

## **CALIFORNIA COASTAL COMMISSION**

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# Th9a

## **LCP-6-OCN-20-0085-2 (Cannabis Ordinance Revisions)**

**June 10, 2021**

### **EXHIBITS**

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**RESOLUTION NO. 20-R0395-1**

**A RESOLUTION OF THE CITY COUNCIL AND COMMUNITY  
DEVELOPMENT COMMISSION OF THE CITY OF OCEANSIDE  
AMENDING THE LOCAL COASTAL PROGRAM BY  
INCORPORATING ADOPTED ZONING ORDINANCE TEXT  
CHANGES TO THE ESTABLISHED CANNABIS LAND USES  
WITHIN SPECIFIC INLAND ZONING DISTRICTS AND  
REQUESTING CALIFORNIA COASTAL COMMISSION  
CERTIFICATION OF SAID AMENDMENT**

**(City of Oceanside –Applicant)**

**(LCPA20-00008)**

WHEREAS, the California Coastal Act (Public Resources Code §30000, et seq.) (The "Coastal Act") requires that the City adopt a Local Coastal Program (LCP) which meets the requirements of the Coastal Act at the local level and implements its provisions and policies; and

WHEREAS, the City's adopted and certified LCP is comprised of a Land Use Plan (LUP) and an Implementation Plan (IP) inclusive of zoning ordinances applicable to areas within the coastal zone; and

WHEREAS, the Comprehensive Zoning Ordinance set forth the purpose, intent, and zoning regulations for properties within the City of Oceanside; and

WHEREAS, certain Articles of said ordinance containing zoning regulations applicable citywide or limited to coastal zone areas have been certified by the California Coastal Commission (CCC) and included in the IP; and

WHEREAS, subsequent modifications to certified Articles require processing of a Local Coastal Program Amendment (LCPA) and recertification by the CCC, prior to inclusion of the amended text in the LCP; and

WHEREAS, zoning text amendments to the City's Comprehensive Zoning Ordinance (ZA19-00007) to remove the medical restriction for cannabis cultivation facilities within specific inland zoning districts, were prepared for City Council consideration; and

WHEREAS, on June 24, 2020, at a duly noticed public hearing, the City Council introduced said zoning text amendments modifying Articles 4, 14 and 36 of the Comprehensive Zoning Ordinance; and

EXHIBIT NO. 1

**Resolution - Page 1 of 3**



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1 WHEREAS, a LCPA (Exhibit A) is necessary to be considered and approved by the City  
2 Council for the adopted zoning text amendments to citywide Article 4 and Article 36, and  
3 recertified by the CCC in order to include the updated text in the IP and ensure internal  
4 consistency between documents; and

5 WHEREAS, the Planning Commission did, on the 4<sup>th</sup> day of November, 2019, conduct a  
6 duly advertised public hearing as prescribed by law to consider staff recommendations for text  
7 amendments to the LCP; and

8 WHEREAS, in accordance with the California Environmental Quality Act (CEQA), staff  
9 has reviewed the proposed project and determined that there is no possibility that the activity will  
10 have a significant effect on the environment, and therefore, pursuant to CEQA Guidelines Section  
11 15061(b) (3) (General Rule), the activity is not subject to CEQA; and

12 WHEREAS, a Notice of Exemption was prepared by the Resource Officer of the City of  
13 Oceanside for this project pursuant to the California Environmental Quality Act of the 1970 and  
14 State Guidelines; and

15  
16 WHEREAS, the City Council/Community Development Commission conducted a duly  
17 noticed public hearing on June 24, 2020 and hereby finds that Local Coastal Program  
18 Amendment (LCPA20-00008) conforms with, and is adequate to carry out, the land use plan of  
19 the Local Coastal Program.

20 NOW, THEREFORE, the Oceanside City Council and Community Development  
21 Commission of the City of Oceanside DOES RESOLVE as follows:

- 22 1. The adopted zoning text amendments to the City's Comprehensive Zoning Ordinance  
23 (ZA19-00007) to remove the medical restriction for cannabis cultivation facilities within  
24 specific inland zoning districts, therefore Local Coastal Program Amendment (LCPA20-  
25 00008) will not impact public coastal access, water or marine resources, sensitive habitat,  
26 visual resources, visitor serving uses, or public facilities.
- 27 2. Pursuant to Public Resources Code §30510(a), the Oceanside City Council/ Community  
28 Development Commission hereby certifies that LCPA20-00008 is intended to be carried  
out in a manner fully in conformity with the Coastal Act, and is hereby adopted.
3. Pursuant to the California Environmental Quality Act of 1970, and the State Guidelines

1 thereto amended to date, a Notice of Exemption has been issued for the project by the  
2 Resource Officer for the City of Oceanside.

