

Council/Agency Meeting Held: _____	_____ City Clerk's Signature
Deferred/Continued to: _____	
<input type="checkbox"/> Approved <input type="checkbox"/> Conditionally Approved <input type="checkbox"/> Denied	
Council Meeting Date: 10/5/2009	Department ID Number: PL 09-19

**CITY OF HUNTINGTON BEACH
REQUEST FOR CITY COUNCIL ACTION**

SUBMITTED TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS

SUBMITTED BY: FRED A. WILSON, CITY ADMINISTRATOR

PREPARED BY: SCOTT HESS, DIRECTOR OF PLANNING

KENNETH W. SMALL, CHIEF OF POLICE

[Handwritten signatures and initials: "FH", "SH", "KW Small", "ACTING CHIEF"]

SUBJECT: APPROVE ZONING TEXT AMENDMENT NO. 09-003 AND AMENDMENTS TO MUNICIPAL CODE (MESSAGE REGULATIONS)

Statement of Issue, Funding Source, Recommended Action, Alternative Action(s), Analysis, Environmental Status, Attachment(s)

Statement of Issue:

Transmitted for your consideration is Zoning Text Amendment No. 09-003 to amend the Huntington Beach Zoning and Subdivision Ordinance (HBZSO) Chapters 204 and 212 and amendments to Municipal Code Chapter 5.24 to modify the City's regulations as they pertain to massage businesses. The proposed amendments reclassify "massage businesses" as a Personal Services use as defined in the HBZSO and require massage professionals to obtain certification by the State. The Planning Commission and staff recommend approval to bring the City's regulations into compliance with State law.

Funding Source: Not applicable.

Recommended Action:

Motion to:

1. "Approve Zoning Text Amendment No. 09-003 with findings for approval (ATTACHMENT NO. 1) and adopt Ordinance No. 3842, An Ordinance of the City of Huntington Beach Amending Chapter 204 of the Huntington Beach Zoning and Subdivision Ordinance Relating to Use Classifications, and adopt Ordinance No. 3843, An Ordinance of the City of Huntington Beach Amending Chapter 212 of the Huntington Beach Zoning and Subdivision Ordinance Relating to Industrial Districts (ATTACHMENT NO. 2);* and"

REQUEST FOR ACTION

MEETING DATE: 10/5/2009

DEPARTMENT ID NUMBER: PL 09-19

2. Approve Municipal Code Amendment and adopt Ordinance No. 3844, An Ordinance of the City of Huntington Beach Amending Chapter 5.24 of the Huntington Beach Municipal Code Relating to Massage Establishments (ATTACHMENT NO.4)."

*Note: Motion #1 was reviewed and approved by the Planning Commission on September 9, 2009:

THE MOTION MADE BY SCANDURA, SECONDED BY DELGLEIZE TO APPROVE ZONING TEXT AMENDMENT NO. 09-003 WITH FINDINGS FOR APPROVAL (ATTACHMENT NO. 1) CARRIED BY THE FOLLOWING VOTE:

AYES: SPEAKER, MANTINI, FARLEY, SHIER-BURNETT, SCANDURA, LIVENGOOD, DELGLEIZE
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

MOTION PASSED

Alternative Action(s):

The City Council may make the following alternative motion(s):

1. "Deny Zoning Text Amendment No. 09-003 with Findings for Denial and do not approve the Ordinance amending the Municipal Code."
2. "Continue Zoning Text Amendment No. 09-003 and the Municipal Code changes and direct staff accordingly."

Analysis:

A. PROJECT PROPOSAL:

Applicant: City of Huntington Beach

Location: Citywide

Zoning Text Amendment No. 09-003 represents a request to amend Chapter 204 (Use Classifications) and Chapter 212 (Industrial Districts) of the Huntington Beach Zoning and Subdivision Ordinance. Zoning Text Amendment No. 09-003 would implement changes to allow massage establishments in the Commercial and Industrial zones as Personal Services uses. The legislative draft is provided in Attachment No. 3 and includes the following:

REQUEST FOR ACTION

MEETING DATE: 10/5/2009

DEPARTMENT ID NUMBER: PL 09-19

- Amends Chapter 204, Section 204.10 Commercial Use Classifications (V) Personal Enrichment Services, deleting massage as a Personal Enrichment Services use.
- Amends Chapter 204, Section 204.10 Commercial Use Classifications (W) Personal Services, adding massage as a Personal Service Use, as regulated by Chapter 5.24.
- Amends Chapter 204, Section 204.10, (AA) Sex Oriented Businesses, deleting reference to Chapter 5.24 of the Huntington Beach Municipal Code.
- Amends Chapter 212 Industrial Districts, Section 212.04 Sex Oriented Businesses deleting reference to Chapter 5.24 of Huntington Beach Municipal

Municipal Code Amendment represents the necessary amendments to the HB Municipal Code to comply with State Law pursuant to SB 731, which transfers the licensing authority for massage businesses from individual cities to the State. The legislative draft is provided in Attachment No. 5.

The proposed Zoning Text Amendment and the amendment to the Municipal Code were initiated by the City in response to recent legislation, described below, that allows for a Statewide certification process.

B. BACKGROUND

In September of 2008, Governor Schwarzenegger signed Senate Bill 731 into law, creating the California Massage Therapy Council (CAMTC) which is tasked with the mission of establishing uniform regulatory and licensing procedures for massage therapists and practitioners in the State. Under the guidelines of this bill, cities can adopt the licensing authority of the CAMTC, and therapists can voluntarily choose to be certified by the State.

The intent of SB 731 is to create a voluntary certification process for the massage therapy profession that will enable consumers to easily identify credible certified massage therapists, regulated and monitored by CAMTC. It further assures that certified massage therapists have completed sufficient training at approved schools. There will be two types of massage therapy certification programs: Massage Technicians and Practitioners, with the difference being in practical educational hours of 250 for Technicians and 500 for Practitioners. In addition, the certification process requires further classroom education including anatomy and physiology. The most difficult obstacle for therapists throughout the State has been that there are no consistent state-wide standards with respect to licensing, continuing education and enforcement in the massage therapy field. Today, the certification criteria varies for each city; however, most require certain basics such as fingerprinting and training verification. In comparison, the new State certification process will require fingerprinting, Department of Justice (DOJ) review, as well as background qualifications similar to other service licensing requirements.

REQUEST FOR ACTION

MEETING DATE: 10/5/2009

DEPARTMENT ID NUMBER: PL 09-19

To comply with State law, the City is proposing changes to the Huntington Beach Zoning and Subdivision Ordinance and the Huntington Beach Municipal Code, which regulate massage and massage establishments. A community meeting was held on August 19, 2009, to introduce the pending Zoning Text Amendment and promote a discussion regarding the provisions of the State Law requiring the amendment. The majority consensus was that business owners and massage professionals were in favor of the certification process.

C. PLANNING COMMISSION MEETING AND RECOMMENDATION:

The Planning Commission held a study session on August 25, 2009, to discuss the proposed code amendments. The Planning Commission held a public hearing on September 9, 2009, regarding the Zoning Text Amendment. Information about the Municipal Code changes was also made available at this time. The Planning Commission inquired about the practical training required by the certification process outlined by the State. Staff explained that, while the particular requirements were not known, the required hours of classroom study and practical experience would most likely be similar to the licensing for Cosmetologist, which requires hands-on practical training experience as part of their curriculum. The Commission also asked which laws are enforced to control prostitution in massage establishments. The Police Department stated that they will continue to monitor massage establishments and enforce applicable State laws and the Municipal Code. There were no speakers who spoke in favor or against the proposed amendments.

D. STAFF ANALYSIS AND RECOMMENDATION:

Presently in the State of California, each city establishes licensing criteria regulating massage therapy businesses and the certification process. In the City of Huntington Beach, licensing criteria can be found in Chapter 5.24 of the Huntington Beach Municipal Code. In conjunction with the licensing are the zoning requirements, which stipulate the locations for massage businesses.

Use Classification Change

The City's Zoning and Subdivision Ordinance currently allows massage businesses in Commercial and Industrial areas. This overall provision will not change with the proposed Zoning Text Amendment. The HBZSO also currently classifies massage businesses as either a Sexually Oriented Business (SOB) or a Personal Enrichment Service established as an ancillary use (secondary use to a primary business) only. For example, ancillary massage businesses are located in health clubs, fitness studios, reducing salons, or spas. The proposed Zoning Text Amendment would change the classification of massage business from a Personal Enrichment Services use to a Personal Services use. Personal Services businesses include barber and beauty shops, seamstresses, tailors, shoe repair shops, dry-cleaning businesses (excluding large-scale bulk cleaning plants), photo-copying, and self-service laundries.

REQUEST FOR ACTION

MEETING DATE: 10/5/2009

DEPARTMENT ID NUMBER: PL 09-19

The effect of this change in classification in the Zoning and Subdivision Ordinance is twofold. First, it results in the removal of the square footage restriction for massage businesses in the Commercial Zones, which were classified as Personal Enrichment Service uses. Presently, the City imposes a not-to-exceed 50 percent of the lease space square footage restriction on massage businesses. Because the CAMTC will conduct thorough background checks with the Department of Justice and have the regulatory means to revoke licensing, the City agrees with the State that from a land use perspective the limits on size are not needed. Second, by eliminating massage businesses from the Sexually Oriented Business classification and reclassifying them as Personal Services, in Industrial areas, massage businesses will only be allowed in conjunction with a mixed use project, similar to all other Personal Services establishments. This change will limit the location options for future massage businesses in industrial areas as there are limited mixed-use industrial developments or development opportunities in the city.

Municipal Code Changes

Representatives from the City Attorney's Office, Police Department, and Planning Department have concurrently drafted changes to Huntington Beach Municipal Code Chapter 5.24. The Municipal Code will require that all massage establishments or businesses obtain State certification. The amendment to Chapter 5.24 of the Huntington Beach Municipal Code reflects what the Police Department believes is pertinent. The deleted text from Chapter 5.24 of the HBMC is replaced with the regulations listed in SB 731. This transfers the licensing and monitoring responsibility from the City to the State. The City by right will now require that anyone desiring to conduct a massage establishment or business in the City of Huntington Beach obtain State massage certification.

State Certification Process

Under the new state law, a City may adopt land use and zoning requirements applicable to massage therapists, practitioners or businesses, provided these requirements are no different than the requirements uniformly applied to other professional or personal services businesses. Under the new State law, once a massage therapist or practitioner is certified they must be treated the same as any other Personal Service business. However, this only is applicable to massage businesses that obtain state certification. State Law allows cities the authority to regulate those massage businesses that are not certified. The City of Huntington Beach has decided to regulate the non-certified massage businesses by requiring certification thereby having one standard that applies to all massage businesses/practitioners citywide. This effort will create consistency in the application of rules and regulations. The bill allows cities to adopt reasonable health and safety requirements.

REQUEST FOR ACTION

MEETING DATE: 10/5/2009

DEPARTMENT ID NUMBER: PL 09-19

Upon adoption of the City's ordinance by the City Council, all existing and new massage therapists and practitioners conducting business in Huntington Beach or desiring to practice in Huntington Beach will have until March 1, 2010, to obtain certification from the CAMTC to continue to have or establish a valid massage business license in the City of Huntington Beach.

E. SUMMARY

Zoning Text Amendment No. 09-003 amends Chapter 204 Use Classifications and Chapter 212 Industrial Districts of the Huntington Beach Zoning and Subdivision Ordinance. Staff recommends that the City Council approve Zoning Text Amendment No. 09-003 and the amendment to Chapter 5.24 Massage Establishments of the Huntington Beach Municipal Code for the following reasons:

- Amendments will comply with State Law provisions under Senate Bill 731, which limits land use restrictions on massage businesses complying with the State certification process.
- Amendments will allow massage businesses in the City to use the new State process, which will enable consumers to identify credible professionals having obtained the appropriate training, licensing and testing to be designated as a certified massage therapist or practitioner.

Strategic Plan

Enhance Economic Development: The amendments to the ZSO regulating Massage businesses will create a consistent licensing process in the City of Huntington Beach that will assist existing and new businesses.

Environmental Status:

The proposed project is categorically exempt pursuant to the City Council Resolution No. 4501, Class 20, which supplements the California Environmental Quality Act.

REQUEST FOR ACTION

MEETING DATE: 10/5/2009

DEPARTMENT ID NUMBER: PL 09-19

Attachment(s):

City Clerk's Page Number	No.	Description
9	1.	Suggested Findings for Approval
11	2.	Ordinance No. <u>3842</u> , An Ordinance of the City of Huntington Beach Amending Chapter 204 of the Huntington Beach Zoning and Subdivision Ordinance Relating to Use Classifications and Ordinance No. <u>3843</u> , An Ordinance of the City of Huntington Beach Amending Chapter 212 of the Huntington Beach Zoning and Subdivision Ordinance Relating to Industrial Districts
31	3.	Legislative Drafts (Chapters 204 and 212 HBZSO)
59	4.	Ordinance No. <u>3844</u> , An Ordinance of the City of Huntington Beach Amending Chapter 5.24 of the Huntington Beach Municipal Code Relating to Massage Establishments
71	5.	Legislative Draft (Chapter 5.24 HBMC)
89	6.	Planning Commission Staff Report dated September 9, 2009
101	7.	Power Point Presentation

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ATTACHMENT #1

ATTACHMENT NO. 1

SUGGESTED FINDINGS OF APPROVAL

ZONING TEXT AMENDMENT NO. 09-003

SUGGESTED FINDINGS FOR APPROVAL - ZONING TEXT AMENDMENT NO. 09-003:

1. Zoning Text Amendment No. 09-003 amending Chapters 204 Use Classifications and 212 Industrial Districts of the Huntington Beach Zoning and Subdivision Ordinance is consistent with the goals, objectives, policies, general land uses and programs specified in the General Plan and any applicable specific plan in compliance with State Law pursuant to Senate Bill 731 establishing certification criteria for Massage Therapy Professionals and consistent regulatory requirements for Massage Therapy Professionals conducting business in the City of Huntington Beach.
2. In the case of a general land use provision, the zoning text amendment is compatible with the uses authorized in, and the standards prescribed for, the zoning district for which it is proposed because the State recognizes that a massage business is in the same service oriented business classification as other service oriented personal services, and therefore, the State assumes the responsibility of the licensing and regulating process for massage professionals throughout the State.
3. A community need is demonstrated for the change proposed because the certification process recognized by zoning text amendment will enable consumers to identify credible professionals having obtained the appropriate training, licensing and testing to be designated as a Certified Massage Therapist or Practitioner.
4. Its adoption of these ordinances will be in conformity with public convenience, general welfare and good zoning practice. The text amendment would recognize current State law facilitates a standardization process throughout the city. The certification process recognized by the zoning text amendment will enable consumers to identify credible professionals having obtained the appropriate training, licensing and testing to be designated as a certified massage therapist or practitioner.

ATTACHMENT #2

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ORDINANCE NO. 3842

AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH
AMENDING CHAPTER 204 OF THE HUNTINGTON BEACH ZONING
AND SUBDIVISION ORDINANCE RELATING
TO USE CLASSIFICATIONS

The City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. Section 204.10 of the Huntington Beach Zoning and Subdivision Ordinance is hereby amended to read as follows:

204.10 Commercial Use Classifications

- A. Ambulance Services. Provision of emergency medical care or transportation, including incidental storage and maintenance of vehicles as regulated by Chapter 5.20.
- B. Animal Sales and Services.
 1. Animal Boarding. Provision of shelter and care for small animals on a commercial basis. This classification includes activities such as feeding, exercising, grooming, and incidental medical care, and kennels.
 2. Animal Grooming. Provision of bathing and trimming services for small animals on a commercial basis. This classification includes boarding for a maximum period of 48 hours.
 3. Animal Hospitals. Establishments where small animals receive medical and surgical treatment. This classification includes only facilities that are entirely enclosed, soundproofed, and air-conditioned. Grooming and temporary (maximum 30 days) boarding of animals are included, if incidental to the hospital use.
 4. Animals: Retail Sales. Retail sales and boarding of small animals, provided such activities take place within an entirely enclosed building. This classification includes grooming, if incidental to the retail use, and boarding of animals not offered for sale for a maximum period of 48 hours.
 5. Equestrian Centers. Establishments offering facilities for instruction in horseback riding, including rings, stables, and exercise areas.
 6. Pet Cemetery. Land used or intended to be used for the burial of animals, ashes or remains of dead animals, including placement or erection of markers, headstones or monuments over such places of burial.

- C. Artists' Studios. Work space for artists and artisans, including individuals practicing one of the fine arts or performing arts, or skilled in an applied art or craft.
- D. Banks and Savings and Loans. Financial institutions that provide retail banking services to individuals and businesses. This classification includes only those institutions engaged in the on-site circulation of cash money. It also includes businesses offering check-cashing facilities.
 - 1. With Drive-up Service. Institutions providing services accessible to persons who remain in their automobiles.
- E. Building Materials and Services. Retailing, wholesaling, or rental of building supplies or equipment. This classification includes lumber yards, tool and equipment sales or rental establishments, and building contractors' yards, but excludes establishments devoted exclusively to retail sales of paint and hardware, and activities classified under Vehicle/Equipment Sales and Services.
- F. Catering Services. Preparation and delivery of food and beverages for off-site consumption without provision for on-site pickup or consumption. (See also Eating and Drinking Establishments.)
- G. Commercial Filming. Commercial motion picture or video photography at the same location more than six days per quarter of a calendar year. (See also Chapter 5.54, Commercial Photography)
- H. Commercial Recreation and Entertainment. Provision of participant or spectator recreation or entertainment. This classification includes theaters, sports stadiums and arenas, amusement parks, bowling alleys, billiard parlors and poolrooms as regulated by Chapter 9.32; dance halls as regulated by Chapter 5.28; ice/roller skating rinks, golf courses, miniature golf courses, scale-model courses, shooting galleries, tennis/racquetball courts, health/fitness clubs, pinball arcades or electronic games centers, cyber café having more than 4 coin-operated game machines as regulated by Chapter 9.28; card rooms as regulated by Chapter 9.24; and fortune telling as regulated by Chapter 5.72.
 - 1. Limited. Indoor movie theaters, game centers and performing arts theaters and health/fitness clubs occupying less than 2,500 square feet.
- I. Communications Facilities. Broadcasting, recording, and other communication services accomplished through electronic or telephonic mechanisms, but excluding Utilities (Major). This classification includes radio, television, or recording studios; telephone switching centers; telegraph offices; and wireless communication facilities.
- J. Eating and Drinking Establishments. Businesses serving prepared food or beverages for consumption on or off the premises.

1. With Fast-Food or Take-Out Service. Establishments where patrons order and pay for their food at a counter or window before it is consumed and may either pick up or be served such food at a table or take it off-site for consumption.
 - a. Drive-through. Service from a building to persons in vehicles through an outdoor service window.
 - b. Limited. Establishments that do not serve persons in vehicles or at a table.
 2. With Live Entertainment/Dancing. An eating or drinking establishment where dancing and/or live entertainment is allowed. This classification includes nightclubs subject to the requirements of Chapter 5.44 of the Municipal Code.
- K. Food and Beverage Sales. Retail sales of food and beverages for off-site preparation and consumption. Typical uses include groceries, liquor stores, or delicatessens. Establishments at which 20 percent or more of the transactions are sales of prepared food for on-site or take-out consumption shall be classified as Catering Services or Eating and Drinking Establishments.
1. With Alcoholic Beverage Sales. Establishments where more than 10 percent of the floor area is devoted to sales, display and storage of alcoholic beverages.
- L. Food Processing. Establishments primarily engaged in the manufacturing or processing of food or beverages for human consumption and wholesale distribution.
- M. Funeral and Interment Services. Establishments primarily engaged in the provision of services involving the care, preparation or disposition of human dead other than in cemeteries. Typical uses include crematories, columbariums, mausoleums or mortuaries.
- N. Horticulture. The raising of fruits, vegetables, flowers, trees, and shrubs as a commercial enterprise.
- O. Laboratories. Establishments providing medical or dental laboratory services; or establishments with less than 2,000 square feet providing photographic, analytical, or testing services. Other laboratories are classified as Limited Industry.
- P. Maintenance and Repair Services. Establishments providing appliance repair, office machine repair, or building maintenance services. This classification excludes maintenance and repair of vehicles or boats; see (Vehicle/Equipment Repair).
- Q. Marine Sales and Services. Establishments providing supplies and equipment for shipping or related services or pleasure boating. Typical uses include chandleries, yacht brokerage and sales, boat yards, boat docks, and sail-making lofts.

