

CITY OF LOS ALAMITOS

3191 Katella Avenue
Los Alamitos, CA 90720

AGENDA PLANNING COMMISSION REGULAR MEETING

Wednesday, August 26, 2015 – 7:00 PM

NOTICE TO THE PUBLIC

This Agenda contains a brief general description of each item to be considered. Except as provided by law, action or discussion shall not be taken on any item not appearing on the agenda. Supporting documents, including staff reports, are available for review at City Hall in the Community Development Department or on the City's website at www.cityoflosalamitos.org once the agenda has been publicly posted.

Any written materials relating to an item on this agenda submitted to the Planning Commission after distribution of the agenda packet are available for public inspection in the Community Development Department, 3191 Katella Ave., Los Alamitos CA 90720, during normal business hours. In addition, such writings or documents will be made available for public review at the respective public meeting.

It is the intention of the City of Los Alamitos to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee, or a participant at this meeting, you will need special assistance beyond what is normally provided, please contact the Community Development Department at (562) 431-3538, extension 303, 48 hours prior to the meeting so that reasonable arrangements may be made. Assisted listening devices may be obtained from the Planning Secretary at the meeting for individuals with hearing impairments.

Persons wishing to address the Planning Commission on any item on the Planning Commission Agenda shall sign in on the Oral Communications Sign In sheet which is located on the podium once the item is called by the Chairperson. At this point, you may address the Planning Commission for up to FIVE MINUTES on that particular item.

1. **CALL TO ORDER**
2. **ROLL CALL**
 - Chair Riley
 - Vice-Chair Culty
 - Commissioner Daniel
 - Commissioner DeBolt
 - Commissioner Grose
 - Commissioner Loe
 - Commissioner Sofelkanik
3. **PLEDGE OF ALLEGIANCE**

4. ORAL COMMUNICATIONS

At this time any individual in the audience may address the Planning Commission and speak on any item within the subject matter jurisdiction of the Commission. If you wish to speak on an item listed on the agenda, please sign in on the Oral Communications Sign In sheet located on the podium. **Remarks are to be limited to not more than five minutes.**

5. APPROVAL OF MINUTES

A. Approve the Minutes for the Regular Meeting of June 24, 2015

B. Approve the Minutes for the Regular Meeting of July 22, 2015

6. CONSENT CALENDAR

None.

7. PUBLIC HEARINGS

A. Continued Discussion of the Massage Ordinance Amendment

Continued consideration of an Ordinance amending Chapter 17 of the Los Alamitos Municipal Code relating to Massage Establishments. (Citywide) (City Initiated) (ZOA 15-02)

Recommendation:

1. Continue the Public Hearing; and, if appropriate,
2. Adopt Resolution No. PC 15-08, entitled, "A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LOS ALAMITOS, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL APPROVE ZONING ORDINANCE NO. 15-TBD AMENDING TITLE 17 OF THE LOS ALAMITOS MUNICIPAL CODE RELATING TO MASSAGE ESTABLISHMENTS (CITYWIDE)."

B. Zoning Ordinance Amendment 15-03

Consideration of a Zoning Ordinance Amendment to Create Medical and Retail Overlay Zones Allowing More Flexible Uses for Certain Parcels in the Planned Light Industrial Zone to Comply with the New 2015-2035 General Plan and to Amend the Zoning Map by Placing the Overlay Zones on Specified Parcels (City initiated).

Recommendation:

1. Open the Public Hearing; and, if appropriate,
2. Adoption of Resolution No. PC 15-14, entitled, "A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LOS ALAMITOS, CALIFORNIA, RECOMMENDING THAT THE CITY

COUNCIL APPROVE AN ORDINANCE FOR ZONING ORDINANCE AMENDMENT (ZOA) 15-03 TO AMEND SECTIONS 17.04.020 AND 17.10.020 OF THE LOS ALAMITOS MUNICIPAL CODE TO CREATE A MEDICAL OVERLAY ZONE AND RETAIL OVERLAY ZONE AND TO AMEND THE ZONING MAP TO PLACE THE MEDICAL OVERLAY ZONE ON PROPERTIES GENERALLY NORTH OF THE LOS ALAMITOS MEDICAL PROPERTIES GENERALLY NORTH OF THE LOS ALAMITOS MEDICAL CENTER SPECIFIC PLAN AREA AND PLACE THE RETAIL OVERLAY ZONE OVER THAT PROPERTY COMMONLY KNOWN AS ARROWHEAD PROPERTIES, WHICH PROPERTIES ARE ALL IN THE PLANNED LIGHT INDUSTRIAL (P-M) ZONE OF THE CITY (CITY INITIATED”.

8. **ITEMS FROM THE COMMUNITY DEVELOPMENT DIRECTOR**
None.

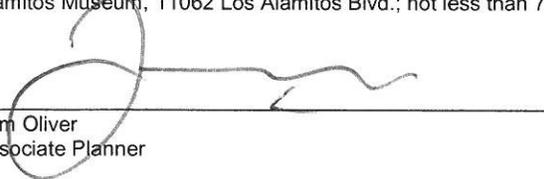
9. **COMMISSIONER REPORTS**
None.

10. **ADJOURNMENT**

APPEAL PROCEDURES

Any final determination by the Planning Commission may be appealed to the City Council, and must be done so in writing at the Community Development Department, within twenty (20) days after the Planning Commission decision. The appeal must include a statement specifically identifying the portion(s) of the decision with which the appellant disagrees and the basis in each case for the disagreement, accompanied by an appeal fee of \$1,000.00 in accordance with Los Alamitos Municipal Code Section 17.68 and Fee Resolution No. 2008-12.

I hereby certify under penalty of perjury under the laws of the State of California, that the foregoing Agenda was posted at the following locations: Los Alamitos City Hall, 3191 Katella Ave.; Los Alamitos Community Center, 10911 Oak Street; and, Los Alamitos Museum, 11062 Los Alamitos Blvd.; not less than 72 hours prior to the meeting.



Tom Oliver
Associate Planner

8/19/15

Date

**MINUTES OF PLANNING COMMISSION MEETING
OF THE CITY OF LOS ALAMITOS**

REGULAR MEETING – June 24, 2015

1. CALL TO ORDER

The Planning Commission met in Regular Session at 7:04 PM, Wednesday, June 24, 2015, in the Council Chambers, 3191 Katella Avenue; Vice-Chair Cuiilty presiding.

2. ROLL CALL

Present: Commissioners: Vice-Chair Mary Anne Cuiilty
Will Daniel
Art DeBolt
Wendy Grose
Gary Loe
Victor Sofelkanik

Absent: Chair John Riley

Staff: Community Development Director Steven Mendoza
Associate Planner Tom Oliver
Assistant City Attorney Lisa Kranitz
Dawn Sallade, Department Secretary

3. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Vice-Chair Cuiilty.

4. ORAL COMMUNICATION

Vice-Chair Cuiilty opened the meeting for Oral Communication for items not on the agenda.

There being no persons wishing to speak, Vice-Chair Cuiilty closed Oral Communication.

5. APPROVAL OF MINUTES

A. Approve the Minutes of the Regular Meeting of May 27, 2015.

Motion/Second: Grose/DeBolt.

Unanimously Carried: The Planning Commission approved the minutes of the Regular meeting of May 27, 2015.

6. CONSENT CALENDAR

None.

7. PUBLIC HEARINGS

A. Appeal of Director's Decision

Unpermitted Expansion of Crossfit at 10893/10895 Portal Drive in the Planned Light Industrial (P-M) Zone, APN 241-241-19.

David Rael-Brook, owner of a Crossfit at 10893 Portal Drive expanded his legal non-conforming use without seeking approval. The Department Director instructed the Owner to revert to the original footprint. The Owner has appealed the Director's decision seeking permission to expand his legal non-conforming use to the space next door at 10895 Portal Drive in the Planned Light Industrial (P-M) Zone (Applicant: David Rael-Brook, Beyond Ordinary Fitness DBA Crossfit).

Commissioner Grose declared a conflict of interest as she has an interest in real estate within 500 feet of the property (on Noel Street) and excused herself from the Chamber.

Community Development/Public Works Director Steven Mendoza summarized the Staff report, referring to the information contained therein, and indicated he's prepared to answer questions from the Planning Commission.

Vice-Chair CUILTY asked if the Commission had any questions or comments prior to opening the Public Hearing.

There being none, Vice-Chair CUILTY opened the item for public comment.

David Rael-Brook, introduced himself as the applicant and said he brought his business partner to speak on the matter.

Bernie Cowens, one of the original owners of Beyond Ordinary Fitness Group LLC who partnered with Tanya Pinto, indicated when Mr. Rael-Brook purchased the business, he purchased Ms. Pinto's interest in the business. Mr. Collins said he is still an owner in the business itself. He added that at no time did they, as owners of the business, attempt to get past any sort of Code Enforcement or anything like that. As they opened the business and they looked at property before signing any leases, they came to the City and applied for a permit and a business license. They opened the business and later it was determined that the business was non-conforming. Staff did give them the right to operate the business in a non-conforming fashion and during that time, a letter was sent to the business; it was sent to Ms. Pinto but was not sent to them. He did not know of any conditions. He understood that they had permission to operate at that location and when the opportunity came to expand, he didn't know that there was a condition that they stay in that spot. He said as soon as they opened the business for operation, he became less involved due to personal reasons. The wall that was taken down was taken down by the management company and not by them.

David Rael-Brook, appellant/owner, thanked the Commission for allowing him to come before them. He said he only wants to do what is right. He said he's spent the last three years working on this business and building it up to

what it is today. We're here tonight because of a violation of code and zoning; a mistake that they made and their management company made. To be honest, he said he never knew about the legalities of business ownership until now and he is learning as he's going. He asks that the Commission put aside the letter of the law in this situation and think about the spirit of the law. He said he's lived in Los Alamitos his entire life and was educated here as well. He said he and his family have been upstanding community members for over 36 years. In July of 2013 when Ms. Pinto decided she wanted out of the business, she asked if he would like to buy her out. He purchased her 50% ownership and no one mentioned any zoning issues or any other issues with the City. Earlier when he was a coach there, he said he does remember there being an issue with the City at the very beginning when they first opened their doors but he thought it was resolved. He said he heard Ms. Pinto constantly asking her neighbor, Aaron, who represents a printing company when he was going to move out so she could expand into his unit. Mr. Rael-Brook said when he bought the business, he bought it with the intention of expanding into Aaron's space when he left.

Mr. Rael-Brook continued by saying he's not a politician or a lawyer and when he went to business school, they never taught them about zoning or permits. He indicated he runs the day to day operations of the business; Mr. Cowens does not. Their clients are made up of Los Alamitos resident's, students, police officers and residents in surrounding communities and they come to the gym because they love and support what they do at the gym. He said they teach people to make a life style change, to reclaim their fitness and to lead a healthy life style so their kids will learn to do the same. He said they just don't take people's money in exchange for a membership and hope to never see them again. He said their gym community is just that—a community. Putting the wall back up is going to ask them to vacate their new space and will make it very difficult for them to run their classes and programs. They have sponsored Race-on-the-Base as well as participating in the race. They work with home schooled children providing training for their P.E. credits, with high school athletes teaching them how to lift properly so that they don't injure themselves when they train at the school facility. They have worked with local Boy Scouts to get their merit badges, and they offer free workouts for members of the military who are on short orders here at the Joint Forces Training Center. They have done fund raisers every year for breast cancer awareness for which they have raised thousands of dollars. They have donated to other countless charities locally and worldwide whether it was financially or with membership training alone. He said they have contributed to businesses in Los Alamitos and they encourage participation in community events. He said they bring business to Los Alamitos and pay taxes which include sales tax to the City. The sale of products offered in their gym isn't enough to warrant being in a commercial space which was one of the options given to them by City Staff.

Mr. Rael-Brook indicated he's cooperated with City Staff since first receiving the notice of violation. At the time, they laid out the options such as moving into a commercial space and he explained to them that this doesn't work for him as the vast majority of more than 10,000 Crossfit affiliates worldwide are in warehouses similar to his and not in retail spaces. Retail space rent is too expensive for him to run his business but more than that, it's worse for the exercise that they perform. Their type of business is loud and by its very nature would cause a nuisance for any retail neighbor. Crossfit gyms belong in warehouses where similar noises and loads are moved. If the Commission asks him to have their wall put back up, this will create an environment where it would be uncomfortable for his clients and it would also make it next to impossible for him to work with all of the youth athletes. He said his gym is a haven for young adults and allows them to do positive activities. The bottom line is they expanded their space for the comfort and safety of their clients; they are not trying to be a large mega gym that takes over the complex or would have a negative impact on the City. They expanded without knowing the proper procedures. They were not trying to pull a fast one on the City and they have been cooperative ever since they received the notice of violation. He said he is pleading with the Commission as one of the owners and leaders of the gym and as a long standing and upstanding member of the City to allow them to keep the gym as it stands. He said he has lost countless hours of sleep over this issue since first receiving this violation. He is learning as he goes and he is asking the Commission for help. He pleaded to don't ask him to take his business elsewhere, to another city or to another space within the City. It wouldn't be right for him to be any closer to any other gym; he doesn't want to cause problems for what they do. It's not in his business model to expand any further than what they have already nor do they want to. For that matter, they couldn't expand because they are the last unit in the building. They have the support of their neighbors especially their direct ones, Aquatic Explorations who wrote a letter to support them, 360 Motor Sports, Imperial Barber Shop who also supplied a letter. He said he hopes that the Commissioners all agree and side with Crossfit Los Alamitos. He asked the Commission to please not think of this as a mistake but rather that the Commission is doing what's right and what is best for the community. He said they have operated for three years in that location and in their expanded location since September without any negative impact. He asked that the Commission allow them to stay and to continue to be a positive influence and contribute to the City of Los Alamitos.

People speaking in opposition:

- Seth Eayer
- Barbara Lands
- Bryce Turner

Opposition's Comments:

- Ignorance of the law does not exempt one from the law;

- CUP appeal that has already been denied by Staff;
- Not fair that other businesses have tried to go into a warehouse location but was denied due to zoning and Code; currently paying a premium retail space rent and would be paying much less if not for being denied entrance into a warehouse space;

People who spoke in favor:

- Major Julian Kemper
- Richard Yukihiro
- Jessica Meffer
- Angela Driseoll
- Justin Castagna
- Mike Biddle
- Josh Wilson
- Nahar Desai
- Dan English
- Judy Klabough
- Misty Yukihiro
- Mark Booth
- Luke Rodriguez
- Thomas Lindsey

Comments by those speaking in favor:

- Gym provides so much to the community—Soldiers, high school athletes, etc.;
- Without expansion, the gym would be too small for all of the members that are already attending the gym;
- Student athletes said Crossfit has given them a place to go after football practice to learn how to lift correctly and avoid injuries; also, the coaches at Crossfit are more than just coaches to the athletes, they are good role models;
- Other Crossfit gyms are good but Crossfit Los Alamitos is the best as they thoughtfully absorb customer feedback to improve individual's experience; they do not value quantity over quality;
- They are not driven by profit but by the people they serve;
- The owners and coaches take an active interest in their clients;
- Spend their profits on coaches, programs, amenities that the members can enjoy;
- Owner is very passionate about his goals and his business;
- Understands the non-conforming use issue but also understands that non-conforming uses are granted all the time on an individual basis;
- Doesn't feel that tearing down a non-bearing wall is not that large of an issue and actually doesn't have a large negative impact;
- More of a positive impact as the gym is bringing more people into the City;

- More room in the gym brings a safer environment;
- Built a community with the young people, older adults, etc.;
- Most activities take place inside the building and don't impact the neighbors;
- They are a model business as well as being an asset to the community and the City of Los Alamitos is lucky to have them;
- They are a member of the Chamber of Commerce;
- Building codes are not in place to penalize people but the intent is to promote safety of business;
- A warehouse is a much better location for this type of business than a retail space due to noise;

There being no additional speakers, Vice-Chair Cuijty closed the item for public comment and brought it back to the Commission for their comments and action.

Commission Loe indicated that there have recently been some changes to zoning for these businesses and asked Staff for their input.

Mr. Mendoza explained that the Planning Commission saw a need to create an area where fitness businesses, dance and gymnastic studios could go and with the new General Plan, they made that feasible in an industrial area off of Reagan. The General Plan supports that. The General Plan has been approved but the zoning changes have not been completed on that although they have been started and should be completed hopefully within the middle of the year. The Commission has been very cognizant of the need of recreation and fitness places to serve our community and they wouldn't have developed that if they did not think there was this kind of need.

Responding to Commission Daniel's question, Assistant City Attorney Lisa Kranitz indicated that Staff didn't take this issue lightly when it came up and a long time was spent analyzing the code and what options there were. Fortunately, while there are provisions that allow the Commission to do a conditional use permit to expand a non-conforming use, one of the findings that the Commission has to make for a CUP is that it's consistent with the General Plan. With the City Council's adoption of the General Plan, this was not the industrial area that was designated for recreational uses; it was the area up by Reagan Street so it would be hard to make that General Plan consistency finding for a CUP which is a requirement.

Commissioner Daniel asked what options does the applicant have if the Commission goes with Staff's findings. Does the applicant have any other options?

Mr. Mendoza replied that the decision that is made tonight certainly could be appealed to the City Council only after the decision is rendered tonight. The City Council would then be facing the same decision.

Commissioner DeBolt asked the Assistant City Attorney about the chronology of the actions that led to being here tonight and, in particular, December 20, 2012 where it said, "The City Attorney determined that they were a legal non-conforming use and allowed to stay with no ability to expand". He said he made a request of Staff for some documentation regarding this agenda item and the Commission received the documentation which included the letter to Tonya Pinto which states no mention of the City Attorney; it was just simply that the Planning Staff determined that it was a legal, non-conforming use. Associate Planner Tom Oliver provided a little more explanation which was that the City Attorney and the City Manager at that time had made this decision. His question to the Ms. Kranitz was does she and the City Manager have that authority or did the prior City Manager and City Attorney have the authority to determine that a property was a legal non-conforming use without benefit of going through the Planning Commission or anywhere else.

Ms. Kranitz answered that without looking at the whole Charter and the General Plan; generally it probably should have come back before the Planning Commission.

Commissioner Daniel indicated that this obviously is a very tough decision and he understands both sides. Obviously, the owner has a very compassionate and well run business; the rules weren't followed though. This is a real challenge tonight.

Ms. Kranitz explained that as far as the options tonight are concerned, she said she does think that the Planning Commission could, if they were inclined, uphold the Community Development Director's determination but provide a lengthy time period to rectify the non-conformity to either take it back or find a new location so it doesn't have to be done right away and perhaps give him whatever time the Commission deems appropriate.

Commissioner DeBolt said he has thought a lot about this and thinks that the genesis was a mistake by Staff originally. Mistakes happen but then that mistake was then compounded by the unilateral decision by the prior City Attorney and City Manager to just grant a legal non-conforming use. Then they sent a letter to Ms. Pinto without getting a receipt from the post office that she signed proving she received it. The Commission now has to decide whether we further compound it by approving an expansion that didn't go through the process. He said he feels that doing this would dig the hole deeper and deeper. Had they gone through a CUP process, there would have been input from the neighbors and other issues that were vetted and then there would be a decision and it would be legalized. He said he's

thinking of tabling this action to give the applicant the opportunity to come in and actually submit to the process of a CUP for the site. With respect to his existing square footage prior to the expansion, he said he doesn't know if the Commission could do that but one thing's for sure, it would be a public meeting where everybody could attend again as well as all the land owners and businesses within 500 feet being notified as well. So, the applicant will submit to the process and this now becomes "legal". The rub is the City is in the process of a zone change, a General Plan change, and we have designated, at least in the PM zone, up near the post office, has an area that would allow indoor recreational uses. There has also been another Crossfit that the City has allowed in the existing PM zone prior to this one with a similar situation and we were able to make sufficient findings that we could put them into that zone. He said the Commission is getting more and more requests for these types of businesses which are simply indicative of the changing market. Nobody on the Commission is trying to be non-business friendly but they do have to comply with regulations and with the process and as a Commission, he believes they do have quite a bit of latitude. He continued by saying the Commission takes the information that Staff provides, seriously looks at it and then render a decision that hopefully balances this. He said he empathizes with the applicant but at the same time, he sees the mess that we're in now. He spoke about how Staff didn't follow procedure that we now make everybody adhere here and he agrees that there has got to be a middle ground. We have ample precedent that we have looked favorably to these businesses in the PM zone and he thinks that we are also engaged in or have discussed refining even currently our PM zone to make sure we have a further delineation of the PM zone where we have our grittier or dirtier industrial uses.

Commissioner Loe commented that this decision is not necessarily about this use or this business as they all think this is a great business and the people are great with this business but we have to make sure that we come back and make it a planning decision and not a decision based on how well we like the business. After listening to the testimony and discussion on how we got here, he said he would definitely be in favor of giving the applicant X-number years or an extensive amount of time to either come back with a CUP, meaning allowing them to continue in business for so many years or them coming back for a CUP or some sort of process like that. He said the City is rezoning and we are allowing these businesses to expand in our City, in our PM zone, allowing this business to continue to some length of time so somewhere down the road we can potentially ship this business into another zone or come back with a CUP.

