

MEMORANDUM

TO: City Council
FROM: City Manager
DATE: May 7, 2015
SUBJECT: Comments on Agenda Items, Meeting of May 12, 2015

ITEM 6. The City Council will be recognizing Mary Pat Paddock as the Duarte Senior Center's Volunteer of the Year. Mary Pat is a dedicated individual with a long history of volunteering throughout the community and we have benefited from her volunteer work at the Duarte Senior Center for more than 24 years. Her positive energy and generous efforts at the Duarte Senior Center exemplify what being a good volunteer is all about. The City Council will also be adopting and presenting her with a Proclamation that May is Older Americans Month.

ITEM 10.D (Consent). This resolution will be considered at the Contract Cities Conference later this month. California State regulations preempt local zoning law on sober living facilities or alcohol and drug prevention facilities in residential neighborhoods. This resolution recommends that the legislature change the law to allow cities to establish distance requirements on these facilities and restrict them to non-profit companies, which would be more consistent with the State's policy on group homes. From City staff's perspective this change would be better than the current law, but if given the opportunity we would prefer to see additional standards set in this area that would assist cities and the State in dealing with facilities that are deemed to be a nuisance.

ITEM 10.E (Consent). Council is being asked to proclaim that May is CalFresh Awareness Month. The CalFresh program is the federally-funded supplemental nutrition food benefit formerly known as the Food Stamps Program that is run through the LA County Department of Public Social Services. The program aims to raise the level of nutrition of low-income households by increasing their food purchasing power.

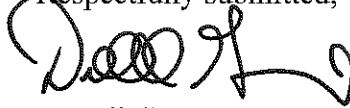
ITEM 12. In preparation for the second reading of the Massage Ordinance at tonight's meeting, staff noticed that the document that Council considered at both meetings in April contained typographical errors and other minor alterations. The attached Ordinance corrects these concerns and now clearly shows the modifications to Chapter 5.56, including deletions of existing code language shown in ~~strikethrough~~ and proposed language shown with a double underline. Furthermore, timeframes for pre-existing massage establishments to begin the compliance process have been updated to reflect the additional amount of time associated with the consideration of Municipal Code Amendment 14-06. These timeframes will not impair the timing for an approval of a CUP application for any massage establishments waiting to obtain approvals from the City. If the City Council chooses to introduce Council Bill 15-O-03 tonight, a second reading will be necessary at a future Council meeting, likely May 26, 2015. The Ordinance would become effective 30 days after the second reading.

ITEM 13.A. As mentioned at the Budget Workshop, beginning on July 1, 2015, the Healthy Workplaces, Healthy Families Act requires that all employers in California provide employees, who work at least 30 days per year, 1 hour of paid leave for every 30 hours worked, up to 24 hours of sick leave in a calendar year. Council is being asked to adopt the policy that will memorialize and

communicate information to part time employees regarding their legal rights to sick leave. The estimated cost of providing sick leave to our part time employees in 2015/16 is \$36,000.

ITEM 13.B. Council is being asked to execute an agreement with Cal Trans for the Active Transportation Program (ATP) grant funds by resolution, appropriate \$38,000 in Proposition A funds as the local match and authorize staff to conduct the RFP process for professional services to develop final plans for the project. As you know, the City received an Active Transportation Program (ATP) grant through Cal Trans for Duarte Road pedestrian and bike improvements and a city-wide way finding sign program. This agreement is for the planning portion of the project only and the construction portion of the project will come back to Council in the form of a second agreement at a future meeting. The sidewalk and bike lane improvements will occur on the north side of Duarte Road between Mountain Avenue and Hope Drive and on a portion of Highland Avenue north of the Gold Line parking area to Evergreen Ave. The way finding signs would be a city wide project that has a focus on directing the public to the Gold Line station but also addresses other major local points of interest.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Darrell George', written in a cursive style.

Darrell George
City Manager



MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM: CESAR MONSALVE, PARKS AND RECREATION DIRECTOR

SUBJECT: RECOGNITION OF DUARTE SENIOR CENTER'S VOLUNTEER
OF THE YEAR – MARY PAT PADDOCK

DATE: 5/12/15

The Duarte Senior Center is very happy to announce that Mary Pat Paddock has been selected as this year's recipient as Senior Volunteer of the Year. On May 21, 2015 the Los Angeles County Board of Supervisors will recognize Mary Pat at the annual Older Americans Recognition Day for her dedication and commitment to the City of Duarte. The Duarte Senior Center will further honor Mary Pat at the Duarte Senior Center Volunteer Recognition Dinner on June 12.

Mary Pat is a generous and dedicated individual with a long career history as a volunteer. She began volunteering at her children's schools and later as a leader in the Girl Scouts and Mariners. Mary Pat later became an L.A. County precinct worker and has done this for 25 years. Additionally, she volunteers to be a reader with "Reading is Fundamental". Mary Pat is an accomplished ceramics arts expert and potter and she has shared this wonderful knowledge by teaching a ceramics class at the Duarte Senior Center for the last 24 years. As a long time participant at the Duarte Senior Center, Mary Pat is an active and dedicated volunteer in many other activities including making party favors, designing and assembling Boutique items, as well as volunteering to teach the "Paper Craft Greeting Card" class. Mary Pat also serves as a Eucharist Minister at Assumption of the B.V.M. Church.

Mary Pat's tireless and generous volunteer efforts have enhanced our community. Her creative spirit and energy have enriched our programs at the Duarte Senior Center, and she exemplifies all the good qualities for which a volunteer is known.

Mary and her family have been invited to the May 12 City Council meeting to be recognized for her volunteer efforts.



Proclamation

OLDER AMERICANS MONTH

WHEREAS, May is traditionally Older Americans Month, a time to celebrate and pay tribute to seniors; and

WHEREAS, California's older population remains one of the State's most enduring resources; and

WHEREAS, older Americans have contributed many years of service in their communities through volunteer programs; and

WHEREAS, seniors possess and share a wealth of experience, background and history, making them an important part of the ties that bind both family and community; and

WHEREAS, today's efforts in designing a coordinated community-based system of care and services for seniors will contribute to the well-being of older Californians in the 21st century; and

WHEREAS, recognition within the State of California offers the State's residents an opportunity to reflect upon the multiple talents and accomplishments of the State's older residents; and

WHEREAS, Mary Pat Paddock has been chosen as the Duarte Senior Center's 2015 Volunteer of the Year;

NOW, THEREFORE, LET IT BE RESOLVED, that the City of Duarte hereby declares May 2015 as OLDER AMERICANS MONTH, and expresses appreciation and congratulations to Mary Pat Paddock, and urges all residents to participate in appropriate ceremonies honoring these men and women who have given of their time and talents to improve the quality of life for all.

Mayor Tzeitel Paras-Caracci

ATTEST:

City Clerk Marla Akana
Duarte, California

May 12, 2015



MINUTES

JOINT CITY COUNCIL/CITY COUNCIL AS SUCCESSOR AGENCY TO DISSOLVED REDEVELOPMENT AGENCY/HOUSING AUTHORITY/COMMUNITY FACILITIES FINANCING AUTHORITY OF THE CITY OF DUARTE HELD CONCURRENTLY WITH A SPECIAL MEETING OF THE DUARTE CITY COUNCIL – APRIL 28, 2015 – 6:30 P.M. REGULAR MEETING – APRIL 28, 2015

CALL TO ORDER	The City Council/City Council as Successor Agency to Dissolved Redevelopment Agency/Housing Authority/Community Facilities Financing Authority of the City of Duarte met in a regular meeting held concurrently with a Special Meeting in the Council Chambers, 1600 Huntington Drive, Duarte, California. Mayor Paras-Caracci called the meeting to order at 6:33 p.m.
RECORDATION OF ATTENDANCE	The following were in attendance: PRESENT: Fasana (arrived prior to Closed Session), Finlay (arrived prior to Closed Session), Kang, Reilly, Paras-Caracci ABSENT: None ADMINISTRATIVE STAFF PRESENT: City Manager George, City Attorney Melching
ADOPTION OF AGENDAS	Reilly moved, Kang seconded to adopt the Special Meeting Agenda, and carried with Fasana and Finlay not present. Kang moved, Reilly seconded to adopt the Regular Meeting Agenda, as amended to remove Item 12.E. from the Consent Calendar for separate discussion and consideration, and carried with Fasana and Finlay not present.
CLOSED SESSION Conference with Legal Counsel (Regular) Anticipated Litigation (Special) Anticipated Litigation, and Property Negotiations	There was no public input. Melching announced the Closed Session for the Regular Meeting was pursuant to Government Code §54956.9 (d)(4); Anticipated litigation; Number of potential cases: One. The Closed Sessions for the Special Meeting were (1) pursuant to Government Code §54956.9 (d)(4); Anticipated litigation; Number of potential cases: One; and (2) pursuant to Government Code 54956.8; Negotiating parties: City of Duarte and prospective sellers; City Negotiators: Darrell George, Craig Hensley; Under Negotiation: price and terms of payment; concerning property located at 1263 Huntington Drive, Duarte, APNs 8530-003-930, 931. The Regular Meeting Closed Session concluded at 7:05 p.m., and the Special Meeting Closed Session recessed at 7:05 p.m., and was continued until later in the meeting prior to Adjournment. City Council reconvened at 7:12 p.m., with all members present.
PLEDGE TO THE FLAG	Brian Urias led the Pledge of Allegiance to the Flag.
MOMENT OF REFLECTION	A moment of reflection was observed.
FITNESS/MENTAL WARM-UP	Reilly and Finlay provided the warm-up.

PUBLIC REPORT OF CLOSED
SESSION ITEM

Melching reported that during the Closed Session for the Regular Meeting, there was no reportable action taken. One item for the Special Meeting (Property Negotiations) was considered, with no reportable action taken. The second item for the Special Meeting (Anticipated Litigation) will be considered later in the meeting prior to Adjournment.

SPECIAL ITEMS

Recognition – Diana Burckhard
Chamber of Commerce

Mayor Paras-Caracci presented a certificate to Diana Burckhard in appreciation of her fifteen years of excellent service to our businesses and residents as the Duarte Chamber of Commerce Director of Membership and Marketing.

Recognition – 48th Assembly
District – Women of the Year

Mayor Paras-Caracci presented certificates to Tina Carey, Maria Muniz, and Pauline Montgomery for being named as the 48th Assembly District's 2015 Women of the Year.

Presentation by Mayor's Youth
Council – Slide the City

Lorelei Near, Ellie Abajian, and members of the Duarte Youth Council presented a PowerPoint of the Slide the City event, provided information about size, recycled water, cost, insurance, potential locations, and impact to residents and businesses, and formally requested City of Duarte sponsorship of the event.

City Council discussed the item, and requested that staff report back on the potential Slide the City event, including costs, feasibility, liability, water conservation issue, discharge of reclaimed water, and public safety.

Public Safety Update

Brian Villalobos presented the monthly Public Safety update, and answered questions from Councilmembers pertaining to 4th of July, graffiti, and CERT training. Reilly stated the new fire-works flyer does not show Royal Oaks Drive on the map.

Steve Hernandez stated some owners feel the City is responsible to paint graffiti from their walls.

Redevelopment Dissolution
Update

Jeff Melching presented an update of redevelopment dissolution, including responses received by the Department of Finance, and stated a revision will be made in May.

ANNOUNCEMENTS

Abdali Martinez, representing Assemblymember Hernandez, announced upcoming workshop.

Sheryl Lefmann, Duarte Chamber, announced upcoming Chamber events and programs in May and June.

Joanna Gee, Duarte Library, stated the new roof construction will last for six weeks, and announced upcoming workshops and programs in May and June.

Karen Herrera presented community announcements about City events, projects, programs, and activities in April and May.

Craig Hensley introduced Alex Tachiki, the City's new Community Development Technician, and welcomed him to the team.

ITEMS ADDED TO CONSENT

Finlay moved, Reilly seconded to add attendance at the NLC Summer Leadership Meeting, June 9-12, 2015, in Salt Lake City, Utah, to Consent Item L, and carried unanimously.

CONSENT CALENDAR

Finlay moved, Reilly seconded to approve the Consent Calendar, as amended, as follows, and carried unanimously. (Later in the meeting, Fasana moved, Kang seconded to remove Item H, and carried unanimously.)

Approve Items A, B, C, F, G J, L.

Remove Items D, E, H, I, K.

ITEMS REMOVED

Item D – Council Bill 15-O-02

Massage Establishments

Location, Development, Standards, Definitions (MCA 14-05)
(Second Reading)

Council Bill 15-O-02 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DUARTE, CALIFORNIA (1) ADDING SECTION 19.60.112 “MASSAGE ESTABLISHMENTS” TO CHAPTER 19.60 “STANDARDS FOR SPECIFIC LAND USES AND ACTIVITIES,” TO ARTICLE 4 “STANDARDS FOR SPECIFIC LAND USES AND ACTIVITIES,” TO TITLE 19 “PLANNING AND ZONING,” OF THE DUARTE MUNICIPAL CODE TO ADD CERTAIN STANDARDS APPLICABLE TO MASSAGE ESTABLISHMENTS; AND (2) AMENDING SECTIONS 19.160.140 “‘M’ DEFINITIONS” AND 19.160.170 “‘P’ DEFINITIONS,” BOTH TO CHAPTER 19.160 “DEFINITIONS,” TO ARTICLE 9 “DEFINITIONS,” TO TITLE 19 “PLANNING AND ZONING,” OF THE DUARTE MUNICIPAL CODE TO AMEND CERTAIN DEFINITIONS THAT ARE APPLICABLE IN THE REGULATIONS OF MASSAGE ESTABLISHMENTS (MCA 14-05) (Second Reading)

Claudia Ponce de Leon stated her mother faced many obstacles pertaining to her massage business, discussed the moratorium, quoted Business and Professions Code 468, felt there was an abuse of authority, and feels her mother should be recognized and treated as a professional.

Elizabeth Gallion stated she attends zumba with Roxanna, she is kind, she is life coaching her, has positive energy, and the City should be encouraging her.

Lorraine Cheung stated Roxanna is one of the best, she is learning the art of being a therapist, she has been put through nonsense, and she hopes Council sees past the new laws and grants her a license to operate as a therapist.

ITEM D – APPROVED
ORDINANCE NO. 857

Fasana moved, Reilly seconded to adopt Ordinance No. 857, and carried unanimously.

ITEM E – Council Bill 15-O-03
Massage Establishments

Business Licenses, Regulations
(MCA 14-06) (Second Reading)

COUNCIL BILL 15-O-03 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DUARTE, CALIFORNIA, AMENDING IN ITS ENTIRETY CHAPTER 5.56, “MASSAGE ESTABLISHMENTS,” OF TITLE 5, “BUSINESS LICENSES AND REGULATIONS,” OF THE DUARTE MUNICIPAL CODE TO REVISE CERTAIN REGULATIONS APPLICABLE TO THE OPERATION OF MASSAGE ESTAB-

LISHMENTS (MCA 14-06) (Second Reading)

George stated a request was received from Massage Green to amend the proposed ordinance by extending the permitted hours of operation by one hour, closing at 9:00 p.m. rather than 8:00 p.m., and stated staff has no objection to that amendment.

ITEM E – INTRODUCED FOR
FIRST READING

Kang moved, Fasana seconded to amend Council Bill 15-O-03 to extend the permitted operating hours by one hour (closing at 9:00 p.m. rather than 8:00 p.m.), and to introduce Council Bill 15-O-03 for first reading, and carried unanimously.

Item H – AB 246 (Hernandez)

Steve Hernandez stated this Assembly Bill is long overdue, the officers deserve this, and it should be supported and approved.

ITEM H – APPROVED

Fasana moved, Finlay seconded to approve the City of Duarte's support of AB 246 (Hernandez), Hate Crimes: Peace Officers, and directed staff to send a letter of support signed by the Mayor, and carried unanimously.

Item I – Award of Contract
FS Construction – ADA Ramp

Craig Hensley presented a staff report and answered questions from Councilmembers about this contract and the current curb ramp program.