- R. Reserved.
- S. Nurseries. Establishments in which all merchandise other than plants is kept within an enclosed building or a fully screened enclosure, and fertilizer of any type is stored and sold in package form only.
- T. Offices, Business and Professional. Offices of firms or organizations providing professional, executive, management, or administrative services, such as architectural, engineering, graphic design, interior design, real estate, insurance, investment, legal, veterinary, and medical/dental offices. This classification includes medical/dental laboratories incidental to an office use, but excludes banks and savings and loan associations.
- U. Pawn Shops. Establishments engaged in the buying or selling of new or secondhand merchandise and offering loans secured by personal property and subject to Chapter 5.36 of the Municipal Code.
- V. Personal Enrichment Services. Provision of instructional services or facilities, including photography, fine arts, crafts, dance or music studios, driving schools, business and trade schools, and diet centers, reducing salons, fitness studios, and yoga or martial arts studios
- W. Personal Services. Provision of recurrently needed services of a personal nature. This classification includes barber and beauty shops, seamstresses, tailors, shoe repair shops, dry-cleaning businesses (excluding large-scale bulk cleaning plants), photocopying, self-service laundries, and massage as regulated by Chapter 5.24.
- X. Research and Development Services. Establishments primarily engaged in industrial or scientific research, including limited product testing. This classification includes electron research firms or pharmaceutical research laboratories, but excludes manufacturing, except of prototypes, or medical testing and analysis.
- Y. Retail Sales. The retail sale of merchandise not specifically listed under another use classification. This classification includes department stores, drug stores, clothing stores, and furniture stores, and businesses retailing the following goods: toys, hobby materials, handcrafted items, jewelry, cameras, photographic supplies, medical supplies and equipment, electronic equipment, records, sporting goods, surfing boards and equipment, kitchen utensils, hardware, appliances, antiques, art supplies and services, paint and wallpaper, carpeting and floor covering, office supplies, bicycles, and new automotive parts and accessories (excluding service and installation).
- Z. Secondhand Appliances and Clothing Sales. The retail sale of used appliances and clothing by secondhand dealers who are subject to Chapter 5.36. This classification excludes antique shops primarily engaged in the sale of used furniture and accessories other than appliances, but includes junk shops.

- AA. Sex Oriented Businesses. Establishments as regulated by Chapter 5.70; and figure model studios as regulated by Chapter 5.60.
- BB. Swap Meets, Indoor/Flea Markets. An occasional, periodic or regularly scheduled market held within a building where groups of individual vendors offer goods for sale to the public.
- CC. Swap Meets, Recurring. Retail sale or exchange of handcrafted or secondhand merchandise for a maximum period of 32 consecutive hours, conducted by a sponsor on a more than twice yearly basis.
- DD. Tattoo Establishment. Premises used for the business of marking or coloring the skin with tattoos as regulated by Chapter 8.70.
- EE. Travel Services. Establishments providing travel information and reservations to individuals and businesses. This classification excludes car rental agencies.
- FF. Vehicle/Equipment Sales and Services.
1. Automobile Rentals. Rental of automobiles, including storage and incidental maintenance, but excluding maintenance requiring pneumatic lifts.
 2. Automobile Washing. Washing, waxing, or cleaning of automobiles or similar light vehicles.
 3. Commercial Parking Facility. Lots offering short-term or long-term parking to the public for a fee.
 4. Service Stations. Establishments engaged in the retail sale of gas, diesel fuel, lubricants, parts, and accessories. This classification includes incidental maintenance and minor repair of motor vehicles, but excluding body and fender work or major repair of automobiles, motorcycles, light and heavy trucks or other vehicles.
 5. Vehicle/Equipment Repair. Repair of automobiles, trucks, motorcycles, mobile homes, recreational vehicles, or boats, including the sale, installation, and servicing of related equipment and parts. This classification includes auto repair shops, body and fender shops, transmission shops, wheel and brake shops, and tire sales and installation, but excludes vehicle dismantling or salvage and tire retreading or recapping.
 - a. Limited. Light repair and sale of goods and services for vehicles, including brakes, muffler, tire shops, oil and lube, and accessory uses, but excluding body and fender shops, upholstery, painting, and rebuilding or reconditioning of vehicles.
 6. Vehicle/Equipment Sales and Rentals. Sale or rental of automobiles, motorcycles, trucks, tractors, construction or

agricultural equipment, manufactured homes, boats, and similar equipment, including storage and incidental maintenance.

7. Vehicle Storage. The business of storing or safekeeping of operative and inoperative vehicles for periods of time greater than a 24 hour period, including, but not limited to, the storage of parking tow-aways, impound yards, and storage lots for automobiles, trucks, buses and recreational vehicles, but not including vehicle dismantling.

GG. Visitor Accommodations.

1. Bed and Breakfast Inns. Establishments offering lodging on a less than weekly basis in a converted single-family or multi-family dwelling or a building of residential design, with incidental eating and drinking service for lodgers only provided from a single kitchen.
2. Hotels and Motels. Establishments offering lodging on a weekly or less than weekly basis. Motels may have kitchens in no more than 25 percent of guest units, and "suite" hotels may have kitchens in all units. This classification includes eating, drinking, and banquet service associated with the facility.
3. Condominium – Hotel. Facility providing overnight visitor accommodations where ownership of at least some of the individual guestrooms (units) within the larger building or complex is in the form of separate condominium ownership interests, as defined in California Civil Code section 1351(f). The primary function of the Condominium-Hotel is to provide overnight transient visitor accommodations within every unit that is available to the general public on a daily basis year-round, while providing both general public availability and limited owner occupancy of those units that are in the form of separate condominium ownership interests.
4. Fractional Ownership Hotel. Facility providing overnight visitor accommodations where at least some of the guestrooms (units) within the facility are owned separately by multiple owners on a fractional time basis. A fractional time basis means that an owner receives exclusive right to use of the individual unit for a certain quantity of days per year and each unit available for fractional ownership will have multiple owners.

HH. Warehouse and Sales Outlets. Businesses which store large inventories of goods in industrial-style buildings where these goods are not produced on the site but are offered to the public for sale.

II. Quasi Residential

1. Residential Hotels. Buildings with 6 or more guest rooms without kitchen facilities in individual rooms, or kitchen facilities for the exclusive use of guests, and which are intended for occupancy on a weekly or monthly basis.
2. Single Room Occupancy. Buildings designed as a residential hotel consisting of a cluster of guest units providing sleeping and living facilities in which sanitary facilities and cooking facilities are provided within each unit; tenancies are weekly or monthly.
3. Timeshare. Any arrangement, plan, or similar program, other than an exchange program, whereby a purchaser receives ownership rights in or the right to use accommodations for a period of time less than a full year during any given year, on a recurring basis for more than one year, but not necessarily for consecutive years.

SECTION 2. This Ordinance shall become effective 30 days after its adoption.

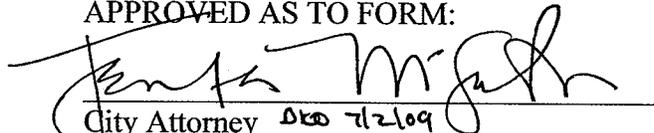
PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the _____ day of _____, 2009.

Mayor

ATTEST:

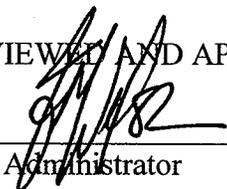
City Clerk

APPROVED AS TO FORM:



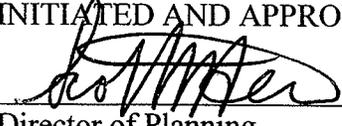
City Attorney *OKO 7/2/09*
7.6.09

REVIEWED AND APPROVED:



City Administrator

INITIATED AND APPROVED:



Director of Planning

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ORDINANCE NO. 3843

AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH
AMENDING CHAPTER 212 OF THE HUNTINGTON BEACH ZONING
AND SUBDIVISION ORDINANCE RELATING
TO INDUSTRIAL DISTRICTS

The City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. Section 212.04 of the Huntington Beach Zoning and Subdivision Ordinance is hereby amended to read as follows:

212.04 IG and IL Districts: Land Use Controls

In the following schedules, letter designations are used as follows:

"P" designates use classifications permitted in the I districts.

"L" designates use classifications subject to certain limitations prescribed by the "Additional Provisions" which follow.

"PC" designates use classifications permitted on approval of a conditional use permit by the Planning Commission.

"ZA" designates use classifications permitted on approval of a conditional use permit by the Zoning Administrator.

"TU" designates use classifications allowed upon approval of a temporary use permit by the Zoning Administrator.

"P/U" for an accessory use means that the use is permitted on the site of a permitted use, but requires a conditional use permit on the site of a conditional use.

Use classifications that are not listed are prohibited. Letters in parentheses in the "Additional Provisions" column refer to requirements following the schedule or located elsewhere in this ordinance. Where letters in parentheses are opposite a use classification heading, referenced provisions shall apply to all use classifications under the heading.

IG AND IL DISTRICTS: LAND USE CONTROLS	P - Permitted L - Limited (see <u>Additional Provisions</u>) PC - Conditional use permit approved by Planning Commission ZA - Conditional use permit approved by Zoning Administrator TU - Temporary Use Permit P/U - Requires conditional use permit on site of conditional use - - Not Permitted
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	IG	IL	Additional Provisions
Residential			
Group Residential	PC	PC	(J)
Public and Semipublic			(A)(M)
Community and Human Service Facilities	PC	PC	(L)
Day Care, General	ZA	ZA	
Heliports	PC	PC	(O)
Maintenance & Service Facilities	ZA	ZA	
Public Safety Facilities	P	P	
Religious Assembly	ZA	ZA	
Schools, Public or Private	L-6	L-6	
Utilities, Major	PC	PC	
Utilities, Minor	L-7	L-7	(P)
Commercial Uses			(D)(M)
Ambulance Services	ZA	ZA	
Animal Sales and Services			
Animal Boarding	ZA	ZA	
Animal Hospitals	ZA	ZA	
Artists' Studios	P	P	
Banks and Savings and Loans	L-1	L-1	
Building Materials and Services	P	P	
Catering Services	-	P	
Commercial Filming	ZA	ZA	
Commercial Recreation and Entertainment	L-2	L-2	
Communication Facilities	L-12	L-12	
Eating & Drinking Establishments w/Live Entertainment	L-3 ZA	L-3 ZA	(S)(U)
Food & Beverage Sales	ZA	ZA	
Hospitals and Medical Clinics	-	PC	
Laboratories	P	P	
Maintenance & Repair Services	P	P	
Marine Sales and Services	P	P	
Nurseries	P	P	
Offices, Business & Professional	L-1	L-1	(H)

IG AND IL	P - Permitted
DISTRICTS:	L - Limited (see <u>Additional Provisions</u>)
LAND USE	PC - Conditional use permit approved by Planning Commission
CONTROLS	ZA - Conditional use permit approved by Zoning Administrator
	TU - Temporary Use Permit
	P/U - Requires conditional use permit on site of conditional use
	- Not Permitted

	IG	IL	Additional Provisions
Personal Enrichment	L-9	L-9	(U)
Personal Services	L-1	L-1	
Quasi Residential	PC	PC	(K)
Research & Development Services	P	P	
Sex Oriented Businesses (regulated by HBMC Chapter 5.70)	L-11	L-11	
Sex Oriented Businesses (regulated by HBMC Chapter 5.60)	PC	PC	(R)
Swap Meets, Indoor/Flea Markets	PC	PC	(Q)
Vehicle/Equipment Sales & Services			
Service Stations	L-4	L-4	
Vehicle/Equipment Repair	P	P	
Vehicle/Equip. Sales/Rentals	L-5	L-5	
Vehicle Storage	P	ZA	(I)
Visitor Accommodations	ZA	ZA	
Warehouse and Sales Outlets	L-8	L-8	
Industrial (See Chapter 204)			(B)(M)(N)
Industry, Custom	P	P	
Industry, General	P	P	
Industry, Limited	P	P	
Industry, R & D	P	P	
Wholesaling, Distribution & Storage	P	P	
Accessory Uses			
Accessory Uses and Structures	P/U	P/U	(C)
Temporary Uses			
Commercial Filming, Limited	P	P	(T)
Real Estate Sales	P	P	
Trade Fairs	P	P	(E)
Nonconforming Uses			(F)

IG AND IL Districts: Additional Provisions

- L-1 Only allowed upon approval of a conditional use permit by the Zoning Administrator for a mixed use project, subject to the following requirements:
- Minimum site area: 3 acres
- Maximum commercial space: 35 percent of the gross floor area and 50 percent of the ground floor area of buildings fronting on an arterial highway.
- Phased development: 25 percent of the initial phase must be designed for industrial occupancy. For projects over 500,000 square feet, the initial phase must include 5 percent of the total amount of industrial space or 50,000 square feet of industrial space, whichever is greater.
- L-2 Allowed upon approval of a conditional use permit by the Zoning Administrator when designed and oriented for principal use by employees of the surrounding industrial development or when designed for general public use, after considering vehicular access and parking requirements.
- L-3 Allowed upon approval of a conditional use permit by the Zoning Administrator when in a free-standing structure or as a secondary use in a building provided that no more than 20 percent of the floor area is occupied by such a use.
- L-4 Only stations offering services primarily oriented to businesses located in an I District are allowed with a conditional use permit by the Planning Commission.
- L-5 No new or used automobile, truck or motorcycle retail sales are permitted.
- L-6 Only schools offering higher education curriculums are allowed with conditional use permit approval by the Planning Commission. No day care, elementary or secondary schools are permitted.
- L-7 Recycling Operations as an accessory use are permitted; recycling operations as a primary use are allowed upon approval of a conditional use permit by the Zoning Administrator.
- L-8 Allowed upon conditional use permit approval by the Planning Commission when a single building with a minimum area of 100,000 square feet is proposed on a site fronting an arterial. The primary tenant shall occupy a minimum 95% of the floor area and the remaining 5% may be occupied by secondary tenants.
- L-9 Permitted if the space is 5,000 square feet or less; allowed by Neighborhood Notification pursuant to Chapter 241 if the space is over 5,000 square feet.
- L-10 RESERVED

IG AND IL Districts: Additional Provisions (continued)

L-11 Allowed subject to the following requirements:

- A. A proposed sex oriented business shall be at least five hundred feet (500') from any residential use, school, park and recreational facility, or any building used for religious assembly (collectively referred to as a "sensitive use") and at least seven hundred fifty feet (750') from another sex oriented business. For purposes of these requirements, all distances shall be measured from the lot line of the proposed sex oriented business to the lot line of the sensitive use or the other sex oriented business. The term "residential use" means any property zoned RL, RM, RMH, RH, RMP, and any properties with equivalent designations under any specific plan.

To determine such distances the applicant shall submit for review a straight line drawing depicting the distances from the lot line of the parcel of land on which the sex oriented business is proposed which includes all the proposed parking and:

1. the lot line of any other sex oriented business within seven hundred fifty feet (750') of the lot line of the proposed sex oriented business; and
 2. the lot line of any building used for religious assembly, school, or park and recreational facility within five hundred (500') feet of the lot line of the proposed sex oriented business; and
 3. the lot line of any parcel of land zoned RL, RM, RMH, RH, and RMP and any parcels of land with equivalent designations under any specific plans within five hundred feet (500') of the lot line of the proposed sex oriented business.
- B. The front facade of the building, including the entrance and signage, shall not be visible from any major, primary or secondary arterial street as designated by the Circulation Element of the General Plan adopted May, 1996, with the exception of Argosy Drive.
- C. Prior to or concurrently with applying for a building permit and/or a certificate of occupancy for the building, the applicant shall submit application for Planning Department Staff Review of a sex oriented business zoning permit with the drawing described in subsection A, a technical site plan, floor plans and building elevations, and application fee. Within ten (10) days of submittal, the Director shall determine if the application is complete. If the application is deemed incomplete, the applicant may resubmit a completed application within ten (10) days. Within thirty days of receipt of a completed

application, the Director shall determine if the application complies with the applicable development and performance standards of the

IG AND IL Districts: Additional Provisions (continued)

Huntington Beach Zoning and Subdivision Ordinance. Said standards include but are not limited to the following:

1. Chapter 203, Definitions; Chapter 212, Industrial Districts; Chapter 230, Site Standards; Chapter 231, Off-Street Parking & Loading Provisions; Chapter 232, Landscape Improvements; and Chapter 236, Nonconforming Uses and Structures.
 2. Chapter 233.08(b), Signs. Signage shall conform to the standards of the Huntington Beach Zoning and Subdivision Ordinance Code except
 - a. that such signs shall contain no suggestive or graphic language, photographs, silhouettes, drawings, statues, monuments, sign shapes or sign projections, or other graphic representations, whether clothed or unclothed, including without limitation representations that depict "specified anatomical areas" or "specified sexual activities"; and
 - b. only the smallest of the signs permitted under Chapter 233.08(b) shall be visible from any major, primary or secondary arterial street, such streets shall be those designated in the Circulation Element of the General Plan adopted May, 1996, with the exception of Argosy Drive.
 3. Compliance with Huntington Beach Municipal Code Chapter 5.70.
- D. The Director shall grant or deny the application for a sex oriented business zoning permit for a sex oriented business. There shall be no administrative appeal from the granting or denial of a permit application thereby permitting the applicant to obtain prompt judicial review.
- E. Ten (10) working days prior to submittal of an application for a sex oriented business zoning permit for Staff Review, the applicant shall: (i) cause notice of the application to be printed in a newspaper of general circulation; and (ii) give mailed notice of the application to property owners within one thousand (1000') feet of the proposed location of the sex oriented business; and the City of Huntington Beach, Department of Community Development by first class mail.

The notice of application shall include the following:

1. Name of applicant;
2. Location of proposed sex oriented business, including street address (if known) and/or lot and tract number;
3. Nature of the sex oriented business, including maximum height and square footage of the proposed development;
4. The City Hall telephone number for the Department of Community Development to call for viewing plans;

IG AND IL Districts: Additional Provisions (continued)

5. The date by which any comments must be received in writing by the Department of Community Development. This date shall be ten (10) working days from staff review submittal; and
 6. The address of the Department of Community Development.
- F. A sex oriented business may not apply for a variance pursuant to Chapter 241 nor a special sign permit pursuant to Chapter 233.
- G. A sex oriented business zoning permit shall become null and void one year after its date of approval unless:
1. Construction has commenced or a Certificate of Occupancy has been issued, whichever comes first; or
 2. The use is established.
- H. The validity of a sex oriented business zoning permit shall not be affected by changes in ownership or proprietorship provided that the new owner or proprietor promptly notifies the Director of the transfer.
- I. A sex oriented business zoning permit shall lapse if the exercise of rights granted by it is discontinued for 12 consecutive months.
- L-12 For wireless communication facilities see section 230.96 Wireless Communication Facilities. All other communication facilities permitted.
- (A) Repealed.
- (B) A conditional use permit from the Zoning Administrator is required for any new use or enlargement of an existing use, or exterior alterations and additions for an existing use located within 150 feet of an R district. The

Director may waive this requirement if there is no substantial change in the character of the use which would affect adjacent residential property in an R District.

- (C) Accessory office uses incidental to a primary industrial use are limited to 10 percent of the floor area of the primary industrial use.
- (D) Adjunct office and commercial space, not to exceed 25 percent of the floor area of the primary industrial use, is allowed with a conditional use permit from the Zoning Administrator, provided that it is intended primarily to serve employees of the industrial use, no exterior signs advertise the adjunct use, the adjunct use is physically separated from the primary industrial use, any retail sales are limited to goods manufactured on-site, and the primary industrial fronts on an arterial.
- (E) See Section 241.22: Temporary Use Permits.
- (F) See Chapter 236: Nonconforming Uses and Structures.

IG AND IL Districts: Additional Provisions (continued)

- (H) Medical/dental offices, insurance brokerage offices, and real estate brokerage offices, except for on-site leasing offices, are not permitted in any I District.

Administrative, management, regional or headquarters offices for any permitted industrial use, which are not intended to serve the public, require a conditional use permit from the Zoning Administrator to occupy more than 10 percent of the total amount of space on the site of the industrial use.
- (I) Automobile dismantling, storage and/or impound yards may be permitted subject to the approval of a conditional use permit by the Planning Commission and the following criteria:
 - (a) The site shall not be located within 660 feet of an R district.
 - (b) All special metal cutting and compacting equipment shall be completely screened from view.
 - (c) Storage yards shall be enclosed by a solid 6-inch concrete block or masonry wall not less than 6 feet in height and set back a minimum 10 feet from abutting streets with the entire setback area permanently landscaped and maintained.
 - (d) Items stacked in the storage yard shall not exceed the height of the screening walls or be visible from adjacent public streets.
- (J) Limited to facilities serving workers employed on-site.
- (K) Limited to: Single Room Occupancy uses (See Section 230.46).

- (L) Limited to Emergency Shelters.
 - (M) Development of vacant land and/or additions of 10,000 square feet or more in floor area; or additions equal to or greater than 50% of the existing building's floor area; or additions to buildings on sites located within 300 feet of a residential zone or use for a permitted use requires approval of a conditional use permit from the Zoning Administrator. The Planning Director may refer any proposed addition to the Zoning Administrator if the proposed addition has the potential to impact residents or tenants in the vicinity (e.g., increased noise, traffic).
 - (N) Major outdoor operations require conditional use permit approval by the Planning Commission. Major outside operations include storage yards and uses utilizing more than 1/3 of the site for outdoor operation.
 - (O) See Section 230.40: Helicopter Takeoff and Landing Areas.
 - (P) See Section 230.44: Recycling Operations.
 - (Q) See Section 230.50: Indoor Swap Meets/Flea Markets
 - (R) See L-11(A) relating to locational restrictions.
-

IG AND IL Districts: Additional Provisions (continued)

- (S) Non-amplified live entertainment greater than 300 feet from a residential zone or use shall be permitted without a conditional use permit.
- (T) Subject to approval by the Police Department, Public Works Department, and Fire Department and the Planning Director.
- (U) Neighborhood notification requirements when no entitlement required pursuant to Chapter 241.

