if residents obtain care and supervision independently from a third party that is not the housing provider, then the housing provider need not obtain a license.²⁷ "Supportive housing" and independent living facilities with "community living support services," both of which provide some services to disabled people, generally do not need to be licensed.²⁸ Recovery homes providing group living arrangements for people who have *graduated* from drug and alcohol programs, but which do not provide care or supervision, also do not need to be licensed.²⁹

The result is that many situations exist where persons with disabilities will live together and receive some services in unlicensed facilities. Because State law does not require that these facilities be treated as single-family homes, some communities have attempted to classify them as lodging houses or other commercial uses and require special permits. Distinguishing a "lodging house" from a "residence" is discussed in more detail in the next section. However, courts in other jurisdictions have found that when the state does not provide a license for a type of facility, cities cannot discriminate against facilities merely because they are unlicensed.³⁰ Although there is no case on point in California or the Ninth Circuit, ordinances requiring greater regulation for *unlicensed* homes with fewer services than *licensed* homes providing more services could raise fair housing issues, although an argument can also be made that unlicensed facilities are completely unregulated and hence require more local supervision. Some

²⁵ Based on cases from other states, the 1,000-foot limit for congregate living health facilities is unlikely to be upheld. Spacing requirements that have been challenged have required 500-foot separations or more.

²⁶ See, e.g., Cal. Health & Safety Code 1520.5(d).

²⁷ Cal. Health & Safety Code 1505(p).

²⁸ Cal. Health & Safety Code 1504.5.

²⁹ Cal. Health & Safety Code 1505(i).

³⁰ North-Shore Chicago Rehabilitation Inc. v. Village of Skokie, 827 F. Supp. 497 (1993).

communities have explicitly adopted ordinances stating that unlicensed group homes serving six or fewer clients are permitted in residential zones.³¹

Legislation was introduced in California in 2006 to make clear that communities *could* regulate *unlicensed* facilities with six or fewer residents. This provision was ultimately removed after receiving fierce opposition from advocates for the disabled and State agencies responsible for finding placements for foster children and recovering drug and alcohol abusers.

III. California Planning and Zoning Laws

California Planning and Zoning Law has long contained provisions prohibiting discrimination in land use decisions based on disability. Effective January 1, 2002, state housing element law was amended to require an analysis of constraints on persons with disabilities and to require programs providing reasonable accommodation. Additional protections for supportive and transitional housing became effective on January 1, 2008.

A. Protection from Discrimination in Land Use Decisions

California's Planning and Zoning Law prohibits discrimination in local governments' zoning and land use actions based on (among other categories) race, sex, lawful occupation, familial status, disability, source of income, method of financing, or occupancy by low to middle income persons.³² It also prevents agencies from imposing different requirements on single-family or multifamily homes because of the familial status, disability, or income of the intended residents.³³

In general, the statute serves the same purposes and requires the same proof as a violation of the federal Fair Housing Act.³⁴ However, federal fair housing law does not specifically limit discrimination based on *income level*,³⁵ and Section 65008 makes clear that discrimination based on disability is prohibited in local planning and zoning decisions.

B. Housing Elements

California requires that each city and county adopt a 'housing element' as part of its general plan for the growth of the community.³⁶ The housing element governs the development of housing in the community. It must identify sites for all types of housing, including transitional housing, supportive housing, and emergency shelters. Beginning in 2002, local housing elements were required to analyze constraints on housing for persons with disabilities and to include programs

³¹ For instance, one community adopted zoning provisions stating that “residential service facilities” serving 6 or fewer clients could be permitted in any residential zone, defining such uses as: “A residential facility, other than a residential care facility or single housekeeping unit, designed for the provision of personal services in addition to housing, or where the operator receives compensation for the provision of personal services in addition to housing. Personal services may include, but are not limited to, protection, care, supervision, counseling, guidance, training, education, therapy, or other nonmedical care.”

³² Cal. Gov't Code 65008(a) and (b).

³³ Cal. Gov't Code 65008(d)(2).

³⁴ Keith v. Volpe, 858 F.2d 467, 485 (9th Cir. 1987).

³⁵ Affordable Housing Development Corp. v. City of Fresno, 433 F.3d 1182 (2006).

³⁶ Cal. Gov't Code 65580 *et seq.*

to remove constraints or to provide reasonable accommodations for housing designed for persons with disabilities.³⁷ The California Attorney General also sent a letter to local planning agencies in May 2001 urging them to adopt reasonable accommodation ordinances. As a consequence, many cities and counties in the State now have a separate reasonable accommodation ordinance that may be applicable to group homes serving disabled persons, whether licensed or unlicensed.

Amendments to housing element law effective January 1, 2008³⁸ specifically require cities and counties to include in their housing elements a program to remove constraints so that 'supportive housing,' as defined in the bill, is treated like other residences of the same type. This means that communities must revise their zoning so that the only restrictions that may be applied to supportive housing, as defined in the statute, are those that apply to other residences of the same type (single-family homes, duplexes, triplexes, or fourplexes) in the same zoning district; no conditional use permit or other permit is required unless other residences of that type in the same zone also must obtain the same permit.

However, to qualify for this protection, the supportive housing must meet the definition of "supportive housing" contained in Health & Safety Code Section 50675.14, which is housing that:

- Has no limit on the length of stay.
- Is linked to onsite or offsite services that assist residents in improving their health status, retaining the housing, and living and working in the community.
- Is occupied by the "target population," defined as adults *with low incomes* having one or more disabilities, including mental illness, HIV or AIDS, substance abuse, or other chronic health problems; and persons eligible for services under the Lanterman Development Disabilities Act, which provides services to persons with developmental disabilities that originated before the person turned 18.

Should a group home meeting this definition of "supportive housing" require a permit of any type, California's "Housing Accountability Act" will allow it to be denied only under very limited circumstances.³⁹

³⁷ Cal. Gov't Code 65583(a)(4); 65583(c)(3).

