I. CALL TO ORDER: Chairman Escandel

➢ Pledge of Allegiance: Commissioner Barsh

➢ Roll Call: Chairman Escandel, Commissioner Arterberry; Commissioner Barsh; Commissioner Hawkins; Commissioner Siva

II. PUBLIC COMMENTS:

At this time, the general public is invited to address the Planning Commission concerning any items that are not listed on the agenda, which are not public hearings or other items under the jurisdiction of the Planning Commission. Comments from the public of any non-agenda items will be limited to three (3) minutes in accordance with City policy.

III. CONSENT CALENDAR ITEMS:

Note: All items listed on the Consent Calendar may be enacted by a single motion without separate discussion. If a discussion or a separate vote on any item is desired by a Planning Commissioner, that item may be removed from the Consent Calendar and considered separately. All remaining items not removed from the Consent Calendar by a Planning Commissioner shall be voted on prior to discussion of the item(s) requested to be pulled.

1. Approval of the July 6, 2010 Planning Commission Minutes
IV. PUBLIC HEARINGS

1. Initial Study/Negative Declaration and Zone Text Amendment No. 09-97505: Amendment to the Banning Municipal Code Chapter 5.74, 5.08.080, and Chapter 17.12 to provide regulations regarding massage establishments, State certified massage therapists, and State certified massage practitioners, to establish an annual investigative fee of $150.00 prior to issuance of the business license renewal for the establishment, and to permit by right, the use to operate in DC (Downtown Commercial), GC (General Commercial), HSC (Highway Serving Commercial), PO (Professional Office), AI (Airport Industrial) and BP (Business Park) zones.

V. PLANNING COMMISSIONER COMMENTS

VI. COMMUNITY DEVELOPMENT DIRECTOR'S REPORT

1. City Council Actions from previous meetings on Planning-Related Items (Oral Report)
2. Change of Planning Commission meeting day to Wednesday

3. Joint Meeting with City Council and Parks Commission to discuss the Parks Master Plan – September 21, 2010

VII. TENTATIVE PROJECTS SCHEDULED FOR SEPTEMBER 7, 2010

1. Review of Paseo San Gorgonio Master Plan

VIII. ADJOURNMENT

The City of Banning Planning Commission is hereby adjourned to the regular Planning Commission meeting of September 7, 2010 starting at 6:30 p.m. in the City Council Chambers.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Planning Department (951) 922-3125. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting [28 CFR 35.102-35.104 ADA title II]
City of Banning

PLANNING COMMISSION MINUTES

July 6, 2010

A regular meeting of the City of Banning Planning Commission was held on Tuesday, July 6, 2010 at 6:30 p.m., in the Council Chambers, City Hall, 99 East Ramsey Street, Banning, CA, 92220.

Commissioners Present: Chairman Hawkins
Commissioner Arterberry
Commissioner Barsh
Commissioner Escandel
Commissioner Siva

Staff Present: Community Development Director Abu Bakar
Assistant City Attorney Laymon
Assistant Planner Guillot
Recording Secretary Sorenson

I. CALL TO ORDER

II. PUBLIC COMMENT

No one came forward.

III. CONSENT CALENDAR

1. Review of Minutes (June 1, 2010)

ACTION (ESCANDEL/ SIVA): A motion was moved, seconded and carried that item 1 be approved as presented.

(Motion carried 3 – 0) (Chairman Hawkins and Commissioner Escandel abstained)
IV. ELECTION OF OFFICERS
Commissioner Escandell was elected Chairman and Commissioner Arterberry was elected Vice-Chairman.

V. PUBLIC HEARINGS

1. Conditional Use Permit No. 10-802: A Request by Horizon Home Center of Hemet, California to construct a single-family dwelling on a 1.65 acre parcel in the Medium Density Residential (MDR) zone located at 3035 W. Nicolet Street. (APN 538-101-025).

Assistant Planner Guillot presented the staff report and stated that the applicant is requesting approval to construct a 1,190 square foot single family dwelling that will serve as the home for the minister of the existing church facility. Our zoning Code requires that a single family dwelling obtain approval of a conditional use permit in the Medium Density Residential zone. In order to accommodate the construction of the dwelling, the slope along the north end of the lot must be re-contoured or a retaining wall must be constructed. Therefore, an engineered grading plan will be required and the City now has a new Grading Ordinance. So all of those grading issues will be addressed through the review of the City Engineer. The proposed single family dwelling will match the architecture of the existing church. Staff recommended approval of this project.

ACTION (BARRH / ARTERBERRY): A motion was moved, seconded and carried that the Planning Commission 1) Adopt a Class 32 Categorical Exemption in compliance with CEQA Guidelines Section 15332 ("In-Fill Development"); and

2) Adopt PC Resolution No. 2010-08 approving Conditional Use Permit #10-802 and subject to conditions of approval.

(Motion carried 5 – 0)

2. Design Review No. 10-701: A Request by the San Gorgonio Memorial Hospital to approve a sign program in connection with the Hospital Specific Plan. (APN 419-050-018 & 419-101-002).

Assistant Planner Guillot presented the staff report and stated that the applicant is requesting approval of a sign program for the entire hospital campus that includes about 24 acres. In December of 2006, the City Council approved a specific plan for the hospital campus that included design guidelines, development standards and details for the construction of that entire campus. However, it did not address the signs. The sign program includes building identification signs, directional traffic signs and directional pedestrian signs. Elements of the previously approved specific plan are incorporated into the architecture of the sign program. The materials for the individual signs include cultured stone, split faced block, stucco and aluminum panels and colors are
coordinated with the architecture of the various campus buildings. Staff recommended approval of the project.

**ACTION (BARS/ HAWKINS):** A motion was moved, seconded and carried that the Planning Commission 1) Adopt a Class 11 Categorical Exemption in compliance with CEQA Guidelines Section 15311 (Accessory Structures); and

2) Adopt PC Resolution No. 2010-09 approving Design Review #10-701 subject to conditions of approval (see Attachment 1).

(Motion carried 5 – 0)


Community Development Director Abu Bakar presented the staff report and stated that the City Redevelopment Agency commissioned this EIR that is before the Planning Commission this evening. The Agency purchased the San Gorgonio Inn property in 2008 when it was vacant. The building is considered to be potentially unsafe or unhealthy and this deterioration and dilapidation was caused by long term neglect and construction that is vulnerable to serious damage from earthquake. The Agency also desires to develop the site in the future to its full potential to generate revenue from property tax, sales tax and job creation. This is consistent with the goals for the Redevelopment Agency. After the demolition, the site will be more attractive to future investors and retailers.

Ms. Abu Bakar stated that the consultant team is here this evening from Romo Planning Group, Cultural Heritage and Michael Brandman Associates. They are the ones who did a very in-depth analysis for the EIR. We included in the staff report stating that the City’s General Plan identified the San Gorgonio Inn as a recorded historic era building. This was based on a survey that was sponsored by the Riverside County Historical Commission in 1982-83. Due to the recognition that the building received in the General Plan, staff determined that early on an EIR is the most appropriate course of action to take. In the EIR, we looked at sixteen environmental issue areas and three of those issue areas needed more attention and more in-depth analysis. The issue areas included aesthetics, cultural resources and hazards and hazardous materials. The EIR concluded that there is no impact to aesthetics as the I-10 is not designated as a scenic highway. There are impacts to cultural resources in regards to the location of the Inn, the building itself is not significant. Due to the location of the Inn, the EIR recommended that it be mitigated with a monument about five feet tall and it needs to include a metal plaque paying tribute to the San Gorgonio Inn and the former Banning Hotel, Bryant House and the City’s early founders. The EIR also determined that asbestos and lead paint are present on the property and needs to be mitigated before any

Planning Commission Meeting
July 6, 2010
kind of demolition activity takes place on the property. As the EIR concluded, the Inn is not listed in the National Register of Historic Places or California Register of Historic Places; it is the location that is significant. With regard to public participation, there were two opportunities for the public to participate. One was when the Notice of Preparation was released from November 27, 2009 through January 1, 2010. The second opportunity was during the 45 day public review period after the City issued a Notice of Availability on the EIR that was from April 23, 2010 through June 7, 2010. Ms. Abu Bakar discussed the comments that were received and the alternatives. She stated that demolition of the Inn would eliminate the blighted condition and eliminate the impacts of the lead paint and asbestos.

In order for the Planning Commission to make a recommendation to the Agency this evening, they will need to make findings which are included on pages 108-111 of the staff report. Staff recommended approval of the project.

Commissioner Siva inquired about the comment letters, in particular from the Native American Heritage Commission and the Morongo Band of Mission Indians. Ernest Perea, Director of Environmental Services for Romo Planning Group, came forward to explain that as part of the process they are required to contact the Native American Heritage Commission and they then send a letter back to Romo telling them which tribes to contact. There were twenty tribes listed and contacted and the Morongo tribe responded. Mr. Perea said that based on the reconnaissance of the site and the record searches and the past activities that have taken place it is highly unlikely that any native American artifacts or remains would be encountered on the property because it has been developed already and the ground has been disturbed. But the standard procedure is for a condition to state that in the event anything is found, work is stopped immediately, the tribe is notified and they are brought onto the property and consulted with as to what to do.

Don Smith, 1681 W. Westward Avenue, Banning CA, came forward to congratulate Chairman Escandell and Vice-Chairman Arterberry on their elections. Mr. Smith also stated that he has been here long enough to remember the San Gorgonio Inn in its glory days. He was concerned that we might rush to tear it down. Although he did agree with the EIR, he felt that the building should not be torn down until there was a concrete deal in place to develop the property. He also feels the sign should be part of the project.

Commissioner Siva requested that staff address Mr. Smith’s question if there is a real need to tear down the Inn right now. Director Abu Bakar responded that there are homeless people who are living in the building, we have to continue to board and secure it and the Police Department has to patrol it. Commissioner Barsh stated that he agrees with Mr. Smith and that tearing down the sign and the Inn might be premature. Commissioner Siva agreed with Commissioner Barsh and stated he would like to see something planned at the site first. Mr. Perea came forward to clarify that the EIR recognizes the significance of the signs and their value to any future development.
They were going to be removed and stored by the City for future consideration. Also the EIR does not mention any timing as it relates to when the Inn would be demolished, that would be up to the City.

Commissioner Hawkins stated that he had heard there was a developer interested in the property and that was still viable. Director Abu Bakar responded that is accurate and we are working with a developer in an exclusive negotiating agreement to develop the site at some point in time. They are looking at possibly submitting an application by the end of the year.