SECTION 2. This Ordinance shall become effective 30 days after its adoption.

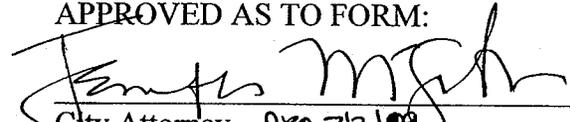
PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the _____ day of _____, 2009.

Mayor

ATTEST:

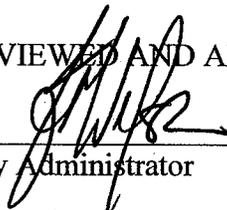
City Clerk

APPROVED AS TO FORM:



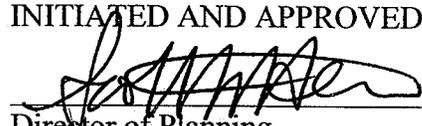
City Attorney ~~0120 7/21/09~~
7-6-09

REVIEWED AND APPROVED:



City Administrator

INITIATED AND APPROVED:



Director of Planning

ATTACHMENT #3

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ORDINANCE NO. 3842

Chapter 204 Use Classifications

(3334-6/97, 3378-2/98, 3521-2/02, 3568-9/02, 3669-12/04, Emergency Ord. 3703-3/05, 3724-02/06, 3757-1/07, 3774-9/07)

(Note: Ordinance No. 3774-9/07 is subject to approval by the California Coastal Commission, 3788-12/07)

Sections:

204.02	Applicability
204.04	Uses Not Classified
204.06	Residential Use Classifications
204.08	Public and Semipublic Use Classifications
204.10	Commercial Use Classifications
204.12	Industrial Use Classifications
204.14	Accessory Use Classifications
204.16	Temporary Use Classifications

204.02 Applicability

Use classifications describe one or more uses having similar characteristics, but do not list every use or activity that may appropriately be within the classification. The Director shall determine whether a specific use shall be deemed to be within one or more use classifications or not within any classification in this Title. The Director may determine that a specific use shall not be deemed to be within a classification, if its characteristics are substantially different than those typical of uses named within the classification. The Director's decision may be appealed to the Planning Commission. (3334-6/97)

204.04 Uses Not Classified

Any new use, or any use that cannot be clearly determined to be in an existing use classification, may be incorporated into the zoning provisions by a Zoning and Subdivision Ordinance text amendment, as provided in Chapter 247. Such an incorporation shall not be effective unless certified by the Coastal Commission as a Local Coastal Program amendment. (3334-6/97)

204.06 Residential Use Classifications

- A. Day Care, Limited (or Small-Family). Non-medical care and supervision of six or fewer persons, or eight or fewer persons if two of the persons are six years of age or older, on a less than 24-hour basis. Children under the age of 10 years who reside in the home shall be counted for purposes of these limits. This classification includes nursery schools, preschools, and day-care centers for children and adults. (3334-6/97, 3669-12/04)
- B. Group Residential. Shared living quarters without separate kitchen or bathroom facilities for each room or unit. This classification includes boarding houses, but excludes residential hotels or motels. (3334-6/97)
- C. Multifamily Residential. Two or more dwelling units on a site. This classification includes manufactured homes. (3334-6/97)

ATTACHMENT NO. 3.1

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- D. Residential Alcohol Recovery, Limited. Twenty-four-hour care for no more than six persons suffering from alcohol problems in need of personal services, supervision, protection or assistance. This classification includes only those facilities licensed by the State of California. (3334-6/97)
- E. Residential Care, Limited. Twenty-four-hour non-medical care for 6 or fewer persons in need of personal services, supervision, protection, or assistance essential for sustaining the activities of daily living. This classification includes only those services and facilities licensed by the State of California. (3334-6/97)
- F. Single-Family Residential. Buildings containing one dwelling unit located on a single lot. This classification includes manufactured homes. (3334-6/97)

204.08 Public and Semipublic Use Classifications

- A. Cemetery. Land used or intended to be used for the burial of human remains and dedicated for cemetery purposes. Cemetery purposes include columbariums, crematoriums, mausoleums, and mortuaries operated in conjunction with the cemetery, business and administrative offices, chapels, flower shops, and necessary maintenance facilities. (3334-6/97)
- B. Clubs and Lodges. Meeting, recreational, or social facilities of a private or nonprofit organization primarily for use by members or guests. This classification includes union halls, social clubs and youth centers. (3334-6/97)
- C. Community and Human Service Facilities.
 - 1. Drug Abuse Centers. Facilities offering drop-in services for persons suffering from drug abuse, including treatment and counseling without provision for on-site residence or confinement. (3334-6/97)
 - 2. Primary Health Care. Medical services, including clinics, counseling and referral services, to persons afflicted with bodily or mental disease or injury without provision for on-site residence or confinement. (3334-6/97)
 - 3. Emergency Kitchens. Establishments offering food for the "homeless" and others in need. (3334-6/97)
 - 4. Emergency Shelters. Establishments offering food and shelter programs for "homeless" people and others in need. This classification does not include facilities licensed for residential care, as defined by the State of California, which provide supervision of daily activities. (3334-6/97)
 - 5. Residential Alcohol Recovery, General. Facilities providing 24-hour care for more than six persons suffering from alcohol problems, in need of personal services, supervision, protection or assistance. These facilities may include an inebriate reception center as well as facilities for treatment, training, research, and administrative services for program participants and employees. This classification includes only those facilities licensed by the State of California. (3334-6/97)

ATTACHMENT NO. 3.2

Legislative Draft

6. Residential Care, General. Twenty-four-hour non-medical care for seven or more persons, including wards of the juvenile court, in need of personal services, supervision, protection, or assistance essential for sustaining the activities of daily living. This classification includes only those facilities licensed by the State of California.
(3334-6/97)
- D. Convalescent Facilities. Establishments providing care on a 24-hour basis for persons requiring regular medical attention, but excluding facilities providing surgical or emergency medical services. (3334-6/97)
- E. Cultural Institutions. Nonprofit institutions displaying or preserving objects of interest in one or more of the arts or sciences. This classification includes libraries, museums, and art galleries. (3334-6/97)
- F. Day Care, Large-Family. Non-medical care and supervision for 7 to 12 persons, or up to 14 persons if two of the persons are six years of age or older on a less than 24-hour basis. Children under the age of 10 years who reside in the home shall be counted for purposes of these limits.
(3334-6/97, 3669-12/04)
- G. Day Care, General. Non-medical care for 13 or more persons on a less than 24-hour basis. This classification includes nursery schools, preschools, and day-care centers for children or adults. (3334-6/97, 3669-12/04)
- H. Emergency Health Care. Facilities providing emergency medical service with no provision for continuing care on an inpatient basis. (3334-6/97)
- I. Government Offices. Administrative, clerical, or public contact offices of a government agency, including postal facilities, together with incidental storage and maintenance of vehicles. (3334-6/97)
- J. Heliports. Pads and facilities enabling takeoffs and landings by helicopter.
(3334-6/97)
- K. Hospitals. Facilities providing medical, surgical, psychiatric, or emergency medical services to sick or injured persons, primarily on an inpatient basis. This classification includes incidental facilities for out-patient treatment, as well as training, research, and administrative services for patients and employees. (3334-6/97)
- L. Maintenance and Service Facilities. Facilities providing maintenance and repair services for vehicles and equipment, and materials storage areas. This classification includes corporation yards, equipment service centers, and similar facilities. (3334-6/97)
- M. Marinas. A boat basin with docks, mooring facilities, supplies and equipment for small boats. (3334-6/97)
- N. Park and Recreation Facilities. Noncommercial parks, playgrounds, recreation facilities, and open spaces. (3334-6/97)

ATTACHMENT NO. 3.3

Legislative Draft

- O. Public Safety Facilities. Facilities for public safety and emergency services, including police and fire protection. (3334-6/97)
- P. Religious Assembly. Facilities for religious worship and incidental religious education, but not including private schools as defined in this section. (3334-6/97)
- Q. Schools, Public or Private. Educational institutions having a curriculum comparable to that required in the public schools of the State of California. (3334-6/97)
- R. Utilities, Major. Generating plants, electrical substations, above-ground electrical transmission lines, switching buildings, refuse collection, transfer, recycling or disposal facilities, flood control or drainage facilities, water or wastewater treatment plants, transportation or communications utilities, and similar facilities of public agencies or public utilities. (3334-6/97)
- S. Utilities, Minor. Utility facilities that are necessary to support legally established uses and involve only minor structures such as electrical distribution lines, underground water and sewer lines, and recycling and collection containers. (3334-6/97)

204.10

Commercial Use Classifications

- A. Ambulance Services. Provision of emergency medical care or transportation, including incidental storage and maintenance of vehicles as regulated by Chapter 5.20. (3334-6/97, 3378-2/98)
- B. Animal Sales and Services.
 - 1. Animal Boarding. Provision of shelter and care for small animals on a commercial basis. This classification includes activities such as feeding, exercising, grooming, and incidental medical care, and kennels. (3334-6/97)
 - 2. Animal Grooming. Provision of bathing and trimming services for small animals on a commercial basis. This classification includes boarding for a maximum period of 48 hours. (3334-6/97)
 - 3. Animal Hospitals. Establishments where small animals receive medical and surgical treatment. This classification includes only facilities that are entirely enclosed, soundproofed, and air-conditioned. Grooming and temporary (maximum 30 days) boarding of animals are included, if incidental to the hospital use. (3334-6/97)
 - 4. Animals: Retail Sales. Retail sales and boarding of small animals, provided such activities take place within an entirely enclosed building. This classification includes grooming, if incidental to the retail use, and boarding of animals not offered for sale for a maximum period of 48 hours. (3334-6/97)
 - 5. Equestrian Centers. Establishments offering facilities for instruction in horseback riding, including rings, stables, and exercise areas. (3334-6/97)

ATTACHMENT NO. 3.4

Legislative Draft

6. Pet Cemetery. Land used or intended to be used for the burial of animals, ashes or remains of dead animals, including placement or erection of markers, headstones or monuments over such places of burial. (3334-6/97)
- C. Artists' Studios. Work space for artists and artisans, including individuals practicing one of the fine arts or performing arts, or skilled in an applied art or craft. (3334-6/97)
- D. Banks and Savings and Loans. Financial institutions that provide retail banking services to individuals and businesses. This classification includes only those institutions engaged in the on-site circulation of cash money. It also includes businesses offering check-cashing facilities. (3334-6/97, 3378-2/98)
 1. With Drive-up Service. Institutions providing services accessible to persons who remain in their automobiles. (3334-6/97)
- E. Building Materials and Services. Retailing, wholesaling, or rental of building supplies or equipment. This classification includes lumber yards, tool and equipment sales or rental establishments, and building contractors' yards, but excludes establishments devoted exclusively to retail sales of paint and hardware, and activities classified under Vehicle/Equipment Sales and Services. (3334-6/97, 3378-2/98)
- F. Catering Services. Preparation and delivery of food and beverages for off-site consumption without provision for on-site pickup or consumption. (See also Eating and Drinking Establishments.) (3334-6/97, 3378-2/98)
- G. Commercial Filming. Commercial motion picture or video photography at the same location more than six days per quarter of a calendar year. (See also Chapter 5.54, Commercial Photography) (3334-6/97, 3378-2/98)
- H. Commercial Recreation and Entertainment. Provision of participant or spectator recreation or entertainment. This classification includes theaters, sports stadiums and arenas, amusement parks, bowling alleys, billiard parlors and poolrooms as regulated by Chapter 9.32; dance halls as regulated by Chapter 5.28; ice/roller skating rinks, golf courses, miniature golf courses, scale-model courses, shooting galleries, tennis/racquetball courts, health/fitness clubs, pinball arcades or electronic games centers, cyber café having more than 4 coin-operated game machines as regulated by Chapter 9.28; card rooms as regulated by Chapter 9.24; and fortune telling as regulated by Chapter 5.72. (3334-6/97, 3378-2/98, 3669-12/04)
 1. Limited. Indoor movie theaters, game centers and performing arts theaters and health/fitness clubs occupying less than 2,500 square feet. (3334-6/97)
- I. Communications Facilities. Broadcasting, recording, and other communication services accomplished through electronic or telephonic mechanisms, but excluding Utilities (Major). This classification includes radio, television, or recording studios; telephone switching centers; telegraph offices; and wireless communication facilities. (3334-6/97, 3378-2/98, 3568-9/02)

ATTACHMENT NO. 3.5

Legislative Draft

- J. Eating and Drinking Establishments. Businesses serving prepared food or beverages for consumption on or off the premises. (3334-6/97, 3378-2/98)
1. With Fast-Food or Take-Out Service. Establishments where patrons order and pay for their food at a counter or window before it is consumed and may either pick up or be served such food at a table or take it off-site for consumption. (3334-6/97)
 - a. Drive-through. Service from a building to persons in vehicles through an outdoor service window. (3334-6/97)
 - b. Limited. Establishments that do not serve persons in vehicles or at a table. (3334-6/97)
 2. With Live Entertainment/Dancing. An eating or drinking establishment where dancing and/or live entertainment is allowed. This classification includes nightclubs subject to the requirements of Chapter 5.44 of the Municipal Code. (3334-6/97)
- K. Food and Beverage Sales. Retail sales of food and beverages for off-site preparation and consumption. Typical uses include groceries, liquor stores, or delicatessens. Establishments at which 20 percent or more of the transactions are sales of prepared food for on-site or take-out consumption shall be classified as Catering Services or Eating and Drinking Establishments. (3334-6/97, 3378-2/98)
1. With Alcoholic Beverage Sales. Establishments where more than 10 percent of the floor area is devoted to sales, display and storage of alcoholic beverages. (3334-6/97)
- L. Food Processing. Establishments primarily engaged in the manufacturing or processing of food or beverages for human consumption and wholesale distribution. (3334-6/97, 3378-2/98)
- M. Funeral and Interment Services. Establishments primarily engaged in the provision of services involving the care, preparation or disposition of human dead other than in cemeteries. Typical uses include crematories, columbariums, mausoleums or mortuaries. (3334-6/97, 3378-2/98)
- N. Horticulture. The raising of fruits, vegetables, flowers, trees, and shrubs as a commercial enterprise. (3334-6/97, 3378-2/98)
- O. Laboratories. Establishments providing medical or dental laboratory services; or establishments with less than 2,000 square feet providing photographic, analytical, or testing services. Other laboratories are classified as Limited Industry. (3334-6/97, 3378-2/98)
- P. Maintenance and Repair Services. Establishments providing appliance repair, office machine repair, or building maintenance services. This classification excludes maintenance and repair of vehicles or boats; see (Vehicle/Equipment Repair). (3334-6/97)

ATTACHMENT NO. 3.6

Legislative Draft

- Q. Marine Sales and Services. Establishments providing supplies and equipment for shipping or related services or pleasure boating. Typical uses include chandleries, yacht brokerage and sales, boat yards, boat docks, and sail-making lofts. (3334-6/97, 3378-2/98)
- R. Reserved. (3788-12/07)
- S. Nurseries. Establishments in which all merchandise other than plants is kept within an enclosed building or a fully screened enclosure, and fertilizer of any type is stored and sold in package form only. (3334-6/97, 3378-2/98)
- T. Offices, Business and Professional. Offices of firms or organizations providing professional, executive, management, or administrative services, such as architectural, engineering, graphic design, interior design, real estate, insurance, investment, legal, veterinary, and medical/dental offices. This classification includes medical/dental laboratories incidental to an office use, but excludes banks and savings and loan associations. (3334-6/97, 3378-2/98)
- U. Pawn Shops. Establishments engaged in the buying or selling of new or secondhand merchandise and offering loans secured by personal property and subject to Chapter 5.36 of the Municipal Code. (3334-6/97, 3378-2/98)
- V. Personal Enrichment Services. Provision of instructional services or facilities, including photography, fine arts, crafts, dance or music studios, driving schools, business and trade schools, and diet centers, reducing salons, fitness studios, **and** yoga or martial arts studios, ~~and massage in conjunction with Personal Services business.~~ (3334-6/97, 3378-2/98, 3669-12/04)
- W. Personal Services. Provision of recurrently needed services of a personal nature. This classification includes barber and beauty shops, seamstresses, tailors, shoe repair shops, dry-cleaning businesses (excluding large-scale bulk cleaning plants), photo-copying, ~~and self-service laundries,~~ **and massage as regulated by Chapter 5.24.** (3334-6/97, 3378-2/98)
- X. Research and Development Services. Establishments primarily engaged in industrial or scientific research, including limited product testing. This classification includes electron research firms or pharmaceutical research laboratories, but excludes manufacturing, except of prototypes, or medical testing and analysis. (3334-6/97, 3378-2/98)
- Y. Retail Sales. The retail sale of merchandise not specifically listed under another use classification. This classification includes department stores, drug stores, clothing stores, and furniture stores, and businesses retailing the following goods: toys, hobby materials, handcrafted items, jewelry, cameras, photographic supplies, medical supplies and equipment, electronic equipment, records, sporting goods, surfing boards and equipment, kitchen utensils, hardware, appliances, antiques, art supplies and services, paint and wallpaper, carpeting and floor covering, office supplies, bicycles, and new automotive parts and accessories (excluding service and installation). (3334-6/97, 3378-2/98)

ATTACHMENT NO. 3-7

Legislative Draft

- Z. Secondhand Appliances and Clothing Sales. The retail sale of used appliances and clothing by secondhand dealers who are subject to Chapter 5.36. This classification excludes antique shops primarily engaged in the sale of used furniture and accessories other than appliances, but includes junk shops. (3334-6/97, 3378-2/98)
- AA. Sex Oriented Businesses. Establishments as regulated by Chapter 5.70; ~~baths, sauna baths and massage establishments, as regulated by Chapter 5.24;~~ and figure model studios as regulated by Chapter 5.60. (3378-2/98)
- BB. Swap Meets, Indoor/Flea Markets. An occasional, periodic or regularly scheduled market held within a building where groups of individual vendors offer goods for sale to the public. (3334-6/97)
- CC. Swap Meets, Recurring. Retail sale or exchange of handcrafted or secondhand merchandise for a maximum period of 32 consecutive hours, conducted by a sponsor on a more than twice yearly basis. (3334-6/97)
- DD. Tattoo Establishment. Premises used for the business of marking or coloring the skin with tattoos as regulated by Chapter 8.70. (3334-6/97)
- EE. Travel Services. Establishments providing travel information and reservations to individuals and businesses. This classification excludes car rental agencies. (3334-6/97)
- FF. Vehicle/Equipment Sales and Services.
1. Automobile Rentals. Rental of automobiles, including storage and incidental maintenance, but excluding maintenance requiring pneumatic lifts. (3334-6/97)
 2. Automobile Washing. Washing, waxing, or cleaning of automobiles or similar light vehicles. (3334-6/97)
 3. Commercial Parking Facility. Lots offering short-term or long-term parking to the public for a fee. (3334-6/97)
 4. Service Stations. Establishments engaged in the retail sale of gas, diesel fuel, lubricants, parts, and accessories. This classification includes incidental maintenance and minor repair of motor vehicles, but excluding body and fender work or major repair of automobiles, motorcycles, light and heavy trucks or other vehicles. (3334-6/97)
 5. Vehicle/Equipment Repair. Repair of automobiles, trucks, motorcycles, mobile homes, recreational vehicles, or boats, including the sale, installation, and servicing of related equipment and parts. This classification includes auto repair shops, body and fender shops, transmission shops, wheel and brake shops, and tire sales and installation, but excludes vehicle dismantling or salvage and tire retreading or recapping. (3334-6/97)
 - a. Limited. Light repair and sale of goods and services for vehicles, including brakes, muffler, tire shops, oil and lube, and accessory uses, but excluding body and fender shops, upholstery, painting, and rebuilding or reconditioning of vehicles. (3334-6/97)

ATTACHMENT NO. 3-6

Legislative Draft

6. Vehicle/Equipment Sales and Rentals. Sale or rental of automobiles, motorcycles, trucks, tractors, construction or agricultural equipment, manufactured homes, boats, and similar equipment, including storage and incidental maintenance. (3334-6/97)
7. Vehicle Storage. The business of storing or safekeeping of operative and inoperative vehicles for periods of time greater than a 24 hour period, including, but not limited to, the storage of parking tow-aways, impound yards, and storage lots for automobiles, trucks, buses and recreational vehicles, but not including vehicle dismantling. (3334-6/97, 3757-1/07)

GG. Visitor Accommodations.

