



ZONING ORDINANCE TEXT AMENDMENT

REPORT TO THE PLANNING AND ZONING COMMISSION

CASE NUMBER: TA15-0005
DATE: December 3, 2015
AGENDA ITEM: 7R

Applicant: Beus Gilbert PLLC on behalf of Hand & Stone Massage
Request: Amend Article 14-2 “Definitions” and Article 14-9 “Non-Residential Districts”, of the Zoning Ordinance pertaining to *Massage Establishments* in the following Zoning Districts, subject to special limitations:

- Office Commercial (O-1)
- Convenience Commercial (C-1)
- Planned Neighborhood Commercial District (PC-1)
- Planned Community Commercial District (PC-2)
- Intermediate Commercial (C-2)
- Central Commercial District (C-3)
- General Commercial District (C-4)
- Regional Commercial District (C-5)

Support / Opposition: As of the date of this printing, Staff has received one (1) phone call and one (1) letter in opposition to this request.

Recommendation: **Approve** as requested.

BACKGROUND

Massage Establishments

1. The Zoning Ordinance was initially adopted by the City in 1977. Over the years, a number of amendments have been adopted to address new development trends, respond to legislative mandates and/or Council directives and maintain a current and relevant regulatory document. Amendments to the Zoning Ordinance are typically initiated by staff but may also be initiated by private parties.
2. In 2000, the City of Peoria adopted *Ordinance No. 00-28* (Case TA 00-04) to add definitions and development standards for a number of specified uses. The initiation of this amendment was at the request of a Councilmember. More specifically, this amendment recognized that the City had experienced an

increase in a number of uses including pawnshops, tattoo parlors and body piercing studios in the community. The Zoning Ordinance at that time did not include definitions or standards for many of these types of use. Moreover, underpinning the amendment was a concern that certain specified uses, in concentration, could lead to blighted conditions or negatively affect the health of an area.

3. Through that amendment, the City identified certain 'regulated uses' and developed definitions and standards thereto. The regulated uses included Body Piercing Studios, *Massage Establishments*, Non-Chartered Financial Institutions (e.g. check cashing), Pawnshops, Retail Liquor Stores, Plasma Centers and Tattoo Studios. These regulated uses were subject to the following standards:

- All vehicular access must be from arterial streets
- Uses require issuance of a Conditional Use Permit (CUP) within the C-2, C-4, C-5 and PI-1 commercial zoning districts. The uses would not be permitted within other zoning districts within the City.
- The use cannot be located on a lot with a property line within 1,000 feet of another regulated list in this section. For example, a massage establishment could not be located within 1,000 feet of another massage establishment or pawnshop or retail liquor store.

4. *Massage Establishments* was included in that listing of regulated uses pursuant to Ordinance No. 00-28. A corresponding definition for massage establishments was developed:

Massage Establishment means any building, room, place, or establishment, other than a regularly licensed and established hospital or dispensary where non-medical or non-surgical manipulative exercises or devices are practiced upon the human body manually or otherwise by any person other than a licensed physician, surgeon, dentist, occupational or physical therapist, chiropractor or osteopath with or without the use of therapeutic, electrical, mechanical or bathing devices. A Massage Establishment shall also include any bathing establishment operated in conjunction with the business. Massage establishments, as established herein, shall not include uses including but not limited to beauty parlors, salons, spas and health and exercise facilities where massage services may be available as an accessory use to a permitted principal use. (Ord. No. 00-28).

Proposed Amendment to Zoning Ordinance

5. While the applicant has a particular business location that precipitated the requested amendment, changes in the perception of the massage therapy industry suggest a need to reconsider the Zoning Ordinance regulations of such uses. Arguably, in recent years, massage establishments have assumed a more clinical and professional operational appearance. They are commonly found in commercial shopping districts. Moreover, massage services are increasingly offered as an accessory service in conjunction with a spa/salon, chiropractor

office or other clinical practice. Today, each individual therapist is required to be licensed through the Arizona State Board of Massage Therapy. Additionally, massage therapy is subject to Title 32, Chapter 42 of the Arizona Revised Statutes ("Massage Therapy").