Chairman Escandel stated that he feels the Inn was more than “iconic” to the City and that the City is losing so much of its historical past. He is nervous that the site would just become a parking lot for the courthouse and feels that tearing it down at this time would be premature.

Commissioner Arterberry asked how this issue came about at this time and Director Abu Bakar responded that the Redevelopment Agency wanted to eliminate blight in the downtown area.

Assistant City Attorney Laymon explained that what is in front of the Planning Commission this evening is whether to make a recommendation or not …..finding specifically those environmental findings that are listed on pages 108 – 111 of the agenda packet. Those findings relate to whether, based upon your review of the EIR, the report sufficiently addresses issues of environmental impact, whether the proposed mitigation measures that are listed in the EIR would duly mitigate any kind of environmental impact. Commission Siva stated that is part of the issue………….the mitigation recommendation …..Commissioner Arterberry inquired if the EIR was approved, does it mean the building will be immediately torn down……..Ernest Perea stated that the project that the EIR identifies is demolition of the building. It says that very clearly in the beginning of the report. If the EIR is certified by the Community Redevelopment Agency then a demolition permit could be issued for demolition of the building. What the EIR does not do, it does not envision what type of future development might occur on that property as it is speculative and unknown at this time. The EIR did evaluate the possibility of the building being used for the two alternatives; one was to restore the building to the 1930’s period and what it would take to do that. And, two was to convert the building into a 200 seat banquet and dinner theater which came forward as part of the City’s downtown design charrette which was done in 2004. Either of these alternatives could be something that a future developer may use the building for. The report concluded that based on structural issues and the loss of historical integrity of the building that it’s going to cost a certain amount of money to do that and the costs were very detailed. We had Heritage Architecture retain cost estimators that went in and actually determined what it would cost to refurbish the building the 1930’s era and the banquet / dinner theater. The EIR explored those alternatives and gave the City the cost involved so they could make an informed decision relative to the demolition. The Inn was a hotel in the past, in 1884 it was the
Bryant House, in the 1920’s and 1930’s it was expanded to include a lot of bungalows that are no longer there........what is left inside the building is a portion of the 1884 structure that encapsulated within a series of remodels that have taken place over the years, particularly in the 1960’s. So the Inn as it existed in 1930 and prior, really does not exist anymore. It has to be rebuilt in order to look like that.

Commissioner Hawkins stated that he has been involved in enough rehab projects in the last thirty years to know that trying to bring something as old as that building back to an original configuration is probably cost prohibitive.

The commissioners asked the Assistant City Attorney Laymon to create a motion that would recommend adoption of the EIR, but state that demolition would not occur until a real, viable acceptable project is going to happen.

ACTION (SIVA / ARTERBERRY): A motion was moved, seconded and carried that the Planning Commission adopt Resolution No. 2010-07 (Attachment 1) recommending to the City of Banning Community Redevelopment Agency (“Agency”) the approval of the EIR (SCH #2009111103) (Attachment 2), Mitigation Monitoring and Reporting Program (Attachment 3), Response to Comments (Attachment 4), and Environmental Findings of Fact on the EIR (Attachment 5) for the San Gorgonio Inn demolition, as amended to include the further recommendation that the Redevelopment Agency not actually cause the demolition of the building until a viable project is imminent.

(Motion carried 5 -0)

VI. TENTATIVE PROJECTS SCHEDULED FOR AUGUST 3, 2010

1. Massage Ordinance

VII. PLANNING COMMISSIONER COMMENTS

Commissioner Barsh commended Commissioner Hawkins for his service to the Planning Commission as chairman. The other commissioners also added their appreciation.

Commissioner Siva stated that he desired to see development happen in Banning. With the economic situation in our country at this time, we are having a lot of problems. The main thing we need to do is to remain consistent in sticking with our ideas and recognizing what the public is saying to us, then trying to move forward in a way that brings about the development that the City can be proud of. This is an excellent example of something that may need to be
done, but when the San Gorgonio Inn is demolished, it will have an emotional impact on a lot of people who live here.

Commissioner Hawkins inquired if the City has considered salvaging the useable items and auctioning them for mementos.

VIII. COMMUNITY DEVELOPMENT DIRECTOR’S REPORT

Community Development Director Abu Bakar stated that the City Council is trying to coordinate a joint meeting between the Planning Commission and Parks Committee to review the Parks Master Plan. The dates that have been offered are July 19th or July 21st at 6:00 p.m. The Commissioners stated their availability: Arterberry – 19th only, Barsh – 19th, Escandel – just not on a Thursday, Hawkins – 19th, Siva – 19th.

IX. ADJOURNMENT

There being no further business to come before the Planning Commission, the meeting was adjourned at 7:35 p.m. to the Planning Commission meeting on August 3, 2010 at 6:30 p.m.

Respectfully submitted,

\[Signature\]
Gini Sorenson
Recording Secretary
CITY OF BANNING
PLANNING COMMISSION REPORT

DATE: August 3, 2010

TO: Planning Commission

FROM: Zai Abu Bakar, Community Development Director

SUBJECT: Zone Text Amendment No. 09-97505: Amendment to Section 5.08.080 of the Banning Municipal Code, Table 17.12.020 of Section 17.12.020 of the Banning Zoning Ordinance, Title 5 of the Banning Municipal Code to add Chapter 5.74 regarding Massage Establishments, State Certified Massage Practitioners, and State Certified Massage Therapists, and Amendment to Resolution No. 1993-158 deleting and adding certain fees related to these uses

STAFF RECOMMENDATION

The Planning Division recommends that the Planning Commission adopt Resolution No. 2010-10 recommending that the City Council take the following actions:

1. Adopt Initial Study/Negative Declaration in compliance with the California Environmental Quality Act Section 15000 et seq.; and

2. Adopt Ordinance No. 1426 amending Section 5.08.080 of the Banning Municipal Code, Table 17.12.020 of Section 17.12.020 of the Banning Zoning Ordinance and Title 5 of the Banning Municipal Code to add Chapter 5.74 regarding Massage Establishments, State Certified Massage Practitioners, and State Certified Massage Therapists; and

3. Adopt Resolution No. 2010-59 repealing Resolution No. 1993-158 and amending fees for state certifies massage therapists/practitioners as follows: delete references to Business License Tax (annual fee) of $125, delete Massage therapist Trainee Permit (annual fee) of $30 and delete police background check (one-time fee charged at time of initial application) of $25.00.

APPLICANT INFORMATION

Applicant: City of Banning
99 E. Ramsey Street
Banning, CA 92220

City of Banning Planning Division
Planning Commission Meeting of August 3, 2010
BACKGROUND/ANALYSIS

In September 2008, the State approved Senate Bill No. 731 (SB 731), which amended California Business and Professions Code sections 4600 et seq., and provided for the certification of massage practitioners and massage therapists through the State’s Massage Therapy Organization or MTO. The MTO is responsible for reviewing applications to ensure that the applicants for massage therapist and massage practitioner certification meet the minimum criteria for their profession and processing the background check through the Department of Justice (DOJ). The DOJ is responsible for conducting the background check and providing the MTO the fitness determination and other information related to massage practitioner and massage therapist applications for certification through the MTO. In addition to issuing certificates to the massage therapists and massage practitioners, the MTO is also responsible for revoking the certification of the massage therapists and practitioners if they have been arrested or charged for specific crimes as referenced in SB 731 including, prostitution, impersonating a certified massage practitioner or therapist, committing any fraudulent, dishonest or corrupt act that is substantially related to the qualifications or duties of a MTO certificate holder, or procuring a MTO certificate by fraud.

Pursuant to SB 731, the City is permitted to regulate massage establishments by adopting and enforcing local zoning, business licensing and reasonable health and safety requirements. However, with the implementation of massage certification at the state level, the City is now prohibited from enacting any ordinance that requires a license, permit, or other authorization to practice massage by an individual who is certified pursuant to SB 731. As such, the City’s role is as follows:

1. Cities must uniformly apply land use and zoning requirements to massage establishments, and professional and personal services businesses (i.e., doctor, dentist, barber shop, health facility, etc.).

2. Cities are prohibited from requiring additional permits, licenses or other authorization of individuals who are certified massage practitioners or certified massage therapists through the State. Cities are permitted to adopt and enforce zoning and business licensing requirements for massage establishments.

3. Cities must not mandate any local building code or physical facility requirements (i.e. showers, restrooms, windows on doors, etc.) that are different from that required of professional or personal service businesses.

4. Cities are allowed to require reasonable health and safety standards for massage establishments which include cleanliness of massage rooms, towels, and linens, attire and personal hygiene for purposes of providing a massage.
The Municipal Code currently allows massage establishments to operate in the Downtown Commercial (DC), General Commercial (GC), Highway Serving Commercial (HSC), and Professional Office (PO) zoning districts with approval of a Conditional Use Permit from the Planning Commission. However, in order to comply with SB 731, the City must uniformly apply land use and zoning requirements to massage establishments, and professional and personal services businesses. The City considers the following uses to be professional or personal services businesses: Health/fitness facilities, Barber shops and beauty shops, Business support/secretarial services, Professional offices and Real Estate Offices. However, the City’s land use and zoning requirements are not uniform with reference to the above-referenced uses. For example, the uses are not all permitted in the same zones. Also, the City does not uniformly require Conditional Use Permits for all of the uses. As such, in order to best comply with SB731, the City is permitting massage establishments by right in the same zones where professional and personal services businesses are permitted. The City will no longer regulate a State certified massage therapy establishment via a Conditional Use Permit.

To comply with SB 731, the following are the proposed amendments to the Municipal Code:

- Add a new chapter 5.74 “Massage Establishments and Massage Therapists/Practitioners” to require all individuals performing massage in the City to obtain a massage certification from the MTO and to establish standards of operations for the Massage Establishments and Massage Therapists/Practitioners. Chapter 5.74 provides for the following:

  o **Section 5.74.010 Intent and Purpose.** The intent and purpose of Chapter 5.74 is to regulate Massage Practitioners and Massage Therapists in accordance with state law to protect the health, safety, and welfare of the residents of Banning.

  o **Section 5.74.020 Definitions.** The definition section provides the meaning of Massage Practitioner and Massage Therapists, among other definitions.

  o **Section 5.74.030 Licensing Requirement.** This section clarifies that a certificate from the Massage Therapy Organization is required in order to perform Massage services in the City of Banning.

  o **Section 5.74.040 License Exemptions.** This Section clarifies that certain professions that perform massages as a component of their professions as approved by the State are exempt from the requirement of this ordinance.

  o **Sections 5.74.050 through 5.74.070 Display of certification, Notice of Massage Therapist/Practitioner employed by Massage...**
Establishment, Business License Required. These Sections require that Massage Therapists and Practitioners display their MTO certifications prominently, require Massage Establishment Owners and Operators to inform the Community Development Director of the hiring and termination of Massage Therapist/Practitioners and require that Massage Establishments obtain a business license from the City.