- 3 4. Pursuant to Coastal Commission Local Coastal Program Regulations §13551(b), this  
4 Local Coastal Plan Amendment shall take effect upon Coastal Commission approval.  
5 5. Notice is hereby given that the time within which judicial review must be sought on the  
6 decision is governed by Public Resources Code §30801.  
7

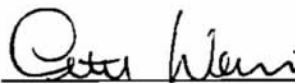
8 PASSED AND ADOPTED by the Oceanside City Council/Community Development  
9 Commission this 24<sup>th</sup> day of June, 2020 by the following vote:

10 AYES: WEISS, KEIM, RODRIGUEZ, SANCHEZ

11 NAYS: FELLER

12 ABSENT: NONE

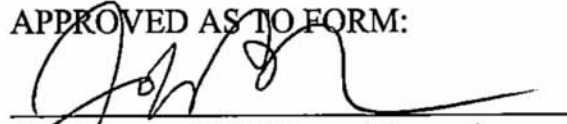
13 ABSTAIN: NONE

14   
Mayor/CDC Chair of the City of Oceanside

15 ATTEST:

16   
17 City Clerk/ CDC Secretary

18 APPROVED AS TO FORM:

19   
20 City Attorney/ CDC General Counsel



ORDINANCE NO. 20-OR0463-1

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE, CALIFORNIA AMENDING CHAPTER 7 OF THE OCEANSIDE CITY CODE AND ARTICLES 4, 14 AND 36 OF THE ZONING ORDINANCE TO REMOVE THE MEDICAL ONLY LIMITATION ON APPROVED COMMERCIAL CANNABIS CULTIVATORS**

WHEREAS, the City of Oceanside, pursuant to its police power, may adopt regulations to protect the health, safety and welfare of the public, Cal. Const. art. XI, § 7, Cal. Govt. Code § 37100, and thereby is authorized to declare what use or condition constitutes a public nuisance; and

WHEREAS, Section 38771 of the California Government Code authorizes the City through its legislative body to declare actions and activities that constitute a public nuisance; and

WHEREAS, in 1970, Congress enacted the Controlled Substances Act (21 U.S.C. Section 801 et seq.) which, among other things, makes it illegal to import, manufacture, distribute, possess, or use marijuana ("cannabis") for any purpose in the United States and further provides criminal penalties for cannabis possession, cultivation and distribution; and

WHEREAS, the People of the State of California have enacted Proposition 215, the Compassionate Use Act of 1996 (codified at Health and Safety Code Section 11362.5 et seq.) (the "CUA"), which exempts qualified patients and their primary caregivers from criminal prosecution under enumerated Health and Safety Code sections for use of cannabis for medical purposes; and

WHEREAS, the California Legislature enacted Senate Bill 420 in 2003, the Medical Marijuana Program Act (codified at Health and Safety Code Section 11362.7 et seq.) ("MMPA"), as amended, which created a state-wide identification card scheme for qualified patients and primary caregivers; and

WHEREAS, on October 11, 2015, the Governor signed into law Senate Bill 643, Assembly Bill 266, and Assembly Bill 243, collectively referred to as the Medical Marijuana Regulation and Safety Act ("MMRSA"), effective January 1, 2016, which establishes a state licensing system for medical cannabis cultivation, manufacturing, delivery, and dispensing, regulating these activities with licensing requirements and regulations that are only applicable if cities and counties also permit cannabis cultivation, manufacturing, dispensing, and delivery



1 within their jurisdictions. Under the MMRSA, cities and counties may continue to ban medical  
2 cannabis cultivation, manufacturing, dispensing, and/or delivery, in which case the new law  
3 would not allow or permit these activities within the cities and counties; and

4 WHEREAS, marijuana remains a schedule I substance pursuant to federal law, 21 U.S.C.  
5 § 812, Schedule 1 (c)(10), and federal law does not provide for any medical use defense or  
6 exception (*Gonzales v. Raich*, 545 U.S. 1 (2005); *United States v. Oakland Cannabis Buyers'*  
7 *Coop.*, 532 U.S. 483 (2001)); and

8 WHEREAS, in *City of Riverside v. Inland Empire Patients Health and Wellness Center,*  
9 *Inc.*, 56 Cal. 4th 729 (2013), the California Supreme Court held that neither the CUA nor the  
10 MMPA preempt local regulation; and

11 WHEREAS, the MMRSA expressly allows cities and counties to ban cannabis businesses  
12 consistent with current state law, including *City of Riverside v. Inland Empire Patients Health*  
13 *and Wellness Center, Inc.*, 56 Cal. 4th 729 (2013);

14 WHEREAS, the City Council added Chapter 7, Article XIII to the Oceanside City Code  
15 on January 20, 2016 to prohibit cannabis cultivation and delivery activities within the City of  
16 Oceanside for the express and specific purpose of preserving the City's authority to ban and/or  
17 adopt future regulations pertaining to cannabis cultivation and delivery as is required by  
18 California Health and Safety Code section 11372.777(c)(4), effective January 1, 2016, added by  
19 the MMRSA; and

20 WHEREAS, on March 16, 2016, the Oceanside City Council added section 7.113 to  
21 Chapter 7, Article XIII of the Oceanside City Code to permit and regulate medical cannabis  
22 delivery services that originate from licensed dispensaries in other jurisdictions; and

23 WHEREAS, in adopting Ordinances 16-OR0041-1, and 16-OR0156-1, the City Council of  
24 the City of Oceanside made findings regarding the impacts associated with commercial cannabis  
25 activities and these findings are incorporated herein by reference and ratified; and