Commissioner Daniel asked the applicant when his current lease is up.

Mr. Rael-Brook answered in two years which would be August of 2017.

In response to Commissioner DeBolt's question, Ms. Kranitz explained that there is no problem with the applicant being a legal non-conforming use to the space that was approved in 2012 by the previous City Attorney and previous City Manager. That is not the issue. Staff had no concerns with that so there is no need for the applicant to go through the CUP process to legalize that space because it is already a legal space. The Commission could certainly give the owner a period of time, uphold the decision of the Community Development Director but provide that he doesn't have to return it until some date to the original time. The benefit of that over tabling it is it does then give him the ability to appeal to the City Council. By tabling it, it is just sitting there and they cannot move forward if they want to take this to the next level.

Commissioner DeBolt commented that at least we have had discussions regarding refining our uses in the PM zone. If we were to follow what the City Attorney said with respect to upholding the appeal but basically stay the requirement that they put back the wall and stay that until August, 2017 which is the expiration of the lease, and in that time frame, if we continue on the path that we're continuing, then we may have sufficient revision in the PM uses such that we can allow these uses. We have, in his opinion, an outdated zoning uses as the City has grown up and we need to be addressing those. He then asked if there is a way to do a CUP to correct that. He said he knows this is only about the extension but he's trying to make the leap to legitimize the process.

Ms. Kranitz explained with regard to the CUP, she doesn't want to pre-judge anything before the application is filed. Take this for instance, we did not think it would qualify for a CUP but Commissioner DeBolt's right, we haven't gone through the zoning and the zone changes and what we're going to put in each zone and what's going to be consistent with the new General Plan.

Commissioner DeBolt then said that speaking for himself, we have sufficient precedence for what we've done to shoe horn these uses into that zone and we've done it.

Assistant City Attorney Kranitz pointed out that the General Plan adopted for Planned Industrial, (the General Plan designation for this property is Planned Industrial and not Limited Industrial). Planned Industrial specifically says commercial recreation uses are not permitted; it's a flat out prohibition making a General Plan consistency finding different from what we've done in the past.

Vice-Chair Cuiilty commented that it seems to her that the best thing would be to uphold Mr. Mendoza's decision, give the applicant until the end of his lease which is August, 2017 and then they can move or rezoning for the property is complete.

Assistant City Attorney Kranitz indicated that that would require a General Plan amendment to change that.

Commissioner Daniel said he likes the idea of following Mr. Mendoza's recommendation and he also likes the idea of extending the time for the applicant but he is not so keen on August because there is a price that they should pay for not following the rules and not knowing the rules. You run a business, you should know those things. But, again, the City allowed them to go into that position so it's not really their fault. He said he's on board to giving the applicant some time but doesn't think he'd give him the full two years; he might give them 18 months and let them sweat a little bit but the thing is to probably let them go to an area; by then, it doesn't look like this area is going to be one but maybe there will be an area where they can get similar costs and not have to go to the retail side. He said we need to do all we can to find some middle ground and have everybody win. He said he just doesn't think we can allow them to stay there but at the same time, we shouldn't kick them out next month; we owe them more than that. He said he would probably look at a year to 18 months.

Ms. Kranitz indicated they can appeal to the City Council or someone else who is interested can appeal tonight's decision to the City Council.

Commissioner Daniel inquired if the applicant went to the City Council and appealed, and the City Council said that they made the mistake, we're not giving you 18 months, and we want you out of there. Can they do that?

Ms. Kranitz said yes they can.

Vice-Chair Cuijly asked if there was a motion.

Commissioner Solfelkanik noted all of the positive comments that have been spoken tonight on the applicant's behalf and explained to him that any decision that is made is based on use and not him personally.

Commissioner DeBolt brought up Section 17.64.050(e) of the Code because he thinks it falls right in with what they're talking about. It says that, "No extension to occupy a greater area of land except as otherwise provided in this Chapter, uses of land or structures existing at the time of the adoption of this ordinance or amendments to this title, may be continued although the particular use or structure does not conform to the regulation specified by the zoning code for the zoning district in which this particular structure is located or uses made provided, however, no non-conforming structure or use may be extended to occupy a greater area of land upon which the structure is located..."; not the space occupied but the structure that is located which is the building. In other words, they're not adding square footage to the building. He continued reading, "...which the structure is located then is owned by the property owner at the time of the adoption of the ordinance."

This man leases a space within a structure which is larger than he is occupying; he expands the use. He's not going outside the four walls of the structure; he removed a demising wall (which all that is is a boundary, it's not a structure), so this is not a structural component that was removed. The way he reads that section of the Code is that it says he can expand; he's allowed to do that.

Vice-Chair Cuijly pointed out except that the owners were notified by Staff that they couldn't.

Ms. Kranitz explained that she can't tell how many times that she, Mr. Mendoza and the City Attorney have agonized over this chapter of the Code and she said the City of Los Alamitos is not the only city that's having trouble with non-conforming use chapters as land uses change. The non-conforming use chapter was really designed for when you were an allowed use, a permitted use or a conditionally permitted use in a zone and then the zoning changed. This was a case where a very specific condition was put onto what happened here and said, "Ok, we messed up. We're going to let you stay but you may not expand this business". It's not something that was actually ever really a non-conforming use as was pointed out. It was deemed a legal non-conforming use by the prior City Manager and City Attorney.

Commissioner DeBolt pointed out that when they went in originally, it was an illegal use that either should have been shut down or they should have come in for a CUP. That didn't happen and unfortunately we're left with the aftermath of that.

Motion: DeBolt

Motion to uphold the appeal and allow the expansion pursuant to Section E of the Code.

Mr. Mendoza pointed out that Commissioner DeBolt is looking towards a resolution written one day that could be supported by something that's in the Code. The Commission is looking for findings and Commissioner DeBolt is finding some leeway in making those findings in the future. Commissioner DeBolt is finding some ambiguities that can be found in favor of the applicant or maybe against the applicant and he's trying to share that.

Re-Stated Motion: DeBolt

Motion to uphold the appeal and permit the expansion based upon a reading of restrictions on non-conforming uses and structures in Section 17.64.050(e) of the Code.

Commissioner DeBolt commented that after this, let the chips fall to a higher power should it be so appealed and if somebody wants to spend money on a lawyer in appeal fees, etc., to come and try to persuade the City Council to overturn the Commission's decision.

Ms. Kranitz suggested that when the Code sections are brought back eventually, the Commission can clarify what they really want to do with this.

Motion: DeBolt

Motion to uphold the appeal and allow the expansion pursuant to Code Section 17.64.050(e).

Commissioner Loe seconded the motion.

Commissioner Daniel thought that the section of the Code that Commissioner DeBolt is referring to should come back to the Commission with some clarification from Staff and the City Attorney to insure that section is being read and interpreted correctly.

Mr. Mendoza indicated that that is for these five Commissioners present to determine. If they agree on a direction, there's been a motion and a second to that motion and if there are substitute motions, that is completely acceptable.

In response to Commissioner DeBolt's question, Ms. Kranitz indicated that the interpretation is not unreasonable or absurd; we read the Code section and we believe what the intent to be but it's not black and white.

Commissioner Loe pointed out that if there was a time duration we could put on it, something like ten years meaning they would have to come back within a certain amount of time to correct the issue.

Commissioner DeBolt pointed out it's a matter of interpretation and he feels there's sufficient information here to provide for an expansion. This is exactly what the Code talks about; expansion of a non-conforming use; however, it doesn't say specifically how it became legal non-conforming but it's able to be expanded provided they don't go outside the four walls of the structure.

Commissioner Solfelkanik said he read Section 17.76.020 and he felt that section, which is a definition section, might clarify Commissioner DeBolt's point.

Commissioner DeBolt read from Section 17.76.020 the following, "A non-conforming use means the use of a structure either conforming or non-conforming or land that was legally established and maintained before the adoption of the Zoning Code and that does not conform to the current Code provisions governing allowable land uses for the zoning district we're in where the use is located".

Ms. Kranitz commented that this interpretation is one that is reasonable.

Commissioner DeBolt called for the question.

Vice-Chair Cuiilty asked for the motion to be read back.

Department Secretary Sallade read the motion as: "A motion to uphold the appeal and allow the expansion pursuant to Code Section 17.64.050(e).

Ayes: Commissioners DeBolt and Loe.

Nays: Vice-Chair Cuiilty, Commissioners Solfelkanik, Daniel.

The motion didn't pass with a vote of 3-2.

Vice-Chair Cuiilty asked if there was another motion.

Commissioner Daniel asked if whether or not the Commission wanted to get an interpretation of the Code from City Staff or do we want to approve this with a time frame.

Ms. Kranitz said she felt that she didn't know if more time was needed. She said she knows how it was read, what we all thought the intent was and re-reading it again, either interpretation could be deemed reasonable; we're not going to be able to give a definite definition. She said she felt this is just one of those things within the Commission's jurisdiction and certainly one of the sections of the Code that needs to be brought back for discussion and clarification so that we don't run into these types of problems again.

Commissioner Loe indicated he would like to approve the appeal.

Commissioner Solfelkanik indicated he understands the strict reading of the Code; however, there are other issues that have shown that there was a decision made by the prior City Attorney and City Manager and there were conditions on that decision. The conditions were violated so he said he can't ignore that. He said he would entertain a motion to allow them to remain for a prescribed amount of time in order to transfer their business to a location where they are permitted or whatever course of action they choose.

Vice-Chair Cuiilty pointed out that they can also appeal to the City Council if they choose after a decision has been made.

Motion: Daniel.

A motion to deny the appeal until August 31, 2017 or when the lease expires whichever is earlier.

Ms. Kranitz suggested the motion be worded as follows: A motion to deny the appeal but give them until August 31, 2017 or when the lease expires whichever is earlier to terminate the expanded use.

Commissioner Daniel agreed with Ms. Kranitz's corrected wording for his motion.

Commissioner Loe said he would like to give them something like five to ten years. He would like to give them enough time for when the General Plan settles in, the zoning settles in, the zoning changes, etc.

Commissioner Daniel asked why he would want to do that.

Commissioner Loe explained that they were approved to be there and they are there; they are operating. He said he felt that was a compromise that they have to fix this at some point down the line. There is enough evidence to support; enough in the Code to support a greater extension of time.

Commissioner Daniel felt that the logical time is when the lease is up; anything short of that is very hard on them. Anything longer than that, they're going to re-sign a lease and be in the same situation they're in now. We're giving them two years to find another place to operate and a lot can change in two years; they can appeal this. They can do a CUP. They have a lot of options that they aren't going to have if we just close the door on them. At the same time, we're not just saying, "Hey, we're just going to ignore what the rules are; ignore what you've done and just let you be in there and who cares about all the other businesses".

Commissioner DeBolt seconded the motion.

Vice-Chair Cuiilty called for the question.

Commissioner Solfelkanik asked to have the motion restated.

Department Secretary Sallade read the motion as: A motion to deny the appeal but give them until August 31, 2017 or when the lease expires whichever is earlier to terminate the expanded use.

Vice-Chair Cuiilty again called for the question.

Ayes: 4

Nays: 1 (Loe was the dissenting vote.)

Motion passes.

Ms. Kranitz explained that Staff will send a letter to the appellant with the decision which will trigger the time frame for appeals.

Commissioner Grose returned to the Chamber.

A break was called at 9:02 PM and reconvened at 9:15 PM with all Commissioners present.

B. Development Application for a Marriott Fairfield Inn Hotel and Drive-Thru Starbucks, Which Requires a Site Plan Review, a Conditional Use Permit for Hotel Operation, Height, Drive-Thru and Shared Parking for a Parcel at 10650 Los Alamitos Boulevard, APN 242-243-03 (Applicant: Kevin Coleman – Net Development Co.).

This is a consideration of a Marriott Fairfield Inn Hotel and Drive-Thru Starbucks at 10650 Los Alamitos Boulevard (APN 242-243-03) on a 2.3 acre vacant parcel in the General Commercial (C-G) Zoning District. The project requires a Site Plan Review, and a Conditional Use Permit covering drive-thru operations, hotel operations, parking and height. (Applicant: Kevin Coleman – Net Development Co.).

Community Development Director Steven Mendoza summarized the Staff report, referring to the information contained therein, gave a PowerPoint presentation and indicated he's prepared to answer questions from the Planning Commission.

Chair Riley opened the Public Hearing.

Mr. Kevin Coleman, Applicant, states that he'll allow others to speak first.

Judy Klabough, Green Street Interiors, said she has been in that location for 38 years and parking is impacted and jammed. She asked the Commission not to make any allowances on parking and not to cut down on anything because they are so jammed already. She said she has issues with the contractors and workers on this project parking on the street and elsewhere and taking up spaces that will impact her business. This is a good project for the City but the parking will be impacted.

Stan Blackwell, 60 Minute Spectacles, has been at his location one year. He said he loves this project and it will be good for the City but the traffic will be a nightmare especially with the high school students going to Starbucks. The Starbucks restaurant will impact the traffic greatly.

Kevin Coleman, Applicant, indicated that the points that were just brought up were valid and he takes them very seriously. He said what they do with their properties now and has done for the past 20 years is they develop their parking lots, sub-structures and everything that is underground first before going vertical. The reason they do this is this allows them to not put any dirt and mess on the streets; it gives their employees a place to park as they are working on the site and it makes their cranes and operational site much safer for their employees. To the issue of traffic, before they even spoke to the City about the plan, he researched the neighborhood. He knows all the owners

around there and they've all informed him that Briggeman is just an accident waiting to happen. It's a narrow street and under width. There are trucks and trailers lined up trying to go into the businesses. He has already voiced this concern with Staff before they even started showing Staff plans for the project. They are widening the street which is part of the conditions. They will widen Briggeman by ten feet. They are undergrounding all the utilities on that street. As far as the traffic impacts, they have the traffic reports; it's been done and they've indicated the traffic requirements. The flow factors on the hotel are entirely different than their normal retail stores so those issues are addressed. With regard to the conditions of approval, he said he agrees with all conditions of approval with the exception of Number 9 which speaks to the equivalent of Starbucks and just getting clarity that it would fall back to Staff or the Planning Director to make the comparison. Then on Number 18, "The identical color". They design and develop real estate all the time and to have two buildings with the exact same colors would be a little off in his opinion so they would like it to be harmonious but would like to have the word "identical" stricken just so that all the colors, etc. harmonize but they are not identical color. Other than those issues, he felt that Staff has done a wonderful job.

Commissioner Solfelkanik indicated he has a long list of concerns which can be addressed later; they are:

- Blighted but valuable property to the City;
- Entrance and exit on Serpentine;
- Light on Serpentine?
- Why one hearing for two projects;
- #7 – codified?
- CUP – determine before approval?
- #33 & #38 – Why aren't they being submitted to the Planning Commission?
- As far as the hierarchy of Marriott, where does Fairfield fall within that range? Would like to have something a little higher on the list.

Commissioner Solfelkanik asked Staff if there is a way we can require the Applicant to use, when available, City vendors.

Commissioner DeBolt indicated he wants some clarification as to whether the Starbucks is a restaurant or a drive through.

Mr. Coleman explained it is a restaurant internal walk in. It is currently the Starbucks model that allows them to have the drive through window; you can walk into the store and sit; and also, you can sit outside as well.

Commissioner DeBolt said he sees a drive through as a real traffic generator which impacts ingress and egress and that is going to be peak traffic. During the school year from 7:00 AM until 8:30 AM it will be gridlock.

Commissioner Daniel indicated there will be an impact to traffic if anything goes in there such as an In-N-Out, etc.

Commissioner DeBolt said he would like to know that if the Commission is considering a Marriott property and a Starbucks and then when we get ready to give approval, find out that Marriott and Starbucks is gone and now something else is coming in, he would like to know that now. Are they approving a Starbucks and a Marriott property? It's being presented as a quality project and he wants to make sure that the City gets what we bargained for.

Commissioner Daniel felt that that is a very good point. Also, he said what we don't want is just a Starbucks and the hotel never gets built.

Ms. Kranitz explained that Staff has included Conditions 8 and 9 to try to tie those down. Staff has put in that it has to be a 3-Diamond Triple A hotel; that language can be tied down tighter in Condition 8 if wanted as to what it has to include. The idea of it being a Starbucks or another business, the Commission could put, "As determined by the Community Development Director", or it can come back to the Planning Commission if warranted for their determination.

Commissioner DeBolt said he would definitely want it to come back to the Commission.

Ms. Kranitz indicated that there were also conditions that the drive through Starbucks building permit is not issued until the building foundation has passed inspection for the hotel so that we know they're committed to building that hotel before the Starbucks goes in.

Commissioner DeBolt asked if this property is going to be subdivided so the restaurant property can be sold separately and apart from the hotel.

Community Development Director Mendoza said he believes that the applicant is interested in doing that. He has not filed the application for a parcel map or a lot line adjustment yet but Staff has made sure he demonstrated how each lot, if ever subdivided, could meet parking or not meet its own parking requirements. A parcel map is subject to the Planning Commission's review; a lot line adjustment is a City Engineering function.

In response to Commissioner DeBolt's question, Ms. Kranitz explained that the Conditions of Approval are always recorded. She said Staff has also put in a requirement that if there was a lot split or if these are multiple lots, then there has to be recordation of shared parking.

Mr. Mendoza explained that Staff is not recommending any changes to the parking situation in regards to this application because Staff doesn't think the applicant can dictate the City's parking standards on public property.

A long discussion ensued regarding the possibilities for parking.

Mr. Coleman mentioned that on the actual letter of intent from Marriott, their corporate rules don't allow them to physically get their license yet until they own the real estate.

Commissioner DeBolt then asked if this is going to be managed by Marriott or is it going to be managed by Mr. Coleman's company.

Mr. Coleman said that Marriott will not manage it but it will be managed by RIM Management which is one of the largest hotel managers in the U.S.

Commissioner DeBolt said after he had looked at the renderings of the hotel, he said he doesn't like the architecture of the building. He said it looked like something out of the 1970's and is too contemporary for that location and for Los Alamitos. He said he stayed in a Fairfield Inn in Temecula and it had more of a Mission-type look and had some character and he felt it would fit better in Los Alamitos.

Commissioner Daniel asked why they considered the Fairfield Inn and not a level higher.

Mr. Coleman said that actually Marriott has probably 12 or 14 levels all the way up to \$2,000 a night rooms. When they look at the property, they look at the demand generators for the surrounding area, the users, and the people that will actually frequent it. It's a re-branded, mid-range hotel and the colors and styles are what are in the market currently.

Commissioner DeBolt indicated that the people that live in Los Alamitos will have to look at the hotel every day and he doesn't like it. One more thing, Staff notes that the parking spaces are penciled in at 19x9 but he really can't tell; he said he would like to see, rather than a condition, he would like to see a drawing before they were to approve this project, that actually shows if there are sufficient spaces.

Commissioner Sofelkanik said that obviously there are a number of issues with this project but he would like to bring up the concerns he has with some of the conditions and everybody else can do that as well. Perhaps then it can be continued to another date as it is getting late. The conditions he has concerns on are Condition #7 – He would like to know from the Assistant City Attorney if there is a definition to that as he would like to make sure they have something to enforce to ensure it doesn't become an extended stay

hotel. Condition #9 – The equivalent of Starbucks: He would like any decision that revolves around that condition to come back to the Commission.

Mr. Mendoza asked for clarification on Condition #9 and asked if it's a Starbucks, Coffee Bean or Peat's, is it okay with Commissioner Sofelkanik if he makes the decision or if it becomes something other than those three, would he like it to come back to the Commission for review.

Commissioner Solfelkanik said that would be okay with him. With regard to Condition #33, he would like the on-site lighting plan to come before the Commission.

Mr. Mendoza indicated that the applicant can just add it to the packet for the Commission's consideration if the Commission continues this item tonight.

Commissioner DeBolt commented that regarding Condition #30 – The wording is, "The parking lot shall be illuminated from dusk until the termination of business every operating day" and he said that that needs to be a little bit more specific. He asks what dusk is. He felt that this condition needs to be refined.

Ms. Kranitz then read the definition of "dusk"; it is: "The darker part of twilight, especially at night".

Commissioner DeBolt said leaving dusk in is good.

Commissioner Solfelkanik brought up Condition #38 and said the Commission usually reviews signage.

Mr. Mendoza responded that the Commission does review signage if they apply for a sign plan review when it doesn't meet Code.

Commissioner Solfelkanik said he is good with that Condition then. With regard to Condition #50M – It appears from the renderings that there is not going to be a light installed at Serpentine and he thinks that that may be an issue.

Mr. Mendoza commented that he doesn't think two signals can be that close together.

Commissioner Sofelkanik said maybe not but people are going to use Serpentine to access this project.