ITEM I – APPROVED

Reilly moved, Kang seconded to award the contract to FS Construction in the amount of \$27,110 for ADA Curb Ramp Project (SEC Mountain and Huntington), and carried unanimously.

Item K – 2016/15 SLESF

Brian Villalobos presented a staff report about the item.

ITEM K - APPROVED

Finlay moved, Reilly seconded to approve the use of the 2015/16 State Supplemental Law Enforcement Services Funds (SLESF) for front line law enforcement services, specifically, the City of Duarte Motorcycle Deputy and Special Event overtime patrols, per staff recommendation, and carried unanimously.

BUSINESS ITEM
Social Media Policy, Rollout

Karen Herrera, Deputy City Manager, presented a detailed staff report about the social media policy and program, including media platforms, policy overview, guidelines, definitions, management, policy highlights, and Brown Act.

There was discussion about the policy and rollout schedule for Facebook, Instagram, YouTube, and LinkedIn. City Council discussed appropriate information, liking, sharing, retweeting, Brown Act, posting of activities, not posting Agenda items, difference between City postings and non-City postings, settings, disallowing posts, JPIA, criteria, specifics, rollout schedule, fiscal impact, and staff time, and requested that staff further research the items discussed, and provide a report back at a future Council Meeting.

ITEMS FROM CITY COUNCIL/
CITY MANAGER

REILLY: Stated the Earth Day program was fantastic, discussed a newspaper article about ways to save money, announced fundraiser on April 30 for Special Olympics, attended youth employ-

ment workshop at Teen Center, Women's Business Expo, ACT-SO event, and Sheriff's Department volunteer banquet, asked that Mitch Skinner and Vic Abekian be recognized at a Council Meeting for their over 2500 hours of service as volunteers on patrol of special events, and stated Danielle Steiner attended the Youth and Family Committee meeting and may become a new member.

FASANA: Thanked staff for the Public Safety presentation.

FINLAY: Attended funeral for Jim McNeal, announced AQMD meeting next Tuesday at 5:30 p.m., congratulated the Mayor on the successful women's conference, and suggested we keep an eye on HR 1308 (Alan Lowenthal) pertaining to funds to help with the impact of goods movement on our rails and highways.

PARAS-CARACCI: Stated she received recognition from Grace Napolitano for the women's conference, she hopes we can engage the Chamber to help with its coming back next year, congratulated the gold medalists who received awards at the ACT-SO competition, and stated Elizabeth Bagwell's service dog George passed away.

ADJOURNMENT

The Regular Meeting was adjourned at 10:02 p.m. in memory of Arthur Boone, to the Budget Workshop, Wednesday, April 29, 2015, 5:00 p.m., at the Duarte Community Center.

The Special Meeting was recessed at 10:02 p.m. to continue the Closed Session. City Council reconvened at 10:45 p.m., with four members present, and Fasana not present. Melching reported that during the continued Special Meeting Closed Session (Anticipated Litigation), Fasana was not present, the item was discussed, and no reportable action was taken. The Special Meeting was adjourned at 10:45 p.m.

Mayor Tzeitel Paras-Caracci

ATTEST:

City Clerk

MINUTES

ADJOURNED REGULAR JOINT CITY COUNCIL/CITY COUNCIL AS SUCCESSOR AGENCY TO DISSOLVED REDEVELOPMENT AGENCY/HOUSING AUTHORITY/ COMMUNITY FACILITIES FINANCING AUTHORITY OF THE CITY OF DUARTE BUDGET WORKSHOP – WEDNESDAY, APRIL 29, 2015

CALL TO ORDER The City Council, City Council as Successor Agency to Dissolved Redevelopment Agency, Housing Authority, and Community Facilities Financing Authority of the City of Duarte met in a Budget Workshop in the Duarte Community Center, 1600 Huntington Drive, Duarte, California. Mayor Paras-Caracci called the meeting to order at 5:15 p.m.

ADOPTION OF AGENDA Reilly moved, Kang seconded to adopt the Agenda, and carried unanimously.

RECORDATION OF ATTENDANCE PRESENT: Fasana, Finlay, Kang, Reilly, Paras-Caracci
ABSENT: None
ADMINISTRATIVE STAFF PRESENT:
City Manager/Executive Director George
Assistant City Manager Petersen
Director of Community Development Hensley
Director of Parks and Recreation Monsalve
Director of Public Safety Services Villalobos
City Attorney Jeff Melching
The meeting functioned as a “Committee of the Whole.”

PUBLIC INPUT The following spoke:
- Jim Kirchner – Duarte Chamber budget.
- Marisol Martinez – Playground equipment, Las Lomas street condition

BUDGET OVERVIEW George provided a general overview of the past year, and gave an overview of the City’s accomplishments. Petersen laid out the order that the Budget Workshop items would be discussed, presented the budget philosophy and proposed 2015/16 budget, and reviewed the process, highlights, and recommendations. She presented information about the General Fund and other City funds.

DELIBERATION/DIRECTION The City Council/Agency/Authority Board deliberated on the information provided. Fasana moved, Kang seconded to increase Chamber expenditures by \$5,000, remove \$30,000 for Fountain Repair, transfer \$2,000 from the City Manager’s travel budget to the Parks and Recreation Commission and Planning Commission, with \$1,000 each for travel and training, and to research whether alternative fuel vehicles are an option for the proposed vehicle replacements and if so, move them to the AQMD fund for payment, and carried unanimously.

ADJOURNMENT The Budget Workshop was adjourned at 8:45 p.m.

ATTEST:

Mayor Tzeitel Paras-Caracci

City Clerk

4/29/15

RESOLUTION NO. __

A RESOLUTION OF CALIFORNIA CONTRACT CITIES
ASSOCIATION RE-AFFIRMING ITS COMMITMENT TO
COOPERATION AMONG UNITS OF GOVERNMENT THAT
SERVE THE PEOPLE OF CALIFORNIA AND URGING THE
STATE LEGISLATURE TO ENACT LEGISLATION THAT
EMPOWERS LOCAL GOVERNMENT TO PRESERVE THE
RESIDENTIAL CHARACTER OF NEIGHBORHOODS
CONSISTENT WITH STATE POLICY RE GROUP HOMES

WHEREAS intergovernmental cooperation is in the best interests of California. The member cities of the California Contract Cities Association are united by their common belief in the cooperative and efficient use of pooled resources among various units of government for the benefit of their constituents. Over the years, the Association and its member cities have advocated for appropriate action and effective handling of the challenges facing California municipalities;

WHEREAS cities protect community character through zoning law. The United States Supreme Court long ago recognized that local government has a legitimate interest in regulating land uses to protect the character of residential neighborhoods;

WHEREAS residential neighborhoods provide a therapeutic and beneficial setting for group homes. Recognizing the strength of California's residential communities, the Legislature expressed a statewide interest in integrating group care facilities into neighborhoods throughout California. State law preempts local zoning for certain licensed facilities, including residential treatment programs for alcoholics and drug addicts;

WHEREAS to preserve residential neighborhoods from concentration of group homes that would change their character, state law imposes distancing requirements for all licensed group homes except alcohol and drug facilities.¹ To avoid overconcentration of these facilities, the State "shall deny" a new license if approval would result in overconcentration.² In addition, cities are afforded an opportunity to show conditions of overconcentration before an application is approved. Cities must receive written notice that a facility is proposed to be located in the city; and "any city or county may request denial of the license... on the basis of overconcentration of residential care facilities."³ Under the Community Care Facilities Act,

¹ H&S Code §1520.5(a).

² H&S Code §1520.5(a)

³ H&S Code §1520.5(d)

“overconcentration” exists when two facilities are located within 300 feet of one another;⁴

WHEREAS former California Attorney General Jerry Brown said that if “the Legislature wishes to grant a similar authorization when the Department licenses the [Alcohol and Drug Program] treatment facilities..., it knows how to do so.”⁵ With that, the AG concludes that under the current statute the state “may not deny an application for licensure or suspend or revoke the license of a treatment facility because the particular community already has more than a sufficient number of treatment facilities to meet the local need.”;⁶

WHEREAS anti-discrimination laws do not prevent laws that preserve the therapeutic setting. Relying on court cases that have interpreted the FHAA, the Legislative Counsel has opined that the state and local government may not regulate “sober living homes” through dispersal or distance requirements, CUPs, business licenses or zoning restrictions unless the regulation benefits the protected class or responds to legitimate safety concerns raised by individuals affected rather than being based on stereotypes.

WHEREAS, sober living and addition rehab/recovery have become big business. Estimates of the annual revenue from rehab facilities in California is in the hundreds of millions of dollars. A 2014 report from Market Watch estimated \$35 billion in annual revenues from facilities in the United States. There are now 14,000+ treatment facilities and growing in the United States. The Minnesota-based Hazelden company reported nearly \$140 million in annual revenue and has purchased the California-based Betty Ford Center; Hazelden was quoted in the *LA Times* announcing an “ambitious expansion” plan for California facilities.

WHEREAS the state should not open residential neighborhoods up to for-profit businesses. State law currently requires private foster family agencies operating in residential zones to be organized and operated on a nonprofit basis.⁷

WHEREAS state policy sought integration of group homes into residential neighborhoods, not disintegration of the residential character of the neighborhoods. A course correction is required to advance state policy.

WHEREAS through zoning authority, cities can preserve the very neighborhoods that the community-care model depends on to succeed. Distancing

⁴ H&S Code §1520.5(b)

⁵ 90 Ops. Cal. Atty Gen. 109 at 5 (No. 07-601).

⁶ *Id.*

⁷ H&S Code §1502(a)(4).

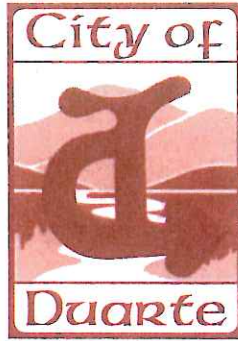
requirements *both* respond to the biggest concern of local government *and* advance state policy.

NOW THEREFORE, the Members of the California Contract Cities association hereby re-affirms its commitment to cooperation among units of government that serve the people of California and urges the California state legislature to enact legislation that empowers local government to preserve the residential character of neighborhoods necessary to effect state policy regarding group homes as follows:

1. Amend the state law to provide the same distancing and notice requirements for ADP facilities as it does for Community Care Act facilities;
2. Enact legislation providing standards that prevent overconcentration of unlicensed sober living homes to maintain residential character of neighborhoods which has therapeutic benefit for the occupants; and
3. Restrict the zoning preemption for licensed ADP facilities to those owned and operated by non-profit organizations

PASSED, APPROVED and ADOPTED this ____ day of _____, 2015

The Hon. VICTOR MANALO
PRESIDENT, CCCA



Proclamation

CALFRESH AWARENESS MONTH

WHEREAS, one of Los Angeles County's highest priorities is to reduce food insecurity and encourage healthy food choices by increasing access and participation in CalFresh, the federally-funded supplemental nutrition food benefit formerly known as the Food Stamps Program; and

WHEREAS, the CalFresh program was created to safeguard the health and well-being of low-income households by increasing their food purchasing power and raising their levels of nutrition; and

WHEREAS, studies suggest that household hunger negatively impacts the intellectual, physical, and emotional development of children, and puts them at greater risk for obesity, diabetes, and other diseases; and

WHEREAS, in an effort to educate residents about CalFresh and healthy eating, and to remove the barriers that discourage eligible individuals and families from applying for assistance, the Los Angeles County Department of Public Social Services (DPSS) is collaborating with various community-based and faith-based partners to implement the Fifth Annual CalFresh Awareness Month Campaign; and

WHEREAS, since the City of Duarte is also known as the "City of Health," we heartily agree with the County Department of Public Social Services about the importance of sharing valuable information about nutrition education and promoting the long-term benefits of healthy exercise;

NOW, THEREFORE, BE IT RESOLVED that the City of Duarte hereby proclaims May 2015 as CALFRESH AWARENESS MONTH, and encourages all residents to learn about the CalFresh Program and to share information about its valuable benefits with those who need it most.

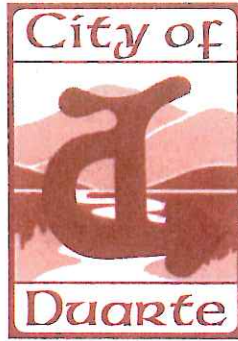
Mayor Tzeitel Paras-Caracci

ATTEST:

City Clerk Marla Akana
Duarte, California

May 12, 2015





Proclamation

CALFRESH AWARENESS MONTH

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Mayor Tzeitel Paras-Caracci

ATTEST:

City Clerk Marla Akana
Duarte, California

May 12, 2015





MEMORANDUM

RECEIVED

MAY - 7 2015

CITY OF DUARTE

TO: CITY COUNCIL
FROM: COMMISSIONER Bylsma-Houghton
SUBJECT: NOTICE OF ABSENCE FROM Park & Rec COMMISSION MEETING
DATE: May 7, 2015

REASON FOR ABSENCE

____ ACCIDENT

____ VACATION

____ SICKNESS

☒ OTHER *

____ DEATH IN FAMILY

Mother's Day
OHIO

I will be here for Parents Care
June (Relief)

DATE OF MEETING ABSENCE

May 11th and July 13th

* EXPLANATION OF ABSENCE

taking care of Parents in
OHIO

[Signature]
Signature

* * * * *

Absence noted by City Council

Date

Department of Industrial Relations
Division of Occupational Safety and Health

May 4, 2015

ELEVATOR, RIDE, AND TRAMWAY UNIT

San Bernardino District Office
464 W. Fourth Street, Suite 325
San Bernardino, CA 92401
Phone: 909.889.6395
Fax: 909.889.8074

City Of Duarte Senior Center
C/O City Of Duarte/Attn: C.Monsalve
1600 Huntington Dr.
Duarte, CA 91010

ORDER TO CORRECT UNSAFE CONDITIONS OR TO SHOW CAUSE

Our records indicate that you have not submitted proof of compliance in writing, as outlined on the Preliminary Order attached herewith, to this Division at its office noted above.

YOU ARE HEREBY NOTIFIED that an inspection of your Passenger, Hydroelectric, PASS, State No. 100765 at a place of employment located at: 1610 Huntington Dr E, Duarte was made on: March 12, 2015 by Safety Engineer: J. Foster and shows the existence of conditions that must be corrected. The Division has determined that these conditions must be corrected before a permit to operate will be issued.

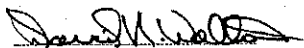
THEREFORE, YOU ARE HEREBY DIRECTED to comply with the requirement(s) hereinafter set forth, and to notify this Division in writing of full compliance on or before June 03, 2015.

If compliance is not met, you must show good cause, in writing, on or before said date, to this Division at its office above, at which time the Division may grant an extension of time to comply with the requirement(s). Furthermore, if compliance is not met, nor a request for an extension granted by said date, an order shall be made by this Division to prohibit the use of said equipment for non compliance condition(s) and a notice to that effect will be attached to said equipment. The process of issuing an Order Prohibiting Use (OPU) will result in an **automatic fee of \$675**. This fee covers the costs of preparing the OPU and will be invoiced upon expiration of this Show Cause compliance date. If the Division receives proof of compliance and/or invoice fees after the OPU process is initiated, owners will still be responsible for this fee even if the OPU is ultimately not served. If the OPU is ultimately served and the unit is shut down, an additional fee will not be charged.

If you desire an oral hearing before this Division regarding said requirement(s), you are hereby directed to file a request in writing with the Division at its office noted above, for such oral hearing before said date.

The requirement(s) for the correction of these condition(s) appear on the attached sheet(s). The numbers following the requirement(s) listed refer to sections of the California Administrative Code, Title 8, Title 24 (T24), or the Labor Code (LC) of the State of California.