26 WHEREAS, Proposition 64 was adopted by the electorate on November 8, 2016 and  
27 authorizes the personal cultivation of up to six cannabis plants in a private residence for non-  
28 medical purposes; and



1 WHEREAS, Proposition 64 allows cities to enact reasonable regulations for the  
2 cultivation of non-medical cannabis that occurs inside a residence or accessory structure and may  
3 completely prohibit outdoor non-medical cultivation until such time as the California Attorney  
4 General determines that the non-medical use of cannabis is lawful in California under federal  
5 law. No such determination has yet been made; and

6 WHEREAS, Proposition 64 regulates the commercial activity of non-medical cannabis  
7 enterprises and assigns certain state agencies with regulatory tasks regarding commercial non-  
8 medical cannabis. Proposition 64 authorizes specified state agencies to issue licenses for  
9 commercial non-medical cannabis businesses; and

10 WHEREAS, Proposition 64 includes Business and Professions Code section 26200 which  
11 recognizes that a city may regulate or completely prohibit within its jurisdiction the establishment  
12 or operation of one or more types of non-medical cannabis businesses licensed by the state; and

13 WHEREAS, at the time Proposition 64 was adopted, the City of Oceanside's permissive  
14 Zoning Code does not list commercial cannabis activities as permitted uses in any zoning district  
15 in the City and, therefore, such uses were not allowed anywhere in the City; and

16 WHEREAS, the City Council adopted Ordinance 17-OR0234-1 on April 19, 2017  
17 prohibiting all commercial non-medical cannabis businesses; and

18 WHEREAS, the California State Legislature adopted SB 94 in June 2017. The budget  
19 trailer bill took effect immediately and repeals the Medical Cannabis Regulation and Safety Act  
20 ("MCRSA"), passed in 2015, and incorporates many of MCRSA's provisions into Prop 64. The  
21 new comprehensive regulatory system, intended to regulate all commercial cannabis uses, is  
22 called the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"). SB  
23 94 clarifies that cities and counties retain full land use authority as to cannabis businesses; cities  
24 and counties may prohibit such businesses entirely, allow only some, or allow them with locally  
25 developed regulations that fit local needs. SB 94 also establishes that local jurisdictions retain  
26 the authority to regulate cannabis businesses, may take enforcement action concerning Fire and  
27 Building Codes, conduct inspections, and implement audits.

28 WHEREAS, under SB 94, the state is now required to notify a local jurisdiction when it  
receives an application for commercial cannabis activity in that jurisdiction. The city or county

1 then has 60 business days to notify the state whether the applicant is in compliance with local  
2 regulations. Although proof of authorization from a city or county is not required, an applicant  
3 may voluntarily include this information with its state application. The state is also prohibited  
4 from issuing a cannabis license if issuance would violate any local ordinance; and

5 WHEREAS, on April 11, 2018, the City Council adopted Ordinance 18-OR0199-1 to  
6 allow, subject to certain requirements and limitations, commercial medical cannabis businesses,  
7 (excluding dispensaries) in specified industrial and agricultural zoning districts, subject to a  
8 conditional use permit and the issuance of a Local License pursuant to Chapter 7, Article XIII of  
9 the Oceanside City Code; and

10 WHEREAS, after a duly noticed public hearing conducted on June 20, 2018, the City  
11 Council introduced an ordinance to amend articles 4, 14 and 36 of the Oceanside Zoning  
12 Ordinance to: 1. allow commercial cultivation in the Agricultural zone subject to a Local License  
13 and CUP, without a 1000 foot buffer otherwise required in Article 36 on the condition that  
14 cultivation does not exceed 20 percent lot coverage; 2. to permit waivers of the 1000 foot  
15 separation requirement for commercial cannabis businesses in the Industrial zone on a case by  
16 case basis; and 3. clarify that the existing law does not allow cultivation in the Industrial zone.

17 WHEREAS, on June 20, 2018, the City Council also directed staff to draft amendments  
18 to the Oceanside City Code and Zoning Ordinance to permit no more than two medical cannabis  
19 delivery establishments (M-Type 9) located in Oceanside; and

20 WHEREAS, on August 8, 2018, the City Council adopted Ordinance No. 18-OR0399-1:  
21 1. eliminating zoning ordinance text limiting medical cannabis cultivation and nursery facilities  
22 to 22,000 square feet per legal lot but retaining the twenty percent lot coverage cap; 2. eliminating  
23 the 1,000 foot buffer between all medical cannabis cultivation and nursery facilities; and 3.  
24 allowing the waiver of locational requirements for medical cannabis facilities pursuant to Section  
25 3605 of the Article 36 of the Zoning Ordinance; and 4. clarifying that the land use classification  
26 definition for medical cannabis manufacturing excludes propagation of medical cannabis; and

27 WHEREAS, on September 5, 2018, the City Council adopted OR0449-1 amending  
28 Chapter 7 of the Oceanside City Code and applicable provisions of the Oceanside Zoning  
Ordinance to allow the City to issue no more than two Local Licenses and conditional use permits