Mr. Coleman commented that to save the Commission time, he cannot afford this project at this rate with all the changes to the Conditions tonight. He said he did not think he was coming here tonight to literally be told how to design a building and how to develop real estate and it just seems like this is

something that the Commission doesn't want in their City and if that's the case, he can leave.

Following discussion, the Commission at that point went through the Conditions that could perhaps be eliminated to try to make the project more feasible.

Commissioner Grose said she does like the project and asked the applicant how long it would take to actually build the project.

Mr. Coleman indicated it would take about one year to complete.

Motion/Second: Cuiilty/Daniel

Unanimously Carried: A motion to continue the Public Hearing to the next regular Planning Commission meeting on July 22, 2015.

C. Modification of Watersafe Swim School Conditional Use Permit (CUP) 14-07M, Site Plan Review (SPR) 14-02M which is an Outdoor Commercial Recreation Facility at 3686 Cerritos Avenue in the Planned Light Industrial (P-M) Zone and Approval of CEQA Addendum Therefore.

During construction, the Planning Division found changes to the site plan that were not approved by the Commission. This report outlines the changes and asks the Commission to consider those modifications to a previously approved swim school at 3686 Cerritos Avenue in the Planned Light Industrial (P-M) Zone or alternatively, deny the modification (Applicant: Ginny Ferguson – Watersafe Swim School).

Community Development Director Steven Mendoza summarized the Staff report, referring to the information contained therein, and indicated he's prepared to answer questions from the Planning Commission.

Vice-Chair Cuiilty opened the Public Hearing.

Nathan Najerian, Director of Water Safe Swim School, indicated he will be in charge of the day to day operation of the school. He said that in October of 2014, the Commission approved the CUP to create a new community oriented swim school on Cerritos Avenue and they have currently spent \$1.5 million dollars to create the facility so far. It is evident that they still do not have the full support of some City staff because of the delays that have happened and the Stop Work Order that was created in spite of the fact that most of these changes have been found insignificant. The consequence of being present tonight is that Staff has delayed their project and they estimate that the delay has cost their business an additional \$31,982 in construction and consultant costs alone. Since most of the students that they get sign up in the summer, and half the summer is gone already, they cannot even begin to estimate the amount of income that they've lost for the remainder of the

year. More importantly for the City of Los Alamitos, the delay in the opening of the school has caused them to miss the majority of the summer swimming season and that is when they really wanted to get the kids safe. They've had to lay off some of the local residents that they had already begun to hire and train because of these delays.

Don Lee, Architect, said he made a mistake on their drawings. It was a drafting error. Both pools were labeled incorrectly at 4 feet deep. Pool #2 should have read, "4 to 7 feet deep" when they made the original submittal. He said he planned to make this correction during the as-builts as normally is done but the City then Red Tagged Pool #2 when they saw the deeper depth. He said the building permit for Pool #2 was secured and approved by the City and it did show 4 to 7 feet deep and they had the permit to do the pool before they began construction. He said what he finds somewhat dismaying is that usually adjustments like this are very often made and just handled administratively. During the plan check process and during construction, they have worked diligently and conscientiously with the City Planning and Building Departments, the Orange County Fire Authority, and the Orange County Health Department to successfully resolve many difficult issues regarding landscape areas, parking requirements, fire truck access, occupancy definitions, occupancy loads, fire separations, health issues and ADA requirements. All of these things they've resolved as they've worked through the process. The owners have done a lot to improve the appearance and the quality of the project. They've also added four more parking spaces than was originally required along with several other improvements.

Ginny Ferguson, Founder and Owner, spoke about the U.S. Swimming Rules and Regulations for holding swim meets. She said a number of the concerns that the City staff has raised has come down to the mistaken belief that there will be formal swim competitions at the site. She said that there cannot be any competitions at her facility because to be authorized for a swimming event, there has to be at least 8 regulation lanes and 10 is preferred. Her pools have only 4 lanes. She provided several more reasons why competitions cannot be held at her facility and this information is per U.S. Swimming and Regulations.

Richard Davis, certified as a Meet Official by U.S.A. Swimming. He said he officiates NCAA, high school, Special Olympics, etc. Mr. Davis indicated he is here to support this swim school. One of the things that is his responsibility as a Meet Referee is to make sure that the pool is certified which means they have to have an engineer come out and certify the pool and once it's on record, it's put on a list with U.S.A. Swimming. This will allow these pools to have sanctioned swim meets. He indicated that Ms. Ferguson's pool is not capable of doing that. He said he could see possibly an inter-squad type of meet where she might have lessons for her students and have them have a practice meet but it's nowhere close to having it be sanctioned.

Mel Malkoff, Project Planner for the swim school said basically this was a lack of communication between Building and Planning. He said the deep water was shown on the building permit; it's been there in the original CUP when they talked about life saving training, lifeguard training and scuba. Scuba training cannot be done in a shallow pool. He said that Staff could have just asked them instead of stopping the project; they could have sat down and at the same time, the concurrent processing of their business license has now been held up as well. Besides these delays, he said he believes the fees they were charged are out of line and proceeded to outline these charges. He also indicated that Staff has now proposed four new conditions beyond the approved CUP; numbers 52, 53, 54 and 55. He said he will ask for four things; they are:

- Delete the four new conditions;
- They have been told there is a 20-day appeal period after this hearing before they can resume construction. Frankly, the ones to appeal this project were the City Staff. He is asking the Commission to waive that 20-day period and let them resume work and direct Staff to process their business license.
- Asking that all the fees to be waived and returned to the client.
- Direct Staff to cooperate with the school and treat them as a welcome business and employer into the City of Los Alamitos.

Commissioner DeBolt said as the Commission is aware, he had requested copies of information prior to this meeting which was furnished by Staff and he appreciates that. He indicated he has been nearly beside himself and have been all day regarding this issue. He then asked Associate Planner Oliver if prior to posting the Stop Work Order, was there any communication with the applicant regarding the discrepancy between the pool depths and what's on the plan.

Associate Planner Oliver said no.

Commissioner DeBolt asked not even a courtesy call?

Mr. Oliver said he called them five minutes after stopping the job but not before.

Commissioner DeBolt then asked if there was a Notice of Correction issued regarding the pool depth discrepancy between what was being done.

Mr. Oliver indicated that that was on the Stop Work Order.

Commissioner DeBolt then asked if Mr. Oliver had provided a Notice of Correction.

Mr. Oliver explained that he is not the Building Inspector and that is usually a Building Department function and not a Planning Department function.

Commissioner DeBolt asked Mr. Oliver if he is authorized to issue a Stop Work Order.

Mr. Oliver said that that was a good question.

Commissioner DeBolt said that on the Stop Work Order, Mr. Oliver had noted it was a violation of the CUP and asked why the violation procedure that is outlined in Paragraph 4 of the CUP not followed?

Mr. Oliver explained that when he went to the property, he really enjoyed how well it was looking. He walked past the pool and saw that it was 7 feet deep, not 4 feet deep. He thought that was strange. He went back to the office because they were getting ready to plaster the inside of the swimming pool and he looked at the plans and it said 7 feet deep. It was supposed to be on the second set of plans they didn't submit to the Planning Department. He said he didn't think that's what was approved in the CUP, so he went back and looked at the CUP and he saw that it was supposed to be only 4 feet deep. He said he then went immediately and put a Stop Work Order so they didn't spend all the money the next day plastering the pool; five minutes later, he called them.

Commissioner DeBolt said the question is why didn't you follow the procedure that is named in the CUP?

Mr. Oliver explained that he wanted to save them money before they plastered the pool the next day.

Commissioner DeBolt asked if the Stop Work Order was issued on April 9th, why wasn't the Commission notified either by email or at least by the April 22nd Commission meeting of the Stop Work.

Mr. Oliver indicated he wasn't sure.

Vice-Chair CUILTY asked if the Planning Commission is usually notified if there's a Stop Work Order as it hasn't happened since she's been on the Commission so she's just curious.

Mr. Oliver said no.

Commissioner Grose asked if these fees are typical.

Mr. Mendoza explained that these are established fees. What the Planning Commission approved was two 4 foot pools. Staff took a very conservative view of this and said this is for the Commission to determine as they are the

last body who looked at it and they should know this. Also, the Commission should know what the environmental impacts of this are and give them enough information so that they can determine that a 7 foot pool doesn't have any more additional impacts than a 4 foot pool. He said he literally stayed arms length from this to not be accused of these kinds of things and this is what came out of it. The original application was for two 4 foot pools and that was what was approved by the Commission. If any Commissioner thought they were approving a 7 foot pool, he said he would be very interested in hearing it.

Commissioner Grose asked on page 3 of the modification request, the applicant wants to delete the competition events?

Mr. Mendoza explained that Staff's concern is that with a change, this could turn into something that the Planning Commission didn't approve. If the Commission remembers, during the public hearing last year, it was all about training youth to make sure that they survive, thrive, and were pool safe. So Staff wanted to make sure that it stayed with that same theme and didn't morph into something that the Planning Commission didn't approve. So now the Commission has a chance to look at these conditions as these are Staff's concerns and they can certainly be tweaked. Staff is just pointing out to the Commission that this has the potential of turning into a special event center.

Commissioner Daniel said that Commissioner DeBolt has made some very good points but the Commission has very adamantly explained to Staff that they want to know about this kind of stuff so these kinds of changes is the kind of stuff that the Commission has requested to bring before them. Commissioner DeBolt's points are still well taken but what they have done is what they've asked them to do with any projects like this because there are some issues here that, the way that it's written, he wasn't aware that this was their intent to begin with. So many things on the list have changed the concept which the Commission originally agreed to.

Commissioner Grose commented that with regard to Condition 52, she said she thinks the concerns that maybe the applicant didn't see is that these are basically buffers for the City and gave the scenario that perhaps five years from now the property is sold and somebody tries to change what the Commission wanted. Earlier today there was a problem with a business that altered the meaning of what it was originally supposed to be by knocking out a wall. The Commission is trying to protect ourselves so nobody in the future comes to the Commission after this business is sold and the City is protected as it was spelled out what we believe the intent of this pool is and was. So, she said she tends to agree with Condition 52 and with the seating arrangements.

Commissioner DeBolt said he would like to go back to comments from Mr. Mendoza and “keeping himself at arm’s length”. He asked Mr. Mendoza if he had no input with Mr. Oliver on the Stop Work Order or anything like that.

Mr. Mendoza said he certainly did. He said he believes he was present that day that Mr. Oliver went out and placed the Stop Work Order. He said he told Mr. Oliver to check the Commission approved plans first before going out to inspect.

Commissioner DeBolt asked that in the general conditions that were on the CUP, Mr. Mendoza is given the latitude to, and he began to read, “If there are any changes proposed regarding the location, alteration of the plans as amended, a request for amendment must be submitted to the Community Development Director. If the Community Development Director determines that the proposed change or changes are consistent with the provisions and spirit and intent of this approval action”... He said and the action would have been the same with proposed action unless you make that finding that it goes to the Planning Commission.

In response to Commissioner DeBolt’s question, Mr. Mendoza said by the applicant filing the application for the modification, that’s how it came to his desk for review. That’s the modification. The applicant filed the applications; he rendered his decision that it shall go to the Planning Commission based on the depth of the pool and felt it was significant enough that the Planning Commission hadn’t originally considered a 7 foot deep pool; that he said that this was going to the Commission. He read the condition out loud:

“1. If any changes are proposed regarding the location or alteration of the plans plotted and dated 5-10-15, a request for the amendment of this approval must be submitted to the Community Development Department.”

Mr. Mendoza said that’s the applications he filed. He filed to modify or amend those approvals. That’s where the costs came in.

Mr. Malkoff said that’s not why he filed.

Mr. Mendoza reiterated that he filed because he changed the project.

Mr. Malkoff said no; he came into Staff after being called by his client that they had a Stop Work Order and he had some discussions with Mr. Oliver and he was told that they were going to have to file for a modification. They’re doing scuba diving and teaching instructors which requires a deep pool. Their architect made a mistake but it was covered in the building permit; the permit says 4 to 7 feet and it’s on the plans. He said when a project is being done, whether it’s a hotel or any other, you come in at the planning stage; they did that last fall and they had a certain level of specificity and their architect did some tree lay outs. After that they got even more

specific and they hired a landscape architect who did all the detailed work. In any normal project that he's done over the last few decades, if there are little changes along the way, you do them as as-builts; talk to Staff and building inspection. The only reason he said he filed was because he was told in the Deemed Complete letter and before that, in discussion, this is a major change; it's not. He wasn't even asked to get a geology letter. When somebody builds a pool in this town, do you get a geology report if it's 4 feet versus 7'?

Mr. Mendoza indicated Staff makes them get a geology report for anything over half an acre because of the liquefaction and the water table in our town.

Mr. Malkoff said the point is he thought they could get the Stop Work withdrawn because the building plans correctly show the deep pool; they've always had a teaching pool where scuba and diving are taught. They were pretty clear in their understanding of what they were building and what they presented to the Commission last fall but he was told by Mr. Oliver that they needed to go ahead and make application and then Staff would render a decision. Then they had to spend \$7450 just for the privilege of waiting another month. In the Deemed Complete letter, it says that they asked to go to the Planning Commission; they didn't. They wanted Mr. Mendoza and Mr. Oliver and whoever else that were needed to go over and figure out what the problem was in the Stop Work and get back to work.

Mr. Mendoza explained that the problem was it didn't match with what the Planning Commission approved.

Commissioner DeBolt commented that there are two issues; in the Staff report on page 2, it reads, "If the Community Development Director has been given the latitude by the Commission to approve changes that comply with the provision of the spirit and intent of the Commission's prior approval..." and then the very last sentence, "The Director feels that the changes are substantial enough to require Planning Commission review". He said on the next page there are approximately fifteen changes and with the exception of the last one, 1.4.1 – Swimming Pool Plans, he asks what is substantial about the other ones that required the Commission's approval.

Mr. Mendoza answered that the depth of the pool was the reason that Staff put the Stop Work Order on it. He continued that Staff didn't know of all the other changes until they submitted the site plan that noted a couple of dozen changes that the Planning Commission hadn't reviewed. He said the argument of whether it's a minor modification or a major modification is certainly up in the air.

Commissioner Loe pointed out that Staff gets criticized if they don't bring something to the Commission and now they're getting criticized if they do bring something to the Commission and things are subjective and subject to

people's interpretation and so forth. Sometimes the Commission gets on Staff for all of a sudden we have a project that looks totally different than what the Commission approved and then we get on Staff for not stepping in and doing something about it.

Commissioner DeBolt said he is of the opinion that the presentation that was made to the Commission, every item with the exception of the bleachers, that is called out in the four added conditions was a part of the original presentation that the Commission approved.

Commissioner Daniel felt that the bottom line is we have a list of his changes as requested by the applicant. The judgment on how it got to the Commission tonight wasn't right; we apologize but that doesn't matter anymore. The Commission needs to look at this and get the swim school back to work if we agree with this modification. He then asked about Conditions 52 through 55 and it was the consensus of the Commission to delete all four conditions as the applicant requested.

Commissioner DeBolt said the final issue is the refund of fees.

Commissioner Daniel asked how much money we are talking about.

Mr. Oliver indicated that \$5000 of the fees was a deposit for the CEQA consultant and they get most of that back. Then there is the regular fee for the two modifications (for tonight) which is \$2000.

Mr. Malkoff indicated that the only issue with their site plan was a dispute between going from Planning to Building regarding the depth of the pool so he thought they would have only had to pay the site plan amendment and not both. The Fire Marshall review of the Site Plan had already been done before the Stop Work Order so he doesn't know why they had to pay for that again.

Mr. Oliver said what Mr. Malkoff is asking about as far as he can tell is the two \$1000 modification checks and the \$400 for the Orange County Fire Authority which will all go back to them.

Mr. Malkoff indicated they don't mind paying \$1000 for the site plan modification but the CUP modification was not changed at all. Plus, they don't want to wait another 20 days to resume construction.

Vice-Chair Culty asked if the Commission has the authority to waive the 20 day appeal period.

Mr. Malkoff questioned who would appeal this; plus, he's already given the City an At Risk letter.

Ms. Kranitz indicated that since the applicant has supplied the City with an At Risk letter saying that they're willing to take the risk and not hold the City responsible for any costs incurred should the decision be overturned is sufficient and he can continue with the project.

Responding to Commission DeBolt's question, Ms. Kranitz indicated that the Stop Work Order will not be in effect since we have an At Risk letter from the applicant.

Motion/Second: DeBolt/Grose

Unanimously Carried: A motion that we approve the modification with the exception and without any additional conditions added; that the City refund to the applicant \$1000 for the CUP; that the applicant provide an At Risk letter in lieu of the Stop Work Order; and, that they be allowed to proceed with construction.

D. Massage Ordinance Amendment.

Consideration of an Ordinance amending Chapter 17 of the Los Alamitos Municipal Code relating to Massage Establishments. (Citywide) (City Initiated) (ZOA 15-02).

Vice-Chair Cuiilty opened the public hearing and asked if anybody would like to speak on this matter.

Motion/Second: Cuiilty/Grose

Unanimously Carried: A motion that we continue this item to the August 26, 2015 regular Planning Commission meeting.

8. ITEMS FROM THE COMMUNITY DEVELOPMENT DIRECTOR

None.

9. COMMISSIONER REPORTS

None.

10. ADJOURNMENT

The Planning Commission adjourned at 11:21 PM.

Mary Anne Cuiilty, Vice-Chair

ATTEST:

Steven Mendoza, Secretary

**MINUTES OF PLANNING COMMISSION MEETING
OF THE CITY OF LOS ALAMITOS**

REGULAR MEETING – July 22, 2015

1. CALL TO ORDER

The Planning Commission met in Regular Session at 7:00 PM, Wednesday, July 22, 2015, in the Council Chambers, 3191 Katella Avenue; Chair Riley presiding.

2. ROLL CALL

Present: Commissioners: Chair John Riley
Vice-Chair Mary Anne Culty
Will Daniel
Art DeBolt
Wendy Grose
Gary Loe
Victor Sofelkanik

Absent: None

Staff: Development Services Director Steven Mendoza
Associate Planner Tom Oliver
Dawn Sallade, Department Secretary

3. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Chair Riley.

4. ORAL COMMUNICATION

Chair Riley opened the meeting for Oral Communication for items not on the agenda.

Theresa Murphy of Precious Life Shelter indicated they are hosting a Taste of Precious Life at the Plaza this Sunday afternoon from 3:30 to 7:00 PM and extended an invitation to all to attend.

There being no further persons wishing to speak, Chair Riley closed Oral Communication.

5. CONSENT CALENDAR

A. Withdrawal of Development Applications for a Marriott Fairfield Inn Hotel and Drive-Thru Starbucks, Which Required a Site Plan Review, a Conditional Use Permit for Hotel Operation, Height, Drive-Thru and Shared Parking for a Parcel at 10650 Los Alamitos Boulevard, APN 242-243-03 (Applicant: Kevin Coleman – Net Development Co.)

This is a report which informs the Commission and the public that the application for the above mentioned project has been withdrawn by the applicant.

Recommendation: Receive and File.

Development Services Director Steven Mendoza summarized the Staff report and indicated he's prepared to answer questions from the Planning Commission.

Chair Riley indicated that the Public Hearing was still open and so closed the Public Hearing.

6. PUBLIC HEARINGS

A. **Consideration of Site Plan Review and Conditional Use Permit for an Application for the Addition of a Residential Unit and Square Footage to an Existing Single Family Residence, Thereby Creating a Duplex, and Replacing a Garage with a Five Space Carport in the R-2 Zone at 10845 Cherry Street (APN 242-183-10) Applicant: Loan Tran.**

This is to consider the addition of a 2,065 square foot residential unit, as well as an addition of 821 square feet, to an existing 946 square foot single family residence, thereby creating a duplex at 10845 Cherry Street in the R-2 Zone, APN 242-183-10. This project would also replace an existing garage with a five space carport. The project requires a Site Plan Review and Conditional Use Permit (Applicant: Loan Tran).

Commissioner Grose declared a conflict of interest as she serves on a Board of Directors that has property next door to the subject project and excused herself from the Chamber.

Associate Planner Tom Oliver summarized the Staff report, referring to the information contained therein, gave a PowerPoint presentation and indicated he's prepared to answer questions from the Planning Commission.

Chair Riley opened the Public Hearing.

Loan Tran, Applicant, indicated she submitted the plan for the construction of the duplex.

There being no additional speakers, Chair Riley closed the item for public comment and brought it back to the Commission for their comments and action.