³⁸ Cal. Gov't Code 65583(a)(5).

³⁹ Cal. Gov't Code 65589.5(d). Local governments cannot deny supportive housing, or add conditions that make the housing infeasible, unless they can make one of five findings:

- The jurisdiction has met its low income housing needs.
- The housing would have a specific, adverse impact on public health or safety, and there is no feasible way to mitigate the impact.
- Denial is required to comply with state or federal law, and there is no way to comply without making the housing unaffordable.
- The housing is proposed on land zoned for agriculture and is surrounded on two sides by land being used for agriculture, or there is inadequate water or sewer service.
- The housing is inconsistent with both the zoning and the land use designation of the site and is not shown in the housing element as an affordable housing site.

Many privately operated group homes have limitations on the length of stay and are not occupied by adults with low incomes and so do not qualify as "supportive housing" under this definition; but many group homes funded under California's Mental Health Services Act do so qualify.

IV. Protections Provided by the California Right to Privacy

Unlike the federal Constitution, California's Constitution contains an *express* right to privacy, adopted by the voters in 1972. The California Supreme Court has found that this right includes "the right to be left alone in our own homes" and has explained that "the right to choose with whom to live is fundamental."⁴⁰ Consequently, the California courts have struck down local ordinances that attempt to control *who* lives in a household—whether families or unrelated persons, whether healthy or disabled, whether renters or owners. On the other hand, the courts will support ordinances that regulate the *use* of a residence for commercial purposes.

Consequently, communities that desire to regulate group homes have attempted to define them as commercial *uses* similar to boarding houses rather than restricting *who* lives there.

A. Families v. Unrelated Persons in a Household

In many states, local communities can control the number of unrelated people permitted to live in a household. However, based on the privacy clause in the State Constitution, California case law requires cities to treat groups of related and unrelated people identically when they function as one household.⁴¹ Local ordinances that define a "family" in terms of blood, marriage, or adoption, and that treat unrelated groups differently from "families," violate California law. California cities cannot limit the number of unrelated people who live together while allowing an unlimited number of family members to live in a dwelling.

In the lead case of *City of Santa Barbara v. Adamson*, Mrs. Adamson owned a very large 6,200 sq. ft., 10-bedroom single-family home that she rented to twelve "congenial people." They became "a close group with social, economic, and psychological commitments to each other. They shared expenses, rotated chores, ate evening meals together" and considered themselves a family.

However, Santa Barbara defined a family as either "two (2) or more persons related by blood, marriage or legal adoption living together as a single housekeeping unit in a dwelling unit," or a maximum of five unrelated adults. The court considered the twelve residents to be an "alternate family" that achieved many of the personal and practical needs served by traditional families. The twelve met half the definition of "family," because they lived as a single housekeeping unit. However, they were not related by blood. The court found that the right of privacy guaranteed them the right to choose whom to live with. The purposes put forth by Santa Barbara to justify the ordinance—such as a concern about parking—could be handled by neutral ordinances applicable to all households, not just unrelated individuals, such as applying limits on the number of cars to *all* households. "*In general, zoning ordinances are much less suspect when they focus on the use than when they command inquiry into who are the users.*"⁴²

⁴⁰ Coalition Advocating Legal Housing Options v. City of Santa Monica, 88 Cal. App. 4th 451, 459-60 (2001).

⁴¹ City of Santa Barbara v. Adamson, 27 Cal. 3d 123, 134 (1980).

⁴² Adamson, 27 Cal. 3d at 133.

Despite this long-standing rule, a 2002 study found that *one-third* of local zoning ordinances, including that of the City of Los Angeles, still contained illegal definitions of "family" that included limits on the number of unrelated people in a household.⁴³ While most cities were aware that these limits were illegal and did not enforce them, interviews with staff members in the City of Los Angeles, for example, found that many did attempt to enforce the limits on the number of unrelated persons.⁴⁴

If a group of people living together can meet the definition of a "household" or "family," there is no limit on the number of people who are permitted to live together, except for Housing Code limits discussed in the next section. By comparison, many ordinances regulate licensed group homes more strictly if they have seven or more residents, by defining such licensed facilities as a separate *use*.

Since *Adamson*, the California courts have struggled to determine when zoning ordinances are focusing on the *occupants* of the home and when they are focusing on the *use* of the home. In particular, courts have struck down ordinances that:

- Limited the residents of a second dwelling unit to the property owner, his/her dependent, or a caregiver for the owner or dependent.⁴⁵
- Allowed owner-occupied properties to have more residents than renter-occupied properties.⁴⁶
- Imposed regulations on tenancies-in-common that had the effect of requiring unrelated persons to share occupancy of their units with each other.⁴⁷

On the other hand, the courts have upheld regulations when they were convinced that the city's primary purpose was to prevent non-residential or commercial *use* in a residential area. In particular, the courts have upheld ordinances that:

- Regulated businesses in single-family residences ("home occupations") and limited employees to residents of the home.⁴⁸
- Prohibited short-term transient rentals of properties for less than thirty days.⁴⁹

B. Occupancy Limits

The Uniform Housing Code (the "UHC") establishes occupancy limits—the number of people who may live in a house of a certain size—and in almost all circumstances municipalities may

⁴³ Housing Rights, Inc., *California Land Use and Zoning Campaign Report* 27-28 (2002). Los Angeles is now considering amendments to its ordinance.

⁴⁴ Kim Savage, *Fair Housing Impediments Study* 37 (prepared for Los Angeles Housing Department) (2002).

⁴⁵ *Coalition Advocating Legal Housing Options v. City of Santa Monica*, 88 Cal. App. 4th 451 (2001).

⁴⁶ *College Area Renters and Landlords Assn. v. City of San Diego*, 43 Cal. App. 4th 677 (1996). However, this case was decided primarily on equal protection grounds, rather than on the right of privacy.