1 for medical cannabis non-storefront delivery establishments (M-Type 9 Non-Storefront Retailer);  
2 and

3 WHEREAS, on August 21, 2019, the City Council adopted a resolution capping the  
4 number of Local Licenses for cultivation to no more than the twelve identified at that council  
5 meeting and directed staff to prepare appropriate amendments to the Oceanside City Code and  
6 Zoning Ordinance to allow the twelve cultivators with Local Licenses and conditional use  
7 permits to engage in cannabis cultivation for adult use; and

8 WHEREAS, pursuant to the provisions of the California Environmental Quality Act  
9 (hereinafter "CEQA") (California Public Resources Code Sections 21000 et seq.) and State  
10 CEQA guidelines (Sections 15000 et seq.), the City has determined that this Ordinance is exempt  
11 pursuant to Section 15061(b)(3) of Title 14 the California Code of Regulations;

12 NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF OCEANSIDE DOES  
13 ORDAIN AS FOLLOWS:

14 SECTION 1: The City Council finds that all the facts, findings, and conclusions set forth  
15 above in this Ordinance are true and correct.

16 SECTION 2: Zone Amendment (ZA19- 00007) amending Articles 4, 14 and 36 of the  
17 Zoning Ordinance, as specified in Exhibit A, is hereby adopted.

18 SECTION 3 Amendments to Chapter 7, Article XIII, of the Oceanside City Code as  
19 specified in Exhibit B are adopted.

20 SECTION 4. The City Clerk of the City of Oceanside is hereby directed to publish this  
21 Ordinance, or the title hereof as a summary, pursuant to state statute, once within fifteen (15)  
22 days after its passage in a newspaper of general circulation published in the City of Oceanside.

23 SECTION 5. If any section, sentence, clause or phrase of this Ordinance is for any reason  
24 held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such  
25 decision shall not affect the validity of the remaining portions of this Ordinance. The City  
26 Council hereby declares that it would have passed this Ordinance and  
27 adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the  
28 fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid  
or unconstitutional.

1 SECTION 6. The amendments to the Zoning Ordinance shall be effective 30 days after  
2 adoption for those areas outside of the Coastal Zone. Although this ordinance does not identify  
3 any zones within the Coastal Zone where any commercial cannabis businesses may be  
4 established, the amendments to Articles 4 and 36 apply citywide. Therefore, Articles 4 and 36  
5 shall not be effective within the Coastal Zone until the City Council adopts a resolution approving  
6 a local coastal program amendment to amend these sections and said amendment is  
7 unconditionally certified by the Coastal Commission.

8  
9 INTRODUCED at a regular meeting of the City Council of the City of Oceanside,  
10 California, held on the 24th day of June 2020, and, thereafter,

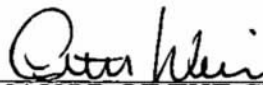
11 PASSED AND ADOPTED at a regular meeting of the City Council of the City of  
12 Oceanside, California, held on the 5th day of August 2020 by the following vote:

13 AYES: WEISS, KEIM, RODRIGUEZ, SANCHEZ

14 NAYS: FELLER

15 ABSENT: NONE


16 ABSTAIN: NONE

17   
18 MAYOR OF THE CITY OF OCEANSIDE

19 ATTEST:

APPROVED AS TO FORM:

20   
21 CITY CLERK

22   
23 CITY ATTORNEY

24  
25  
26  
27 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE, CALIFORNIA AMENDING  
28 ARTICLES 4, 14 AND 36 OF THE ZONING ORDINANCE TO REGULATE COMMERCIAL CANNABIS FACILITIES



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**Article 4 Use Classifications (Inland & Coastal Districts – Exclusive of Downtown)****Sections:**

- 410 Purpose and Applicability
- 411 Uses Not Classified
- 412 Residential Use Classifications
- 413 Public and Semipublic Use Classifications
- 414 Commercial Use Classifications
- 415 Industrial Use Classifications
- 416 Agricultural and Extractive Use Classifications
- 417 Accessory Use Classifications
- 418 Temporary Use Classifications

**410 Purpose and Applicability**

Use classifications describe one or more uses having similar characteristics, but do not list every use or activity that may appropriately be within the classification. The City Planner shall determine whether a specific use shall be deemed to be within one or more use classifications or not within any classification in this Title. The City Planner may determine that a specific use shall not be deemed to be within a classification, whether or not named within the classification, if its characteristics are substantially incompatible with those typical of uses named within the classification. The City Planner's decision may be appealed to the Planning Commission.

**411 Uses Not Classified**

Any new use, or any use that cannot be clearly determined to be in an existing use classification is prohibited. Provided, however, that any new use may be incorporated into the zoning regulations by a Zoning Ordinance text amendment, as provided in Article 45.

**412 Residential Use Classifications**

- A. Day Care, Limited. Non-medical care and supervision of up to and including fourteen persons on a less than 24-hour basis within a licensee's home for children and adults.
- B. Group Residential. Shared living quarters without separate kitchen or bathroom facilities for each room or unit. This classification includes roominghouse/boardinghouse, dormitories, fraternities, sororities, and private residential clubs, but excludes residential hotels (see Single-Room Occupancy (SRO) Residential Hotels).
- C. Live/Work Quarters. An area comprising one or more rooms in a building originally designed for industrial or commercial occupancy that includes cooking space, sanitary

EXHIBIT NO. 3

Text Changes - Page 1 of 36



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facilities, and working space for artists, artisans and similarly activities and Custom Industry uses as defined herein.