Motion/Second: Cuijty/DeBolt

Carried 6/0/1 (Grose abstained): The Planning Commission approved the adoption of Resolution No. PC 15-12, entitled, "A RESOLUTION OF THE

PLANNING COMMISSION OF THE CITY OF LOS ALAMITOS, CALIFORNIA, APPROVING SITE PLAN REVIEW 15-03 FOR THE ADDITION OF A 2,065 SQUARE FOOT RESIDENTIAL UNIT, AS WELL AS ADDING 821 SQUARE FEET, TO AN EXISTING 946 SQUARE FOOT SINGLE FAMILY RESIDENCE, THEREBY CREATING A DUPLEX, AND REPLACING A GARAGE WITH A FIVE SPACE CARPORT AT 10845 CHERRY STREET IN THE R-2 ZONE, APN 242-183-10, AND DIRECTING A NOTICE OF EXEMPTION BE FILED FOR A CATEGORICAL EXEMPTION FROM CEQA (APPLICANT: LOAN TRAN)”; and,

Adopt Resolution No. PC 15-13, entitled, “A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LOS ALAMITOS, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT (CUP) 15-04 FOR THE ADDITION OF A 2,065 SQUARE FOOT RESIDENTIAL UNIT, AS WELL AS ADDING 821 SQUARE FEET, TO AN EXISTING 946 SQUARE FOOT SINGLE FAMILY RESIDENCE, THEREBY CREATING A DUPLEX, AND REPLACING A GARAGE WITH A FIVE SPACE CARPORT AT 10845 CHERRY STREET IN THE R-2 ZONE, APN 242-183-10, AND DIRECTING A NOTICE OF EXEMPTION BE FILED FOR A CATEGORICAL EXEMPTION FROM CEQA (APPLICANT: LOAN TRAN)”.

Commissioner Grose returned to the Chamber.

7. ITEMS FROM THE COMMUNITY DEVELOPMENT DIRECTOR

None.

8. COMMISSIONER REPORTS

Call for Review of Planning Commission Decision Regarding Appeal of Director’s Decision – Unpermitted Expansion of Crossfit at 10893/10895 Portal Drive in the Planned Light Industrial (P-M) Zone APN 241-241-19.

Mr. Mendoza explained the that there are two processes after he takes an action or a Commission takes an action. It can be appealed to the City Council within 20 days or a Council member can call it up for review with 10 days. They have the option of bringing up to review; they have to stay neutral on the item and not state what their opposition is or whether their favorability of it is. They then do a very similar public hearing with public notice, Staff report, and the Commissioner’s will be noticed as well.

In response to Commissioner Daniel’s question, Mr. Mendoza indicated Council member Hasselbrink has requested that this be brought up for review.

Commissioner DeBolt asked if the Commission attends and be subjected to questions as to what their reasoning for the decision was.

Mr. Mendoza indicated that there is no requirement that the Commission has to attend the Council meeting.

Chair Riley asked if the Commission will receive a summary of their actions after the meeting.

Mr. Mendoza explained that they have several options; they could send the whole issue back to the Planning Commission; they can make a decision to uphold the Commission's decision; they could over-ride the Commission's decision; or, they could augment it in any way they see fit. He further commented that the five Council members will probably have as complex feelings and observations that the Commission had.

Commissioner Solfelkanik asked if there is any forum that the City Council could question the Planning Commission as to why they made certain findings.

Mr. Mendoza indicated that the whole Planning Commission is on tape and they can review that. They could also direct him to question the Commissioners if they want but he just doesn't see that happening.

Commissioner Grose asked if Council member Hasselbrink gave a reason for why she is requesting the review.

Mr. Mendoza responded she did not. Placing a reason would put her in a position of bias.

Commissioner DeBolt asked if this is an appeal.

Mr. Mendoza replied no, that it's a call for review. The appeal section of the Code has two sections: Appeal and Call for Review. It was implemented about four years ago or so.

9. ADJOURNMENT

The Planning Commission adjourned at 7:26 PM.

John Riley, Chair

ATTEST:

Steven Mendoza, Secretary

City of Los Alamitos

Planning Commission

Agenda Report Public Hearing

August 26, 2015
Item No: 7-A

To: Chair Riley and Members of the Planning Commission
Via: Steven Mendoza, Development Services Director
From: Lisa Kranitz, Assistant City Attorney
Subject: Massage Ordinance Amendment

Summary: Continued Consideration of an Ordinance Amending Chapter 17 of the Los Alamitos Municipal Code relating to Massage Establishments. (Citywide) (City Initiated) (ZOA 15-02)

Recommendation:

1. Continue the Public Hearing; and, if appropriate,
2. Adopt Resolution No. PC 15-08, entitled, "A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LOS ALAMITOS, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL APPROVE ZONING ORDINANCE NO. 15-TBD AMENDING TITLE 17 OF THE LOS ALAMITOS MUNICIPAL CODE RELATING TO MASSAGE ESTABLISHMENTS."

Background:

As a result of Assembly Bill 1147, the City will need to amend Chapter 5.32 of the Los Alamitos Municipal Code relating to the business license and regulation provisions of massage establishments. Earlier this year the City Council adopted a moratorium on all new massage establishments. The moratorium is effective until January 21, 2016 (10 months and 15 days from March 6, 2015). Tonight's meeting begins a discussion that was continued from the June 24, 2015 Planning Commission meeting concerning Staff-proposed new massage establishment ordinances in light of AB 1147.

Attachment:

- 1) Planning Commission Resolution No. PC 15-08
- 2) Staff Report from Planning Commission Meeting of 6/24/15
- 3) Draft City Council Ordinance No. 15-TBD
- 4) Draft City Council Ordinance for LAMC Section 5.32 – for information only

RESOLUTION NO. PC 15-08

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LOS ALAMITOS, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL APPROVE ZONING ORDINANCE AMENDMENT (ZOA) 15-02 TO AMEND TITLE 17 OF THE LOS ALAMITOS MUNICIPAL CODE RELATING TO MASSAGE ESTABLISHMENTS (CITY INITIATED) (CITY WIDE)

WHEREAS, with the adoption of AB 1147 effective January 1, 2015, the Legislature has restored local land use control to cities with regard to massage establishments; and,

WHEREAS, at its meeting of May 27, 2015, the Planning Commission approved a Resolution of Intention directing Staff to bring back changes relating to massage establishments; and,

WHEREAS, on June 24, 2015 the Planning Commission of the City of Los Alamitos opened a duly noticed public hearing on this Resolution, and continued the discussion to the August 26, 2015 meeting; and,

WHEREAS, on August 26, 2015 the Planning Commission of the City of Los Alamitos held a continued hearing on this Resolution, after which they adopted the Resolution; and,

NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF LOS ALAMITOS, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The Planning Commission hereby recommends that the City Council adopt the Ordinance (15-TBD), attached hereto as Attachment 3, amending Title 17 of the Los Alamitos Municipal Code relating to Massage Establishments.

SECTION 2. The Planning Commission's recommendation is based upon the following findings:

A. The zoning ordinance does not create any inconsistencies with the General Plan. It does not change any zones which would be inconsistent with the General Plan designations. The zoning ordinance promotes Land Use Goal 3 which relates to commercial opportunities being compatible with surrounding neighborhoods, as well as Land Use Goal 2 and Economic Development Goal 1 which relate to having a mix of uses that provides fiscal balance.

B. The ordinance will better the public convenience, health, interest, safety, or welfare of the City as it will allow the City to better regulate massage establishments.

C. Staff has determined that the Ordinance amendment is exempt from CEQA as there is no possibility of this having an impact on the environment. The ability to require a conditional use permit will allow the City to better protect the environment.

D. Last, the proposed amendment will be internally consistent with other provisions of the zoning code.

PASSED, APPROVED, AND ADOPTED this 26th day of August, 2015.

John Riley, Chair

ATTEST:

Steven Mendoza, Secretary

APPROVED AS TO FORM:

Lisa Kranitz, Assistant City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LOS ALAMITOS)

I, Steven Mendoza, Planning Commission Secretary of the City of Los Alamitos, do hereby certify that the foregoing Resolution was adopted at a regular meeting of the Planning Commission held on the 26th day of August, 2015, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Steven Mendoza, Secretary

City of Los Alamitos
Planning Commission

Agenda Report
Public Hearing

June 24, 2015
Item No: 7-D

To: Chair Riley and Members of the Planning Commission
Via: Steven Mendoza, Community Development/Public Works Director
From: Lisa Kranitz, Assistant City Attorney
Subject: Massage Ordinance Amendment

Summary: Consideration of an Ordinance amending Chapter 17 of the Los Alamitos Municipal Code relating to Massage Establishments. (Citywide) (City Initiated) (ZOA 15-02)

Recommendation:

1. Open the Public Hearing; and, if appropriate,
2. Adopt Resolution No. PC 15-08, entitled, "A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LOS ALAMITOS, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL APPROVE ZONING ORDINANCE NO. 15-TBD AMENDING TITLE 17 OF THE LOS ALAMITOS MUNICIPAL CODE RELATING TO MASSAGE ESTABLISHMENTS."

Applicant: City Initiated

Location: C-G Zone, Citywide

Environmental: Exemption pursuant to Section 15061(b)(3) under the general rule that CEQA does not apply to activities which can be seen with certainty to have no effect on the environment. Changing the regulations relating to massage establishments will not have any environmental impacts.

Approval Criteria: Section 17.70.020 of the Los Alamitos Municipal Code (LAMC) requires that any proposed amendment of the zoning provisions be recommended by the

Planning Commission by a resolution to the City Council.

Noticing:

Notice announcing the Public Hearing for June 24, 2015 was published in the News Enterprise on June 10, 2015.

Background:

A. State Legislation

In 2008, the Legislature adopted SB 731 which created a non-profit organization, the California Massage Therapy Council (“CAMTC”) to provide voluntary certification to massage therapists and massage practitioners. Once a person had a CAMTC certification, they were exempt from all local government regulations. SB 731 and the various amendments thereto, also prohibited local government from regulating massage establishments differently than any other professional business and required that they be allowed in all the same zones as any other professional business if the individuals were CAMTC certified. Numerous cities experienced unprecedented increases in the number of massage establishments and increased problems with human trafficking and prostitution. While Los Alamitos did not experience unprecedented growth, the impacts were great in neighboring cities.

SB 731 had a sunset date of January 1, 2015. Recognizing that SB 731 went too far and had many unintended consequences, the Legislature adopted AB 1147 late last year which restored the ability of cities and counties to impose local control.

While the CAMTC and the voluntary certification provisions remain intact, there were a number of important changes brought about by AB 1147, some of which are more relevant to the City and its ability to control massage establishments than others. The most important change is that cities and counties now have the ability to impose ordinances, regulations, rules, requirements, restrictions and land use regulations on massage establishment businesses that are different from those placed on other professional services – even when the individuals are CAMTC certified, although there are still some limitations on local government control. Additionally, the composition of the CAMTC Board has been changed to reduce the amount of industry representation and increase the amount of governmental representation. The Massage Therapy Act now provides that protection of the public is the highest priority and local regulations are enforceable if they are reasonable and necessary.

The new Massage Therapy Act remains in effect until January 1, 2017 and like its predecessor, will undergo review to determine its effectiveness and pitfalls prior to expiration. The League of California Cities has, therefore, cautioned that cities not abuse the authority which has been given back.

B. City Legislation and Regulations

Prior to SB 731 Los Alamitos allowed massage establishments in the C-O Zone, and the C-G Zone (Permitted -- if on non-arterial street, CUP – if on arterial street). As a result of SB 731, the City was forced to amend its massage provisions and its zoning ordinance to allow massage establishments by right in the C-O and G-G zones. As SB 731 was amended, the City even lost the ability to impose controls such as time restrictions on massage establishments unless these restrictions were applied to other businesses.

Also as a result of SB 731, the City amended Chapter 5.32 of the Los Alamitos Municipal Code relating to the business license and regulation provisions of massage establishments. Earlier this year the City Council adopted a moratorium on all new massage establishments.

Analysis:

With the adoption of AB 1147 the City may restore local land use control as well as impose additional restrictions under the business license provisions.

The changes to the Los Alamitos Municipal Code will be set forth in two ordinances. The first will be the zoning ordinance making massage establishments subject to a conditional use permit in the C-G zone only. This ordinance requires a public hearing before both the Planning Commission and the City Council and is the subject of tonight's hearing.

The second ordinance will make changes to the business regulations relating to massage establishments. It repeals and readopts a new Chapter 5.32. Although the Planning Commission does not make recommendations or take action on this ordinance, it is being included in your packet so that the Commission has an understanding of the entire regulatory scheme.

A. Changes to Title 17

The proposed zoning ordinance will change the Code provisions so that massage establishments will be allowed to locate in the C-G zones with a conditional use permit.

Additionally, the zoning ordinance makes the following changes:

- Adds a provision to Section 17.42.010 of the Conditional Use Permit chapter to provide that in determining the compatibility of massage establishments, the Commission may take into account the number of other massage establishments in the surrounding community. This will help avoid a proliferation of such establishments within Los Alamitos.

- Adds a definition of massage to cross reference Chapter 5.32 and adds a definition of a massage establishment.
- Adds a provision to Chapter 17.42 on conditional use permits that specifies what is to be shown on the detailed floor plan that is submitted, as well as a requirement that the floor plan be scaled in inches and feet and labeled in English.

There are currently three existing massage establishments in Los Alamitos. The Ordinance provides that its provisions, i.e., the requirement for a conditional use permit, will not apply to any massage establishment that was in lawful existence on May 1, 2015, unless such business is transferred to a new owner.

Upon the effective date of the changes to Title 17, the moratorium will be of no further force or effect.

B. Chapter 5.32

The following is a very brief summary of the changes to Chapter 5.32:

- Under the new provisions of Chapter 5.32 the following is required for the operation of massage establishments:
 - Massage Technicians and Massage Practitioners must all be CAMTC certified. There will no longer be any massage practitioner permits issued by the City.
 - Owners and Managers must have an Operator Permit to own/manage a massage establishment. These permits will require a background check by the Los Alamitos Municipal Code; if a person has a CAMTC certificate, the Operator Permit will be automatically issued. The permits are good for a period of three years. The Ordinance makes the Operators responsible for the conduct that takes place in the massage establishment, regardless of whether they are the perpetrator of illegal conduct.
 - The business itself must receive a Certificate of Operation. This will not be issued until the business has obtained a CUP and all of the owners and managers have obtained an Operator Permit. Certificates are not transferable to a separate location of the same business, to a different business at the same location, to the same business under different ownership at the same location, or the same business under a different name. No new Certificate of Operation will be issued for a location which has been closed due to criminal activity and a new Certificate of Operation cannot be issued for a location once suspension or revocation proceedings have commenced until they are dismissed. (§ 5.32.070.)

- Applicants will be required to submit scaled floor plans as part of the Certificate of Operation and Conditional Use Permit process. (§ 5.32.035; § 5.32.070.)
- The ordinance provides for a complete exemption for certain types of businesses (§ 5.32.020A) and a partial exemption for businesses that provide massage where there is no disrobing and the massage is administered in an open room which is open to public view (§ 5.23.020B).
- The operational requirements are set forth in § 5.32.110. These include:
 - Hours of operation between 6:00 A.M. and 10:00 P.M. unless modified by a CUP
 - Requirement that Operator be present during all hours of operation
 - Posting of picture of Operator on duty
 - Requirement on dress that is now dictated by AB 1147
 - Requirement to provide personnel lists to the City
- The building and facility requirements are set forth in § 5.32.120. These include:
 - No locks on interior doors except bathroom and one office door
 - Minimum lighting requirements of 210 lumens for every 150 square feet of space; no dimmer switches, colored, lights, flashing lights, or anything other than a lampshade
 - Prohibition on buzzer, alarm, or intercom systems
- Rooms are subject to inspection

Existing businesses will not be required to obtain a Certificate of Operation or Operator Permit unless there is a change that would trigger the need for a new Certificate of Operation as described above. The existing businesses will have to comply with the other provisions within 60 days from the effective date of the ordinance to comply with the other provisions of the Chapter.

Findings:

Los Alamitos Municipal Code Section 17.70.050 requires certain findings be made for Zoning Ordinance Amendments.

The first finding is that the proposed amendment ensures and maintains consistency with the General Plan. The zoning ordinance does not create any inconsistencies with

the General Plan. It does not change any zones which would be inconsistent with the General Plan designations. The zoning ordinance promotes Land Use Goal 3 which relates to commercial opportunities being compatible with surrounding neighborhoods, as well as Land Use Goal 2 and Economic Development Goal 1 which relate to having a mix of uses the provides fiscal balance.

The second finding is that the proposed amendment will not adversely affect the public convenience, health, interest, safety, or welfare of the City. This amendment will have the opposite effect as it will allow the City to better regulate massage establishments.

Third, the proposed project has been reviewed in compliance with CEQA and the City's environmental review procedures. Staff has determined that the Ordinance amendment is exempt from CEQA as there is no possibility of this having an impact on the environment. The ability to require a conditional use permit will allow the City to better protect the environment.

Last, the proposed amendment has to be internally consistent with other provisions of the zoning code. Providing for massage establishments to be regulated by a conditional use permit is not inconsistent with any other provision of the Los Alamitos Zoning provisions.

Recommendation:

Staff recommends that the Planning Commission conduct a public hearing to discuss the Zoning Ordinance amendment and then adopt Resolution No. PC 15-08 recommending that the City Council adopt the Ordinance making changes to Title 17 of the Los Alamitos Municipal Code relating to massage establishments.

Attachments:

- 1) *Planning Commission Resolution No. PC 15-08*
- 2) *Draft City Council Ordinance No. TBD*
- 3) *Draft City Council Ordinance for LAMC Section 5.32 – for information only*

RESOLUTION NO. PC 15-08

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LOS ALAMITOS, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL APPROVE ZONING ORDINANCE AMENDMENT (ZOA) 15-02 TO AMEND TITLE 17 OF THE LOS ALAMITOS MUNICIPAL CODE RELATING TO MASSAGE ESTABLISHMENTS (CITY INITIATED) (CITY WIDE)

WHEREAS, with the adoption of AB 1147 effective January 1, 2015, the Legislature has restored local land use control to cities with regard to massage establishments; and,

WHEREAS, at its meeting of May 27, 2015, the Planning Commission approved a Resolution of Intention directing Staff to bring back changes relating to massage establishments; and,

WHEREAS, on June 24, 2015 the Planning Commission of the City of Los Alamitos opened a duly noticed public hearing on this Resolution, and continued the discussion to the August 26, 2015 meeting; and,

WHEREAS, on August 26, 2015 the Planning Commission of the City of Los Alamitos held a continued hearing on this Resolution, after which they adopted the Resolution; and,

NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF LOS ALAMITOS, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The Planning Commission hereby recommends that the City Council adopt the Ordinance (15-TBD), attached hereto as Attachment 3, amending Title 17 of the Los Alamitos Municipal Code relating to Massage Establishments.

SECTION 2. The Planning Commission's recommendation is based upon the following findings:

A. The zoning ordinance does not create any inconsistencies with the General Plan. It does not change any zones which would be inconsistent with the General Plan designations. The zoning ordinance promotes Land Use Goal 3 which relates to commercial opportunities being compatible with surrounding neighborhoods, as well as Land Use Goal 2 and Economic Development Goal 1 which relate to having a mix of uses that provides fiscal balance.

B. The ordinance will better the public convenience, health, interest, safety, or welfare of the City as it will allow the City to better regulate massage establishments.

C. Staff has determined that the Ordinance amendment is exempt from CEQA as there is no possibility of this having an impact on the environment. The ability to require a conditional use permit will allow the City to better protect the environment.

D. Last, the proposed amendment will be internally consistent with other provisions of the zoning code.

PASSED, APPROVED, AND ADOPTED this 26th day of August, 2015.

John Riley, Chair

ATTEST:

Steven Mendoza, Secretary

APPROVED AS TO FORM:

Lisa Kranitz, Assistant City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LOS ALAMITOS)

I, Steven Mendoza, Planning Commission Secretary of the City of Los Alamitos, do hereby certify that the foregoing Resolution was adopted at a regular meeting of the Planning Commission held on the 26th day of August, 2015, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Steven Mendoza, Secretary

DRAFT ORDINANCE NO. TBD

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS ALAMITOS, CALIFORNIA, REPEALING AND READOPTING CHAPTER 5.32 OF THE LOS ALAMITOS MUNICIPAL CODE RELATING TO MASSAGE ESTABLISHMENTS

WHEREAS, there is substantial research that indicates that the skillful practice of massage can provide many health benefits including relief of pain from disease, injury and other sources, and that massage can be a valuable component of a wellness program; and,

WHEREAS, in 2008 the California Legislature passed SB 731 which added a new Chapter 10.5 to the California Business and Professions Code which provided for the formation of a nonprofit Massage Therapy Organization to oversee a state-sanctioned program of voluntary certification for massage practitioners so that such persons could avoid being required to obtain local massage permits; and,

WHEREAS, in 2011 in compliance with SB 731, the City of Los Alamitos amended Chapter 5.32 of the Los Alamitos Municipal Code; and,

WHEREAS, SB 731 had a sunset date of January 2, 2015; and,

WHEREAS, the changes that the City was required to make in compliance with SB 731 and the subsequent amendments thereto severely limited the manner in which the City could regulate massage establishment businesses; and,

WHEREAS, in September 2014 the Legislature adopted AB 1147, amending the laws enacted by SB 731 and the various amendments thereto; and,

WHEREAS, the purpose of AB 1147 was to restore much of the local control and land use authority to local governments which had been usurped by SB 731 and the various amendments thereto; and,

WHEREAS, there is concern that as other cities in surrounding communities enact moratoriums and impose regulations on massage establishments the number of massage establishments in the community will continue to expand unless the City has the ability to better regulate such businesses; and,

WHEREAS, other cities have experienced problems with massage establishments in terms of prostitution and human trafficking; and,

WHEREAS, the City Council wants to ensure that Los Alamitos does not experience these same types of problems and believes the best way to do so is through reasonable regulations; and,

WHEREAS, the City Council desires to amend Chapter 5.32 of the Los Alamitos Municipal Code in order to make additional changes in its regulation of massage establishment businesses and the practice of massage in order to protect the public; and,

WHEREAS, on January 20, 2015, the City Council adopted Urgency Ordinance No. 2015-01 imposing a moratorium on all new massage establishments in the City and extended the moratorium on February 23, 2015 by adoption of Urgency Ordinance No. 2015-02; and,

WHEREAS, the City Council desires to regulate all existing and new massage establishments in order to protect the health, safety, and welfare of the community.