⁴⁷ *Tom v. City & County of San Francisco*, 120 Cal. App. 4th 674 (2004).

⁴⁸ *City of Los Altos v. Barnes*, 3 Cal. App. 4th 1193 (1992).

⁴⁹ *Ewing v. City of Carmel*, 234 Cal. App. 3^d 1579 (1991).

not adopt more restrictive limits. The UHC provides that at least one room in a dwelling unit must have 120 square feet. Other rooms must have at least 70 square feet (except kitchens). If more than two persons are using a room for sleeping purposes, there must be an additional 50 square feet for each additional person.⁵⁰ Using this standard, the occupancy limit would be seven persons for a 400-sq. ft. studio apartment (the size of a standard two-car garage). Locally adopted occupancy limits cannot be more restrictive than the UHC unless justified based on local climatic, geological, or topographical conditions. Efforts by cities to adopt more restrictive standards based on other impacts (such as parking and noise) have been overturned in California.⁵¹

Similarly, the Ninth Circuit found that a local ordinance that limited the number of persons in a homeless shelter to 15, when the building code would allow 25 persons, was unreasonable, and found that allowing 25 persons in the shelter would constitute a reasonable accommodation.⁵²

Based on these federal and state precedents, localities may not limit the number of people living in a dwelling below that permitted by the UHC.

V. Local Regulation of Group Homes

In the past decade, much local concern has been directed at sober living homes, which are typically unlicensed facilities designed to provide support to recovering substance abusers. Because privately operated sober living homes often desire to attract middle- and upper middle-income residents, and there is a high demand for such facilities, they have often been located in middle- and upper-class areas, and in some cases have experienced local opposition. The League of California Cities has sponsored legislation designed to require licensing or allow more local control, but those efforts have failed. Communities often view such facilities as businesses exploiting a loophole rather than as residences and so seek to be able to distinguish them from residences, often defining them as "lodging houses" or "boarding houses." Lodging houses typically require a conditional use permit and are not permitted in single-family residential zones. Conversely, sober living homes seek to be classified as "households" or "single housekeeping units" so they may locate in any residential neighborhood without requiring any public notice or needing any use permit.

A. Defining Unlicensed Facilities as Lodging Houses or Single Housekeeping Units

A 2003 opinion of the State Attorney General found that communities may prohibit or regulate the operation of a lodging house in a single family zone in order to preserve the residential character of the neighborhood.⁵³ The City of Lompoc defined a lodging house as "a residence or dwelling . . . wherein three or more rooms, with or without individual or group cooking facilities, are rented to individuals under separate rental agreements or leases, either written or oral, whether or not an owner, agent or rental manager is in residence." The Attorney General agreed

⁵⁰ Cal. Health and Safety Code 17922(a)(1). See Briseno v. City of Santa Ana, 6 Cal. App. 4th 1378, 1381-82 (1992) (holding that the state Uniform Housing Code preempts local regulation of occupancy limits).

⁵¹ Briseno, 6 Cal. App. 4th at 1383.

⁵² Turning Point, Inc. v. City of Caldwell, 74 F.3d 941 (9th Cir. 1996).

⁵³ 86 Ops. Cal. Att'y Gen'l 30 (2003).

that a lodging house, while providing a 'residence' to paying customers, could be considered a *commercial* use and so could be prohibited in residential areas. ("There is no question but that municipalities are entitled to confine commercial activities to certain districts [citations], and that they may further limit activities within those districts by requiring use permits."⁵⁴)

The Attorney General further concluded that the ordinance was consistent with *Adamson* because it would allow any owner of property to rent to any member of the public and any member of the public to apply for lodging. The proposed ordinance would be directed at a commercial *use* of property inconsistent with the residential character of the neighborhood regardless of the identity of the users.

Based on the Attorney General's opinion and *Adamson*, then, cities have increasingly defined a "household" or "single housekeeping unit" to have these characteristics:

- One joint lease signed by all residents;
- Access by all to all common areas of the home; and
- Shared housekeeping and shared household expenses.
- No limits on length of residence.
- New residents selected by existing residents, not a manager or landlord.

For instance, the City of Los Angeles proposed an ordinance defining a "single housekeeping unit" as:

One household where all the members have common access to and common use of all living, kitchen, and eating areas within the dwelling unit, and household activities and responsibilities such as meals, chores, expenses, and maintenance of the premises are shared or carried out according to a household plan or other customary method. If all or part of the dwelling unit is rented, the lessees must jointly occupy the unit under a single lease, either written or oral, whether for monetary or non-monetary consideration.

The same ordinance proposed to define a boarding or rooming house as:

A one-family dwelling, or a dwelling with five or fewer guest rooms or suites of rooms, where lodging is provided to individuals with or without meals, for monetary or non-monetary consideration under two or more separate agreements or leases, either written or oral.

Under these and similar ordinance definitions, many sober living homes operated by private organizations, whether for-profit or nonprofit, are classified as boarding or lodging houses because residents do not sign a joint lease; new residents are selected by a manager; household expenses may not be shared (i.e., residents pay a set fee to the manager); and there may be limits

⁵⁴ *Id.*

on length of residence. In contrast, persons who desire to live together to support each other during recovery and rent a home together would be classified as a “single housekeeping unit.”

Enforcement Issues. If a group home is challenged as not constituting a single housekeeping unit, the operator will likely assert that it is indeed operating as a single unit. Unless there is public information available showing that a residence is operated as a lodging house (e.g., web advertising), an investigation would be required to demonstrate otherwise. If complaints were based primarily on the disability of the occupants (which could include their status as recovering drug and alcohol abusers), then California privacy rights and fair housing laws might be implicated. In one Washington, D.C., case, a federal district court found a violation of the federal Fair Housing Act where the Zoning Administrator carried out a detailed investigation of a residence for five mentally ill men in response to neighbors' concerns, finding that the Zoning Administrator's actions were motivated in part by the neighbors' fears about the residents' mental illness.⁵⁵ In California, a similar challenge might be additionally based on rights of privacy and equal protection concerns.