1. Bed and Breakfast Inns. Establishments offering lodging on a less than weekly basis in a converted single-family or multi-family dwelling or a building of residential design, with incidental eating and drinking service for lodgers only provided from a single kitchen. (3334-6/97)
2. Hotels and Motels. Establishments offering lodging on a weekly or less than weekly basis. Motels may have kitchens in no more than 25 percent of guest units, and "suite" hotels may have kitchens in all units. This classification includes eating, drinking, and banquet service associated with the facility. (3334-6/97)
3. Condominium – Hotel. Facility providing overnight visitor accommodations where ownership of at least some of the individual guestrooms (units) within the larger building or complex is in the form of separate condominium ownership interests, as defined in California Civil Code section 1351(f). The primary function of the Condominium-Hotel is to provide overnight transient visitor accommodations within every unit that is available to the general public on a daily basis year-round, while providing both general public availability and limited owner occupancy of those units that are in the form of separate condominium ownership interests. (3774-9/07 - subject to approval by the California Coastal Commission)
4. Fractional Ownership Hotel. Facility providing overnight visitor accommodations where at least some of the guestrooms (units) within the facility are owned separately by multiple owners on a fractional time basis. A fractional time basis means that an owner receives exclusive right to use of the individual unit for a certain quantity of days per year and each unit available for fractional ownership will have multiple owners. (3774-9/07 - subject to approval by the California Coastal Commission)

HH. Warehouse and Sales Outlets. Businesses which store large inventories of goods in industrial-style buildings where these goods are not produced on the site but are offered to the public for sale. (3334-6/97)

II. Quasi Residential

ATTACHMENT NO. 3.9

Legislative Draft

1. Residential Hotels. Buildings with 6 or more guest rooms without kitchen facilities in individual rooms, or kitchen facilities for the exclusive use of guests, and which are intended for occupancy on a weekly or monthly basis. (3334-6/97)
2. Single Room Occupancy. Buildings designed as a residential hotel consisting of a cluster of guest units providing sleeping and living facilities in which sanitary facilities and cooking facilities are provided within each unit; tenancies are weekly or monthly. (3334-6/97)
3. Timeshare. Any arrangement, plan, or similar program, other than an exchange program, whereby a purchaser receives ownership rights in or the right to use accommodations for a period of time less than a full year during any given year, on a recurring basis for more than one year, but not necessarily for consecutive years. (3334-6/97, 3774-9/07 - subject to approval by the California Coastal Commission)

204.12 Industrial Use Classifications

- A. Industry, Custom. Establishments primarily engaged in on-site production of goods by hand manufacturing involving the use of hand tools and small-scale equipment. (3334-6/97)
 1. Small-scale. Includes mechanical equipment not exceeding 2 horsepower or a single kiln not exceeding 8 kilowatts and the incidental direct sale to consumers of only those goods produced on-site. Typical uses include ceramic studios, candle-making shops, and custom jewelry manufacture. (3334-6/97)
- B. Industry, General. Manufacturing of products, primarily from extracted or raw materials, or bulk storage and handling of such products and materials. Uses in this classification typically involve a high incidence of truck or rail traffic, and/or outdoor storage of products, materials, equipment, or bulk fuel. This classification includes chemical manufacture or processing, food processing and packaging, laundry and dry cleaning plants, auto dismantling within an enclosed building, stonework and concrete products manufacture (excluding concrete ready-mix plants), small animal production and processing within an enclosed building, and power generation. (3334-6/97)
- C. Industry, Limited. Manufacturing of finished parts or products, primarily from previously prepared materials; and provision of industrial services, both within an enclosed building. This classification includes processing, fabrication, assembly, treatment, and packaging, but excludes basic industrial processing from raw materials and Vehicle/Equipment Services, but does allow food processing for human consumption. (3334-6/97)
- D. Industry, Research and Development. Establishments primarily engaged in the research, development, and controlled production of high-technology electronic, industrial or scientific products or commodities for sale, but prohibits uses that may be objectionable in the opinion of the Director, by reason of production of offensive odor, dust, noise, vibration, or in the opinion of the Fire Chief by reason of storage of hazardous materials. Uses include aerospace and biotechnology firms, and non-toxic computer component manufacturers. (3334-6/97)

ATTACHMENT NO. 3.10

Legislative Draft

This classification also includes assembly, testing and repair of components, devices, equipment, systems, parts and components such as but not limited to the following: coils, tubes, semi-conductors; communication, navigation, guidance and control equipment; data processing equipment; filing and labeling machinery; glass edging and silvering equipment; graphics and art equipment; metering equipment; optical devices and equipment; photographic equipment; radar, infrared and ultraviolet equipment; radio and television equipment. (3334-6/97)

This classification also includes the manufacture of components, devices, equipment, parts and systems which includes assembly, fabricating, plating and processing, testing and repair, such as but not limited to the following: machine and metal fabricating shops, model and spray painting shops, environmental test, including vibration analysis, cryogenics, and related functions, plating and processing shops, nuclear and radioisotope. (3334-6/97)

This classification also includes research and development laboratories including biochemical and chemical development facilities for national welfare on land, sea, or air; and facilities for film and photography, metallurgy; pharmaceutical, and medical and x-ray research. (3334-6/97)

- E. Wholesaling, Distribution and Storage. Storage and distribution facilities without sales to the public on-site or direct public access except for recycling facilities and public storage in a small individual space exclusively and directly accessible to a specific tenant. This classification includes mini-warehouses. (3334-6/97)

204.14 Accessory Use Classifications

Accessory Uses and Structures. Uses and structures that are incidental to the principal permitted or conditionally permitted use or structure on a site and are customarily found on the same site. This classification includes detached or attached garages, home occupations, caretakers' units, and dormitory type housing for industrial commercial workers employed on the site, and accessory dwelling units. (3334-6/97)

204.16 Temporary Use Classifications

- A. Animal Shows. Exhibitions of domestic or large animals for a maximum of seven days. (3334-6/97)
- B. Festivals, Circuses and Carnivals. Provision of games, eating and drinking facilities, live entertainment, animal exhibitions, or similar activities in a tent or other temporary structure for a maximum of seven days. This classification excludes events conducted in a permanent entertainment facility. (3334-6/97, 3521-2/02)
- C. Commercial Filming, Limited. Commercial motion picture or video photography at a specific location six or fewer days per quarter of a calendar year. (See also Chapter 5.54, Commercial Photography) (3334-6/97)
- D. Personal Property Sales. Sales of personal property by a resident ("garage sales") for a period not to exceed 48 consecutive hours and no more than once every six months. (3334-6/97)

ATTACHMENT NO. 3.11

Legislative Draft

- E. Real Estate Sales. An office for the marketing, sales, or rental of residential, commercial, or industrial development. This classification includes "model homes." (3334-6/97)
- F. Retail Sales, Outdoor. Retail sales of new merchandise on the site of a legally established retail business for a period not to exceed 96 consecutive hours (four days) no more than once every 3 months. (3334-6/97, 3669-12/04)
- G. Seasonal Sales. Retail sales of seasonal products, including Christmas trees, Halloween pumpkins and strawberries. (3334-6/97)
- H. Street Fairs. Provision of games, eating and drinking facilities, live entertainment, or similar activities not requiring the use of roofed structures. (3334-6/97)
- I. Trade Fairs. Display and sale of goods or equipment related to a specific trade or industry for a maximum period of five days per year. (3334-6/97)
- J. Temporary Event. Those temporary activities located within the coastal zone that do not qualify for an exemption pursuant to Section 245.08. (3334-6/97)
- K. Tent Event. Allows for the overflow of any assembly for a period not to exceed 72 consecutive hours and not more than once every 3 months. (3521-2/02, 3724-02/06)

ATTACHMENT NO. 3.12

Legislative Draft

Chapter 212 I Industrial Districts

(3254-10/94, 3378-2/98, 3523-2/02, 3568-9/02, Emergency Ord. 3703-3/21/05, 3708-6/05, 3724-02/06, 3788-12/07)

Sections:

- 212.02 Industrial Districts Established
- 212.04 IG and IL Districts: Land Use Controls
- 212.06 IG and IL Districts: Development Standards
- 212.08 Review of Plans

212.02 Industrial Districts Established (3254-10/94)

Two (2) industrial zoning districts are established by this chapter as follows: (3254-10/94)

- A. The IG General Industrial District provides sites for the full range of manufacturing, industrial processing, resource and energy production, general service, and distribution. (3254-10/94)
- B. The IL Limited Industrial District provides sites for moderate- to low-intensity industrial uses, commercial services and light manufacturing. (3254-10/94)

212.04 IG and IL Districts: Land Use Controls (3254-10/94, 3788-12/07)

In the following schedules, letter designations are used as follows: (3254-10/94)

"P" designates use classifications permitted in the I districts. (3254-10/94)

"L" designates use classifications subject to certain limitations prescribed by the "Additional Provisions" which follow. (3254-10/94)

"PC" designates use classifications permitted on approval of a conditional use permit by the Planning Commission. (3254-10/94)

"ZA" designates use classifications permitted on approval of a conditional use permit by the Zoning Administrator. (3254-10/94)

"TU" designates use classifications allowed upon approval of a temporary use permit by the Zoning Administrator. (3254-10/94)

"P/U" for an accessory use means that the use is permitted on the site of a permitted use, but requires a conditional use permit on the site of a conditional use. (3254-10/94)

Use classifications that are not listed are prohibited. Letters in parentheses in the "Additional Provisions" column refer to requirements following the schedule or located elsewhere in this ordinance. Where letters in parentheses are opposite a use classification heading, referenced provisions shall apply to all use classifications under the heading. (3254-10/94)

Legislative Draft

IG AND IL DISTRICTS:	P - Permitted
LAND USE CONTROLS	L - Limited (see <u>Additional Provisions</u>)
	PC - Conditional use permit approved by Planning Commission
	ZA - Conditional use permit approved by Zoning Administrator
	TU - Temporary Use Permit
	P/U - Requires conditional use permit on site of conditional use
	- - Not Permitted

	IG	IL	Additional Provisions
Residential			
Group Residential	PC	PC	(J)
Public and Semipublic			
Community and Human Service Facilities			(A)(M)(3708-6/05, 3724-02/06)
Day Care, General	PC	PC	(L) (3708-6/05, 3724-02/06)
Heliports	ZA	ZA	(3523-2/02)
Maintenance & Service <u>Service</u> Facilities	PC	PC	(O)
Public Safety Facilities	ZA	ZA	(3708-6/05)
Religious Assembly	P	P	
Schools, Public or Private	ZA	ZA	(3724-02/06)
Utilities, Major	L-6	L-6	
Utilities, Minor	PC	PC	
	L-7	L-7	(P)
Commercial Uses			
Ambulance Services			(D)(M)
Animal Sales and Services	ZA	ZA	
Animal Boarding	ZA	ZA	(3523-2/02)
Animal Hospitals	ZA	ZA	(3523-2/02)
Artists' Studios	P	P	
Banks and Savings and Loans	L-1	L-1	
Building Materials and Services	P	P	
Catering Services	-	P	
Commercial Filming	ZA	ZA	
Commercial Recreation and Entertainment	L-2	L-2	
Communication Facilities	L-12	L-12	(3568-9/02)
Eating & Drinking Establishments w/Live Entertainment	L-3	L-3	
Food & Beverage Sales	ZA	ZA	(S)(U) (3523-2/02)
Hospitals and Medical Clinics	ZA	ZA	(3523-2/02)
Laboratories	-	PC	
Maintenance & Repair Services	P	P	
Marine Sales and Services	P	P	
Nurseries	P	P	
Offices, Business & Professional	L-1	L-1	(H)

Legislative Draft

IG AND IL	P - Permitted
DISTRICTS:	L - Limited (see <u>Additional Provisions</u>)
LAND USE	PC - Conditional use permit approved by Planning Commission
CONTROLS	ZA - Conditional use permit approved by Zoning Administrator
	TU - Temporary Use Permit
	P/U - Requires conditional use permit on site of conditional use
	- Not Permitted

	IG	IL	Additional Provisions	
Personal Enrichment	L-9	L-9	(U)	(3523-2/02)
Personal Services	L-1	L-1		
Quasi Residential	PC	PC	(K)	(3708-6/05)
Research & Development Services	P	P		
Sex Oriented Businesses (regulated by HBMC Chapter 5.70)	L-11	L-11		(3378-2/98)
Sex Oriented Businesses (regulated by HBMC Chapters 5.24 & 5.60)	PC	PC	(R)	(3378-2/98)
Swap Meets, Indoor/Flea Markets	PC	PC	(Q)	(3378-2/98)
Vehicle/Equipment Sales & Services				
Service Stations	L-4	L-4		
Vehicle/Equipment Repair	P	P		
Vehicle/Equip. Sales/Rentals	L-5	L-5		
Vehicle Storage	P	ZA	(I)	
Visitor Accommodations	ZA	ZA		(3708-6/05)
Warehouse and Sales Outlets	L-8	L-8		
Industrial (See Chapter 204)			(B)(M)(N)	
Industry, Custom	P	P		
Industry, General	P	P		
Industry, Limited	P	P		
Industry, R & D	P	P		
Wholesaling, Distribution & Storage	P	P		
Accessory Uses				
Accessory Uses and Structures	P/U	P/U	(C)	
Temporary Uses				
Commercial Filming, Limited	P	P	(T)	(3523-2/02)
Real Estate Sales	P	P		(3)
Trade Fairs	P	P	(E)	(523-2/02, 3708-6/05) (3708-6/05)
Nonconforming Uses			(F)	

Legislative Draft

IG AND IL Districts: Additional Provisions

- L-1 Only allowed upon approval of a conditional use permit by the Zoning Administrator for a mixed use project, subject to the following requirements: (3254-10/94, 3708-6/05)
- Minimum site area: 3 acres (3254-10/94)
- Maximum commercial space: 35 percent of the gross floor area and 50 percent of the ground floor area of buildings fronting on an arterial highway. (3254-10/94)
- Phased development: 25 percent of the initial phase must be designed for industrial occupancy. For projects over 500,000 square feet, the initial phase must include 5 percent of the total amount of industrial space or 50,000 square feet of industrial space, whichever is greater. (3254-10/94)
- L-2 Allowed upon approval of a conditional use permit by the Zoning Administrator when designed and oriented for principal use by employees of the surrounding industrial development or when designed for general public use, after considering vehicular access and parking requirements. (3254-10/94, 3708-6/05)
- L-3 Allowed upon approval of a conditional use permit by the Zoning Administrator when in a free-standing structure or as a secondary use in a building provided that no more than 20 percent of the floor area is occupied by such a use. (3254-10/94, 3523-2/02)
- L-4 Only stations offering services primarily oriented to businesses located in an I District are allowed with a conditional use permit by the Planning Commission. (3254-10/94)
- L-5 No new or used automobile, truck or motorcycle retail sales are permitted. (3254-10/94)
- L-6 Only schools offering higher education curriculums are allowed with conditional use permit approval by the Planning Commission. No day care, elementary or secondary schools are permitted. (3254-10/94)
- L-7 Recycling Operations as an accessory use are permitted; recycling operations as a primary use are allowed upon approval of a conditional use permit by the Zoning Administrator. (3254-10/94, 3708-6/05)
- L-8 Allowed upon conditional use permit approval by the Planning Commission when a single building with a minimum area of 100,000 square feet is proposed on a site fronting an arterial. The primary tenant shall occupy a minimum 95% of the floor area and the remaining 5% may be occupied by secondary tenants. (3254-10/94)
- L-9 Permitted if the space is 5,000 square feet or less; allowed by Neighborhood Notification pursuant to Chapter 241 if the space is over 5,000 square feet. (3254-10/94, 3523-2/02, 3708-6/05)
- L-10 RESERVED (3254-10/94, 3523-2/02, 3724-02/06)

Legislative Draft

IG AND IL Districts: Additional Provisions (continued)

L-11 Allowed subject to the following requirements: (3378-2/98)

- A. A proposed sex oriented business shall be at least five hundred feet (500') from any residential use, school, park and recreational facility, or any building used for religious assembly (collectively referred to as a "sensitive use") and at least seven hundred fifty feet (750') from another sex oriented business. For purposes of these requirements, all distances shall be measured from the lot line of the proposed sex oriented business to the lot line of the sensitive use or the other sex oriented business. The term "residential use" means any property zoned RL, RM, RMH, RH, RMP, and any properties with equivalent designations under any specific plan. (3378-2/98)

To determine such distances the applicant shall submit for review a straight line drawing depicting the distances from the lot line of the parcel of land on which the sex oriented business is proposed which includes all the proposed parking and:
(3378-2/98)

1. the lot line of any other sex oriented business within seven hundred fifty feet (750') of the lot line of the proposed sex oriented business; and (3378-2/98)
 2. the lot line of any building used for religious assembly, school, or park and recreational facility within five hundred (500') feet of the lot line of the proposed sex oriented business; and (3378-2/98)
 3. the lot line of any parcel of land zoned RL, RM, RMH, RH, and RMP and any parcels of land with equivalent designations under any specific plans within five hundred feet (500') of the lot line of the proposed sex oriented business. (3378-2/98)
- B. The front facade of the building, including the entrance and signage, shall not be visible from any major, primary or secondary arterial street as designated by the Circulation Element of the General Plan adopted May, 1996, with the exception of Argosy Drive.
(3378-2/98)
- C. Prior to or concurrently with applying for a building permit and/or a certificate of occupancy for the building, the applicant shall submit application for Planning Department Staff Review of a sex oriented business zoning permit with the drawing described in subsection A, a technical site plan, floor plans and building elevations, and application fee. Within ten (10) days of submittal, the Director shall determine if the application is complete. If the application is deemed incomplete, the applicant may resubmit a completed application within ten (10) days. Within thirty days of receipt of a completed application, the Director shall determine if the application complies with the applicable development and performance standards of the

Legislative Draft

IG AND IL Districts: Additional Provisions (continued)

Huntington Beach Zoning and Subdivision Ordinance. Said standards include but are not limited to the following: (3378-2/98)

1. Chapter 203, Definitions; Chapter 212, Industrial Districts; Chapter 230, Site Standards; Chapter 231, Off-Street Parking & Loading Provisions; Chapter 232, Landscape Improvements; and Chapter 236, Nonconforming Uses and Structures. (3378-2/98)
 2. Chapter 233.08(b), Signs. Signage shall conform to the standards of the Huntington Beach Zoning and Subdivision Ordinance Code except
 - a. that such signs shall contain no suggestive or graphic language, photographs, silhouettes, drawings, statues, monuments, sign shapes or sign projections, or other graphic representations, whether clothed or unclothed, including without limitation representations that depict "specified anatomical areas" or "specified sexual activities"; and (3378-2/98)
 - b. only the smallest of the signs permitted under Chapter 233.08(b) shall be visible from any major, primary or secondary arterial street, such streets shall be those designated in the Circulation Element of the General Plan adopted May, 1996, with the exception of Argosy Drive.
 3. Compliance with Huntington Beach Municipal Code Chapter 5.70. (3378-2/98)
- D. The Director shall grant or deny the application for a sex oriented business zoning permit for a sex oriented business. There shall be no administrative appeal from the granting or denial of a permit application thereby permitting the applicant to obtain prompt judicial review. (3378-2/98)
- E. Ten (10) working days prior to submittal of an application for a sex oriented business zoning permit for Staff Review, the applicant shall: (i) cause notice of the application to be printed in a newspaper of general circulation; and (ii) give mailed notice of the application to property owners within one thousand (1000') feet of the proposed location of the sex oriented business; and the City of Huntington Beach, Department of Community Development by first class mail. (3378-2/98)

The notice of application shall include the following: (3378-2/98)

1. Name of applicant; (3378-2/98)
2. Location of proposed sex oriented business, including street address (if known) and/or lot and tract number; (3378-2/98)
3. Nature of the sex oriented business, including maximum height and square footage of the proposed development; (3378-2/98)

Legislative Draft

4. The City Hall telephone number for the Department of Community Development to call for viewing plans; (3378-2/98)

Legislative Draft

IG AND IL Districts: Additional Provisions (continued)

5. The date by which any comments must be received in writing by the Department of Community Development. This date shall be ten (10) working days from staff review submittal; and (3378-2/98)
 6. The address of the Department of Community Development. (3378-2/98)
 - F. A sex oriented business may not apply for a variance pursuant to Chapter 241 nor a special sign permit pursuant to Chapter 233. (3378-2/98)
 - G. A sex oriented business zoning permit shall become null and void one year after its date of approval unless: (3378-2/98)
 1. Construction has commenced or a Certificate of Occupancy has been issued, whichever comes first; or (3378-2/98)
 2. The use is established. (3378-2/98)
 - H. The validity of a sex oriented business zoning permit shall not be affected by changes in ownership or proprietorship provided that the new owner or proprietor promptly notifies the Director of the transfer. (3378-2/98)
 - I. A sex oriented business zoning permit shall lapse if the exercise of rights granted by it is discontinued for 12 consecutive months. (3378-2/98)
- L-12 For wireless communication facilities see section 230.96 Wireless Communication Facilities. All other communication facilities permitted. (3568-9/02)
- (A) Repealed. (3254-10/94, 3708-6/05)
 - (B) A conditional use permit from the Zoning Administrator is required for any new use or enlargement of an existing use, or exterior alterations and additions for an existing use located within 150 feet of an R district. The Director may waive this requirement if there is no substantial change in the character of the use which would affect adjacent residential property in an R District. (3254-10/94)
 - (C) Accessory office uses incidental to a primary industrial use are limited to 10 percent of the floor area of the primary industrial use. (3254-10/94)
 - (D) Adjunct office and commercial space, not to exceed 25 percent of the floor area of the primary industrial use, is allowed with a conditional use permit from the Zoning Administrator, provided that it is intended primarily to serve employees of the industrial use, no exterior signs advertise the adjunct use, the adjunct use is physically separated from the primary industrial use, any retail sales are limited to goods manufactured on-site, and the primary industrial fronts on an arterial. (3254-10/94)
 - (E) See Section 241.22: Temporary Use Permits. (3254-10/94)

