PLANNING COMMISSION OF MONTEREY PARK
AGENDA

REGULAR PLANNING COMMISSION MEETING
Monterey Park City Hall Council Chambers
320 West Newmark Avenue

Tuesday
April 25, 2023
6:30 PM

MISSION STATEMENT
The mission of the City of Monterey Park is to provide excellent services to enhance the quality of life for our entire community.

GENERAL INFORMATION
Documents related to an Agenda item are available to the public in the Community Development Department – Planning Division located at 320 West Newmark Avenue, Monterey Park, CA 91754, during normal business hours and the City's website at **http://www.montereypark.ca.gov/AgendaCenter**.

PUBLIC PARTICIPATION

You may speak up to 5 minutes on Agenda item. You may combine up to 2 minutes of time with another person's speaking. No person may speak more than a total of 10 minutes. The Chairperson and Planning Commission Members may change the amount of time allowed for speakers. Written Communication will be accepted up to 24 hours before the meeting via email to planningpermitcounter@montereypark.ca.gov

Per the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please call City Hall at (626) 307-1359 for reasonable accommodation at least 24 hours before a meeting. Council Chambers are wheelchair accessible.

CALL TO ORDER	Chairperson Sam
FLAG SALUTE	Vice Chairperson Ricky Choi
ROLL CALL	Chairperson Tammy Sam, Vice Chairperson Ricky Choi, Jack Chiang, Peter Fung, Jasmine Pesantes

REORGANIZATION OF THE PLANNING COMMISSION
Selection of Chair and Vice-Chair

AGENDA ADDITIONS, DELETIONS, CHANGES AND ADOPTIONS

PUBLIC COMMUNICATIONS. While all comments are welcome, the Brown Act does not allow the Commission to take discuss, deliberate, or take action on any item not on the agenda. The Commission may briefly respond to comments after Public Communications is closed. Persons may, in addition to any other matter within the Commission's subject-matter jurisdiction, comment on agenda Items at this time. If you provide public comment on a specific agenda item at this time, however, you cannot later provide comments at the time the agenda Item is considered.

ORAL AND WRITTEN COMMUNICATIONS

[1.] PRESENTATIONS – None.

[2.] CITY OF MONTEREY PARK- CONSENT CALENDAR – None.

[3.] PUBLIC HEARING – None.

3-A. ZONING CODE AMENDMENT (ZCA-22-01)—A RESOLUTION RECOMMENDING CITY COUNCIL ADOPT AN ORDINANCE AMENDING TITLE 21 (ZONING) OF THE MONTEREY PARK MUNICIPAL CODE TO ADD CHAPTER 21.19 ENTITLED "INCLUSIONARY HOUSING." APPLICABLE CITYWIDE

It is recommended that the Planning Commission consider:

(1) Opening the public hearing;
(2) Receiving documentary and testimonial evidence;
(3) Closing the public hearing;
(4) After considering the evidence received during the public hearing, adopting a Resolution recommending City Council approval of an amendment to Title 21 (Zoning) of the Monterey Park Municipal Code to add Chapter 21.19, entitled "Inclusionary Housing"; and
(5) Taking such additional, related action that may be desirable.

Pursuant to CEQA, the draft Ordinance is exempt from further CEQA review for the following reasons: (1) it will not result in a direct or reasonably foreseeable indirect physical change in the environment (CEQA Guidelines § 15060(c)(2); (2) there is no possibility that this Ordinance may have a significant effect on the environment because this is review of proposed legislation and any potential housing projects that would be affected by the proposed regulations would undergo independent environmental review (CEQA Guidelines § 15061(b)(3); and (3) this Ordinance, by itself, does not constitute a "project" as defined by CEQA because it involves a policy action affecting prospective future development to comply with Housing Element Program 15 (CEQA Guidelines § 15378).

3-B. ZONING CODE AMENDMENT (ZCA-23-01)—A RESOLUTION RECOMENDING CITY COUNCIL AMEND MONTEREY PARK MUNICIPAL CODE CHAPTER 21.18 AFFORDABLE HOUSING INCENTIVES – DENSITY BONUS, APPLICABLE CITYWIDE

It is recommended that the Planning Commission consider:

(1) Opening the public hearing;
(2) Receiving documentary and testimonial evidence;
(3) Closing the public hearing;
(4) After considering the evidence received during the public hearing, adopt a resolution recommending that the City Council adopt the draft Ordinance amending regulations related to the Density Bonus under ZCA-23-01; and
(5) Taking such additional, related action that may be desirable.

The proposed Ordinance is exempt from additional environmental review under the California Environmental Quality Act ("California Public Resources Code §§ 21000, et seq., "CEQA") and its implementing guidelines (14 California Code of Regulations §§ 15000, et seq.; "CEQA Guidelines") for the following reasons: (1) it will not result in a direct or reasonably foreseeable indirect physical change in the environment (CEQA Guidelines § 15060(c)(2)); (2) there is no possibility that the Ordinance itself may have a significant effect on the environment (CEQA Guidelines § 15061(b)(3)); and (3) the Ordinance, by itself, does not constitute a "project" as defined in the CEQA Guidelines (CEQA Guidelines § 15378). The Ordinance is for general policies and procedure-making; any project governed by the proposed Ordinance would receive a separate environmental evaluation and review. It can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment.

[4.] OLD BUSINESS

4-A. CONSIDERATION AND POSSIBLE ACTION CONCERNING CONDITIONAL USE PERMIT (CUP-22-03) TO ALLOW A MASSAGE ESTABLISHMENT TO OPERATE AT 301 E. GARVEY AVENUE, #E, IN THE C-B (CENTRAL BUSINESS) ZONE – ITEM CONTINUED FROM THE FEBRUARY 28, 2023 PLANNING COMMISSION MEETING

It is recommended that the Planning Commission consider:

(1) Adopting the revised Resolution (as discussed during the February 28, 2023 meeting) approving CUP-22-03; and

(2) Taking such additional, related action that may be desirable.

Pursuant to the California Environmental Quality Act (Public Resources Code §§ 21000, *et seq*.; "CEQA") and the CEQA Guidelines (14 Cal. Code of Regs. §15000, *et seq.*), the proposed use is not subject to additional environmental. This project will not have a significant effect on the environment per CEQA Guidelines § 15301 (Class 1 Existing Facilities) because the Project consists of a conditional use permit to operate a massage establishment within an existing building. Class 1 consists of existing facilities including the negligible expansion of an existing use.

[5.] NEW BUSINESS – None.

[6] COMMISSION COMMUNICATIONS

[7.] FUTURE AGENDA ITEMS

ADJOURN

Next regular scheduled meeting is on April 25, 2023.

Planning Commission Staff Report

DATE: April 25, 2023
AGENDA ITEM NO: 3-A

TO: The Planning Commission

FROM: Jessica Serrano, Director of Community Development

SUBJECT: **PUBLIC HEARING – ZONING CODE AMENDMENT NO. 22-01 (ZCA-22-01)** - Resolution recommending City Council approval of an amendment to Title 21 (Zoning) of the Monterey Park Municipal Code to add Chapter 21.19, entitled "Inclusionary Housing."

RECOMMENDATION:

It is recommended that the Planning Commission consider:

(1) Opening the public hearing;
(2) Receiving documentary and testimonial evidence;
(3) Closing the public hearing;
(4) After considering the evidence received during the public hearing, adopting a Resolution recommending City Council approval of an amendment to Title 21 (Zoning) of the Monterey Park Municipal Code to add Chapter 21.19, entitled "Inclusionary Housing"; and
(5) Taking such additional, related, action that may be desirable.

CEQA (California Environmental Quality Act):

Pursuant to CEQA, this Ordinance is exempt from further CEQA review for the following reasons: (1) it will not result in a direct or reasonably foreseeable indirect physical change in the environment (CEQA Guidelines § 15060(c)(2); (2) there is no possibility that this Ordinance may have a significant effect on the environment because this is review of proposed legislation and any potential housing projects that would be affected by the proposed regulations would undergo independent environmental review (CEQA Guidelines § 15061(b)(3); and (3) this Ordinance, by itself, does not constitute a "project" as defined by CEQA because it involves a policy action affecting prospective future development to comply with Housing Element Program 15 (CEQA Guidelines § 15378).

TYPE OF ACTION (LEGISLATIVE; QUASI-JUDICIAL; OR ADVISORY)

Legislative: The recommended action relates to an Ordinance that implements inclusionary housing requirements. The proposed Ordinance is legislative policy action intending to increase availability of affordable housing stock by requiring developers who create five or more units to make a percentage of the units available for lower- and moderate-income households. In considering such actions, the Planning Commission acts in advisory capacity to the City Council. The recommended action includes an amendment to the zoning regulations via the proposed Ordinance. For the proposed text amendment, the Planning Commission must make these findings (MPMC § 21.38.050):

- That the proposed text amendment is consistent with the goals, policies, and objectives of the General Plan;
- That the proposed text amendment will not adversely affect surrounding properties; and
- That the proposed text amendment promotes public health, safety, and general welfare and serves the goals and purposes of the MPMC's zoning regulations.

These findings are included in the draft Ordinance; the facts upon which these findings rely are also included with the draft documents.

EXECUTIVE SUMMARY:

The proposed action is advisory to the City Council. The proposed inclusionary housing ordinance ("Ordinance") for ZCA 22-01 was revised for the Planning Commission's consideration, based on direction from the City Council.

The proposed Ordinance (Attachment 2) is intended to encourage the production of affordable units in new housing developments. This is accomplished by two methods, or a combination of methods: (1) require actual construction of affordable units; (2) pay an in-lieu fee to the City that is commensurate with the cost of a new unit, or (3) donate land for the development of affordable units. For the second option, fees will be consolidated into an affordable housing trust fund which is separate from the City's General Fund. The affordable housing trust fund monies may then be leveraged by the City to help pay for affordable housing in other projects. Should the Planning Commission recommend City Council approval of the proposed Ordinance, the in-lieu fee will be established by City Council resolution at a duly noticed public hearing.

BACKGROUND:

The City adopted the 2021-2029 Housing Element of the General Plan on January 19, 2022. As part of ongoing efforts to address housing for all income levels, Housing Element Program 15 commits the City to consider developing an inclusionary housing program. Such programs require certain residential and mixed-use developments to designate a percentage of units for affordable housing. Inclusionary housing programs provide alternatives to the production of housing onsite, such as the payment of an in-lieu fee established by City Council resolution.

On September 7, 2022, the City Council held a discussion on potential inclusionary housing standards. The Council was generally in support of adopting an inclusionary housing ordinance and provided staff with direction to develop an ordinance that, among other things, was balanced and fair, comparable with the requirements of neighboring communities, that would not deter housing development from occurring, and that the City consider adopting in-lieu fees which are calculated per unit rather than per project.

On September 27, 2022, the Planning Commission considered and recommended approval of the Inclusionary Housing Ordinance to the City Council. When the Ordinance was considered by the City Council on November 2, 2022, the Council directed the Community Development Director to provide more information on how the Affordable Housing Trust Fund monies will be utilized, allowing developers an option to dedicate land for the development of affordable units, and provide more information on density bonuses. Council directed the Director to make further changes to the Inclusionary Housing Ordinance and refer the matter back to the Planning Commission for review and recommendation.

The Director revised the proposed Ordinance by including language at the end of MPMC Section 21.19.050(A)(3) governing the use of the Affordable Housing Trust Fund monies, which can be used for additional uses as may be designated by City Council resolution; added subsection "c" to 21.19.050 regulating land dedication as an alternative manner of compliance; and is bringing revisions to the City's Density Bonus regulations in conjunction with the Inclusionary Housing Ordinance. The option for developers to dedicate land works in tandem with the in-lieu fees that would create not only the capital to fund an affordable housing project, but also provides for land to create units.

The proposed Ordinance together with the Planning Commission's recommendation will be scheduled for a City Council public hearing for final consideration. If introduced by the City Council, the Ordinance will be scheduled for a second reading together with the adoption of the in-lieu fee and creation of an affordable housing trust fund, which will become effective 30 days after adoption.

Once created, the City would be able to deposit $100,000 into the affordable housing trust fund. This money stems from the Celadon mixed-use project that the City Council approved earlier this year and constitutes one of the public benefits promised by that developer to off-set the impacts from the development. The City Council anticipated the creation of this trust fund at that time and expected the developer to assist the City with implementing the Housing Element objectives.

PROPOSED ORDINANCE:

As part of the research conducted in the drafting of this Ordinance, several inclusionary housing ordinances were reviewed, including ordinances for nearby communities and for communities beyond the San Gabriel Valley. Attachment 3 contains a summary of some of the inclusionary housing ordinances that were reviewed.

The following table provides a summary of the major components of the proposed Ordinance:

Applicability	Projects creating 5 or more dwelling units
Affordability Levels*	For rent projects: - 9% Low-Income Households - 6% Moderate-Income Households For sale projects: - 15% Moderate-Income Households
Alternative Compliance Methods	- Inclusionary Housing In-lieu Fee prior to issuance of certificate of occupancy - Off-Site Units - Land Dedication
For- Sale Unit Standards	- Must be affordable for 45 years - Must certify purchaser's income - City consent required prior to leasing or renting inclusionary unit - Purchaser of inclusionary units must occupy as "principal residence" - Affordability restrictions must be disclosed to new owners
Rental Units Standards	- Must be affordable for 55 years - Must certify renter's income - Renter cannot sublease without City approval - Affordability restrictions must be disclosed to new owners
Standards	- Inclusionary Housing Units must be comparable to market rate units and dispersed throughout development - Certification of continuing occupancy of inclusionary unit by eligible households
Agreement	Inclusionary Housing Agreement required between developer and City prior to building permit issuance
Modifications or Waivers	- Modifications or waivers to requirements may be allowed under certain circumstances, subject to Director approval - Director's approval may be appealed to Planning Agency

* Income levels are established on an annual basis by the California Housing and Community Development Department (HCD).

Respectfully submitted,

J. Serrano

Jessica Serrano
Director of Community Development

Prepared by:

Beth Chow
Beth Chow, AICP
Senior Planner

Reviewed by:

Justin A. Tamayo
Deputy City Attorney

ATTACHMENTS:

Attachment 1:	Planning Commission Resolution recommending City Council approval an Ordinance amending Title 21 (Zoning) of the Monterey Park Municipal Code to add Chapter 21.19
Attachment 2:	Proposed Inclusionary Housing Ordinance
Attachment 3:	Survey of Inclusionary Housing Ordinances in Surrounding Communities
Attachment 4:	Notice of Exemption

ATTACHMENT 1

Planning Commission Resolution

RESOLUTION NO.

A RESOLUTION RECOMMENDING THE CITY COUNCIL ADOPT AN ORDINANCE AMENDING TITLE 21 (ZONING) OF THE MONTEREY PARK MUNICIPAL CODE TO ADD CHAPTER 21.19, ENTITLED "INCLUSIONARY HOUSING."

The Planning Commission of the City of Monterey Park does resolve as follows:

<u>SECTION 1.</u> The Planning Commission finds and declares that:

A. The California Legislature declared that California is experiencing a housing shortage for households of very low, low, and moderate incomes.

B. On January 19, 2022, the City Council adopted the 2021-2029 Housing Element in accordance with California law.

C. Goal 4 of the City's 2021-2029 Housing Element seeks to provide housing that meets the needs of all economic segments of the community.

D. Policy 4.1 of the Housing Element encourages the use of regulatory structures to facilitate affordable housing.

E. Program 15 of the Housing Element identifies Inclusionary Housing Regulations as a method for increasing affordable housing.

F. To help implement the Housing Element, the City drafted the proposed Ordinance ("ZCA 22-01") pursuant to Monterey Park Municipal Code ("MPMC") § 21.38.020.

G. On September 7, 2022, the City Council discussed draft inclusionary housing regulations. At that meeting, the City Council gave direction to the Interim Community Development Director regarding how such regulations should be drafted.

H. On September 27, 2022, the City's Planning Commission conducted a duly noticed public hearing regarding ZCA 22-01. By Resolution No. 02-22, the Planning Commission recommended the City Council adopt a draft ordinance.

I. On November 2, 2022, the City Council conducted a duly noticed public hearing regarding ZCA-22-01. Following the public hearing, the City Council referred the ordinance back to the Planning Commission for additional consideration, with direction to the Interim Community Development Director to include an option for land donation as part of the inclusionary housing regulations.

J. The City reviewed this Ordinance pursuant to the California Environmental Quality Act (Public Resources Code §§ 21000, *et seq*., "CEQA") and the regulations promulgated thereunder (14 Cal. Code of Regulations §§15000, *et seq*., the "CEQA Guidelines"). CEQA and the CEQA Guidelines are collectively referred to as "CEQA Regulations."

K. Notice of Public a Hearing before the Planning Commission was duly given and published in the time, form, and manner as required by law.

L. On April 25, 2023, the Planning Commission considered the rewritten ordinance. The findings in this Resolution are made based on the entire administrative record including testimony and evidence presented to the Planning Commission on September 27, 2022; the City Council at its November 2, 2022, public hearing; and the April 25th public hearing before the Planning Commission including, without limitation, the staff reports submitted by the Interim Community Development Director.

M. In *Building Industry Association v. City of San Jose* (2015) 61 Cal.4th 435, the California Supreme Court upheld cities' ability to adopt inclusionary housing requirements utilizing their police powers.

N. Pursuant to Government Code §§ 65850 and 65850.1, cities may adopt ordinances requiring inclusionary housing requirements for rental residential developments so long as they offer alternative means of compliance.