NOW, THEREFORE, the City Council of the City of Los Alamitos does hereby ordain as follows:

SECTION 1. Chapter 5.32 of the Los Alamitos Municipal Code is hereby repealed and a new Chapter 5.32 adopted to read as follows:

Chapter 5.32 MASSAGE

Article I. General Provisions

5.32.000 Findings and purpose.

The City Council finds and declares as follows:

A. The permit requirements and restrictions imposed by this Chapter are reasonably necessary to protect the health, safety and welfare of the citizens of the City, while recognizing massage as a legitimate business interest that provides benefits to its patrons in a therapeutic setting.

B. This Chapter is enacted pursuant to the provisions of the State Constitution, California Government Code Sections 37100, 51030 et seq., California Business and Professions Code Sections 4600 through 4620 and Section 16000 and Section 13 of the Chiropractic Act (initiative measure approved by the electors November 7, 1922, as amended) and AB 1147 (2014).

C. There is a significant risk of injury to massage clients by persons improperly trained and/or educated in providing massage services, and this Chapter provides reasonable safeguards against injury and economic loss.

D. There is opportunity for acts of prostitution, lewdness, and other unlawful sexual activity to occur in massage establishments, as well as problems relating to human trafficking in massage establishments. The establishment of reasonable standards for issuance of permits and restrictions on operations would serve to reduce the risk of illegal activity and would thereby benefit the public health.

E. The provisions of this Chapter are intended to enhance the efficient processing of permits for massage establishments, owners and managers and the ongoing regulation of those permittees and certificate holders by the City of Los

Alamitos. The provisions of this chapter in no way limit the authority of the City to inspect massage establishments or conduct investigations to ensure permittees are complying with applicable rules and regulations.

F. The restrictions and requirements contained in this Chapter are intended to stop the practice of businesses quickly changing ownership in name upon the discovery of criminal activity by the City.

G. The restrictions and requirements contained in this Chapter are intended to be in addition to the requirement of a valid business license issued pursuant to Title 5 of the Los Alamitos Municipal Code as well as any conditions imposed pursuant to a conditional use permit.

H. The regulations and restrictions contained in this Chapter are intended to discourage massage establishments from degenerating into houses of prostitution, and the means utilized in this Chapter bear a reasonable and rational relationship to the goals sought to be achieved within the confines allowed by state law.

I. The provisions of this Chapter are not intended to be exclusive and compliance therewith shall not excuse noncompliance with any state or local laws or regulations that are uniformly applied to other professional or personal service businesses.

J. The California Massage Therapy Council ("CAMTC") can better, and more efficiently, regulate massage technicians in order to best protect the public and it is in the public interest to require that all persons providing massage in the City have a certificate from the CAMTC.

5.32.010 Definitions.

For the purpose of this Chapter, the following words and phrases shall be construed to have the meanings set forth in this section, unless it is apparent from the context that a different meaning is intended:

A. "California Massage Therapy Council" or "CAMTC" means the nonprofit organization created to regulate and issue massage practitioner and therapist certificates pursuant to California Business and Professions Code Section 4600 et seq.

B. "CAMTC Certificate" means a massage practitioner or massage therapist certificate issued by the CAMTC.

C. "Certificate of Operation" means the certificate issued by the Community Development Director entitling a business to be operated as a massage establishment.

D. "Chief of Police" means the Chief of Police of the City of Los Alamitos, or designee.

E. "City" means the city of Los Alamitos.

F. "City Manager" means the City Manager of the City of Los Alamitos, or designee.

G. "Community Development Director" means the Community Development Director of the City of Los Alamitos, or designee.

H. "Compensation" means the payment, loan, advance, donation, contribution, deposit, exchange, or gift of money or anything of value.

I. "Conviction," or "convicted" means a conviction following a guilty plea, nolo contendere plea, or judgment or verdict where the time for appeal has elapsed or conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the California Penal Code allowing the applicant to withdraw his or her plea of guilty or nolo contendere and to enter a plea of not guilty, or dismissing the accusation or information.

J. "Employee" means any person, other than a massage practitioner, massage therapist, or Operator, who renders any service, with or without compensation, to the Operator or agent of an Operator of a massage establishment relating to the day-to-day operation of the massage establishment whether as an employee or independent contractor.

K. "Main entry door" means a door from the outside of the establishment leading into the reception area.

L. "Manager" means the person(s) designated by the owner of the massage establishment to act as the representative and agent of the owner in managing day-to-day operations with corresponding responsibilities. Evidence of management includes, but is not limited to, the ability of the individual to direct or hire and dismiss employees, control hours of operation, create policy or rules or purchase supplies, and ensure that the massage establishment complies with the requirements of this code and of other laws. A manager may also be an owner. A manager must have a valid Operator Permit.

M. "Massage" means any method of treating the external parts of the body for remedial, health, hygienic, or relaxation purpose. "Massage" includes, but is not limited to, treatment by means of manual pressure, acupressure, friction, stroking, kneading, rubbing, tapping, pounding, vibrating, with or without the aid of or by means of any mechanical, electronic, or electrical apparatus or appliance, and with or without rubbing alcohol, liniments, aromatics, antiseptics, oils, powders, creams, lotions, ointments, or other similar preparations. Massage specifically includes the application of any of these methods to the scalp, neck, or feet of any individual. (Some persons practicing massage may be exempt from all or parts of the permit requirements; please consult Section 5.32.020.)

N. "Massage establishment" means any enterprise or establishment having a fixed place of business where any person engages in, conducts, carries on, or permits to be engaged in, conducted, or carried on, any of the activities set forth in the definition of massage in this section.

O. "Massage practitioner" means a person who is certified as such by the CAMTC in accordance with the Massage Therapy Act.

P. "Massage technician" means a massage practitioner or massage therapist certified by CAMTC.

Q. "Massage therapist" means a person who is certified as such by the CAMTC in accordance with the Massage Therapy Act.

R. "Operator" means all persons who own or manage a massage establishment.

S. "Operator permit" means the permit issued by Chief of Police allowing a person to own or manage a massage establishment.

T. "Out-call massage" means any business or enterprise that engages in or performs massage for any form of consideration or in exchange for anything of value whatsoever at a location other than a massage establishment.

U. "Owner" means all of the following:

1. The sole proprietor of a massage establishment, i.e., where the owner is the only person performing massage at that establishment;

2. In the case of a general business, each owner of the business;

3. In the case of a corporation, each stockholder holding more than ten percent of the corporation and each officer and director of the corporation;

4. In the case of a partnership, each partner, excluding limited partners owning less than ten percent of the partnership, and where a partner is a corporation, the provisions pertaining to a corporate applicant in subsection (R)(3) apply.

V. "Patron" means an individual on the premises of a massage establishment for the purpose of utilizing the services of a massage establishment, a parent or guardian accompanying a minor receiving the services of a massage establishment, or a person helping an elderly or infirm person receiving the services of a massage establishment.

W. "Permit" means an Operator Permit or Certificate of Operation.

X. "Permittee" means any person who has obtained a Certificate of Operation or Operator Permit from the City.

Y. "Person who has engaged in disqualifying conduct" means a person who:

1. Within ten years preceding the date of filing of the application in question or, in the case of revocation proceedings, within ten years preceding the date of the revocation notice, has been convicted in a court of competent jurisdiction of any of the following:

a. A violation of any provision of law pursuant to which a person is required to register under the provisions of Penal Code Section 290, or

b. Conduct in violation of Penal Code Sections 266h, 266i, 314, 315, 316, 318, 653.22, 653.23, or subsections (a), (b) or (d) of Section 647, or

c. An attempt to commit or conspiracy to commit any of the above mentioned offenses, or

d. When the prosecution accepted a plea of guilty or nolo contendere to a charge of a violation of Penal Code Section 415, 602 or any lesser included or related offense, in satisfaction of, or as a substitute for, any of the previously listed crimes, or

e. Any crime committed while engaged in the management or ownership of a massage establishment or the practice of massage; or,

f. A violation of Health and Safety Code Section 11550 or any offense involving the illegal sale, distribution or possession of a controlled substance specified in Health and Safety Code Section 11054, 11055, 11056, 11057 or 11058, or,

g. Any offense under a statute of any state or ordinance of any city or county, which is the equivalent of any of the aforementioned offenses, including Business & Professions Code Section 4609(a);

2. Within ten years preceding the date of the filing of the application in question or, in the case of revocation proceedings, within ten years preceding the date of the revocation notice, has had any massage establishment, Operator, technician, practitioner, therapist or trainee certificate, license or permit issued by any state, local agency or other licensing authority, including the CAMTC: denied, revoked or suspended for any reason other than lack of sufficient education; or has had to surrender such a certificate, license or permit as a result of pending criminal charges or administrative proceedings for suspension or revocation of any such certificate, license or permit; or

3. Within five years preceding the date of filing of the application in question or, in the case of revocation proceedings, within five years preceding the date of the revocation notice, has been convicted in a court of competent jurisdiction of any of the following:

a. Any crime, other than an infraction or those listed above, involving dishonesty, fraud, or deceit, with the intent to substantially benefit him or herself or another, or substantially injure another, or

b. Any crime, other than an infraction or crimes relating to those offenses listed above, where the crime or act is substantially related to the management or ownership of a massage establishment or the practice of massage, including a violation of the Massage Therapy Act; or

4. Has been subjected to a permanent injunction against the conducting or maintaining of a nuisance pursuant to Sections 11225 through 11235 of the Penal Code as the same may be amended from time to time, or any similar provisions of law in a jurisdiction outside the state of California; or

5. Has been found to be maintaining a nuisance in connection with the same or similar type of business; or

6. Within five years preceding the date of filing of the application in question, or, in the case of revocation proceedings, within five years preceding the date of the revocation notice, has engaged in the exposing of specified anatomical areas of oneself or of another person to view, or in touching the specified anatomical areas of oneself or of another person, while providing massage services or while within view of a patron of the massage establishment; or

7. Within five years preceding the date of filing of the application in question, or, in the case of revocation proceedings, within five years preceding the date of the revocation notice, has been the owner, Manager, or other similar position, in an

establishment where there is substantial evidence that disqualifying conduct described above has occurred by others on the premises, regardless of whether there was a conviction of such persons.

8. Disqualifying conduct does not include the failure to obtain a Certificate of Operation or Operator Permit without any prior oral or written notification by the City that such was required, provided that the business and/or person cease operations immediately upon notification.

Z. "Proof of bona fide employment" means proof of an employer–employee relationship between the Operator of the massage establishment and any person working at the massage establishment. Satisfactory proof of bona fide employment must be shown by written payroll documentation evidencing the employer's compliance with California Employment Development Department (EDD) requirements for the withholding of California income tax, unemployment insurance contributions and disability contributions from the employee and written payroll documentation of the employer's compliance with Internal Revenue Service (IRS) requirements for the withholding of federal income taxes, Social Security (FICA) and Medicare contributions from the employee. Such written documentation can include, but is not limited to, W-2 wage and tax statements.

AA. "Reception area" means an area immediately inside the main entry door of the massage establishment dedicated to the reception and waiting of patrons and visitors of the massage establishment and which is not a massage room or otherwise used for the provision of massage services.

BB. "Residence address" means the actual physical home address and shall not include a P.O. box, mailbox service, or other similar location.

CC. "Sole provider" means a massage business where the owner owns 100 percent of the business, is the only person who provides massage services for compensation for that business pursuant to a valid and active Certificate, and has no other employees or independent contractors.

DD. "Specified anatomical areas" means any of the following human anatomical areas: genitals, pubic area, buttocks, anus, or female breasts below a point immediately above the top of the areolae, without a health care referral and written consent of the patron.

EE. "Visitor" means a nonemployee who has entered the massage establishment for purposes other than receiving services.

5.32.020 Exemptions.

A. Complete Exemption. The requirements of this Chapter shall have no application and no effect upon and shall not be construed as applying to:

1. Any physician, surgeon, chiropractor, acupuncturist, osteopath, or physical therapist licensed to practice such profession in the state of California, within the scope of their license.

2. Any registered nurse or licensed vocational nurse, licensed to practice under the laws of the state of California, who is an employee of and working under the on-site direction of a physician, surgeon, chiropractor, osteopath, or physical therapist, duly licensed to practice their respective professions in this state.

a. Any other person providing massage services that is employed by a physician, surgeon, chiropractor, osteopath, or physical therapist, shall be required to have a valid CAMTC certificate, as well as work under the adequate supervision of such physician, surgeon, chiropractor, osteopath, or physical therapist as required by State law or regulation. If no specific law or regulation applies, adequate supervision shall have the same meaning as set forth in 16 California Code of Regulations Section 312.

b. If a duly licensed acupuncturist wishes to provide massage therapy services to his or her clients by an individual(s) other than his- or her- self, said individual(s) must have a valid CAMTC Certificate and the office of the acupuncturist shall be subject to all the provisions of this Chapter, as well as any other applicable provisions of the Los Alamitos Municipal Code.

3. Any person licensed to practice any healing art under the provisions of Division 2 (commencing with Section 500) of the Business and Professions Code when engaging in such practice within the scope of such license.

4. State licensed hospitals, nursing homes, sanatoriums, or other health care facilities duly licensed by the state of California, and the employees of such facilities while working on the premises of such state licensed facilities.

5. Accredited high schools, junior colleges, and colleges or universities whose coaches and trainers are acting within the scope of their employment.

6. Barbers, beauticians, or manicurists who are duly licensed by the state of California pursuant to the Barbering and Cosmetology Act set forth in Business and Professions Code Section 7300 et seq., as the same may be amended from time to time, while engaging in practices within the scope of such license, except that this exemption applies solely for the massaging of the neck, face, and/or scalp of the customer or client of said barber or beautician or, in the case of a licensed manicurist, the massaging of the forearms, hands, calves, and/or feet at a state licensed facility. However, if a state licensed establishment also has a Certificate of Operation from the city to operate as a massage establishment, the business must also comply with all provisions of this chapter.

7. Schools of cosmetology or barbering which comply with the requirements of Business and Professions Code Section 7362 et seq., when instructors are acting within the scope of their employment or when students are working as unpaid externs pursuant to the requirements of Business and Professions Code Section 7395.1.

8. Any other business or professions exempt by state law.

B. Partial Exemption. Businesses that provide massage that: (a) do not involve disrobing; and (b) are administered in an open room which is open to public view from the entrance of the establishment shall only have to follow the specific listed requirements:

1. Massage services must be performed by the holder of a valid CAMTC certificate.
2. The business shall comply with the following provisions of this Chapter:
 - a. Section 5.32.110A.1 relating to hours;
 - b. Section 5.32.110C relating to instruments, equipment and personnel;
 - c. Section 5.32.110D.1 through D.3 relating to personnel lists;
 - d. Section 5.32.110E relating to prohibited conduct;
 - e. Section 5.32.120A, B, D, E, F and G—H relating to building and facility requirements; and,
 - f. Section 5.32.130 relating to inspections.

C. Any person claiming exemption under this section shall furnish satisfactory evidence upon request that he or she is entitled to such exemption, including, proof of bona fide employment, or if applicable, a citation to the particular provision of state law upon which that person relies.

5.32.030 Business license—Other permits required.

A. Nothing herein relieves an individual or business from obtaining a City business license, conditional use permit, or other permit if otherwise required by law.

B. Any individual applying for a business license as a massage practitioner or a massage therapist shall provide proof of a current CAMTC certificate before being issued a business license.

5.32.035 Floor Plans Required.

A. All massage establishments shall be required to submit a scaled floor plan as part of their application for a Certificate of Operation as specified in Section 5.32.070A.

B. All businesses that claim a partial exemption from this Chapter pursuant to Section 5.32.020B shall be required to submit scaled floor plans in order to verify the applicability of the exemption.

C. No changes may be made to the approved floor plan without written approval from the Community Development Department, which may require modification of the conditional use permit.

Article II. Massage Practitioners and Massage Therapists

5.32.040 State certificate required.

A. No person shall provide massage services, including out-call massage services, from any location in the City without having been issued a CAMTC certificate, regardless of whether such person has an Operator Permit or the business has a Certificate of Operation.

B. Any person certified by the state who desires to operate a massage establishment, must obtain an Operator Permit in accordance with Article III of this Chapter.

C. No Operator of a massage establishment shall hire as an employee or utilize as an independent contractor any person to perform massage unless such person has been issued a massage certificate.

Article III. Certificates of Operation and Operator Permits

5.32.050 Certificate and permit requirement.

A. No person shall own or manage any massage establishment in any location within the City without first having obtained an Operator Permit.

B. No massage establishment shall be allowed to operate within the city unless the business first obtains a Certificate of Operation. No Certificate of Operation shall be approved until each Operator identified in the application has obtained an Operator Permit.

C. Any person desiring to obtain a Certificate of Operation and/or an Operator Permit shall make application in accordance with the provisions of this article, which application shall be accompanied by a nonrefundable fee in an amount established by resolution of the City Council.

D. All applications shall be dated and shall contain the following statements:

1. A certification under penalty of perjury that the information contained in the application is true and correct; and,

2. An authorization for the City, its officers, agents and employees, to seek information and conduct an investigation into the truth of the statements set forth in the application and to ensure continual compliance with all applicable provisions of law.

E. The provisions of Sections 5.32.035 and 5.32.110 through 5.32.140 shall apply to any business that operates as a massage establishment, even if such business fails to obtain Operator Permits or certificates of operation. The City may immediately order a business that fails to have a Certificate of Operation or a permitted Operator to cease operation.

F. Within thirty working days following receipt of a completed application, the Community Development Director shall either issue the Certificate of Operation and the Chief of Police shall issue an Operator Permit or mail a written statement of the reasons

for denial thereof. Notwithstanding the above, failure of the City to act upon a completed application within the time frame set forth above shall not be deemed approval of the application pursuant to this Chapter. Any Certificate of Operation or permit issued pursuant to this subsection shall be deemed conditional pending the City's receipt of the California Department of Justice report on the applicant's fingerprints. If the fingerprint report demonstrates that the applicant has made any false, misleading or fraudulent statement of material fact in the permit application or in any report or record required to be filed therewith, or discloses any disqualifying conduct, the permit shall be subject to denial or revocation pursuant to this Chapter.

5.32.060 Operator permit.

A. Application—Contents. Applicants for Operator Permits shall submit the following information to the Los Alamitos Police Department on a form supplied by the Department:

1. The full true name of the applicant;
2. A complete statement listing and explaining any and all aliases and fictitious names used by the applicant within the ten years immediately preceding the application;
3. The current residence address and business address and current residence and business telephone number of the applicant;
4. A list of all previous residential and business addresses for a minimum of eight years immediately preceding the present address of the applicant and the dates of residence for each address;
5. The applicant's place of birth, and original documentation to verify both the applicant's identity and employment authorization (if applicable), as listed under 8 USC 1324a(b)(1) and 8 CFR 274a.2(b)(1). Documentation to satisfy this requirement may include, but is not limited to, a California driver's license, California identification card, Social Security card, resident alien ("green") card, United States passport (unexpired or expired), unexpired foreign passport that contains a temporary I-551 stamp, or an unexpired employment authorization document issued by the United States Government in compliance with 8 CFR 274a.2(b)(1)(v)(A);
6. The history of the applicant as to any similar business or occupation within ten years immediately preceding the filing of the application. Such information shall include, but not be limited to, the names and addresses of any other massage establishments or similar businesses the applicant has owned, managed, provided massage services at, or worked at, whether the applicant has had a permit or license to operate, manage, provide massage services at, or work at a massage establishment denied, revoked or suspended in any jurisdiction; the reasons for any such denial, revocation or suspension; and the business, activity or occupation the applicant engaged in subsequent to such denial, revocation or suspension;
7. All criminal convictions within the last ten years, excluding minor traffic violations, and the date and place of each such conviction and reason therefor;

8. Such other reasonable identification and information as the Chief of Police may require in order to discover the truth of the matter specified as required to be set forth in the application;

9. The applicant shall provide two passport size photographs (2" x 2") to the Los Alamitos Police Department; and,

10. An acknowledgement that by applying for an Operator Permit, the applicant understands that they are responsible for all violations of employees or independent contractors that may take place in the massage establishment which they own or manage and that such violations are grounds for revocation of the Operator Permit.