B. Best Practices - Service Providers

We advise our nonprofit sponsors that if a facility can be considered a single housekeeping unit, the facility must be treated as a residence with one family residing in it. The most defensible structure for such a facility would be to:

- Have one rental agreement or lease signed by all *occupants*. If, instead, the provider signs the lease and each resident has a verbal or written agreement with the provider, then the facility could be considered a "lodging house" under the definition upheld by the Attorney General.
- Give all residents equal access to all living and eating areas and food preparation and service areas.
- Keep track of, and share, household expenses.
- Do not require occupants to move after a certain period of time, except for time limits imposed by the rental agreement or lease with the owner.
- Allow all existing residents to select new members of the household.

VI. Conclusion

In my own experience as a former city official, many group homes were invisible in the community and caused few problems. Most complaints about overcrowding and excessive vehicles did not involve a group home, but rather the poorest areas where space was rented out to the limits of the Housing Code.

The group homes that caused the most concern were sober living facilities which tended to concentrate in certain inexpensive single-family neighborhoods. In one case, all five homes on

⁵⁵ Community Housing Trust v. Dep't of Consumer & Regulatory Affairs, 257 F. Supp. 2d 208 (D.D.C. 2003).

one block face were purchased by a single owner. He was knowledgeable about his rights but unconcerned about his obligations, and sneered at the City's and neighborhood's concerns. Since the facilities were unlicensed, there was no regulatory oversight. When the occupant of one home was arrested for drug dealing, it caused an uproar.

Many providers are conscious of their position in neighborhoods and make an effort to accommodate community concerns. Others may be perceived as arrogant and dismissive of local concerns, viewing all neighbors as "NIMBYs." Providers who view themselves as part of the community and set house rules that encourage community involvement, restrict noise, control parking, and establish smoking locations not visible from the street can go a long way toward abating perceived problems.

Cities should modify their zoning ordinances to address unlicensed group homes and decide on a strategy for dealing with group homes with seven or more persons (use permit and reasonable accommodation). State legislation requiring some minimal licensing for sober living facilities would also be beneficial to set standards for minimal levels of care. Cities need also to avoid the kind of incidents that result in the Legislature's willingness to further constrain local control of these homes.

SUMMARY: GROUP HOME ANALYSIS UNDER CALIFORNIA LAW

IF LICENSED:

6 or fewer clients:

Must be treated like a single-family home for all zoning purposes, except for spacing requirements for certain licensed facilities (e.g., community care facilities). Community care facilities for the elderly and drug and alcohol treatment centers do not have spacing requirements.

7 or more clients:

Psychiatric facilities—both inpatient and outpatient—must be permitted in any zone that permits nursing homes or hospitals as conditional or permitted uses. (City of Torrance v. Transitional Living Centers)

Other licensed facilities are often subject to a use permit and may not be permitted in certain zones. Advocates may request a reasonable accommodation to avoid use permit requirements or to obtain modifications to traditional zoning requirements. But the Ninth Circuit has not found a use permit *per se* to violate the Fair Housing Act. (Gamble v. City of Escondido)

IF UNLICENSED:

Is it operated as a single housekeeping unit (household, family)?

If so, must be treated like a single dwelling unit.

Unlicensed homes are more likely to be considered as a single housekeeping unit if they meet the following tests:

- Physical access: all have access to common areas: kitchen, laundry, living & family rooms is free.
- No limits on term of occupancy
- All residents on lease or rental agreement [AG's opinion]
- Makeup of the household is determined by the residents rather than a landlord or property manager
- Normal household activities (meals, chores) and household expenses shared (*Adamson*)

There are different *local* definitions of "family" or a single housekeeping unit. (For instance, some localities do not use the existence of separate rental agreements as a test for a single housekeeping unit.) Advocates oppose some of the above characteristics.

Does it qualify as "supportive housing" under housing element law?

If so, must be treated like other residences of the same physical type [depending on date of adoption of housing element].

6 or fewer clients:

Fair housing argument if treated more strictly than licensed facilities; but no case in California holds this specifically.

Defined as a boarding house or another use?

Only the *use* can be regulated, not the *user*.
Group homes for the disabled cannot be treated in a discriminatory fashion from other group homes (boarding houses, dormitories, etc.).

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CITY OF SANTA ANA PLANNING
SANTA ANA/PLANNING & BUILDING
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SANTA ANA, CA 92702

CNS 3460915

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Ad Description: ZOA 2021-02

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NOTICE OF PUBLIC HEARING BEFORE THE SANTA ANA PLANNING COMMISSION

The City of Santa Ana encourages the public to participate in the decision-making process. We encourage you to contact us prior to the Public Hearing if you have any questions.

Planning Commission Action Items - The Planning Commission will hold a Public Hearing at a Regular meeting to receive public testimony and will make a recommendation on the items described below. Their recommendation will be forwarded to the City Council at a later date for final determination.

Project Location: Citywide

Project Applicant: City of Santa Ana

Proposed Project: The City is requesting adoption of Zoning Ordinance Amendment No. 2021-02 to amend various sections of Chapter 41 (Zoning) of the Santa Ana Municipal Code addressing reasonable accommodations, group homes, and accessory dwelling units (ADUs). Specifically, the proposed amendments include establishing uses permitted by right and a reasonable accommodation process to address other facility types, and ADU ordinance refinements related to definitions, development standards, and size limitations.

Environmental Impact: The Planning Commission will consider a

determination that the project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines - General Rule. Notice of Exemption/Environmental Review No. 2021-40 will be filed for this project.