<u>SECTION 2.</u> *Factual Findings and Conclusions.* The Planning Commission finds that the following facts exist and makes the following conclusions:

A. The MPMC amendments in the proposed Ordinance are consistent with the goals, policies and objectives of the General Plan. Among other things, these regulations will provide housing opportunities for households in all income levels without constraining housing development in the City

B. The proposed Ordinance will not adversely affect surrounding properties. The inclusionary housing regulations will operate citywide and will not affect a change in the use or the intensity of use of property in any single zone.

C. These regulations promote public health, safety, and general welfare and serve the goals and purposes of the MPMC's zoning regulations. The inclusionary housing regulations will continue to promote the public health, safety, and general welfare while serving the goals and purposes of the zoning regulations. Among other things, the regulations will facilitate creation of housing to address the Legislature's determination regarding a statewide housing shortage for households of very low, low, and moderate incomes.

SECTION 3. *Environmental Assessment.* Pursuant to CEQA, the draft Ordinance is exempt from further CEQA review for the following reasons: (1) it will not result in a direct or reasonably foreseeable indirect physical change in the environment (CEQA Guidelines § 15060(c)(2); (2) there is no possibility that the Ordinance may have a significant effect on the environment because this is review of proposed legislation and any potential housing projects that would be affected by the proposed regulations would undergo independent environmental review (CEQA Guidelines § 15061(b)(3); and (3) the Ordinance, by itself, does not constitute a "project" as defined by CEQA because it involves a policy action affecting prospective future development to comply with Housing Element Program 15 (CEQA Guidelines § 15378).

SECTION 4. *Actions.* The Planning Commission recommends that the City Council adopt the draft Inclusionary Housing Ordinance attached as Attachment "2," and incorporated into this Resolution by reference.

SECTION 5. *Limitations.* The Planning Commission's analysis and evaluation of the project is based on the best information currently available. It is inevitable that in evaluating a project that absolute and perfect knowledge of all possible aspects of the project will not exist. One of the major limitations on analysis of the project is the Planning Commission's lack of knowledge of future events. In all instances, best efforts were made to form accurate assumptions. Somewhat related to this are the limitations on the City's ability to solve what are in effect regional, state, and national problems and issues. The City must work within the political framework within which it exists and with the limitations inherent in that framework.

SECTION 6. *Summaries of Information.* All summaries of information in the findings, which precede this section, are based on the substantial evidence in the record. The absence of any particular fact from any such summary is not an indication that a particular finding is not based in part on that fact.

SECTION 7. This Resolution will remain effective until superseded by a subsequent resolution.

SECTION 8. The Planning Commission Secretary is directed to mail a copy of this Resolution to any person requesting a copy.

SECTION 9. This Resolution will take effect immediately upon adoption.

ADOPTED AND APPROVED this 25th day of April 2023.

____

Chairperson Tammy Sam

I hereby certify that the foregoing Resolution was duly adopted by the Planning Commission of the City of Monterey Park at the special meeting held on the 25th day of April 2023, by the following vote of the Planning Commission:

AYES:
NOES:
ABSTAIN:
ABSENT:

____
Jessica Serrano, Secretary

APPROVED AS TO FORM:
KARL H. BERGER, CITY ATTORNEY

By: ______________________________
Justin A. Tamayo,
Deputy City Attorney

ATTACHMENT 2

Draft Inclusionary Housing Ordinance

ORDINANCE NO.

AN ORDINANCE AMENDING MONTEREY PARK MUNICIPAL CODE TITLE 21 (ZONING) TO ADD CHAPTER 21.19, ENTITLED "INCLUSIONARY HOUSING."

The City Council of the City of Monterey Park does ordain as follows:

SECTION 4: The City Council finds and declares that:

A. The California Legislature declared that California is experiencing a housing shortage for households of very low, low, and moderate incomes.

B. On January 19, 2022, the City Council adopted the 2021-2029 Housing Element in accordance with California law.

C. Goal 4 of the City's 2021-2029 Housing Element seeks to provide housing that meets the needs of all economic segments of the community.

D. Policy 4.1 of the Housing Element encourages the use of regulatory structures to facilitate affordable housing.

E. Program 15 of the Housing Element identifies Inclusionary Housing Regulations as a method for increasing affordable housing.

F. To help implement the Housing Element, the City drafted the proposed Ordinance ("ZCA 22-01") pursuant to Monterey Park Municipal Code ("MPMC") § 21.38.020.

G. On September 7, 2022, the City Council discussed draft inclusionary housing regulations. At that meeting, the City Council gave direction to the Interim Community Development Director regarding how such regulations should be drafted.

H. On November 2, 2022, the City Council conducted a duly noticed public hearing regarding ZCA-22-01. Following the public hearing, the City Council referred the ordinance back to the Planning Commission for additional consideration, with direction to the Interim Community Development Director to include an option for land donation as part of the inclusionary housing regulations.

I. The City reviewed this Ordinance pursuant to the California Environmental Quality Act (Public Resources Code §§ 21000, *et seq*., "CEQA") and the regulations promulgated thereunder (14 Cal. Code of Regulations §§15000, *et seq*., the "CEQA Guidelines"). CEQA and the CEQA Guidelines are collectively referred to as "CEQA Regulations."

J. Notice of Public a Hearing before the Planning Commission was duly given and published in the time, form, and manner as required by law.

K. In *Building Industry Association v. City of San Jose* (2015) 61 Cal.4th 435, the California Supreme Court upheld cities' ability to adopt inclusionary housing requirements utilizing their police powers.

L. Pursuant to Government Code §§ 65850 and 65850.1, cities may adopt ordinances requiring inclusionary housing requirements for rental residential developments so long as they offer alternative means of compliance.

M. On September 27, 2022, the Planning Commission conducted a duly noticed public hearing to assess the proposed MPMC amendments in ZCA 22-01, considered all oral and written evidence, and adopted Resolution _____ recommending that the City Council adopt this Ordinance.

N. The findings in this Resolution are made based on the entire administrative record including testimony and evidence presented to the Planning Commission on September 27, 2022; the City Council at its November 2, 2022, public hearing; the April 25, 2023, public hearing before the Planning Commission; and the public hearing held by the City Council on including, without limitation, the staff reports submitted by the Interim Community Development Director.

SECTION 2: Pursuant to MPMC § 21.38.050, the City Council finds as follows:

A. The MPMC amendments in this Ordinance are consistent with the goals, policies and objectives of the General Plan. Among other things, these regulations will provide housing opportunities for households in all income levels without constraining housing development in the City.

B. These regulations will not adversely affect surrounding properties. Such regulations will operate citywide and will not affect a change in the use or the intensity of use of property in any zone.

C. These regulations promote public health, safety, and general welfare and serve the goals and purposes of the MPMC's zoning regulations. The inclusionary housing regulations will continue to promote the public health, safety, and general welfare while serving the goals and purposes of the zoning regulations. Among other things, the regulations will facilitate creation of housing to address the Legislature's determination regarding a statewide housing shortage for households of very low-, low-, and moderate-incomes.

SECTION 3. *Environmental Assessment.* Pursuant to CEQA, this Ordinance is exempt from further CEQA review for the following reasons: (1) it will not result in a direct or reasonably foreseeable indirect physical change in the environment (CEQA Guidelines § 15060(c)(2); (2) there is no possibility that this Ordinance may have a significant effect on the environment because this is review of proposed legislation and any potential housing projects that would be affected by the proposed regulations would undergo independent environmental review (CEQA Guidelines § 15061(b)(3); and (3) this Ordinance, by itself, does not constitute a "project" as defined by CEQA because it involves a policy action affecting prospective future development to comply with Housing Element Program 15 (CEQA Guidelines § 15378).

SECTION 4: A new Chapter 21.19 is added to the MPMC to read as follows:

"Chapter 21.19

INCLUSIONARY HOUSING

21.19.010 Purpose.

This Chapter is adopted in accordance with Article XI, § 7 of the California Constitution and Government Code §§ 65850 and 65850.1 for the purpose of establishing requirements, standards, and procedures to facilitate affordable housing development for a range of households with varying income levels.

21.19.020 Definitions.

Unless the contrary is stated or clearly appears from the context, the following definitions govern the construction of the words and phrases used in this chapter:

A. "Affordable housing" means dwelling units made available to low-, very low-, or moderate-income households.

B. "Affordable housing cost" has the same meaning as set forth in Health and Safety Code § 50052.5 and any successor statute or regulation.

C. "Affordable housing trust fund" is described in § 21.19.050.

D. "Affordable rent" has the same meaning as set forth in Health and Safety Code § 50053 and any successor statute or regulation.

E. "Area median income" means the median family income of a geographic area.

F. "Developer" means the person or persons seeking City approval of a project.

G. "Director" means the City Manager, or designee.

H. "Dwelling unit" means one or more rooms, designed, occupied, or intended for occupancy as separate living quarters, with full cooking, sleeping, and bathroom facilities for the exclusive use of a single household.

I. "Eligible household" means a household eligible to purchase or rent an inclusionary housing unit, as applicable.

J. "Health care facility" means a facility, place, or building, other than a hospital, which is maintained and operated as a residence for patients to provide them long-term medical care, and includes nursing homes, intermediate care facilities, extended care facilities, hospice homes, and similar facilities licensed by the California Department of Health Services pursuant to Health and Safety Code § 1200, *et seq*.

K. "HUD" means the United States Department of Housing and Urban Development.

L. "Inclusionary housing unit" means a dwelling unit built pursuant to the requirements of this chapter and made available to very low-, low-, or moderate-income households.

M. "Inclusionary housing in-lieu fee" is a fee adopted by city council resolution in accordance with this chapter the payment of which may satisfy a developer's obligations in this chapter.

N. "Low-income household" means a household income that does not exceed 80% of area median income for Los Angeles County, as published periodically by HUD, pursuant to Health and Safety Code § 50079.5 and any successor statute or regulation.

O. "Market rate unit" means a dwelling unit where the rental rate or sales price is not restricted by applicable law.

P. "Moderate-income household" means a household income that does not exceed 120% of area median income for Los Angeles County, as published periodically by HUD, pursuant to Health and Safety Code § 50093 and any successor statute or regulation.

Q. "Project" means any residential or mixed-use proposal for the creation of five or more new dwelling units.

R. "Very low-income household" means a household income that does not exceed 50% of area median income for Los Angeles County, as published periodically by HUD, pursuant to Health and Safety Code § 50105 and any successor statute or regulation.

21.19.030 Applicability; Exemptions.

A. This chapter applies to projects for rent or sale, including the residential portions of mixed-use developments. It may also be incorporated as a public benefit into any development agreement approved pursuant to this code.

B. The following are exempted from this chapter's requirements:

1. Any eligible project for which the City enters into a development agreement that provides comparable community benefits, as determined by the City Council.

2. Any eligible project that is 100% affordable for very low-, low-, or moderate- income households that will be deed-restricted for a period of at least 55 years for rental units or 45 years for for-sale units.

3. Development of emergency shelters, community care facilities, or health care facilities.

4. Reuse of a designated landmark or contributing structure for housing within a historic district.

5. Accessory dwelling units, junior dwelling units, or units created pursuant to Government Code §§ 65852.21 and 66411.7, provided that the replacement or restoration does not increase the number of existing units by five or more.

6. Residential building additions, repairs, or remodels, provided the work does not increase the number of existing units by five or more.

7. Replacement or restoration of residential units damaged or destroyed by fire, flood, earthquake, or other disaster, provided that the replacement or restoration does not increase the number of existing units by five or more.

8. Any eligible project otherwise exempt under state or federal law.

21.19.040 Inclusionary Housing Unit Requirements.

A. Inclusionary Units for Rent. Developers proposing a rental project must rent 15% of the units to affordable households at an affordable rent, as follows:

1. Nine percent to very low-income households or low-income households; and

2. Six percent moderate-income households.

B. Inclusionary Units for Sale. Developers with projects for sale must sell 15% of the units to moderate-income households at an affordable housing cost.

C. Calculation of Inclusionary Housing Units Fractional Units.

1. The percentage of inclusionary housing units required in this section will be applied to the project's total number of proposed dwelling units.

2. If an inclusionary housing unit calculation in this section results in a fractional remainder, the developer may choose one of the following options: round up to the next whole number and provide the resulting unit onsite; or pay the fractional amount above the whole number as an inclusionary housing in-lieu fee pursuant to this chapter.

21.19.050 Alternative Compliance.

A. Inclusionary Housing In-lieu Fee; Affordable Housing Trust Fund.

1. The inclusionary housing unit requirements of this chapter may be satisfied if the developer causes an inclusionary housing in-lieu fee to be paid to the City. This may be accomplished by providing some of the required inclusionary housing units onsite and paying an the in-lieu fee required under this section for any remaining, required inclusionary housing units

2. The inclusionary housing in-lieu fee must be paid, in full, to the City before it issues a final certificate of occupancy for the project, unless otherwise prohibited by law.

3. An affordable housing trust fund is created. All funds authorized in this chapter must be deposited into this inclusionary housing trust fund. The monies in such fund must be used exclusively for providing affordable housing in the City and for reasonable costs associated with the acquisition, development, maintenance, improvement, and oversight of affordable housing. Such additional uses may be designated by City Council resolution.

B. Off-site Units.

The Director may determine that a developer has met this chapter's requirements if the developer develops, or causes a qualified third-party affordable housing developer to develop, allocated affordable housing units off-site on property located within the City's jurisdiction in accordance with the following requirements:

1. Any third-party (e.g., a nonprofit housing agency) the developer associates with to create off-site units under this section must agree, in writing, to all the provisions

of this chapter and be a signatory to the inclusionary housing agreement required under this chapter.

2. The off-site affordable units developed must at least be equal to the inclusionary housing units required for the project and consistent with the standards set forth in this chapter.

3. To ensure the creation of the off-site affordable units, developer must provide a surety, in a form approved by the City Attorney, equal to 25% of the total estimated cost to construct the off-site affordable units to ensure performance. Examples of sureties that may be acceptable include the following: performance bonds; surety bonds; cash deposits; money orders; letters of credit; and certificates of deposit. The Director will relinquish the surety at the time that the Building Official issues a final certificate of occupancy for the last of the off-site affordable units.

4. The developer must pay an in-lieu fee in an amount required by this chapter to the City in the event the off-site units are not timely completed.

C. Land Dedication or Conveyance.

The Director may determine that a developer met this chapter's requirements if the developer dedicates off-site real property in accordance with all the following requirements:

1. The property must be fully within the City's jurisdiction.

2. The developer must identify and offer for dedication or conveyance the property subject to this section at the time of project application and concurrently provide proof to the Director's satisfaction evidencing the property's value and developer's transferable, unencumbered interest in the property.

3. The developer must provide evidence to the Director's satisfaction that shows the property is free from environmental contamination, has access to public streets, and utilities, and suitable for affordable housing development pursuant to applicable law.

4. The land must be transferred to the City or City-approved developer specializing in affordable housing development.

5. The land and constructed units thereupon must be deed restricted, in a manner approved by the City Attorney, that secures the units' continued affordability.

6. The City Manager will make a recommendation to the City Council whether to accept or deny the proposed dedication or conveyance. The City has no obligation to accept any proposed dedication or conveyance made in accordance with this subsection.

21.19.060 Standards for Inclusionary Housing Units.

A. Projects with inclusionary housing units are subject to the following requirements:

1. The developer must identify all contiguous property under common ownership or control in its project application. If the developer does not plan to develop all such property, then it must record a covenant, in a form approved by the City Attorney, requiring that such undeveloped property include inclusionary housing units or pay the in-lieu fee as required by this chapter at such future date that an application is filed for ministerial or discretionary approval of a residential development subject to this chapter. Such covenant must run with the land and be effective for at least 30 years pursuant to Civil Code § 885.030.

2. All inclusionary housing units must be reasonably dispersed throughout the project to avoid any concentration of inclusionary units within a project.

3. All inclusionary housing units must be comparable to market rate units included within a project in terms of number of bedrooms, design, materials, size, finished quality, appearance, or other material conditions.

4. All inclusionary housing units must be accessible to project amenities, utilities, and facilities available to market rate units at the same or lower cost chargeable, if at all, to market rate units.

5. All inclusionary housing units must be constructed before or concurrent with the construction of market rate units in the project, and in phased projects, inclusionary housing units may be constructed in proportion to the number of units in each phase of the residential development.

6. A developer must submit a written report to the Director, within 30 days of the Director’s written request, that identifies the income and family size of the occupants of the inclusionary unit. The City may impose a fee established by city council resolution to recover its associated regulatory costs pursuant to this chapter.

B. Inclusionary housing units for sale are subject to the following restrictions:

1. Such for-sale units must be deed restricted to the target household income group for a minimum of 45 years.

2. The developer, property owner, and all subsequent owners of an inclusionary housing unit offered for sale must certify, in a form and content acceptable to the Director, the purchaser’s income.

3. An owner of such a for-sale unit is prohibited from leasing or renting the unit unless the City gives its prior written consent to such lease or rental based on economic hardship, shown by substantial evidence by the owner.

4. Except as otherwise provided, a purchaser of inclusionary housing units offered for sale must occupy the unit as a “principal residence” as such term is defined for federal tax purposes in the United States Internal Revenue Code. Upon good cause show, supported by substantial evidence, the Director may allow a purchaser to rent inclusionary housing units to persons within the same household income category.

5. The City must approve subsequent owners of such for-sale units who must meet the same qualifications as the original owner.

6. Before the escrow closing for such a for-sale unit, the seller must provide written notice to the buyer of the affordability restrictions including, without limitation, resale price restrictions, in a document written in plain language and approved in writing by the Director.