DIVISION OF OCCUPATIONAL SAFETY AND HEALTH



David Walton, Acting Senior Safety Engineer

/dd

Department of Industrial Relations
Division of Occupational Safety and Health

ELEVATOR, RIDE, AND TRAMWAY UNIT

San Bernardino District Office
464 W. Fourth Street, Suite 325
San Bernardino, CA 92401
Phone: 909.889.6395
Fax: 909.889.8074

**PRELIMINARY
ORDER**

March 18, 2015

City Of Duarte Senior Center
C/O City Of Duarte/Attn: C.Monsalve
1600 Huntington Dr.
Duarte, CA 91010

A survey of your Passenger, Hydroelectric, PASS, State Number 100765, located at 1610 Huntington Dr E, Duarte, was made on March 12, 2015 by ERT Engineer, J. Foster.
Person Contacted: Admin. Compliance date: May 04, 2015.

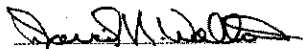
The conditions in need of correction are noted below. The numbers following the listed items refer to the sections of the California Code of Regulations (Title 8), or the Labor Code (L.C.) of the State of California.

1. A load test identifying the elevators running speed up and down, rated speed, working pressure, relief pressure, pressure switch operation(if applicable) and static pressure results shall be conducted on the elevator and the results submitted to the division. subsection 3071(j)
2. A metal, fiber or plastic tag shall be securely attached to the elevator pumping unit in the machine room, with lettering not less than 1/4 inch high on a contrasting background, indicating the Elevator State Number, the Elevator Company that conducted the load test and the Date of the load test. subsection 3071(j)
3. There shall not be less than two working lamps of equal wattage provided in the elevator car emergency light fixture. subsection 3034(g)(3)(B) , 3064
4. The telephone in the elevator shall be made to operate as intended. subsection 3041(a) , 3071(i)

Notification in writing that **each of the listed items** have been complied with shall be submitted to the above listed District office on the Compliance Form available at www.dir.ca.gov/dosh/ElevatorPubs_forms.html before the **PERMIT TO OPERATE** will be issued. Failure to Notify the Division within the allotted time may result in additional Penalties being assessed.

NO PERMIT WILL BE ISSUED UNTIL NOTIFICATION HAS BEEN RECEIVED AND ALL FEES ARE PAID.

*Note: The invoice is being sent by separate mailing.



David Walton, Acting Senior Safety Engineer

/dd

MEMORANDUM

TO: Mayor and Councilmembers

FROM: Darrell J. George, City Manager

DATE: May 7, 2015

SUBJECT: Conference Attendance – City Council Meeting of May 12, 2015

Duarte Unified School District
Senior Breakfast
June 9, 2015
Embassy Suites – Arcadia
\$25 each



- STUDENTS
- STAFF
- PARENTS



OUR DISTRICT

BOARD OF EDUCATION



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CONNECTION



ARTS &
MUSIC



PARENT
EDUCATION

DHS Senior Breakfast

6/9/2015 8:00 AM

Go To Calendar

Print

Export

Location

Embassy Suites Arcadia

\$25.00

RSVP with Wendy 599-5722



MEMORANDUM

Date: May 12, 2015

To: Mayor and City Council

From: Jason Golding, Senior Planner

Subject: **Reintroduction of Ordinance 15-O-03 (MCA 14-06) for minor alterations and typographical revisions**

Ordinance 15-O-03, Municipal Code Amendment 14-06, was introduced at the April 14, 2015 City Council meeting. On April 27, Massage Green, a national massage business interested in opening a new location within the Target Shopping Center/Mountain Vista Plaza, requested a one-hour extension to the permitted operating hours for massage businesses from 8:00 to 9:00 p.m. (DMC 5.56.210). Due to this modification, the Council was required to reintroduce the proposed Ordinance at the April 28, 2015 City Council meeting.

In preparation for the second reading of the Ordinance at tonight's meeting, Staff noticed that the document that Council considered at both meetings in April contained typographical errors and other minor alterations. The attached Ordinance corrects these concerns and now clearly shows the modifications to Chapter 5.56, including deletions of existing code language shown in ~~strikethrough~~ and proposed language shown with a double underline. Furthermore, timeframes for pre-existing massage establishments to begin the compliance process (DMC 5.56.360) have been updated to reflect the additional amount of time associated with the consideration of Municipal Code Amendment 14-06.

If the City Council chooses to introduce Ordinance 15-O-03 tonight, a second reading will be necessary at a future Council meeting, likely May 26, 2015. The Ordinance would become effective 30 days after the second reading.



CITY COUNCIL STAFF REPORT

Date: May 12, 2015

To: Mayor and City Council

Location: City-wide

Project: **Municipal Code Amendment 14-06**; A City-initiated request to amend, delete, and/or replace Chapter 5.56, "Massage Establishments," of Title 5, "Business Licenses and Regulations," of the Duarte Municipal Code.

SUMMARY

Current massage laws, enacted in 2008 under SB 731, placed severe limitations to how and what cities can regulate related to the massage industry. After several years working under SB 731, the City has experienced a series of problems dealing with massage businesses, including frequent turnover of massage technician staff and management, unapproved floor plan modifications, recordkeeping issues and on one occasion, an arrest for prostitution. As a result of these issues and numerous requests for new massage businesses, the City Council adopted a moratorium this past summer on the issuance of massage business licenses in order to provide time for Staff to research and properly evaluate the City's massage regulations.

On January 1, AB 1147 came into effect, which revised State law to allow cities additional authority in adopting land uses regulations, operational requirements, amongst other regulations pertaining to massage businesses. Municipal Code Amendment (MCA) 14-05 proposed (*and its corresponding Ordinance was approved by the City Council on April 28, 2015*) a set of new developmental and locational land use standards that are designed to accommodate massage businesses but with regulations to address the minimum size of the lease/building area these business can operate in; requiring increased transparency and visibility into the frontages of these lease areas; implementing lighting requirements; creating and expanding the definition of massage establishments; and categorizing massage businesses into a more restrictive land use category. MCA 14-06, pertains to modifying, adding and deleting multiple sections of the existing Chapter 5.56 of the Duarte Municipal Code, including but not limited to topics such as: regulation of massage technician licenses, operational standards, recordkeeping, violations and pre-existing/ non-conforming massage businesses.

MCA 14-06 is being brought before the Council to bring our current massage ordinance (DMC 5.56) into compliance with new State massage laws that became effective January 1st. These modifications are designed to promote legitimate massage businesses that will enhance and compliment the City's commercial centers, while addressing health and safety concerns and creating enforcement mechanisms for controlling illicit operators.

BACKGROUND

In 2008, the State passed SB 731, which changed the ability of local governments to regulate the massage industry. A second primary goal of SB 731 was to establish the California

Massage Therapy Council ("CAMTC"). CAMTC is a private nonprofit public benefit corporation that is tasked with creating and implementing a voluntary certification program for the massage therapy profession; ensuring that certified massage professionals have completed sufficient training at approved schools; and approving massage schools. One of the unintended consequences of this law was that massage establishments had fewer regulations than most other businesses since SB 731 prohibited local governments from regulating or enacting ordinances for a business that employs certified massage therapists unless the requirements are "no different than the requirements that are uniformly applied to all other individuals and businesses providing professional services". From 2008 until recently, many cities including Duarte, have had law enforcement issues with many massage business acting in disguise as brothels or as fronts for human trafficking. Code enforcement and zoning professionals have also had difficulties in monitoring many business that have frequently had changes in ownership/management and floor plan changes that result in modifications from approved plans. At the same time, Community Development Department Staff experienced a large influx of massage business applicants. Due to these concerns, the City Council adopted a moratorium on establishing, locating or operating massage establishments (including issuing business licenses or zoning clearances) on July 8, 2014. On August 12, the Council adopted an extension to this moratorium, which is set to expire on July 7, 2015.

As a result of these concerns, amongst other issues related to massage technician licensing, many local jurisdictions and law enforcement professionals lobbied the State Legislature to revise massage laws and return local control back to municipalities. AB 1147 was signed into law by Governor Brown on September 18, 2014 and became effective the first of this year. The bill authorizes a complete revision of the law pertaining to massage therapy, including returning land use control back to the cities and modifications to how massage technicians are certified. This law intends on returning local authority in regards to regulating massage businesses and massage technicians and also reducing incidences of human trafficking and prostitution.

Since 2008, the City has seen a large increase in the number of massage business license requests and has permitted several massage establishments. Five (5) massage businesses are currently operating in the City:

1. 1163 Huntington Drive - East Meets West Spa
2. 1740 Huntington Drive, #310 - Rainbow Spa
3. 1802 Huntington Drive, #D - Foot & Body Spa
4. 2138 Huntington Drive - Lucky Star Massage
5. 2163 Huntington Drive - Duarte Foot & Body Massage

All of these businesses occupy smaller lease spaces, the largest being 1,480 s.f. and the average lease area being 1,188 s.f.. Furthermore, except for East meets West Spa, these establishments occupy space in smaller, older and/or less maintained shopping centers or buildings. This usually translates into less expensive lease rates.

In discussions with our Public Safety Department, there has been both criminal and/or municipal code violations related to massage establishments in the City. One arrest for prostitution has occurred at one of the five massage businesses listed above. Due to the sheer influx of massage businesses throughout the County since passage of SB 731, the Los Angeles County Sheriff's Department has had challenges in providing the necessary resources to investigate and prosecute illicit business activities at massage businesses in their contract communities. This circumstance has created additional pressure on cities, especially the Code Enforcement and Planning Divisions, in enforcing municipal codes and massage regulations. Many Public Safety resources have been used in enforcing provisions of our current Massage Ordinance. All of the above businesses have had Municipal Code violations, primarily being: change of floor plans, unlicensed massage technicians, locked doors, and insufficient records. Furthermore, many of the current massage establishments have frequent management and staffing (technicians) turnover, creating the need for City staff to reeducate, reinspect and schedule more frequent investigations to ensure local regulations are being met.

On January 20, 2015, a public hearing for MCA 14-05 was conducted before the Duarte Planning Commission. The Commission unanimously approved PC Resolution 14-04, recommending City Council approval of MCA 14-05. Since MCA 14-06 does not affect the Duarte Development Code, the Planning Commission was not required to provide a formal recommendation to the City Council on that amendment. Staff did, however, provide the Commission with an informational copy of the proposed changes to Chapter 5.56 of the Duarte Municipal Code - an early version of ordinance 15-O-03. The Commission presented some of their initial concerns and questions at the meeting. An email summarizing the Commission's comments on MCA 14-06 has been attached for the Council's reference (Exhibit A).

On February 24, the Council held a public hearing and discussed proposed subsection 19.60.112.C.1 of MCA 14-05, which required a minimum 2,000 square foot (s.f.) gross owned or leased floor area for new massage establishments. During deliberation, several different ideas were considered, including: maintaining a 2,000 s.f. minimum, reducing the floor area requirement, or completely eliminating any minimum massage establishment size. Public testimony was taken from one person who currently operates a 1,200 s.f. wellness center that they plan on converting to a massage business after consideration of the ordinances; they expressed their concern over the minimum lease area requirement. The Council did not introduce the Ordinance and instead referred the issue of minimum massage establishment floor area back to the Planning Commission for further consideration. On March 16, the Planning Commission clarified its recommendation (4-1-0-0), proposing a minimum 1,200 square foot floor area requirement for a new massage business. Staff prepared additional analysis on the floor area requirement issue for use by the Planning Commission (Exhibit D). A staff report for MCA 14-06 and related Ordinance 15-O-03 was also presented to the Council on February 24. This item was continued to a future meeting with a date uncertain.

On April 14, a public hearing was held for both MCA 14-05 and 14-06. The Council voted 4-1 to introduce Ordinance 15-O-02 (MCA 14-05) for first reading. Concerning MCA 14-06, Staff presented several minor modifications to the proposed Ordinance. The staff report and

Ordinance remain unchanged from the first Council consideration of the item (February 24, 2015), except for three proposed modifications:

- Chapter 5.56.100 - additional language on window coverings for interior doors/windows;
- Chapter 5.56.160 - rewritten section dealing with separate room requirements based upon gender and limitations on group massage; and
- Chapter 5.56.170 - clarification on serving both genders, clarification about providing separate gender dressing and toilet facilities, and deletion of a requirement that showers be provided to each gender.

The Council unanimously approved Ordinance 15-O-03 (MCA 14-06) with the three modifications listed above and introduced the bill for first reading.

On April 27, City Staff received a request by by Massage Green, a national massage business intending to apply for a new massage business in the Mountain Vista Plaza Center (aka Target Center), to extend the permitted operating hours form 8:00 to 9:00 p.m.

On April 28, the City Council unanimously approved Ordinance 15-O-02 (MCA 14-05) for second reading. Due to the request from Massage Green to modify the proposed operating hours (DMC 5.56.210), the Council was required to reintroduce Ordinance 15-O-03 for first reading. The Council unanimously approved the requested change to permitted operating hours and introduced the Ordinance for first reading.

ANALYSIS

The current moratorium allowed staff time to analyze and discuss community, regional and State-wide concerns about deficiencies in current law and to create locational, developmental and operational standards that aims to allow true massage operations, while discouraging and provide enforcement mechanisms for illegitimate massage businesses and massage technicians. These proposed municipal code amendments give the City new regulations to require larger, more transparent and appropriately illuminated massage businesses; a requirement to obtain a conditional use permit for new massage businesses; updated tools to require proper massage technician licensing verification, health and hygiene standards, security procedures and other operational requirements; and strengthened enforcement mechanisms to ensure both the business and technicians operate within the rules of the City. Each section below further summarizes each proposed municipal code amendments described in the attached Ordinances.

Municipal Code Amendment 14-05 - Duarte Development Code Chapters 19.60.112 & 19.160

MCA 14-05 (Ordinance 15-O-02) is one of two code amendments intended to update and regulate massage businesses throughout the City. Unlike MCA 14-06, which primary deals with how massage businesses operate, MCA 14-05 provides new locational and developmental land

use standards related to the establishment of a new massage business within the City, amends the definition of massage within the context of the Development Code and places massage establishments in a more restrictive land use category. The primary intentions of MCA 14-05 are to permit only larger massage establishments than can provide adequate space for a receptionist area; provide transparency and visibility into the front area of the business; illuminate portions of these properties to ensure public safety and discourage illicit activities, and requiring new massage establishments obtain a conditional use permit.

Additional discussion on this code amendment has been deleted from this staff report since MCA 14-05 was approved and Ordinance 15-O-02 was adopted by the Council on April 28, 2015.

Municipal Code Amendment 14-06 - Duarte Municipal Code Chapter 5.56

AB 1147, which came into effect January 1 of this year, allows municipalities the opportunity to create specific community standards to regulate lawful massage businesses. The City Attorney's office has reviewed the proposed modifications to Chapter 5.56 of the Duarte Municipal Code to meet the new State law and to provide the City with reasonable operational standards and enforcement tools to allow lawful massage businesses while abating illicit operators and establishments.

MCA 14-06 revises, adds and deletes language from the City's existing Massage Establishment Chapter, provided in Duarte Municipal Code Chapter 5.56 (Exhibit C - Draft Ordinance 15-O-03). The majority of the Chapter remains as approved by the City Council through Ordinance 821, adopted July 13, 2010 and as amended through previous massage ordinances dating from 1960, 1971, 1974, 2001 and 2006. However, the modifications proposed in MCA 14-06 take into account recent experiences gained from the establishment of several massage businesses since passage of SB 731 and the associated issues encountered permitting, inspecting and regulating these types of uses. The proposed modifications are best analyzed by grouping the major topic areas covered by this code amendment: licensing, inspection and recordkeeping; health and hygiene; permitted and prohibited conduct; safety and security; enforcement, and pre-existing massage establishments.

Licensing, Inspection and Recordkeeping

Subchapters 5.56.010-060 and 5.56.230-240 pertains primarily to City business licensing requirements, massage technician licensing and training verification, opportunities for City inspection, the display of certifications and permits, and recordkeeping for both services rendered and employees.

Major modifications from the current Chapter include a requirement to report change of massage technicians, management or business operations within five (5) business days; additional information required on the license applications; verification of proper legal identification for patrons and services rendered; new information required for employees and

independent contractors; and minimum timeframes for the retention of employee or independent contractor information.