Legislative Draft

(F) See Chapter 236: Nonconforming Uses and Structures. (3254-10/94)

Legislative Draft

IG AND IL Districts: Additional Provisions (continued)

- (H) Medical/dental offices, insurance brokerage offices, and real estate brokerage offices, except for on-site leasing offices, are not permitted in any I District. (3254-10/94)
- Administrative, management, regional or headquarters offices for any permitted industrial use, which are not intended to serve the public, require a conditional use permit from the Zoning Administrator to occupy more than 10 percent of the total amount of space on the site of the industrial use. (3254-10/94)
- (I) Automobile dismantling, storage and/or impound yards may be permitted subject to the approval of a conditional use permit by the Planning Commission and the following criteria: (3254-10/94)
- (a) The site shall not be located within 660 feet of an R district. (3254-10/94)
 - (b) All special metal cutting and compacting equipment shall be completely screened from view. (3254-10/94)
 - (c) Storage yards shall be enclosed by a solid 6-inch concrete block or masonry wall not less than 6 feet in height and set back a minimum 10 feet from abutting streets with the entire setback area permanently landscaped and maintained. (3254-10/94)
 - (d) Items stacked in the storage yard shall not exceed the height of the screening walls or be visible from adjacent public streets. (3254-10/94)
- (J) Limited to facilities serving workers employed on-site. (3254-10/94)
- (K) Limited to: Single Room Occupancy uses (See Section 230.46). (3254-10/94, 3708-6/05)
- (L) Limited to Emergency Shelters. (3254-10/94)
- (M) Development of vacant land and/or additions of 10,000 square feet or more in floor area; or additions equal to or greater than 50% of the existing building's floor area; or additions to buildings on sites located within 300 feet of a residential zone or use for a permitted use requires approval of a conditional use permit from the Zoning Administrator. The Planning Director may refer any proposed addition to the Zoning Administrator if the proposed addition has the potential to impact residents or tenants in the vicinity (e.g., increased noise, traffic). (3254-10/94, 3523-2/02)
- (N) Major outdoor operations require conditional use permit approval by the Planning Commission. Major outside operations include storage yards and uses utilizing more than 1/3 of the site for outdoor operation. (3254-10/94)
- (O) See Section 230.40: Helicopter Takeoff and Landing Areas. (3254-10/94)
- (P) See Section 230.44: Recycling Operations. (3254-10/94)
- (Q) See Section 230.50: Indoor Swap Meets/Flea Markets (3254-10/94)

Legislative Draft

(R) See L-11(A) relating to locational restrictions.. (3254-10/94, 3378-2/98)

Legislative Draft

IG AND IL Districts: Additional Provisions (continued)

- (S) Non-amplified live entertainment greater than 300 feet from a residential zone or use shall be permitted without a conditional use permit. (3523-2/02)
- (T) Subject to approval by the Police Department, Public Works Department, and Fire Department and the Planning Director. (3523-2/02)
- (U) Neighborhood notification requirements when no entitlement required pursuant to Chapter 241. (3523-2/02, 3708-6/05)

212.06 IG AND IL Districts: Development Standards

The following schedule prescribes development standards for the I Districts. The first two columns prescribe basic requirements for permitted and conditional uses in each district. Letters in parentheses in the "Additional Requirements" column reference requirements following the schedule or located elsewhere in this ordinance. In calculating the maximum gross floor area as defined in Chapter 203, the floor area ratio is calculated on the basis of net site area. Fractional numbers shall be rounded down to the nearest whole number. All required setbacks shall be measured from ultimate right-of-way and in accordance with definitions set forth in Chapter 203, Definitions. (3254-10/94)

	IG	IL	Additional Requirements
Residential Development			(M)
Nonresidential Development			
Minimum Lot Area (sq. ft.)	20,000	20,000	(A)(B) (3708-06/05)
Minimum Lot Width (ft.)	100	100	(A)(B)
Minimum Setbacks			(A)(C)
Front (ft.)	10;20	10;20	(D)
Side (ft.)	0	15	(E)(F) (3708-06/05)
Street Side (ft.)	10	10	
Rear (ft.)	0	0	(E) (3708-06/05)
Maximum Height of Structures (ft.)	40	40	(G)
Maximum Floor Area Ratio (FAR)	0.75	0.75	
Minimum Site Landscaping (%)	8	8	(H)(I)
	IG	IL	Additional Requirements
Fences and Walls	See Section 230.88		
Off-Street Parking and Loading	See Chapter 231		(J)
Outdoor Facilities	See Section 230.74		
Screening of Mechanical Equipment	See Section 230.76		(K)
Refuse Storage Area	See Section 230.78		
Underground Utilities	See Chapter 17.64		
Performance Standards	See Section 230.82		(L)
Nonconforming Uses and Structures	See Chapter 236		
Signs	See Chapter 233		

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IG AND IL Districts: Additional Development Standards

- (A) See Section 230.62: Building Site Required and Section 230.64: Development on Substandard Lots. (3254-10/94)
- (B) Smaller lot dimensions for new parcels may be permitted by the Zoning Administrator with an approved development plan and tentative subdivision map. (3254-10/94)
- (C) See Section 230.68: Building Projections into Yards and Required Open Space. Double-frontage lots shall provide front yards on each frontage. (3254-10/94)
- (D) The minimum front setback shall 10 feet and the average setback 20 feet, except for parcels fronting on local streets where only a 10 foot setback is required. (3254-10/94)

All I Districts: An additional setback is required for buildings exceeding 25 feet in height (1 foot for each foot of height) and for buildings exceeding 150 feet in length (1 foot for each 10 feet of building length) up to a maximum setback of 30 feet. (3254-10/94)

- (E) In all I districts, a 15-foot setback is required abutting an R district and no openings in buildings within 45 feet of an R district. (3254-10/94)
- (F) A zero-side yard setback may be permitted in the I districts, but not abutting an R district, provided that a solid wall at the property line is constructed of maintenance-free masonry material and the opposite side yard is a minimum of 30 feet. (3254-10/94)

Exception. The Zoning Administrator or Planning Commission may approve a conditional use permit to allow a 15-foot interior side yards opposite a zero-side yard on one lot, if an abutting side yard at least 15 feet wide is provided and access easements are recorded ensuring a minimum 30-foot separation between buildings. This 30-foot accessway must be maintained free of obstructions and open to the sky, and no opening for truck loading or unloading shall be permitted in the building face fronting on the accessway unless a 45-foot long striped areas is provided solely for loading and unloading entirely within the building. (3254-10/94)

- (G) See Section 230.70: Measurement of Height. Within 45 feet of an R district, no building or structure shall exceed a height of 18 feet. (3254-10/94)
- (H) Planting Areas. Required front and street-side yards adjacent to a public right-of-way shall be planting areas except for necessary drives and walks. A 6-foot wide planting area shall be provided adjacent to an R district and contain one tree for each 25 lineal feet of planting area. (3254-10/94)
- (I) See Chapter 232: Landscape Improvements. (3254-10/94)
- (J) Truck or rail loading, dock facilities, and the doors for such facilities shall not be visible from or be located within 45 feet of an R district. (3254-10/94)
- (K) See Section 230.80: Antennae. (3254-10/94)
- (L) Noise. No new use shall be permitted, or exterior alterations and/or additions to an existing use allowed, within 150 feet of an R district until a report prepared by a California state-licensed

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acoustical engineer is approved by the Director. This report shall include recommended noise mitigation measures for the industrial use to ensure that noise levels will conform with Chapter 8.40 of the Municipal Code. The Director may waive this requirement for change of use or addition or exterior alteration to an existing use if it can be established that there had been no previous noise offense, that no outside activities will take place, or if adequate noise mitigation measures for the development are provided. (3254-10/94)

- (M) Group residential or accessory residential uses shall be subject to standards for minimum setbacks and height of the RH District. (3254-10/94)

212.08 Review of Plans

All applications for new construction and exterior alterations and additions shall be submitted to the Planning Department for review. Discretionary review shall be required as follows: (3254-10/94,3708-6/05)

- A. Zoning Administrator Review. Projects requiring a conditional use permit from the Zoning Administrator; projects including a zero-side yard exception; projects on substandard lots. (3254-10/94)
- B. Design Review Board. Projects within redevelopment project areas and areas within 500 feet of a PS district; see Chapter 244. (3254-10/94)
- C. Planning Commission. Projects requiring a conditional use permit from the Commission. (3254-10/94)
- D. Projects in the Coastal Zone. A Coastal Development Permit is required unless the project is exempt; see Chapter 245. (3254-10/94)

ATTACHMENT #4

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AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH
AMENDING CHAPTER 5.24 OF THE HUNTINGTON BEACH MUNICIPAL
CODE RELATING TO MASSAGE ESTABLISHMENTS

The City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. Section 5.24.010 of the Huntington Beach Municipal Code is hereby amended to read as follows:

5.24.010 Definitions. Unless the particular provision or the context otherwise requires, the definitions and provisions contained in this section shall govern the construction, meaning and application of words and phrases used in this chapter.

- (a) "Massage" or "massage therapy" means any method of 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.
- (b) "Massage establishment" means 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.
- (c) "Massage therapist," "bodyworker," "bodywork therapist," or "massage and bodywork therapist" means a person who is certified by the Massage Therapy Organization under Subdivision (c) of Section 4601 of the California Business and Professions Code, and who administers massage for compensation.
- (d) "Massage practitioner," "bodywork practitioner," or "massage and bodywork practitioner" means a person who is certified by the Massage Therapy Organization under Subdivision (b) of Section 4601 of the California Business and Professions Code, and who administers massage for compensation.
- (e) "Organization" means the Massage Therapy Organization created pursuant to Sections 4600-4620 of the California Business and Professions Code.
- (f) For purposes of this Chapter, the terms "massage" and "bodywork" shall have the same meaning.
- (g) "Owner" means the individual(s) whose name appears on the City of Huntington Beach business license.

- (h) "Operator" means 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.
- (i) "Certified" shall mean any valid certificate issued in accordance with Sections 2600 through 4620 of the California Business and Professions Code.
- (j) "Compensation" shall mean the payment, loan, advance, donation, contribution, deposit, or gift of money or anything of value.

SECTION 2. Section 5.24.020 of the Huntington Beach Municipal Code is hereby amended to read as follows:

5.24.020 Massage certification required. It shall be 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 Huntington Beach the business of providing massages in exchange for compensation without being currently certified as a massage practitioner or massage therapist by the California Massage Therapy Organization in accordance with Sections 4600 through 4620 of the California Business and Professions Code. Certification by the Massage Therapy Organization must be obtained by March 1, 2010.

SECTION 3. Section 5.24.030 of the Huntington Beach Municipal Code is hereby amended to read as follows:

5.24.030 Massage establishment or services—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 a business license and provide the following relevant information:
 - 1. Full name of certificate holder
 - 2. Date of birth
 - 3. State issued identification number (if applicable)
 - 4. Social Security Number
 - 5. Home address and phone number
 - 6. Work address and phone number
 - 7. Color photograph of the certificate holder
 - 8. Proof of State certification for those who will provide massage services
- (b) Prior to submitting the massage business license application, the fees as established by resolution of the City Council shall be paid to the City of Huntington Beach.
- (c) The application for the massage business license does not authorize operation of a massage establishment or performing massage services until the business license is issued.
- (d) It shall be the responsibility of each massage business owner or operator to file copies or provide other evidence of the certificates held by the persons who are providing massage services at the business.

- (e) It shall be the responsibility of each massage business owner or operator to notify the City of any intention to rename, change management, or convey the business to another person.

SECTION 4. Section 5.24.040 of the Huntington Beach Municipal Code is hereby repealed.

SECTION 5. Section 5.24.050 of the Huntington Beach Municipal Code is hereby repealed.

SECTION 6. Section 5.24.060 of the Huntington Beach Municipal Code is hereby repealed.

SECTION 7. Section 5.24.070 of the Huntington Beach Municipal Code is hereby repealed.

SECTION 8. Section 5.24.090 of the Huntington Beach Municipal Code is hereby repealed.

SECTION 9. Section 5.24.100 of the Huntington Beach Municipal Code is hereby repealed.

SECTION 10. Section 5.24.110 of the Huntington Beach Municipal Code is hereby repealed.

SECTION 11. Section 5.24.125 of the Huntington Beach Municipal Code is hereby repealed.

SECTION 12. Section 5.24.130 of the Huntington Beach Municipal Code is hereby repealed.

SECTION 13. Section 5.24.150 of the Huntington Beach Municipal Code is hereby amended to read as follows:

5.24.150 Exemptions. Exemptions do not apply to independent contractors of the listed exempted professionals. The provisions of this chapter shall not apply to the following classes of individuals or groups while engaged in or performing the duties of their respective professions:

- (a) Physicians, surgeons, chiropractors, osteopaths, acupuncturists, and physical therapists duly licensed to practice in the state of California.
- (b) Hospitals, nursing homes, sanitariums, or other health care facilities duly licensed by the state of California, provided that at all times such physicians, surgeons, chiropractors, osteopaths and physical therapists are acting in adherence with the provisions of the state law which govern this field.
- (c) Registered or licensed vocational nurses duly registered by the state of California.
- (d) Barbershops and beauty parlors, barbers and beauticians but only when engaged in the practice for which they are licensed by the state of California i.e., massage above the neck and shoulders, hands and arms and below the knee.

- (e) Accredited high schools and colleges, and coaches and trainers employed therein while acting within the scope of their employment.
- (f) Trainers of any amateur, semi-professional or professional athlete or athletic team.
(2395-11/79)
- (g) No employed or independent contractor massage technician may administer massage or otherwise treat or care for patients other than patients of the practitioner and those patients must have been prescribed massage therapy by a practitioner listed in this section prior to the administration of the massage therapy.
- (h) Physical Therapist students, and Massage Therapist students earning practical hours for school/education, and who are currently enrolled in a licensed program for Physical Therapy, through a recognized school/education center, can work, under the direct supervision of an exempted professional as defined in this section. Direct supervision means that an exempted professional, as defined in this section, must be present at all times when a student is performing their duties.

SECTION 15. Section 5.24.160 of the Huntington Beach Municipal Code is hereby amended to read as follows:

5.24.160 Massage establishment – Facilities. Every massage establishment shall maintain facilities meeting the following requirements:

- (a) **Sign** - subject to applicable provisions of the City's codes, a recognizable and legible sign shall be posted at the main entrance identifying the business as a massage establishment.
- (b) **Lighting** - minimum lighting shall be provided in accordance with the Electrical Code adopted by the City and, in addition, at least one artificial light of not less than forty (40) watts shall be provided in each room or enclosure where massage services are performed on patrons and shall be activated at all times while a patron is in such room or enclosure.
- (c) **Equipment** - adequate equipment for disinfecting and sterilizing instruments used in performing the acts of massage shall be provided.
- (d) **Water** - hot and cold running water shall be provided at all times.
- (e) **Linen storage** - closed cabinets shall be provided and utilized for storage of clean linens, and approved receptacles shall be provided for the deposit of soiled linen.
- (f) **Separation of sexes** - if male and female patrons are to be served simultaneously at the massage establishment, a separate massage room or rooms and separate dressing, bathing and toilet facilities shall be provided and utilized for male and female patrons. Each separate facility or room shall be clearly marked as such.
- (g) **Massage table pads** - pads used on massage tables shall be covered in a professional manner with durable, washable plastic or other waterproof material acceptable to Orange County Health Department.

SECTION 16. Section 5.24.170 of the Huntington Beach Municipal Code is hereby amended to read as follows:

5.24.170 Massage establishment operation. Every massage establishment shall comply with the following operating requirements:

- (a)(1) Each person employed or acting as a massage therapist or massage practitioner shall have a valid certificate issued by the Massage Therapy Organization, a clearly legible copy of which shall be conspicuously posted in the room or location where massage services will be provided.
- (2) It is unlawful for the owner, operator, responsible managing employee, manager or certificate holder in charge of or in control of the massage establishment to employ or permit a person to act as a massage therapist or massage practitioner who does not possess a valid massage therapist or massage practitioner certificate issued by the Massage Therapy Organization.
- (3) No business, except those exempted under Section 5.24.150 herein, may employ anyone to provide massage or allow anyone to massage unless the massage provider possesses a valid massage certificate issued by the Massage Therapy Organization.
- (b) Bath and massage operations shall be carried on and the premises shall be open only between the hours of 7 a.m. and 9 p.m. A massage begun any time before 9 p.m. must nevertheless terminate at 9 p.m. No person, whether certified or not, may provide massage in exchange for compensation after 9 p.m.
- (c) A list of services shall be posted in an open, public place on the premises, and shall be described in readily understood language. No owner, operator, responsible managing employee, manager or certificate holder shall permit, and no massage therapist or massage practitioner shall offer to perform any services other than those posted.
- (d) Any massage establishment or business shall maintain on its premises evidence for review by local authorities that demonstrates that all persons providing massage services are certified by the Massage Therapy Organization.
- (e) Each massage therapist and massage practitioner shall wear a name tag while administering a massage and which shall be worn on outer clothing and be clearly visible. The massage therapist and massage practitioner shall not use any name other than specified on their certificate while on duty.
- (f) Massage therapists and massage practitioners shall be fully clothed at all times. Clothing shall be of a fully opaque, non-transparent material and provide the complete covering from mid-thigh to three (3) inches below the collar bone.
- (g) Areas where massages are to be performed shall be separated by a non-lockable door unless there is no staff available to assure security for clients and massage staff who are behind closed doors. Said door shall not be equipped with a "peep hole" or any other device that allows anyone to see into or out of this room when the door is closed.

- (h) 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.
- (i) Wet and dry heat rooms, steam or vapor rooms or cabinets, shower rooms and compartments, toilet rooms and pools shall be thoroughly cleaned and disinfected as needed, and at least once each day the premises are open, with a disinfectant approved by the Health Department. Bathtubs shall be thoroughly cleaned after each use. All walls, ceilings, floors, and other physical facilities for the establishment must be in good repair and maintained in a clean and sanitary condition.
- (j) Instruments utilized in performing massage shall not be used on more than one (1) patron unless they have been sterilized using approved sterilizing methods.
- (k) Where a covering is furnished by the massage establishment, it shall not be used by more than one (1) patron until it has first been laundered and disinfected.
- (l) The owner or operator of the massage establishment shall keep a complete and current list of the names and residence addresses of all massage therapists, massage practitioners and employees of the massage establishment, and the name and residence addresses of the manager or managing employee purported to be principally in charge of the operation of the massage establishment. This roster shall be kept at the premises and be available for inspection by officials charged with enforcement of this chapter.
- (m) Every massage establishment shall keep a written record of the date and hour of each treatment administered, the name and address of each patron, the name of the massage therapist or massage practitioner administering treatment, and the type of treatment administered, to be recorded on a patron release form. Such written record shall be open to inspection by officials charged with enforcement of this chapter. Such records shall be kept on the premises of the massage establishment for a period of two (2) years.
- (n) No part of the massage establishment shall be used for residential or sleeping purposes.
- (o) No person shall enter, be, or remain in any part of a massage establishment while in the possession of, consuming, or using any alcoholic beverage or drug except a prescription drug. The responsible owner, operator, managing employee, manager or permittee shall not permit any such person to enter or remain upon such premises.
- (p) Every massage establishment shall be open at all times during hours during which massage is being provided for inspection by any officer of the City of Huntington Beach.
- (q) All doors leading into a massage establishment or area where massages are being performed shall remain unlocked during business hours unless there is no staff available to assure security for clients and massage staff who are behind closed doors.

- (r) No massage establishment shall simultaneously operate as a school of massage, or share facilities with a school of massage.

SECTION 17. Section 5.24.190 of the Huntington Beach Municipal Code is hereby repealed.

SECTION 18. Section 5.24.200 of the Huntington Beach Municipal Code is hereby repealed.

SECTION 19. Section 5.24.210 of the Huntington Beach Municipal Code is hereby repealed.

SECTION 20. Section 5.24.220 of the Huntington Beach Municipal Code is hereby repealed.

SECTION 21. Section 5.24.225 of the Huntington Beach Municipal Code is hereby amended to read as follows:

5.24.225 Outcall Massages. No outcall massage, which is a massage in a private residence or at a location which does not regularly provide or permit massage, shall be conducted in a hotel or motel room, or in the private residence of the certificate holder. No outcall massage may be provided in a private residence or business not regularly providing massage services between 7 p.m. and 8 a.m.