7. Title in a for-sale unit may transfer because of changes in circumstance including, without limitation, death, marriage, and divorce. Except as otherwise provided, if such a changed circumstance results in a title transfer which causes a household to become ineligible for an inclusionary housing unit then the housing unit must be sold to an eligible household within nine months after such title transfer occurs.

8. Upon the death of one owner, title in the for-sale unit may transfer to the surviving joint tenant without respect to the joint tenant’s household income eligibility.

9. If a for-sale unit is sold for an amount more than the resale price authorized under this chapter, the buyer and seller are jointly liable to the City for the entire purchase price of the unit. Funds recovered by the Director must be deposited in the affordable housing trust fund. The foregoing notwithstanding, the Director may allow the buyer and seller up to 180 days to cure any violation of this chapter’s resale price restrictions upon the buyer and seller’s written request for such cure period.

C. Inclusionary housing units for rent are subject to the following restrictions:

1. Such rental units must be deed restricted to the target household income group for a minimum of 55 years.

2. The owner of the rental units must certify to the Director, in a form acceptable to the City Attorney, the income of the tenant at the time of the initial rental and annually thereafter.

3. The renter of an inclusionary housing unit is prohibited from subleasing the unit unless the Director gave its prior written consent to such sublease based on demonstrated hardship by the renter as shown by substantial evidence. Any rent obtained through an unpermitted sublease of an inclusionary housing unit is forfeited to the City, and recovered funds must be deposited in the affordable housing trust fund.

4. The Director may require the execution and recording of whatever documents are necessary or useful in ensuring enforcement of this section, in a form approved by the City Attorney, which must be recorded against all applicable inclusionary units.

5. Before the escrow closing of an inclusionary housing unit for rent, the seller must provide written notice to the buyer of the affordability restrictions including, without limitation, to resale price restrictions in a document written in plain language and approved, in writing by the Director.

21.19.070 Eligibility Requirements.

A. Unless otherwise provided, only eligible households are authorized to occupy inclusionary housing units in this chapter.

B. Elected and appointed officials or employees of the City subject to the City's conflict of interest code are ineligible to occupy an inclusionary housing unit created under this chapter.

21.19.080 Inclusionary Housing Plan.

No application for a project subject to this chapter's requirements will be complete until the developer submits an inclusionary housing plan to the City in a form acceptable to the Director that contains all of the following, as applicable:

A. The number, type, and location of all inclusionary housing units for the project.

B. Any requested modifications or waivers and the basis therefore.

C. A detailed methodology for determining the rental rates or sale prices of all inclusionary housing units.

D. The affordability level and affordability term for each inclusionary housing unit.

E. Deed restrictions, including applicable sale and rent limitations set forth in this chapter.

F. A timeline of project phasing, including completion timelines for inclusionary housing units in relation to market rate units.

G. The financing for ongoing monitoring and administrative costs.

H. Enforcement mechanisms to ensure that inclusionary housing units are occupied by eligible households and are not sold, rented, leased, sublet, assigned, or otherwise transferred to non-eligible households.

I. The manner in which inclusionary housing units will be marketed and filled, including the screening and qualifying of prospective renters or purchasers of inclusionary housing units.

21.19.090 Inclusionary Housing Agreement.

A. A written inclusionary housing agreement, in a form approved by the City Attorney, must be entered into between the developer and the City for any project providing onsite inclusionary housing units or off-site inclusionary housing units pursuant to this chapter.

B. The inclusionary housing agreement must include the following:

1. All information required for an inclusionary housing plan.

2. A clause authorizing the recovery of City costs, including, without limitation, attorney's fees, incurred in any action taken to enforce compliance with the inclusionary housing agreement.

3. Any additional reasonable information the Director requires in ensuring compliance with this chapter.

C. The Building Official will not issue a building permit for a project subject to this section's requirements until all of this chapter's applicable requirements of are satisfied, including, without limitation, full execution of an inclusionary housing agreement.

D. The inclusionary housing agreement must be recorded with the Los Angeles County Recorder and will run with the land, binding any developer successor in interest, including bona fide purchasers.

21.19.100 Modifications or Waivers.

A. The City may modify or waive this chapter's requirements if the developer demonstrates for good cause shown and by substantial evidence to the Director that this chapter's application would constitute a violation of applicable law or a taking of property in violation of the United States or California Constitutions.

Any developer requesting an adjustment or waiver of this chapter's requirements must submit documentation concurrently with filing the project application that presents substantial evidence to support the adjustment or waiver request. This documentation must set forth in detail the factual and legal basis for any such claim.

B. Before or in conjunction with a decision on the proposed project, the Director must render a written decision on the proposed adjustment or waiver of this chapter's requirements. The Director's decision may be appealed to the Planning Agency in a manner provided in this code.

21.19.110 Administration and Enforcement.

A. The City Council may establish fees or regulations by resolution for the City's ongoing administration of this chapter.

B. Any public official, employee, or agent's failure to fulfill this chapter's requirements does not excuse any person, owner, household, or other party from complying with such requirements.

C. The Building Official will not issue a final certificate of occupancy for a project subject to this chapter's requirements until all of this chapter's applicable requirements are satisfied, unless otherwise provided in an inclusionary housing agreement.

D. In addition to the general remedies provided in this code and other applicable law, the City Attorney is authorized to take any appropriate enforcement action to ensure compliance with this chapter, including, without limitation:

   1. Actions to revoke, deny, or suspend any permit, including a building permit, certificate of occupancy, or discretionary approval.

   2. Actions to recover civil fines, restitution to prevent unjust enrichment for violating this chapter, and/or enforcement costs, including attorney's fees.

   3. Eviction or foreclosure.

   4. Any other appropriate action for injunctive relief or damages."

SECTION 5: *Electronic Signatures*. This Ordinance may be executed with electronic signatures in accordance with Government Code § 16.5. Such electronic signatures will be treated in all respects as having the same effect as an original signature.

SECTION 6: *Construction*. This Ordinance must be broadly construed to achieve the purposes stated in this Ordinance. It is the City Council's intent that the provisions of this Ordinance be interpreted or implemented by the City and others in a manner that facilitates the purposes set forth in this Ordinance.

SECTION 7: *Severability*. If any part of this Ordinance or its Application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this Ordinance are severable.

<u>SECTION 8:</u> *Recordation*. The City Clerk, or designee, is directed to certify the passage and adoption of this Ordinance; cause it to be entered into the City of Monterey Park's book of original ordinances; make a note of the passage and adoption in the records of this meeting; and, within 15 days after the passage and adoption of this Ordinance, and cause it to be published or posted in accordance with California law.

<u>SECTION 9:</u> *Effective Date*. This Ordinance will become effective 30 days after second reading and adoption.

PASSED AND ADOPTED this ____ day of _________, 2023.

____
Jose Sanchez, Mayor

ATTEST:

____
Maychelle Yee, City Clerk

APPROVED AS TO FORM:
KARL H. BERGER, CITY ATTORNEY

____
Justin Tamayo, Deputy City Attorney

ATTACHMENT 3

Survey of Surrounding Cities

Survey of Inclusionary Housing Ordinances

Jurisdiction	Threshold Units	Inclusionary Percentage	In Lieu Fee	Other Alternatives	Rental-Units Income Category	For-Sale Units Income Category	Term of Affordability
Monterey Park (Proposed)	5+ unit residential development	15%	Yes	• Off-site units	• 9% low-income households • 6% moderate-income	• Moderate-Income households	45 years
Alhambra	5+ unit residential development	15%	Yes	• Off-site units • Land donation	• 9% low-income households • 6% moderate-income households May be reduced if: • Very low-income units in lieu of low-income = credit of 1.5 units/unit • Very low-income units in lieu of moderate-income = credit of 2 units/unit • Low-income units in lieu of moderate-income = credit of 1.5 units/unit	• 9% low-income households • 6% moderate-income households May be reduced if: • Very low-income units in lieu of low-income = credit of 1.5 units/unit • Very low-income units in lieu of moderate-income = credit of 2 units/unit • Low-income units in lieu of moderate-income = credit of 1.5 units/unit	45 years
Duarte	4+ unit residential development	15%	Yes	NA	• very low, low or moderate-income households • 40% of inclusionary units must be for very low-income households May be reduced if: • Very low-income units in lieu of moderate-income = credit of 2 units/unit • Low-income units in lieu of moderate-income = credit of 1.5 units/unit	• Moderate-Income households May be reduced if: • Very low-income units in lieu of moderate-income = credit of 2 units/unit • Low-income units in lieu of moderate-income = credit of 1.5 units/unit	• Rental Units: 55 years • For-Sale Units: 45 years

Survey of Inclusionary Housing Ordinances

Jurisdiction	Threshold Units	Inclusionary Percentage	In Lieu Fee	Other Alternatives	Rental-Units Income Category	For-Sale Units Income Category	Term of Affordability
La Habra*	10+ unit residential development	15%	Yes	• Off-site units • Land donation • Acquire and reconstruct existing units • Combination of options allowed	• 6% low-income households • 9% moderate-income households	Households earning no more than 110% AMI**	• Rental Units: 55 years • For-Sale Units: 45 years
Los Angeles County	5+ unit residential development	Rental (< 15 units): • 40% AMI or less = 5% • 65% AMI or less = 7% • 80% AMI or less = 10% Rental (15 units or >): • 40% AMI or less = 10% • 65% AMI or less = 15% • 80% AMI or less = 20% For-Sale (< 15 units): • 135% AMI or less = 7% For-Sale (15 units or >): • 135% AMI or less = 15%	No	• Off-site units	Extremely low, very low, low or moderate-income households	Moderate or middle income households	• Rental Units: in perpetuity • For-Sale Units: determined by equity-sharing agreement

Survey of Inclusionary Housing Ordinances

Jurisdiction	Threshold Units	Inclusionary Percentage	In Lieu Fee	Other Alternatives	Rental-Units Income Category	For-Sale Units Income Category	Term of Affordability
Pasadena	10+ unit residential development	20%	Yes	• Off-site units • Land donation • Off-site units when very low, low or moderate-income households are displaced	• 5% very low-income households • 5% very low or low-income households • 10% very low, low or moderate-income households	very low, low or moderate-income	• Rental Units: in perpetuity • For-Sale Units: 45 years
South Pasadena	3+ unit residential development	20%	Yes	• Off-site units • Rehabilitation/ conversion of equivalent number of existing units to affordable units • Land donation	• ≤10 Units – 2 units lower income, or 1 very low & 1 non-above moderate income • 11+ Units – 50% extremely low or very low and 50% lower income	Moderate-income	55 years

* Outside of the San Gabriel Valley.

** AMI = Area Median Income means the median family income of a geographic area.

ATTACHMENT 4

Notice of Exemption

Notice of Exemption

From: City of Monterey Park Planning
320 W. Newmark Avenue
Monterey Park, CA 91754

To:

☐ Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

☐ Los Angeles, County Clerk
Environmental Filings
12400 Imperial Highway #1201
Norwalk, CA 90650
Attn: Business Filings and Registration

Project Title: Zoning Code Amendment No. 22-01 (ZCA-22-01) Inclusionary Housing Ordinance
Project Location: City-Wide
Project Location - City: Monterey Park
Project Location - County: Los Angeles

Description of Project:
An amendment to Title 21 of the Monterey Park Municipal Code to establishing inclusionary housing requirements. The amendment is a legislative policy action intended to increase the availability of affordable housing stock by requiring developers who create five or more units to make a percentage of the units available to lower- and moderate-income households.

Name of Public Agency Approving Project: City of Monterey Park
Name of Person or Agency Carrying Out Project: City of Monterey Park

Exempt Status: (*check one*)

☐ Ministerial (Sec. 21080(b)(1); 15268);
☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));
☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
☐ Categorical Exemption. State type and section number: ____________________
☐ Statutory Exemptions. State code number: ______________
☒ Other: Sections 15060(c)(2), 15061(b)(3)

Reasons why project is exempt:
Pursuant to CEQA, this Ordinance is not subject to exempt from further CEQA review under the California Environmental Quality Act (Public Resources Code §§ 21000, et seq.; "CEQA") for the following reasons: (1) it will not result in a direct or reasonably foreseeable indirect physical change in the environment (14 Cal. Code Regs. CEQA Guidelines § 15060(c)(2); (2) there is no possibility that this Ordinance may have a significant effect on the environment (14 Cal. Code Regs. because this is review of proposed legislation and any potential housing projects that would be affected by the proposed regulations would undergo independent environmental review (CEQA Guidelines § 15061(b)(3); and (3) this Ordinance, by itself, does not constitute a "project" as defined in the CEQA Guidelines (14 Cal. Code Regs.by CEQA because it involves a policy action affecting prospective future development to comply with Housing Element Program 15 (CEQA Guidelines § 15378).

Lead Agency Contact Person: Beth Chow, AICP Telephone (626) 307-1315

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a notice of exemption been filed by the public agency approving the project? ☐ Yes ☐ No

Signature: ______________________ Date: __________ Title: Senior Planner

☐ Signed by Lead Agency Date received for filing at OPR:

☐ Signed by Applicant

Planning Commission Staff Report

DATE: April 25, 2023

AGENDA ITEM NO: 3-B

TO: The Planning Commission

FROM: Jessica Serrano, Director of Community Development

SUBJECT: **PUBLIC HEARING - ZONING CODE AMENDMENT NO. 23-01 (ZCA-23-01)** – Consideration and possible action to adopt a resolution recommending that the City Council approve an amendment to Monterey Park Municipal Code Chapter 21.18 Affordable Housing Incentives – Density Bonus (ZCA 23-01) to implement the Monterey Park Housing Element

RECOMMENDATION:

It is recommended that the Planning Commission consider:

(1) Open the public hearing;
(2) Receiving documentary and testimonial evidence;
(3) Closing the public hearing;
(4) After considering the evidence received during the public hearing, adopt a resolution recommending that the City Council adopt the draft Ordinance amending regulations related to the Density Bonus under ZCA-23-01 (Attachment 1);
(5) Taking such additional, related, action that may be desirable.

CEQA (California Environmental Quality Act):

The proposed Ordinance is exempt from additional environmental review under the California Environmental Quality Act (California Public Resources Code §§ 21000, *et seq*., "CEQA") and CEQA Guidelines (14 California Code of Regulations §§ 15000, *et seq*.) because (1) it will not result in a direct or reasonably foreseeable indirect physical change in the environment (CEQA Guidelines § 15060(c)(2); (2) there is no possibility that the Ordinance itself may have a significant effect on the environment (CEQA Guidelines § 15061(b)(3); and (3) the Ordinance, by itself, does not constitute a "project" as defined in the CEQA Guidelines (CEQA Guidelines § 15378). The Ordinance is for general policies and procedure-making; any project governed by the proposed Ordinance would receive a separate environmental evaluation and review. It can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment.

TYPE OF ACTION (LEGISLATIVE; QUASI-JUDICIAL; OR ADVISORY)

Legislative: The proposed Ordinance is a legislative policy action that promotes affordable housing development by providing incentives for such development. In considering this action, the Planning Commission acts in its advisory capacity for the City Council. For any proposed text amendment, the Planning Commission (and, subsequently, the City Council) must make these findings (MPMC § 21.38.050):

- That the proposed text amendment is consistent with the goals, policies, and objectives of the General Plan;

- That the proposed text amendment change will not adversely affect surrounding properties; and

- That the proposed text amendment promotes public health, safety, and general welfare and serves the goals and purposes of the MPMC's zoning regulations.

These findings are included in the draft Ordinance; the facts upon which these findings rely are also included with the draft documents.

EXECUTIVE SUMMARY:

The proposed action is advisory to the City Council. In March of 2022, the City Council categorized an update of the Density Bonus Ordinance as a moderate priority. On November 2, 2022, City Council asked the Interim Community Development Director bring forward an update to the Density Bonus Ordinance in coordination with the Inclusionary Housing Ordinance. On November 16, 2022 the City Council amended and adopted the 2021-2029 Housing Element that included Program 14: Affordable Housing Development Incentives, which listed the consideration of updating the City's Density Ordinance as one it its objectives.

BACKGROUND

A density bonus is an incentive-based tool that permits a developer to increase the maximum allowable development density on a site in exchange for specified public policy goals. If adopted, the proposed Ordinance would provide density bonuses to help develop affordable housing units in exchange for a menu of incentives to make development easier. This is accomplished by reducing the applicable development standards such as height, floor area ratio, or setbacks.

Density bonus regulations are, in part, imposed by California law. The proposed Ordinance will help align the City's current regulations with changes in California law since 2013.

ANALYSIS

If adopted, the draft Ordinance implements Government Code §§ 65915, *et. seq.*

(Attachment A). Currently, California law permits a bonus ranging from 20-80% density increase, depending on how many affordable housing units the developer includes in a project. Additionally, for projects that provide 100% affordable units, applicants are allowed unlimited density bonus and an additional three stories of building height if located near a major transit stop. Under the State law, the following are the minimum thresholds that qualify a project for a density bonus:

- 5% of units set-aside for very low income households;
- 10% of units set-aside for lower income households ;
- 10% of for-sale units set-aside for moderate income households ;
- 100% of units set-aside for very low, low-, and moderate-income households (with maximum 20% moderate);
- 10% of the housing units set-aside for transitional foster youth, disabled veterans or homeless persons, with rents restricted at the very low-income level;
- 20% of units set-aside for low-income college students in housing dedicated for full-time students at accredited colleges;
- The project dedicates at least one acre of land, or land of sufficient size to permit at least 40 units, to the city for very low-income units and is appropriately zoned and includes access to public utilities and infrastructure;
- The project is a senior citizen housing development with at least 35 units (no affordable units required); and
- The project is a mobile home park this is age-restricted to senior citizens (no affordable units required)

As part of the update to the Density Bonus regulations, an updated menu of incentives are included, allowing the City to prioritize where relaxation of development standards may occur. The menu of incentives provides clarity to developers while preserving the City's interests and priorities. The menu of incentives includes:

- Reduction of yards and setbacks;
- Reduction of lot width requirements;
- Increase of floor area ratio;
- Increase in building height/total number of stories;
- Reduction of open space requirements;
- Expanded area for density calculation; and
- Sustainable "Green" Building compliance.