B. Once the information required by Subsection A is submitted, the applicant shall have his or her fingerprints taken for a criminal history background (Livescan) check in the manner directed by the Los Alamitos Police Department.

C. The Chief of Police shall issue the Operator Permit, unless after investigation he or she makes any of the following findings:

1. The applicant has failed to provide information, documentation and assurances required by this chapter or by the Chief of Police; has failed to reveal any fact material to qualification; or has supplied information that is untrue or misleading as to a material fact pertaining to the qualification criteria; or

2. The applicant is a person who has engaged in disqualifying conduct; or,

3. There is substantial evidence that the applicant has engaged in disqualifying conduct, even if there is no conviction for such conduct; or,

4. The applicant has violated any provision of this Chapter, or any similar ordinance, law, rule, or regulation of any other public agency which regulates the operation of massage establishments; or,

5. The applicant is not at least eighteen years of age; or,

6. The applicant is delinquent in paying City fees or penalties owed in relation to any permit issued pursuant to this Chapter.

D. Permits issued pursuant to this section shall remain in effect, unless revoked, for a period of three years. Applications for the renewal of a permit shall be filed on a form supplied by the City with the Chief of Police. Temporary permits shall not be issued and expired permits are not valid unless the permittee has a written receipt showing that the renewal application was filed at least thirty (30) days prior to expiration without action having been taken by the Chief of Police. Renewal applications shall be signed under penalty of perjury and shall be accompanied by a nonrefundable filing fee established by resolution of the City Council. A permittee shall be required to update the information contained in his or her original permit application and provide any new and/or additional information as may be reasonably required by the Chief of Police in order to determine whether the permit should be renewed, including all information required by Subsection A of this section. Failure to provide this documentation shall be grounds for nonrenewal of the permit.

E. If the criminal history background check report demonstrates that the applicant has made any false, misleading or fraudulent statement of material fact in the permit application or in any report or record required to be filed therewith, or discloses any disqualifying conduct, the permit shall be subject to denial.

F. Automatic Issuance and Renewal for CAMTC Certificate Holders.

1. Any person who holds a valid CAMTC certificate shall only be required to provide the following information on a form that includes the statements set forth in Section 5.32.050(D):

a. The full true name of the applicant;

b. The current residence and business address and current residence and business telephone number of the applicant; and,

c. The name and address of the massage establishment for which the Operator Permit is sought.

2. A copy of the applicant's CAMTC certificate and identification shall be provided with the application, along with a fee in an amount set by resolution of the City Council.

3. The applicant shall provide photographs as specified above.

4. The Operator Permit shall automatically be issued upon completion of the form and verification of the validity of the CAMTC certificate by the Police Department. No background check shall be required.

5. Renewals shall be required in accordance with Subsection D of this section, but such renewals shall be automatic as long as the permittee maintains and provides a copy of his or her valid CAMTC certificate.

G. Every person to whom a permit has been granted pursuant to this Chapter shall be issued an identification badge by the Los Alamitos Police Department which shall contain the person's name, photograph, expiration date and any other information deemed necessary by the Chief of Police. The badge shall be worn so as to be readily visible at all times while on the premises of the massage establishment.

H. Permits issued pursuant to this Chapter may not be assigned or transferred.

I. It is the duty of each Operator to notify the Chief of Police whenever there is a change in information which was required to be submitted in the application for the Operator Permit in the first instance. Such notification shall be in writing and made within ten business days of the change on a form provided by the Police Department.

J. Each Operator of a massage establishment shall be responsible for the conduct of all employees and independent contractors working on the premises of the business. Failure of the employees or independent contractors to comply with this Chapter may result in the revocation of the Operator's permit.

K. The Operator of the massage establishment is responsible for verifying that all persons hold the appropriate CAMTC Certificate as required by this Chapter.

L. Any requirement of this Chapter applying to an Operator shall apply to each and every Operator of a massage establishment.

5.32.070 Certificate of Operation.

A. Applications for a Certificate of Operation shall be filed with the Community Development Department and shall include the information set forth below:

1. The full name of the applicant;
2. The name under which the business is to be conducted, which name must match the name of the business under which the corresponding business tax certificate is issued under Title 5. No massage establishment business shall operate under any business name or conduct business under any designation not specified in the Certificate of Operation. If the applicant is a corporation, the name shall be exactly as shown on the articles of incorporation or on a valid DBA ("doing business as");
3. The address of the proposed massage establishment;
4. A detailed description of the operation and type of services to be provided by the massage establishment, including other therapies to be provided, and other businesses to be operated on the same premises;
5. The full name of each Operator of the massage establishment;
6. A legal size copy of the floor plan approved as part of the conditional use permit, drawn to scale showing: entrances; exits; windows; interior doors; restrooms; all other separately enclosed rooms with dimensions, including, but not limited to closets, storerooms, break rooms, and changing rooms; and location of massage tables and chairs which is dimensioned in feet and inches and labeled in English;
7. The full name, address, and phone number of the legal owner of the property, if other than the applicant on which the massage establishment is to be located, along with a copy of the signed lease and a notarized acknowledgement from the owner of the property that a massage establishment will be located on his or her property; and
8. The hours and days of operation.

B. The Community Development Director shall issue a Certificate of Operation upon verification of the following:

1. The massage establishment will comply with all applicable laws, including, but not limited to, building, fire, zoning, health and safety regulations, as well as any conditions which have been imposed to comply with such laws; and
2. Each person identified as an Operator has obtained an Operator Permit.

C. Every massage establishment for which a Certificate of Operation has been granted pursuant to this Chapter shall display the certificate in a conspicuous place so it may be readily seen by persons entering the premises.

D. A Certificate of Operation is not transferable to a separate location of the same business, to a different business at the same location, or to the same business under different ownership at the same location, or the same business under a different name.

E. It is the duty of each Operator to notify the Community Development Department whenever there is a change in information which was required to be submitted in the application for the Certificate of Operation in the first instance. Any sale or transfer of any reportable interest of an owner in a massage establishment, which interest would be required to be reported under Subsection A of this section in the first instance, shall render the Certificate of Operation temporarily suspended and subject to revocation in accordance with the provisions of this Chapter unless prior to the effective date of such sale or transfer, the new owner applies for and obtains an Operator Permit.

F. Notwithstanding any other provision of this code to the contrary, where a Notice of Intent to suspend or revoke, or a notice of suspension or revocation, has been issued regarding a massage establishment, or the business has otherwise been required to close because of suspension or revocation proceedings against the Operator, the Community Development Department shall not process or issue a new application for a Certificate of Operation for said location unless or until the revocation or suspension proceedings are dismissed or a final determination is made that the current Certificate of Operation should not be suspended or revoked, or a two year period has passed since the occurrence of the activity which gave rise to the suspension or revocation proceedings or other criminal actions.

G. Notwithstanding any other provision of this code to the contrary, when a massage establishment has been closed due to criminal activity and such decision is final, no new massage establishment may open in such location and no Certificate of Operation shall be issued for such location for a period of two years from the date of such final determination. For purposes of this section, closure due to criminal activity includes voluntary closure of the business after there have been arrests at the location or other notices relating to criminal activity or notices relating to suspension or revocation proceedings. This provision is not meant to prohibit the issuance of a Certificate of Operation to a business which initially failed to obtain a Certificate of Operation without any prior oral or written notification by the City that such was required.

H. Where the applicant for the Certificate of Operation is not the record owner, as shown on the latest county assessment roll, then upon issuance of the Certificate, the City shall send written notice to the property owner advising of the issuance of the certificate and the regulations applicable to the massage establishment

and the property pursuant to this Chapter; this may be accomplished by including a copy of this Chapter with the notice.

5.32.080 Suspension and Revocation of permits and certificates.

A. Subject to the procedures set forth in this section, the Chief of Police may suspend or revoke an Operator Permit or a Certificate of Operation issued pursuant to this Chapter whenever the Chief of Police determines that any of the following has occurred:

1. The permittee, or an employee or independent contractor working on the premises, is conducting operations in a manner contrary to the provisions of this code;
2. The permittee, or employee or independent contractor working on the premises, is conducting operations in a manner which constitutes a public nuisance;
3. The permittee, or an employee or independent contractor working on the premises, is conducting operations in a manner which is detrimental to the health, safety or welfare of the city or its inhabitants;
4. There is substantial evidence of prostitution;
5. The permittee, or any employee or independent contractor working on the premises, had engaged in Disqualifying Conduct; or,
6. The Chief of Police makes any of the findings that would have justified denying the application in the first instance.

B. If, in the discretion of the Chief of Police, an alleged violation is minor and capable of correction, then prior to suspension or revocation a written notice shall be given to the permittee of the violation(s) involved to allow a period of time to correct the alleged violation(s), which period shall not exceed five business days, at the end of which period, an inspection shall be conducted to determine whether the alleged violation(s) has been corrected. For purposes of this section, written notice may include either a notice of violation or an administrative citation.

C. If the Chief of Police determines that an alleged violation is not minor or capable of correction, that the violation(s) continues without correction, or that there have been previous violations of this Chapter, even if for different reasons, then the Chief of Police may issue a Notice of Intent to Suspend or Revoke, along with an administrative or criminal citation. Examples of a violation which will be determined by the Chief of Police to be not capable of correction include, but are not limited to, substantial evidence of prostitution activity on the massage establishment's premises or an immediate threat to public health, safety or welfare.

D. Notice of Intent to Suspend or Revoke. A Notice of Intent to Suspend or Revoke shall contain a statement of an alleged violation(s) which constitutes the basis for the suspension or revocation, notice of the right of the Permittee to respond to the charges, either orally or in writing to the Chief of Police for a pre-appeal determination, notice of the right to appeal to the City Manager, and notice that a failure to respond in the time specified shall constitute a waiver of the right to respond, but not the right to

appeal. If an alleged violation is capable of correction, the notice shall also advise the Permittee to correct the alleged violation(s) within the time to respond.

E. Response to Notice of Intent/Pre-appeal Determination.

1. The time to respond and request a pre-appeal determination shall be five business days from the date of service of the notice, regardless of whether the materials upon which the Notice of Intent is based are provided to the Permittee at that time.

2. If there is no response, the Permit shall be considered suspended or revoked upon the expiration of time in which to respond and request a pre-appeal hearing.

3. If there is a response, the Permit shall remain in effect until a determination is made by the Chief of Police. In no event shall the Chief hold a hearing until at least five (5) business days have passed from the time the City provides the materials upon which the Notice of Intent is issued to the Permittee.

F. Suspension or Revocation

1. If, after consideration of the Permittee's response, the Chief of Police determines that the Notice of Intent to Suspend or Revoke should be upheld, then the Chief of Police shall issue a Notice of Suspension or Revocation and serve it upon the Permittee as well as any other interested person requesting a copy of the same. Where all massage activity is required to cease, notice shall also be served on the owner of the property if different from the Operator or Certificate holder. The notice shall include information about the right to appeal.

a. Upon issuance of a Notice of Suspension or Revocation of a Certificate of Operation, all massage activity at the Massage Establishment shall cease and no activity for which the Certificate of Operation is required shall be conducted while any appeal may be pending.

b. Upon issuance of a Notice of Suspension or Revocation of an Operator Permit, the Operator must cease all work at the Massage Establishment. If there is no other person who has an Operator Permit which is not the subject of a suspension or revocation proceeding, then all massage activity at the Massage Establishment shall also cease and no massage activity shall be conducted while any appeal may be pending.

G. Surrender of Certificate of Operation and Permits. Any permittee shall immediately surrender his or her permit or certificate to the Chief of Police upon its suspension or revocation. The Operator shall immediately surrender the Certificate of Operation upon suspension or revocation of an Operator Permit if there is no other permitted Operator, regardless of whether the Certificate of Operation is being suspended or revoked.

5.32.090 Appeals.

A. Appeals.

1. Appeals shall be in writing, shall clearly state the applicable basis for the appeal, and filed with the City Clerk within the following time frames:

a. Appeals from any decision of the Chief of Police or Community Development Director under this chapter shall be filed with the City Clerk not later than fifteen calendar days following the date of notice of the denial.

b. Appeals from a Notice of Intent to Suspend or Revoke a permit where no response is filed in accordance with Section 5.32.080E above shall be filed not later than ten (10) calendar days following the expiration of the response period.

c. Appeals from a Notice of Suspension or Revocation issued after a response is filed in accordance with Section 5.32.080E above shall be filed not later than ten (10) calendar days following the Chief's written decision set forth in a Notice of Suspension or Revocation.

2. The City Clerk shall not accept an appeal, and no hearing shall be held, unless the appellant has paid a filing fee, in an amount set by resolution of the City Council, to defray the cost of such appeal. Any appeal without the timely payment of fees shall be considered to be untimely.

3. The scope of the appeal hearing pursuant to this section shall be limited to those issues raised by the appellant in the written appeal, as submitted pursuant to Subsection A.1 of this section.

B. City Manager Action.

1. Upon receipt of a timely filed appeal, the City Clerk shall set the matter for hearing before the City Manager. The hearing shall be held not fewer than ten calendar days nor more than thirty calendar days from the date of the appeal request. The hearing may be continued from time to time upon the mutual consent of the parties. For the purposes of this section, "City Manager" may include a hearing officer appointed by the City Manager, who shall then act in the City Manager's place.

2. The appellant shall be provided with notice of the time and place of the appeal hearing, as well as a copy of all relevant materials at least seven calendar days prior to the hearing.

3. At the time of such hearing, the City Manager shall review the records and files relating to the decision.

a. The City Manager shall permit any interested person to present any relevant evidence bearing on the issues involved in the matter.

b. In conducting the hearing, technical rules relating to evidence and witnesses shall not apply. Any relevant evidence may be admitted if it is material and if it 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 evidence may be admissible if it is the sort upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The rules of privilege shall be

applicable to the extent they are permitted in civil actions. Irrelevant, collateral, and repetitious testimony shall be excluded.

c. In determining whether a person should be disqualified for meeting the definition of a “person who has engaged in disqualifying conduct,” the City Manager may consider: the nature and severity of the act(s) or crime(s); whether there were any additional subsequent act(s) or crime(s); the number of act(s) or crime(s); and how recent the act(s) or crime(s) were.

4. The appellant shall have the burden of proving that he or she meets the requirements for issuing the permit or certificate in the first instance; the City shall have the burden in proving that grounds exist for revoking or failing to renew a permit.

5. Based upon the evidence presented at the hearing, the City Manager shall determine whether the decision should be affirmed, modified or reversed.

6. The City Manager’s decision shall be communicated in writing to the appellant within ten working days after the close of the hearing and submission of the matter to the City Manager for decision. The City Manager’s decision shall state whether the decision is affirmed, modified or reversed and shall state the reasons therefor.

7. The decision of the City Manager shall include notice that the decision is final and conclusive, that judicial review may be sought therefrom pursuant to Code of Civil Procedure Section 1094.5, and that any action filed in the Superior Court shall be filed within ninety days following the City Manager’s notice pursuant to Code of Civil Procedure Section 1094.6.

5.32.100 Notices.

All notices required to be given pursuant to this Chapter shall be served on the responsible party (i.e., permittee, applicant, appellant, or a representative thereof) either by personal delivery or by deposit in the United States mail in a sealed envelope, postage prepaid addressed to such responsible party as the name and address appear in the most recent application on file with the City. Service by mail shall be deemed to have been completed on the date deposited in the mail. Notices shall include information regarding appeal rights and a statement that the failure to file an appeal shall constitute a failure to exhaust administrative remedies.

Article IV. Operation and Facility Requirements

5.32.110 Operational requirements.

A. Hours and Conditions of Operation.

1. No massage establishment shall operate nor shall any massage be administered in any massage establishment between the hours of 10:00 P.M. and 6:00 A.M., regardless of whether compensation is being received for such massage. A massage begun any time before 10:00 P.M. must nevertheless terminate at 10:00 P.M. No afterhour’s use of the massage establishment shall be allowed for any purpose. The

hours of operation must be displayed in a conspicuous public place in the lobby within the massage establishment and in any front window clearly visible from outside of the massage establishment. These hours of operation may be modified pursuant to a conditional use permit.

2. During hours of operation, no person other than a valid permit holder under this Chapter, a massage practitioner, a massage therapist, or a patron shall be allowed beyond the reception area of the massage establishment.

3. Patrons and visitors shall only be permitted in the massage establishment during the hours of operation.

a. Visitors shall only be permitted in the reception area of the massage establishment.

b. Patrons shall only be permitted in massage treatment areas if at least one massage technician is on the premises.

4. The massage establishment shall be supervised during all hours of operation by a manager who is one of the Operator specified in the permit application. The name and photograph (minimum size of four inches by six inches) of the on-duty manager shall be posted in a conspicuous place in the reception area of the massage establishment at all times that the business is open. This provision shall not apply to Sole Providers.

5. No massage establishment shall be used for residential purposes.

a. There shall be no massage tables, cots, or beds in the establishment other than as shown on the approved floor plan.

b. Locker facilities shall be provided for all employees and independent contractors and all personal items of the employees and independent contractors shall be kept in the lockers while at the massage establishment.

c. Full kitchen facilities shall not be allowed. A sink and a microwave are acceptable. No hot plates, ovens, stoves or other cooking mechanisms shall be allowed.

6. No massage establishment shall be located on the premises as an escort service.

B. Posting Requirements. In addition to any other requirements for posting set forth in this Chapter, the following shall also apply:

1. A recognizable and legible sign complying with the requirements of this code shall be posted at the main entrance identifying the establishment as a massage establishment.

2. Each service offered, the price thereof, and the minimum length of time such service shall be performed shall be posted in English and such other languages as may be convenient to communicate such service, in a conspicuous public location in each massage establishment. No services shall be performed and no sums shall be charged for such services other than those posted. Nothing herein prohibits a voluntary tip from being paid by the patron.

3. Any posted signs which are in a language other than English shall also be posted in English.

C. Instruments, Equipment, and Personnel.

1. Disinfecting agents and sterilizing equipment shall be provided for any instruments used in performing acts of massage and said instruments shall be disinfected and sterilized after each use.

2. Unless otherwise approved by a conditional use permit, massages shall be administered only on standard or portable massage tables or chairs which are covered with a durable, washable plastic or other acceptable waterproof material. Beds, mattresses, water beds, futons, sofa beds, any type of portable or convertible beds, and foam pads more than four inches thick or with a width of more than four feet shall not be permitted in the establishment.

3. No massage technician shall massage the genitals, or anal area of any patron, nor shall any Operator of a massage establishment allow or permit such a massage to the above specified areas.

4. No massage technician shall massage the breasts of a female patron without the written consent of the person receiving the massage and a referral from a licensed California health care provider, nor shall any Operator of a massage establishment allow or permit such a massage to the above-specified area.

5. A massage shall not be given and no patron shall be in the presence of any massage establishment staff unless the patron's genitalia and, if a female patron, the female patron's breasts, are fully covered by a fully opaque, nontransparent covering.

6. Persons providing services in the massage establishment shall not be dressed in attire that is: transparent, see-through, substantially exposes the massage technician's undergarments, or exposes the massage technician's breasts, buttocks, or genitals; in a manner which has been deemed by CAMTC to constitute unprofessional attire based on the custom and practice of the profession in California; or in swim attire unless such person is providing a water-based massage modality which has been approved by CAMTC.

7. All massage establishments shall be so equipped, maintained and operated as to effectively control the entrance, harborage, and breeding of vermin, including flies. When flies or other vermin are present, effective control measures shall be instituted for their control or elimination.

8. Clean and sanitary towels, sheets and linens shall be provided for each patron of the establishment. No common use of towels or linens shall be permitted. Heavy white paper may be substituted for sheets; provided, that such paper is used once for each person and then discarded into a sanitary receptacle.

9. All massage tables shall be at least two feet away from all walls at all times.

D. Personnel Lists.

1. Within seven calendar days of receiving a Certificate of Operation, the Operator shall provide the Police Department with a complete list of all massage technicians who are working or will work, be employed, or provide massage services in the massage establishment along with a copy of their CAMTC certificate and identification card, as well as with the name and residence address of the manager principally in charge of the operation of the massage establishment and of any other manager.

2. The Operator shall have a continuing obligation to notify the Chief of Police in writing of any changes in massage technicians and managers within seven calendar days of such change.

3. The Operator shall maintain copies of each massage technician's CAMTC certificate and identification card on file on the premises of the massage establishment which shall be available to any individual upon request, including, but not limited to, employees of the City. Additionally, the Operator shall be required to file copies of each CAMTC certificate and identification card with the Police Department within seven days of a massage technician beginning to work at the massage establishment. Information required by this section shall be maintained at the massage establishment for a minimum of two years following the date that the person ceases providing services/employment to the massage establishment.