- Sections 5.74.080 Standards for Operations of Massage Establishments. This section provides operating standards for the facilities, including signage, cleanliness of massage rooms, towels, and linens, attire and personal hygiene for purposes of providing a massage and hours of operations of the Massage Establishment.

- Sections 5.74.090 through 5.74.110 relates to prohibited conduct, penalties, enforcement, and abatement. These sections specify prohibited conduct, penalties for non-compliance with this ordinance and the Municipal Code, penalties for compliance, enforcement of the massage establishments, and abatement should the establishments become a public nuisance.

- Amend Section 5.08.080.K to read as follows:
  - “Massage Establishment Annual Business Tax, Per Year $220.00
  - “Massage Establishment, Annual Investigative Fee, Per Year: $150.00.”

The existing subsection K reads, “Massage Parlor-Baths. (City Council permit required) Per Year $220.00. The proposed amendment is to replace the word “parlor-baths” with the word “establishment” and delete “City Council permit required” so that it is consistent with the Ordinance. The Annual Investigative Fee is a new fee that is proposed with the Ordinance. This fee is for an annual inspection of the establishment prior to the renewal of the business license to ensure that the establishment is in compliance with the Ordinance.

- Amend Section 17.12.020, Table 17.12.020 to allow Massage Establishments to operate by right in the same zoning districts as other professional and personal services businesses in the City.

The City’s professional and personal services businesses, which include, Health/fitness facilities, Barber shops and beauty shops, Business support/secretarial services, Professional offices and Real Estate Offices, are permitted in Downtown Commercial (DC), General Commercial (GC), Highway Serving Commercial (HSC), Professional Office (PO), Airport Industrial (AI) and Business Park (BP) zones. Some businesses are permitted by right and some are subject to Conditional Use Permit.
To comply with SB 731, certified massage establishments are proposed to be permitted by right in Downtown Commercial (DC), General Commercial (GC), Highway Serving Commercial (HSC), Professional office (PO), Airport Industrial (AI), and Business Park (BP) zones.

- Adopt Resolution No. 2010-59 repealing Resolution No. 1993-158 and amending fees for state certified massage therapists/practitioners as follows: delete references to Business License Tax (annual fee) of $125, delete Massage therapist Trainee Permit (annual fee) of $30 and delete police background check (one-time fee charged at time of initial application) of $25.00.

ENVIRONMENTAL DETERMINATION

The Planning Commission, in light of the whole record before it, including but not limited to, the City’s Local CEQA Guidelines, the recommendation of the Community Development Department as provided in the Staff Report dated August 3, 2010 and documents incorporated therein by reference, and any other evidence (within the meaning of Public Resources Code § 21080(e) and § 21082.2) within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

1. California Environmental Quality Act (CEQA):

   CEQA: The Planning Commission has analyzed this proposed project and has determined that a Negative Declaration is required per the California Environmental Quality Act (“CEQA”) under Section 15070(a) regarding negative declarations, Section 15268 regarding ministerial projects, and Section 15376 regarding the definition of “person” of the CEQA Guidelines, which provide that the adoption of an ordinance by a city is considered a project which requires the preparation of an Initial Study. However, the Project (the adoption of an ordinance amending the City of Banning Municipal Code) does not have negative impacts on the environment. A Negative Declaration is proposed for adoption.

2. Multiple Species Habitat Conservation Plan (MSHCP).

   The amendment to the Zoning Code does not relate to any one physical project and are not subject to the MSHCP. Further, projects subject to this resolution will trigger individual project analysis and documentation related to the requirements of MSHCP including mitigation through payment of the MSHCP Mitigation Fee.

REQUIRED FINDINGS FOR ZONE TEXT AMENDMENT NO. 09-97505:

The Zoning Ordinance requires that each Zone Text Amendment meet certain findings in Section 17.116.050 in order to be approved by the Planning Commission. The following findings are provided for Commission consideration:
1. The proposed Zone Text Amendment is consistent with the goals and policies of the General Plan.

Findings of Fact:

The Zone Text Amendment is consistent with the goals and policies of the General Plan, insofar as to provide regulations for the orderly conduct of certain businesses to protect the health, safety, and general welfare of the community. The primary General Plan Land Use Goal states “A balanced, well-planned community including businesses which provides a functional pattern of land uses and enhances the quality of life for all Banning residents”. The amendment to the Municipal Code to provide regulations pertaining to State certified massage establishments, massage practitioners, and massage therapists provides a functional pattern of land uses and enhances the quality of life for all Banning residents to ensure that these businesses are operating within a reasonable standard set by the community to ensure that they do not become a public nuisance.

2. The proposed Zone Text Amendment is internally consistent with the Zoning Ordinance.

Findings of Fact:

The Zone Text Amendment is consistent with the existing provisions of the Zoning Ordinance. The amendment will modify and update the zoning districts in which the massage establishments are allowed to locate within the City of Banning and to establish development standards pertaining to State regulations regarding State certified massage practitioners and massage therapists.

3. That the Planning Commission has independently reviewed and considered the requirements of the California Environmental Quality Act.

Findings of Fact:

The Planning Commission has analyzed this proposed project and has determined that a Negative Declaration is required per the California Environmental Quality Act (“CEQA”) under Section 15070(a), Section 15268, and Section 15376(a)(1) of the CEQA Guidelines, which provide that the adoption of an ordinance by a city is considered a project which requires the preparation of an Initial Study, which leads to a conclusion that the adoption of an ordinance amendment the City of Banning Municipal Code does not have a negative impact on the environment; therefore, a Negative Declaration is proposed for adoption.
PUBLIC COMMUNICATION:

The proposed Zone Text Amendment No. 09-97505 was advertised in the Record Gazette newspaper on July 9, 2010. As of the date of this report, staff has not received any verbal or written comments for or against the proposed Zone Text Amendment.

Prepared and Recommended By:

[Signature]

Zai Abu Bakar
Community Development Director

PC Attachments:

1. PC Resolution No. 2010-10
2. Initial Study/Negative Declaration
3. Draft Ordinance No. 1426
4. Resolution No. 2010-59
5. Resolution No. 1993-158
ATTACHMENT 1

PC Resolution No. 2010-10
RESOLUTION NO. 2010-10

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BANNING, CALIFORNIA RECOMMENDING TO THE CITY COUNCIL THE APPROVAL OF ZONE TEXT AMENDMENT NO. 09-97505, TO AMEND SECTIONS 5.08.080(K) AND TABLE 17.12.020 OF SECTION 17.12.020, ADD A NEW CHAPTER 5.74 TO THE MUNICIPAL CODE REGARDING MASSAGE ESTABLISHMENTS, STATE CERTIFIED MASSAGE PRACTITIONERS, AND STATE CERTIFIED MASSAGE THERAPISTS, AND THE ADOPTION OF RESOLUTION NO. 2010-59 REPEALING RESOLUTION NO. 1993-158 AND AMENDING FEES FOR STATE CERTIFIED MASSAGE THERAPISTS/PRACTITIONERS.

WHEREAS, the Municipal Code allows for Zone Text Amendments consistent with the goals and policies of the General Plan; and

WHEREAS, SB 731 was adopted by the State in September 2008 which commenced the certification of massage practitioners and massage therapists through the State’s Massage Therapy Organization or MTO.

WHEREAS, the City of Banning desires to comply with SB 731 (which is codified in Sections 4600-4620 of the Business and Professions Code), and this ordinance provides a process to allow massage practitioners and massage therapists to operate in the City and establishes a standard for the operations of the massage establishment to protect the health, safety and welfare of the residents of Banning.

WHEREAS, on July 9, 2010, the City gave public notice as required under Zoning Code Section 17.68 by advertising in the Record Gazette newspaper of the holding of a public hearing by the Planning Commission at which the amendment to the Municipal Code would be considered; and

WHEREAS, on August 3, 2010, the Planning Commission held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, the Zone Text Amendment and at which time the Planning Commission considered the Zone Text Amendment; and

WHEREAS, at this public hearing, the Planning Commission has analyzed this proposed project and has determined that it is not exempt from the California Environmental Quality Act (“CEQA”) Sections 15070(a) regarding negative declarations, 15268 regarding ministerial projects, and 15376 regarding the definition of “person” of the CEQA Guidelines and a Negative Declaration is recommended for adoption by the City Council.

NOW THEREFORE, the Planning Commission of the City of Banning does hereby find, determine, and resolve as follows:

Resolution No. 2010-10
SECTION 1. ENVIRONMENTAL FINDINGS.

The Planning Commission, in light of the whole record before it, including but not limited to, the City’s Local CEQA Guidelines, the recommendation of the Community Development Department as provided in the Staff Report dated August 3, 2010, and documents incorporated therein by reference, and any other evidence (within the meaning of Public Resources Code § 21080(e) and §21082.2) within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

CEQA: The City Council has analyzed this proposed project and has determined that it is not exempt from the California Environmental Quality Act (“CEQA”) under Sections 15070(a) regarding negative declarations, 15268 regarding ministerial projects, and 15376 regarding the definition of “person.” Accordingly, the Negative Declaration is hereby adopted.

SECTION 2. FINDINGS.

1. The proposed Zone Text Amendment is consistent with the goals and policies of the General Plan.

Findings of Fact:

The Zone Text Amendment is consistent with the goals and policies of the General Plan, insofar as the General Plan designations and Zoning designations will not change, and the text amendments will result in clarifying the goals, policies and programs of the General Plan. The primary General Plan Land Use Goal states “A balanced, well planned community including businesses which provides a functional pattern of land uses and enhances the quality of life for all Banning residents”. The amendment to the Municipal Code to provide a process and standards for operations of massage establishments, massage practitioners, and massage therapists to ensure a functional pattern of land uses and ensure that the quality of life, health, safety, and welfare of the community is not compromised.