Newly added to the menu of incentives is an option for additional density bonus when a development employs sustainable building practices, as prioritizing sustainable practices is one of the City's goals. This menu of incentives helps to preserve local control within the City's developable properties. Overall, the proposed Ordinance, if adopted, helps to achieve goals and objectives set by City Council and the Housing Element, and is consistent with California law.

Respectfully submitted,

J. Serrano

Jessica Serrano
Director of Community Development

Prepared by:

Beth Chow

Beth Chow, AICP
Senior Planner

Reviewed by:

Justin A. Tamayo
Deputy City Attorney

ATTACHMENTS:

Attachment 1: Government Code § 65915 through 65918

Attachment 2: Resolution

Attachment 3: Draft Density Bonus Ordinance

Attachment 4: Notice of Exemption

ATTACHMENT 1

Government Code § 65915 through 65918

GOVERNMENT CODE - GOV

TITLE 7. PLANNING AND LAND USE [65000 - 66499.58] *(Heading of Title 7 amended by Stats. 1974, Ch. 1536.)*

DIVISION 1. PLANNING AND ZONING [65000 - 66301] *(Heading of Division 1 added by Stats. 1974, Ch. 1536.)*

CHAPTER 4.3. Density Bonuses and Other Incentives [65915 - 65918] *(Chapter 4.3 added by Stats. 1979, Ch. 1207.)*

65915. (a) (1) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall comply with this section. A city, county, or city and county shall adopt an ordinance that specifies how compliance with this section will be implemented. Except as otherwise provided in subdivision (s), failure to adopt an ordinance shall not relieve a city, county, or city and county from complying with this section.

(2) A local government shall not condition the submission, review, or approval of an application pursuant to this chapter on the preparation of an additional report or study that is not otherwise required by state law, including this section. This subdivision does not prohibit a local government from requiring an applicant to provide reasonable documentation to establish eligibility for a requested density bonus, incentives or concessions, as described in subdivision (d), waivers or reductions of development standards, as described in subdivision (e), and parking ratios, as described in subdivision (p).

(3) In order to provide for the expeditious processing of a density bonus application, the local government shall do all of the following:

(A) Adopt procedures and timelines for processing a density bonus application.

(B) Provide a list of all documents and information required to be submitted with the density bonus application in order for the density bonus application to be deemed complete. This list shall be consistent with this chapter.

(C) Notify the applicant for a density bonus whether the application is complete in a manner consistent with the timelines specified in Section 65943.

(D) (i) If the local government notifies the applicant that the application is deemed complete pursuant to subparagraph (C), provide the applicant with a determination as to the following matters:

(I) The amount of density bonus, calculated pursuant to subdivision (f), for which the applicant is eligible.

(II) If the applicant requests a parking ratio pursuant to subdivision (p), the parking ratio for which the applicant is eligible.

(III) If the applicant requests incentives or concessions pursuant to subdivision (d) or waivers or reductions of development standards pursuant to subdivision (e), whether the applicant has provided adequate information for the local government to make a determination as to those incentives, concessions, or waivers or reductions of development standards.

(ii) Any determination required by this subparagraph shall be based on the development project at the time the application is deemed complete. The local government shall adjust the amount of density bonus and parking ratios awarded pursuant to this section based on any changes to the project during the course of development.

(b) (1) A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (f), and, if requested by the applicant and consistent with the applicable requirements of this section, incentives or concessions, as described in subdivision (d), waivers or reductions of development standards, as described in subdivision (e), and parking ratios, as described in subdivision (p), if an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section, that will contain at least any one of the following:

(A) Ten percent of the total units of a housing development, including a shared housing building development, for rental or sale to lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(B) Five percent of the total units of a housing development, including a shared housing building development, for rental or sale to very low income households, as defined in Section 50105 of the Health and Safety Code.

(C) A senior citizen housing development, as defined in Sections 51.3 and 51.12 of the Civil Code, or a mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code. For purposes of this subparagraph, “development” includes a shared housing building development.

(D) Ten percent of the total dwelling units of a housing development are sold to persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.

(E) Ten percent of the total units of a housing development for transitional foster youth, as defined in Section 66025.9 of the Education Code, disabled veterans, as defined in Section 18541, or homeless persons, as defined in the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.). The units described in this subparagraph shall be subject to a recorded affordability restriction of 55 years and shall be provided at the same affordability level as very low income units.

(F) (i) Twenty percent of the total units for lower income students in a student housing development that meets the following requirements:

(I) All units in the student housing development will be used exclusively for undergraduate, graduate, or professional students enrolled full time at an institution of higher education accredited by the Western Association of Schools and Colleges or the Accrediting Commission for Community and Junior Colleges. In order to be eligible under this subclause, the developer shall, as a condition of receiving a certificate of occupancy, provide evidence to the city, county, or city and county that the developer has entered into an operating agreement or master lease with one or more institutions of higher education for the institution or institutions to occupy all units of the student housing development with students from that institution or institutions. An operating agreement or master lease entered into pursuant to this subclause is not violated or breached if, in any subsequent year, there are not sufficient students enrolled in an institution of higher education to fill all units in the student housing development.

(II) The applicable 20-percent units will be used for lower income students.

(III) The rent provided in the applicable units of the development for lower income students shall be calculated at 30 percent of 65 percent of the area median income for a single-room occupancy unit type.

(IV) The development will provide priority for the applicable affordable units for lower income students experiencing homelessness. A homeless service provider, as defined in paragraph (3) of subdivision (e) of Section 103577 of the Health and Safety Code, or institution of higher education that has knowledge of a person’s homeless status may verify a person’s status as homeless for purposes of this subclause.

(ii) For purposes of calculating a density bonus granted pursuant to this subparagraph, the term "unit" as used in this section means one rental bed and its pro rata share of associated common area facilities. The units described in this subparagraph shall be subject to a recorded affordability restriction of 55 years.

(G) One hundred percent of all units in the development, including total units and density bonus units, but exclusive of a manager's unit or units, are for lower income households, as defined by Section 50079.5 of the Health and Safety Code, except that up to 20 percent of the units in the development, including total units and density bonus units, may be for moderate-income households, as defined in Section 50053 of the Health and Safety Code. For purposes of this subparagraph, "development" includes a shared housing building development.

(2) For purposes of calculating the amount of the density bonus pursuant to subdivision (f), an applicant who requests a density bonus pursuant to this subdivision shall elect whether the bonus shall be awarded on the basis of subparagraph (A), (B), (C), (D), (E), (F), or (G) of paragraph (1).

(c) (1) (A) An applicant shall agree to, and the city, county, or city and county shall ensure, the continued affordability of all very low and low-income rental units that qualified the applicant for the award of the density bonus for 55 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.

(B) (i) Except as otherwise provided in clause (ii), rents for the lower income density bonus units shall be set at an affordable rent, as defined in Section 50053 of the Health and Safety Code.

(ii) For housing developments meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b), rents for all units in the development, including both base density and density bonus units, shall be as follows:

(I) The rent for at least 20 percent of the units in the development shall be set at an affordable rent, as defined in Section 50053 of the Health and Safety Code.

(II) The rent for the remaining units in the development shall be set at an amount consistent with the maximum rent levels for lower income households, as those rents and incomes are determined by the California Tax Credit Allocation Committee.

(2) (A) An applicant shall agree to ensure, and the city, county, or city and county shall ensure, that a for-sale unit that qualified the applicant for the award of the density bonus meets either of the following conditions:

(i) The unit is initially occupied by a person or family of very low, low, or moderate income, as required, and it is offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the Health and Safety Code and is subject to an equity sharing agreement.

(ii) The unit is purchased by a qualified nonprofit housing corporation pursuant to a recorded contract that satisfies all of the requirements specified in paragraph (10) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code and that includes all of the following:

(I) A repurchase option that requires a subsequent purchaser of the property that desires to resell or convey the property to offer the qualified nonprofit corporation the right to repurchase the property prior to selling or conveying that property to any other purchaser.

(II) An equity sharing agreement.

(III) Affordability restrictions on the sale and conveyance of the property that ensure that the property will be preserved for lower income housing for at least 45 years for owner-occupied housing units and will be sold or resold only to persons or families of very low, low, or moderate income, as defined in Section 50052.5 of the Health and Safety Code.

(B) For purposes of this paragraph, a "qualified nonprofit housing corporation" is a nonprofit housing corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has received a welfare exemption under Section 214.15 of the Revenue and Taxation Code for properties intended to be sold to low-income families who participate in a special no-interest loan program.

(C) The local government shall enforce an equity sharing agreement required pursuant to clause (i) or (ii) of subparagraph (A), unless it is in conflict with the requirements of another public funding source or law or may defer to the recapture provisions of the public funding source. The following apply to the equity sharing agreement:

(i) Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation.

(ii) Except as provided in clause (v), the local government shall recapture any initial subsidy, as defined in clause (iii), and its proportionate share of appreciation, as defined in clause (iv), which amount shall be used within five years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote home ownership.

(iii) For purposes of this subdivision, the local government's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any downpayment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.

(iv) For purposes of this subdivision, the local government's proportionate share of appreciation shall be equal to the ratio of the local government's initial subsidy to the fair market value of the home at the time of initial sale.

(v) If the unit is purchased or developed by a qualified nonprofit housing corporation pursuant to clause (ii) of subparagraph (A) the local government may enter into a contract with the qualified nonprofit housing corporation under which the qualified nonprofit housing corporation would recapture any initial subsidy and its proportionate share of appreciation if the qualified nonprofit housing corporation is required to use 100 percent of the proceeds to promote homeownership for lower income households as defined by Health and Safety Code Section 50079.5 within the jurisdiction of the local government.

(3) (A) An applicant shall be ineligible for a density bonus or any other incentives or concessions under this section if the housing development is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; subject to any other form of rent or price control through a public entity's valid exercise of its police power; or occupied by lower or very low income households, unless the proposed housing development replaces those units, and either of the following applies:

(i) The proposed housing development, inclusive of the units replaced pursuant to this paragraph, contains affordable units at the percentages set forth in subdivision (b).

(ii) Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a lower or very low income household.

(B) For the purposes of this paragraph, "replace" shall mean either of the following:

(i) If any dwelling units described in subparagraph (A) are occupied on the date of application, the proposed housing development shall provide at least the same number of units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy. If the income category of the household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. For unoccupied dwelling units described in subparagraph (A) in a development with occupied units, the proposed housing development shall provide units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as the last household in occupancy. If the income category of the last household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(ii) If all dwelling units described in subparagraph (A) have been vacated or demolished within the five-year period preceding the application, the proposed housing development shall provide at least the same number of units of equivalent size as existed at the highpoint of those units in the five-year period preceding the application to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those persons and families in occupancy at that time, if known. If the incomes of the persons and families in occupancy at the highpoint is not known, it shall be rebuttably presumed that low-income and very low income renter households occupied these units in the same proportion of low-income and very low income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(C) Notwithstanding subparagraph (B), for any dwelling unit described in subparagraph (A) that is or was, within the five-year period preceding the application, subject to a form of rent or price control through a local government's valid exercise of its police power and that is or was occupied by persons or families above lower income, the city, county, or city and county may do either of the following:

(i) Require that the replacement units be made available at affordable rent or affordable housing cost to, and occupied by, low-income persons or families. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(ii) Require that the units be replaced in compliance with the jurisdiction's rent or price control ordinance, provided that each unit described in subparagraph (A) is replaced. Unless otherwise required by the jurisdiction's rent or price control ordinance, these units shall not be subject to a recorded affordability restriction.

(D) For purposes of this paragraph, "equivalent size" means that the replacement units contain at least the same total number of bedrooms as the units being replaced.

(E) Subparagraph (A) does not apply to an applicant seeking a density bonus for a proposed housing development if the applicant's application was submitted to, or processed by, a city, county, or city and county before January 1, 2015.

(d) (1) An applicant for a density bonus pursuant to subdivision (b) may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of any of the following:

(A) The concession or incentive does not result in identifiable and actual cost reductions, consistent with subdivision (k), to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(B) The concession or incentive would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households.

(C) The concession or incentive would be contrary to state or federal law.

(2) The applicant shall receive the following number of incentives or concessions:

(A) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a development in which the units are for sale.

(B) Two incentives or concessions for projects that include at least 17 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a development in which the units are for sale.

(C) Three incentives or concessions for projects that include at least 24 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a development in which the units are for sale.

(D) Four incentives or concessions for a project meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b). If the project is located within one-half mile of a major transit stop or is located in a very low vehicle travel area in a designated county, the applicant shall also receive a height increase of up to three additional stories, or 33 feet.

(E) One incentive or concession for projects that include at least 20 percent of the total units for lower income students in a student housing development.

(3) The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. This subdivision shall not be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health or safety, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. This subdivision shall not be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section that shall include legislative body approval of the means of compliance with this section.

(4) The city, county, or city and county shall bear the burden of proof for the denial of a requested concession or incentive.

(e) (1) In no case may a city, county, or city and county apply any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. Subject to paragraph (3), an applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted under this section, and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. This subdivision shall not be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health or safety, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. This subdivision shall not be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.

(2) A proposal for the waiver or reduction of development standards pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(3) A housing development that receives a waiver from any maximum controls on density pursuant to clause (ii) of subparagraph (D) of paragraph (3) of subdivision (f) shall only be eligible for a waiver or reduction of development standards as provided in subparagraph (D) of paragraph (2) of subdivision (d) and clause (ii) of subparagraph (D) of paragraph (3) of subdivision (f), unless the city, county, or city and county agrees to additional waivers or reductions of development standards.

(f) For the purposes of this chapter, "density bonus" means a density increase over the otherwise maximum allowable gross residential density as of the date of application by the applicant to the city, county, or city and county, or, if elected by the applicant, a lesser percentage of density increase, including, but not limited to, no increase in density. The amount of density increase to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).

(1) For housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
16	29
17	30.5
18	32
19	33.5
20	35
21	38.75

22	42.5
23	46.25
24	50

(2) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Very Low Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35
12	38.75
13	42.5
14	46.25
15	50

(3) (A) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of senior housing units.

(B) For housing developments meeting the criteria of subparagraph (E) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of the type of units giving rise to a density bonus under that subparagraph.

(C) For housing developments meeting the criteria of subparagraph (F) of paragraph (1) of subdivision (b), the density bonus shall be 35 percent of the student housing units.

(D) For housing developments meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b), the following shall apply:

(i) Except as otherwise provided in clauses (ii) and (iii), the density bonus shall be 80 percent of the number of units for lower income households.

(ii) If the housing development is located within one-half mile of a major transit stop, the city, county, or city and county shall not impose any maximum controls on density.

(iii) If the housing development is located in a very low vehicle travel area within a designated county, the city, county, or city and county shall not impose any maximum controls on density.

(4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Moderate-Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35
41	38.75
42	42.5

43	46.25
44	50

(5) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not require, or be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.

(g) (1) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county in accordance with this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density for the entire development, as follows:

Percentage Very Low Income	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27
23	28
24	29
25	30
26	31
27	32
28	33
29	34
30	35

(2) This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks an increase pursuant to both this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer

to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this subdivision if all of the following conditions are met:

(A) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(B) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

(C) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned with appropriate development standards for development at the density described in paragraph (3) of subdivision (c) of Section 65583.2, and is or will be served by adequate public facilities and infrastructure.

(D) The transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, not later than the date of approval of the final subdivision map, parcel map, or residential development application, except that the local government may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed by the local government before the time of transfer.

(E) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which shall be recorded on the property at the time of the transfer.

(F) The land is transferred to the local agency or to a housing developer approved by the local agency. The local agency may require the applicant to identify and transfer the land to the developer.

(G) The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.

(H) A proposed source of funding for the very low income units shall be identified not later than the date of approval of the final subdivision map, parcel map, or residential development application.

(h) (1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a childcare facility that will be located on the premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

(A) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the childcare facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the childcare facility.

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(A) The childcare facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to subdivision (c).

(B) Of the children who attend the childcare facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city, county, or city and county shall not be required to provide a density bonus or concession for a childcare facility if it finds, based upon substantial evidence, that the community has adequate childcare facilities.

(4) “Childcare facility,” as used in this section, means a child daycare facility other than a family daycare home, including, but not limited to, infant centers, preschools, extended daycare facilities, and schoolage childcare centers.

(i) “Housing development,” as used in this section, means a development project for five or more residential units, including mixed-use developments. For the purposes of this section, “housing development” also includes a subdivision or common interest development, as defined in Section 4100 of the Civil Code, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units shall be on contiguous sites that are the subject of one development application, but do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(j) (1) The granting of a concession or incentive shall not require or be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, study, or other discretionary approval. For purposes of this subdivision, “study” does not include reasonable documentation to establish eligibility for the concession or incentive or to demonstrate that the incentive or concession meets the definition set forth in subdivision (k). This provision is declaratory of existing law.

(2) Except as provided in subdivisions (d) and (e), the granting of a density bonus shall not require or be interpreted to require the waiver of a local ordinance or provisions of a local ordinance unrelated to development standards.