SECTION 22. Section 5.25.230 of the Huntington Beach Municipal Code is hereby amended to read as follows:

5.24.230 Prohibited conduct.

- (a) A massage therapist or massage practitioner shall not violate the provisions of Sections 647(a) and (b) of the California Penal Code, or any other state law involving a crime of moral turpitude, and such practices shall not be allowed or permitted by anyone.
- (b) A massage therapist or massage practitioner shall be fully clothed at all times and shall not expose their genitals, pubic area, buttocks, or in the case of female therapists or practitioners, their breasts, and such practices shall not be allowed or permitted by anyone.
- (c) A massage therapist or massage practitioner shall not massage a person of one sex within the view of a patron of the opposite sex, and such practice shall not be allowed or permitted by anyone unless all parties expressly consent to the treatment, location, and presence of the opposite sex.
 - (1) This subsection shall not apply if all involved patrons are fully clothed, excluding socks or stockings.
 - (2) No more than one male and one female may consent to be massaged in the same treatment room, and no more than two members of the same sex may consent to be massaged in the same treatment room.
 - (3) No person under the age of 18 may consent to a massage in the presence of another unless the other person is the minor's parent or legal guardian.

- (d) A massage therapist or massage practitioner shall not massage, fondle, or otherwise have intentional contact with the genitals or anus of any patron, or the breasts of a female patron and such practices shall not be allowed or permitted by anyone.
- (e) A massage therapist or massage practitioner shall not give a massage unless the breasts of female patrons are covered and the genitals of all patrons are covered, and such practices shall not be allowed or permitted by anyone.

SECTION 23. Section 5.24.235 of the Huntington Beach Municipal Code is added to read as follows:

5.24.235 Responsibility. The owner or operator of a massage business or establishment shall be responsible for the conduct of all employees or independent contractors working on the premises of the business.

5.24.240 Violation--Penalty. Any person violating this chapter shall be guilty of a MISDEMEANOR, punishable by a fine of one-thousand dollars (\$1,000) or by imprisonment in the county jail for a period not to exceed six (6) months, or by both such fine and imprisonment.

SECTION 24. Section 5.24.250 of the Huntington Beach Municipal Code is hereby repealed.

SECTION 25. Section 5.24.260 of the Huntington Beach Municipal Code is hereby repealed.

SECTION 26. Section 5.24.270 of the Huntington Beach Municipal Code is hereby repealed.

SECTION 27. Section 5.24.275 of the Huntington Beach Municipal Code is hereby repealed.

SECTION 28. Section 5.24.285 of the Huntington Beach Municipal Code is hereby repealed.

5.24.340 Unlawful operation declared nuisance. Any massage establishment operated, conducted or maintained contrary to the provisions of this chapter shall be and the same is hereby declared to be unlawful and a public nuisance. The City Attorney may, in addition to, or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings for abatement, removal or injunction thereof, in the manner provided by law. The City Attorney shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as shall abate or remove such massage establishment and restrain and enjoin any person from operating, conducting or maintaining a massage establishment contrary to the provisions of this chapter.

SECTION 29. This ordinance shall become effective 30 days after its adoption.

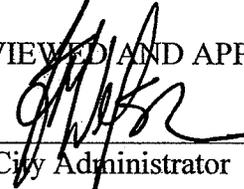
PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the _____ day of _____, 200__.

Mayor

ATTEST:

City Clerk

REVIEWED AND APPROVED:

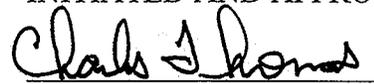


City Administrator

APPROVED AS TO FORM:


9.21.09 City Attorney Dec 9/21/09

INITIATED AND APPROVED:

 / ACTING CHIEF

Police Chief

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LEGISLATIVE DRAFT

ORDINANCE NO. 3844

Chapter 5.24

MASSAGE ESTABLISHMENTS

(1213-6/66, 1293-3/67, 2007-10/75, 2187-6/77, Urg. 2361-3/79, Urg. 2394-8/79, 3173-10/92, 3267-9/95, 3467-6/00, 3694-2/05, 3716-7/05, 3738-7/06)

Sections:

- 5.24.010 Definitions
- 5.24.020 ~~Massage establishment and massage technician—Permit certification required~~
- 5.24.030 ~~Massage establishment--Application for permit—Fees~~ Business license to operate massage business
- 5.24.040 ~~Massage establishment—Application—Contents~~ Repealed
- 5.24.050 ~~Massage establishment—Applicant to appear~~ Repealed
- 5.24.060 ~~Massage establishment—Application—Investigation~~ Repealed
- 5.24.070 ~~Massage establishment and massage technician—Permit—Refusal—Appeal~~ Repealed
- 5.24.080 Repealed -- Ord 3267-9/95
- 5.24.090 ~~Massage technician—Additional application and fee~~ Repealed
- 5.24.100 ~~Massage technician permit—Application~~ Repealed
- 5.24.110 ~~Massage technician application—Contents~~ Repealed
- 5.24.120 Repealed -- Ord 2466-2/81
- 5.24.125 ~~Employed Massage Technicians~~ Repealed
- 5.24.130 ~~Massage technician—Permit—Issuance~~ Repealed
- 5.24.140 Repealed -- Ord 3267-9/95
- 5.24.150 Exemptions
- 5.24.160 Massage establishment--Facilities
- 5.24.170 Massage establishment operation (3716-7/05)
- 5.24.190 ~~Permit renewal~~ Repealed
- 5.24.200 ~~Permits nontransferable~~ Repealed
- 5.24.210 ~~Number of establishments limited~~ Repealed
- 5.24.220 ~~Massage establishment—Change of location or name~~ Repealed
- 5.24.225 ~~Other business establishments providing massage~~ Outcall massages
- 5.24.230 Prohibited conduct
- 5.24.235 Responsibility
- 5.24.240 Violation--Penalty
- 5.24.250 ~~Permit suspension and revocation~~ Repealed
- 5.24.260 ~~Appeal procedure~~ Repealed
- 5.24.270 ~~Appeal—Hearing~~ Repealed
- 5.24.275 ~~Administrative Hearing Decision~~ Repealed
- 5.24.280 Repealed -- Ord 2726-10/84
- 5.24.285 ~~Right to Judicial Review~~ Repealed
- 5.24.290 Repealed -- Ord 2726-10/84
- 5.24.300 Repealed -- Ord 2726-10/84
- 5.24.310 Repealed -- Ord 2726-10/84
- 5.24.320 Repealed -- Ord 2726-10/84
- 5.24.330 Repealed -- Ord 2726-10/84
- 5.24.340 Unlawful operation declared nuisance

5.24.010 Definitions. Unless the particular provision or the context otherwise requires, the definitions and provisions contained in this section shall govern the construction, meaning, and application of words and phrases used in this chapter.

- (a) "Massage" or "massage therapy" means any method of 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,

- (b) liniment, antiseptic, oil, powder, cream, ointment, or other similar preparations commonly used in this practice.
- (b) "Massage establishment" means 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 as fifty percent (50%) or more of the activity carried on in the establishment. (3467-6/00)
- (c) "Recognized school of massage" means any school or institution of learning which teaches the theory, ethics, practice, profession, or work of massage, which school or institution complies with the California Education Code section 94310 or 94311, and which requires a resident course of study before the student shall be furnished with a diploma or certificate of graduation. Schools offering a correspondence course not requiring actual attendance shall not be deemed a recognized school. (2395-11/79, 2466-2/81, 3267-5/95) "Massage therapist," "bodyworker," "bodywork therapist," or "massage and bodywork therapist" means a person who is certified by the Massage Therapy Organization under Subdivision (c) of Section 4601 of the California Business and Professions Code, and who administers massage for compensation.
- (d) "Qualified Massage Association" means any association which meets the following criteria: (3267-5/95)
- (1) Has established as a minimum education requirement for membership the completion of at least five hundred (500) hours of training from a recognized school of massage or has a written and practical testing of equivalency administered and overseen by its admission committee or by a national certification program endorsed by the National Commission for Certifying Agencies (NCCA), which will be considered in lieu of the minimum education requirement of five hundred (500) hours. (3267-9/95)
 - (2) Offers and requires participation and completion by members of a minimum number of hours of specified continuing education as a condition of continuing membership. (3267-9/95)
 - (3) Is open to members of the general public meeting the requirements for membership on a national basis. (3267-9/95)
 - (4) Has minimum educational requirements or equivalents, including at least five hundred (500) classroom hours or its equivalent in anatomy, physiology, hygiene, sanitation, massage therapy and practice, ethics of massage practice, first aid and CPR. Equivalency must be verified by written and practical testing by the Association. (3267-9/95)
 - (5) The Association has established rules of ethics and has enforcement procedures for the suspension or revocation of membership for violation of such rules. (3267-9/95)
 - (6) The Association requires participation and completion by members of a minimum number of hours of specified continuing education as a condition of continued membership. (3267-9/95)
"Massage practitioner," "bodywork practitioner," or "massage and bodywork practitioner" means a person who is certified by the Massage Therapy Organization under Subdivision (b) of Section 4601 of the California Business and Professions Code, and who administers massage for compensation.

- (e) “Qualifying Exam” means a national certification examination which has been recognized by objective standards to fairly evaluate professional level, skill, safety and competence as determined by a qualified massage association. (3267-9/95) “Organization” means the Massage Therapy Organization created pursuant to Sections 4600-4620 of the California Business and Professions Code.
- (f) “Massage Technician” means any person who performs massage in exchange for anything of any value whatsoever, whether or not that person has a valid permit from the City. (3267-9/95, 3467-6/00) For purposes of this Chapter, the terms “massage” and “bodywork” shall have the same meaning.
- (g) “Owner” means the individual(s) whose name appears on the City of Huntington Beach business license. (3267-9/95)
- (h) “Operator” means 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. (3267-9/95)
- (i) “Customer area” means areas open to customers of the establishment. (3267-9/95) “Certified” shall mean any valid certificate issued in accordance with Sections 2600 through 4620 of the California Business and Professions Code.
- (j) A crime of “Moral turpitude” shall be defined as a crime which infringes upon the moral sentiment of the community, as distinguished from statutory *mala prohibita* (acts prohibited by a law). (3267-9/95) “Compensation” shall mean the payment, loan, advance, donation, contribution, deposit, or gift of money or anything of value.

5.24.020 Massage establishment and Massage Technician—Permit certification required. It shall be 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 Huntington Beach the business of providing a massages in exchange for compensation for establishment, or to provide massage in exchange for anything something of value, without being currently certified as a massage practitioner or massage therapist by the California Massage Therapy Organization in accordance with Sections 4600 through 4620 of the California Business and Professions Code. Certification by the Massage Therapy Organization must be obtained by March 1, 2010, a permit issued by the City of Huntington Beach pursuant to the provisions of this chapter for each and every such massage establishment and such person providing massage services. Education and training requirements contained in this chapter apply equally to massage technicians and massage establishment owners. (2395-11/79, 3267-9/95)

5.24.030 Massage establishment or services—Application for permit—Fees Business License required.

- (a) Any person, association, corporation, partnership or other entity desiring to obtain a permit to operate a massage establishment or provide massage services shall make application to the Chief of Police or his designated representative. Prior to submitting such application, a nonrefundable fee as established by resolution of the City Council shall be paid to the City of Huntington Beach to defray, the cost of investigation and report required by this chapter. The City Treasurer shall issue a receipt showing that such application fee has been paid. The receipt, or a copy thereof, shall be supplied to the Chief of Police at the time such application is submitted. (3267-9/95, 3738-7/06) apply for a business license and provide the following relevant information:

- (1) Full name of certificate holder
- (2) Date of birth
- (3) State issued identification number (if applicable)
- (4) Social Security Number
- (5) Home address and phone number
- (6) Work address and phone number
- (7) Color photograph of the certificate holder
- (8) Proof of State certification for those who will provide massage services

(b) The application for permit does not authorize operation of a massage establishment or performing massage until such permit has been granted. (2395-11/79, 3267-9/95) Prior to submitting the massage business license application, the fees as established by resolution of the City Council shall be paid to the City of Huntington Beach.

(c) The application for the massage business license does not authorize operation of a massage establishment or performing massage services until the business license is issued.

(d) It shall be the responsibility of each massage business owner or operator to file copies or provide other evidence of the certificates held by the persons who are providing massage services at the business.

(e) It shall be the responsibility of each massage business owner or operator to notify the City of any intention to rename, change management, or convey the business to another person.

5.24.040 Massage establishment Application Contents. Each applicant for a massage establishment permit shall furnish the following information:

- (a) The full, true name and any other names used by the applicant.
- (b) The present address and telephone number of the applicant.
- (c) The previous addresses of applicant, if any, for a period of five (5) years immediately prior to the date of the application and the dates of residence at each.
- (d) Acceptable written proof that the applicant is at least eighteen (18) years of age.
- (e) The applicant's height, weight, color of eyes and hair and date and place of birth, unless applicant is a partnership or corporation, in which case this information shall be supplied for the person or persons authorized to execute the application. (3267-9/95)
- (f) Two photographs of the applicant at least 2" X 2" taken within the last six (6) months.
- (g) Business, occupation or employment history of the applicant for the five (5) years immediately preceding the date of application.
- (h) The business license history of the applicant and whether such applicant, in previous operations in this or any other City, state, or territory under license, has had such license or permit for a massage establishment or other similar type of business revoked or suspended, the reason therefor, and the business activity or occupation subsequent to such action of suspension or revocation.
- (i) All convictions, including ordinance violations, exclusive of traffic violations, stating the dates and places of any such conviction.

~~(j) If the applicant is: (2395-11/79, 3267-9/95)~~

~~—(1) a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation or charter, together with the place and date of incorporation, and the names and addresses of each of its current officers and directors, and each stockholder holding more than five percent (5%) of the stock in the corporation. (2395-11/79, 3267-9/95)~~

~~—(2) a partnership, the applicant shall set forth the name, residence address and dates of birth of the partners, including limited partners. If it is a limited partnership, it shall furnish a copy of its certificate of limited partnership filed with the Secretary of State. If one or more of the partners is a corporation, the provisions of this subsection pertaining to corporations shall apply. (2395-11/79, 3267-9/95)~~

~~—The applicant corporation or partnership shall designate one of its officers or general partners to act as its responsible managing officer. Such designated persons shall complete and sign all application forms required of an individual applicant under this chapter, but only one application fee shall be charged. (2395-11/79, 3267-9/95)~~

~~(k) The name and address of the owner and lessor of the real property upon which the business is to be conducted, and, if applicable, a copy of the lease or rental agreement. (2395-11/79, 3267-9/95)~~

~~(l) Proof of matriculation from a recognized school of massage, as defined herein. If the applicant is a corporation or partnership, then this proof must be supplied for a member of the corporation or partnership who will actively participate in the management of the establishment. (3267-9/95)~~

~~(m) Proof of passage of an independently prepared and administered national certification exam which has been recognized by objective standards to fairly evaluate professional levels of skill, safety and competence, as determined by a qualified massage association. (3267-9/95)~~

~~(n) Such other identification and information as the Police Department may require in order to discover the truth of the matters hereinbefore specified as required to be set forth in the application. (2395-11/79, 3267-9/95, 3467-6/00)~~

~~(o) The Chief of Police shall require the applicant to furnish fingerprints. (2395-11/79, 3267-9/95, 3467-6/00)~~

~~(p) Proof of actual malpractice insurance coverage or the ability to qualify for professional malpractice insurance. (3267-9/95, 3467-6/00)~~

~~**5.24.050 Massage establishment—Applicant to appear.** The applicant, if an individual, or designated responsible managing officer, if a partnership or corporation, shall personally appear at the Police Department of the City of Huntington Beach and produce proof that the application fee as set by resolution of the City Council has been paid and shall present the application containing the aforementioned and described information. (2395-11/79, 3267-9/95)~~

~~**5.24.060 Massage establishment—Application—Investigation.** Upon receipt of the completed application, the Chief of Police shall have sixty (60) days to investigate the application and the background of the applicant, including, but not limited to, any past criminal convictions as provided by the Justice Department or other legally authorized agency. Upon completion of the investigation, the Chief of Police shall grant the permit if he finds: (2395-11/79, 3267-9/95)~~

~~(a) The required fee has been paid.~~

- (b) The applicant conforms in all respects to the provisions of this chapter.
- (c) The applicant has not knowingly made any false, misleading or fraudulent statements in the application. (2395 11/79, 3267 9/95)
- (d) The applicant has fully cooperated in the investigation of his or her application.
- (e) The applicant, if an individual, or any officers, directors, or shareholders of the corporation holding more than 5% of the stock, if the applicant is a corporation, or any of the partners, including limited partners, if the applicant is a partnership, has not been convicted in a court of competent jurisdiction of an offense involving conduct which requires registration under California Penal Code section 290, or of conduct violating Penal Code sections 266, 314, 315, 316, 318, 647(a), and 647(b), or convicted of an attempt to commit any of the abovementioned offenses or convicted in any state of an offense which if committed or attempted in this state, or conspiracy to commit any of the above offenses, would have been punishable as one or more of the abovementioned offenses, or any crime involving dishonesty, fraud, deceit, or moral turpitude. (2395 11/79, 3267 9/95)
- (f) The massage establishment, as proposed by applicant, would comply with all applicable laws, including but not limited to zoning, fire and safety requirements and standards. (2395 11/79, 3267 9/95)
- (g) The applicant is at least eighteen (18) years of age. (2395 11/79, 3267 9/95)
- (h) The applicant has not engaged in conduct which would constitute grounds for suspension or revocation under this chapter. (2395 11/79, 3267 9/95)
- (i) The applicant has shown proof of malpractice insurance and has complied with all other city ordinances pertaining to insurance coverage. (3267 9/95)

If relevant Department of Justice state summary criminal history information is not received within the sixty-day investigation period, the Chief of Police is authorized to issue a temporary permit. A final decision granting or denying a permit shall be made after receipt of such summary criminal history information. If the permit is granted, its effective date shall be the date of issuance of the temporary permit. If the permit is denied, the temporary permit shall expire upon notice of denial.