2. The proposed Zone Text Amendment is internally consistent with the Zoning Ordinance.

Findings of Fact:

The Zone Text Amendment is internally consistent with the existing provisions of the Zoning Ordinance. City staff has checked all sections of the Zoning Ordinance to ensure that there are no references to massage establishments or massage parlors and confirmed that with the amendment the Zoning Ordinance is internally consistent. The only reference to Massage is in Section 17.12.020, Table 17.12.020, which is hereby amended to indicate Massage Establishment.

3. That the City Council has independently reviewed and considered the requirements of the California Environmental Quality Act.
Findings of Fact:

CEQA: The City Council has analyzed this proposed project and has determined that it is not exempt from the California Environmental Quality Act ("CEQA") under Sections 15070(a) regarding negative declarations, 15268 regarding ministerial projects, and 15376 regarding the definition of "person" and a Negative Declaration is hereby adopted.

SECTION 3. PLANNING COMMISSION ACTIONS

The Planning Commission hereby takes the following actions:

1. Recommend Approval of Zone Text Amendment. The Planning Commission hereby recommends approval of Zone Text Amendment No. 09-97505 to the City Council for the following actions:

   - Amend Sections 5.08.080(K) and Table 17.12.020 of Section 17.12.020 and add a New Chapter 5.74 to the Municipal Code regarding massage establishments, State certified massage practitioners and State certified massage therapists as indicated in the attached draft Ordinance.

   - Adopt Resolution No. 2010-59 repealing Resolution No. 1993-158 and amending fees for state certified massage therapists/practitioners.

PASSED, APPROVED AND ADOPTED this 3rd day of August 2010.

Bill Escandel, Chairman
Banning Planning Commission

APPROVED AS TO FORM AND LEGAL CONTENT:

Lona N. Laymon, Assistant City Attorney
Aleshire & Wynder, LLP
City of Banning, California
ATTEST:

Virginia Sorenson, Recording Secretary
City of Banning

CERTIFICATION:

I, Virginia Sorenson, Recording Secretary of the Planning Commission of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2010-10, was duly adopted by the Planning Commission of the City of Banning, California, at a regular meeting thereof held on the 3rd day of August 2010, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Virginia Sorenson, Recording Secretary
City of Banning, California
ATTACHMENT 2

Initial Study & Negative Declaration
CITY OF BANNING
Initial Study/Negative Declaration
for
Zone Text Amendment # 09-97505
Massage Ordinance

July 6, 2010

City of Banning
Community Development Department
99 E. Ramsey Street
Banning, California 92220

Zai Abu Bakar
Community Development Director
(951) 922-3131
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<td>8. LIST OF PREPARERS</td>
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EXECUTIVE SUMMARY

This Initial Study assesses the potential environmental impacts of the Zone Text Amendment # 09-97505 - an amendment to the Banning Zoning Code to establish the zoning districts in which Massage Establishments, State certified massage therapists, and State certified massage practitioners ("Project") may practice by right in the City. The purpose of the project is to comply with Senate Bill 731.

The project amends Section 17.12.020 of the Banning Zoning Code to allow Massage Establishments, massage therapists, and massage practitioners that are certified by the State Massage Therapy Organization to operate by right in the Downtown Commercial (DC), General Commercial (GC), Highway Serving Commercial (HSC), Professional Office (PO), Airport Industrial (AI) and Business Park (BP) zoning districts. Previously, massage establishments require approval of a Conditional Use Permit to operate in DC, GC, HSC, and PO. The Municipal Code is also being amended to add a new Chapter 5.74 "Massage Establishments and Massage Therapists/Practitioners" providing regulations related to the State certified massage establishments, State certified massage therapists, and State certified massage practitioners.

The results of the Initial Study show that there is no substantial evidence that the Project would have a significant effect on the environment. A Negative Declaration is being recommended for adoption.

1. INTRODUCTION

Purpose and Scope

This Initial Study serves as the environmental review of the proposed Project, as required by the California Environmental Quality Act (CEQA), Public Resources Code Section 21000 et seq., the State CEQA Guidelines, and the City of Banning Local Guidelines for Implementing CEQA.

In accordance with Section 15063 of the State CEQA Guidelines, the City is required to prepare an Initial Study to determine if the Project may have a significant effect on the environment. This Initial Study is intended to be an informational document providing the Planning Commission, City Council, other public agencies, and the general public with an objective assessment of the potential environmental impacts that could result from the implementation of the Project.

Incorporation by Reference

This Initial Study is based in part on the information and analysis contained in other environmental and planning documents. These documents are hereby incorporated by reference in their entirety into this Initial Study, as authorized by Section 15150 of the State CEQA Guidelines. All of the documents incorporated by reference are listed in Section 8 of this Initial Study.

2. EVALUATION OF ENVIRONMENTAL IMPACTS

An Environmental Checklist Form (Form) has been used to evaluate the potential environmental impacts associated with the proposed Project. The Form has been prepared by the Resources Agency of California to assist local governmental agencies, such as the City of Banning, in complying with the requirements of the Statutes and Guidelines for implementing the California Environmental Quality Act.
The Form has been used by the City of Banning to review the effects of the proposed Project with respect to the following environmental factors. The environmental factors checked below would be potentially affected by this project, involving at least one impact that is "Potentially Significant Impact". Based on the analysis contained in this Initial Study, the following environmental factors are affected by the proposed project.

☐ Aesthetics  ☐ Hydrology/Water Quality  ☐ Population/Housing
☐ Agriculture Resources  ☐ Hazards & Hazards Materials  ☐ Public Services
☐ Air Quality  ☐ Land Use and Planning  ☐ Recreation
☐ Biological Resources  ☐ Mineral Resources  ☐ Transportation/Traffic
☐ Cultural Resources  ☐ Noise  ☐ Utilities/Service Systems
☐ Geology/Soils

In the Form, a series of questions is asked about the Project for each of the above-listed environmental factors. A brief explanation is then provided for each question on the Form.

There are four possible responses to each question:

A. **Potentially Significant Impact.**

This response is used when the Project has the potential to have an effect on the environment that is considered to be significant and adverse.

B. **Potentially Significant Unless Mitigation Incorporated.**

This response is used when the Project has the potential to have a significant impact, which is not expected to occur because:

a. Mitigation measures have been incorporated into the Project design in order to reduce the impact to a less than significant level; or,

b. Adherence to existing policies, regulations, and/or design standards would reduce the impact of the Project to a less than significant level.

C. **Less Than Significant Impact.**

This response is used when the potential environmental impact of the Project is determined to be below known or measurable thresholds of significance and thus would not require mitigation.

D. **No Impact.**

This response is used when the proposed Project does not have any measurable impact.
3. ENVIRONMENTAL DETERMINATION

On the basis of this initial evaluation, I find that:

☐ The proposed Project could not have a significant effect on the environment, and a Negative Declaration will be prepared.

☐ Although the proposed Project could have a significant effect on the environment, there will not be a significant effect in this case because the mitigation measures, described in Exhibit C (attached), have been added to the Project. A Mitigated Negative Declaration will be prepared.

☐ The proposed Project may have a significant effect on the environment, and an Environmental Impact Report is required.

☐ The proposed Project may have a potentially significant impact unless mitigation is incorporated, but at least one of the impacts has been: 1) adequately analyzed in an earlier document pursuant to applicable legal standards and 2) addressed by mitigation measures based on the earlier analysis as described on the attached sheets. An Environmental Impact Report is required, but it is to analyze only those impacts that have not already been addressed.

☐ Although the proposed Project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier Environmental Impact Report (EIR) or in a Negative Declaration pursuant to applicable legal standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or Negative Declaration, including revisions or mitigation measures that are imposed upon the proposed Project, nothing further is required.

Approved for distribution by:

Signature: Zai Abu Bakar, Community Development Director

Prepared by: Zai Abu Bakar, Community Development Director

Date: July 6, 2010

Public Review: July 9, 2010 through July 29, 2010
4. PROJECT DESCRIPTION

Project Title: Zone Text Amendment #09-97505 - An amendment to the Banning Zoning Code regarding State certified massage establishments, State certified massage practitioners, and State certified massage therapists.

Applicant: City of Banning
99 E. Ramsey Street
Banning, California 92220

Project Description: Zone Text Amendment #09-97505 is an amendment to the Banning Zoning Code to allow State certified massage establishments, State certified massage therapists, and State certified massage practitioners to operate by right in the Downtown Commercial (DC), General Commercial (GC), Highway Serving Commercial (HSC), Professional Office (PO), Airport Industrial (AI) and Business Park (BP) zoning districts.

Approvals Required:

In order to complete and approve the Project, the City of Banning would need to take the following actions:

- Approval of a Negative Declaration;
- Approval of Zone Text Amendment #09-97505
- Issuance of Business Licenses for State Certified Massage Establishments, State certified massage therapists, and State certified massage practitioners when these businesses are proposed within existing buildings that are approved for occupancy by the City.
## ENVIRONMENTAL ANALYSIS CHECKLIST