(k) For the purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable and actual cost reductions, to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(2) Approval of mixed-use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable and actual cost reductions to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(l) Subdivision (k) does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(m) This section does not supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). Any density bonus, concessions, incentives, waivers or reductions of development standards, and parking ratios to which the applicant is entitled under this section shall be permitted in a manner that is consistent with this section and Division 20 (commencing with Section 30000) of the Public Resources Code.

(n) If permitted by local ordinance, nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

(o) For purposes of this section, the following definitions shall apply:

(1) "Designated county" includes the Counties of Alameda, Contra Costa, Los Angeles, Marin, Napa, Orange, Riverside, Sacramento, San Bernardino, San Diego, San Francisco, San Mateo, Santa Barbara, Santa Clara, Solano, Sonoma, and Ventura.

(2) "Development standard" includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, a minimum lot area per unit requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.

(3) "Located within one-half mile of a major transit stop" means that any point on a proposed development, for which an applicant seeks a density bonus, other incentives or concessions, waivers or reductions of development standards, or a vehicular parking ratio pursuant to this section, is within one-half mile of any point on the property on which a major transit stop is located, including any parking lot owned by the transit authority or other local agency operating the major transit stop.

(4) "Lower income student" means a student who has a household income and asset level that does not exceed the level for Cal Grant A or Cal Grant B award recipients as set forth in paragraph (1) of subdivision (k) of Section 69432.7 of the Education Code. The eligibility of a student to occupy a unit for lower income students under this section shall be verified by an affidavit, award letter, or letter of eligibility provided by the institution of higher education in which the student is enrolled or by the California Student Aid Commission that the student receives or is eligible for financial aid, including an institutional grant or fee waiver from the college or university, the California Student Aid Commission, or the federal government.

(5) "Major transit stop" has the same meaning as defined in subdivision (b) of Section 21155 of the Public Resources Code.

(6) "Maximum allowable residential density" or "base density" means the maximum number of units allowed under the zoning ordinance, specific plan, or land use element of the general plan, or, if a range of density is permitted, means the maximum number of units allowed by the specific zoning range, specific plan, or land use element of the general plan applicable to the project. If the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan or specific plan, the greater shall prevail. Density shall be determined using dwelling units per acre. However, if the applicable zoning ordinance, specific plan, or land use element of the general plan does not provide a dwelling-units-per-acre standard for density, then the local agency shall calculate the number of units by:

(A) Estimating the realistic development capacity of the site based on the objective development standards applicable to the project, including, but not limited to, floor area ratio, site coverage, maximum building height and number of stories, building setbacks and stepbacks, public and private open space requirements, minimum percentage or square footage of any nonresidential component, and parking requirements, unless not required for the base project. Parking requirements shall include considerations regarding number of spaces, location, design, type, and circulation. A developer may provide a base density study and the local agency shall accept it, provided that it includes all applicable objective development standards.

(B) Maintaining the same average unit size and other project details relevant to the base density study, excepting those that may be modified by waiver or concession to accommodate the bonus units, in the proposed project as in the study.

(7) (A) (i) “Shared housing building” means a residential or mixed-use structure, with five or more shared housing units and one or more common kitchens and dining areas designed for permanent residence of more than 30 days by its tenants. The kitchens and dining areas within the shared housing building shall be able to adequately accommodate all residents. If a local ordinance further restricts the attributes of a shared housing building beyond the requirements established in this section, the local definition shall apply to the extent that it does not conflict with the requirements of this section.

(ii) A “shared housing building” may include other dwelling units that are not shared housing units, provided that those dwelling units do not occupy more than 25 percent of the floor area of the shared housing building. A shared housing building may include 100 percent shared housing units.

(B) “Shared housing unit” means one or more habitable rooms, not within another dwelling unit, that includes a bathroom, sink, refrigerator, and microwave, is used for permanent residence, that meets the “minimum room area” specified in Section R304 of the California Residential Code (Part 2.5 of Title 24 of the California Code of Regulations), and complies with the definition of “guestroom” in Section R202 of the California Residential Code. If a local ordinance further restricts the attributes of a shared housing building beyond the requirements established in this section, the local definition shall apply to the extent that it does not conflict with the requirements of this section.

(8) (A) “Total units” or “total dwelling units” means a calculation of the number of units that:

(i) Excludes a unit added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus.

(ii) Includes a unit designated to satisfy an inclusionary zoning requirement of a city, county, or city and county.

(B) For purposes of calculating a density bonus granted pursuant to this section for a shared housing building, “unit” means one shared housing unit and its pro rata share of associated common area facilities.

(9) “Very low vehicle travel area” means an urbanized area, as designated by the United States Census Bureau, where the existing residential development generates vehicle miles traveled per capita that is below 85 percent of either regional vehicle miles traveled per capita or city vehicle miles traveled per capita. For purposes of this paragraph, “area” may include a travel analysis zone, hexagon, or grid. For the purposes of determining “regional vehicle miles traveled per capita” pursuant to this paragraph, a “region” is the entirety of incorporated and unincorporated areas governed by a multicounty or single-county metropolitan planning organization, or the entirety of the incorporated and unincorporated areas of an individual county that is not part of a metropolitan planning organization.

(p) (1) Except as provided in paragraphs (2), (3), and (4), upon the request of the developer, a city, county, or city and county shall not require a vehicular parking ratio, inclusive of parking for persons with a disability and guests, of a development meeting the criteria of subdivisions (b) and (c), that exceeds the following ratios:

(A) Zero to one bedroom: one onsite parking space.

(B) Two to three bedrooms: one and one-half onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(2) (A) Notwithstanding paragraph (1), if a development includes at least 20 percent low-income units for housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b) or at least 11 percent very low income units for housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), is located within one-half mile of a major transit stop, and there is unobstructed access to the major transit stop from the

development, then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of parking for persons with a disability and guests, that exceeds 0.5 spaces per unit. Notwithstanding paragraph (1), if a development includes at least 40 percent moderate-income units for housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, and the residents of the development have unobstructed access to the major transit stop from the development then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of parking for persons with a disability and guests, that exceeds 0.5 spaces per bedroom.

(B) For purposes of this subdivision, "unobstructed access to the major transit stop" means a resident is able to access the major transit stop without encountering natural or constructed impediments. For purposes of this subparagraph, "natural or constructed impediments" includes, but is not limited to, freeways, rivers, mountains, and bodies of water, but does not include residential structures, shopping centers, parking lots, or rails used for transit.

(3) Notwithstanding paragraph (1), if a development meets the criteria of subparagraph (G) of paragraph (1) of subdivision (b), then, upon the request of the developer, a city, county, or city and county shall not impose vehicular parking standards if the development meets any of the following criteria:

(A) The development is located within one-half mile of a major transit stop and there is unobstructed access to the major transit stop from the development.

(B) The development is a for-rent housing development for individuals who are 55 years of age or older that complies with Sections 51.2 and 51.3 of the Civil Code and the development has either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

(C) The development is either a special needs housing development, as defined in Section 51312 of the Health and Safety Code, or a supportive housing development, as defined in Section 50675.14 of the Health and Safety Code. A development that is a special needs housing development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

(4) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide onsite parking through tandem parking or uncovered parking, but not through onstreet parking.

(5) This subdivision shall apply to a development that meets the requirements of subdivisions (b) and (c), but only at the request of the applicant. An applicant may request parking incentives or concessions beyond those provided in this subdivision pursuant to subdivision (d).

(6) This subdivision does not preclude a city, county, or city and county from reducing or eliminating a parking requirement for development projects of any type in any location.

(7) Notwithstanding paragraphs (2) and (3), if a city, county, city and county, or an independent consultant has conducted an areawide or jurisdictionwide parking study in the last seven years, then the city, county, or city and county may impose a higher vehicular parking ratio not to exceed the ratio described in paragraph (1), based upon substantial evidence found in the parking study, that includes, but is not limited to, an analysis of parking availability, differing levels of transit access, walkability access to transit services, the potential for shared parking, the effect of parking requirements on the cost of market-rate and subsidized developments, and the lower rates of car ownership for low-income and very low income individuals, including seniors and special needs individuals. The city, county, or city and county shall pay the costs of any new study. The city, county, or city and county shall make findings, based on a parking study completed in conformity with this paragraph, supporting the need for the higher parking ratio.

(8) A request pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(q) Each component of any density calculation, including base density and bonus density, resulting in fractional units shall be separately rounded up to the next whole number. The Legislature finds and declares that this provision is declaratory of existing law.

(r) This chapter shall be interpreted liberally in favor of producing the maximum number of total housing units.

(s) Notwithstanding any other law, if a city, including a charter city, county, or city and county has adopted an ordinance or a housing program, or both an ordinance and a housing program, that incentivizes the development of affordable housing that allows for density bonuses that exceed the density bonuses required by the version of this section effective through December 31, 2020, that city, county, or city and county is not required to amend or otherwise update its ordinance or corresponding affordable housing incentive program to comply with the amendments made to this section by the act adding this subdivision, and is exempt from complying with the incentive and concession calculation amendments made to this section by the act adding this subdivision as set forth in subdivision (d), particularly subparagraphs (B) and (C) of paragraph (2) of that subdivision, and the amendments made to the density tables under subdivision (f).

(t) When an applicant proposes to construct a housing development that conforms to the requirements of subparagraph (A) or (B) of paragraph (1) of subdivision (b) that is a shared housing building, the city, county, or city and county shall not require any minimum unit size requirements or minimum bedroom requirements that are in conflict with paragraph (7) of subdivision (o).

(u) (1) The Legislature finds and declares that the intent behind the Density Bonus Law is to allow public entities to reduce or even eliminate subsidies for a particular project by allowing a developer to include more total units in a project than would otherwise be allowed by the local zoning ordinance in exchange for affordable units. It further reaffirms that the intent is to cover at least some of the financing gap of affordable housing with regulatory incentives, rather than additional public subsidy.

(2) It is therefore the intent of the Legislature to make modifications to the Density Bonus Law by the act adding this subdivision to further incentivize the construction of very low, low-, and moderate-income housing units. It is further the intent of the Legislature in making these modifications to the Density Bonus Law to ensure that any additional benefits conferred upon a developer are balanced with the receipt of a public benefit in the form of adequate levels of affordable housing. The Legislature further intends that these modifications will ensure that the Density Bonus Law creates incentives for the construction of more housing across all areas of the state.

(Amended by Stats. 2022, Ch. 653, Sec. 1.5. (AB 2334) Effective January 1, 2023.)

ATTACHMENT 2

Resolution

RESOLUTION NO. ____

A RESOLUTION RECOMMENDING THE CITY COUNCIL TO AMEND MONTEREY PARK MUNICIPAL CODE CHAPTER 21.18 AFFORDABLE HOUSING INCENTIVES – DENSITY BONUS (ZCA 23-01).

The Planning Commission of the City of Monterey Park does resolve as follows:

<u>SECTION 1:</u> The Planning Commission finds and declares that:

A. The California Legislature declared that cities must use their vested powers to facilitate housing development "for the housing needs of all economic segments of the community" (Gov't. Code § 65580(d)).

B. Cities should adopt ordinances consistent with Government Code § 65915 ("Density Bonus Law") to implement the Density Bonus Law.

C. On January 19, 2022, the City Council adopted the 2021-2029 Housing Element to develop a comprehensive strategy for providing safe, decent and affordable housing within the community.

D. Goal 4 of the Housing Element makes it a goal for the City to provide housing that meets the needs of all economic segments of the community.

E. Policy 4.1 of the Housing Element encourages the use of regulatory structures to facilitate affordable housing.

F. Program 14 of the Housing Element makes updating the Density Bonus regulations a priority.

G. The City initiated this zoning code amendment ("ZCA 23-01") pursuant to Monterey Park Municipal Code ("MPMC") § 21.38.020.

H. The City reviewed the Ordinance pursuant to the California Environmental Quality Act (Public Resources Code §§ 21000, et seq., "CEQA") and the regulations promulgated thereunder (14 Cal. Code of Regulations §§15000, et seq., the "CEQA Guidelines"). CEQA and the CEQA Guidelines are collectively referred to as "CEQA Regulations";

I. Notice of Public a Hearing before the Planning Commission was duly given and published in the time, form, and manner as required by law; and

J. On April 25, 2023, the City's Planning Commission conducted a duly noticed public hearing to assess ZCA 23-01. This Resolution, and its findings, is adopted based upon the evidence set forth in the entire record including, without limitation, documentary and testimonial evidence; the staff report; and such additional information set forth in the entire administrative record that is too voluminous to reference, but is on file in the Community Development Department.

SECTION 2: *Factual Findings and Conclusions.* The Planning Commission finds that the following facts exist and makes the following conclusions:

A. The MPMC amendments in the proposed Ordinance are consistent with the goals, policies and objectives of the General Plan. Among other things, these regulations will provide housing opportunities for households in all income levels without constraining housing development in the City.

B. These regulations will not adversely affect surrounding properties. Such regulations will operate citywide and will not affect a change in the use or the intensity of use of property in any zone.

C. These regulations promote public health, safety, and general welfare and serve the goals and purposes of the MPMC's zoning regulations. The density bonus regulations will continue to promote the public health, safety, and general welfare while serving the goals and purposes of the zoning regulations. Among other things, the regulations will facilitate creation of housing to address the Legislature's determination regarding a statewide housing shortage for households of very low, low, and moderate incomes.

SECTION 3: *Environmental Assessment*. The proposed Ordinance is exempt from additional environmental review under the California Environmental Quality Act (California Public Resources Code §§ 21000, *et seq*., "CEQA") and CEQA Guidelines (14 California Code of Regulations §§ 15000, *et seq*.) because (1) it will not result in a direct or reasonably foreseeable indirect physical change in the environment (CEQA Guidelines § 15060(c)(2); (2) there is no possibility that the Ordinance itself may have a significant effect on the environment (CEQA Guidelines § 15061(b)(3); and (3) the Ordinance, by itself, does not constitute a "project" as defined in the CEQA Guidelines (CEQA Guidelines § 15378). The Ordinance is for general policies and procedure-making; any project governed by the proposed Ordinance would receive a separate environmental evaluation and review. It can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment.

SECTION 4: *Actions.* The Planning Commission recommends that the City Council adopt the Ordinance attached as Attachment "3," and incorporated into this Resolution by reference.

SECTION 5: *Limitations.* The Planning Commission's analysis and evaluation of the project is based on the best information currently available. It is inevitable that in evaluating a project that absolute and perfect knowledge of all possible aspects of the project will not exist. One of the major limitations on analysis of the project is the Planning Commission's lack of knowledge of future events. In all instances, best efforts were made to form accurate assumptions. Somewhat related to this are the limitations on the City's ability to solve what are in effect regional, state, and national problems and issues. The City must work within the political framework within which it exists and with the limitations inherent in that framework.

SECTION 6: *Summaries of Information.* All summaries of information in the findings, which precede this section, are based on the substantial evidence in the record. The absence of any particular fact from any such summary is not an indication that a particular finding is not based in part on that fact.

SECTION 7: This Resolution will remain effective until superseded by a subsequent resolution.

SECTION 8: The Planning Commission Secretary is directed to mail a copy of this Resolution to any person requesting a copy.

SECTION 9: This Resolution will take effect immediately upon adoption.

ADOPTED AND APPROVED this 25th day of April 2023.

____
Tammy Sam, Chairperson

I hereby certify that the foregoing Resolution was duly adopted by the Planning Commission of the City of Monterey Park at the special meeting held on the 25th day of April 2023, by the following vote of the Planning Commission:

AYES:
NOES:
ABSTAIN:
ABSENT:

____
Jessica Serrano, Secretary

APPROVED AS TO FORM:
KARL H. BERGER, CITY ATTORNEY

By: ____________________________
Justin A. Tamayo, Deputy City Attorney

ATTACHMENT 3

Draft Density Bonus Ordinance

ORDINANCE NO.

AN ORDINANCE AMENDING MONTEREY PARK MUNICIPAL CODE CHAPTER 21.18 GOVERNING AFFORDABLE HOUSING INCENTIVES AND DENSITY BONUS

The City Council of the City of Monterey Park does ordain as follows:

SECTION 1: The City Council finds and declares that:

A. Monterey Park Municipal Code ("MPMC") Chapter 21.18 regulates density bonuses in the City and was last amended in 2013;

B. The City initiated a code amendment by this Ordinance ("ZCA 23-01") pursuant to MPMC § 21.38.020; and

C. On April 25, 2023, the Planning Commission conducted a duly noticed public hearing to assess the proposed MPMC amendments in ZCA 23-01, considered all oral and written evidence, and adopted Resolution _____ recommending that the City Council adopt this Ordinance.

D. This Ordinance is adopted based upon the entirety of the administrative record including, without limitation, the staff reports submitted to the Planning Commission and City Council during the course of the public hearings.

SECTION 2: *Zoning Amendments.* Pursuant to MPMC § 21.38.050, the City Council finds as follows:

A. The MPMC amendments in this Ordinance are consistent with the goals, policies and objectives of the General Plan. Among other things, these regulations will provide housing opportunities for households in all income levels without constraining housing development in the City and implements Program 14 of the Housing Element.

B. This Ordinance will not adversely affect surrounding properties. Regulations adopted by the Ordinance govern all property within the City's jurisdiction and will not affect a change in the use or the intensity of use of property in any zone.

C. This Ordinance promotes public health, safety, and general welfare and serves the goals and purposes of the MPMC's zoning regulations. The density bonus regulations will continue to promote the public health, safety, and general welfare while serving the goals and purposes of the zoning regulations. Among other things, the regulations will facilitate creation of housing to address the Legislature's determination regarding a statewide housing shortage for households of very low-, low-, and moderate-incomes, and bring the MPMC into compliance with State law.