These changes are being requested due to several factors. Experience from both our city and other nearby municipalities have shown that massage businesses frequently change management, employees, floor plans and business operations. It is not uncommon to see a massage business begin with one set of owners and within a matter of months see the business transfer to another owner. In some cases, massage businesses in the City that have been established only for a few years, have changed ownership numerous times, some as frequent as twice per year. Furthermore, massage technicians have rotated through different establishments, some as frequently as weekly, with many bypassing the City verification and licensing process. It is suspected that these frequent changes, and the lack of verification of employees, contribute to human trafficking activities. These changes to Chapter 5.56 are designed to allow the City the opportunity to ensure proper licensure, understand the changes to the business plan or number of employees associated with new ownership, confirm payment of business license fees and allow Staff to inspect premises for conformance with City laws and Building Codes. Verification of patron identification and services rendered is designed to legitimize the use of massage services and discourage use of the establishment for illicit behaviors. Proposed recordkeeping language is intended to provide law enforcement with information that may help in the: prosecution or arrest of patrons who make sexual advances to employees or for enforcement of illicit services occurring within the establishment; and in the prevention of potential disease transmission, whereas, notification can be produced for patrons or employees who may have come into contact with communicable diseases.

Health and Hygiene

Subchapters 5.56.080, 5.56.150-180 and 5.56.260-280 focus on health and hygiene issues that are specific to massage establishments. Much of the existing language in our current massage establishment law has been maintained, including requirements for attire and hygiene requirements, toilet and dressing facilities, washbasin requirements, the handling of linens, improvement construction, cleanliness and required footwear and clothing.

A few substantial changes to this category of regulations include modifications to attire requirements superseded by the new State law under AB 1147 and the requirement for interior laundry facilities. The concern about laundry facilities is fairly common as most current massage businesses have installed unpermitted and potentially unsafe laundry facilities either on the outside of their buildings or within interior areas originally approved for other purposes. Other modifications to the existing code were made including: a requirement that all genders must be served; clarification on massage rooms, dressing and toilet facilities to be separated by gender; and to add language related to group massage.

Permitted and Prohibited Conduct

MCA 14-06 proposes several alterations and additions to the Massage Establishment laws pertaining to allowed and prohibited business conduct. Massage schools are being prohibited under a new subchapter 5.56.070. Subchapter 5.56.190 defines what and how services can be

provided to minors. Massage businesses would be required under subchapter 5.56.200 to display and provide only a list of services rendered at the location that met the definition of legitimate massage. Advertisements that suggest services other than those approved under the new Massage Establishment law would be prohibited under subchapter 5.56.250. The use of shower tables and shower rooms, where clients are provided a therapeutic bath and massage services, would be prohibited, along with other procedures and equipment, in subchapter 5.56.255. Subchapter 5.56.290 has been updated to meet new State law and include additional restrictions on massage conduct, such as the touching of genitals or breast areas unless as directed by a physician. Language has been added to prohibit possession of non-prescription drugs and condoms or other prophylactics (subchapter 5.56.300).

These modifications have been added to address concerns faced by Public Safety professionals in both our City and the greater Los Angeles area. For instance, research conducted during the consideration of the massage moratorium (Ordinance 851) showed that several massage establishment locations within the City were advertised under "erotic massage parlor reviews" on websites known to list reviews for illicit massage parlors. Discussion amongst public safety professionals have also shown that shower tables and shower rooms have been disproportionately associated with illicit massage rather than lawful massage establishments.

Safety and Security

Subchapters 5.56.100, 5.56.120-130, and 5.56.210 address safety and security issues. MCA 14-06 proposes a requirement for the installation of obscured doors (without the use of additional window coverings) to all massage rooms, which would allow use of the massage room to be visually confirmed, but the identity of the room occupants would be protected. Subchapter 5.56.120 would mandate that two employees be staffed at all times to address concerns for employee safety and to require that businesses keep unlocked doors during their hours of operation. This section also adds a requirement that a video security system be installed to monitor entries, exits, reception areas and hallways of massage establishments and that the video data be retained for a minimum of 30 days. Hours of operation have been modified due to a request from a business owner interested in opening a new massage establishment after the expiration of the moratorium. The new proposed hours of operation are from 8:00 a.m. to 9:00 p.m.

Enforcement

Enforcement of massage establishments can be conducted in multiple ways. Criminal arrests and prosecution can occur through the Sheriff's Department enforcement of prostitution, human trafficking, and other criminal violations. New massage businesses will also be regulated through a conditional use permit, where violations of their conditions of approval are cause for a revocation hearing before the Planning Commission. Although these are all viable options, the initial enforcement mechanism begins with strong language in our City's Massage Ordinance. MCA 14-06 is specifically designed to provide the necessary tools needed by our Public Safety Department to effectively deal with repeat violators and ensure that massage businesses operate in a lawful manner.

Subchapter 5.56.320 provides improved language to enforce the rules promulgated under the Massage Ordinance, creates a penalty system for repeat violators, and specifies property owner notification and potential penalties for owners who's tenants operate outside of the law. Penalties for violations will include a "three strikes" system, similar to that used in the Ordinance 848 related to the City's regulation of synthetic drugs. Violations could occur involving any of the operational standards and other laws described in the proposed Massage Ordinance. The first violation would cause a written warning to be issued advising both the business and property owner to cease the prohibited activity. A second violation, within a one-year period from the last violation, would yield a stronger written warning advising that further violations could result in revocation of the business license and a one-year prohibition on re-application for a business license. The third and final violation, within a one-year period from the last violation, would result in revocation of the business license and a prohibition on a reapplication/reissuance of a business license for a massage business at the violating location for one-year. Businesses who receive a third violation notice would be provided with appeal procedures pursuant to Chapter 5.04. A significant addition to the enforcement provisions involves notification and associated consequences for landowners. Each notice of violation, citation, conviction or license revocation would be provided to the property owner. This section was included to make property owners more cognizant of their tenants business operations and to help stave off issuance of a third violation, which results in a prohibition on a reapplication/reissuance of a business license for a massage business at the violating location for one-year. Finally language has been included by which violations involving criminal activity could result in immediate revocation of the business license and a one-year prohibition on reissuance of another massage business license at the location.

Pre-existing Massage Establishments

The proposed code amendments will result in all five existing massage establishment locations becoming "non-conforming uses". MCA 14-06 has been written to bring these existing businesses into compliance with the revised Massage Ordinance (DMC Chapter 5.56) within reasonable timeframes. If passed by the Council, City Staff will shortly thereafter inform existing massage establishments and their corresponding property owners about the new Code requirements, afford an opportunity to meet and discuss regulations with City Staff, and provide a list of materials and submittals required to begin the compliance process. Regulations pertaining to: licensing; inspections; recordkeeping; attire and hygiene requirements; employment; management; services to minors; list of displayed services; prohibited conduct, procedures and equipment; and violation provisions will be required within 120 days of notice by the City. The proposed ordinance will provide a little more than three (3) years for compliance with more complicated and costly physical and operational modifications (5.56.100 - reception area/obscured massage room doors, 5.56.130 - video security, 5.56.150(c) - interior laundry facilities, and/or 5.56.170 - separation of rooms by gender). Massage establishments that do not meet the new Massage Ordinance will face enforcement actions to either comply with the new regulations or face revocation of their business license. These existing businesses will not be required to meet the locational and developmental standards required under Duarte Development Code 19.60.112 (MCA 14-05) or be obligated to obtain conditional use permit

approval, unless they significantly modify their business operations, expand/enlarge, cease operations for more than 12 months or move to another location.

RECOMMENDATION

Staff believes that with the adoption of MCA 14-05 and its companion amendment, MCA 14-06, massage businesses can be properly regulated within the City's Commercial zones, reduce the instances of illegal business activities and provide opportunities for a personal service business that can compliment other services and retail businesses. In addition, approval of these code amendments would cease the moratorium on massage establishments, which was passed by the City Council as Ordinance 851 on August 12, 2014.

Staff recommends that City Council hold a public hearing, and review, consider and approve the proposed Ordinance:

1. **Municipal Code Amendment 14-06** (Exhibit C, Ordinance 15-O-03); to amend, delete, and/or replace Chapter 5.56, "Massage Establishments," of Title 5, "Business Licenses and Regulations," of the Duarte Municipal Code.

Respectfully Submitted,

Jason Golding
Senior Planner

ATTACHMENTS

Exhibit A – Planning Commission comments on MCA 14-06 - DMC Chapter 5.56 Amendments

Exhibit C – Ordinance 15-O-03; MCA 14-06

Exhibit D – Memorandum to Planning Commission dated March 16, 2015 related to establishing a minimum floor area requirement for new massage businesses

From: Sheryl Lefmann slefmann@outlook.com
Subject: MCA 14-05 - Chapter 5.56 Input
Date: January 22, 2015 at 10:02 AM
To: Jason Golding goldingj@accessduarte.com
Cc: Craig Hensley chensley@accessduarte.com, Irma Hernandez hernandez@accessduarte.com, Nohemi Hernandez hernandezn@accessduarte.com

Good morning Jason, et al,

I cannot believe how much work you have put into this. I don't think many people would think about the amount of work and research that goes into these things. Thanks for being so thorough.

As you requested in our Planning Commission meeting last night, below is my input specifically on the draft of Chapter 5.56 – Massage Establishments. I know you may have already addressed some of the earlier ones, but I want to make sure I didn't miss anything and also address typographical errors.

- 5.56.040(c) - Is five days enough time to review new services.
- 5.56.050 – Needs period at end of sentence, not comma.
- 5.56.130 – Heading needs period to be consistent with other headings.
- 5.56.130(d) – Suggest 30 days, not 7 days. This is more in line with other businesses requiring video surveillance.
- 5.56.130 – At the end there is a bolded “(a)” area with nothing attached following it.
- 5.56.180 – Suggest adding air dryers. This is ecologically friendly and actually more sanitary than paper or cloth.
- 5.56.230 – As I spoke about, I really have an issue with recording the complete address of the patron. I have tried to see the value of having it recorded, but don't see it. Also think about current requirements of businesses that sell certain OTC medicines. They record the ID, but not the address. Should this carry any more weight than a health and safety and/or business and professional code?
- 5.56.240 – Why is there no requirement to keep a copy of the Massage Therapy Council certificate on file?
- 5.56.255(g) – “shower tables [ADD DEFINITION]”. Self-explanatory.
- 5.56.320(a) – This is very hard to understand. I know it's legalize, but a little convoluted.
- 5.56.320(c) – “We need to add the requirement that . . .” I assume this is clean up language.
- 5.56.360 “We need to address quite a bit more . . .” Again, I assume this is additional clean up.

As was voiced by several commissioners during the meeting, enforcement is a concern I have as well on several fronts.

1. If enforcement is to be handled by our existing code enforcement staff, this seems like a lot of items to be cognizant of when researching or checking on businesses. Although its only five establishments at this time, it seems like a lot of work for our limited staff. Public Safety is always spread so thin that often checks are neglected unless there have been complaints filed against them. Not the most proactive stance to take.
2. Would these be administrative violations, infractions or misdemeanor? Can our public safety (code enforcement) officers cite for misdemeanors? If not, then we have to pull resources from LASD.

If you have any questions regarding my comments, please let me know.

Respectfully,

Sheryl

EXHIBIT A

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DUARTE, CALIFORNIA AMENDING IN ITS ENTIRETY CHAPTER 5.56, "MASSAGE ESTABLISHMENTS," OF TITLE 5, "BUSINESS LICENSES AND REGULATIONS," OF THE DUARTE MUNICIPAL CODE TO REVISE CERTAIN REGULATIONS APPLICABLE TO THE OPERATION OF MASSAGE ESTABLISHMENTS (MCA 14-06)

THE CITY COUNCIL OF THE CITY OF DUARTE, CALIFORNIA, ORDAINS AS FOLLOWS:

SECTION 1. CHAPTER 5.56 AMENDED

Chapter 5.56, "Massage Establishments," of Title 5, "Business Licenses and Regulations," of the Duarte Municipal Code is amended in its entirety to read as follows:

5.56.010 - Purpose and intent.

The intent and purpose of this chapter is to comply with the provisions found in California Business and Professions Code section 4600 et seq. relating to the regulation of massage or massage services, which shall include but not be limited to services referred to as Reiki, applied oils, body sponge, reflexology, bodywork-, and acupressure (collectively "Massage"), and to allow legitimate massage uses while restricting business fronts for illicit sexual activity and/or human trafficking. Any terms used in this chapter that are not defined in this chapter shall have the same meaning as that defined by California Business and Professions Code section 4600 et seq. Nothing in this chapter shall serve to limit the city's authority under California Business and Professions Code section 4600 et seq.

5.56.020 - License required.

- (a) It shall be unlawful and a violation of this code for any individual person, association, partnership, corporation, or other entity to engage or permit to engage in, conduct, or carry on, in or upon any premises within the city the business of massage in exchange for compensation without being currently certified as a massage practitioner or massage therapist by the operation of a Massage establishment unless: (1) all persons providing Massages at the establishment are certified massage practitioners and/or certified Massage therapists pursuant to the California Massage Therapy Organization Council's certification procedures in accordance with California Business and Professions Code section 4600 et seq.; and (2) the Massage establishment operator has obtained a business license and a conditional use permit from the city as well any other permits, licenses and other approvals required by law. Procedures for obtaining a business license are set forth in chapter 5.04 of this code and section 5.56.040 of this chapter.
- (b) All persons administering Massages in the city for compensation must be a certified Massage practitioner and/or a certified Massage therapist holding a valid certification from the Massage Therapy Council. No person may administer massage within the city without first providing, to the Director of Administrative Services, a copy of his or her massage certificate and a list of the names and addresses of all Massage establishments at

which he or she will provide Massage for compensation. Any change in the locations at which a person will provide Massage for compensation shall be reported to the city within five (5) business days of the change.

- (c) This section applies to all independent contractors, sole proprietors, and owners of a Massage business. Accordingly, pursuant to Government Code section 51034(c)(8), any Massage business owner, including a sole proprietor or independent contractor who is California Massage Therapy Council certified, must obtain a business license and any other entitlement required by this Code to carry on the business of Massage therapy.

5.56.030 — Business license required; inspection of premises; notification to city.

~~(a) Any person, association, partnership, corporation, or other entity engaged in the businesses of massage described in Section 5.56.010 of this chapter shall apply for and secure a city business license under Chapter 5.04 prior to commencing any operation in the city.~~

5.56.040 – Massage Establishment business license required; inspection of premises; notification to city.

- (a) In addition to the information required to be provided under chapter 5.04 of this Code, a person applying for a business license for a Massage establishment as described in sections 5.56.020 of this chapter shall provide the following information:

- (1) The prior business and permit history of the applicant, including but not limited to whether the applicant has ever had any permit or license issued by any agency, board, city, county, territory, or state; the date of issuance of such a permit or license; whether the permit or license was revoked or suspended; and whether a vocational or professional license or permit was issued, revoked, or suspended, and the reason for any revocation or suspension.
- (2) A description of the proposed Massage establishment, including the type of treatments to be administered;
- (3) Authorization for the city, its agents and employees, to seek information and conduct an investigation into the truth of the statements set forth in the application.
- (4) A complete current list of the names and residence addresses of all proposed Massage technicians, aides, trainees and other employees who are or will be employed in the Massage establishment, if known, together with the State-issued Massage Technician's License for each proposed Massage technician. If not known at the time of submission of the application, the applicant shall provide the required information no later than five (5) business days prior to opening for business.
- (5) For each person that the Massage establishment does or will employ, retain or permit to perform Massage for compensation: a copy of that person's legal form of identification with photograph, a copy of that person's current certificate issued

by the Massage Therapy Council, and a copy of that person's identification card issued by the Massage Therapy Council.