5.24.070 ~~Massage establishment and massage technician Permit Refusal Appeal.~~ If the Chief of Police, following investigation of the applicant, finds that the applicant does not fulfill the requirements set forth in this chapter, he shall deny the application and notify the applicant by first class mail of such denial. Any applicant who is denied a permit by the Chief of Police may appeal such denial to the City Administrator, pursuant to the provisions of this chapter. (2395 11/79, 2726 10/84, 3267 9/95)

5.24.090 ~~Massage technician additional application and fee.~~ In the event a massage technician currently licensed by the City of Huntington Beach seeks employment at a massage establishment other than the establishment indicated on the original application, an additional application and fee as set by resolution of the City Council must be submitted. (2395 11/79, 3267 9/95)

5.24.100 ~~Massage technician permit Application.~~ Any person desiring to obtain a permit to act as a massage technician shall make application to the Chief of Police or his designated representative. Prior to submitting application, a nonrefundable fee as established by resolution

of the City Council shall be paid to the City of Huntington Beach to defray the cost of investigation and report required by this chapter. The City Clerk or the City Treasurer shall issue a receipt showing that such application fee has been paid. The receipt, or a copy thereof, shall be supplied to the Chief of Police at the time such application is submitted. (2395 11/79, 3267 9/95)

An application for a permit does not authorize acting as a massage technician until a permit has been granted. (2395 11/79)

5.24.110 Massage technician application - Contents. In addition to all the information required by section 5.24.040 of this chapter, each application for massage technician permit shall contain the name, address and phone number at which the applicant will be employed or in the case of persons providing massage at various locations throughout the City, a permanent address other than a post office box, associated with the business, usually the location for which a City business license has been issued. (2395 11/79, 3267 9/95, 3694 2/05)

(a) Those individuals or companies providing massage at various locations throughout the City must possess a valid Massage Permit, and a Business License. (3694 2/05)

(b) Address of record on the Massage Permit and Business License must be the permanent address of permitted person(s), no post office boxes or private mailboxes will be accepted. (3694 2/05)

(c) No massage, for a fee, shall be done at the residence of the permitted massage technician or in any hotel or motel room in the City. (3694 2/05)

(d) This section includes all definitions of massage as indicated under 5.24.010(a), and includes Chair Massage Therapy. (3694 2/05)

The applicant must furnish a statement from a physician, licensed to practice in the state of California, that the applicant has been examined within the past thirty (30) days prior to submitting the application, and has been found free of any communicable disease. (2395 11/79, 2777 7/85, 3267 9/95)

5.24.125 Employed Massage Technicians. Massage technicians who are employed by any licensed practitioner listed under Section 5.24.150 are not required to be permitted through the City of Huntington Beach. An employed massage technician must be working under the practitioner's license and the licensed practitioner must be present at least 50% of the time at the licensed establishment during the times the massage technician is employed and caring for patients. To qualify for this exemption, all massage technicians must be employed by a practitioner listed in Section 5.24.150 and their employment must be verified by an application, wage slips, W2 or W4 tax documents. An employed massage technician shall not receive monies paid per individual massage or tips. All documentation showing employment of massage technicians shall be kept by the practitioner for a period of not less than three years. This exemption does not apply to independent contractors. (3694 2/05)

5.24.130 Massage technician - Permit - Issuance. The Chief of Police shall have thirty (30) days to investigate the application and the background of the applicant. Upon completion of the investigation, the Chief of Police shall grant the permit if the following requirements have been met: (2395 11/79, 3267 9/95, 3694 2/05)

(a) The applicant has successfully completed a minimum of 500 hours of instruction in massage or physical therapy at a recognized school of massage, or physical therapy prior to issuance of the permit. Applicant must produce a transcript evidencing such successful completion of training. (3694 2/05)

- (b) ~~The applicant has not had a massage establishment permit or massage technician's permit or other similar license or permit denied or revoked for cause by a licensing authority or by any city, county or state within three (3) years prior to the date of application. (2395-11/79, 3267-9/95)~~
- (c) ~~All applicants must have passed an independently prepared and administered national certification exam which has been recognized by objective standards to fairly evaluate professional levels of skill, safety and competence, as determined by a qualified massage association. (3267-9/95, 3694-2/05)~~
- (d) ~~The applicant has not been convicted of any of the offenses listed in Section 5.24.060(e) within the last five (5) years. (3267-9/95, 3467-6/00)~~

~~If relevant Department of Justice state summary criminal history information has not been received within the thirty (30) day investigation period, the Chief of Police is authorized to issue a temporary permit. A final decision granting or denying a permit shall be made after receipt of such summary criminal history information. If the permit is granted, its effective date shall be the date of issuance of the temporary permit. If the permit is denied, the temporary permit shall expire upon notice of denial.~~

5.24.150 Exemptions. Exemptions do not apply to independent contractors of the listed exempted professionals. Each independent contractor must possess a valid massage technician permit. The provisions of this chapter shall not apply to the following classes of individuals or groups while engaged in or performing the duties of their respective professions: (2395-11/79, 3267-9/95, 3694-2/05)

- (a) Physicians, surgeons, chiropractors, osteopaths, acupuncturists, and physical therapists duly licensed to practice in the state of California. (3467-6/00)
- (b) Hospitals, nursing homes, sanitariums, or other health care facilities duly licensed by the state of California, provided that at all times such physicians, surgeons, chiropractors, osteopaths and physical therapists are acting in adherence with the provisions of the state law which govern this field. (3467-6/00)
- (c) Registered or licensed vocational nurses duly registered by the state of California. (3694-2/05)
- (d) Barbershops and beauty parlors, barbers and beauticians but only when engaged in the practice for which they are licensed by the state of California i.e., massage above the neck and shoulders, hands and arms and below the knee. (3694-2/05)
- (e) Accredited high schools and colleges, and coaches and trainers employed therein while acting within the scope of their employment.
- (f) Trainers of any amateur, semi-professional or professional athlete or athletic team. (2395-11/79)
- (g) No employed or independent contractor massage technician may administer massage or otherwise treat or care for patients other than patients of the practitioner and those patients must have been prescribed massage therapy by a practitioner listed in this section prior to the administration of the massage therapy. (3694-2/05)
- (h) Physical Therapist students, and Massage Therapist students earning practical hours for school/education, and who are currently enrolled in a licensed program for Physical Therapy,

through a recognized school/education center, can work, under the direct supervision of an exempted professional as defined in this section. Direct supervision means that an exempted professional, as defined in this section, must be present at all times when a student is performing their duties. (3694-2/05)

5.24.160 Massage establishment--Facilities. Every massage establishment shall maintain facilities meeting the following requirements:

- (a) Sign - subject to applicable provisions of the City's codes, a recognizable and legible sign shall be posted at the main entrance identifying the business as a massage establishment.
- (b) Lighting - minimum lighting shall be provided in accordance with the Electrical Code adopted by the City and, in addition, at least one artificial light of not less than forty (40) watts shall be provided in each room or enclosure where massage services are performed on patrons and shall be activated at all times while a patron is in such room or enclosure. (3267-9/95, 3694-2/05)
- (c) Equipment - adequate equipment for disinfecting and sterilizing instruments used in performing the acts of massage shall be provided. (3694-2/05)
- (d) Water - hot and cold running water shall be provided at all times. (3694-2/05)
- (e) Linen storage - closed cabinets shall be provided and utilized for storage of clean linens, and approved receptacles shall be provided for the deposit of soiled linen. (2395-11/79, 3267-9/95, 3694-2/05)
- (f) Separation of sexes - if male and female patrons are to be served simultaneously at the massage establishment, a separate massage room or rooms and separate dressing, bathing and toilet facilities shall be provided and utilized for male and female patrons. Each separate facility or room shall be clearly marked as such. (2395-11/79, 3267-9/95, 3694-2/05)
- (g) ~~Bathing, dressing, locker, toilet facilities~~ - adequate bathing, dressing, locker, and toilet facilities shall be provided for patrons. A minimum of one tub or shower, one dressing room containing a separate locker for each patron to be served, which locker shall be capable of being locked, and a minimum of one toilet and one wash basin shall be provided for every massage establishment. (3694-2/05)
- (hg) Massage table pads - pads used on massage tables shall be covered in a professional manner with durable, washable plastic or other waterproof material acceptable to Orange County Health Department. (3694-2/05)

5.24.170 Massage establishment operation. Every massage establishment shall comply with the following operating requirements:

- (a) (1) Each person employed or acting as a massage technician, therapist or massage practitioner shall have a valid permit/certificate issued by the City of Huntington Beach Massage Therapy Organization, a clearly legible copy of which shall be conspicuously posted in the room or location where massage services will be provided. (2395-11/79, 3267-9/95, 3467-6/00)
- (2) It is unlawful for the owner, operator, responsible managing employee, manager or permittee/certificate holder in charge of or in control of the massage establishment to employ or permit a person to act as a massage technician, therapist or massage practitioner, as defined in this chapter, who does not possess a valid massage technician's therapist or

massage practitioner certificate issued by the Massage Therapy Organization permit.
(3467-6/00)

- (3) No business, except those exempted under section 5.24.150 herein, may employ anyone to provide massage or allow anyone to provide massage, unless the massage provider possesses a valid massage certificate issued by the Massage Therapy Organization under this Chapter. (3467-6/00, 3694-2/05)
- (b) Bath and massage operations shall be carried on and the premises shall be open only between the hours of 7 a.m. and 9 p.m. A massage begun any time before 9 p.m. must nevertheless terminate at 9 p.m. No person, whether ~~licensed under this Chapter~~ certified or not, may provide massage in exchange for ~~anything of value~~ compensation after 9:00 p.m. (2395-11/79, 3267-9/95, 3467-6/00)
- (c) A list of services shall be posted in an open, public place on the premises, and shall be described in readily understood language. No owner, operator, responsible managing employee, manager, or ~~permittee~~ certificate holder shall permit, and no massage technician practitioner shall offer to perform any services other than those posted.
- (d) Any massage establishment or business shall maintain on its premises evidence for review by local authorities that demonstrates that all persons providing massage services are certified by the Massage Therapy Organization. The owner/operator of a massage establishment shall display a massage establishment permit and the permit for each and every massage technician employed in the establishment in an open and conspicuous place on the premises, available for examination upon demand by any police officer of the City. (2395-11/79, 3267-9/95)
- (e) Each massage technician ~~therapist and massage practitioner~~ shall wear a photo identification card prepared and issued by the City ~~name tag~~ while administering a massage and which ~~The identification card shall be worn on outer clothing with the photo side facing out and be highly visible.~~ The massage technician ~~therapist and massage practitioner~~ shall not use any name other than specified on the photo identification card ~~their certificate~~ while on duty. (3267-9/95)
- (f) ~~Massage technicians and attendants~~ therapists and massage practitioners shall be fully clothed at all times. Clothing shall be of a fully opaque, non-transparent material and provide the complete covering from mid-thigh to three (3) inches below the collar bone. (3267-9/95)
- (g) Areas where massages ~~is~~ are to be performed shall be separated by a non-lockable door unless there is no staff available to assure security for clients and massage staff who are behind closed doors. Said door shall not be equipped with a "peep hole" or any other device that allows anyone to see into or out of this room when the door is closed. (3694-2/05)
- (h) 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. (2395-11/79, 3267-9/95)
- (i) Wet and dry heat rooms, steam or vapor rooms or cabinets, shower rooms and compartments, toilet rooms and pools shall be thoroughly cleaned and disinfected as needed, and at least once each day the premises are open, with a disinfectant approved by the Health Department. Bathtubs shall be thoroughly cleaned after each use. All walls, ceilings, floors, and other physical facilities for the establishment must be in good repair and maintained in a clean and sanitary condition. (2395-11/79, 3267-9/95)

- (j) Instruments utilized in performing massage shall not be used on more than one (1) patron unless they have been sterilized using approved sterilizing methods. (2395-11/79, 3267-9/95)
- (k) Where a covering is furnished by the massage establishment, it shall not be used by more than one (1) patron until it has first been laundered and disinfected. (2395-11/79, 3267-9/95)
- (l) The owner or operator of the massage establishment shall keep a complete and current list of the names and residence addresses of all ~~massage technicians-therapists,~~ massage practitioners and employees of the massage establishment, and the name and residence addresses of the manager or managing employee purported to be principally in charge of the operation of the massage establishment. This roster shall be kept at the premises and be available for inspection by officials charged with enforcement of this chapter. (3267-9/95)
- (m) Every massage establishment shall keep a written record of the date and hour of each treatment administered, the name and address of each patron, the name of the massage therapist or massage practitioner administering treatment, and the type of treatment administered, to be recorded on a patron release form. Such written record shall be open to inspection by officials charged with the enforcement of this chapter. Such records shall be kept on the premises of the massage establishment for a period of two (2) years. (3267-9/95)
- ~~(n) The owner/operator of each massage establishment shall file with the City, documents issued by an insurance company authorized to do business in the State of California evidencing that the permittee is insured under a liability insurance policy providing minimum coverage in an amount set by resolution of the City Council for injury or death to one person arising out of the operation of any massage establishment and the administration of a massage, and shall be kept in full force and effect at all times by such owner or operator. Proof of such insurance shall be kept on the premises at all times. (3267-9/95, 3746-7/05)~~
- ~~(o) No part of the establishment shall be used for residential or sleeping purposes. No cooking or food preparation shall be allowed on the premises unless a full service kitchen is installed. Such a kitchen shall be for the sole use of employees, and shall be installed in an "employees only" area. The full service kitchen shall have a minimum of a sink with hot and cold running water, a refrigerator, a stove and sufficient cabinets to store cooking utensils. (3267-9/95)~~
- ~~(p) No person shall enter, be, or remain in any part of a massage establishment while in the possession of, consuming, or using any alcoholic beverage or drug except a prescription drug. The responsible owner, operator, managing employee, manager or permittee shall not permit any such person to enter or remain upon such premises. (2395-11/79, 3267-9/95)~~
- ~~(q) Every massage establishment shall be open at all times during hours during which massage is being provided for inspection by any officer of the City of Huntington Beach. (2395-11/79, 3267-9/95, 3467-6/00)~~
- ~~(r) All exterior doors leading into a massage establishment or area where massages are being performed shall remain unlocked from the inside during business hours unless there is no staff available to assure security for clients and massage staff who are being closed doors. All doors leading to the business or leading to the customer areas are to remain unlocked during business hours. (2395-11/79, 3267-9/95)~~
- ~~(s) No massage establishment shall simultaneously operate as a school of massage, or share facilities with a school of massage. (2395-11/79, 2466-2/81, 3267-9/95)~~

5.24.190 Permit renewal. ~~Permits for massage establishments and massage technicians shall be renewed on a year-to-year basis provided that the permittees continue to meet the requirements~~

set out in this chapter. The renewal fee for massage establishments and massage technicians shall be set by resolution of the City Council. The application for permit renewal shall contain the same information as required under this chapter for the original application. (2395-11/79, 3267-9/95)

5.24.200 Permits nontransferable. No massage establishment permit may be sold, transferred or assigned by a permittee, or by operation of law, to any other person or persons. Any such sale, transfer or assignment, or attempted sale, transfer or assignment, shall be deemed to constitute a voluntary surrender of such permit and such permit shall thereafter be null and void; provided and excepting, however, that if the permittee is a partnership and one or more of the partners should die, one or more of the surviving partners may acquire, by purchase or otherwise, the interest of the deceased partner or partners without effecting a surrender or termination of such permit, and in such case, the permit, upon notification to the Chief of Police, shall be placed in the name of the surviving partners. A massage establishment permit issued to a corporation shall be deemed terminated and void when either any outstanding stock of the corporation is sold, transferred or assigned after the issuance of a permit, or any stock authorized but not issued at the time of the granting of a permit is thereafter issued or sold, transferred or assigned. No massage technician permit may be sold, transferred or assigned by a permittee, or by operation of law, to any other person or persons. (2395-11/79, 3267-9/95)

5.24.210 Number of establishments limited. No more than ten (10) valid permits for massage establishments shall be authorized by the City Council to operate in the City of Huntington Beach. (2395-11/79)

5.24.220 Massage establishment - Change of location or name.

- (a) No massage establishment shall move from the location specified on its permit until a change of location fee in the sum set by resolution of the City Council has been paid to the City of Huntington Beach, and approval has been obtained from the Chief of Police and the Department of Community Development. Such approval shall not be given unless all requirements and regulations, as contained in the City's codes, have been met. (2395-11/79, 3267-9/95)
- (b) No permittee shall operate, conduct, manage, engage in, or carry on the business of massage establishment under any name other than his name and the name of the massage establishment as specified on his permit.
- (c) Any application for an extension or expansion of a building or other place of business where a massage establishment is located shall require inspection and shall comply with the provisions and regulations of this chapter and all other city ordinances including zoning ordinances. (2395-11/79, 3267-9/95)

5.24.225 Other business establishments providing massage Outcall massages. No outcall massage, which is a massage in a private residence or at a location which does not regularly provide or permit massage, shall be conducted in a hotel or motel room, or in the private residence of the certificate holder. No outcall massage may be provided in a private residence or business not regularly providing massage services between 7 p.m. and 8 a.m. Those businesses that provide massage, as defined herein, to paying customers, said service representing less than fifty percent (50%) of the activity carried on at the business, must comply with Sections 5.24.160 (a) (g), and (i), and 5.24.170 (a), (b), (c), (f), (h), (i), (j), (k), (p), (q), (r) and (s) of this Chapter. (3694-2/05)

- (a) ~~No massage, as defined in this Chapter, shall be provided in a hotel or motel room or in a private residence or business not providing massage services without a permit issued pursuant to this Chapter. (3694-2/05)~~
- (c) ~~In a private residence or business not providing massage services, no massage may be provided between 7:00 p.m. and 8:00 a.m. (3694-2/05)~~
- (d) ~~In the case of a business which does not provide massage services: (3694-2/05)~~
 - 1. ~~No alcohol may be served anywhere on the premises where a massage is being performed; (3694-2/05)~~
 - 2. ~~Both patron and technician must be fully clothed; (3694-2/05)~~
 - 3. ~~No massage shall be performed behind closed doors. (3694-2/05)~~

5.24.230 Prohibited conduct.

- (a) ~~A massage techniciantherapist or shall not violate the provisions of sections 647(a) and (b) of the California Penal Code, or any other state law involving a crime of moral turpitude, and such practices shall not be allowed or permitted by the massage establishment permitteeanyone. (2395-11/79, 3267-9/95)~~
- (b) ~~A massage techniciantherapist or massage practitioner shall be fully clothed at all times and shall not expose their genitals, pubic area, buttocks, or in the case of female technicianstherapists or practitioners, their breasts, and such practices shall not be allowed or permitted by the massage establishment permitteeanyone. (2395-11/79, 3267-9/95)~~
- (c) ~~A massage techniciantherapist or massage practitioner shall not massage a patron of one sex within the view of a patron of the opposite sex, and such practices shall not be allowed or permitted by the massage establishment permitteeanyone unless all parties expressly consent to the treatment, location, and presence of the opposite sex. (2395-11/79, 3267-9/95)~~
 - 1. ~~This subsection shall not apply if all involved patrons are fully clothed, excluding socks or stockings.~~
 - 2. ~~No more than one male and one female may consent to be massaged in the same treatment room, and no more than two members of the same sex may consent to be massaged in the same treatment room.~~
 - 3. ~~No person under the age of 18 may consent to a massage in the presence of another unless the other person is the minor's parent or legal guardian.~~
- (d) ~~A massage techniciantherapist or massage practitioner shall not give a massages at any location other than on the premises of a massage establishment with a valid permit, or at business location establishment other than the one specified on the technician's permit(s). (2395-11/79, 3267-9/95, 3467-6/00)massage, fondle, or otherwise have intentional contact with the genitals or anus of any patron, or the breasts of a female patron and such practices shall not be allowed or permitted by anyone.~~
- (e) ~~A massage techniciantherapist or massage practitioner shall not massage, fondle, or otherwise have intentional contact with the genitals or anus of any patron, or the breasts of a female patron, andgive a massage unless the breasts of female patrons are covered and the genitals of~~

all patrons are covered, and such practices shall not be allowed or permitted by the massage establishment permittee. (2395-11/79, 3267-9/95) anyone.

- (f) ~~A massage technician shall not give a massage unless the breasts of female patrons are covered and the genitals of all patrons are covered, and such practices shall not be allowed or permitted by the massage establishment permittee. (2395-11/79, 3267-9/95)~~

~~Proof of knowledge of any violation of this section shall not be required to be shown where a massage establishment permit is suspended or revoked. (2395-11/79, 2726-10/84)~~

5.24.235 Responsibility. The owner or operator of a massage business or establishment shall be responsible for the conduct of all employees or independent contractors working on the premises of the business.

5.24.240 Violation--Penalty. Any person violating this chapter shall be guilty of a MISDEMEANOR, punishable by a fine of one-thousand dollars (\$1,000) or by imprisonment in the county jail for a period not to exceed six (6) months, or by both such fine and imprisonment. (2395-11/79, 2726-10/84, 3173-10/92, 3267-9/95, 3467-6/00)

- ~~(d) The person requesting the Administrative Hearing may file a written declaration with the City Attorney before the hearing or personally attend the hearing on the date, time and place specified. A failure to file a written declaration before the hearing or personally attend the hearing, unless continued pursuant to this Chapter, will be considered a non-appearance. Non-appearance shall constitute an abandonment of the request, for the hearing. The failure to appear by the appellant shall be noted on the Notice of Decision by the Hearing Officer which will be mailed to the permittee by the City Attorney. (3694-2/05, 3738-7/06)~~

5.24.270 Appeal Hearing. The following rules of evidence shall apply:

- (a) ~~Oral evidence shall be taken only under oath or affirmation. The hearing officer shall have authority to administer oaths, and to receive and rule on admissibility of evidence.~~
- (b) ~~Each party shall have the right to call and examine witnesses, to introduce exhibits, and to cross-examine opposing witnesses who have testified under direct examination. The hearing officer may call and examine any witness.~~
- (c) ~~Technical rules relating to evidence and witnesses shall not apply to hearings provided for herein. Any relevant evidence may be admitted if it is material and is evidence customarily relied upon by responsible persons in the conduct of their affairs regardless of the existence of any common law or statutory rule which might make admission of such evidence improper over objection in civil actions. Hearsay testimony may be used for the purpose of supplementing or explaining any evidence given in direct examination, but shall not be sufficient in itself to support a finding unless such testimony would be admissible over objection in civil actions. The rules of privilege shall be applicable to the extent that they now, or are hereafter permitted in civil actions; and irrelevant, collateral, undue, and repetitious testimony shall be excluded. (2395-11/79, 2726-10/84)~~
- (d) ~~The hearing shall be conducted by a Hearing Officer either: (i) on the date, time and place specified in the notice, or (ii) on the date designated on the original notice of decision by the Chief of Police. (3694-2/05)~~
- (e) ~~The City Attorney's Office or the City Attorney's designee shall ensure that the pertinent records are delivered to the Hearing Officer for the hearing. The City Attorney's Office, or~~

the City Attorney's designee, shall also make available to the appellant before the hearing a copy of any additional reports that are provided to the Hearing Officer. (3694-2/05)

- (f) Any reports prepared by the Police Department concerning the denial, suspension, or revocation of the permit that are provided to the Hearing Officer shall be accepted by the Hearing Officer as prima facie evidence of the reasons for such action on the permit and the facts stated in such documents. (3694-2/05)
- (g) Neither the Police Officer who denied, revoked or suspended the permit nor any other representative of the City shall be required to attend the hearing, nor shall the Hearing Officer require that there be submitted any evidence, other than the reasons for denial stated in the documents presented to the Hearing Officer, that may exist among the public records of the City. However, any such appearance and/or submission may be made at the discretion of any City employee or agent. (3694-2/05)
- (h) The Hearing Officer may continue a hearing if a request is made showing good cause by the appellant or a representative of the City. All continuance requests shall either: (i) be made in person at the hearing by the appellant or his or her representative if the appellant is physically unable to attend, or (ii) be made by a written request received by the City Attorney at least 24 hours before the hearing date. If the continuance is granted, a new hearing date shall be set within 45 days. If the continuance is denied, the hearing shall proceed then and there as scheduled, and if the appellant is not present the request(s) shall be deemed abandoned in accordance with the subsection below. The Hearing Officer's decision is final and he or she shall either personally give the Notice of Decision to the appellant or the representative if present at the end of the hearing or request that the notice be mailed by the City Attorney. (3694-2/05)
- (i) The hearing shall be conducted informally and the legal rules of evidence need not be followed. The Hearing Officer does not have the authority to issue a subpoena. (3694-2/05)
- (j) Abandonment of the request for hearing, constitutes a failure to exhaust administrative remedies. (3694-2/05)