SECTION 2: *Environmental Review.* The proposed Ordinance is exempt from additional environmental review under the California Environmental Quality Act ("California Public Resources Code §§ 21000, *et seq*., "CEQA") and its implementing guidelines (14 California Code of Regulations §§ 15000, *et seq*.; "CEQA Guidelines") for the following reasons: (1) it will not result in a direct or reasonably foreseeable indirect physical change in the environment (CEQA Guidelines § 15060(c)(2)); (2) there is no possibility that the Ordinance itself may have a significant effect on the environment (CEQA Guidelines § 15061(b)(3)); and (3) the Ordinance, by itself, does not constitute a "project" as defined in the CEQA Guidelines (CEQA Guidelines § 15378). The Ordinance is for general policies and procedure-making; any project governed by the proposed Ordinance would receive a separate environmental evaluation and review. It can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment.

SECTION 3: Chapter 21.18 of the Monterey Park Municipal Code ("MPMC") entitled "AFFORDABLE HOUSING INCENTIVES—DENSITY BONUS" is amended in its entirety to read as follows:

"**Chapter 21.18**

AFFORDABLE HOUSING INCENTIVES—DENSITY BONUS

21.18.010. **Purpose**.

The purpose of this Chapter is to establish procedures for implementing density bonus requirements set forth in Government Code §§ 65915, *et seq*., as may be amended from time to time (the "Density Bonus Act").

21.18.020. **Procedure**.

A. In addition to any other requirement, applications for a density bonus must be filed on a form approved by the Community Development Director, or designee (the "Director"). An application must be filed concurrently with any other land use application required by this code. At the time the application is submitted, the applicant must pay an application fee established by City Council resolution.

B. The Director will process the Density Bonus Act application in the same manner as all applications required by this code.

C. Applications filed under this chapter must include reasonable documentation to establish eligibility under the Density Bonus Act.

21.18.030. **Bonuses and Incentives.**

A. Housing developments qualifying under the Density Bonus Act may receive a bonus or concession pursuant to this chapter.

B. Terms and phrases used in this chapter have the same meaning as defined by the Density Bonus Act.

C. Where the density allowed under this code is inconsistent with the density allowed under the land use element of the general plan, the maximum density allowed controls.

D. Upon an applicant’s submission of reasonable documentation establishing eligibility, the City may not impose any development standard or parking standard that physically precludes a housing development qualifying under the Density Bonus Act.

E. Before the Building Official issues a building permit, an applicant receiving bonuses or concessions under this chapter must execute and record an agreement, in a form approved by the City Attorney, securing the continued affordability of all dwelling units in accordance with the Density Bonus Act and this chapter.

F. All dwelling units benefitting from the bonuses or concessions under this chapter must be concurrently built in the same manner as market rates. All affordable units must be integrated and reasonably distributed throughout the approved project with the market rate units to ensure a reasonable mix of affordable and market rate units.

21.18.040. **Amenities.**

Residents of affordable units may not be charged for amenities not charged to other residents including, without limitation, access to recreational facilities, parking, cable TV, and interior amenities like dishwashers and microwave ovens. Optional services for all residents must be the same. Tenants of affordable units may not be required to purchase additional services.

21.18.050. **Menu of Incentives**.

Applicants with projects qualifying for incentives may request one or more of the following incentives the number of incentives being requested must be consistent to the Density Bonus Act unless otherwise authorized by the approving body:

A. Yard/Setback. Up to a 20% decrease in the required width or depth of any individual yard or setback, except along any property line that abuts a R-1 or more restrictively zoned property. A landscaping plan must be submitted to the Director for approval that incorporates screening as defined by this title.

B. Lot Width. Up to a 20% decrease from a lot width requirement. A landscaping plan must be submitted to the Director for approval that incorporates screening as defined by this title.

C. Floor Area Ratio.

1. A percentage increase in the allowable floor area ratio equal to the percentage of density bonus for which the project is eligible, not to exceed 35%; or

2. In lieu of the otherwise applicable floor area ratio, a floor area ratio not to exceed those identified in the General Plan governing the project site.

D. Height. Subject to Chapter 21.42, a percentage increase in the height requirement in feet equal to the percentage of density bonus for which the project is eligible. This percentage increase in height is applicable over the entire parcel regardless of the number of underlying height limits. For purposes of this subsection, height limits contained in this Title and adopted specific plans do not apply.

1. In any zone in which the height or number of stories is limited, this height increase will permit a maximum of 11 additional feet or one additional story, whichever is lower, to provide the affordable units.

2. No additional height can be permitted for that portion of a building in a project that is located within 50 feet of a lot classified in an R-1 or more restrictive zone.

3. No additional height is permitted for that portion of a building in a project that is located within 15 feet of a lot classified in the R-2 Zone.

4. For each foot of additional height, the building must be set back one horizontal foot.

5. No additional height can be permitted for any portion of a building in a project located on a lot sharing a common lot line with or across an alley from a lot classified in an R-1 or more restrictive zone. This prohibition does not apply if the lot on which the project is located within 1,500 feet of a transit stop but no additional height can be permitted for that portion of a building in the project that is located within 50 feet of a lot classified in an R-1 or more restrictive residential zone.

E. Open Space. Up to a 20% decrease from an open space requirement. A landscaping plan must be submitted to the Director for approval that incorporates screening as defined by this title.

F. Density Calculation. The area of any land required to be dedicated for street or alley purposes may be included as lot area for purposes of calculating the maximum density permitted by the underlying zone in which the project is located.

G. Green Building. Density Bonus qualified projects that achieve compliance with Level 2 of the California Green Building Code may be provided with the following additional incentives that will not be counted toward the maximum incentives as permitted by California law:

1. Projects may be granted a density bonus of 20% additional units; or

2. Fifty percent of private open space may be credited toward satisfying common open space requirements if each dwelling unit, out of 50% of the total number of dwelling units, includes at least 50 square feet of private open space with a minimum width and length of 5 linear feet. Alternatively, the project may comply with common open space requirements by providing private open space areas that exceed the minimum private open space requirements in this title, provided the private open space is equal to or greater than the total common open space area required for the development in this title.

21.18.060. **Request for Incentives.**

A. For projects qualifying under the Density Bonus Act for which ministerial approvals are required, the following procedures apply:

1. Application. An applicant must file a request on a form provided by the Director, accompanied fees established by city council resolution.

2. Director Authority. The Director may determine whether an application is consistent with this chapter.

B. Action. The Director must approve a density bonus and requested incentive(s) unless the Director makes one or more of the written findings provided for under Government Code § 65915(d)(1).

C. Written Decision. The Director must transmit a written decision by first class mail to the applicant and to all owners of properties abutting, and across the street or alley from the subject property.

21.18.070. **Additional Option for Affordable Units Located Near Transit Stop/ Major Employment Center.**

In lieu of providing the requisite number of affordable units in a project located in or within 1,500 feet of a transit stop or major employment center, as determined by the Director, that would otherwise be required under this Chapter an applicant may opt to provide a greater number of smaller units provided that:

A. The total number of units in the project, including density bonus units, do not exceed the maximum permitted by this chapter;

B. The square footage of the aggregate smaller affordable units is equal to or greater than the square footage of the aggregate affordable units that would otherwise be required under this chapter;

C. The smaller affordable units are distributed throughout the building and have proportionally the same number of bedrooms as the market rate units; and

D. The smaller affordable units meet the minimum unit size requirements established by the Low Income Housing Tax Credit Program (4 Code of Cal. Regs. § 10300, *et seq*.).”

SECTION 4: *Electronic Signatures*. This Ordinance may be executed with electronic signatures in accordance with Government Code § 16.5. Such electronic signatures will be treated in all respects as having the same effect as an original signature.

SECTION 5: *Construction*. This Ordinance must be broadly construed to achieve the purposes stated in this Ordinance. It is the City Council’s intent that the provisions of this Ordinance be interpreted or implemented by the City and others in a manner that facilitates the purposes set forth in this Ordinance.

SECTION 6: *Severability*. If any part of this Ordinance or its Application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this Ordinance are severable.

<u>SECTION 7:</u> *Recordation*. The City Clerk, or designee, is directed to certify the passage and adoption of this Ordinance; cause it to be entered into the City of Monterey Park's book of original ordinances; make a note of the passage and adoption in the records of this meeting; and, within 15 days after the passage and adoption of this Ordinance, and cause it to be published or posted in accordance with California law.

<u>SECTION 8:</u> *Effective Date*. This Ordinance will become effective 30 days after second reading and adoption.

PASSED AND ADOPTED this ____ day of _________, 2023.

____
Jose Sanchez, Mayor

ATTEST:

____
Maychelle Yee, City Clerk

APPROVED AS TO FORM:
KARL H. BERGER, CITY ATTORNEY

By: _______________________________
Justin Tamayo, Deputy City Attorney

ATTACHMENT 4

Notice of Exemption

Notice of Exemption

From: City of Monterey Park Planning
320 W. Newmark Avenue
Monterey Park, CA 91754

To:

☐ Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

☐ Los Angeles, County Clerk
Environmental Filings
12400 Imperial Highway #1201
Norwalk, CA 90650
Attn: Business Filings and Registration

Project Title: Zoning Code Amendment No. 23-01 (ZCA-23-01) Density Bonus Ordinance
Project Location - Specific: City-Wide
Project Location - City: Monterey Park
Project Location - County: Los Angeles

Description of Project:
Consideration and possible action to amend, in its entirety Monterey Park Municipal Code (MPMC) Title 21, Chapter 21.18 Affordable Housing Incentives – Density Bonus

Name of Public Agency Approving Project: City of Monterey Park
Name of Person or Agency Carrying Out Project: City of Monterey Park

Exempt Status: (*check one*)

☐ Ministerial (Sec. 21080(b)(1); 15268);

☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));

☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));

☐ Categorical Exemption. State type and section number: ____________________

☐ Statutory Exemptions. State code number: __________

☐ Other: Sections 15060(c)(2), 15061(b)(3)

Reasons why project is exempt:

Pursuant to the California Environmental Quality Act ("CEQA") and its implementing guidelines, the action is exempt for the following reasons: (1) it will not result in a direct or reasonably foreseeable indirect physical change in the environment (14 Cal. Code Regs. § 15060(c)(2); (2) there is no possibility that the Ordinance itself may have a significant effect on the environment (14 Cal. Code Regs. § 15061(b)(3); and (3) the Ordinance, by itself, does not constitute a "project" as defined in the CEQA Guidelines (14 Cal. Code Regs. § 15378). The Ordinance is for general policies and procedure-making. It can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment.

Lead Agency Contact Person: Beth Chow, AICP Telephone (626) 307-1315

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a notice of exemption been filed by the public agency approving the project? ☐ Yes ☐ No

Signature: ____________________ Date: __________ Title: Senior Planner

☐ Signed by Lead Agency Date received for filing at OPR:

☐ Signed by Applicant

Planning Commission Staff Report

DATE: April 25, 2023

AGENDA ITEM NO: 4-A

TO: The Planning Commission

FROM: Jessica Serrano, Director of Community Development

SUBJECT: Consideration and possible action concerning Conditional Use Permit (CUP-22-03) to allow a massage establishment to operate at 301 E Garvey Avenue, #E, in the C-B (Central Business) Zone – Item Continued from the February 28, 2023 Planning Commission Meeting

RECOMMENDATION:

It is recommended that the Planning Commission consider:

(1) Adopting the revised Resolution (as discussed during the February 28, 2023 meeting) approving CUP-22-03; and
(2) Taking such additional, related, action that may be desirable.

CEQA (California Environmental Quality Act):

Pursuant to the California Environmental Quality Act (Public Resources Code §§ 21000, *et seq*.; "CEQA") and the CEQA Guidelines (14 Cal. Code of Regs. §15000, *et seq*.), the proposed use is not subject to additional environmental review. This project will not have a significant effect on the environment per CEQA Guidelines § 15301 (Class 1 Existing Facilities) because the Project consists of a conditional use permit to operate a massage establishment within an existing building. Class 1 consists of existing facilities including the negligible expansion of an existing use.

EXECUTIVE SUMMARY:

On February 28, 2023, the Planning Commission considered this item at its public hearing, however questions arose related to the operations of the proposed massage establishment, the conditions of approval and its consistency with state law governing massage. During discussion, the Planning Commission proposed additional conditions that are precluded by California Government Code §51034, which has been included as Attachment 3 for reference. The public hearing was closed and by a 4:1 vote, the item was continued to the next Planning Commission meeting on March 14, 2023 to consider revised conditions. However, the Planning Commission has not convened a meeting since February 23, 2023 at will be considered at this meeting.

A revised Resolution reflecting additional clarity and changes requested by the Commission has been included as Attachment 2. No material changes have been made related to the conditions of approval.

Staff finds that the proposed massage establishment is consistent with the City's Municipal Code and the General Plan and recommends approval of CUP-22-03, subject to the conditions contained in the revised Resolution.

Respectfully submitted,

J. Serrano

Jessica Serrano
Director of Community Development

Prepared by:

Kevin Tan

Kevin Tan
Assistant Planner

Reviewed by:

Justin A. Tamayo
Deputy City Attorney

Attachments:

Attachment 1: Resolution, with Exhibit A

Attachment 2: Red-lined Conditions of Approval

Attachment 3: California Government Code §51034

Attachment 4: Notice of Exemption

Attachment 5: 2/28/2023 Planning Commission Staff Report

ATTACHMENT 1

Resolution, with Exhibit A

RESOLUTION NO.____

A RESOLUTION APPROVING CONDITIONAL USE PERMIT (CUP-22-03) TO ALLOW A MASSAGE BUSINESS WITHIN THE CENTRAL BUSINESS (C-B) ZONE ON PROPERTY LOCATED AT 301 EAST GARVEY AVENUE, UNIT E

The Planning Commission of the City of Monterey Park does resolve as follows:

SECTION 1: The Planning Commission finds and declares that:

A. On October 29, 2022, Ms. Qing Zhao ("Applicant"), submitted an application, pursuant to Monterey Park Municipal Code ("MPMC") §§ 5.28.050 and 21.32.020, requesting approval of Conditional Use Permit (CUP-22-03) to allow a massage establishment at 301 E. Garvey Avenue, Unit E ("Project");

B. The proposed Project is located in the C-B (Central Business) zone, where such massage use is permitted with a CUP for the zoning district.

C. The proposed Project was reviewed by the City of Monterey Park, Community Development Department for, in part, consistency with the General Plan, and conformity with the MPMC and California Environmental Quality Act (Public Resources Code §§ 21000, *et seq*., "CEQA," and the regulations promulgated thereunder (14 California Code of Regulations §§ 15000, *et seq*., the "CEQA Guidelines"));

D. The Community Development Department completed its review and scheduled a public hearing regarding the Project before the Planning Commission for February 28, 2023;

E. Notices of Public Hearing before the Planning Commission was duly given and published in the time, form, and manner as required by law; and

F. On February 28, 2023, the Planning Commission held a public hearing to receive public testimony and other evidence regarding the proposed Project including, without limitation, information provided to the Planning Commission by City staff and public testimony; and

G. At the February 28, 2023 Planning Commission meeting, the Commission continued the item to the next regularly scheduled Planning Commission meeting to allow for revisions in the conditions of approval;

H. On April 25, 2023, the Planning Commission considered the proposed Project including information provided by City Staff and the applicant.

I. This Resolution and its findings are made based upon the testimony and evidence presented to the Commission at its February 28, 2023 hearing and April 25, 2023 meeting including, without limitation, the staff report submitted by the Community Development Department.

SECTION 2: *Factual Findings and Conclusions.* The Planning Commission finds that the following facts exist and makes the following conclusions:

A. The Applicant is requesting approval of CUP-22-03 to establish a massage establishment within an existing multi-tenant commercial property. The tenant space is approximately 894 square feet and will feature a lobby, four massage rooms, one employee breakroom, a reception counter, a washer & dryer, a service sink, and an all-gender bathroom. The business operating hours will be Monday through Sunday from 10:00 a.m. to 10:00 p.m.;

B. The property located at 301 East Garvey Avenue, Unit E has a zoning designation of Central Business (C-B) and a General Plan land use designation of Mixed Use. A massage business is a conditionally allowed use in the C-B zone.

C. The property is rectangular is shape, and approximately 34,255.08 square feet in size, consisting of a single parcel, Assessor's Parcel Number 5255-018-021. The subject property is situated located at the northeast corner of N. Nicholson Avenue and E. Garvey Avenue. It is currently developed with a one-story commercial building comprised of multiple tenant spaces, known as Jade Plaza, which is accessible off both Nicholson Avenue and Garvey Avenue.

D. Located to the north of the Subject Property is a multi-family residential lot, east is a one-story retail store, south (across Garvey Avenue) is an auto sales lot, and west (across Nicholson Avenue) is retail sales for auto supplies and parts.

E. The proposed tenant space is 894 square feet, which will be relatively small and generate minimal impacts to traffic and parking demands, additionally, the previous use of this unit was also a massage establishment, therefore, the site will have adequate parking for the proposed use.

F. Condition numbers 12 through 15 in the attached Resolution have been recommended by the Police Department to address compliance with the Massage Therapy Act. The Police Department will monitor the subject property relative to safety considerations including, without limitation, such as hours of operation and required certifications.

SECTION 3: *Environmental Assessment*. The proposed project is categorically exempt from the provisions of the California Environmental Quality Act ("CEQA"), per State CEQA Guidelines § 15301 (Class 1 – Existing Facilities), because the proposed project consists of permitting of an existing private structure and therefore involves a negligible expansion of an existing use. It can be seen with certainty that no special circumstances exist that would create a reasonable possibility that the proposed project will have a significant adverse effect on the environment.