Meeting Details: This matter will be heard on **Monday, April 26, 2021 at 5:30 p.m.** In light of COVID-19, this meeting will be conducted in a virtual environment. For the most up to date information on how to participate virtually in this meeting, please visit <https://www.santa-ana.org/pb/planning-and-building-meetings/planning-and-building-meeting-participation>.

Written Comments: If you are unable to participate in the virtual meeting, you may send written comments by e-mail to PBACComments@santa-ana.org (reference the Agenda Item # in the subject line) or mail to Sarah Bernal, Recording Secretary, City of Santa Ana, 20 Civic Center Plaza - M20, Santa Ana, CA 92701. **Deadline to submit written comments is 5:00 p.m. on the day of the meeting.** Comments received after the deadline may not be distributed to the Commission but will be made part of the record.

Where To Get More Information: Additional details regarding the proposed action(s), including the full text of the discretionary item, may be found on the City website 72 hours prior to the public hearing at:

www.santa-ana.org/cc/city-meetings

Who To Contact For Questions: Should you have any questions, please contact Ali Pezeshkpour with the Planning and Building Agency at APezeshkpour@santa-ana.org or 714-647-5882.

Note: If you challenge the decision on the above matter, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Planning Commission or City Council of the City of Santa Ana at, or prior to, the public hearing.

Si tiene preguntas en español, favor de llamar a Narcadalia Perez al (714) 667-2260. N u c h i e n l i c b n g t i n g V i t x i n i n t h o i c h o Tony Lai's (714) 565-2627.

4/14/21
CNS-3460915#
ORANGE COUNTY REGISTER





**City of Santa Ana
20 Civic Center Plaza, Santa Ana, CA 92701
Planning Commission Staff Report
April 26, 2021**

Topic: Call for an Election of the Office of Chairperson, Initiated by Planning Commissioner

RECOMMENDED ACTION

Discuss the request. If the Planning Commission desires, it can exercise the process authorized under Section 12(b) of the Bylaws to conduct a Preliminary Review and to conduct the election for the office of Chairperson at the next regular meeting. The initial step of calling for the Preliminary Review of a matter not otherwise before the Commission requires three (3) affirmative votes by the members of the Planning Commission. In the event of three votes, the matter will be scheduled for the next regularly scheduled meeting, in accordance with Section 12(b) of the Bylaws.

DISCUSSION

At the meeting of April 12, 2021, there was a request to place the election of the office of the Chairperson on the Agenda for the Planning Commission. Pursuant to Section 11 of the Planning Commission Bylaws, the election of the offices of Chairperson and Vice Chairperson is conducted annually in July and when there is a vacancy to serve the remainder of the unexpired term. The Planning Commission conducted the annual election in accordance with the Bylaws on August 10, 2020, and elected Commissioner Mark McLoughlin and Commissioner Cynthia Contreras-Leo to serve as Chairperson and Vice Chairperson, respectively, for the 2020-2021 term.

Due to the vacancy of the office of Vice Chairperson as a result of the departure of former Commissioner Cynthia Contreras-Leo, the election for the office of the Vice Chairperson was placed on the agenda and was conducted by the Commission during the regular meeting of March 22, 2021. With regards to the office of Chairperson, under the Bylaws, that election is not due until July of 2021. This office has been continuously served by Commissioner McLoughlin since August of 2020, and a vacancy under the Bylaws has not occurred.

Commissioner McLoughlin started serving the 2020-2021 Chairperson term as a City Council appointed Citywide representative. Subsequently, on January 19, 2021, the City Council appointed Commissioner McLoughlin to serve as a representative of Ward 4 in place of being a Citywide representative. Commissioner McLoughlin's service on the Planning Commission has been continuous and uninterrupted by a resignation or a vote of the City Council to remove the Commissioner from his appointment as a Planning Commissioner.

As previously indicated, the Bylaws only address the election of officers annually in July and in a situation of a vacancy. However, Section 12(b) of the Bylaws states that any three members may vote to take up any matter for preliminary review that is not otherwise before the Commission. The Bylaws outline a three step process. The first step requires a vote to occur at a regular meeting to place the matter on the agenda for preliminary review at the next regularly scheduled meeting. If three affirmative votes are made, the matter will be agendized for preliminary review at the next regularly scheduled meeting. In order for the Commission to pursue the issue beyond a preliminary review, a majority vote is required. If the issue receives a majority vote to move forward, the last step is to take action on the issue.

If the Planning Commission desires, it can exercise the above steps as articulated in Section 12(b) of the Bylaws to preliminarily review and take action calling the election for the office of Chairperson at the next regular meeting.

ENVIRONMENTAL IMPACT

There is no environmental impact associated with this action.

FISCAL IMPACT

There is no environmental impact associated with this action.

EXHIBIT(S)

1. The Bylaws of the Planning Commission of the City of Santa Ana

Submitted By:

Minh Thai, Executive Director of Planning and Building Agency

THE BYLAWS OF THE PLANNING COMMISSION OF THE CITY OF SANTA ANA

1. MEETINGS

- a. The Planning Commission shall meet monthly on the second and fourth Monday at 5:30 p.m. at the City Council Chamber, 22 Civic Center Plaza, Santa Ana, California. In the event any regular meeting falls on a holiday, the regular meeting shall be held the next business day at the same hour prescribed hereinabove. A regular meeting may be adjourned to a time and place designated by the Chairperson.
- b. Matters requiring special study may be agendized by city staff or continued to a Special Study Meeting upon a vote of the Commission.
- c. The Chairperson is empowered to re-organize the agenda order at his/her discretion.
- d. As to each matter before the Commission, the Chairperson shall state the matter before the Commission. Staff shall present the staff report and recommendation. The Planning Commission Secretary shall inform the Commission of any correspondence received related to the subject matter.
- e. Any decision or ruling of the Chairperson (including discretionary rulings) may be appealed by request of any member (at any time). The Chairperson shall ask for a roll call vote of the Commission to determine if the decision of the Chairperson shall be upheld. If the roll call vote loses, the Chairperson is reversed.