<table>
<thead>
<tr>
<th>I. AESTHETICS. Would the Project:</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Have a substantial adverse effect on a scenic vista?</td>
</tr>
<tr>
<td>b) Substantially damage scenic resources, including but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?</td>
</tr>
<tr>
<td>c) Substantially degrade the existing visual character or quality of the site and its surroundings?</td>
</tr>
<tr>
<td>d) Create a new source of substantial light or glare, which would adversely affect day or nighttime views in the area?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>II. AGRICULTURAL RESOURCES. Would the Project:</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?</td>
</tr>
<tr>
<td>b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?</td>
</tr>
<tr>
<td>c) Involve other changes in the existing environment that, due to their location or nature, could result in conversion of Farmland to non-agricultural use?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>III. AIR QUALITY. Would the Project:</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Conflict with or obstruct implementation of the applicable air quality plan?</td>
</tr>
<tr>
<td>b) Violate any air quality standard or contribute to an existing or projected air quality violation?</td>
</tr>
<tr>
<td>c) Result in a cumulatively considerable net increase of any criteria pollutant for which the region is in non-attainment under an applicable federal or state</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Potentially Significant Impact</th>
<th>Potentially Significant Unless Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
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<tr>
<td>IV. BIOLOGICAL RESOURCES. Would the Project:</td>
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<td>---------------------------------------------</td>
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<tr>
<td>a) Have a substantial adverse effect, either directly or through habitat modification, on any species identified as candidate, sensitive or special status species in local or regional plans, policies or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including but not limited to marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
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<tr>
<td>e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?</td>
<td>☐</td>
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<tr>
<td>e) Conflict with the provisions of an adopted Habitat Conservation Plan,</td>
<td>☐</td>
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<tr>
<td>Natural Conservancy Conservation Plan, or other approved local, regional, or state habitat conservation plan?</td>
<td>Potentially Significant Impact</td>
<td>Potentially Significant Unless Mitigation Incorporated</td>
<td>Less Than Significant Impact</td>
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<tr>
<td>V. CULTURAL RESOURCES. Would the Project:</td>
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<tr>
<td>a) Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>d) Disturb any human remains including those interred outside of formal cemeteries?</td>
<td>☐</td>
<td>☐</td>
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<tr>
<td>VI. GEOLOGY AND SOILS. Would the Project:</td>
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<tr>
<td>a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:</td>
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<tr>
<td>i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.</td>
<td>☐</td>
<td>☐</td>
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<tr>
<td>ii) Strong seismic ground shaking?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
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<tr>
<td>iii) Seismic-related ground failure, including liquefaction?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
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<tr>
<td>iv) Landslides?</td>
<td>☐</td>
<td>☐</td>
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</tr>
<tr>
<td>b) Result in substantial soil erosion or the loss of topsoil?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the Project, and potentially result in on- or off-site landslide, lateral</td>
<td>☐</td>
<td>☐</td>
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<tr>
<td>d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code, creating substantial risks to life or property?</td>
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<tr>
<td>e) Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems if sewers are not available?</td>
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<td>Potentially Significant Impact</td>
<td>Potentially Significant Unless Mitigation Incorporated</td>
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</table>

### VII. HAZARDS AND HAZARDOUS MATERIALS. Would the Project:

<p>| a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials? |
|---|---|---|---|---|
| Potentially Significant Impact | Potentially Significant Unless Mitigation Incorporated | Less Than Significant Impact | No Impact |
| | | | |
| b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment? |
| Potentially Significant Impact | Potentially Significant Unless Mitigation Incorporated | Less Than Significant Impact | No Impact |
| | | | |
| c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school? |
| Potentially Significant Impact | Potentially Significant Unless Mitigation Incorporated | Less Than Significant Impact | No Impact |
| | | | |
| d) Be located on a site included on the list of hazardous materials sites compiled per Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment? |
| Potentially Significant Impact | Potentially Significant Unless Mitigation Incorporated | Less Than Significant Impact | No Impact |
| | | | |
| e) For a Project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would it result in a safety hazard for people residing or working in the project area? |
| Potentially Significant Impact | Potentially Significant Unless Mitigation Incorporated | Less Than Significant Impact | No Impact |
| | | | |
| f) For a Project within the vicinity of a private airstrip, would the Project result in a safety hazard for people residing or working in the area? |
| Potentially Significant Impact | Potentially Significant Unless Mitigation Incorporated | Less Than Significant Impact | No Impact |
| | | | |
| g) Impair implementation of, or physically interfere with, an adopted emergency response plan |
| Potentially Significant Impact | Potentially Significant Unless Mitigation Incorporated | Less Than Significant Impact | No Impact |
| | | | |</p>
<table>
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<tr>
<th>or emergency evacuation plan?</th>
<th>Potentially Significant Impact</th>
<th>Potentially Significant Unless Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?</td>
<td>☐</td>
<td>☐</td>
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</tr>
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</table>

**VIII. HYDROLOGY AND WATER QUALITY.**

**Would the Project:**

- a) Violate any water quality standards or waste discharge requirements? ☐ ☐ ☐ ☐ ☐
- b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing or planned land uses for which permits have been granted)? ☐ ☐ ☐ ☐ ☐
- c) Substantially alter the existing drainage pattern of the site or area, including alteration of the course of a stream or river, in a manner that would result in substantial erosion or siltation on- or off-site? ☐ ☐ ☐ ☐ ☐
- d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in such a way as to result in flooding either on-site or off-site? ☐ ☐ ☐ ☐ ☐
- e) Create or contribute runoff water exceeding the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff? ☐ ☐ ☐ ☐ ☐
- f) Otherwise substantially degrade water quality? ☐ ☐ ☐ ☐ ☐
- g) Place housing within a 100-year
<table>
<thead>
<tr>
<th><strong>IX. LAND USE AND PLANNING: Would the Project:</strong></th>
<th>Potentially Significant Impact</th>
<th>Potentially Significant Unless Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
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<tbody>
<tr>
<td>a) Physically divide an established community?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the Project adopted for the purpose of avoiding or mitigating an environmental effect?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
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<tr>
<td>c) Conflict with any applicable habitat conservation plan or natural community conservation plan?</td>
<td>☐</td>
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<tr>
<th><strong>X. MINERAL RESOURCES: Would the Project:</strong></th>
<th>Potentially Significant Impact</th>
<th>Potentially Significant Unless Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>b) Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
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<thead>
<tr>
<th><strong>XI. NOISE: Would the Project:</strong></th>
<th>Potentially Significant Impact</th>
<th>Potentially Significant Unless Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Expose persons to a generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>b) Expose persons to a generation of excessive groundborne vibration or</td>
<td>☐</td>
<td>☐</td>
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<td></td>
<td>Potentially Significant Impact</td>
<td>Potentially Significant Unless Mitigation Incorporated</td>
<td>Less Than Significant Impact</td>
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<tr>
<td>c) Create a substantial permanent increase in ambient noise levels in the Project vicinity above levels existing without the Project?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☑</td>
</tr>
<tr>
<td>d) Create a substantial temporary or periodic increase in ambient noise levels in the Project vicinity above levels existing without the Project?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☑</td>
</tr>
<tr>
<td>e) For a Project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the Project expose people residing or working in the Project area to excessive noise levels?</td>
<td>☐</td>
<td>☐</td>
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<tr>
<td>f) For a Project within the vicinity of a private airstrip, would the Project expose people residing or working in the Project area to excessive noise levels?</td>
<td>☐</td>
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</tr>
</tbody>
</table>

XII. POPULATION AND HOUSING. Would the Project:

a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)? | ☐                             | ☐                                                    | ☐                           | ☑         |

b) Displace a substantial number of existing housing, necessitating the construction of replacement housing elsewhere? | ☐                             | ☐                                                    | ☐                           | ☑         |

XIII. PUBLIC SERVICES. Would the Project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities or the need for new or physically altered governmental facilities, the construction of which could cause significant Environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:
a) Fire protection? | ☐                             | ☐                                                    | ☐                           | ☑         |
<table>
<thead>
<tr>
<th></th>
<th>Potentially Significant Impact</th>
<th>Potentially Significant Unless Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>b) Police protection?</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>c) Schools?</td>
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<tr>
<td>d) Parks?</td>
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<tr>
<td>e) Other public facilities?</td>
<td>□</td>
<td>□</td>
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</table>

### XIV. RECREATION:

a) Would the Project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?  

b) Does the Project include recreational facilities or require the construction or expansion of recreational facilities that might have an adverse physical effect on the environment?  

### XV. TRANSPORTATION/TRAFFIC. Would the Project:

a) Cause an increase in traffic that is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)?  

b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?  

c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?  

d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?  

e) Result in inadequate emergency access?  

f) Result in inadequate parking capacity?  

g) Conflict with adopted policies, plans, or programs supporting
<table>
<thead>
<tr>
<th>XVI. UTILITIES AND SERVICE SYSTEMS. Would the Project:</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?</td>
</tr>
<tr>
<td>b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?</td>
</tr>
<tr>
<td>c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?</td>
</tr>
<tr>
<td>d) Have sufficient water supplies available to serve the Project from existing entitlements and resources, or new or expanded entitlements needed?</td>
</tr>
<tr>
<td>e) Result in a determination by the wastewater treatment provider, which serves or may serve the Project, that it has adequate capacity to serve the Project's projected demand in addition to the provider's existing commitments?</td>
</tr>
<tr>
<td>f) Be served by a landfill with sufficient permitted capacity to accommodate the Project's solid waste disposal needs?</td>
</tr>
<tr>
<td>g) Comply with federal, state and local statutes and regulations related to solid waste?</td>
</tr>
</tbody>
</table>
### XVII. MANDATORY FINDINGS OF SIGNIFICANCE

<table>
<thead>
<tr>
<th>a) Does the Project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or an endangered threatened species, or eliminate important examples of the major periods of California history or prehistory?</th>
<th>☐</th>
<th>☐</th>
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</tr>
</thead>
<tbody>
<tr>
<td>b) Does the Project have impacts that are individually limited, but cumulatively considerable? (Are the incremental effects of the Project considerable when viewed in connection with those of past Projects, those of other current Projects, and those of probable future Projects?)</td>
<td>☐</td>
<td>☐</td>
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</tr>
<tr>
<td>c) Does the Project have environmental effects that will cause substantial adverse effects on human beings, either directly or indirectly?</td>
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<td>☐</td>
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</tr>
</tbody>
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### 6. EXPLANATION OF THE ITEMS MARKED ON THE ENVIRONMENTAL CHECKLIST FORM

**Checklist Item I. Aesthetics**

a-d No Impact (Scenic Vista, Scenic Resources-State Scenic Highway, Visual Character, Light/Glare). The project is an amendment to the Banning Zoning Code for a use that will not have an impact on aesthetic resources, visual character or light/glare. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

**Checklist Item II. Agricultural Resources**

a-c No Impact (Farmland Conversion, Zoning, Land Use). The project is an amendment to the Banning Zoning Code for a use that will not have an impact on agricultural resources. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.
Checklist Item III. Air Quality

a-e No Impact (Air Quality Plan, Air Quality Standards, Cumulative Considerable Net Increase/Criteria, Sensitive Receptors, Pollutant Concentrations, Odors, Global Climate Change). The project is an amendment to the Banning Zoning Code for a use that will not have an impact on air quality. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item IV. Biological Resources

a-f No Impact (Listed Species, Riparian Habitat, Natural Communities, Wetlands, Wildlife Movement, Local Policies – Tree Preservation, Conservation Plans).

The project is an amendment to the Banning Zoning Code for a use that will not have an impact on biological resources. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item V. Cultural Resources


The project is an amendment to the Banning Zoning Code for a use that will not have an impact on cultural resources. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item VI. Geology and Soils

a-e No Impact (Alquist-Priolo Zone, Seismic Ground Shaking, Seismic Ground Failure, Liquefaction, Landslide, Soil Erosion, Loss of Topsoil, Unstable Geologic Unit, Expansive Soil, Septic Tank Suitability)

The project is an amendment to the Banning Zoning Code for a use that will not have an impact on geology and soils. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item VII. Hazards and Hazardous Materials.