4. The Operator shall maintain on the premises of the massage establishment a register of all non-state certified persons employed, working or providing other services at the massage establishment. The register shall be maintained for a minimum of two years following the time that the person ceases providing services/employment to the massage establishment. The Operator shall make the register immediately available for inspection upon demand of a representative of the Police Department, any health officer, or any other official charged with enforcement of this Chapter. The register shall include, but is not limited to, the following information:

- a. Name, nicknames and/or aliases;
- b. Home address and relevant phone number, including, but not limited to, home, cellular and pager numbers;
- c. Age, date of birth, gender, height, weight, color of hair and eyes;
- d. The date of employment, and termination, if any;
- e. The duties of each person; and
- f. In a separate portion of the register, Social Security numbers, which shall only be available for review by the Los Alamitos Police Department or other law enforcement personnel, but not health officers or other officials charged with the enforcement of this Chapter.

E. Prohibited Conduct.

1. No alcoholic beverages shall be sold, served, or furnished on the premises of any massage establishment without a valid alcoholic beverage license from the state and conditional use permit from the City.

2. No storage or sale of condoms or spermicide shall be permitted within the massage establishment.

3. No Operator shall hire, employ or allow a person to perform massage services unless such person possesses a valid CAMTC certificate. Each Operator of a massage establishment shall verify that all persons hold the appropriate state certificate required by this Chapter. Nothing herein prevents an Operator from hiring, employing, or allowing a person to perform services allowed by such person's cosmetology or barber license, if the business has a state establishment license in addition to a Certificate of Operation.

4. No person shall use or possess, nor shall there be any storage of, any sexually oriented implements or paraphernalia which are designed or marketed primarily for the stimulation of human genital organs or sadomasochistic activity in any part of a massage establishment.

5. No electrical, mechanical or artificial device shall be used by any massage establishment staff for audio and/or video recording or for monitoring the performance of a massage, of the conversation or other sounds in the massage rooms, without the knowledge and written consent of the patron.

6. No Operator of a massage establishment shall place, publish or distribute or cause to be placed, published or distributed any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective patrons or clients that any service is available other than those services described in this Chapter and posted on the premises as required in this Chapter, nor shall any massage establishment employ language in the text of any advertising that would reasonably suggest to a prospective patron that any service is available other than those services described in this Chapter and posted on the premises as required by this Chapter.

5.32.120 Building and facility requirements.

A. The building, or unit within the building where the exempt massage establishment is located, shall comply with all applicable building code requirements.

B. All massage rooms and dressing rooms shall be screened off by hinged doors that can open inward. Swinging doors that can open inward, draw drapes, curtain enclosures, or accordion-pleated closures in lieu of doors are acceptable on all inner dressing rooms and massage therapy rooms or cubicles.

C. Except for bathroom doors and one office door, interior doors may not have locks on them.

D. In addition to the minimum lighting required by the provisions of Chapter 15.04 of the Los Alamitos Municipal Code, all rooms in which massages are being provided shall be lit with a minimum of one light fixture emitting at least 210 lumens for every 150 square feet of space during the administration of such services, with the light fixtures being spread throughout the space. No dimmer switches, strobe lights, flashing lights, colored light, or any coverings or other apparatus, other than a lampshade, which

changes or darkens the color of the primary light source shall be used in any room in which massage services are being provided.

E. Any locker facilities provided for the use of patrons shall be fully secured for the protection of the patron's valuables and the patron shall be given control of the key or other means of access.

F. The walls in all rooms where water or steam baths are given shall have a washable mold-resistant surface.

G. All walls, ceilings, floors, pools, showers, bathtubs, steam rooms and all other physical facilities for the establishment must be built to Building Code standards, in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms, or steam or vapor cabinets, shower compartments, and toilet rooms shall be thoroughly cleaned and disinfected each day the business is in operation. Bathtubs shall be thoroughly cleaned and disinfected after each use. Any room in which table showers are used shall be designed and built as a shower facility.

H. Where shower facilities, including table showers, are provided, an enclosed changing area, directly adjacent to the shower shall be provided. The changing area shall be designed to allow the patron to exit the shower and enter the changing area without being exposed or visible to any other area of the massage establishment.

I. One main entry door that enters into the reception area shall be provided for patron use. All patrons, and any persons other than those providing services at the massage establishment, shall be required to enter and exit through the main entry door of the establishment.

J. All exterior doors (except rear exterior doors used only for employee entrance to and exit from the massage establishment) shall remain unlocked during business hours, and the establishment shall comply with the provisions of the Los Alamitos Municipal Code pertaining to the posting of signs stating that doors shall remain unlocked during business hours. Exits for fire safety purposes may be allowed where deemed necessary by the appropriate public safety agency. Notwithstanding the above, the front door may be locked if there is no staff available to assure security for the clients and massage staff who are behind closed doors, provided that the massage establishment is owned by one individual with one or no employees or independent contractors.

K. There shall be no buzzer, alarm, or intercom systems.

L. No massage business located in a building or structure with exterior windows fronting a public street, highway, walkway, or parking area shall block visibility into the interior reception and waiting area through the use of curtains, closed blinds, tints, or any other material that obstructs or substantially darkens the view into the premises or by signs that cover more than 25% of any windowpane. The interior of the business shall be plainly visible from the exterior of the business by passing vehicles and pedestrians. Translucent UV films or tints shall be allowed provided they do not violate these provisions and if a sample has been approved through the conditional use permit process or by the Community Development Director.

5.32.130 Inspections.

A. Representatives of the City's Police Department, Fire Department, Community Development Department, and finance department, and agents for the City from the County Health Department and representatives of any state or local agencies with regulatory authority over massage establishments shall have the right to enter massage establishments, from time to time, during regular business hours, or at any time that the massage establishment is occupied or open for business, to verify the massage establishment is in compliance with all applicable laws without the need for an inspection or abatement warrant.

B. The Operator shall cause to be conspicuously posted so that the same may be readily visible to persons in the reception area of the massage establishment, in letters that are a minimum of one inch in height, a notice which provides substantially as follows:

THIS MASSAGE ESTABLISHMENT AND THE MASSAGE ROOMS DO NOT PROVIDE COMPLETE PRIVACY AND ARE SUBJECT TO INSPECTION BY CITY AND HEALTH OFFICIALS WITHOUT PRIOR NOTICE

C. No person shall refuse to permit, cause delay of, or interfere with, a lawful inspection or compliance check of the premises by the officials listed in Subsection A of this section at any time.

5.32.140 Violation—Nuisance—Remedy.

A. It is unlawful for any person to engage in conduct that violates any provision of this Chapter, to engage in conduct which fails to meet the standards set forth in this Chapter, or to own, manage, or operate a massage establishment that is not fully in compliance with the operational standards set forth in this Chapter.

B. Any violation of this Chapter shall be a misdemeanor unless, in the sole discretion of the City prosecutor, it is charged as, or reduced to, an infraction. Citations and warning notices may be utilized as determined appropriate to the circumstances by the enforcing personnel.

C. In addition to the above, any massage establishment operated, conducted or maintained contrary to the provisions of this Chapter shall be and is declared to be unlawful and a public nuisance and the City may, in addition to or in lieu of prosecuting a criminal action under this Chapter, commence an action or actions, proceeding or proceedings, for the abatement, removal and enjoinder thereof, in the manner provided by law, including any code enforcement procedures established pursuant to the laws of the state of California or the City of Los Alamitos; and may take such other steps and may apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such massage establishments and restrain and enjoin any person from operating, conducting or maintaining a massage establishment contrary to the provisions of this Chapter. If an injunction is sought, attorneys' fees and costs will be assessed at the discretion of the court against the party subject to said injunction.

D. Any violation of the provisions of this Chapter shall constitute a separate offense for each and every day during which such violation is committed or continued.

E. Any violation of this Chapter shall constitute a public nuisance.

SECTION 2. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase be declared unconstitutional.

SECTION 3. Existing Businesses. Massage establishment businesses that are in legal existence as of May 1, 2015 shall not be required to obtain a Certificate of Operation or Operator Permits unless there is a change which would trigger the need for a new Certificate of Operation under § 5.32.070D. Existing massage establishments shall have 60 days from the effective date to comply with all other provisions of this Ordinance, including the requirement to provide a floor plan, from the date of adoption of this Ordinance. This Ordinance shall supersede any conditions in a conditional use permit to the contrary.

SECTION 4. Certification. The City Clerk shall certify the passage of this Ordinance and shall cause the same to be processed as required by law.

SECTION 5. This Ordinance is exempt from CEQA pursuant to Section 15061(b)(3) under the general rule that CEQA does not apply to activities which can be seen with certainty to have no effect on the environment. Changing the regulations relating to Massage Establishments will not create any environmental impacts.

SECTION 6. Effective Date. This Ordinance shall become effective on the thirty-first day after adoption. The provisions of this Ordinance shall apply immediately to all new massage establishments.

Passed, approved, and adopted this ____ day of _____, 2015.

Richard D. Murphy, Mayor
City of Los Alamitos

ATTEST:

Windy Quintanar, City Clerk, CMC

City of Los Alamitos

Planning Commission

Agenda Report Public Hearing

August 26, 2015
Item No: 7-B

To: Chair Riley and Members of the Planning Commission

Via: Steven A. Mendoza, Development Services Director

From: Tom Oliver, Associate Planner

Subject: Zoning Ordinance Amendment 15-03
Consideration of a Zoning Ordinance Amendment to Create Medical and Retail Overlay Zones Allowing More Flexible Uses for Certain Parcels in the Planned Light Industrial Zone to Comply with the New 2015-2035 General Plan and to Amend the Zoning Map by Placing the Overlay Zones on Specified Parcels (City initiated)

Summary: Consideration of a Zoning Ordinance Amendment (ZOA 15-03) to Create Medical and Retail Overlay Zones Allowing More Flexible Uses for Certain Parcels in the Planned Light Industrial Zone to Comply with the New 2015-2035 General Plan and to Amend the Zoning Map by Placing the Overlay Zones on Specified Parcels (City initiated).

Recommendation:

1. Open the Public Hearing; and, if appropriate,
2. Adoption of Resolution No. 15-14, entitled, "A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LOS ALAMITOS, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL APPROVE AN ORDINANCE FOR ZONING ORDINANCE AMENDMENT (ZOA) 15-03 TO AMEND SECTIONS 17.04.020 AND 17.10.020 OF THE LOS ALAMITOS MUNICIPAL CODE TO CREATE A MEDICAL OVERLAY ZONE AND RETAIL OVERLAY ZONE AND TO AMEND THE ZONING MAP TO PLACE THE MEDICAL OVERLAY ZONE ON PROPERTIES GENERALLY NORTH OF THE LOS ALAMITOS MEDICAL CENTER SPECIFIC PLAN AREA AND PLACE THE RETAIL OVERLAY ZONE OVER THAT PROPERTY COMMONLY KNOWN AS ARROWHEAD PROPERTIES, WHICH PROPERTIES ARE ALL IN THE PLANNED LIGHT INDUSTRIAL (P-M) ZONE OF THE CITY (CITY INITIATED)".

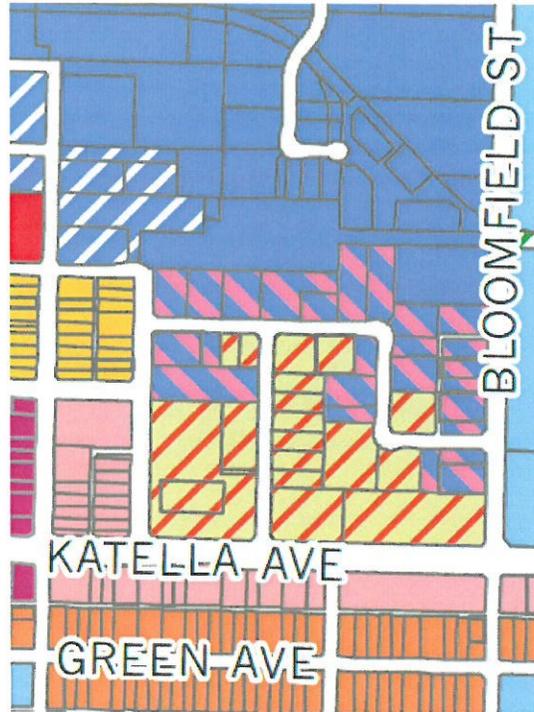
Applicant:	City Initiated
Location:	Various parcels in the Planned Light Industrial (P-M) Zoning District
Approval Criteria:	Section 17.70.020 of the Los Alamitos Municipal Code (LAMC) requires that any proposed amendment be recommended by a resolution to the City Council.
Noticing:	Notices announcing the Public Hearing for August 26, 2015, were mailed to all property owners within 500 feet of the proposed location on August 12, 2015. A Public Hearing notice regarding this meeting was also published in the News Enterprise on August 12, 2015.
Environmental:	The City Council of the City of Los Alamitos, California, certified the Final Program Environmental Impact Report on March 23, 2015 for the Los Alamitos General Plan to include land use changes for various parcels and adopting environmental findings, a statement of overriding considerations and a mitigation monitoring and reporting plan pursuant to the California Environmental Quality Act. The zone changes fall within the Program EIR.

Background

The 2015 – 2035 General Plan was approved and a Program Environmental Impact Report (EIR) was certified by the City Council on March 23, 2015. As part of the new General Plan, both a Medical Overlay and Retail Overlay land use designation were created and placed on certain Planned Industrial Properties as shown on Attachment 3. The City is now required to create corresponding overlay zones and place them over the same properties to create consistency with the General Plan. These changes will have to be approved by an ordinance of the City Council upon recommendation of the Planning Commission. In its April 22nd meeting, the Planning Commission approved a Resolution of Intention directing Staff to bring back such draft Zoning Ordinance Amendments to the Planning Commission.



Medical Overlay



The Medical Overlay Land Use designation has a maximum FAR of 3.0 and is described in the General Plan as follows: “While the underlying land use remains Planned Industrial, this Overlay encourages and permits medical businesses as primary uses on the north side of the Los Alamitos Medical Center campus.” This area is to capture the expected growth of the medical services industry that is expected to occur in conjunction with the Los Alamitos Medical Center which is approved for and is currently implementing a planned expansion that could accommodate a great deal of new medical service uses. If additional medical office demand is created, the City prefers to locate it alongside the Medical Center campus on the north side of Katella Avenue. The Medical Overlay land use designation communicates this preference without limiting opportunities for medical uses elsewhere in the City.

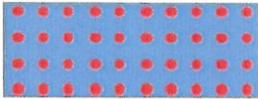
Medical services are defined in the Los Alamitos Municipal Code as follows:

“Medical Services

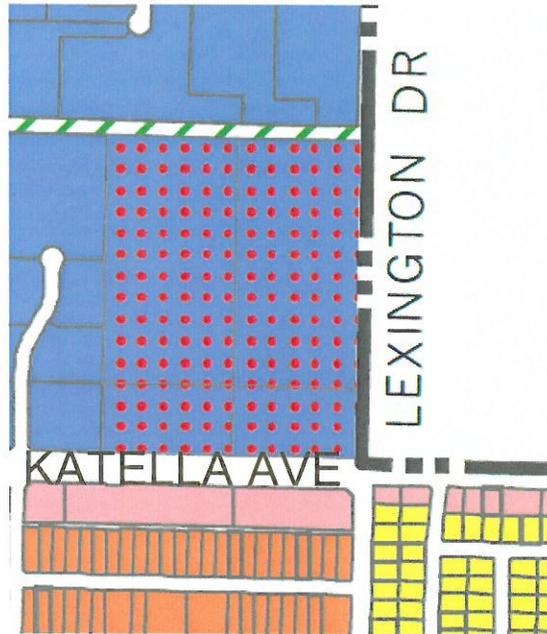
1. “Ambulance service” means facilities from which emergency personnel and transportation are dispatched to emergencies, including incidental storage and maintenance of vehicles.

2. "Clinics and offices" mean facilities primarily engaged in furnishing outpatient medical, mental health, surgical and other personal health services, but which are separate from hospitals, including:
 - a. Medical, dental and psychiatric offices;
 - b. Out-patient care facilities;
 - c. Other allied health services;
 - d. Urgent care services.
3. "Extended care" means residential facilities providing in-patient nursing and health-related care as a primary use for persons requiring regular medical attention but excluding a facility providing surgical or emergency medical services, including:
 - a. Skilled nursing facilities;
 - b. Convalescent homes;
 - c. Hospices;
 - d. Rest homes.
4. Health Facilities—Therapy and Rehabilitation. "Therapy and rehabilitation health facilities" mean establishments of independent health practitioners primarily engaged in one of the following:
 - a. "Therapy" means administering medically prescribed physical therapy treatment for patients suffering from injuries or muscle, nerve, joint, and bone disease;
 - b. "Rehabilitation" means planning and administering educational, recreational, and social activities designed to help patients or individuals with disabilities, regain physical or mental functioning or to adapt to their disabilities; and
 - c. "Specialized sensory treatments" mean diagnosing and treating speech, language, or hearing problems. These practitioners operated private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others (e.g., hospitals, HMO medical centers).
5. "Hospitals" means institutions designed and primarily engaged in providing diagnostic services and extensive medical treatment, including surgery. These establishments have an organized medical staff, in-patient beds, and equipment and facilities to provide complete health care. May include on-site accessory clinics and laboratories, accessory retail uses and emergency heliports."

The zone change will allow those uses which are listed under Medical Services in Table 2-04 in the same manner and under the same development standards that such uses are permitted or conditionally permitted in the C-O zone, as well as continue to allow all uses of the P-M zone.



Retail Overlay



Arrowhead Products is a dynamic aerospace company whose facilities are situated on 28 acres along Katella Avenue; its two plants total over 250,000 square feet of working area. The company has been operating at this location for decades and generates a large number of highly skilled, highly paid jobs as the company continues to build upon its global status. The City supports its continued operation and success. However, if the company ever decides to move locations or changes its business, the property could also be an ideal site for new retail development. The Retail Overlay land use designation was developed in order to allow such uses to occur. It is defined in the General Plan as follows: "While the underlying land use remains Planned Industrial, this Overlay encourages and permits retail businesses as primary uses on the Arrowhead Products site at the time that the property owner determines that industrial uses are no longer desired." The maximum FAR for Retail is 1.0.

Staff feels that the term "retail" in this overlay is intended to correspond to the term "Retail Business" in the General Plan. Staff is therefore recommending that the Retail Overlay zone allow any use allowed in the General Commercial (C-G) zoning district as set forth in Table 2-04, in the same manner and under the same development standards that such uses are permitted or conditionally permitted therein. Industrial uses shall be continued to be allowed as set forth in the P-M zone.

Recommendation

Staff recommends that the Planning Commission conduct a Public Hearing to discuss this subject and then adopt Resolution No. 15-14 recommending that the City Council adopt Ordinance No. 15-TBD, making changes to the Los Alamitos Municipal Code and Zoning Map relating to the creation and placement of Medical and Retail Overlay zones to conform to the requirements of the 2015-2035 General Plan.

*Attachments: 1) Planning Commission Resolution No. PC 15-14
2) Draft City Council Ordinance No. TBD
3) Mapped Changes (the General Plan Map)*

RESOLUTION NO. PC 15-14

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LOS ALAMITOS, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL APPROVE AN ORDINANCE FOR ZONING ORDINANCE AMENDMENT (ZOA) 15-03 TO AMEND SECTIONS 17.04.020 AND 17.10.020 OF THE LOS ALAMITOS MUNICIPAL CODE TO CREATE A MEDICAL OVERLAY ZONE AND RETAIL OVERLAY ZONE AND TO AMEND THE ZONING MAP TO PLACE THE MEDICAL OVERLAY ZONE ON PROPERTIES GENERALLY NORTH OF THE LOS ALAMITOS MEDICAL CENTER SPECIFIC PLAN AREA AND PLACE THE RETAIL OVERLAY ZONE OVER THAT PROPERTY COMMONLY KNOWN AS ARROWHEAD PROPERTIES, WHICH PROPERTIES ARE ALL IN THE PLANNED LIGHT INDUSTRIAL (P-M) ZONE OF THE CITY (CITY INITIATED)

WHEREAS, the 2015-2035 Los Alamitos General Plan was approved by the City Council on March 23, 2015; and,

WHEREAS, the General Plan added a Medical Overlay land use designation to allow medical uses in the industrial area that are directly north of the Los Alamitos Medical Center Specific Plan Area, the purpose of which is to encourage and permit medical businesses as primary uses to capture the expected growth of the medical services industry that is expected to occur in conjunction with the Los Alamitos Medical Center; and

WHEREAS, the General Plan also added a Retail Overlay land use designation to allow retail uses on the industrial property commonly known as the Arrowhead property in order to provide retail opportunities at such time as the owners of the Arrowhead property determine that an industrial use is no longer the desired use; and

WHEREAS, State law requires that there be consistency between the City's zoning and the General Plan; and

WHEREAS, in its April 22, 2015 meeting, the Planning Commission approved a Resolution of Intention directing Staff to bring back to future Commission meetings draft Zoning Ordinance Amendments that recommend to the City Council modifications to the Los Alamitos Zoning Code, to bring the Zoning Code and its map into conformance with the 2015-2035 General Plan; and,

WHEREAS, the Planning Commission opened a duly noticed Public Hearing concerning this Amendment on August 26, 2015; and,

WHEREAS, the Planning Commission considered all applicable Staff reports and all public testimony and evidence presented at the Public Hearing.

NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF LOS ALAMITOS, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The Planning Commission hereby recommends that the City Council adopt Ordinance No. TBD (ZOA 15-03), attached hereto.

SECTION 2. In making this recommendation the Planning Commission makes the following findings:

A. The proposed changes ensure and maintain consistency between the General Plan and the Zoning Code. The addition of these overlays is required of the Zoning Code by the Land Use Map of the new General Plan.

B. The proposed amendment will not adversely affect the public convenience, health, interest, safety, or welfare of the City as there are no adverse impacts anticipated in the Code amendments as demonstrated by the Certified EIR for the General Plan Amendment which contemplated these zone changes. The changes continue the planning that has been put into place by the General Plan and it is good planning practice, as well as a legal necessity, to create consistency between the General Plan and zoning.

C. The proposed amendments are internally consistent with other applicable provisions of this Zoning Code and do not provide any conflicts with any other provision of the Los Alamitos Municipal Code.

D. The sites on which the overlay zones are being placed are physically suitable for the type of development which would be allowed in the overlay zones. The changes do not involve any actual development and any development specific impacts will be dealt with at the project specific level.

E. The proposed amendment has been reviewed in compliance with the provisions of the California Environmental Quality Act (CEQA). The City Council of the City of Los Alamitos, California, certified the Final Environmental Impact Report on March 23, 2015 for the Los Alamitos General Plan to include land use changes for various parcels and adopting environmental findings, a statement of overriding considerations and a mitigation monitoring and reporting plan pursuant to the California Environmental Quality Act. As zoning is required to be consistent with the General Plan, the impacts relating to the zone changes are identical to the impacts that were covered in the Program EIR and there are no new impacts which would occur from such changes. As such, the zone changes are within the scope of the Program EIR.

PASSED, APPROVED, AND ADOPTED this 26th day of August, 2015.

John Riley, Chair

ATTEST:

Steven Mendoza, Secretary

APPROVED AS TO FORM:

Lisa Kranitz
Assistant City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LOS ALAMITOS)

I, Steven Mendoza, Planning Commission Secretary of the City of Los Alamitos, do hereby certify that the foregoing Resolution was adopted at a regular meeting of the Planning Commission held on the 26th day of August, 2015, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Steven Mendoza, Secretary

DRAFT ORDINANCE NO. TBD

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS ALAMITOS, CALIFORNIA, APPROVING ZONING ORDINANCE AMENDMENT (ZOA) 15-03 TO AMEND SECTIONS 17.04.020 AND 17.10.020 OF THE LOS ALAMITOS MUNICIPAL CODE TO CREATE A MEDICAL OVERLAY ZONE AND RETAIL OVERLAY ZONE AND TO AMEND THE ZONING MAP TO PLACE THE MEDICAL OVERLAY ZONE ON PROPERTIES GENERALLY NORTH OF THE LOS ALAMITOS MEDICAL CENTER SPECIFIC PLAN AREA AND PLACE THE RETAIL OVERLAY ZONE OVER THAT PROPERTY COMMONLY KNOWN AS ARROWHEAD PROPERTIES, WHICH PROPERTIES ARE ALL IN THE PLANNED LIGHT INDUSTRIAL (P-M) ZONE OF THE CITY (CITY INITIATED)

WHEREAS, the 2015-2035 Los Alamitos General Plan was approved by the City Council on March 23, 2015; and,

WHEREAS, the General Plan added a Medical Overlay land use designation to allow medical uses in the industrial area that directly north of the Los Alamitos Medical Center Specific Plan Area, the purpose of which is to encourage and permit medical businesses as primary uses to capture the expected growth of the medical services industry that is expected to occur in conjunction with the Los Alamitos Medical Center; and,

WHEREAS, the General Plan also added a Retail Overlay land use designation to allow retail uses on the industrial property commonly known as the Arrowhead property in order to provide retail opportunities at such time as the owners of the Arrowhead property determine that an industrial use is no longer the desired use; and,

WHEREAS, State law requires that there be consistency between the City's zoning and the General Plan; and,

WHEREAS, the Planning Commission held a duly noticed public hearing concerning this Amendment on August 26, 2015; and,

WHEREAS, at the conclusion of the public hearing, the Planning Commission adopted a resolution recommending that the City Council adopt this Ordinance; and,

WHEREAS, the City Council held a duly noticed Public Hearing concerning this Amendment on _____, 2015; and,

WHEREAS, the City Council considered all applicable Staff reports and all public testimony and evidence presented at the public hearing.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF LOS ALAMITOS, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council of the City of Los Alamitos, California finds that the above recitals are true and correct and incorporates them by reference herein.

SECTION 2. Table 2-01 of Section 17.04.020 of the Los Alamitos Municipal Code is hereby amended by adding the following overlay zones to the Table:

Zoning District Symbol	Zoning District Name	General Plan Land Use Designation
Residential Zoning Districts		
R-1	Single-family residential zoning district	Residential
R-2	Limited multiple-family residential zoning district	Residential
R-3	Multiple-family residential zoning district	Residential
M-H	Mobile home park zoning district	Residential
Commercial / Industrial Zoning Districts		
C-O	Commercial-professional office zoning district	Commercial
C-G	General commercial zoning district	Commercial
P-M	Planned light-industrial zoning district	Industrial
Special Purpose Zoning Districts		
O-A	Open area zoning district	Special use
C-F	Community facilities zoning district	Special use
Overlay Zoning District		
-TC	Town center	Commercial
<u>-MOZ</u>	<u>Medical Overlay</u>	<u>Medical Overlay</u>
<u>-ROZ</u>	<u>Retail Overlay</u>	<u>Retail Overlay</u>

SECTION 3. Section 17.12.010 of the Los Alamitos Municipal Code is hereby amended by adding subsections D and E to read as follows:

D. -MOZ (Medical) Overlay Zoning District

1. Purpose of Zoning District. The Medical (-MOZ) overlay zoning district is intended to encourage and permit medical businesses as primary uses on certain

parcels north of the Los Alamitos Medical Center campus, while still maintaining the underlying zoning district.

2. Uses Allowed. The uses allowed in the Medical (-MOZ) overlay zoning district shall be those uses listed under the designation of "Medical Services" in Table 2-04 in the same manner that such uses are permitted or conditionally permitted in the Commercial Office (C-O) zoning district, as well as all uses permitted or conditionally permitted in the underlying zoning district.

3. Development Standards. The development standards for any Medical Service shall be the same as in the Commercial Office (C-O) zoning district. The development standards for any use permitted or conditionally permitted in the underlying zoning district shall be as set forth in that district.

4. Applicant's Option. Property in the Medical (-MOZ) overlay zoning district may be developed under either the underlying zoning district or the overlay zoning district at the Applicant's option. If the use is allowed in both zones, it may be developed under the least restrictive zone.

E. -ROZ (Retail) Overlay Zoning District

1. Purpose of Zoning District. The Retail (-ROZ) overlay zoning district is intended to allow the development of retail businesses on certain parcels, while still maintaining the underlying zoning.

2. Uses Allowed. The Uses allowed in the Retail (-ROZ) overlay zoning district shall be those uses allowed in the General Commercial (C-G) zoning district as set forth in Table 2-04 in the same manner that such uses are permitted or conditionally permitted in the General Commercial (C-G) zone, as well as all uses permitted or conditionally permitted in the underlying zoning district.

3. Development Standards. The development standards for any use allowed in the General Commercial zoning district shall be as set forth in that district. The development standards for any use permitted or conditionally permitted in the underlying zoning district shall be as set forth in that district.

4. Applicant's Option. Property in the Retail (-ROZ) overlay zoning district may be developed under either the underlying zoning district or the overlay zoning district at the Applicant's option. If the use is allowed in both zones, it may be developed under the least restrictive zone.

SECTION 4. The Los Alamitos Zoning Map, is amended to change the properties listed below as indicated and as shown on Exhibits A and B, attached hereto and incorporated herein below by reference.

Planned Light Industrial (P-M) to Planned Light Industrial/Medical Overlay (P-M-MOZ)		
APN	ADDRESS	OWNER
242-163-04	3722 Catalina Street	Don Wilson Staples LLC
242-163-03	3762 Catalina Street	Broderson
242-152-01	3842 Catalina Street	Broderson
242-163-05		Golden State Water
242-152-15	10871 Kyle Street	Broderson
242-152-04	10891 Kyle Street	Lindow
242-161-04	3721 Catalina Street	Don Wilson Staples LLC
242-161-03	3751 Catalina Street	Don Wilson Staples LLC
242-161-02	3781 Catalina Street	Durnin
242-161-05	3821 Catalina Street	Don Wilson Staples LLC
242-161-06	3801 Catalina Street	Don Wilson Staples LLC
242-151-18	3831 Catalina Street	Solt Catalina LLC
242-151-17	3841 Catalina Street	Solt Catalina LLC
242-151-16	10832 Kyle Street	Kyle Street
242-151-15	10842 Kyle Street	Lewis
242-151-22	10852 Kyle Street	Twomey
242-151-02	10831 Bloomfield Street	Wavel
242-151-03	10841 Bloomfield Street	Leek
242-151-04	10851 Bloomfield Street	Twomey
242-151-05	10861 Bloomfield Street	Rose
242-151-21	10871 Bloomfield Street	Nieto
242-151-08	10911 Bloomfield Street	DeWeese
242-152-11	10941 Bloomfield Street	Thurber LLC
242-152-18	10961 Bloomfield Street	Frt Holdings LLC
242-152-10	3884 Florista Street	Twomey

Planned Light Industrial (P-M) to Planned Industrial/Retail Overlay (P-M-ROZ)		
APN	ADDRESS	OWNER
241-241-09	4411 Katella Avenue	JCB Inc Tincum Corp
241-241-08	4411 Katella Avenue	JCB Inc Tincum Corp
241-241-10	4411 Katella Avenue	JCB Inc Tincum Corp
241-241-11	4411 Katella Avenue	JCB Inc Tincum Corp

SECTION 5. This approval is based upon the following findings:

A. The proposed changes ensure and maintain consistency between the General Plan and the Zoning Code. The addition of these overlays is required of the Zoning Code by the Land Use Map of the new General Plan.

B. The proposed amendment will not adversely affect the public convenience, health, interest, safety, or welfare of the City as there are no adverse

impacts anticipated in the Code amendments as demonstrated by the Certified EIR for the General Plan Amendment which contemplated these zone changes. The changes continue the planning that has been put into place by the General Plan and it is good planning practice, as well as a legal necessity, to create consistency between the General Plan and zoning.

C. The proposed amendments are internally consistent with other applicable provisions of this Zoning Code and do not provide any conflicts with any other provision of the Los Alamitos Municipal Code.

D. The sites on which the overlay zones are being placed are physically suitable for the type of development which would be allowed in the overlay zones. The changes do not involve any actual development and any development specific impacts will be dealt with at the project specific level.

E. The proposed amendment has been reviewed in compliance with the provisions of the California Environmental Quality Act (CEQA). The City Council of the City of Los Alamitos, California, certified the Final Environmental Impact Report on March 23, 2015 for the Los Alamitos General Plan to include land use changes for various parcels and adopting environmental findings, a statement of overriding considerations and a mitigation monitoring and reporting plan pursuant to the California Environmental Quality Act. As zoning is required to be consistent with the General Plan, the impacts relating to the zone changes are identical to the impacts that were covered in the Program EIR and there are no new impacts which would occur from such changes. As such, the zone changes are within the scope of the Program EIR.

SECTION 6. The City Clerk shall certify as to the adoption of this Ordinance and shall cause a summary thereof to be published within fifteen (15) days of the adoption and shall post a Certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

SECTION 7. This Ordinance shall take effect thirty days after approval as provided in Government Code Section 36937.

SECTION 8. The City Council of the City of Los Alamitos, California, certified the Final Environmental Impact Report on March 23, 2015 for the Los Alamitos General Plan to include land use changes for various parcels and adopting environmental findings, a statement of overriding considerations and a mitigation monitoring and reporting plan pursuant to the California Environmental Quality Act.

PASSED, APPROVED AND ADOPTED THIS ____ DAY OF _____, 2015.

Richard D. Murphy, Mayor

ATTEST:

Windmera Quintanar, City Clerk, CMC

APPROVED AS TO FORM:

Cary Reisman
City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF LOS ALAMITOS)

I, Windmera Quintanar, City Clerk of the City of Los Alamitos, do hereby certify that the foregoing Ordinance No. 15-TBD was duly introduced and placed upon its first reading at a regular meeting of the City Council on the ____ day of _____, 2015 and that thereafter, said Ordinance was duly adopted and passed at a regular meeting of the City Council on the ____ day of _____, 2015, by the following vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

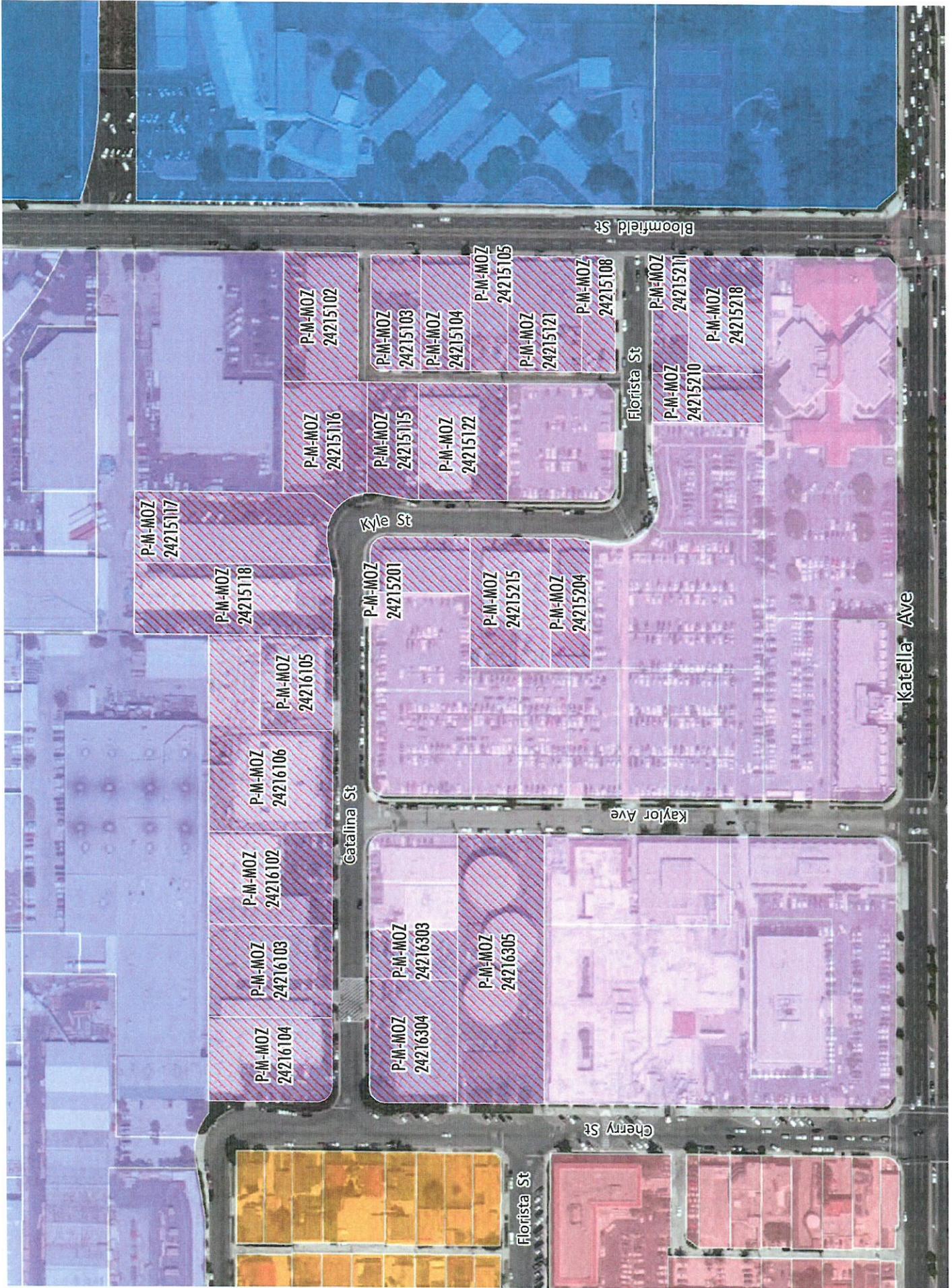
ABSTAIN: COUNCIL MEMBERS:

Windmera Quintanar, City Clerk, CMC

Attachment 3



0 125 250 500 Feet
Aerial Map of Los Alamitos, CA - Area North of Los Alamitos Medical Center
Before

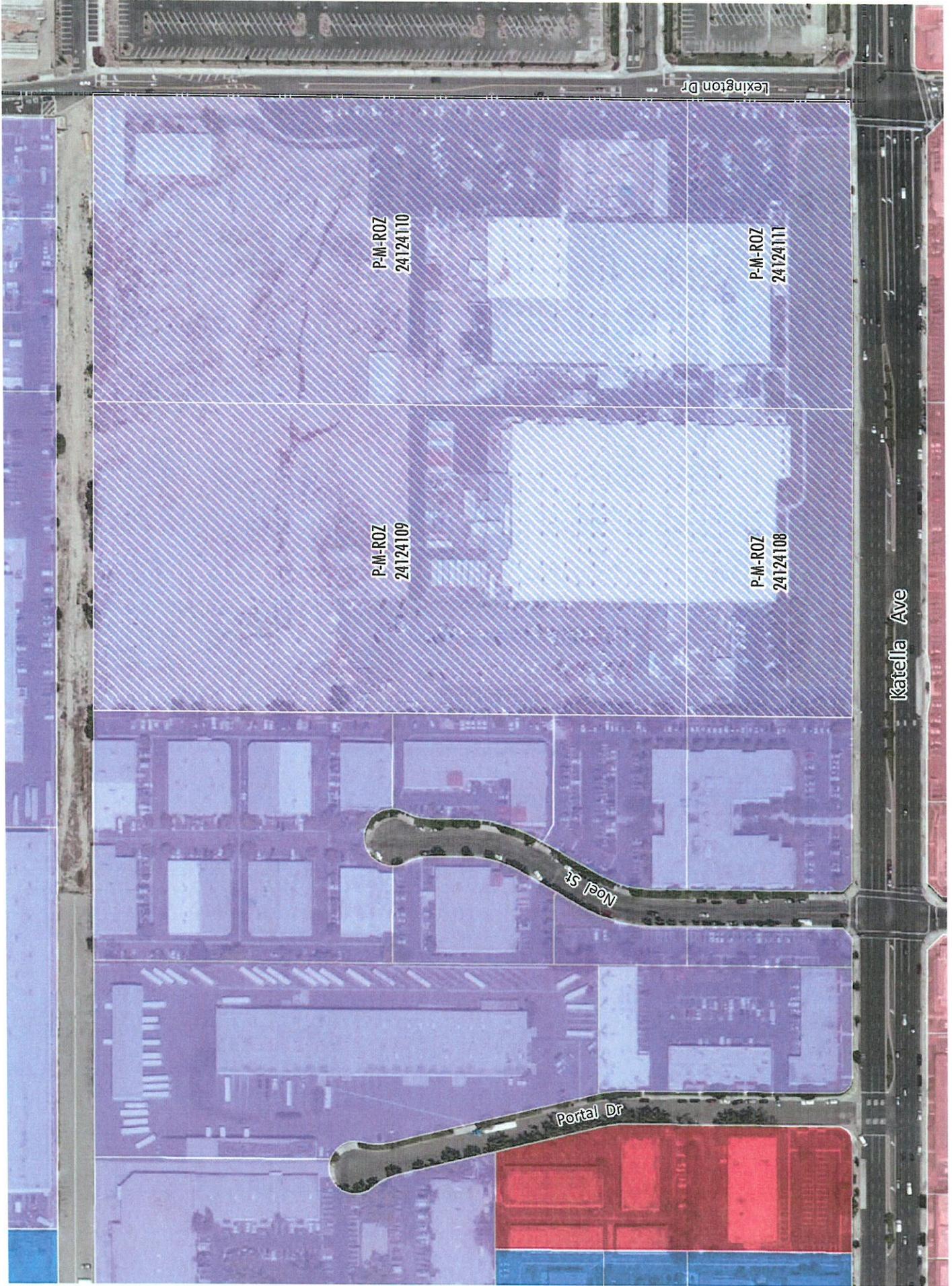




Katella Ave and Lexington Dr

Before

0 125 250 500 Feet



Katella Ave and Lexington Dr

After

0 125 250 500 Feet