- D. Multifamily Residential. Two or more dwelling units on a site. This classification includes mobile home and factory-built housing.
- E. Residential Care, Limited. Twenty-four-hour non-medical care for six or fewer persons in need of personal services, supervision, protection, or assistance essential for sustaining the activities of daily living.
- F. Single-Family Residential. Buildings containing one dwelling unit located on a single lot. This classification includes mobile home and factory-built housing.
- G. RV Parks. A facility renting or leasing space on a short-term or long-term basis to owners or users of recreational vehicles, not for permanent residence.
- H. Transitional Housing. Buildings configured as rental housing developments but operated under program requirements that call for the termination of assistance and recirculation of assisted units to other eligible program recipients at some predetermined future point in time, which shall be no less than six months and no more than 24 months from initial occupancy. Transitional housing offers either on or off-site access to social services, counseling, and other programs to assist formerly homeless residents in the transition to permanent housing. This classification does not include facilities licensed for residential care by the State of California or homeless shelters.
- I. Supportive Housing. Rental housing developments receiving assistance under the Multifamily Housing Program regulated through California Code of Regulations, Title 25, Article 7, Section 4. Such housing is occupied by a target population, as defined by Health and safety Code Section 53260(d), and linked to onsite or offsite services that assist the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community. Supportive housing has no limit on length of stay.

#### 413 Public and Semipublic Use Classifications

- A. Airport. Runways and related facilities for airplane landing and take-off.
  - B. Cemetery. Land used or intended to be used for the burial of human remains and dedicated for cemetery purposes. Cemetery purposes include columbariums, crematoriums, mausoleums, and mortuaries operated in conjunction with the cemetery.
  - C. Child Care. Non-medical care and supervision on a less than 24-hour basis in any care facility of any capacity, and not within a licensee's home for persons under the age of 18.
  - D. Clubs and Lodges. Meeting, recreational, or social facilities of a private or nonprofit organization primarily for use by members or guests. This classification includes union
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halls, social clubs, youth, and senior centers.

1. Small scale. Establishments occupying no more than 5,000 square feet.
- E. Convalescent Facilities. Establishments providing care on a 24-hour basis for persons requiring regular medical attention, but excluding facilities providing surgical or emergency medical services.
- F. Cultural Institutions. Nonprofit institutions displaying or preserving objects of interest in one or more of the arts or sciences. This classification includes libraries, museums, and art galleries.
1. Small-scale. Establishments occupying no more than 5,000 square feet.
- G. Day Care, General. Non-medical care and supervision on a less than 24-hour basis in any care facility of any capacity, and not within a licensee's home for persons over the age of 18.
- H. Detention Facilities. Publicly owned and operated facilities providing housing, care, and supervision for persons confined by law.
- I. Emergency Health Care. Facilities providing emergency medical service with no provision for continuing care on an inpatient basis.
- J. Emergency Shelter. Housing with minimal supportive services for homeless persons that is limited to occupancy of 120 days or less in a 365-day period. No individual or household may be denied emergency shelter because of an inability to pay. Such accommodations may include basic supportive services such as food, shower and rest room facilities, laundry room, storage areas, and limited administrative or intake offices.
- K. Government Offices. Administrative, clerical, or public contact offices of a government agency, including postal facilities, together with incidental storage and maintenance of vehicles.
1. Small-scale. Establishments occupying no more than 5,000 square feet.
- L. Heliports. Pads and facilities enabling takeoffs and landings by helicopters.
- M. Hospitals. Facilities providing medical, surgical, psychiatric, or emergency medical services to sick or injured persons, primarily on an inpatient basis. This classification includes incidental facilities for outpatient treatment, as well as training, research, and administrative services for patients and employees.
- N. Maintenance and Service Facilities. Facilities providing maintenance and repair services for vehicles and equipment, and materials storage areas. This classification includes
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corporation yards, equipment service centers, and similar facilities.

- O. Marinas. A boat basis with docks, mooring facilities, supplies and equipment for boats.
- P. Park and Recreation Facilities. Noncommercial parks, playgrounds, recreation facilities, and open spaces.
- Q. Public Safety Facilities. Facilities for public safety and emergency services, including police and fire protection.
  - 1. Small-scale. Establishments occupying no more than 5,000 square feet.
- R. Religious Assembly. Facilities for religious worship and incidental religious education and other religious facility related supportive and social services. This use classification specifically excludes private schools as defined in this section.
  - 1. Small-scale. Establishments occupying no more than 5,000 square feet.
- S. Residential Care, General. Twenty-four hour non-medical care for seven or more persons, including wards of the juvenile court, in need of personal services, supervision, protection, or assistance essential for sustaining the activities of daily living.
- T. Resource Centers. Neighborhood facilities that are City-sponsored or under the control of the City and are used for neighborhood safety, enhancement, education, health care, and other similar neighborhood programs.
- U. Schools, Public or Private. Educational institutions having a curriculum comparable to that required in the public schools of the State of California.
- V. Utilities, Major. Generating plants, electrical substations, aboveground electrical transmission lines, lone switching buildings, refuse collection, transfer, recycling or disposal facilities, water reservoirs, flood control or drainage facilities, water or waste water treatment plants, transportation or communications utilities, and similar facilities of public agencies or public utilities. A structure that may have a significant effect on surrounding uses shall be regulated under this classification.
- W. Utilities, Minor. Utility facilities that are necessary to support legally established uses and involve only minor structures such as electrical distribution lines, underground water and sewer lines, and recycling centers within convenience zones, as defined by the California Beverage Container Recycling and Litter Reduction Act.