SECTION 4: *Conditional Use Permit Findings*. Pursuant to MPMC § 21.32.020(B), the Planning Commission finds as follows:

A. The site is adequate in size, shape, and topography for the proposed use in that the proposed use is a massage business within an existing commercial development with multiple tenant spaces. The tenant space of approximately 894-square feet is adequate in size and shape to accommodate the operation of the proposed massage business. No additional square footage would be added to the building footprint and no physical changes are proposed to the site;

B. The site has sufficient access to streets and highways, adequate in width and pavement type to carry the quantity and quality of traffic generated by the proposed use. Garvey Avenue and Nicholson Avenue will continue to be able to accommodate the amount of traffic generated by the proposed massage use that is to occupy tenant space within an existing commercial building. The proposed use is not expected to significantly increase traffic;

C. The proposed use is consistent with the General Plan and conforms to objectives of the General Plan and the Monterey Park Municipal Code zoning regulations. The subject property is designated Mixed Use in the General Plan. The Mixed Use Land use category allows for a broad range of retail and service commercial uses, hospitality, entertainment, medical, professional offices, and residential uses. The proposed use is a massage establishment within an existing commercial building;

D. The proposed use will not create unusual noise, traffic, or other conditions that may be objectionable, detrimental, or incompatible with surrounding properties or other uses in the City. The proposed use, as conditioned, will not have an adverse effect on the use, enjoyment or valuation of property in the neighborhood as required security measures will minimize the potential for any negative impacts. The massage business is to provide distinctive and appropriate use within the C-B zone and it is professional in nature and consistent with the low-impact businesses nearby.

E. The proposed use will not have an adverse effect on the public health, safety, and general welfare because security measures and the limited size of the use will limit any potential adverse effects to neighboring properties. Conditions have been included in the Resolution to address concerns relating to safety and security and the massage business will be designed and operated in accordance with City standards. Additionally, the Police Department will monitor the subject property relative to safety considerations including, without limitation, hours of operation and required certification.

F. The proposed use applied for at the location is properly one authorized by conditional use permit pursuant to the Zoning Code. MPMC §§ 5.28.050 and 21.10.030

specifically allow for a massage establishment in the C-B (Central Business) Zone with CUP approval.

SECTION 5: *Approval.* Subject to the conditions listed on the attached Exhibit “A,” which are incorporated into this Resolution by reference, the Planning Commission approves Conditional Use Permit (CUP-22-03).

SECTION 6: *Notice of Exemption*. The Director of Community and Economic Development, or designee, is directed to file a Notice of Exemption in accordance with CEQA §§ 15062, and any other applicable law.

SECTION 7: *Reliance on Record*. Each and every one of the findings and determinations in this Resolution are based on the competent and substantial evidence, both oral and written, contained in the entire record relating to the project. The findings and determinations constitute the independent findings and determinations of the Planning Commission in all respects and are fully and completely supported by substantial evidence in the record as a whole.

SECTION 8: *Construction.* This Resolution must be broadly construed in order to achieve the purposes stated in this Resolution. It is the Planning Commission’s intent that the provisions of this Resolution be interpreted or implemented by the City and others in a manner that facilitates the purposes set forth in this Resolution.

SECTION 9: *Limitations*. The Planning Commission’s analysis and evaluation of the project is based on the best information currently available. It is inevitable that in evaluating a project that absolute and perfect knowledge of all possible aspects of the project will not exist. One of the major limitations on analysis of the project is the Planning Commission’s lack of knowledge of future events. In all instances, best efforts have been made to form accurate assumptions. Somewhat related to this are the limitations on the City's ability to solve what are in effect regional, state, and national problems and issues. The City must work within the political framework within which it exists and with the limitations inherent in that framework.

SECTION 10: *Severability*. If any part of this Resolution or its application is deemed invalid by a court of competent jurisdiction, the Planning Commission intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this Resolution are severable.

SECTION 11: *Preservation*. This Resolution does not affect any penalty, forfeiture, or liability incurred before, or prelude prosecution and imposition of penalties for any violation occurring before, this Resolution’s effective date. Any such amended part will remain in full force and effect for sustaining action or prosecuting violations occurring before the effective date of this Resolution.

SECTION 12: *Summaries of Information.* All summaries of information in the findings, which precede this section, are based on the substantial evidence in the record. The absence of any particular fact from any such summary is not an indication that a particular finding is not based in part on that fact.

SECTION 13: *Electronic Signatures*. This Resolution may be executed with electronic signatures in accordance with Government Code §16.5. Such electronic signatures will be treated in all respects as having the same effect as an original signature.

SECTION 14: This Resolution will remain effective until superseded by a subsequent resolution.

SECTION 15: A copy of this Resolution will be mailed to Qing Zhao and to any other person requesting a copy.

SECTION 16: This Resolution is the Planning Commission's final decision and will become effective immediately upon adoption, and will remain effective unless the action is appealed within ten days pursuant to MPMC § 21.32.060, and MPMC § 1.10.

SECTION 17: The Planning Commission Chairperson, or presiding officer, is hereby authorized to affix his signature to this Resolution signifying its adoption by the Planning Commission of the City of Monterey Park, and the Planning Commission Secretary is directed to attest thereto.

PASSED, APPROVED, AND ADOPTED BY THE PLANNING COMMISSION OF THE CITY OF MONTEREY PARK THIS 25TH DAY OF April 2023.

Tammy Sam, Chairperson

I hereby certify that the foregoing Resolution was duly adopted by the Planning Commission of the City of Monterey Park at the regular meeting held on the 25th day of April 2023, by the following vote of the Planning Commission:

**AYES:
NOES:
ABSTAIN:
ABSENT:**

Jessica Serrano, Secretary

APPROVED AS TO FORM:
Karl H. Berger, City Attorney

By: ______________________
Justin A. Tamayo,
Deputy City Attorney

RESOLUTION NO.

Exhibit A

CONDITIONS OF APPROVAL

301 EAST GARVEY AVENUE, UNIT E

In addition to all applicable provisions of the Monterey Park Municipal Code ("MPMC"), Qing Zhao (the "Applicant"), agrees to comply with the following conditions of approval ("Project Conditions") for Conditional Use Permit ("CUP-22-03").

PLANNING:

1. The Applicant agrees to indemnify and hold the City harmless from and against any claim, action, damages, costs (including, without limitation, attorney's fees), injuries, or liability, arising from the City's approval of CUP-22-03 except for such loss or damage arising from the City's sole negligence or willful misconduct. Should the City be named in any suit, or should any claim be brought against it by suit or otherwise, whether the same be groundless or not, arising out of the City approval of CUP-22-03, the Applicant agrees to defend the City (at the City's request and with counsel satisfactory to the City) and will indemnify the City for any judgment rendered against it or any sums paid out in settlement or otherwise. For purposes of this section "the City" includes the City of Monterey Park's elected officials, appointed officials, officers, and employees.

2. CUP-22-03 expires 12 months after its approval if the use has not commenced or if improvements are required, but construction has not commenced under a valid building permit. A total of a one year extension may be granted by the Planning Commission upon finding of good cause. An application requesting an extension must be filed with the Community Development Director, or designee.

3. The Applicant is responsible for maintaining the area adjacent to the business location and the site in general, including any parkways and alleys.

4. The property must remain well maintained and free of graffiti. The Applicant's failure to remove graffiti within 24 hours of written notice by the City will result in the City abating the graffiti at the Applicant's cost.

5. A copy of the Project Conditions for CUP-22-03 must be kept on the premises of the establishment and presented to any authorized City official upon request.

6. The Applicant must submit a floor plan reflecting the complete business operations, including the identification of all locations where foot or body massages are proposed, to the Director for review and approval.

7. The massage establishment must maintain the layout and floor plans approved as part of CUP-22-03. The Community Development Director, or designee, is authorized to approve minor modifications to the approved preliminary plans or any

of the conditions if such modifications achieve substantially the same results as would strict compliance with said plans and conditions.

8. A list of all persons providing massage services at the establishment, including each person's full true name and other names used.

9. The permitted hours of operation of the business are from Monday through Sunday from 10:00 am to 10:00 pm. Customers are not allowed within the business outside of these business hours.

10. No persons other than those receiving a massage and those administering a massage may enter or remain within a room where a massage is being given.

11. Massage beds or tables used in conjunction with the business must be a table designed and manufactured for medical and massage uses. No mattresses or sleeping beds are allowed.

<u>POLICE:</u>

12. Lockers must be provided whenever patrons are required to undress or disrobe. Male and female patrons may not be served simultaneously in the same room. Male and female patrons may not simultaneously use massage rooms, or lockers.

13. The inside of doors to individual massage rooms or enclosures may not be fitted with locks or any device intended to prevent the opening of such doors. Doors of individual massage rooms must not be locked at any time during a massage therapy session.

14. Except in emergencies, patrons must be directed to use the front or street facing entrance and exit.

15. All payment for services, including gratuities, must be exchanged in a reception room or other central area, if any, and not within any of the massage rooms.

By signing this document, the Applicant, certifies having read and understood the Project Conditions, and agrees to comply with the Project Conditions.

____

Qing Zhao, Applicant

ATTACHMENT 2

Red-lined Conditions of Approval

RESOLUTION NO.

Exhibit A

CONDITIONS OF APPROVAL

301 EAST GARVEY AVENUE, UNIT E

In addition to all applicable provisions of the Monterey Park Municipal Code ("MPMC"), ~~Ms.~~ Qing Zhao~~,~~ (the "Applicant"), agrees ~~that he will~~to comply with the following conditions of approval ("Project Conditions") for Conditional Use Permit ~~(~~("CUP-22-03~~) ("Project Conditions~~").

PLANNING:

1. ~~Ms. Qing Zhao (the "~~The Applicant~~"),~~ agrees to indemnify and hold the City harmless from and against any claim, action, damages, costs (including, without limitation, attorney's fees), injuries, or liability, arising from the City's approval of CUP-22-03 except for such loss or damage arising from the City's sole negligence or willful misconduct. Should the City be named in any suit, or should any claim be brought against it by suit or otherwise, whether the same be groundless or not, arising out of the City approval of CUP-22-03, the Applicant agrees to defend the City (at the City's request and with counsel satisfactory to the City) and will indemnify the City for any judgment rendered against it or any sums paid out in settlement or otherwise. For purposes of this section "the City" includes the City of Monterey Park's elected officials, appointed officials, officers, and employees.

2. ~~The conditional use permit~~CUP-22-03 expires ~~twelve~~12 months after its approval if the use has not commenced or if improvements are required, but construction has not commenced under a valid building permit. A total of a one year extension may be granted by the Planning Commission upon finding of good cause. An application requesting an extension must be filed with the Community Development Director, or designee.

~~3. The applicant and/or business operator successors must comply with the provisions established in Monterey Park Municipal Code Chapter 5.28.~~

~~4.~~3. ~~The property owner~~The Applicant is responsible for maintaining the area adjacent to the business location and the site in general, including any parkways and alleys.

~~5.~~4. The property must remain well maintained and free of graffiti. ~~Failure of the applicant/property owner~~The Applicant's failure to remove graffiti within 24 hours of written notice by the City will ~~cause~~result in the City ~~to abate~~abating the graffiti at the Applicant's cost ~~of the applicant/property owner~~.

~~6.~~5. A copy of the Project Conditions ~~of Approval~~ for ~~Conditional Use Permit (~~CUP-22-03~~)~~ must be kept on the premises of the establishment and presented to any authorized City official upon request.

6. The Applicant must submit a floor plan reflecting the complete business operations, including the identification of all locations where foot or body massages are proposed, to the Director for review and approval.

7. The massage establishment must maintain the layout and floor plans ~~as submitted~~approved as part of ~~this application.~~ CUP-22-03. The Community Development Director, or designee, is authorized to approve minor modifications to the approved preliminary plans or any of the conditions if such modifications achieve substantially the same results as would strict compliance with said plans and conditions.

8. A list of all persons providing massage services at the establishment, including each person's full true name and other names used~~, photograph, and certificate from the California Massage Therapy Council ("CAMTC") must be displayed prominently on the premises in a location that can be readily viewed by customers or City representatives.~~ .

9. The permitted hours of operation of the business are from Monday through Sunday from 10:00 am to 10:00 pm. Customers are not allowed within the business outside of these business hours.

~~10. No persons may give, or assist in giving of any massage to any other person under the age of 18 years, unless the parent or guardian of such minor person has given consent thereto in writing.~~

~~11. Physical facilities for the massage establishment must be maintained in good repair and in clean and sanitary condition. The restroom utilized in the operation must be cleaned each day.~~

~~12. Massage Practitioners operating as independent contractors, not employees, within an establishment must obtain a business license from the City of Monterey Park before commencing any activity within the City.~~

~~13. Any changes to the services provided or business plan must be submitted to an approved by the Community Development Director, or designee, before any change taking effect. Any changes that significantly alter the use may be referred to the Planning Commission for review.~~

~~14.~~10. No persons other than those receiving a massage~~, parents or guardians of a minor who is receiving a massage,~~ and those administering a massage ~~shell~~may enter or remain within a room where a massage is being given.

~~15.~~11. Massage beds or tables used in conjunction with the business must be a table designed and manufactured for medical and massage uses. No mattresses or sleeping beds are allowed.

POLICE:

~~16. Lighting must be provided in accordance with the building laws and, in addition, at least one artificial light must be provided in each room or enclosure where massage services are performed on patrons.~~

~~17.~~12. ~~Dressing areas, and toilet facilities must be provided for patrons.~~ Lockers must be provided whenever patrons are required to undress or disrobe. Male and female patrons may not be served simultaneously in the same room. Male and female patrons may not simultaneously use massage rooms, ~~dressing areas,~~or lockers ~~and toilet facilities.~~.

~~18.~~13. The inside of doors to individual massage rooms or enclosures may not be fitted with locks or any device intended to prevent the opening of such doors. Doors of individual massage rooms must not be locked at any time during a massage therapy session.

~~19. The permittee must comply with all applicable laws including without limitation, labor and health and safety laws and building codes.~~

~~20. Permittee must comply with the Massage Therapy Act (Business and Professions Code §4600, *et seq.*) including, without limitation, regulations governing the display of certificates, sexual acts, advertising, and dressing requirements.~~

~~21.~~14. Except in emergencies, patrons must be directed to use the front or street facing entrance and exit.

~~22.~~15. All payment for services, including gratuities, must be exchanged in a reception room or other central area, if any, and not within any of the massage rooms.

~~FIRE:~~

~~23. All conditions identified by the Fire Chief, or designee, are subject to review and approval by the Fire Chief for determination of applicability and extent to which any condition may be required.~~

~~24. Permittee must provide an approved automatic fire sprinkler system and fire alarm as set forth by Fire Code 903 and 907 for the existing structure under deferred submittals.~~

~~25. Fire Department vehicular access roads must be installed and maintained in a serviceable manner prior to and during the time of construction. CFC 501.4~~

~~26. A Knox box and keys must be provided at entrance. CFC 506.1~~

~~27. If "As-built" plans are required, additional fees will be due for the review of the drawings.~~

By signing this document, ~~Ms. Qing Zhao, certifies that~~ the Applicant, certifies having read~~,~~ and understood~~, and agrees to~~ the Project Conditions ~~listed in this document~~, and agrees to comply with the Project Conditions.

____

~~Ms.~~ Qing Zhao, Applicant

ATTACHMENT 3

California Government Code §51034

GOVERNMENT CODE - GOV

TITLE 5. LOCAL AGENCIES [50001 - 57607] *(Title 5 added by Stats. 1949, Ch. 81.)*

DIVISION 1. CITIES AND COUNTIES [50001 - 52203] *(Division 1 added by Stats. 1949, Ch. 81.)*

PART 1. POWERS AND DUTIES COMMON TO CITIES AND COUNTIES [50001 - 51298.5] *(Part 1 added by Stats. 1949, Ch. 81.)*

CHAPTER 6. Massage [51030 - 51034] *(Chapter 6 added by Stats. 1976, Ch. 1352.)*

51034. (a) The Legislature in enacting this chapter recognizes the existing power of a city or county to regulate a lawful massage business pursuant to Section 37101, or pursuant to Section 16000 or 16100 of the Business and Professions Code, or under Section 7 of Article XI of the California Constitution.

(b) Nothing contained in this chapter shall be a limitation on that existing power or on the existing authority of a city to license for revenue purposes. A city, county, or city and county shall not enact or enforce an ordinance that conflicts with the provisions of this section or Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code.

(c) Nothing contained in this chapter shall authorize a city, county, or city and county to do any of the following:

(1) Prohibit a person of one sex from engaging in the massage of a person of the other sex.

(2) Define a massage establishment as an adult entertainment business, or otherwise regulate a massage establishment as adult entertainment.

(3) Require a massage establishment to have windows or walls that do not extend from the floor to ceiling, or have other internal physical structures, including windows, that interfere with a client's reasonable expectation of privacy.

(4) Require a massage establishment to have a shower or bath.

(5) Impose client draping requirements that extend beyond the covering of genitalia and female breasts, or otherwise mandate that the client wear special clothing.

(6) Prohibit a massage establishment from locking its external doors if the massage establishment is a business entity owned by one individual with one or no employees or independent contractors.

(7) Require a massage establishment to post any notice in an area that may be viewed by clients that contains explicit language describing sexual acts, mentions genitalia, or specific contraception devices.