- (6) The name and residence addresses of the proposed operator(s) and manager(s) who will be principally in charge of the operation of the Massage establishment.
- (7) The name and mailing address of the Landlord and the fee owner of the property at which the Massage establishment will be conducted.
- (8) Evidence satisfactory to the Director of Administrative Services demonstrating that the proposed Massage establishment is authorized under city zoning to conduct Massage activities at the proposed Massage establishment site.
- (9) A scaled floor plan of the Massage establishment, including, at minimum measurements and purposes labeled of all rooms and spaces within the building.
- (b) As a condition of issuance of a business license, the city shall have the right to inspect the premises to confirm compliance with this chapter and applicable state law.
- (c) Except as otherwise specifically provided in this subdivision, once a business license is issued to a Massage establishment, the applicant shall submit to the city any change to any of the information required above within five (5) business days of discovering that change. Such changes include, but are not limited to, changes in the types of services to be provided, changes in the persons employed or retained by the Massage establishment to perform Massage for compensation and changes to the floor plan or physical arrangement of space within the Massage establishment.
- (d) (e) The owner or operator of a ~~massage~~ Massage establishment, including independent contractors and sole providers, shall notify the city in writing of any intention to rename, change management, or convey the business to another person or entity at least fifteen five (5) business days prior to such renaming, change of management, or conveyance of the business.

~~5.56.040~~ **5.56.060 - Display of permit and certifications.**

- (a) Each person employed or retained by a ~~massage~~ Massage, including independent contractors, by a Massage establishment to perform ~~massage~~ Massage services in or on the premises or through an outcall massage service shall display on keep in his or her person possession a copy of a valid certification identification card issued to that employee by the California Massage Therapy Council and a legal form of identification with photograph. It should be the obligation of the massage business or establishment to display a copy of each such permit or certification in an open and conspicuous place visible from the entrance and/or reception and waiting area of the massage establishment and business. A passport size photograph of the employee shall be affixed to each permit, certification, or identification card on display pursuant to this section. The home address of any employee need not be displayed.
- (b) The Massage business or establishment must also display a copy of each such certificate for every certified Massage therapist and certified Massage practitioner employed by the Massage establishment, as an employee, independent contractor or otherwise, in an open

and conspicuous place visible from the entrance and/or reception and waiting area of the massage establishment and business. A passport-size photograph of the employee shall be affixed to each permit, certification, or identification card on display pursuant to this section. The home address of any employee need not be displayed.

5.56.070 – Massage School Prohibited

No Massage establishment shall operate as a school of Massage or use, or permit use of, any portion of its facilities as a school of Massage.

5.56.050 5.56.080 - Attire and physical hygiene requirements.

The following attire and physical hygiene requirements shall be applicable to all massage businesses and establishments and to all persons performing massage services in owners, operators, managers, employees, and independent contractors of such Massage establishments located within the city.

- (a) All persons shall wear clean and sanitary outer garments at all times when present on the premises of the Massage establishment. All outer garments shall be of a fully opaque, nontransparent material and provide complete covering from at least the mid thigh to two inches below the collarbone. The midriff shall not be exposed.
- (b) All outer garments shall comply with the standards set forth in Business and Professions Code section 4609, and, accordingly shall be of a fully opaque, nontransparent material, and shall not expose any genitals, pubic areas, buttocks or breasts.
- (c) All persons shall thoroughly wash their hands with soap and water or any equally affective cleansing agent immediately before providing any massage-Massage service to a patron. No massage-Massage services shall be provided upon a surface of the skin or scalp of a patron where such skin is inflamed, broken (e.g., abraded, cut) or where a skin infection or eruption is present.
- (d) No person afflicted with an infection or parasitic infestation capable of being transmitted to a patron shall knowingly provide massage-Massage services to a patron, or remain on the premises of a massage-Massage business or establishment while so infected or infested. Infections or parasitic infestations capable of being transmitted to a patron include, but are not limited to:
 - (1) Cold, influenza or other respiratory illness accompanied by a fever, until twenty-four hours after resolution of the fever;
 - (2) Streptococcal pharyngitis ("strep throat"), until twenty-four hours after treatment has been initiated and twenty-four hours after resolution of fever, whichever is the later;
 - (3) Purulent conjunctivitis ("pink eye"), until examined by a physician and approved for return to work;
 - (4) Pertussis ("whooping cough"), until five days of antibiotic therapy has been completed;

- (5) Varicella ("chicken pox"), until the sixth day after onset of rash or sooner if all lesions have dried and crusted;
- (6) Mumps, until nine days after onset of parotid gland swelling;
- (7) Tuberculosis, until a physician or local health department authority states that the person is noninfectious;
- (8) Impetigo (bacterial skin infection), until twenty-four hours after treatment has begun and twenty-four hours after resolution of the infection, whichever is later;
- (9) Pediculosis (head lice), until the morning after first treatment; and
- (10) Scabies ("crabs"), until after treatment has been completed.

Blood-borne diseases, such as HIV/AIDS and hepatitis B (HBV), shall not be considered infectious or communicable diseases for the purpose of this paragraph (c).

~~5.56.060—Ventilation requirements.~~

~~Minimum ventilation shall be provided in accordance with the applicable building code regulations.~~

~~5.56.070~~ 5.56.100 - Reception area separate from customer waiting area; screening of openings.

~~There shall be a reception or front desk area accessed through the front door of the premises and a separate location within the premises to be used as a waiting area for customers who are awaiting massage services. To ensure that the view of the interior of the premises is obscured from outside the premises, any building openings, entries, windows, and the like found in massage businesses and establishments shall be located, covered, or screened in such a manner as to prevent a view into the interior from outside the building with the exception of the reception or front desk, and/or customer waiting area which shall be visible from the exterior through the front door, and/or store-front window. To ensure that the view of each of the Massage rooms of the premises is partially obscured, all interior openings, entries, windows, doorways, and the like into Massage rooms found in Massage businesses and establishments shall use obscured glass doors without use of any type of additional covering, such that use of a Massage room may be visually confirmed, but the identity of the room occupants is protected.~~

~~5.56.080—Lighting in parking lot.~~

~~To ensure the personal safety and security of patrons and employees and to reduce the incident of vandalism and theft, lighting at all massage businesses and establishments must be designed to illuminate all off-street parking areas serving any massage business and establishments.~~

~~5.56.090~~ 5.56.110 - Construction.

The following construction standards are adopted to ensure the personal health and safety of patrons and employees by imposing reasonable hygiene requirements:

- (a) Construction of rooms used for toilets, tubs, steam baths, and showers at all massage Massage businesses and establishments shall be made waterproof with approved waterproofed material and shall be installed in accordance with all applicable state and local laws and regulations. Plumbing fixtures shall be in accordance with all applicable state and local laws and regulations.
- (b) Steam rooms and shower compartments shall have waterproof floors, walls and ceilings approved by the city.
- (c) Floors of wet and dry heat rooms shall be adequately pitched to one or more drains properly connected to the sewer. However, dry heat rooms with wooden floors need not be provided with pitched floors and drains.
- (d) A source of hot water must be available within the immediate vicinity of dry and wet heat rooms to facilitate cleaning.

~~5.56.100 — Unlocked exterior doors.~~

~~To protect the personal health and safety and security of patrons and employees, all exterior doors of a massage business and establishment shall remain unlocked during business hours.~~

~~5.56.110 — Locked interior doors prohibited.~~

~~To protect the personal safety and security of patrons and employees, it shall be unlawful for any massage service to be carried on within any cubicle, room, booth, or any area within a massage business and establishment which is fitted with a door capable of being locked.~~

~~5.56.120 — Unobstructed opening required.~~

- ~~(a) — To protect the personal safety and security of patrons and employees, all doors or doorway coverings within all massage businesses and establishments shall have an unobstructed opening six inches by six inches in size capable of clear two-way viewing into and out of all cubicles, rooms, or booths. The opening shall not be less than four and one-half feet from the floor of the establishment nor more than five and one-half feet from the floor.~~

5.56.120 - Minimum number of employees and unlocked exterior and interior doors

- (a) All Massage businesses and/or establishments shall utilize a minimum of two (2) employees during all business hours.
- (b) All exterior doors of a Massage business and/or establishment shall remain unlocked during business hours.
- (c) It shall be unlawful for any Massage service to be carried on within any cubicle, room, booth, or any area within a Massage business and establishment which is fitted with a door capable of being locked.
- (d) (b) Toilets and cubicles used solely for the application of liquid and vapor baths shall have no such opening in the covering door or curtain, but shall be clearly marked as to such purpose on the exterior door or curtain of the cubicle, room or booth.

- (e) Nothing contained in this section shall be construed to eliminate other requirements of statute, ordinance, or this code concerning the maintenance of premises, nor to preclude authorized inspection thereof, whenever such inspection is deemed necessary by the police or health departments, or by the city to assure compliance with the provisions of this chapter and applicable fire, health, and safety requirements.

5.56.130 - Video security

- (a) The reception or front desk area, all hallways, and every entry and exit of every Massage business and/or establishment shall utilize a video security system that provides surveillance of such areas during all business hours. All video footage shall be retained in a digital format for a minimum of 30 calendar days. The Massage business establishment owner, operator, manager, and/or employee shall make the recorded surveillance immediately available for inspection upon reasonable demand of the City Manager, City Manager's designee, city law enforcement or any city code compliance officer. The owner of the Massage business establishment shall submit to the Director of Public Safety a Supplemental Security Plan, before the issuance of a city business license, prepared to the Director's satisfaction outlining implementation of the following measures, which shall be monitored by the Public Safety Department. Upon plan approval by the Director of Public Safety, the plan components shall be installed and made operational prior to the Massage establishment commencing operation. At a minimum, the security plan shall provide the following:

- (1) A Closed Circuit Television (CCTV) System capable of viewing and recording events inside and outside the premises. The quantity, type, and location of cameras shall be subject to Public Safety Director approval.
- (2) Details on the location of the CCTV system recorder and storage of recorded content. The recorder shall be locked in a cabinet within an office; access to the cabinet shall be available to employees on duty at all times.
- (3) Details on clearly distinguishable height markers on the interior side of the doorjamb, or on the interior edge of a pair of doors, for all doors used by the public to access the establishment. 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 5' and ending at 6'6".

5.56.150 - Cleanliness.

- (a) Adequate equipment for disinfecting and sterilizing instruments used in performing the acts of massage-Massage shall be provided.
- (b) Hot and cold running water shall be provided at all times.
- (c) A washer and dryer, for thoroughly cleaning soiled linens, shall be located within the interior of the massage establishment.
- (d) Separate closed cabinets shall be provided for the storage of clean and soiled linen, and shall be plainly marked: "Clean Linen" and "Soiled Linen."

5.56.140-5.56.160 - Separate rooms and group massage.

~~In any establishment in which massage Massage services are rendered only to members of the same sex at any one time, such persons of the same sex may be placed in a single separate room if such persons are related by blood, marriage, registered domestic partnership, or adoption, or the operators of the massage Massage establishment may elect to place such persons of the same sex, who are eligible to be in the same room, in separate enclosed rooms or booths having adequate ventilation to an area outside said room or booth while massage Massage services are being performed.~~

Massage services for one gender must be provided in a room separate from members of the opposite gender. Establishments that provide Massage services to a group of two (2) or more persons (e.g. group Massage), may only do so for members of the same gender in a room separate from members of the opposite gender. Group Massage may be provided to members of the opposite gender in a separate single room, only if such persons are related by blood, marriage, registered domestic partnership or adoption.

5.56.150-5.56.170 - Genders served. BathingLockers, dressing, and toilet facilities.

Massage services shall be offered to members of both genders at all times. Adequate bathing, dressing, locker, and toilet facilities shall be provided for patrons. A minimum of one separate locker for each patron served at any given time shall be provided, which locker shall be capable of being locked. If male and female patrons are to be served simultaneously at the establishment, separate bathing, a separate massage room or Massage rooms, sSeparate dressing, and separate toilet facilities shall be provided for male and for female patrons.

5.56.160-5.56.180 - Washbasins.

A minimum of one separate washbasin shall be provided in each ~~massage~~ Massage establishment for the use of employees of any such establishment, which basin shall provide soap or detergent and hot and cold running water at all times and shall be located within or as close as practicable to the area devoted to the performing of ~~massage~~ Massage services. In addition, there shall be provided at each washbasin, sanitary towels placed in permanently installed dispensers.

5.56.170-5.56.190 - Services to minors.

To ensure safety and security, minors are not permitted to enter the premises of a ~~massage~~ Massage business or establishment without being accompanied at all times by a parent or legal guardian and the building entrance to any ~~massage~~ Massage business and establishment shall be clearly and legibly posted by a notice indicating that minors are precluded from entering the premises unless accompanied by a parent or legal guardian at all times. As used herein, the term "minor" means an individual under the age of eighteen years.

5.56.180-5.56.200 - Harmful displays.

To protect minors from viewing displays of harmful materials, no display or exhibit which emphasize or direct the viewer's attention to the subject's genitals or which depict or describe sexual activities or specified anatomical areas, shall be placed in, on, or at a Massage business and establishment in such a manner as to be visible from the exterior of the premises.

5.56.190-5.56.210 - Permitted hours.

To ensure the personal safety and security of patrons and employees and limit negative secondary impacts to surrounding uses, ~~massage~~-Massage businesses and establishments shall only operate between the hours of ~~eight~~ 8:00 a.m. and ~~eight~~ 8:00 p.m.

~~5.56.200~~ **5.56.220 - List of services display.**

All ~~massage~~-Massage businesses and establishments shall post a list of services available, described in English, and at the option of the ~~massage~~-Massage business and establishment one or more other language, and the cost of such services in a conspicuous place on the premises. No service shall be included on the list unless it is a service that falls within the professionally recognized scope of practice of a certified Massage therapist or certified Massage practitioner. No owner, manager or operator of a Massage establishment shall allow, and no person shall perform or offer to perform, any service other than those posted pursuant to this paragraph.

~~5.56.210~~ - **5.56.230 - Records of Services Rendered.**

To ensure the personal safety and security of patrons and employees and to aid law enforcement officials in their investigation of illegal activities, all ~~massage~~-Massage businesses and establishments and independent ~~massage~~-Massage therapists and ~~massage~~-Massage practitioners shall maintain a record which includes at minimum, the date and time of each massage, the name and address of the patron, the name of the person administering such massage, and the type of massage given. In addition, each ~~massage~~ business and establishment shall maintain a current list of all ~~massage~~ therapists and ~~massage~~ practitioners providing massage services at said location. Such records service, the full name and complete address of the patron (which information shall be verified through the presentation of a proper form of legal identification), the full name of any certified Massage practitioner or certified Massage therapist who administered any portion of such service, and the type of Massage given. Such records shall be retained for a minimum of two (2) years from the date of service, and shall be made available, upon request, for inspection by the city manager or police chief City Manager or City Manager's designee, city law enforcement or any city code compliance officer. The information contained in such records shall be confidential unless otherwise required under applicable law.

5.56.240 - Records of Employees and Independent Contractors

The operator and/or manager of a Massage establishment shall maintain on the premises a register of all Massage therapists and Massage practitioners, including employees and independent contractors, providing Massage services at said establishment. Information concerning an employee or independent contract shall be maintained for a minimum of two years after the person ceases to work for the establishment. The operator and/or manager shall make the register immediately available for inspection upon reasonable demand of the City Manager, City Manager's designee, city law enforcement or any city code compliance officer. The register shall include, but not be limited to, the following information:

- (a) The name, nicknames and/or aliases used by an employee.
- (b) The employee's home address and relevant phone numbers (including but not limited to home, cellular and pager numbers.)
- (c) The employee's age, date of birth, gender, height, weight, color of hair and eyes.
- (d) The employee's Social Security number.
- (e) The date of employment and termination, if any.

- (f) The duties of each employee.
- (g) A legal form of identification with photograph

5.56.250 – Advertisement

No Massage establishment owner, operator, manager, employee or independent contractor shall place, publish or distribute, or cause or allow to be placed, published or distributed, any advertising matter that would reasonably suggest to prospective patrons that any service is available unless such service is listed on the Massage establishment's list of available services required under section 5.56.220, above.

5.56.220-5.56.255 - Prohibited procedures and equipment.