#### 414 Commercial Use Classifications

- A. Adult Business. An Adult Business is any business, where employees, independent contractors, or patrons expose "specified anatomical areas" or engage in "specified sexual activities," or any business which offers to its patrons services or entertainment



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characterized by an emphasis on matter depicting, exposing, describing, discussing or relating to "specified sexual activities or "specified anatomical areas".

A use which has a majority of its conduct of activities, floor area, stock-in-trade, or revenue derived from, material characterized by an emphasis on matter depicting, exposing, describing, discussing or relating to "specified sexual activities" or "specified anatomical areas", shall be considered to be an Adult Business.

Adult Businesses do not include bona fide medical establishments operated by properly licensed and registered medical personnel with appropriate medical credentials for the treatment of patients.

Adult Businesses include, but are not limited to the following:

1. Adult Bookstore/Novelty Store/Video Store. An establishment which has: (1) a substantial or significant portion of its gross revenues or of its stock in trade, books, magazines, and other periodicals or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations that are distinguished or characterized by their emphasis on matter depicting, describing, or relating to "Specified Sexual Activities" or "Specified Anatomical Areas"; or (2) a substantial or significant portion of its stock in trade, instruments, devices or paraphernalia designed for use in connection with "Specified Sexual Activities".
2. Adult Entertainment Business. Any establishment that (1) is customarily only open to adults and excludes minors by reason of age, and (2) devotes a substantial or significant portion of its stock in trade to the sale or display of instruments, devices, or paraphernalia which are designed for use in connection with "Specified Sexual Activities".
3. Adult Cabaret. A nightclub, bar, restaurant, or similar commercial establishment which regularly features: (1) persons who appear in a state of nudity; or (2) live performances which are characterized by the exposure of "Specified Anatomical Areas" or by "Specified Sexual Activities"; or (3) films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "Specified Sexual Activities" or "Specified Anatomical Areas".
4. Adult Motel. A motel or similar establishment offering public accommodations for any consideration, which provides patrons with material distinguished or characterized by an emphasis on depiction or description of "Specified Sexual Activities" or "Specified Anatomical Areas".
5. Adult Motion Picture Theater. An enclosed building used for presenting motion picture films, video cassettes, cable television, or any other such visual media, distinguished or characterized by an emphasis on matter depicting, describing or relating to

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"Specified Sexual Activities" or "Specified Anatomical Areas" for observation by patrons therein.

6. **Adult Theater.** A theater, concert hall, auditorium, or other similar establishment, either indoor or outdoor in nature, which regularly features live performances which are distinguished or characterized by an emphasis on specified sexual activities or by exposure of specified anatomical areas for observation by patrons.
7. **Figure Studio.** Any premises on which the business of furnishing nude models who pose for the purpose of being photographed, sketched, painted, drawn or observed by persons who pay a fee, or other consideration or compensation, or a gratuity, for the right or opportunity to depict or observe the model, or for admission to, or for permission to remain upon, or as a condition for remaining upon, the premises.

The term model shall include: Any person, male or female, who poses nude to be photographed, sketched, painted, drawn or observed.

The term nude shall include: Completely without clothing; or with any pubic area exposed; or with the pubic area covered in such a manner that the private parts are visible or the form thereof discernible; or with the breasts exposed by female so that the nipples thereof are exposed.

"Figure studio" does not include any studio or classroom which is operated by any public agency, or any private post-secondary educational institution authorized by California state law to issue and confer a diploma or degree.

8. **Peep-Show Establishment.** Peep-Show Establishment as defined in the Oceanside City Code.

B. **Ambulance Services.** Provision of emergency medical care or transportation, including incidental storage and maintenance of vehicles.

C. **Animal Sales and Services.**

1. **Animal Boarding.** Provision of shelter and care for animals on a commercial basis. This classification includes activities such as feeding, exercising, grooming, and incidental medical care.
2. **Animal Grooming.** Provision of bathing and trimming services for animals on a commercial basis. This classification includes boarding of domestic animals for a maximum period of 48 hours.
3. **Animal Hospitals.** Establishments where animals receive medical and surgical treatment. This classification includes only facilities that are entirely enclosed, soundproofed, and air-conditioned. Grooming and temporary (30 days) boarding of animals is included if incidental to the hospital use.