2. QUORUM

A majority of the Commission shall constitute a quorum for the action of business.

3. CONDUCT OF PUBLIC HEARINGS

- a. The Chairperson will open the public hearing, recognize all parties speaking in favor of, or opposed to, the matter, then recognize the applicant.

- b. No person, other than the applicant or the applicant's designee, addressing the Commission shall speak more than three minutes, unless so authorized by the Chairperson.
- c. Once recognized by the Chairperson, any Commissioner may speak and may be limited by the Chairperson until all other Commissioners have had an opportunity to speak.
- d. During the public hearing, any Commissioner may ask unlimited questions of the staff, the applicant or any member of the public who has spoken before the Commission after being recognized by the Chairperson.
- e. The Chairperson may, at his/her discretion, encourage the proponents and opponents of any matter to organize into spokesperson groups in the interest of expediency and to avoid repetition. However, no person desiring to speak shall be denied the right to do so.
- f. Closing the public hearing:
 - 1) After all speakers have been heard, the Chairperson shall declare the hearing closed.
 - 2) A closed hearing may be re-opened only on motion and vote as hereinafter provided.
- g. Commission Discussion:
 - 1) After close of the public hearing, members of the Commission may publicly discuss the matter before them and may ask questions, with the permission of the Chairperson, of persons who have spoken before the Commission. Speakers shall respond to questions posed and not introduce new testimony.
 - 2) Upon conclusion of the discussion, if any, the Chairperson shall ask for a motion declaring the decision of the Commission. The motion shall be made and seconded.
 - 3) Prior to a vote, the motion may be further discussed by members of the Commission.

4. WITHDRAWALS

- a. Any matter set for hearing by the Commission may be withdrawn from consideration at the oral or written request of the applicant or staff.

- b. Any matter set for hearing at which neither the applicant nor his/her representative is present may, upon vote of the commission, be denied without prejudice with forfeiture of all fees to defray the costs of preparing the hearing.

5. CONTINUANCES

- a. A continuance may be requested by staff, the applicant or a commissioner, either orally or in writing. At the discretion of the Chairperson, a discussion may be held on the requested continuance.
- b. At the close of the discussion, or if no discussion is held, the matter will, upon vote of the commission, be continued to a date certain.

6. PROCESSING OF MOTIONS

- a. A motion shall be made and seconded. (If any debate then follows and it is likely that there will be confusion as to the motion, the Chairperson or any interested party should ask the Planning Commission Secretary to read it from his/her notes). A motion may not be withdrawn or modified by the mover without the consent of the second.
- b. The Chairperson, and the Vice Chairperson in the absence of a Chairperson, has the right to make or second motions.

7. ACTION ON ITEMS

At any meeting where an action on an item is to be taken by the Commission, including an application for a variance, conditional use permit, minor exception, zone change or zoning amendment at a public hearing, the following rules shall apply:

- a. The Commission may continue the item to a date certain in accordance with Section 5 of these Bylaws.
- b. An item is approved if a motion to approve is carried by majority vote of the members voting. The failure to carry of a motion to approve does not constitute denial of the item.
- c. Any member may move to approve an item subject to different conditions proposed in previous motions not approved.

- d. An item is denied if a motion to deny is carried by majority vote of the members voting. The failure to carry a motion to deny does not constitute approval of the item.
- e. In the event of an impasse, the Chairperson shall offer the proponent of the item the option of:
 - 1) Denial without prejudice of his/her item, in which case the proponent may appeal to the City Council, if permitted by the Santa Ana Municipal Code; or
 - 2) Continuing the item to a later date for further consideration by the Commission. (Items are deemed at an impasse at the discretion of the Chairperson.)

8. ABSTENTIONS AND CONFLICTS OF INTEREST

- a. No member of the Commission shall abstain from any vote without providing an explanation.
- b. When a member decides to abstain, he/she shall openly state the fact and nature of his/her abstention and then absent himself/herself from the room prior to debate and vote on the matter.
- c. A member is not required to abstain from voting because of absence from any part of the public hearing, provided such member has read the staff report and minutes pertaining to the hearing, any and all documentary evidence introduced in the hearing, and provided further that such member shall be given the opportunity to ask questions of any interested persons who are present and of the other members of the Commission concerning matters discussed at the hearing.
- d. Each Commissioner shall decide for himself/herself whether to disqualify himself/herself by reason of a financial, personal or perceived conflict of interest in accordance with state law. Each commissioner shall be entitled to consult with the Commission's legal counsel privately prior to making such a decision and should do so as early as possible after perceiving the possible conflict.
- e. Each Commissioner shall complete and submit to the Commission Secretary an ex parte disclosure form, as approved by the Executive Director of the Planning and Building Agency and the City Attorney, as applicable and necessary to document any and all ex parte communications with applicants or outside parties, prior to the commencement of any form of hearing before the Commission on the

subject matter. If any ex parte communications occur after the commencement of the matter but before the matter is closed, the Commissioner shall submit a supplemental ex parte disclosure form to the Commission Secretary.

9. VOTING

- a. The vote required to decide in the affirmative shall be the vote of more than one-half of the members present.
- b. Only a voice vote shall be taken unless a member of the Commission calls for a roll call vote.
- c. Any member who voted with the majority on any action may move for reconsideration of such action only at the same meeting. After a motion for reconsideration has once been acted on, no other motion for reconsideration thereof shall be made without unanimous consent.

10. CONSENT ITEMS

All matters listed under consent items on the agenda are considered routine and will be acted upon by the Commission without discussion, unless any Commission member wishes to discuss the item. In that event, the Chairperson will remove that item from the consent calendar and place it on the agenda for separate consideration.