The project is an amendment to the Banning Zoning Code for a use that will not have an impact on hazard and hazardous materials. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item VIII. Hydrology and Water Quality.

a-j No Impact (Water Quality, Waste Discharge, Groundwater, Drainage Patterns Flooding, Storm Drains, Water Quality, Housing in 100-Year Flood Hazard Area, Flood Levee or Dam, Seiche, Tsunami, or Mudflow).

The project is an amendment to the Banning Zoning Code for a use that will not have an impact on hydrology and water quality. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.
Checklist Item IX. Land Use and Planning

a – c. No Impact (Physical Division, Land Use Plans, Conservation Plans)

The project is an amendment to the Banning Zoning Code for a use that will not have an impact on land use and planning. Guidelines and regulations which provide standards for use is proposed in the Municipal Code as part of this Zone Text Amendment to ensure that there is no land use impacts. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item X. Mineral Resources.


The project is an amendment to the Banning Zoning Code for a use that will not have an impact on mineral resources. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item XI. Noise.


The project is an amendment to the Banning Zoning Code for a use that will not have an impact on noise. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item XII. Population and Housing.

a – c No Impact (Population Growth, Displace Housing).

The project is an amendment to the Banning Zoning Code for a use that will not have an impact on population and housing. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item XIII. Public Services.

a. No Impact (Fire Services, Police Services, Schools, Parks, Other Public Facilities)

The project is an amendment to the Banning Zoning Code for a use and will not create a direct demand for public services. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item XIV. Recreation

a - b. No Impact (Existing Facilities, New or Altered Facilities).

The project is an amendment to the Banning Zoning Code for a use and will not create a direct demand for recreation services. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item XV. Transportation/Traffic.

a – g No Impact (Roadway Capacity and Level of Service, Congestion Management Program (CMP), Air Traffic Patterns, Roadway Design Hazards, Emergency Access, Parking, Alternative Transportation)
The project is an amendment to the Banning Zoning Code for a use and will not create an increase in traffic. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item XVI. Utilities and Service Systems

a – g No Impact (RWQCB Wastewater Treatment, New Water and Wastewater Facilities, New Stormwater Drainage Facilities, Water Supplies, Wastewater, Landfill, Solid Waste).

The project is an amendment to the Banning Zoning Code for a use and will not create a demand for new utility service or the construction of new facilities. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item XVII. Mandatory Findings of Significance

a. No Impact (Environment and Habitat).

Based on the analysis contain in this Initial Study, the proposed project will not impact Aesthetics, Agriculture Resources, Air Quality, Biological Resources, Cultural Resources, Geology/Soils, Hydrology/Water Quality, Land Use and Planning, Mineral Resources, Noise, Population/Housing, Public Services, Recreation, Transportation/Traffic, and Utility/Services Systems. Thus the project would have no impact on the environment.

It will not degrade the quality of the environment and no habitat, wildlife populations, and plant and animal communities would be impacted. The purpose of the project is to provide zoning districts in which the State certified massage establishments, State certified massage practitioners, and State certified massage therapists to operate by right. The purpose of the Zone Text Amendment is to provide consistency between the City’s Zoning Code, City’s Municipal Code, and Senate Bill SB 731. Specifically Section 5.74.020 of the Municipal Code provides definition of Massage Establishment, Massage Therapist, Massage Practitioners among other things related to these uses. Additionally, Section 17.12.020 allows State certified massage establishments, State certified massage practitioners, and State certified massage the Downtown Commercial (DC), General Commercial (GC), Highway Serving Commercial (HSC), Professional Office (PO), Airport Industrial (AI) and Business Park (BP). The amendment will be included in the City of Banning Municipal Code and will not create environmental impacts.

b. No Impact (Cumulatively Considerable).

Based on the analysis contain in this Initial Study, the projects provide consistency between the Zoning Code, Municipal Code, and Senate Bill SB 731 for Massage establishment and certified massage therapists in the City. The amendment addresses definition, requirements, and locations where massage establishments and certified massage therapists can locate and operate in the City. The project does not create environmental impacts. They are intended to provide consistency between the City’s Zoning Code and Senate Bill SB 731. Any use involving construction or expansion of a building will be evaluated at the appropriate time when more information is known.

c. No Impact (Human Beings). The implementation of the project provides consistency between the City’s Zoning Code, Municipal Code, and Senate Bill SB 731 as identified in this Initial Study and compliance with mandatory City requirements would not result in significant impacts to human beings, either directly or indirectly. Any use involving construction or expansion of a building will be evaluated at the appropriate time when more information is known.

7. INCORPORATION BY REFERENCE

This Initial Study is based in part on the information and analysis contained in the documents listed below. These documents are hereby incorporated by reference in their entirety into this Initial Study.
Copies of all documents incorporated herein are available for review in the Community Development Department at the Banning Civic Center, 99 E. Ramsey Street, Banning, and California, 92220.

A. City of Banning General Plan

This document provides a vision for the future development of the community. It is the official policy statement of the City Council intended to guide the private and public development of the City. The General Plan was adopted March 2006.

B. City of Banning Municipal Code

The Municipal Code contains various regulations and development standards that govern use and development of properties within the City. The Zoning Ordinance was adopted in March 2006.

C. City of Banning Local Procedures for Complying with CEQA

These procedures identify how the City implements CEQA and the State CEQA Guidelines. These local procedures were put into effect in order to comply with Section 15022 of the State CEQA Guidelines.

8. LIST OF PREPARERS

Listed below are the persons who prepared or participated in the preparation of the Initial Study:

Project Manager:
Zai Abu Bakar, Community Development Director

Reviewed by:
Dave Aleshire, City Attorney
ATTACHMENT 3

Draft Ordinance No. 1426
ORDINANCE NO. 1426

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA APPROVING ZONE TEXT AMENDMENT NO. 09-97505, TO AMEND SECTIONS 5.08.080(K) AND TABLE 17.12.020 OF SECTION 17.12.020 AND TO ADD A NEW CHAPTER 5.74 TO THE MUNICIPAL CODE REGARDING STATE CERTIFIED MASSAGE ESTABLISHMENTS, MASSAGE PRACTITIONERS/ THERAPISTS.

WHEREAS, the Municipal Code allows for Zone Text Amendments consistent with the goals and policies of the General Plan; and

WHEREAS, SB 731 was adopted by the State in September 2008 which commenced the certification of massage practitioners and massage therapists through the State’s Massage Therapy Organization or MTO.

WHEREAS, the City of Banning desires to comply with SB 731 (which is codified in Sections 4600-4620 of the Business and Professions Code), and this ordinance provides a process to allow massage practitioners and massage therapists to operate in the City and establishes a standard for the operations of the massage establishment to protect health, safety and welfare of the residents of Banning.

WHEREAS, on the July 9, 2010, the City gave public notice as required under Zoning Code Section 17.68 by advertising in the Record Gazette newspaper of the holding of a public hearing by the Planning Commission at which the amendment to the Municipal Code would be considered; and

WHEREAS, on August 3, 2010, the Planning Commission held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, the Zone Text Amendment and at which time the Planning Commission considered the Zone Text Amendment; and

WHEREAS, on August 13, 2010, the City gave public notice as required under Zoning Code Section 17.68 by advertising in the Record Gazette newspaper of the holding of a public hearing by the City Council meeting at which the amendment to the Municipal Code would be considered; and

WHEREAS, on August 24, 2010, the City Council held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, the Zone Text Amendment and at which time the Planning Commission considered the Zone Text Amendment; and
WHEREAS, at this public hearing, the City Council has analyzed this proposed project and has determined that it is not exempt from the California Environmental Quality Act ("CEQA") Sections 15070(a) regarding negative declarations, 15268 regarding ministerial projects, and 15376 regarding the definition of "person" of the CEQA Guidelines and a Negative Declaration is recommended for adoption by the City Council.

NOW THEREFORE BE IT HEREBY ORDAINED, that the City Council of the City of Banning does hereby find, determine, and resolve as follows:

SECTION 1. ENVIRONMENTAL FINDINGS.

The City Council, in light of the whole record before it, including but not limited to, the City’s Local CEQA Guidelines, the recommendation of the Community Development Department as provided in the Staff Report dated August 24, 2010, and documents incorporated therein by reference, and any other evidence (within the meaning of Public Resources Code § 21080(e) and §21082.2) within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

CEQA: The City Council has analyzed this proposed project and has determined that it is not exempt from the California Environmental Quality Act ("CEQA") under Sections 15070(a) regarding negative declarations, 15268 regarding ministerial projects, and 15376 regarding the definition of "person." Accordingly, the Negative Declaration is hereby adopted.

SECTION 2. FINDINGS.

1. The proposed Zone Text Amendment is consistent with the goals and policies of the General Plan.

Findings of Fact:

The Zone Text Amendment is consistent with the goals and policies of the General Plan, insofar as the General Plan designations and Zoning designations will not change, and the text amendments will result in clarifying the goals, policies and programs of the General Plan. The primary General Plan Land Use Goal states "A balanced, well planned community including businesses which provides a functional pattern of land uses and enhances the quality of life for all Banning residents". The amendment to the Municipal Code to provide a process and standards for operations of massage establishments, massage practitioners, and massage therapists to ensure a functional pattern of land uses and ensure that the quality of life, health, safety, and welfare of the community is not compromised.

2. The proposed Zone Text Amendment is internally consistent with the Zoning Ordinance.

Findings of Fact:

Ordinance No. 1426

44
The Zone Text Amendment is internally consistent with the existing provisions of the Zoning Ordinance. City staff has checked all sections of the Zoning Ordinance to ensure that there are no references to massage establishments or massage parlors and confirmed that with the amendment the Zoning Ordinance is internally consistent. The only reference to Massage is in Section 17.12.020, Table 17.12.020, which is hereby amended to indicate Massage Establishment.

3. That the City Council has independently reviewed and considered the requirements of the California Environmental Quality Act.

Findings of Fact:

CEQA: The City Council has analyzed this proposed project and has determined that it is not exempt from the California Environmental Quality Act ("CEQA") under Sections 15070(a) regarding negative declarations, 15268 regarding ministerial projects, and 15376 regarding the definition of "person" and a Negative Declaration is hereby adopted.