No invasive procedures shall be performed on any patron. Invasive procedures include, but are not limited to:

- (a) (1)Application of electricity which contracts the muscle;
- (b) (2)Application of topical lotions, creams, or other substances which affect living tissue, such as chemical peel preparations or bleaches;
- (c) (3)Penetration of the skin by metal needles;
- (d) (4)Abrasion of the skin below the non-living, epidermal layers;
- (e) (5)Removal of skin by means of any razor-edged instrument or other device or tool; and
- (f) (6)Any needle-like instrument which is used for the purpose of extracting skin blemishes and other similar procedures.
- (g) Any table shower massage, Vichy massage or other procedure that involves a table or other flat surface that is intended for patrons to lay on while receiving bathing and/or massage services (in any location, including, without limitation, a shower or lavatory).
- (h) Any table shower device, or other device that is intended for patrons to lay on while receiving bathing and/or massage services (in any location, including, without limitation, a shower or lavatory).

5.56.230-5.56.260 - Restrictions on garments provided.

All bathrobes, bathing suits and/or other garments that are provided for the use of patrons shall be either fully disposable and shall not be used by more than one patron, or shall be laundered after each use.

5.56.240-5.56.270 - Restrictions on grooming and hygiene products provided.

All combs, brushes, and or other personal items of grooming or hygiene that are provided for the use of patrons shall be either fully disposable and shall not be used by more than one patron, or shall be fully disinfected after each use.

5.56.250-5.56.280 - Required footwear while showering.

No patrons shall be allowed to use any shower facilities of the business or establishment unless such patrons are wearing slip-resistant sandals or flip-flops while in the shower compartment. All footwear such as sandals or flip-flops that are provided for the use of patrons

shall be either fully disposable and shall not be used by more than one patron, or shall be fully disinfected after each use.

~~5.56.260~~ **5.56.290 - Prohibited conduct.**

~~The~~ To protect the personal health and safety of patrons and employees, the following conduct is prohibited to deter criminal activity and to protect the personal health and safety of patrons and employees: from taking place within a Massage establishment:

- (a) ~~(a) It is unlawful for any massage therapist, massage practitioner, any patron, or any other person present where massage services are being offered or performed, to~~ No person present at a Massage establishment may expose or touch an anatomical area, whether his or her own, or those of another person.
- (b) ~~It is unlawful for any massage therapist, massage practitioner, any patron, or any other person present where massage services are being offered or performed, to be in a state of full nudity or semi-nudity. Full nudity or semi-nudity means any of the following: a) the appearance or display of an anus, male or female genital, pubic region, or a female breast below a point immediately above the top of the areola, and/or (b) a state of undress which less than completely covers an anus, male or female genital, pubic region or a female breast below a point immediately above the top of the areola.~~
- (b) A Massage of the genitals or anal region of a patron, or any other person located within the Massage establishment, as provided in Business and Professions Code section 4609(a)(1)(E).
- (c) No Massage services shall be rendered to a patron, unless the patron's genitals are fully covered. In the case of a female patron, the patron's breasts must also be covered to the point immediately above the top of the areola. In addition, no patron's genitals or breasts of a any female patron shall intentionally be touched while the patron is on the premises of the Massage establishment.
- (d) ~~(e) It is unlawful for any massage therapist, massage practitioner, any patron~~ It is unlawful for any massage establishment to allow any of its employees, independent contractors, patrons, or any other person present where massage ~~Massage~~ services are being offered or performed, to engage in any sexual activity.
- (e) ~~(d) It is unlawful for any person owning, operating or managing a massage~~ Massage businesses and establishment knowingly to cause, allow or permit in or about such massage ~~Massage~~ businesses and establishment any agent, employee or any other person under his control or supervision to perform such acts prohibited in this section.
- (f) ~~(e) For purposes of this section, the phrase "anatomical area" means human genitals, pubic region, anus, or a female breast below a point immediately above the top of the areola.~~
- (g) ~~(f) For purpose of this section, the phrase "sexual activity" means any of the following: (a) the fondling or other touching of human genitals, pubic region, anus, or female breasts; (b) sex acts, normal or perverted, actual or simulated, including, but not limited to, intercourse, oral copulation, masturbation, or sodomy; or (c) excretory functions as part of or in connection with the fondling or other touching of human genitals, pubic region, buttocks, anus, or female breasts, sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy.~~

This section does not prohibit any certified massage practitioner or certified massage therapist from performing:

- (h) A Massage of the gluteal muscles for compensation.
 - (i) A massage of female breasts with (1) the written consent of the person receiving the Massage and (2) a referral from a licenses California health care provider pursuant to Business and Professions Code section 4609(a)(1)(F).
 - (j) Specific techniques recognized by the California Massage Therapy Council as legitimate.
- ~~5.56.270 – Alcohol prohibited.~~

~~To protect the personal health, safety and security of patrons and to deter criminal activity, no massage therapist, massage practitioner or massage business and establishment shall provide or offer any alcoholic beverage to a patron during the course of providing or offering to provide any massage service.~~

5.56.300 – Alcohol, prophylactic devices and non-prescription drugs prohibited.

No alcoholic beverage or drug, other than a prescription medication in the possession of the person for whom the prescription was written, and no condoms or other prophylactic devices, shall be stored or allowed on a Massage establishment's premises. Service of alcoholic beverages shall not be permitted.

~~5.56.280~~ **5.56.310 - Minors—Employment or services prohibited.**

No holder of a massage ~~Massage~~ businesses and establishment ~~permit~~ license shall employ any person under eighteen years of age.

~~5.56.290~~ **5.56.320 - Violations of a public nuisance, penalties and nuisance abatement.; license revocation for repeated violations; notifications to Landlord**

- (a) Any massage ~~Massage~~ establishment operated, conducted, or maintained contrary to the provisions of this chapter or related chapters shall be, and the same is hereby declared to be unlawful and a public nuisance, and the city attorney or city prosecutor ~~City Manager~~ or City Manager's designee, City Attorney or City Prosecutor may, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings, against the Massage establishment owner and/or its agents and/or employees, and/or the landlord and/or fee owner of the property on which the Massage establishment is operated, for the abatement, removal and enjoinder thereof, in the manner provided by law. Such remedies shall be in addition to any other penalties or remedies available to the city under this code, or under state law.
- (b) In addition to any other penalty authorized by law or this code, the penalty for violating any of the terms, conditions, or requirements of this chapter shall be as follows:
 - (1) First Violation. When a person or business is found to violate any provision of this chapter, that person or business shall be issued a formal, written warning from a city code enforcement officer to cease the prohibited activity.

- (2) Second Violation. When a person or business is found to violate any provision of this chapter after being issued a formal, written warning within the prior twelve (12) month period for a previous violation, that person or relevant agent for the business shall be given a second written notice of violation advising that any further violations will result in the revocation of the business license for such establishment, and a prohibition on a re-application for a business license for a period of one (1) year from the subsequent violation.
- (3) Third Violation. When a person or business is found to violate any provision of this chapter for a third time within a twelve (12) month period following receipt of a second violation, that person or business shall be given written notice by the Code Enforcement Officer that its business license for the premises in question is immediately and summarily revoked, and that continued operation of the business in question thereafter shall be deemed an additional violation of the city's Municipal Code. A copy of such notice shall be posted at a prominent location upon the property in question. An action to revoke a business license under this section may be appealed within ten (10) days of the date of the written notice of the summary revocation, pursuant to the procedure set forth in section 5.04.260 of this Code. Notwithstanding any provision of the Municipal Code to the contrary, and because the City Council has declared that a business operating in violation of this chapter poses an immediate threat to public health, safety and welfare, the filing of an appeal in connection with the immediate, summary revocation of a business license under this chapter shall not stay the effectiveness of the revocation during the pendency of an appeal. Upon revocation of a business license pursuant to this section, (1) the applicant and any affiliate thereof shall be prohibited from re-occupancy of a Massage Establishment during the twelve (12) month period following the revocation., and (2) all persons shall be prohibited from applying for a business license to operate a Massage Establishment at the subject location during the twelve (12) month period following the revocation.
- (c) The Landlord and the fee owner of the property at which the Massage establishment is conducted, as identified in the business license application, shall be notified of each citation, violation, conviction, and/or business license revocation action taken pursuant to this chapter.

5.26.330 – Management; liability of management.

One or more managers shall be designated to act as the person(s) in charge of managing day-to-day operations of the Massage establishment, including receiving all complaints. The names of such managers must be provided to the city. At least one manager shall be on premises of the massage establishment at all times during all business hours of operation. In addition to the holder of the Massage facility's business license, on-site managers shall be responsible for all violations taking place on the massage establishment premises during their respective shifts.

5.56.300-5.56.340 - Exemptions from chapter.

This chapter shall not apply to:

- (a) ~~(a)~~Persons holding a valid certificate to practice the healing arts under the laws of the State of California and their employees, including, but not limited to, holders of medical degrees such as physicians, surgeons, chiropractors, osteopaths, naturopaths, podiatrists, acupuncturists, physical therapists, registered nurses, and licensed vocational nurses;
- (b) ~~(b)~~State-licensed hospitals, nursing homes, sanitariums, physiotherapy establishments, or other state-licensed physical or mental health facilities and their employees;
- (c) ~~(c)~~Barbers and cosmetologists who are licensed under the laws of the State of California while providing massage services within the scope of their licenses, provided that such massage services are limited solely to the neck, face, scalp, feet and lower limbs up to the knees, and hands and arms, of their patrons;
- (d) ~~(d)~~Persons who provide ~~massage~~ Massage services to amateur, semi-professional or professional athletes or athletic teams, facilities or events, so long as such persons do not practice ~~massage~~ Massage services as their primary occupation within city limits;
- (e) ~~Massage businesses or establishments that are sole proprietorships as defined under paragraph (1) of subdivision (b) of Section 4612 of the California Business and Professions Code, except that such businesses or establishments shall not be exempt from this chapter to the extent Section 4612 expressly permits the regulation of such businesses or establishments by local ordinance, and such businesses or establishments shall comply with the provisions of this chapter to extent permitted by Section 4612 of the California Business and Professions Code.~~

5.56.350 – Compliance with applicable laws.

Massage establishments shall be operated in compliance with all applicable laws and regulations, including without limitation, the California Massage Therapy Act (Business and Professions Code section 4600 et seq.).

5.56.360 – Pre-Existing Massage Establishments.

- (a) Except as set forth in subsection 5.56.360(b), all requirements of this chapter shall be applicable effective within the timeframes described below.
 - (1) The city shall notify both the tenants and the property owners of all Massage Establishments that were legally operating with the city prior to MayJune 1, 2015 of — (1) the city’s then-current Massage Establishment regulations, (2) an opportunity —to meet and confer with city staff concerning the then-current Massage —Establishment regulations, and (3) a list of materials that must be submitted to the —city under this chapter.
 - (2) All existing Massage Establishments shall, within sixty (60) days after receiving the notifications required in subsection 5.56.360(a)(1), provide to the city any and all documentation required by this chapter, and shall authorize an inspection of the Massage Establishment by city staff. Following receipt of the documentation and completion of the inspection, city staff shall notify the tenants and the property owners of the Massage Establishment of all required corrections or changes as necessary to achieve compliance with this chapter.

- (3) All existing Massage Establishments shall, within sixty (60) days after receiving the notifications required in subsection 5.56.360(a)(2), make any necessary changes to the physical structure or operations of said Massage Establishment as necessary to be in compliance with this chapter (except to the extent required compliance is deferred pursuant to section 5.56.360(b)).
- (b) Notwithstanding subsection 5.56.360(a), all Massage Establishments that were legally operating in the city prior to MayJune 1, 2015 and determined by the Director of Community —Development to be out of compliance with the requirements of sections 5.56.100, —5.56.130, 5.56.150(c) and/or 5.56.170 of this chapter, shall achieve full compliance with —such sections on or prior to July 1, 2018.

SECTION 2. CEQA DETERMINATION.

In adopting this Ordinance, the City Council finds and determines, based on all of the information in the record and on the basis of its independent judgment, that this Ordinance is exempt from the California Environmental Quality Act pursuant to the following exemptions, and each of them independently: Title 14 California Code of Regulations Section 15061(b)(3), in that it can be seen with certainty that the adoption of this Ordinance proposes no activity that may have a significant effect on the environment, and pursuant to Title 14 California Code of Regulations Section 15301, in that this Ordinance involves no expansion of use of existing facilities.

SECTION 3. SEVERABILITY.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase, or portion of this Ordinance is, for any reason, held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

SECTION 4. POSTING OF ORDINANCE.

The City Clerk shall certify as to the adoption of this Ordinance and shall cause this Ordinance to be posted in the manner provided for in the Duarte Municipal Code.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect thirty (30) days following its second reading.

PASSED, APPROVED, AND ADOPTED after second reading at a regular meeting of the City Council of the City of Duarte this ____ day of _____, 2015.

MAYOR TZEITEL PARAS-CARACCI

STATE OF CALIFORNIA)

COUNTY OF LOS ANGELES) ss.
CITY OF DUARTE)

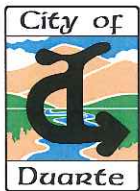
I, Marla Akana, City Clerk of the City of Duarte, County of Los Angeles, State of California, hereby attest to the above signature and certify that Ordinance No. _____ was adopted by the City Council of said City of Duarte at a regular meeting of said Council held on the _____ day of _____, 2015, by the following Roll Call vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

City Clerk Marla Akana
City of Duarte, California



MEMORANDUM

Date: March 16, 2015

To: Chairperson and Planning Commissioners

From: Jason Golding, Senior Planner

Subject: **Municipal Code Amendment (MCA) 14-05**; City Council request for additional analysis of square footage requirement, as outlined in proposed Ordinance 15-O-02, Chapter 19.60.112.C.1

At the February 24, 2015 meeting, the City Council introduced Ordinance 15-O-02 (MCA 14-05); a code amendment to: (1) add Duarte Development Code sections 19.60.112, to provide locational and development standards for massage establishments; and (2) modify certain definitions appearing in Duarte Development Code Chapter 19.160 to more clearly address the City's regulations of massage establishments. The Council discussed proposed subsection 19.60.112.C.1, which required a minimum 2,000 square foot (s.f.) gross owned or leased floor area for new massage establishments. During deliberation, several different ideas were considered, including maintaining the 2,000 s.f. minimum, reducing the floor area requirement, or completely eliminating any minimum massage establishment size. Public testimony was taken from one person who currently operates a 1,200 s.f. wellness center that they plan on converting to a massage business after consideration of the ordinances; they expressed their concern over the minimum lease area requirement. The Council did not introduce the Ordinance and instead referred the issue of minimum massage establishment floor area back to the Planning Commission for further consideration.

As previously discussed in the Staff Report, one significant component of the Development Code amendment was the establishment of a minimum floor area requirement for new massage businesses. Code Enforcement and Planning Division experience show that most interested massage businesses are looking for smaller spaces in older, less maintained and smaller centers. A brief survey was conducted for the five existing massage establishments in the City.

TABLE 1				
	Address	Business Name	Appx. Floor Area (s.f.)	Appx. Receptionist Area (s.f.)
1.	1163 Huntington Dr.	East Meets West Spa	1,125	230
2.	1740 Huntington Dr., #310	Rainbow Spa	1,200	200
3.	1802 Huntington Dr, #D	Foot & Body Spa	840	200
4.	2138 Huntington Dr.	Lucky Star Massage	1,500	305
5.	2163 Huntington Dr.	Duarte Foot & Body Massage	1,325	190

All of the City's existing massage establishments have had enforcement issues. Table 2 provides information from the Public Safety Department on past enforcement actions related to

the five current massage businesses within the community. Addresses have been removed and the locations changed from Table 1 for the purposes of this staff report.