6. The City of Peoria received an application from Beus Gilbert on behalf of *Hand & Stone Massage* requesting to amend the Zoning Ordinance as it pertains to Massage Establishments. The applicant's initial request was to (1) amend the Ordinance to add two new sub-definitions for *Massage Establishment, Licensed, and Massage Establishment, Unlicensed*, and (2) to allow licensed Massage Establishments as a Permitted Principal Use in several non-residential zoning districts.
7. As stated above, Article 14-9, "Non-Residential Districts" of the Zoning Ordinance currently allows *Massage Establishments* as a Permitted Conditional Use in the Intermediate Commercial (C-2), General Commercial (C-4), Regional Commercial District (C-5), and Planned Light Industrial (PI-1) zoning districts, subject to limitations, including issuance of a Conditional Use Permit and 1,000 foot separation. This use is currently not a Permitted Principal Use in any zoning district.

DISCUSSION AND ANALYSIS

8. In response to the requested amendment, staff reviewed the "Definitions" of Article 14-2 and the "Land Use Matrix" of Article 14-9 of the Zoning Ordinance and assessed the proposed definition and use in relation to the definition and matrix as a whole in terms of the language and possible associated impacts.
9. The proposed sub-definitions did not create an optimal solution, as each individual therapist is required to go through the Arizona State Board of Massage Therapy for licensing, and not the massage establishment business itself. This created an enforcement concern as it would be implausible to track the licensing for each employee. If a non-licensed individual was hired, it would require the business to cease operations until a Conditional Use Permit would be obtained.
10. A modified definition was concluded to be the best course of action, instead of the sub-definitions. The new staff-proposed definition was cultivated with the assistance of the City Attorney's Office. Together, it was determined that the Arizona Revised Statutes provided the best, comprehensive definition. The new definition refers to the A.R.S. which will provide consistency with any updates and also removes the need for the current extended description for accessory use scenarios. The applicant is agreeable to the simplified definition.

11. The modified definition also affected the proposed changes to the Land Use Matrix of Article 14-9. The applicant proposed to remove *Massage Establishments* from the Personal Services line item (*Plasma Center, Massage Establishment, Tattoo & Body Piercing Studio*) and create two new line items, *Massage Establishment, Licensed*, and *Massage Establishment, Unlicensed*.
12. Staff researched existing regulatory measures for massage establishments in other communities in the Phoenix metropolitan area. As a result, it was found that a number of communities already consider massage establishments as a Permitted Use that is allowed by-right in a number of zoning districts. Other municipalities require a staff, or “administrative” level approval process for the use, whereas the City’s current requirement of a Planning and Zoning Commission-approved Conditional Use Permit was a less common requirement. *Table 1* provides a comparison of several municipalities’ regulation of the use.

Table 1 - Regulatory Comparison

Municipality	Zoning Districts where use may be allowed	Use Category/Approval Process
Avondale	C1, C2, C3	Principal Permitted Use - “by right”
Buckeye	NMU, CMU, RMU, DC, PO, C1, C2, C3, BP	Principal Permitted Use - “by right”
Scottsdale	IG, CO, C1, C2, C3, PRC, I-1, PCP, DM-2, DMU-2, DRU-2, PCC, PNC	Principal Permitted Use - “by right”
Surprise	MU, CC, CR, C-RS	Principal Permitted Use - “by right”
Goodyear	C-2	Administrative Use Permit
Tempe	R/O, CSS, CC, PCC-1, PCC-2, RCC, MU-1, MU-2, MU-3, MU-4, MU-Ed	Conditional Use Permit
Maricopa County	MU-G	Administrative Use Permit

PEORIA		
Current Regulations	C-2, C-4, C-5, PI-1	Conditional Use Permit
Proposed Regulations	O-1, C-1, C-2, C-3, C-4, C-5	Principal Permitted Use – “by right”

13. As a result of research and analysis, staff agrees with the applicant proposal to remove *Massage Establishments* from the Personal Services line item that requires a Conditional Use Permit (*Plasma Center, Massage Establishment, Tattoo & Body Piercing Studio*), and create just one new line item for *Massage*

Establishment, corresponding to the staff-proposed definition. The proposed use would be a Permitted Principal Use in the Office Commercial (O-1), Convenience Commercial (C-1), Planned Neighborhood Commercial District (PC-1), Planned Community Commercial District (PC-2), Intermediate Commercial (C-2), Central Commercial District (C-3), General Commercial District (C-4), and Regional Commercial District (C-5), subject to special limitations. The result of the proposed change would be as follows:

- Removal of massage establishments from the earlier list of regulated personal services pursuant to *Ordinance 00-28*; and
 - Massage establishments would not require issuance of a Conditional Use Permit (CUP) and would be a Permitted Principal Use in all commercial zoning districts; and
 - As a Permitted Principal Use, massage establishments would not be subject to the 1,000 feet of separation.
14. Inclusion of this use in the Office Commercial (O-1), Convenience Commercial (C-1), Planned Neighborhood Commercial District (PC-1), Planned Community Commercial District (PC-2), Intermediate Commercial (C-2), Central Commercial District (C-3), General Commercial District (C-4), and Regional Commercial District (C-5) would provide the opportunity for residents to utilize massage therapy in a convenient area where they could find other day-to-day retail uses and services in close proximity. Removing the use from the Light Industrial (I-1) zoning district eliminates the need to make a separate trip into an industrial area designed for limited customer access.
 15. Staff has been working with the Peoria Police Department to determine if massage therapy establishments or day spas are more prone to crime than other commercial businesses. In our joint research and assessment, it was determined that massage establishments are not crime hotspots, and to date, only one criminal case has been recorded, which was not due to prostitution, human trafficking, or money laundering.
 16. Nonetheless, a Special Limitation has been proposed with this amendment to mitigate the potential for negative impacts on the community. The limitation is:
 - Hours of operation shall be limited from 8:00 a.m. to 10:00 p.m.

The proposed limitation keeps the hours of operation in line with the other industry-leading massage therapy companies located in Peoria and eliminates the perception that the businesses could cater to late-night illicit activities.

17. It is staff's assessment that the proposed change will provide better options for massage therapy businesses to provide services that better serve patrons and residents in Peoria, while ensuring that such uses occur in a safe, compatible, and unobtrusive manner.

Administrative Procedure

Noticing and Neighborhood Comment

18. Public notice of this proposed amendment to the Zoning Ordinance was provided in the manner prescribed under Article 14-39. The time, date, and place of the hearing have been published at least once in a newspaper of general circulation in the City at least fifteen (15) days prior to the hearing. As of the printing of this report, one phone call and one mailed letter have been received in opposition of the text amendment.

- The phone call in opposition was concerned about a competing business being able to be located closer to her business.
- The mailed letter in opposition was concerned about the removal of the 1,000 foot buffer from other massage establishments specifically, and the perceived unfairness for previous businesses needing to obtain a Conditional Use Permit (Exhibit B).

Proposition 207

19. It has been determined that a Proposition 207 waiver is not required.

Planning & Zoning Commission Study Session

20. On October 15, 2015, the Planning and Zoning Commission was introduced to the proposed text amendment through a Study Session. The Commission provided input on the proposal and requested additional information on how this use was addressed in other communities and for input from the Police Department pertaining to this use. Table 1 above provides a survey of area municipalities. Additionally, a representative from the Police Department will be available at the December 3, 2015 Public Hearing to speak on point to this use and its experience in Peoria. Again, as identified above, the Police Department has not identified or experienced a causal relationship to illicit activities from existing establishments in Peoria.

FINDINGS AND RECOMMENDATION

21. Based on the following findings:

- The amendment recognizes that the perception, regulatory environment and experience of the use has changed necessitating a reconsideration and change in approach; and
- The proposed amendment promotes economic development by expanding locations available to massage therapy businesses and increasing service options for customers, while providing limitations to limit the potential for negative impacts upon the community;
- The proposed amendment provides an improvement and modernization to the Zoning Ordinance by removing unwarranted restrictions; and
- The proposed amendment is consistent with the goals, objectives and policies of the Land Use element of the General Plan which promotes compatibility between differing uses and promotes high-quality architectural and site development; and,
- Upon review of the application, the Planning Manager has determined that a Proposition 207 waiver is not required for this application.

It is recommended that the Planning and Zoning Commission take the following action:

Recommend approval of Case TA15-0005 to the City Council.

ATTACHMENTS

Exhibit A: Proposed changes to Article 14-2 and Article 14-9
(deletions/additions shown as ~~strike~~/underscore)

Exhibit B: Letter in opposition dated November 6, 2015.

Prepared by: Randy Proch
Planner