5.24.275 Administrative Hearing Decision.

- (a) After considering all the evidence and testimony submitted at the administrative hearing, the Hearing Officer shall issue a written decision to uphold or reverse the decision on the permit. The Hearing Officer has no discretion or authority to issue a permit. The decision will be made on a Notice of Decision form and will state the reasons and evidence considered for the decision. The decision of the Hearing Officer shall be made at the conclusion of the hearing and shall be final. The Notice of Decision for the Administrative Hearing shall be delivered to the appellant at the conclusion of the hearing. (3694-2/05)
- (b) The Hearing Officer's continued employment, performance evaluation, compensation, and benefits shall not directly or indirectly be linked to the decision rendered. (3694-2/05)

5.24.285 Right to Judicial Review.

- (a) The appellant may seek judicial review of the Administrative Hearing decision by filing an appeal with the West Justice Center of the Superior Court within 20 calendar days after the appellant receives a copy of the Notice of Decision at the conclusion of the hearing. The appeal filed with the court must also contain a proof of service showing a copy of the appeal was served upon "City of Huntington Beach (Attention: City Attorney)." (3694-2/05)

~~(b) The City Attorney shall forward to the Court within 15 days of its request, the pertinent documents for any case appealed to that court. (3694-2/05)~~

5.24.340 Unlawful operation declared nuisance. Any massage establishment operated, conducted or maintained contrary to the provisions of this chapter shall be and the same is hereby declared to be unlawful and a public nuisance. The City Attorney may, in addition to, or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings for abatement, removal or injunction thereof, in the manner provided by law. The City Attorney shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as shall abate or remove such massage establishment and restrain and enjoin any person from operating, conducting or maintaining a massage establishment contrary to the provisions of this chapter. (2395-11/79, 3267-9/95)

ATTACHMENT #6

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STAFF REPORT

TO: Planning Commission
FROM: Scott Hess, AICP, Director of Planning
BY: Rosemary Medel, Associate Planner *RM*
DATE: September 9, 2009

SUBJECT: ZONING TEXT AMENDMENT NO. 09-003 (MESSAGE ORDINANCE)

APPLICANT: City of Huntington Beach

LOCATION: Citywide

STATEMENT OF ISSUE:

- ◆ Zoning Text Amendment No. 09-003 request:
 - Amend Chapter 204, Section 204.10 (V) Personal Enrichment Services: delete massage as a Personal Enrichment Service business.
 - Amend Chapter Section 204.10 (W) Personal Services: Include massage, as regulated by Huntington Beach Municipal Code Chapter 5.24.
 - Amend Section 204.10 (AA) and Chapter 212, Section 212.04: Eliminate reference to massage as a Sexually Oriented Business.
- ◆ Staff's Recommendation:

Approve Zoning Text Amendment No. 09-003 based upon the following:

 - Amendment will comply with State Law provisions under Senate Bill 731, which limits land use restrictions on massage businesses complying with the State certification process.
 - Amendment will allow massage businesses in the City to use the new State process, which will enable consumers to identify credible professionals having obtained the appropriate training, licensing and testing to be designated as a certified massage therapist or practitioner.

RECOMMENDATION:

Motion to:

“Approve Zoning Text Amendment No. 09-003 with findings for approval (Attachment No. 1) and forward Draft Ordinance (Attachment No. 2) to the City Council for adoption.”

ALTERNATIVE ACTION(S):

The Planning Commission may take alternative actions such as:

- A. "Continue Zoning Text Amendment No. 09-003
- B. "Deny Zoning Text Amendment No.09-003 with findings for denial."

PROJECT PROPOSAL:

Zoning Text Amendment No. 09-003 represents a request to amend Chapter 204 (Use Classifications) and Chapter 212 (Industrial Districts) of the Huntington Beach Zoning and Subdivision Ordinance. Zoning Text Amendment No. 09-003 would implement changes to allow massage establishments in the Commercial and Industrial zones as Personal Service uses. The Zoning Text Amendment would implement the following significant changes. The legislative draft is provided in Attachment No. 3.

- Amends Chapter 204, Section 204.10 Commercial Use Classifications (V) Personal Enrichment Services, deleting massage as a Personal Enrichment Service use. (Attachment No. 3.7)
- Amends Chapter 204, Section 204.10 Commercial Use Classifications (W) Personal Services, adding massage as a Personal Service Use, as regulated by Chapter 5.24. (Attachment No. 3.7)
- Amends Chapter 204, Section 204.10, (AA) Sex Oriented Businesses, deleting reference to Chapter 5.24 of the Huntington Beach Municipal Code. (Attachment No. 3.8)
- Amends Chapter 212 Industrial Districts, Section 212.04 Sex Oriented Businesses deleting reference to Chapter 5.24 of Huntington Beach Municipal (Attachment No. 3.15)

The proposed zoning text amendment was initiated by the City in response to recent legislation, described below, that allows for a Statewide certification process.

Background:

In September of 2008, Governor Schwarzenegger signed Senate Bill 731 into law, creating the California Massage Therapy Council (CAMTC) which is tasked with the mission of establishing uniform regulatory and licensing procedures for massage therapists and practitioners in the State. Under the guidelines of this bill, cities can adopt the licensing authority of the CAMTC, and therapists can voluntarily choose to be certified by the State.

The intent of SB 731 is to create a voluntary certification process for the massage therapy profession that will enable consumers to easily identify credible certified massage therapists, regulated and monitored by CAMTC. It further assures that certified massage therapists have completed sufficient training at approved schools. There will be two types of massage therapy certification programs: Massage Technicians and Practitioners, with the difference being in practical educational hours of 250 for Technicians and 500 for Practitioners. In addition, the certification process requires further classroom education including anatomy and physiology. The most difficult obstacle for therapists throughout the State has been that there are no consistent state-wide standards with respect to licensing, continuing education and enforcement in the massage therapy field. Today, the certification criteria varies for each

city; however, most require certain basics such as fingerprinting and training verification. In comparison, the new State certification process will require fingerprinting, Department of Justice (DOJ) review, as well as background qualifications similar to other service licensing requirements.

In order to adopt and follow the guidelines of the bill, the City is proposing changes to the Huntington Beach Zoning and Subdivision Ordinance and the Huntington Beach Municipal Code, which regulate massage and massage establishments.

A community meeting was held on August 19, 2009 to introduce the pending Zoning Text Amendment and promote a discussion regarding the provisions of the State Law requiring the amendment. The majority consensus was that business owners and massage professionals were in favor of the certification process. On August 25, 2009, a study session was held with the Planning Commission to present the proposed amendments.

ISSUES:

General Plan Conformance:

The proposed project is consistent with the goals and objectives of the City's General Plan as follows:

A. Land Use Element

Policy LU 10.1.9: Continue to control the location and amount of alcohol sales, adult businesses, game arcades, and other "community-sensitive" uses, based on proximity to residences, schools, religious facilities, and parks as authorized by legislative and legal requirements.(1-LU 1)

Zoning Compliance: Not Applicable

Urban Design Guidelines Conformance: Not Applicable

Environmental Status:

The proposed ZTA No. 08-005 is categorically exempt pursuant to City Council Resolution No. 4501, Class 20, which supplements the California Environmental Quality Act.

Coastal Status: The proposed amendment will be combined with other minor amendments that will be forwarded to the California Coastal Commission as a minor Local Coastal Program Amendment for certification.

Redevelopment Status: Not applicable.

Design Review Board: Not applicable.

Other Departments' Concerns and Requirements:

The proposed amendments to the City's existing ordinance were prepared with input and assistance from City Staff representing the City Attorney's Office, Police, and Planning Departments.

Public Notification:

Legal notice was published in the Huntington Beach/Fountain Valley Independent on August 27, 2009, and notices were sent to individuals/organizations requesting notification (Planning Department's Notification Matrix), as well as other interested parties. As of September 2, 2009 no communication supporting or opposing the request has been received.

Application Processing Dates:

DATE OF COMPLETE APPLICATION:
August 20, 2009

MANDATORY PROCESSING DATE(S):
Legislative Action – Not Applicable

ANALYSIS:

Presently in the State of California, each city establishes licensing criteria regulating the massage therapy business and a certification process. In the City of Huntington Beach, licensing criteria can be found in Chapter 5.24 of the Huntington Beach Municipal Code, and the Zoning and Subdivision Ordinance contains the land use regulations. The newly adopted State law transfers certification responsibility from cities to CAMTC.

Under the new state law, a City may adopt land use and zoning requirements applicable to massage therapists, practitioners or businesses, provided these requirements are no different than the requirements uniformly applied to other professional or personal services businesses. This only applies to those massage establishments or businesses that obtain state certification. State Law allows cities the authority to regulate those massage businesses that are not certified. The City of Huntington Beach has decided to regulate the non-certified massage establishments by requiring certification thereby having one standard that applies to all massage businesses/practitioners citywide. This effort will create consistency in the application of rules and regulations. As such, representatives from the City Attorney's Office, Police Department, and Planning Department are concurrently drafting changes to Huntington Beach Municipal Code Chapter 5.24 requiring all massage establishments or businesses to obtain State certification. The Municipal Code changes will be going directly to City Council for consideration but are attached to this report for reference. (Attachment No. 5)

Upon adoption of the City's ordinance by the City Council, all existing and new massage therapists and practitioners conducting business in Huntington Beach or desiring to practice in Huntington Beach will have until March 2010 to obtain certification from the CAMTC to continue to have or establish a valid massage business license in the City of Huntington Beach.

Use Classification Change

The City's Zoning and Subdivision Ordinance allows massage businesses in Commercial and Industrial areas. This overall provision will not change with the proposed Zoning Text amendment. The City's Zoning and Subdivision Ordinance also currently classifies massage businesses as either a Sexually Oriented Business (SOB) or a Personal Enrichment Service established as an ancillary business only. Ancillary massage businesses are located in health clubs, salons, or spas. The proposed zoning text amendment would change the classification of massage business to a Personal Services use. Under the new State law, once a massage therapist or practitioner is certified they must be treated the same as any other Personal Service business. The bill allows cities to adopt reasonable health and safety requirements. The amendments to Chapter 5.24 of the Huntington Beach Municipal Code will reflect what the Police Department believes is pertinent and is much of what is already existing in the code.

The effect of this change in classification in the Zoning and Subdivision Ordinance is twofold. First, it results in the removal of the square footage restriction for massage businesses in the Commercial Zones, which were classified as Personal Enrichment Service uses. Presently, the City imposes a not-to-exceed 50 percent of the lease space square footage restriction on these massage businesses. Because the CAMTC will conduct thorough background checks with the Department of Justice and have the regulatory means to revoke licensing, the City agrees with the State that from a land use perspective the limits on size are not needed. Second, by eliminating massage businesses from the Sexually Oriented Business classification and reclassifying them as Personal Services, in Industrial areas massage businesses will only be allowed in conjunction with a mixed use project, similar to all other Personal Service establishments. This change will limit the location options for future massage businesses in industrial areas as there are limited mixed-use industrial developments or development opportunities in the city.

Staff recommends that the Planning Commission approve Zoning Text Amendment No. 09-003 with findings for approval and forward the item to City Council for adoption of the ordinance. The proposed amendments to Chapters 204 and 212 of the Huntington Beach Zoning and Subdivision Ordinance reflect compliance with State Law to designate massage businesses as a Personal Service use.

ATTACHMENTS:

- ~~1. Suggested Findings of Approval~~
- ~~2. Draft Ordinances~~
- ~~3. Legislative Drafts~~
4. Senate Bill 731 – Fact Sheet
- ~~5. Huntington Beach Municipal Code Chapter 5.24 Legislative Draft~~

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SB 731 FACT SHEET

SB 731 MEETS STANDARDS CURRENTLY ESTABLISHED BY CITIES AND COUNTIES AND WILL ALSO BENEFIT CITIES AND COUNTIES:

I. SB 731 Meets Standards Established by Cities and Counties:

- Applicants for state certification will undergo criminal background checks including fingerprints. (Section 4601.3(a)). The CAMTC is mandated to request subsequent arrest notification service from the Department of Justice for all applicants for licensure for whom fingerprints are submitted. (Section 4601.3(d)).
- The CAMTC will be authorized to investigate the certificate of completion of questionable schools and reject those it determines to be fraudulent. (Section 4601(g)(1) and (2)).
- The CAMTC will be authorized to discipline certificate holders through probation, suspension, revocation, or other means it deems proper. (Section 4601(a)).
- The CAMTC will be required to permanently revoke the certificate of anyone violating subdivision (b) of Section 647 of the Penal Code of any offense described in subdivision (h) of Section 4603. The law requires the CAMTC to immediately suspend the certificate, notify the certificate holder and any business employing the certificate holder of such suspension. Upon notice that the charges have resulted in a conviction, the CAMTC has authority to revoke the certificate. (Section 4602(c)).
- The CAMTC will be authorized to deny or revoke certificates for unprofessional conduct, including, but not limited to, denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a certificate holder by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision, order, or judgment shall be conclusive evidence of these actions. (Section 4603(a)).
- The CAMTC may also deny or revoke a certificate for the following: procuring a certificate by fraud, misrepresentation, or mistake; violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision or term of this chapter or any rule or bylaw adopted by the organization; conviction of any felony, or conviction of a misdemeanor that is substantially related to the qualifications or duties of a certificate holder, in which event the record of the conviction shall be conclusive evidence of the crime; impersonating an applicant or acting as a proxy for an applicant in any examination referred to under this chapter for the issuance of a certificate; impersonating a certified practitioner or therapist, or permitting or allowing an uncertified person to use a certificate; committing any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications or duties of a certificate holder; committing any act punishable as a sexually related crime. (Section 4603(a)-(h)).

- It is an unfair business practice to state that one is certified, registered or licensed by a governmental agency (the CAMTC will be a private not-for-profit with legislative oversight) as a massage therapist or practitioner. (Section 4605).
- It is an unfair business practice for any person to hold oneself out or use the title of "certified massage therapist" or "certified massage practitioner" or any other term, such as "licensed," "registered," or "CMT," that implies or suggests that the person is certified as a massage therapist or practitioner without meeting the requirements of the law. (Section 4606).

II. SB 731 Allows Cities and Counties to Know Who is Practicing in Their Jurisdiction:

- SB 731 gives the CAMTC broad authority to share information with local authorities. The CAMTC is authorized to provide to local authorities information concerning a certificate holder, including but not limited to, the current status of the certificate holder, address of the certificate holder (home and work), history of disciplinary actions against the certificate holder (including revocation), and any other information necessary to verify facts relevant to administering a local ordinance (Section 4602.5(a)).
- The CAMTC must also accept information provided by local authorities, and has a responsibility to review information received and take action warranted by that information. (Section 4602.5(b)).
- The CAMTC is required to request subsequent arrest notification service from the Department of Justice for all applicants for licensure. (Section 4601.3(d)). The CAMTC can share this information with local authorities, as stated above.

III. Important Authority Retained by Cities and Counties under SB 731

- Cities and counties retain authority over any person not certified pursuant to SB 731. (Section 4613(a)).
- SB 731 specifies that the superior court in and for the county in which any person acts as a massage practitioner or massage therapist in violation of the provisions of this chapter, may, upon a petition by any person, issue an injunction or other appropriate order restraining the conduct. The proceedings under this paragraph shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure. (Section 4607).
- A city or county may adopt reasonable health and safety requirements with respect to massage establishments or businesses, including, but not limited to:
 - ✓ Cleanliness of rooms
 - ✓ Cleanliness of towels and linens
 - ✓ Reasonable attire and personal hygiene requirements
 (Section 4612(b)(6)).
- A city or county may require an applicant for a business license to operate a massage establishment to fill out an application providing relevant information and make reasonable investigation into the information provided. (Section 4612(b)(7)).
- Local authorities can deny or restrict a business license if the applicant has provided materially false information (Section 4612(b)(7)).

- The owner/operator of a massage establishment is responsible for the conduct of all employees or independent contractors working on the premises. Local authorities can still suspend, revoke or otherwise restrict the license issued to a massage establishment for violations of SB 731 or local ordinances. (Section 4612(c)).
- Local authorities may have and enforce an ordinance that is applicable to massage businesses or establishments that provides duly authorized officials of the city or county the right to conduct reasonable inspections during regular business hours, to ensure compliance with this chapter, the local ordinance, or other applicable fire and health and safety requirements. Such ordinances may require an owner or operator to notify the city or county of any intention to rename, change management, or convey the business to another person. (Section 4612(d)).
- Local authorities may require a massage establishment to maintain on its premises for review evidence demonstrating that all persons providing massage services are certified. A local authority may require a business to file copies or provide other evidence of the certificates held by persons providing massage services at the business. Section 4612(b)(2)(A)-(B).
- Cities and counties may adopt land use and zoning requirements applicable to massage establishments provided that the requirements are no different than those uniformly applied to other professional or personal services businesses. (Section 4612(b)((4)).

IV. Restrictions on Local Authorities

- Local authorities cannot have land use and zoning requirements applicable to massage establishments that are not also applied to other professional or personal service businesses. (Section 4612(b)(4)).
- Local building code or physical facility requirements applicable to massage establishments cannot:
 - ✓ Require additional restrooms, showers or other facilities that are not uniformly applicable to other professional or service businesses
 - ✓ Require unlocked doors when there is no staff available to assure security for clients and staff behind closed doors
 - ✓ Require windows that provide a view into massage rooms
 (Section 4612(b)(5)).
- Local authorities cannot adopt ordinances that impose additional qualifications, such as medical examinations, background checks or other criteria, upon anyone certified by the CAMTC.

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ATTACHMENT #7

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Zoning Text Amendment No. 09-003 (Massage Ordinance)

**Amending HBZSO Chapters
204 Use Classifications and
212 Industrial Districts and
HB Municipal Code Chapter 5.24
Massage Establishments**

October 5, 2009

Senate Bill 731

- September 2008, Governor signs SB 731 into law creating the California Massage Therapy Council (CAMTC)
- CAMTC is tasked with the mission of establishing regulatory and licensing procedures for massage therapists and practitioners in the State
- Under the guidelines of the bill, cities can adopt the licensing authority of the CAMTC, and massage professionals can voluntarily choose to be certified by the State

Past Challenges for Massage Professionals – SB 731

- The most difficult obstacle for massage professionals throughout the State has been the lack of consistent state-wide standards in the licensing process
- SB 731 requires Finger Printing and Training Verification, Dept. of Justice background check and licensing process

- To comply with State law, City is proposing changes to HBZSO and HBMC, which both regulate massage establishments
- A community meeting was held on August 19, 2009, to introduce the pending ZTA and promote discussion regarding the provisions of the State law
- The majority consensus was in favor of the certification process

ZTA 09-003 - Request

- Amend Chapter 204 Use Classifications, Section 204.10 (V) Personal Enrichment Services, deleting massage as a Personal Enrichment Service business;
- Amend Section 204.10 (W) Personal Services to now include massage as regulated by HBMC Chapter 5.24
- Amend Section 204.10 (AA) Sex Oriented Businesses, deleting reference to Chapter 5.24 HBMC
- Amend Chapter 212 Industrial Districts, Section 212.04 eliminating reference to massage as a Sexually Oriented Business.

Municipal Code - Request

- Amend Chapter 5.24 HBMC-Massage Establishments deleting certain sections related to the certification of massage professionals and amend various sections to clarify the City's licensing process.

Planning Commission Review

- Study Session held with Planning Commission on August 25, 2009
- Public Hearing conducted by Planning Commission (PC) on September 9, 2009
- The Planning Commission recommends approval of the Zoning Text Amendment

Analysis

- ZSO allows for massage businesses in Commercial and Industrial areas.
- Massage businesses are either classified as a Sexually Oriented or Personal Enrichment - established only as an ancillary use.
- The Zoning Text Amendment will change the classification of massage establishments to Personal Services use.
- Under new State law, once a massage professional is certified they must be treated as Personal Services use.

Analysis (continued)

- Removes the square footage restriction for massage businesses in CG zone
- Eliminates massage businesses from the Sexually Oriented Business classification in the Industrial Districts
- Permits Personal Services use, only in Industrial mixed-use developments

Analysis

- Upon adoption of the City's ordinance, all existing and new massage professionals will be required to show proof of California State Certification license
- Massage professionals will have until March 1, 2010 to comply with the adopted City ordinance
- Municipal Code changes are the product of the efforts of the City Attorney's Office, Police and the Planning Department concurrently proposing amendments to Chapter 5.24 of the HBMC

Recommendation

Adopt ZTA No. 09-003 and the
amendment to the Municipal Code
as recommended

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