(8) Impose a requirement that a person certified pursuant to Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code take any test, medical examination, or background check, including a criminal background check or requiring submission of fingerprints for a federal or state criminal background check, or comply with education requirements beyond what is required by Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code.

(9) Impose a requirement that an individual holding a certificate issued in accordance with Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code, obtain any other license, permit, certificate, or other authorization to provide massage for compensation. However, this paragraph shall not be construed to prohibit a city, county, or city and county from requiring by ordinance that a massage business or establishment obtain a license, permit, certificate, or other authorization in

order to operate lawfully within the jurisdiction.

(10) Impose a dress code requirement on a person certified pursuant to Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code in excess of those already imposed pursuant to paragraph (10) of subdivision (a) of Section 4609 of the Business and Professions Code.

(11) Prohibit a person certified pursuant to Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code from performing massage for compensation on the gluteal muscles, prohibit specific massage techniques recognized by the California Massage Therapy Council as legitimate, or impose any other specific restriction on professional practice beyond those set forth in subparagraph (E) of paragraph (1) of subdivision (a) of Section 4609 of the Business and Professions Code, except as authorized by Section 460 of the Business and Professions Code.

(Amended by Stats. 2016, Ch. 411, Sec. 9. (AB 2194) Effective January 1, 2017.)

ATTACHMENT 4

Notice of Exemption

Notice of Exemption

From: City of Monterey Park Planning
320 W. Newmark Avenue
Monterey Park, CA 91754

To:

☐ Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

☐ Los Angeles, County Clerk
Environmental Filings
12400 Imperial Highway #1201
Norwalk, CA 90650
Attn: Business Filings and Registration

Project Title: Conditional Use Permit (CUP 22-03)
Project Location - Specific: 301 East Garvey Avenue, Unit E
Project Location - City: Monterey Park
Project Location - County: Los Angeles

Description of Project:
Approval of a massage establishment to operate at 301 East Garvey Avenue, Unit E.

Name of Public Agency Approving Project: City of Monterey Park
Name of Person or Agency Carrying Out Project: City of Monterey Park

Exempt Status: (*check one*)

☐ Ministerial (Sec. 21080(b)(1); 15268);

☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));

☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));

X Categorical Exemption. State type and section number: § 15301 (Class 1 – Existing Facilities)

☐ Statutory Exemptions. State code number: ______________

Reasons why project is exempt:

Pursuant to the California Environmental Quality Act ((Public Resources Code §§ 21000, *et seq*.; "CEQA") and the CEQA Guidelines (14 Cal. Code of Regs. §15000, *et seq*.), the proposed use is not subject to additional environmental review. This project will not have a significant effect on the environment per CEQA Guidelines § 15301 (Class 1 Existing Facilities) because the proposed project consists of permitting of an existing private structure and therefore involves a negligible expansion of an existing use. The project does not propose any physical improvements to the site or any physical changes to the existing building.

Lead Agency Contact Person: Kevin Tan Telephone (626) 307-1315

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a notice of exemption been filed by the public agency approving the project? ☐ Yes ☐ No

Signature: ______________________ Date: __________ Title: Assistant Planner

☐ Signed by Lead Agency Date received for filing at OPR:

☐ Signed by Applicant

ATTACHMENT 5

2/28/2023 Planning Commission Staff Report

Planning Commission Staff Report

DATE: February, 28, 2023

AGENDA ITEM NO: 3-A

TO: The Planning Commission

FROM: Jessica Serrano, Interim Director of Community Development

SUBJECT: A Public Hearing to consider Conditional Use Permit (CUP-22-03), a request to allow a massage establishment to operate within the Central Business (C-B) Zone on property located at 301 East Garvey Avenue, Unit E.

RECOMMENDATION:

It is recommended that the Planning Commission consider:

(1) Opening the public hearing;
(2) Receiving documentary and testimonial evidence;
(3) Closing the public hearing;
(4) Adopting the Resolution approving the requested Conditional Use Permit (CUP-22-03), subject to conditions of approval contained therein; and
(5) Taking such additional, related, action that may be desirable.

CEQA (California Environmental Quality Act):

The proposed project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA), per CEQA Guidelines § 15301 (Class 1 – Existing Facilities), because the proposed project consists of permitting of an existing private structure and therefore involves a negligible expansion of an existing use. The project does not propose any physical improvements to the site or any physical changes to the existing building.

EXECUTIVE SUMMARY:

The Applicant, Ms. Qing Zhao, requests approval of a CUP to allow the operation of a new massage establishment at 301 E. Garvey Avenue, Unit E, pursuant to the Monterey Park Municipal Code (“MPMC”) §21.12.030(F)(2). The proposed business would occupy a tenant space, approximately 894 square feet in size, within an existing commercial development known as Jade Plaza.

Staff finds that the proposed massage establishment is consistent with the City’s Municipal Code and the General Plan and recommends approval of Conditional Use Permit (CUP-22-03), subject to the conditions contained in the Resolution.

TYPE OF ACTION (QUASI-JUDICIAL)

The recommended action is to adopt a CUP. In considering such actions, the Planning Commission acts in a quasi-judicial role. When doing so, the Planning Commission acts like a court: it applies facts gathered during a public hearing to existing law. Just like a court, the Planning Commission can only consider facts that are relevant to the case. A party appearing before the legislative body is entitled to

- Notice of the proposed action;
- Reasons for the action;
- A copy of the evidence on which the action is based; and
- The right to respond before a reasonably impartial, noninvolved reviewer.

The Planning Commission must base its decisions upon substantial evidence within the record. “Substantial evidence” generally means enough relevant information and reasonable inferences from information gathered during a public hearing that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts does not constitute substantial evidence. Substantial evidence includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. If the Planning Commission asks irrelevant questions and bases its decision-making on such questions, a court may overturn the Planning Commission’s decision and potentially hold the City liable for violating the applicant’s constitutionally protected due process rights.

To approve the CUP (per MPMC §§ 21.32.020(B)) the Planning Commission must find that:

- The site is adequate in size, shape and topography for the proposed use including without limitation, any required yards, walls, fences, parking and loading facilities, landscaping, setbacks, and other development standards prescribed in the MPMC;
- The site has sufficient access to streets and highways, adequate in width and pavement type to carry the quantity and quality of traffic generated by the proposed use;
- The proposed use is consistent with the General Plan and any applicable specific plan;
- The proposed use will not create unusual noise, traffic, or other conditions that may be objectionable, detrimental, or incompatible with surrounding properties or other permitted uses in the City;

BACKGROUND:

The property at 301 East Garvey Avenue, Unit E (“Subject Property”) is within an existing commercial development known as Jade Plaza, located at the northeast corner of N. Nicholson Avenue and E. Garvey Avenue. It has a zoning designation of Central Business (C-B) and a General Plan land use designation of Mixed Use. The Subject Property is rectangular in shape, approximately 34,255.08 square feet in size, and consists of a single parcel, Assessor’s Parcel Number 5255-018-021. It is currently developed with a one-story commercial center comprised of multiple tenant spaces and accessible off both Nicholson Avenue and Garvey Avenue.

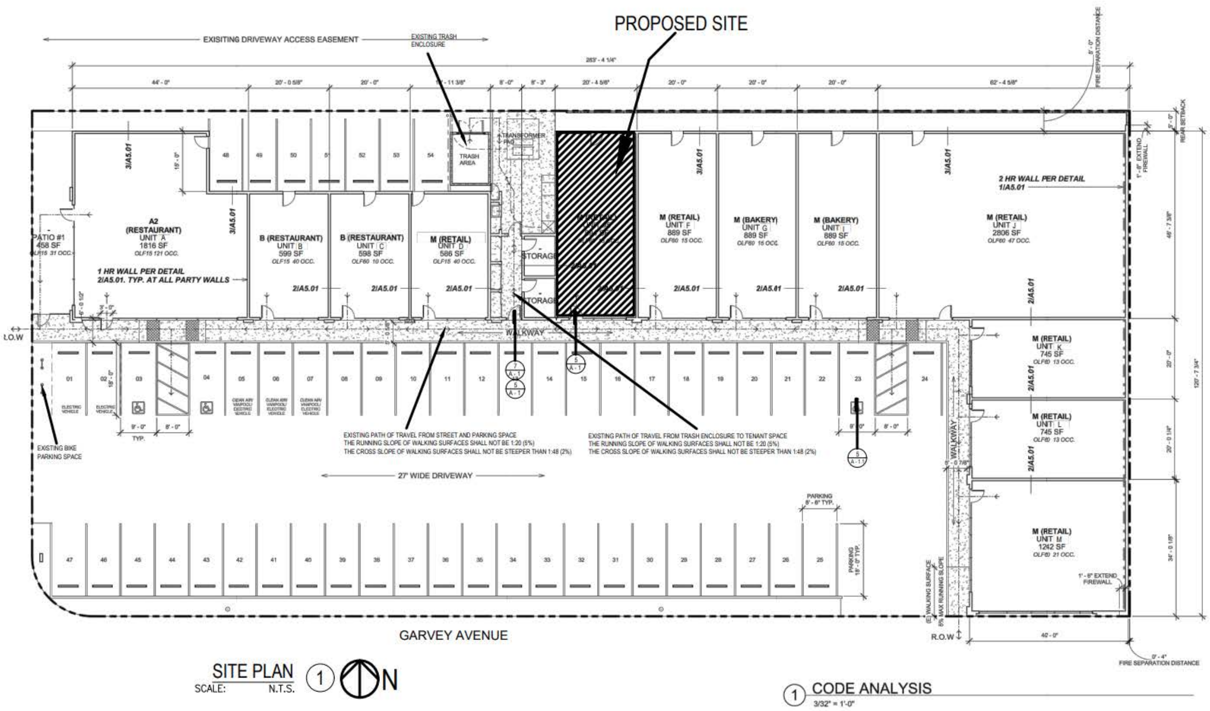


Figure 1: Site Plan

Located to the north of the Subject Property is a multi-family residential lot, east is a one-story retail store, south (across Garvey Avenue) is an auto sales lot, and west (across Nicholson Avenue) is retail sales for auto supplies and parts.

The proposed massage establishment will be located within Unit E of the Subject Property (“Unit E”) and is a conditionally allowed use in the C-B zone. Unit E is 894 square feet, which will be relatively small and generate minimal impacts to traffic and parking demands. Further, the previous use of this unit was also a massage establishment and therefore, staff deemed the property to have adequate parking for the proposed use. No physical changes are proposed to Unit E other than interior tenant improvements.

The Applicant proposes to provide foot and body massage services with business operating hours on Monday through Sunday from 10:00 a.m. to 10:00 p.m. Unit E will have a lobby, four massage rooms, one employee breakroom, a reception counter, a washer & dryer, a service sink, and an all-gender restroom.

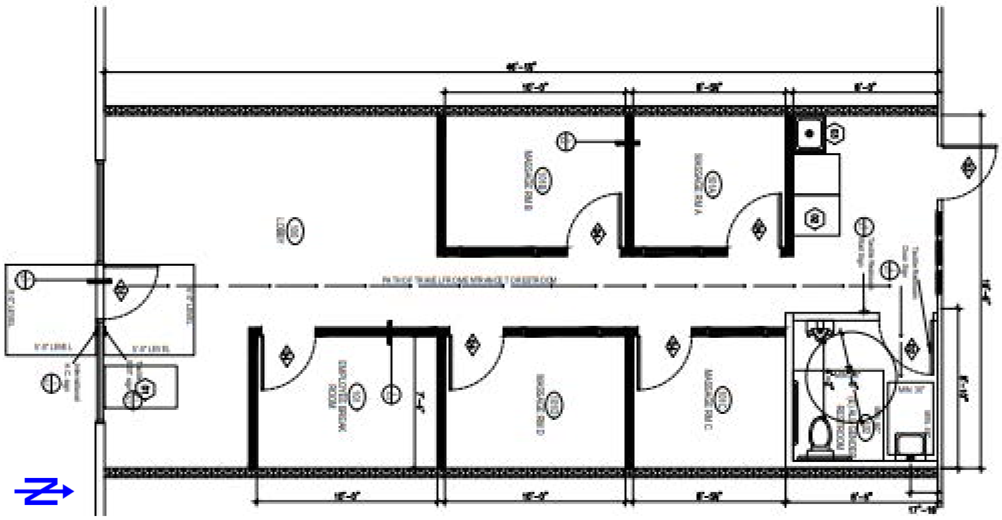


Figure 2: Proposed Floor Plan

According to MPMC § 21.10.030, a massage establishment is subject to the approval of a conditional use permit and must comply with the regulations in MPMC Chapter 5.28. Specifically, per MPMC § 5.28.110, massage businesses must comply with a list of specified requirements including, without limitation, minimum lighting, necessary ventilation, and the provision of mandatory restrooms, in accordance with the California Building Code.

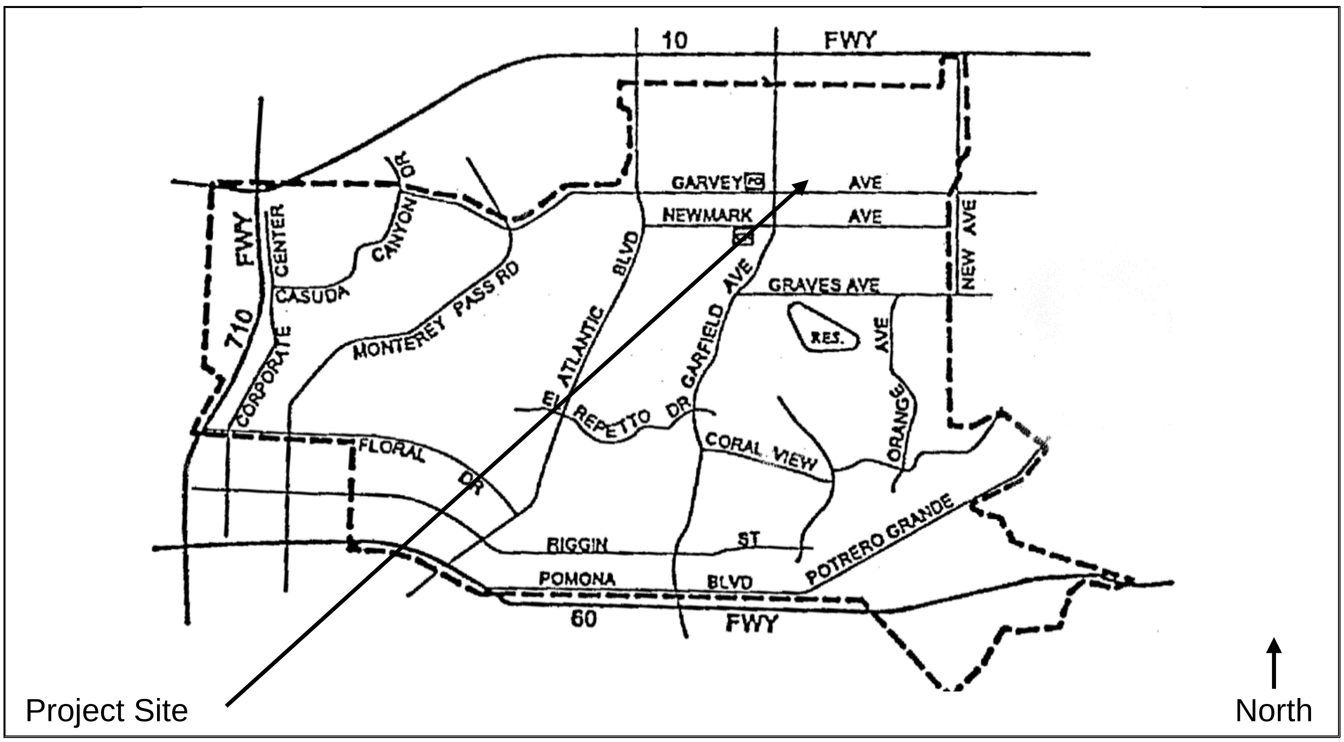
MPMC Chapter 5.28 also dictates standards for the owners, operators, or employees of massage establishments. The owner or owners, with at least a 5-percent interest in the business, must maintain certification from the California Massage Therapy Council ("CAMTC") or pass a background check. Additionally, every person or employee conducting massage services must hold a valid certification with the CAMTC.

The Police Department has incorporated conditions for the operation of a massage establishment of the attached Resolution. Condition numbers 19 through 25 of the Resolution have been recommended by the Police Department to include appropriate lighting, compliance with the Massage Therapy Act, and that all payment for services, including gratuities, must be exchanged in the reception room or other central area, if any, and not within the massage rooms. Lastly, the business owner must be responsible for maintaining an up-to-date roster of employees and copies of all required licenses from the California Massage Therapy Council for each technician administering massage services prior to the issuance of a business license. At this time, the Applicant will operate as a sole proprietor, however, the conditions above allow for additional employees as the business is established, which is in line with the request by the Applicant.

Legal Notification

The legal notice of this hearing was posted at City Hall, Monterey Park Bruggemeyer Library, and Langley Center on **February 16, 2023**, with affidavits of posting on file. The legal notice of this hearing was mailed to **88** property owners within a 300-foot radius of the property concerned on **February 16, 2023**.

Vicinity Map



Aerial Map

Project Site

North

ALTERNATIVE COMMISSION CONSIDERATIONS:

None.

FISCAL IMPACT:

There may be an increase in sales tax revenue and business license tax revenue. Calculations of the exact amount would be speculative.

Respectfully submitted,

Jessica Serrano
Interim Director of Community Development

Prepared by:

Kevin Tan
Kevin Tan
Assistant Planner

Reviewed by:

Justin Tamayo
Deputy City Attorney

Attachments:

Attachment 1: Draft Resolution

Attachment 2: Notice of Exemption