11. COMMISSION OFFICERS

- a. The Planning Commission shall have two elected offices: Chairperson and Vice Chairperson. The officers shall be elected during the month of July each year and shall take effect at the subsequent meeting.
- b. In the event of a vacancy in the office of the Chairperson or Vice Chairperson, the Planning Commission shall elect one of its members for the unexpired term at its next regular meeting following the occurrence of the vacancy.
- c. In the event that both the Chairperson and Vice Chairperson are absent from the same meeting of the Commission, the Commission shall, as the first order of business, nominate a member to serve as Chairperson pro tem for the meeting.

- d. The Planning Commission shall annually elect a commission member to serve as ex officio representative to the Historic Resources Commission, as stated in the City Charter (Section 2-371).

(Added by Planning Commission vote on February 8, 2016.)

12. ALL OTHER PLANNING COMMISSION POWERS AND DUTIES

- a. Attendance of Witnesses. The Planning Commission has the power to compel the attendance of witnesses, the power to issue subpoenas and the power to administer oaths in any proceeding or investigation pending before it. The City Attorney will be directed to issue said subpoenas upon the majority vote of the Commission (Charter Section 906 and 1100 of the Santa Ana Municipal Code).
- b. Matters before the Commission. Any three members may vote to take up any matter for preliminary review that is not otherwise before the Commission. In this event, the matter will be scheduled for review at the next regularly scheduled meeting. A majority vote will be required for the Commission to pursue the issue beyond a preliminary review.
- c. Temporary or Standing Committees.
- 1) The Chairperson shall appoint as needed such temporary or standing committees for the study, investigation, and report of particular matters as concern to the Commission.
 - 2) Standing committees may be appointed to advise on those Planning Commission responsibilities that are defined in the Charter:
 - a) General Plan and Zoning
 - b) Urban Design and Architectural Review

13. ENFORCEMENT

If any Planning Commissioner is found by a majority of the Planning Commission to be in violation of any section of these Bylaws of the Planning Commission or Code of Ethics and Conduct, the Planning Commission, upon majority vote of the Planning Commission, may take any or all of the following actions:

- a. Prepare a letter informing the City Council of a breach of the Bylaws and/or Code of Ethics and Conduct; and,

- b. Prepare a letter to the City Council requesting action be taken to address the situation.

14. THE CITY OF SANTA ANA CODE OF ETHICS AND CONDUCT (Attachment 1)

The Commission hereby adopts and incorporates by reference the Code of Ethics and Conduct, originally adopted by the City Council of the City of Santa Ana on June 2, 2008, and as may be amended by the City Council. All Commissioners shall be required to abide by the rules and regulations of said Code of Ethics and Conduct.



THE CITY OF SANTA ANA
CODE OF ETHICS AND CONDUCT

ADOPTED JUNE 2, 2008

The people of the City of Santa Ana, at an election held on February 5, 2008, approved an amendment to the City Charter of the City of Santa Ana which states: "The City of Santa Ana shall adopt a Code of Ethics and Conduct for elected officials and members of appointed boards, commissions, and committees to assure public confidence in the integrity of local government elected and appointed officials." Consistent with the vote of the people, the following Code of Ethics and Conduct is hereby adopted by the City of Santa Ana to ensure effective and fair operation of the local government of the City of Santa Ana.

I. PREAMBLE

It is the intent of this code to achieve fair, ethical, and accountable local government for the City of Santa Ana. The people of Santa Ana expect public officials, both elected and appointed, to comply with both the letter and the spirit of the laws of the State of California, the United States of America, and the Charter, Municipal Code, and established policies of the City of Santa Ana affecting the operations of local government. In addition, public officials are expected to comply with the provisions of this Code of Ethics and Conduct established pursuant to the expressed will of the people. All persons covered by this code will aspire to meet the highest ethical standards in the conduct of their responsibility as an elected or appointed official of the City of Santa Ana.

This code addresses various aspects related to the governance of the City of Santa Ana and supplements, but does not supplant other laws and rules that prescribe the legal responsibilities of City officials. These include, but are not limited to, the Federal and State Constitutions, various provisions of the California Government Code (such as the Brown Act and the Political Reform Act), the Labor Code, laws prohibiting discrimination and harassment, and the City of Santa Ana Charter and Municipal Code. Elected and appointed officials are expected to be familiar with these laws to ensure that they exercise their public responsibilities in a proper fashion. This code is not designed to be used as a tool to remove appointed officials, as the City Council retains the right under the Charter and Municipal Code to remove appointed officials in accordance with those provisions.

While it is not possible to anticipate and provide a rule of conduct and ethics for all situations that public officials may face, this Code of Ethics and Conduct is designed to provide a framework to guide public officials in their daily duties.

II. SCOPE

The provisions of this Code of Ethics and Conduct shall apply to the Mayor and members of the City Council, and to all members of the boards, commissions, and committees appointed by the City Council or the Mayor or the Mayor and City Council, including any *ad hoc* committees. Further, the provisions of this Code of Ethics and Conduct shall only apply to these officials and members acting in their official capacities and in the discharge of their duties.

III. CORE VALUES

Attitudes, words, and actions should demonstrate, support, and reflect the following qualities and characteristics for the well being of our community. The five core values and expressions that reflect these core values are as follows:

INTEGRITY/ HONESTY

- I am honest with my fellow elected officials, the public and others.
- I do not promise what I believe to be unrealistic.
- I am prepared to make unpopular decisions when my sense of the public's best interests requires it.
- I credit others' contributions to moving our community's interests forward.
- I do not knowingly use false or inaccurate information to support my position or views.
- I safeguard the ability to make independent, objective, fair and impartial judgments by scrupulously avoiding financial and social relationships and transactions that may compromise, or give the appearance of compromising, objectivity, independence, and honesty.

RESPONSIBILITY/PROTECTING THE PUBLIC'S INTERESTS

- I do not accept gifts, services or other special considerations because of my public position.
- I excuse myself from participating in decisions when my or my immediate family's financial interests may be affected by my agency's actions.
- I do not give special treatment or consideration to any individual or group beyond that available to any other individual
- I refrain from disclosing confidential information concerning litigation, personnel, property, or other affairs of the City, without proper legal authority, nor use such information to advance my financial or other personal interests.