SECTION 3. Section 5.08.080(K) of the Banning Municipal Code is hereby is amended to read, in its entirety, as follows:

"K. Massage Establishment, Annual Business Tax

| Per Year | $220.00 |

Massage Establishments, Annual Investigative Fee prior to business license renewal

| Per Year | $150.00 |

SECTION 4: Chapter 5.74 of the Banning Municipal Code is hereby added and titled "Massage Establishments and Massage Therapists/Practitioners," to read as follows:

"Chapter 5.74 Massage Establishments and Massage Therapists/Practitioners

5.74.010 Purpose and intent.

The purpose of this chapter is:

To regulate Massage Establishments, Massage Therapists, and Massage Practitioners, to protect the public health, safety, and welfare of the citizens of the City and to comply with Sections 4600 – 4620 of the California Business and Professions Code.

To discourage the use of Massage therapy as an unlawful activity or an activity that violates subdivision (a) and (b) of Section 647 of the California Penal Code.

To ensure that compliance with the provisions of this chapter is not to be exclusive and compliance therewith shall not excuse noncompliance with any state and local laws or
regulations that are uniformly applied to other professional or personal services businesses, including but not limited to, all zoning regulations, business license provisions, building codes, fire codes, electrical codes, plumbing codes, and regulations applicable to professional and personal services.

5.74.020 Definitions.

Massage. The term “Massage” shall mean any method of applying pressure on, or friction against or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating the external parts of the human body with the hands or with the aid of any mechanical or electrical apparatus or appliance, or with or without supplementary aids such as rubbing alcohol, liniment, antiseptic, oil, powder, cream, ointment, or other similar preparations commonly used in this practice.

Massage Establishment. The term “Massage Establishment” shall mean any establishment having a fixed place of business where any individual, firm, association, partnership, corporation, or combination of individuals, engages in, conducts, carries on or permits to be engaged in, conducted or carried on, Massages, baths or health treatments involving Massage or baths.

Massage Practitioner. The term “Massage Practitioner” means a person who is certified by the Massage Therapy Organization under subdivision (b) of Business and Professions Code Section 4601 and who administers Massage for compensation.

Massage Therapist. The term “Massage Therapist” means a person who is certified by the Massage Therapy Organization under subdivision (c) of Business and Professions Code Section 4601 and who administers Massage for compensation.

Massage Therapy Organization (MTO). The term “Massage Therapy Organization” or “MTO” shall mean the organization created pursuant to Chapter 10.5 of Division 2 of the Business and Professions Code.

Operator. The term “Operator” shall mean the individual who manages the Massage Establishment. Evidence of management includes but is not limited to evidence that the individual has power to direct or hire and dismiss employees, control hours of operation, create policy or rules or purchase supplies. An Operator may also be an Owner.

Owner. The term “Owner” shall mean the individual(s) whose name(s) appears on the City of Banning business license.

5.74.030 Licensing requirements for a massage establishment, massage therapist, and massage practitioner.

It is unlawful for any person, association, partnership, corporation or other entity to engage in, conduct or carry on, permit to engage in, in or upon any premises within the City of Banning, the business of providing Massage in exchange for compensation without being
currently certified as a Massage Practitioner or Massage Therapist by the MTO in accordance with Sections 4600 through 4620 of the California Business and Professions Code. For all persons currently performing Massage in the City, certification by the MTO must be obtained within 120 days from passage of the ordinance. It is unlawful for any Owner or Operator to employ or permit a person to act as a Massage Practitioner or Massage Therapist, as defined in this chapter, within the city, who is not in possession of a valid, unrevoked massage therapist or massage practitioner license issued by the MTO.

5.74.040 License exemptions.

This chapter shall not apply to the following classes of individuals while engaged in the performance of the duties of their respective professions:

A. Physicians, surgeons, chiropractors, osteopaths, or physical therapists who are duly licensed to practice their respective professions in the state of California;

B. Nurses who are registered as such under the laws of the state of California;

C. Barbers, beauticians and cosmetologists, with respect to above-the-shoulder massage, including scalp, neck and shoulder massage, who are duly licensed under the laws of the state of California, in accordance with the limitations of their licenses;

D. Acupuncturists who are duly certified to practice their profession in the state of California.

5.74.050 Display of certification.

Any person to whom a MTO certification is granted shall display such certification prominently in a conspicuous place, capable of being viewed by customers, at every location where the licensed activities are performed or conducted.

5.74.060 Notice of massage therapist/practitioner employed by Massage Establishment.

A. No Unlicensed Massage Practitioner or Massage Therapists. Massage Establishments, Owners, and Operators shall only permit persons certified by the MTO to perform Massage in a Massage Establishment.

B. Notices to the City. The Owner or Operator of each Massage Establishment shall provide the Community Development Director, or his or her designee, in writing, of the following for each Massage Practitioner or Massage Therapist whose services are utilized by the Massage Establishment (1) within five days of the hiring and/or commencement of services, whichever is first, and (2) within five days of the termination of employment or discontinuation of services:

1. The name;
2. MTO certification number;
3. Date of hiring or termination date;
4. Location of each Massage Establishment where employed;
5. True and correct copy of the MTO certification;

6. Color photograph of the certificate holder.

5.74.070 Business License Required.

A. Any person, association, corporation, partnership or other entity desiring to operate a Massage Establishment or provide Massage services shall apply for and obtain a business license from the City and provide the following relevant information:

1. Full name of license holder;
2. Date of Birth;
3. State issued identification number;
4. Social Security Number;
5. Home address and phone number;
6. Work address and phone number;
7. Color photograph of the certificate holder; and
8. True and correct copy of MTO certification for those who will provide massage services.

B. Any person, association, corporation, partnership or other entity applying for or renewing a business license for the operation of a Massage Establishment, must schedule and complete an inspection of the Massage Establishment premises with the Community Development Director or his/her designee. No business license shall be granted or renewed until such inspection has been completed and the Massage Establishment is found to be in compliance with the City’s code.

5.74.080 Minimum standards for facilities and operations.

A. Operating Requirements. No license to operate a Massage Establishment shall be issued nor may any Massage Establishment operate unless the Massage Establishment premises and operation comply with each of the following minimum requirements:

1. Signage. A legible sign shall be posted at the main entrance identifying the establishment as a Massage Establishment and all such signs shall otherwise comply with the sign requirements of the City’s Zoning Ordinance.

2. Disinfection of Instruments. Instruments used for Massage shall be disinfected prior to each use. Where such instruments for Massage are employed, adequate quantities of supplies for disinfection shall be available during all hours of operation.

3. Linen Storage. Cabinets shall be utilized for the storage of clean towels and linen. After use, towels and linen shall be removed from the room or booth and stored in a clean container until laundered.

Ordinance No. 1426
4. Dressing and Toilet Facilities. Dressing and toilet facilities shall be provided for patrons.

5. Sanitary Conditions. All walls, ceilings, floors, steam and vapor rooms, and all other physical facilities for the Massage Establishment shall be kept in good repair, and maintained in a clean and sanitary condition.

6. Clean Linen. Clean and sanitary towels and linens shall be provided for patrons receiving Massage services. Towels and linens shall not be used on more than one (1) patron unless they have first been laundered and disinfected. Disposable towels and coverings shall not be used on more than one (1) patron.

7. Massage Practitioner and Massage Therapist Dress Code. All persons employed to work on the Massage Establishment premises, and including all Massage Practitioners and Massage Therapists conducting licensed activities on the Massage Establishment premises, shall be dressed in clothing made of an opaque material, and at a minimum, shall not expose any Specified anatomical areas, as defined in Section 5.84.020, and shall comply with the following requirements, as applicable:

   a. Upper Garments. All garments covering the upper torso (e.g., shirts or dresses) shall have sleeves not less than two inches in length, measuring from the top of the shoulder, and necklines not lower than two inches below the clavicle.

   b. Skirts. Hems of dresses, skirts, smocks, or other similar garments shall not be more than two inches above the top of the knee.

   c. Shorts. Cuffs or hems of shorts, culottes, pants or other similar garments shall not be more than six inches above the top of the knee.

8. Compliance with Laws. The premises to be used shall at all times comply with City, state, and federal laws.

5.74.090 Prohibited conduct.

A. Prohibited Conduct. No Massage Practitioners or Massage Therapists and/or any other employee working in a Massage Establishment, or the Massage Establishment's customers, patrons, or guests shall engage in any Specified sexual activities, as defined in Section 5.84.020, upon the premises of the Massage Establishment. No Massage Practitioner or Massage Therapist and/or other employee of a Massage Establishment may expose Specified anatomical areas, as defined in Section 5.84.020, in the presence of any patron, customer, or guests. In the course of administering Massage, no Massage Practitioner or Massage Therapist and/or other Massage Establishment employee may make intentional physical contact with the Specified anatomical areas of any customer, patron, or guests.

B. Draping. No Massage Establishment shall allow Massage Practitioners or Massage Therapists and/or any other employees working in a Massage Establishment to administer any form of Massage or come into any form of physical contact with a customer who is either fully or partially undressed, without first draping the customer's Specified anatomical areas, as defined in Section 5.84.020, if such areas would otherwise be exposed, in accordance with the accepted
standards of the American Massage Therapy Association and/or Associated Professional Massage Therapists and Allied Health Practitioners.

5.74.100 Inspection and Enforcement.

Officers of the Police Department, or employees of the Planning Division, Building and Safety Division, Code Enforcement Division and the Fire Department shall have the right to enter any Massage Establishment during regular business hours to make reasonable inspection to ascertain whether the provisions of this chapter are being met, provided reasonable and normal business operations shall not be interfered with.

5.74.110 Abatement.

Any Massage Establishment operated, conducted or maintained contrary to the provisions of this chapter shall be, and is declared to be unlawful and a public nuisance. Any violation of this chapter is subject to any and all remedies available to the City, including but not limited to, a civil action brought by the city attorney for injunctive relief, administrative or judicial nuisance abatement proceedings, criminal code enforcement proceedings, and/or civil and criminal penalties as provided by law.”

SECTION 5. Table 17.12.020 of Section 17.12.020 of the Banning Municipal Code is hereby amended to read, in its entirety, as follows:

<table>
<thead>
<tr>
<th>Zone</th>
<th>DC</th>
<th>GC</th>
<th>HSC</th>
<th>PO</th>
<th>I</th>
<th>AI</th>
<th>BP</th>
<th>IMR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Massage Parlor</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Massage Establishment</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>X</td>
</tr>
</tbody>
</table>

SECTION 6. SEVERABILITY.