TABLE 2	
Location	Violations (number of violations)
1.	Alterations to floor plan/layout (2); building permits required (2); recordkeeping (2)
2.	Displaying technician licensing/permits (3); massage technician license required (2); cleanliness (3); building permits required (2); alterations to floor plan/layout; recordkeeping (3); separate rooms
3.	Bathing and dressing room requirements (2); building permits required; screening of openings; recordkeeping (2); reception area
4.	Unlocked doors; displaying technician licensing/permits; cleanliness; building permits required; recordkeeping (2); prostitution - arrest made, case withdrawn
5.	Displaying technician licensing/permits (4); building permits required (4); alterations to floor plan/layout (4); recordkeeping (4); restrictions on garments provided - not being washed; prohibited procedures - abrasive procedures; required footwear for showering

Research of other cities with national massage businesses, such as chains like Massage Envy and Massage Green, indicate that their lease spaces are typically no less than 2,000 s.f., with most between 2,200 and 2,800 s.f.. These establishments usually occupy space in well-maintained shopping centers where they can compliment other services and shopping opportunities provided by adjoining businesses. It was Staff's intent to include this minimum floor area requirement to encourage larger massage businesses to locate in more prominent shopping centers, where they can co-exist, rather than isolate themselves, from the rest of the business activities on the property. A larger minimum lease size requirement will likely involve businesses with more employees and/or massage technician contractors, which should reduce illicit behaviors and increase transparency. Furthermore, the cost to lease a larger space discourages smaller massage businesses that aim to operate as a sole proprietor, which is being prohibited in MCA 14-06.

A second option would be to consider reducing the minimum floor area requirement. As shown in Table 1 above, most current massage establishments range in size for 840 to 1,500 s.f, with an average lease area of 1,200 s.f.. Some type of minimum floor area requirement, depending on the reduction, will partially address the concerns related to smaller lease spaces. The Commission should consider that a smaller minimum area requirement would likely equate to additional requests for massage businesses within the City.

A third option is the elimination of a minimum floor area requirement. Staff performed an analysis of an estimated minimum floor area necessary to operate a new massage establishment. Space demand was calculated for male and female restrooms and bathing facilities, laundry, lockers, wash basins and receptionist areas required by both proposed modifications to DDC 19.60.112 and DMC 5.56 (MCA 14-05 and 14-06).

TABLE 3		
Room Function	Estimated area (s.f.)	Area Total (s.f.)
Restroom	60 (per gender)	120
Bathing facilities	50 (per gender)	100
Laundry, employee washbasin	60	60
Lockers	30	30
Receptionist/entry area	200	200
Hallways/misc. space	100	100
TOTAL	-	610

As shown in Table 3, an estimated minimum lease space of 610 s.f. would be needed to accommodate only the rooms and functions mandated by the new ordinances and the typical miscellaneous space present in most floor plans. This leaves a small amount of area in many lease spaces to accommodate private massage rooms, open massage areas, break rooms, offices and other ancillary space needs. Most private massage rooms vary between 60 and 150 s.f., with an average of 100 s.f. One massage business in the City has a large open massage area that is approximately 400 s.f. in area. Considering the minimum space requirements, listed in Table 3, and typical massage and ancillary areas, it would be reasonable to require 1,200 - 1,500 square feet for new massage businesses. Staff contends that eliminating a minimum space requirement would foster more of the type of massage businesses that have generated code and law enforcement concerns in the past and lead to additional massage business requests; both of which demand additional Staff resources related to education with relevant ordinances, application processing, inspection, and enforcement.

The Planning Commission is being asked to deliberate and make a formal recommendation to the City Council on any requirement (or lack thereof) for a floor plan minimum area for new massage establishments.

ATTACHMENTS

Exhibit A—MCA 14-05 City Council Staff Report

Exhibit B—Ordinance 15-O-02

MEMORANDUM

TO: Kristen Petersen, Assistant City Manager
FROM: Michelle Brown, Human Resources Specialist
DATE: May 4, 2015
SUBJECT: PART-TIME EMPLOYEE SICK LEAVE POLICY

Background

On September 10, 2014 legislation (AB 1522) was passed that requires employers in California to provide paid sick leave to all employees, including part-time and temporary workers. The Healthy Workplaces, Healthy Families Act of 2014 took effect on January 1, 2015 for employment tracking purposes, however the right to accrue and use sick leave does not take effect until July 1, 2015. Under the Act all employers in California are required to provide employees who work at least 30 days or more within a year one hour of paid leave for every 30 hours worked, up to 24 hours of sick leave in a calendar year. An employee will be able to utilize this leave to remain off work for the diagnosis, care, or treatment of an existing health condition or preventative care for himself/herself or immediate family member.

Sick Leave Usage Summary:

- Sick leave begins to accrue after 30 days of employment at a rate of 1 hour per every 30 hours worked, up to 24 hours in a calendar year
- Sick leave may be used after 90 days of employment
- Leave must be requested by employee via timesheet portal or through other appropriate communication methods to supervisor and/or human resources
- Leave must be taken in 2-hour increments and will be paid at the current hourly rate of scheduled position
- Up to 24 hours of unused leave may be carried to next calendar year
- A maximum of 48 hours may be accrued, though no more than 24 hours may be used in one calendar year

Staff's intention is to implement all necessary requirements of the Healthy Workplaces, Healthy Families Act of 2014 by July 1, 2015. In order to memorialize and communicate necessary information to employees regarding legal rights to sick leave, staff has written the attached Part-Time Employee Sick Leave Policy.

Recommendation

It is recommended that the City Council adopt the attached Part-Time Sick Leave Policy.



City of Duarte Part-Time Employee Sick Leave Policy

I. PURPOSE

This policy establishes rules and regulations for all part-time City employees regarding accrual of and use of paid sick time in accordance with the Healthy Workplaces, Healthy Families Act of 2014.

II. DEFINITIONS:

- A. **Regular Part-Time Employee:** Employees, who work an average of at least 20 hours per week, or more than 1,000 hours per year, but less than an average of 40 hours per week, are considered regular part-time employees. Half-time employees are those who work an average of 20-29 hours per week.
- B. **Part-Time Hourly Employee:** Employees, who work an average of less than 20 hours per week, or fewer than 1,000 hours per year, are considered hourly employees. Hourly employees are hired by, and serve at the will of, the City Manager. They may be terminated from employment at any time, without cause.
- A. **Hours Worked:** Hours worked shall include all time when a part-time employee is required to be on duty or to be on the City's premises or at a prescribed workplace, and all time when a part-time employee is suffered or permitted to work. Paid sick time is not considered time worked.
- B. **Immediate Family:** Immediate family means: biological, adopted or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis, regardless of the child's age or dependency status; biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child; spouse; State of California registered domestic partner; grandparent; grandchild; sibling.

III. PAID SICK TIME

- A. **Effective Date of Healthy Workplaces, Healthy Families Act of 2014:** The Healthy Workplaces, Healthy Families Act of 2014 takes effect January 1, 2015. However, the right to accrue and take sick leave under this law does not take effect until July 1, 2015, or on the first day of employment if hired after July 1, 2015.
- B. **Accrual of Paid Sick Time:** Beginning July 1, 2015, paid sick time is accrued at the rate of one hour for every 30 hours worked.
- C. **Eligibility for Paid Sick Time:** Part-time employees become eligible for paid sick leave by working on or after January 1, 2015, for at least 30 days within a calendar year. Part-time employees who work less than 30 days within a calendar year are not eligible for paid sick leave.
- D. **Qualification Period Prior to Use of Paid Sick Time:** Part-time employees are entitled to use their accrued sick time only after completing 90 days of employment.

Part-time employees who work less than 90 days are not entitled to take any paid sick leave.

- E. **Notice of Accrued Sick Time:** All accrued sick leave will be reflected on the part-time employee's paystub, including the balance of paid sick hours available. Accrual and balance information is also available via the City's electronic timesheet system.
- F. **No Advance of Sick Time:** The City will not "lend" sick time to a part-time employee before it has been accrued.
- G. **Sick Time Rate of Pay:** Part-time employees shall be compensated for sick time at their regular rate of pay for the position and schedule in which sick time is utilized.
- H. **Annual Sick Time Use Limit:** Part-time employees may use up to 24 hours of accrued sick time during a calendar year.
- I. **Accrued Sick Time Carry-Over:** Unused sick time may be carried over from calendar year to calendar year with a maximum sick time leave bank of 48 hours.
- J. **Minimum Sick Time Use:** The minimum amount of sick time a part-time employee may use is two hours per workday.
- K. **Use of Sick Time:** Upon the oral or written request of an employee, the City shall permit part-time employees to use accrued paid sick time for the following purposes:
 - 1. Diagnosis, care, or treatment of an existing health condition, or preventative care for an employee or an employee's immediate family member.
 - 2. For part-time employees who are victims of domestic violence, sexual assault, or stalking, for the purposes described in subdivision(c) of Section 230 and subdivision (a) of Section 230.1 of the California Labor Code.
- L. **Part-Time Employee Responsibility:**
 - 1. Part-time employees are not responsible for finding other employees to cover shifts due to their use of sick time.
 - 2. Part-time employees are required to contact their immediate supervisor when they must use sick time for a permitted purpose described in this policy. If no immediate supervisor is available or does not respond, part-time employees must contact the Department Head or Human Resources Department.
 - 3. If the need for paid sick leave is foreseeable, part-time employees are required to provide 5 days advance notice if they must use sick leave for a permitted purpose described in this policy. If the need for paid sick leave is unforeseeable, the part-time employees must provide notice of the need for the leave as soon as practicable.
- M. **Unused Sick Time:** No part-time employee shall be compensated for, or allowed to exhaust any accrued sick time upon resignation, including retirement, termination, layoff, or death.

N. Sick Time Accrual Upon Termination of Employment: Unused accrued sick time at termination shall be reinstated upon return to active status occurring within no more than 12 months of termination. For employees who return to the City within 12 months from their previous separation, days worked prior to the previous separation will count toward the 90 day qualification period.

O. Sick Time Accrual Upon Promotion to Regular Benefited Status: Sick time accrued while in part-time status shall remain intact upon promotion to a regular full-time position, and will thereafter be subject to all rules and policies governing accrued sick time for regular employees.

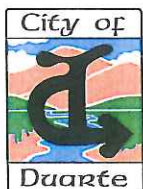
P. Violations of Policy: Violations of the policy may result in termination of employment.

IV. EXCEPTIONS

There are no exceptions to this Policy without the express authorization of the City Manager or designee.

V. AUTHORITY

By the authority of the City Manager.



MEMORANDUM

To: Mayor and City Council

From: Rafael Casillas, P.E., Public Works Manager

Date: May 12, 2015

Subject: Active Transportation Program Duarte Gold Line Station Pedestrian and Bicycle Improvements First/Last Mile Connectivity – Execute the Administering Agency-State Master Agreement No. 00458S, Adopt Resolution No. 15-R-04, Appropriate PROPALR funds and Authorize solicitation for professional services.

RECOMMENDED ACTION

Staff recommends that the City Council take the following actions:

1. Execute the Administering Agency-State Master Agreement No. 00458S for Plans, Specifications and Estimates (PS&E) phase of the Active Transportation Program (ATP) Duarte Gold Line Station Pedestrian and Bicycle Improvements First/Last Mile Connectivity,
2. Adopt Resolution No. 15-R-04 to designate the grantee's agent for all matters relating to the State of California for Active Transportation Program Cycle I,
3. Appropriate \$38,000 Proposition A Local Return (PROPALR) matching funds for the PS&E phase, and
4. Authorize staff to solicit Request for Proposals (RFP) for professional services for the PS&E phase, project and construction management of the Citywide Way-finding Signs, pedestrian and bicycle improvements consistent with the Duarte Gold Line Station.

BACKGROUND

The City of Duarte received notice from Los Angeles Metro that the Duarte Gold Line Station Pedestrian Improvements and Phase II Pedestrian Improvements are on the approved recommended list of project to the California Transportation Commission (CTC). The regional project list were approved by the Regional Council on October 2, 2014 and adopted by the CTC on November 12, 2014. The new state 2014 ATP is to promote walking and biking as created by SB99 and AB 101.

The City of Duarte's ATP project consists of design and construction of pedestrian and bicycle improvements around the Duarte Gold Line Station connecting the station with surrounding uses

including the City of Hope National Medical Center, the civic center, a recently rezoned area for mixed-use TOD development; residential and retail areas to the west, south and northwest of the LRT station; the Class I Duarte Bike Trail and the Lario-San Gabriel River Trail regional bikeway network; the planned Emerald Necklace regional bikeway network, and schools, shopping, and community facilities that on the north side of the I-210 freeway that is currently a barrier to travel due to the lack of sidewalks. See Exhibits A and B for project scoping.

Improvements include sidewalks and bike paths on Duarte Road between Mountain Avenue and Hope Drive and bike paths on Highland Avenue between the station and Royal Oaks Drive. The project will complete a block long gap with a new sidewalk on the west side of Highland Avenue south of Evergreen Avenue and include citywide way-finding signage. See Exhibit C for project conceptual design.

FISCAL IMPACT

The State of California and the City of Duarte will enter into an Administering Agency-State Master Agreement for the PS&E component of the Active Transportation Program. The construction funding component of the project will be processed through a separate Master Agreement prior to construction. The State fund obligation requires execution of the attached master agreement (attachment A) and adoption of an authorizing resolution (attachment B). The funds will be utilized for the PS&E project design phase of Duarte Gold Line Station Pedestrian and Bicycle First/Last Mile Improvements. The City of Duarte will appropriate PROPALR funds for the required local match. The City of Duarte agrees to all ongoing operation and maintenance cost of project improvements. The ATP project funding detail for FY14/15, FY15/16 and FY16/17 is as follows:

Component	State Funds	Matching Funds	Estimated Cost
PS&E (FY14/15-15/16)	\$148,000	\$38,000	\$186,000
Construction (FY15/16-16/17)	\$1,157,000	\$303,000	\$1,460,000
Total Project	\$1,305,000	\$341,000	\$1,646,000

CONCLUSION

Staff respectfully recommends that the City Council execute the Administering Agency-State Master Agreement No. 00458S for Plans, Specifications and Estimates (PS&E) phase of the Active Transportation Program (ATP) Duarte Gold Line Station Pedestrian and Bicycle Improvements First/Last Mile Connectivity, adopt Resolution No. 15-R-04 to designate the grantee's agent for all matter relating to the State of California for Active Transportation Program Cycle I, appropriate \$38,000 Proposition A Local Return (PROPALR) matching funds for the PS&E phase and authorize staff to solicit Request for Proposals (RFP) for professional services

of the PS&E phase, project and construction management of the Citywide Way-finding Signs, pedestrian and bicycle improvements consistent with the Duarte Gold Line Station.

DISTRIBUTION: Community Development Director
 City Clerk
 Staff

Attachment(s)

Attachment A – Department of Transportation Letter Dated March 31, 2015 and two originals of the Program Supplement Agreement to Administering Agency-State Master Agreement.

Attachment B – Resolution R-15-04

Exhibit(s)

Exhibit A – Project Scoping

Exhibit B – Project Scoping

Exhibit C – Conceptual Design

ATTACHMENT A

MASTER AGREEMENT



DEPARTMENT OF TRANSPORTATION

Division of Local Assistance
1120 N STREET
P.O. BOX 942874, MS# 1
Sacramento, CA 94274-0001
TTY 711
(916) 654-3883
Fax (916) 654-2408

March 31, 2015

Mr. Rafael O. Casillas
Director of Public Works
City of Duarte
1600 Huntington Drive
Duarte, CA 91010

Dear Mr. R. Casillas:

Enclosed are two originals of the Program Supplement Agreement No. 0N05 Rev. 000 to Administering Agency-State Master Agreement No. 00458S .

Please sign both Program Supplement Agreements and return them to this office, Office of Local Programs - MS1 within 90 days from receipt of this letter. If the signed Agreements are not received back in this office within 90 days, funds will be disencumbered and/or deobligated. Alterations should not be made to the agreement language or funding. ATTACH YOUR LOCAL AGENCY'S CERTIFIED AUTHORIZING RESOLUTION THAT CLEARLY IDENTIFIES THE PROJECT AND THE OFFICIAL AUTHORIZED TO EXECUTE THE AGREEMENT. A fully executed copy of the agreement will be returned to you upon ratification by Caltrans. No invoices for reimbursement can be processed until the agreement is fully executed.

A copy of the State approved finance letter containing the fund encumbrance and reversion date information will be mailed to you with your copy of the executed agreement.

Your prompt action is requested. If you have questions, please contact your District Local Assistance Engineer.