FAIRNESS/ACCOUNTABILITY

- I promote meaningful public involvement in the agency's decision-making processes.
- I treat all persons, claims and transactions in a fair and equitable manner; I make decisions based on the merits of the issue.
- If I receive substantive information that is relevant to a matter under consideration from sources outside the public decision-making process, I publicly share it with my fellow governing board members and staff.
- I work to contribute to a strong organization that exemplifies transparency and open communication.

RESPECT FOR FELLOW ELECTED OR APPOINTED OFFICIALS, STAFF, AND THE PUBLIC

- I treat my fellow officials, staff and the public with patience, courtesy and civility, even when we disagree on what is best for the community.
- I work towards consensus building and gain value from diverse opinions.
- I respect the distinction between the role of office holder and staff; I involve staff in meetings with individuals, those with business before the agency, officials from other agencies and legislators to ensure proper staff support and to keep staff informed
- I conduct myself in a courteous and respectful manner at all times during the performance of my official City duties.
- I encourage full participation of all persons and groups; I am aware and observe important celebrations and events which reflect the values of our diverse population.

PROPER AND EFFICIENT USE OF PUBLIC RESOURCES

- I do not use public resources, such as agency staff time, equipment, supplies or facilities, for private gain or personal purposes.

- I make decisions after prudent consideration of their financial impact, taking into account the long-term financial needs of the agency, especially its financial stability.
- I demonstrate concern for the proper use of agency assets (such as personnel, time, property, equipment, funds) and follow established procedures.
- I am a prudent steward of public resources and actively consider the impact of my decisions on the financial and social stability of the City and its residents

IV. IMPLEMENTATION AND ENFORCEMENT

City of Santa Ana elected and appointed officials of the various boards, commissions and committees have the primary responsibility to assure that ethical standards are understood and met, and that the public can continue to have full confidence in the integrity of government. This code of ethics will be most effective when the elected and appointed officials are thoroughly familiar with it and embrace its provisions.

Upon adoption of this code, all current elected or appointed officials shall be given a copy of the code and asked to affirm in writing that they have received the code, understand its provisions, and pledge to conduct themselves by the code. All new members of the City Council, upon election or reelection, and members of boards, commissions, and committees appointed by the City Council, upon appointment or reappointment, shall be given a copy of the code and are required to affirm in writing they have received the code and understand its provisions, and pledge to conduct themselves by the code. (See Attachment) Additionally, all members of the City Council, boards, commissions, and committees, as part of their AB1234 training, shall be provided additional training clarifying the provisions and application of this code. The City Attorney, or his/her designee, shall serve as a resource person to those persons covered by the code to assist them in determination of appropriate actions consistent with the code.

A periodic review of the code shall be conducted to ensure that the code is an effective and vital document.

This Code of Conduct is intended to be a reflection of the community's values as articulated by the Mayor and City Council as they represent the will of the people of the City of Santa Ana.

CITY OF SANTA ANA – CODE OF ETHICS AND CONDUCT CERTIFICATION

As an elected or appointed official of the City of Santa Ana, California, I herein certify that I have received a copy of the Code of Ethics and Conduct of the City of Santa Ana, have been offered training and assistance in understanding this code, and am aware of the provisions of the code and its application to my responsibilities. Consistent with the code, I pledge the following in the conduct of my duties:

INTEGRITY/ HONESTY

- I am honest with my fellow elected officials, the public and others.
- I do not promise what I believe to be unrealistic.
- I am prepared to make unpopular decisions when my sense of the public's best interests requires it.
- I credit others' contributions to moving our community's interests forward.
- I do not knowingly use false or inaccurate information to support my position or views.
- I safeguard the ability to make independent, objective, fair and impartial judgments by scrupulously avoiding financial and social relationships and transactions that may compromise, or give the appearance of compromising, objectivity, independence, and honesty.

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- I do not accept gifts, services or other special considerations because of my public position.
- I excuse myself from participating in decisions when my or my family's financial interests may be affected by my agency's actions.
- I do not give special treatment or consideration to any individual or group beyond that available to any other individual.
- I refrain from disclosing confidential information concerning litigation, personnel, property, or other affairs of the City, without proper legal authority, nor use such information to advance my financial or other personal interests.

FAIRNESS/ACCOUNTABILITY

- I promote meaningful public involvement in the agency's decision-making processes.
- I treat all persons, claims and transactions in a fair and equitable manner; I make decisions based on the merits of the issue.
- If I receive substantive information that is relevant to a matter under consideration from sources outside the public decision-making process, I publicly share it with my fellow governing board members and staff.
- I work to contribute to a strong organization that exemplifies transparency and open communication.

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- I treat my fellow officials, staff and the public with patience, courtesy and civility, even when we disagree on what is best for the community.
- I work towards consensus building and gain value from diverse opinions.
- I respect the distinction between the role of office holder and staff; I involve staff in meetings with individuals, those with business before the agency, officials from other agencies and legislators to ensure proper staff support and to keep staff informed
- I conduct myself in a courteous and respectful manner at all times during the performance of my official City duties.
- I encourage full participation of all persons and groups; I am aware and observe important celebrations and events which reflect the values of our diverse population.

PROPER AND EFFICIENT USE OF PUBLIC RESOURCES

- I do not use public resources, such as agency staff time, equipment, supplies or facilities, for private gain or personal purposes.
- I make decisions after prudent consideration of their financial impact, taking into account the long-term financial needs of the agency, especially its financial stability.
- I demonstrate concern for the proper use of agency assets (such as personnel, time, property, equipment, funds) and follow established procedures.
- I am a prudent steward of public resources and actively consider the impact of my decisions on the financial and social stability of the City and its residents.