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 7. EFFECTIVE DATE.

The City Clerk shall certify to the passage and adoption of this ordinance, and shall make a minute order of the passage and adoption thereof in the records of and the proceedings of the City Council at which the same is passed and adopted. This Ordinance shall take effect thirty (30) days after its 2nd reading in accordance with California law, and within fifteen (15) days
after its final passage, the City Clerk shall cause it to be published in a newspaper of general circulation.

PASSED, APPROVED, AND ADOPTED this ___ day of __________, 2010.

Robert E. Botts, Mayor
City of Banning

APPROVED AS TO FORM AND LEGAL CONTENT:

David J. Aleshire, City Attorney
Aleshire & Wynder, LLP
City of Banning, California

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1426 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the ___ day of __________, and was duly adopted at a regular meeting of said City Council on the ___ day of __________ 2010, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon, City Clerk
City of Banning
Banning, California

Ordinance No. 1426 51
ATTACHMENT 4

Resolution No. 2010-59
RESOLUTION NO. 2010-59

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA REPEALING RESOLUTION NO. 1993-158 AND AMENDING FEES FOR STATE CERTIFIED MASSAGE THERAPISTS/PRACTITIONERS

WHEREAS, Resolution No. 1993-158 was adopted by the City Council on January 11, 1994 establishing fees for massage establishment business license tax and massage therapist/massage therapist trainee permits; and

WHEREAS, SB 731 was adopted by the State in September 2008 which commenced the certification of massage practitioners and massage therapists through the State’s Massage Therapy Organization or MTO and the City has amended its Municipal Code to set forth a process for the licensing and regulation of massage establishments and State Certified massage therapists and massage practitioners in compliance with SB 731; and

WHEREAS, Resolution No. 1993-158 establishes certain fees relating to massage related businesses which are no longer in compliance with SB 731;

WHEREAS, Resolution No. 1993-158 establishes certain fees relating to massage related businesses which are no longer collected by the City; and

WHEREAS, the City of Banning desires to comply with SB 731 (which is codified in Sections 4600-4620 of the Business and Professions Code) and ensure that its fees are consistent with SB 731, the City’s massage regulations, and the City’s practices in collecting fees.

NOW THEREFORE, the City Council of the City of Banning does hereby approve and resolve as follows:

SECTION 1. That Resolution No. 1993-158, which established fees for a massage establishment business license tax and massage therapist/massage therapist trainee permits, be repealed in its entirety.

SECTION 2.

Item:                               Fee:

State Certified Massage Therapist/ $125.00
State Certified Massage Practitioner (annual fee)

SECTION 3. That this Resolution is to be given effect immediately upon adoption.
PASSED, APPROVED AND ADOPTED this ____ day of ______ 2010.

________________________________________
Robert E. Botts, Mayor
City of Banning

APPROVED AS TO FORM AND
LEGAL CONTENT:

_____________________________
David J. Aleshire, City Attorney
Aleshire & Wynder, LLP
City of Banning, California

ATTEST:

_____________________________
Marie Calderon, City Clerk
City of Banning

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2010-59, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the ____ day of _____________ 2010.

AYES:
NOES:
ABSENT:
ABSTAIN:

_____________________________
Marie Calderon, City Clerk
City of Banning

Resolution No. 2010-59
2

54
ATTACHMENT 5

Resolution No. 1993-158
RESOLUTION NO. 1993-158

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING
ADOPTING AN AMENDMENT TO RESOLUTION NO. 1993-30,
ESTABLISHING FEES FOR A MASSAGE ESTABLISHMENT BUSINESS
LICENSE TAX AND MASSAGE THERAPIST/MASSAGE THERAPIST
TRAINEE PERMITS.

The City Council of the City of Banning does hereby approve
and resolves as follows:

Section 1.

Item .................................................. Proposed Fee
Business License Tax (annual fee) ...................... $125.00
Massage Therapist Permit (annual fee)* ............... $125.00
Massage Therapist Trainee Permit (annual fee) ...... $30.00
Police Background Check (one time fee charged at
time of initial application) ......................... $25.00

*The Massage Therapist Permit annual fee shall be waived when the
individual paying the Business License Tax is the Massage
Therapist.

Section 2.

The Mayor shall sign this Resolution and the City Clerk shall
attest thereto and shall within fifteen (15) days cause it or a
summary of it to be published in the Record Gazette, and thereupon
and thereafter this Resolution shall become effective on the 30th
day after its adoption.

PASSED, APPROVED, AND ADOPTED this 11th day of January, 1994.

GARY E. REYNOLDS, Mayor
City of Banning

ATTEST:

LUCILLE M. ELIZONDO, City Clerk

6/10
CERTIFICATION

I, Lucille M. Elizondo, City Clerk of the City of Banning, do hereby certify that the foregoing Resolution 1993-158, was duly adopted by the City Council of Banning, California, at a regular meeting thereof held on the 11th day of January, 1994, by the following vote, to wit:

AYES: Councilmembers Anderson, Lewis, Smith

NOES: None

ABSENT: Councilmember Williams, Mayor Reynolds

ABSTAIN: None

LUCILLE M. ELIZONDO, City Clerk
RESOLUTION NO. 1993-158

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING
ADOPTING AN AMENDMENT TO RESOLUTION NO. 1993-30,
ESTABLISHING FEES FOR A MASSAGE ESTABLISHMENT BUSINESS
LICENSE TAX AND MASSAGE THERAPIST/MASSAGE THERAPIST
TRAINEE PERMITS.

The City Council of the City of Banning does hereby approve
and resolves as follows:

Section 1.

Item

<table>
<thead>
<tr>
<th>Proposed Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business License Tax (annual fee) plus Police Background Check</td>
</tr>
<tr>
<td>Massage Therapist Permit (annual fee)* plus Police Background Check</td>
</tr>
<tr>
<td>Massage Therapist Trainee Permit (annual fee) plus Police Background Check</td>
</tr>
</tbody>
</table>

*The Massage Therapist Permit annual fee shall be waived when the
individual acquiring the Business License for the operation of a
massage establishment is the Massage Therapist.

Section 2.

The Mayor shall sign this Resolution and the City Clerk shall
attest thereto and shall within fifteen (15) days cause it or a
summary of it to be published in the Record Gazette, and thereupon
and thereafter this Resolution shall become effective on the 30th
day after its adoption.

PASSED, APPROVED, AND ADOPTED this 23rd day of November, 1993.

GARY E. REYNOLDS, Mayor
City of Banning

ATTEST:

LUCILLE M. ELIZONDO, City Clerk
CERTIFICATION

I, Lucille M. Elizondo, City Clerk of the City of Banning, do hereby certify that the foregoing Resolution 1993-158 was introduced at a regular meeting of the City Council duly called and held on the 23rd day of November, 1993, and was approved and adopted by the following vote, to wit:

AYES: Councilmembers Anderson, Lewis, Smith, Williams, Mayor Reynolds
NOES: None
ABSENT: None
ABSTAIN: None

LUCILLE M. ELIZONDO, City Clerk
City of Banning, California
DATE: August 3, 2010
TO: Planning Commission
FROM: Zai Abu Bakar, Community Development Director
RE: Planning Commission Meeting Date Change

Based on my phone calls and conversation with each of the Planning Commissioners, changing the Planning Commission meeting date from Tuesday night to Wednesday night is not an issue. The meeting time and location remain the same. The meeting starts at 6:30 p.m. in the City Council Chambers.

The Municipal Code sets the Planning Commission meeting date, time, and location. In order to change the meeting date, the Council must adopt an ordinance amending the Code. Staff has prepared a draft Ordinance (attached) for City Council review and adoption. Staff recommends that the Planning Commission signify their agreement with this change of date.

Attachment

The City of Banning promotes and supports a high quality of life that ensures a safe and friendly environment, fosters new opportunities and provides responsive, fair treatment to all and is the pride of its citizens.
ORDINANCE NO. 1427

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AMENDING THE BANNING MUNICIPAL CODE TO CHANGE THE REGULAR MEETING DATE OF THE BANNING PLANNING COMMISSION

WHEREAS, Banning Municipal Code Section 2.28.090 directs that the bylaws and ordinances governing the Planning Commission are adopted and amended by the City Council of the City of Banning; and

WHEREAS, the Planning Commission and City staff have determined that the Commission and public would be better served by the Commission conducting its regular meetings on a night other than the first Tuesday of each month; and

WHEREAS, the Planning Commission and City staff have further determined that moving the regular Commission meeting to the first Wednesday of each month (while maintaining the current meeting start time of 6:30 p.m.) will not result in any public inconvenience; and

WHEREAS, at its regular meeting on August 3, 2010, the Planning Commission voted to recommend that the City Council change the regular Planning Commission meeting time to 6:30 p.m. of the first Wednesday each month.

WHEREAS, the City Council now desires to codify into the Banning Municipal Code a change to the regular meeting day for the Planning Commission, moving the Planning Commission’s regular meeting to the first Wednesday of each month.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 2.28.080 of the Banning Municipal Code is hereby amended to read in its entirety as follows:

“Meeting times and places.

A. The planning commission shall meet on the first Wednesday of each month at 6:30 P.M. at the City Council chambers located at 99 E. Ramsey Street.

B. Commissioners will attend special meetings as they arise.”

SECTION 2. The Mayor shall sign this ordinance and the City Clerk shall attest thereto and shall within fifteen days of its adoption cause it or a summary of it, to be published in the Record Gazette, a newspaper published and circulated in the City. Thereupon this ordinance shall take effect 30 days after adoption and be in force and effect according to law.

Ordinance No. 1427
SECTION 3. The City Clerk shall certify to the adoption of this ordinance and shall cause a copy of the same to be published in a manner prescribed by law.

PASSED, APPROVED, and ADOPTED this ______ day of ____________, 2010.

____________________
Robert E. Botts, Mayor
City of Banning

APPROVED AS TO FORM
AND LEGAL CONTENT:

____________________
David J. Aleshire, City Attorney
Aleshire & Wynder, LLP
City of Banning, California

ATTEST:

____________________
Marie A. Calderon, City Clerk
City of Banning

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1427 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the ______ day of ____________, 2010, and was duly adopted at a regular meeting of said City Council on the ______ day of ____________, 2010, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

____________________
Marie A. Calderon, City Clerk
City of Banning
Banning, California