Sincerely,



 ROBERT NGUYEN, Chief (Acting)
Office of Project Implementation - South
Division of Local Assistance

Enclosure

c: OLP AE Project Files
(07) DLAE - David Sosa

RECEIVED

APR 02 2015

CITY OF DUARTE



File : 07-LA-0-DRT

ATPL-5346(010)

Duarte Road from Highland Avenue
to Mountain Avenue, adjacent to the
Gold Line Station and entirely within

PROGRAM SUPPLEMENT NO. N05
to
ADMINISTERING AGENCY-STATE AGREEMENT
FOR STATE FUNDED PROJECTS NO 00458S

Adv Project ID Date: March 25, 2015
0715000156 Location: 07-LA-0-DRT
Project Number: ATPL-5346(010)
E.A. Number:
Locode: 5346

This Program Supplement, effective _____, hereby adopts and incorporates into the Administering Agency-State Agreement No. 00458S for State Funded Projects which was entered into between the ADMINISTERING AGENCY and the STATE with an effective date of _____ and is subject to all the terms and conditions thereof. This PROGRAM SUPPLEMENT is executed in accordance with Article I of the aforementioned Master Agreement under authority of Resolution No. _____ approved by the ADMINISTERING AGENCY on _____ (See copy attached).

The ADMINISTERING AGENCY further stipulates that as a condition to the payment by the State of any funds derived from sources noted below encumbered to this project, Administering Agency accepts and will comply with the Special Covenants and remarks set forth on the following pages.

PROJECT LOCATION:

Duarte Road from Highland Avenue to Mountain Avenue, adjacent to the Gold Line Station and entirely within the City of Duarte.

TYPE OF WORK: Pedestr/bike Gold Line Improvements Gold Line Station construct
sidewalks,pedestr lighting landscap

Estimated Cost	State Funds		Matching Funds	
	STATE		LOCAL	OTHER
\$186,000.00		\$148,000.00	\$38,000.00	\$0.00

CITY OF DUARTE

By _____
Title _____
Date _____
Attest _____

STATE OF CALIFORNIA
Department of Transportation

By _____
Chief, Office of Project Implementation
Division of Local Assistance
Date _____

I hereby certify upon my personal knowledge that budgeted funds are available for this encumbrance:

Accounting Officer



Date

3/25/15

\$148,000.00

[illegible]

SPECIAL COVENANTS OR REMARKS

Chapter	Statutes	Item	Year	Program	BC	Category	Fund Source	AMOUNT

SPECIAL COVENANTS OR REMARKS

1. A. This PROJECT will be administered in accordance with the applicable CTC STIP guidelines and the Active Transportation Program guidelines as adopted or amended, the Local Assistance Procedures Manual (LAPM), the Local Assistance Program Guidelines (LAPG), and this PROGRAM SUPPLEMENT.

B. This PROJECT is programmed to receive State funds from the Active Transportation Program (ATP). Funding may be provided under one or more components. A component(s) specific fund allocation is required, in addition to other requirements, before reimbursable work can occur for the component(s) identified. Each allocation will be assigned an effective date and identify the amount of funds allocated per component(s).

This PROGRAM SUPPLEMENT has been prepared to allow reimbursement of eligible PROJECT expenditures for the component(s) allocated. Unless otherwise determined, the effective date of the component specific allocation will constitute the start of reimbursable expenditures.

C. STATE and ADMINISTERING AGENCY agree that any additional funds made available by future allocations will be encumbered on this PROJECT by use of a STATE approved Allocation Letter and Finance Letter. ADMINISTERING AGENCY agrees that STATE funds available for reimbursement will be limited to the amount allocated by the California Transportation Commission (CTC) and/or the STATE.

D. Upon ADMINISTERING AGENCY request, the CTC and/or STATE may approve supplementary allocations, time extensions, and fund transfers between components. Funds transferred between allocated project components retain their original timely use of funds deadlines, but an approved time extension will revise the timely use of funds criteria for the component(s) and allocation(s) requested. Approved supplementary allocations, time extensions, and fund transfers between components made after the execution of this PROGRAM SUPPLEMENT will be documented and considered subject to the terms and conditions thereof. Documentation will consist of a STATE approved Allocation Letter, Fund Transfer Letter, Time Extension Letter, and Finance Letter, as appropriate.

E. This PROJECT is subject to the timely use of funds provisions enacted by the Active Transportation Program guidelines, as adopted or amended, and by approved CTC and State procedures as outlined below.

Funds allocated for the environmental & permits (E&P), plan specifications & estimate (PS&E), and right-of-way components are available for expenditure until the end of the second fiscal year following the year in which the funds were allocated.

Funds allocated for the construction component are subject to an award deadline and contract completion deadline. ADMINISTERING AGENCY agrees to award the contract within 6 months of the construction fund allocation and to complete and accept the construction within 36 months of award.

F. Award information shall be submitted by the ADMINISTERING AGENCY to the District

SPECIAL COVENANTS OR REMARKS

Local Assistance Engineer immediately after project contract award and prior to the submittal of the ADMINISTERING AGENCY'S first invoice for the construction contract. Failure to do so will cause a delay in the State processing of invoices for the construction phase.

G. The ADMINISTERING AGENCY shall invoice STATE for environmental & permits (E&P), plans specifications & estimate (PS&E), and right-of-way costs no later than 180 days after the end of last eligible fiscal year of expenditure. For construction costs, the ADMINISTERING AGENCY has 180 days after project completion or contract acceptance to make the final payment to the contractor prepare the final Report of Expenditures and final invoice, and submit to STATE for verification and payment.

H. ADMINISTERING AGENCY agrees to submit the final report documents that collectively constitute a "Report of Expenditures" within one hundred eighty (180) days of PROJECT completion. Failure of ADMINISTERING AGENCY to submit a "Final Report of Expenditures" within 180 days of PROJECT completion will result in STATE imposing sanctions upon ADMINISTERING AGENCY in accordance with the current LAPM and the Active Transportation Program (ATP) Guidelines.

I. ADMINISTERING AGENCY agrees to comply with Office of Management and Budget (OMB) Circular A-87, Cost Principles for State and Local Governments, and 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Notwithstanding the foregoing, ADMINISTERING AGENCY will not be required to comply with 49 CFR, Part 18.36 (i), subsections (3), (4), (5), (6), (8), (9), (12), and (13).

J. By executing this PROGRAM SUPPLEMENT, ADMINISTERING AGENCY agrees to comply with all reporting requirements in accordance with the Active Transportation Program guidelines, as adopted or amended.

ATTACHMENT B

RESOLUTION NO. 15-R-04

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF DUARTE DESIGNATING THE GRANTEE'S AGENT FOR ALL
MATTERS RELATING TO THE STATE OF CALIFORNIA FOR ACTIVE
TRANSPORTATION PROGRAM CYCLE I**

WHEREAS, on September 26, 2013, Governor Brown signed legislation creating the Active Transportation Program (ATP) in the Department of Transportation Senate Bill 99 Chapter 359 and Assembly Bill 101, Chapter 354; and

WHEREAS, the City of Duarte and State of California enter into a Master Agreement for Active Transportation Program Cycle I;

NOW, THEREFORE, BE IT RESOLVED that the City Manager, or his/her designee, is hereby authorized and empowered to execute in the name of the City of Duarte all program supplements, master agreement and right-of-way certifications, grant documents, including but not limited to, applications, agreements, amendments, and requests for payment necessary to secure grant funds and implement the approved grant project.

PASSED, APPROVED, AND ADOPTED this 12th day of May, 2015.

Mayor Tzeitel Paras-Caracci

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF DUARTE)

I, Marla Akana, City Clerk of the City of Duarte, County of Los Angeles, State of California, hereby attest to the above signature and certify that Resolution No. 15-04 was adopted by the City Council of said City of Duarte at a regular meeting of said Council held on the 12th day of May, 2015, by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

City Clerk Marla Akana
City of Duarte, California

EXHIBIT A

PROJECT SCOPING

Project Scope Map

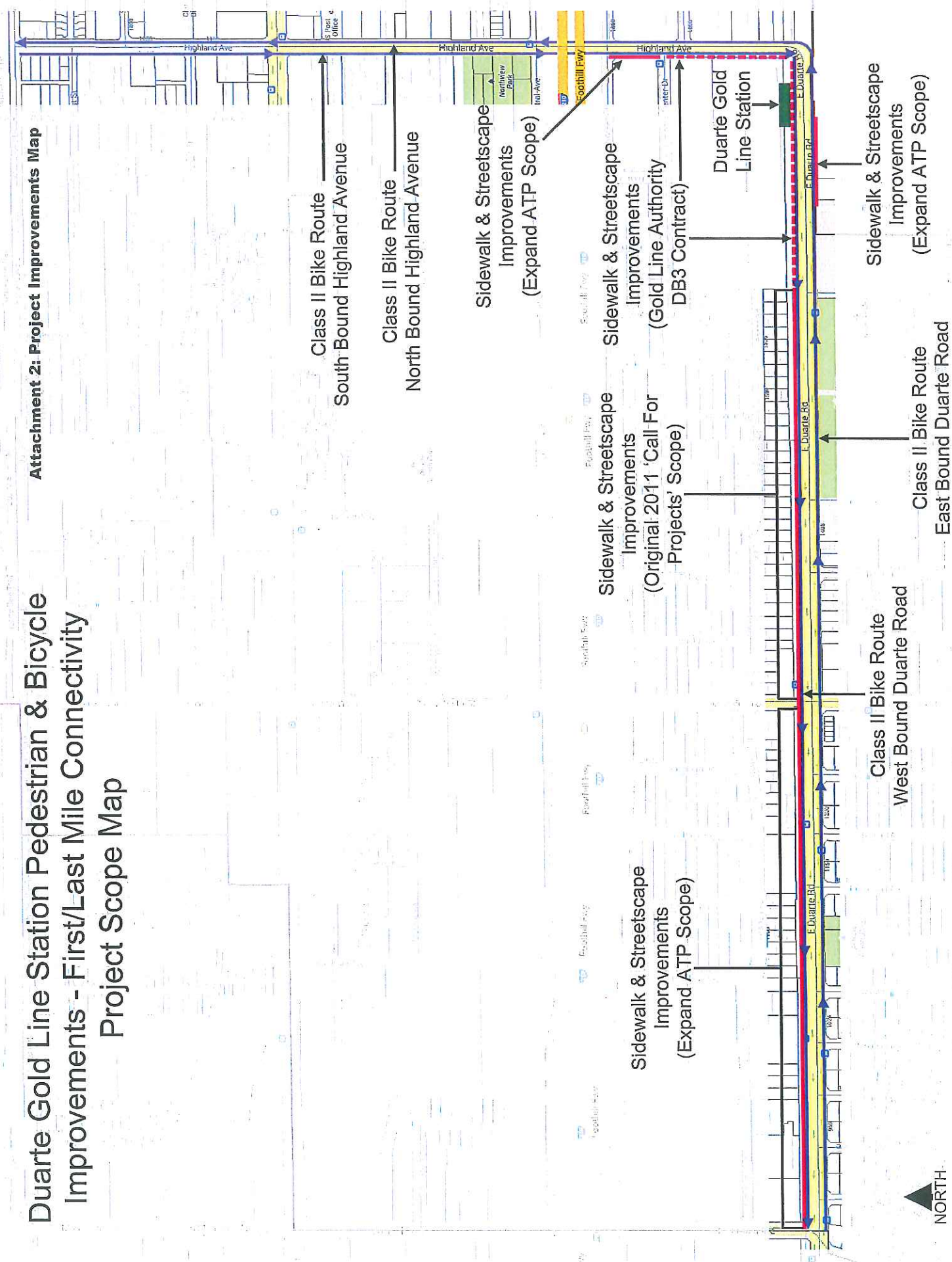


EXHIBIT B

PROJECT SCOPING

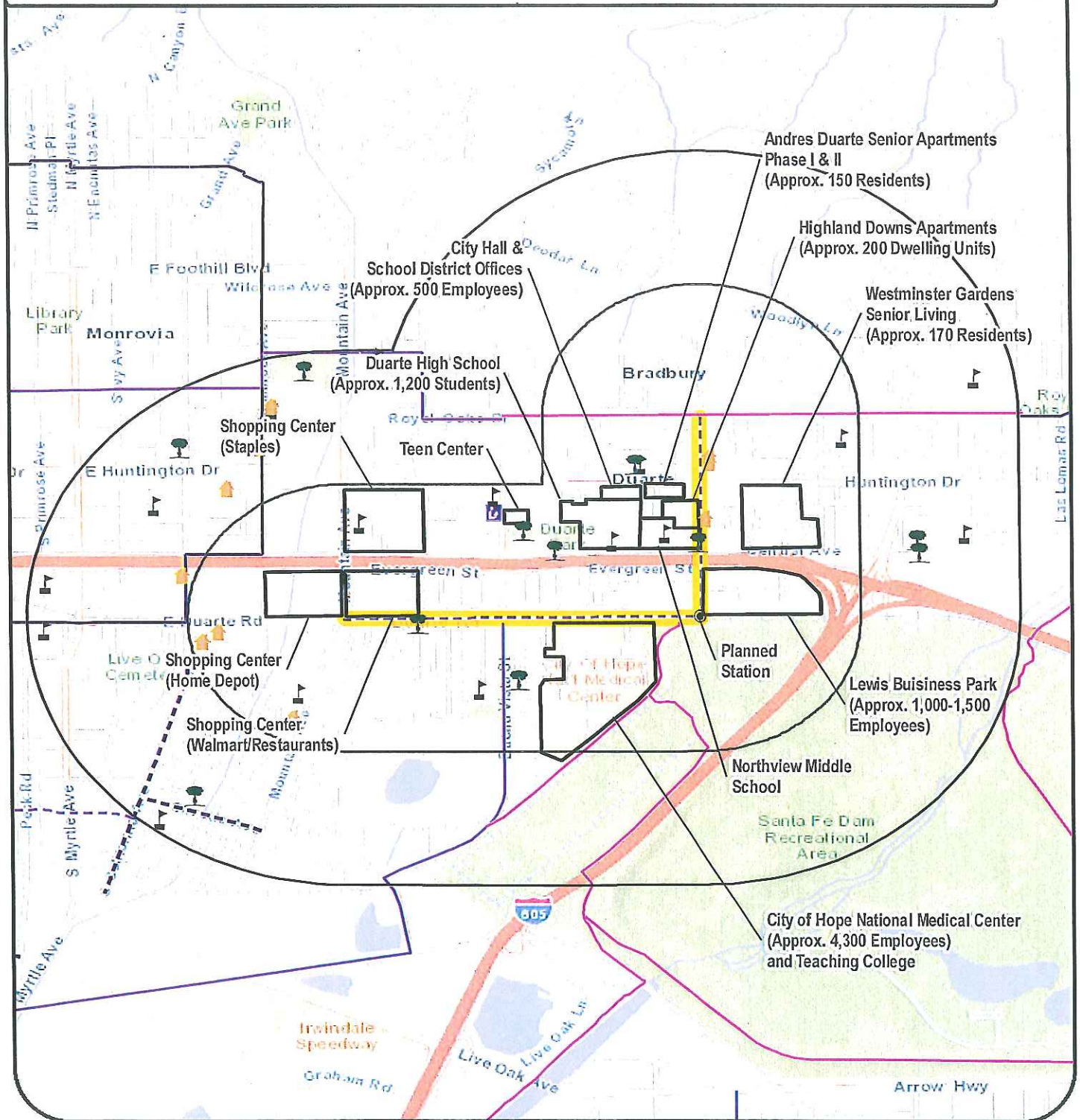


Major Activity Centers

Duarte Gold Line Station Pedestrian and Bicycle Improvements

Jurisdiction: DUARTE

Project Number: F5627



1 in = 0.54 miles

0 1,000 2,000 Feet

EXHIBIT C

CONCEPT DESIGN



CITY OF DUARTE

GOLD LINE STATION AREA DEVELOPMENT SPECIFIC PLAN

Conceptual Streetscape Improvements – Duarte Rd.