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4. Animals: Retail Sales. Retail sales and boarding of animals provided such activities take place within an entirely enclosed building. This classification includes grooming if incidental to the retail use, and boarding of animals not offered for sale for a maximum period of 48 hours.
- D. Artists' Studios. Work and display space for artists and artisans, including individuals practicing one of the fine arts or performing arts, or skilled in an applied art or craft.
1. Small-scale. Establishments occupying no more than 5,000 square feet.
- E. Banks and Savings and Loans. Financial institutions that provide retail banking services to individuals and businesses. This classification is limited to institutions engaged in the on-site circulation of cash money including businesses offering check-cashing facilities.
1. Drive-through/Drive-up Service. Institutions providing self-service banking facilities that are not associated with a primary banking or savings and loan building located on the same site.
2. Self-service Facilities (ATM's). Institutions providing self-service banking facilities that are not associated with a primary banking or savings and loan building located on the same site.
- F. Bars and Cocktail Lounges. Any premises designed, used or intended to be used for the selling or serving of alcoholic beverages to the public for consumption on the premises, and in which food is not sold or served to the public as in a bona fide restaurant. Ancillary tasting facilities associated with craft breweries and craft wineries shall not be considered to constitute bars or cocktail lounges as here defined.
- G. Bath Houses. Any establishment or business which has as its primary activity or service the provision of communal or private bathing in a sauna, jacuzzi or other therapeutic bath, save and except for bathing conducted as part of a hydrotherapy treatment practiced by or under the supervision of a medical practitioner who is formally associated therewith.
- H. Brewery, Craft. A small-scale beer manufacturing facility that includes designated floor area (comprising no less than 20 percent and no more than 40 percent of the total floor area) for product sampling and/or retail sales of beer conforming to state requirements. Retail sales of craft brewery merchandise including mugs, pint glasses, growlers, tap handles, coasters, apparel, signs, bottle openers, and books are also permitted. A craft brewery shall produce a minimum of 250 barrels annually and not exceed a maximum output of 15,000 barrels annually (with a barrel of beer being equal to 31 U.S. gallons). Facilities housing a craft brewery shall not exceed 15,000 square feet of floor area. The category of a craft brewery (based upon floor area and scale of operation) shall determine the appropriate review and approval process, as specified below. Such facilities shall be subject to the following limitations:
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1. Other than business name and/or logo, such uses shall not display exterior signage (including advertising directed to the exterior from interior spaces) that promotes the availability of alcoholic beverages.
  2. There shall be no amusement or video machines maintained on the premises.
  3. There shall be no "happy hour" or regular periods of reduced-priced alcoholic beverages.
  4. Amplified live entertainment shall require issuance of an Administrative Use Permit.
  5. Ancillary food service involving outdoor equipment (e.g., food trucks) shall require issuance of an Outdoor Facilities Permit.
  6. Delivery/distribution activities involving Class 4 or higher vehicles shall not occur between the hours of 10 p.m. and 7 a.m.
  7. Hours of operations shall not extend beyond 10 p.m., unless extended hours of operation are approved through a Conditional Use Permit.

Craft breweries shall be regulated under the following tiered review and approval process:

1. Tier 1: Produces at least 250 and no more than 10,000 barrels annually and does not exceed 10,000 square feet of floor area. Tier 1 facilities are subject to approval of an Administrative Conditional Use Permit (ACUP) when not abutting residential zoning districts, schools, and/or churches. Tier 1 facilities abutting residential zoning districts, schools, and/or churches are subject to approval of a Conditional Use Permit (CUP).
  2. Tier 2: Produces at least 750 and no more than 15,000 barrels annually and does not exceed 15,000 square feet of floor area. Tier 2 facilities are subject to approval of a Conditional Use Permit (CUP).
- I. Building Materials and Services. Retailing, wholesaling, or rental of building supplies or equipment. This classification includes lumber yards, tool and equipment sales or rental establishments, and building contractors' yards, but excludes establishments devoted exclusively to retail sales of paint and hardware, and activities classified under Vehicle/Equipment Sales and Services, including vehicle towing services.
  - J. Catering Services. Preparation and delivery of food and beverages for off-site consumption with provision for on-site pickup or consumption not to exceed 1,000 square feet. (See also Eating and Drinking Establishments.)
  - K. Commercial Recreation and Entertainment. Provision of participant or spectator recreation or entertainment. This classification includes theaters, sports stadiums and arenas, amusement parks, bowling alleys, billiard parlors, pool rooms, dance halls, ice/roller skating rinks, golf courses, miniature golf courses, scale-model courses, shooting galleries, tennis/racquetball courts, arcades and games centers having five or more coin-operated game machines and card rooms.
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1. Dance Establishment. Any premises wherein a public dance, as defined in the Oceanside City Code, is held.
  2. Pool Rooms, Billiard Rooms, and Shooting Galleries. Pool rooms, billiard rooms, and shooting galleries as defined in the Oceanside City Code.
  3. Arcades and Game Centers. Any place having five or more coin-operated, slug-operated, or any type of amusement or entertainment machines for which payment is necessary for operation. These include, but are not limited to pinball machines and video games, but do not include merchandise vending machines or mini-jukeboxes (See Section 3027, Arcades and Game Centers).
  4. Limited. Indoor movie theaters and performing arts theaters.
  5. Small-scale. Establishments occupying no more than 5,000 square feet.
- L. Communications Facilities. Broadcasting, recording, and other communication services accomplished through electronic or telephonic mechanisms, but excluding Utilities (Major). This classification includes radio, television, or recording studios; telephone switching centers; and telegraph offices.
- M. Food and Beverage Kiosk. An establishment that provides walk-up and/or drive-thru food and beverage services only through a kiosk window for off-site consumption. The sale and consumption of alcoholic beverages is prohibited.
- N. Food and Beverage Sales. Retail sales of food and beverages for off-site preparation and consumption. Typical uses include groceries, liquor stores, or delicatessens. Establishments at which 20 percent or more of the transactions are sales of prepared food for on-site or take-out consumption shall be classified as Catering Services or Eating and Drinking Establishments.
1. Convenience Markets. Retail sales of food, beverage and small convenience items typically found in establishments with long or late hours of operation. This definition excludes delicatessens and other specialty food shops having a sizeable assortment of fresh fruits and vegetables, and fresh-cut meat or fish.
  2. Liquor Store. A place or business engaged in the primary business of off-sale alcoholic beverages. For the purposes of this ordinance, primary business shall mean 25 percent or more of the shelf area of a business.
- O. Funeral and Interment Services. Establishments primarily engaged in the provision of services involving the care, preparation or disposition of human dead other than in cemeteries. Typical uses include crematories, columbariums, mausoleums or mortuaries.
- P. Home Improvement. Retailing or wholesaling of goods to be used for home improvements or the furnishing of homes. This classification is limited to specialty businesses in which
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the primary inventory of the business includes one of the following merchandise; furniture, carpet and other floor coverings, window coverings, wall coverings, bed and bath products, kitchen remodels, doors and windows, garage doors, glass, paint, mattresses, cabinets and shelves, fireplaces, patios, lighting materials, pool and spas, and similar uses. This use classification does not include a comprehensive home improvement store.

- Q. Horticulture, Limited. The raising of fruits, vegetables, flowers, ornamental trees and shrubs on sites of 2.5 acres or less, as a wholesale commercial enterprise, provided that nursery equipment or materials necessary for the operation shall be stores on-site within structures. Wholesale commercial horticulture accessory to a dwelling unit shall be regulated as a home occupation. On-site Agricultural Sales Stands may be allowed subject to the location and development standards of Section 3038.
- R. Laboratories. Establishments providing medical or dental laboratory services; or establishments with less than 2,000 square feet providing photographic, analytical, or testing services. Other laboratories are classified as Limited Industry.
- S. Maintenance and Repair Services. Establishments providing appliance repair, office machine repair, or building maintenance services. This classification excludes maintenance and repair of vehicles or boats and ships (see Vehicle/Equipment Repair and Marine Sales and Services).
- T. Marine Sales, Rentals, and Services. Establishments providing supplies and equipment for shipping or related services, or pleasure boating and recreation. Typical uses include chandleries, yacht brokerage, sales, boat yards, boat docks, and sail-making lofts.
- X. Nurseries. Wholesale or retail establishments for the selling of plants, shrubs, trees and related products in which all merchandise other than plants is kept within an enclosed building or a fully screened enclosure, and fertilizer or chemicals of any type are stored and sold in package form only. Nurseries may include the growing and propagation of plants as part of the operation. This classification excludes ~~medical~~ Cannabis Nurseries.
- V. Offices, Business and Professional. Offices of firms or organizations providing professional, executive, management, or administrative services, such as architectural, engineering, real estate, insurance, investment, legal, and medical/dental offices. This classification includes medical/dental laboratories incidental to an office use, but excludes banks and savings and loan associations.
- W. Payday Loan/Paycheck Advance Establishment. A person or entity that for compensation, engages in whole or in part, in the business of lending limited amounts of funds for a short-term, against the borrower's future paychecks. The aforementioned definition excludes State or federally chartered banks, savings associations, credit unions, or industrial loan companies offering direct deposit advance service to their customer that is incidental to their main purpose or business.
- X. Pawn Shops. Establishments engaged in the buying or selling of new or secondhand
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merchandise and offering loans secured by personal property and subject to Chapter 22 of the Municipal Code.

Y. Personal Improvement Services. Provision of instructional services or facilities, including: photography, fine arts, crafts, dance or music studios; driving, business or trade schools; diet centers, or reducing salons; and health/fitness studios, spas or clubs.

1. Health/Fitness Studios, Spas or Clubs. Establishments with equipment for exercise and physical conditioning.
2. Massage Establishments. Establishments providing massage service.
3. Small Scale. Establishments occupying no more than 5,000 square feet.

Z. Personal Services. Provision of services of a personal nature. This classification includes: tattooing establishments, body piercing establishment, escort services, barber and beauty shops, seamstresses, tailors, shoe repair shops, laundry and dry cleaning agencies (excluding large-sale plants - see Section 15.C.1), photo-copying, word processing, packaging, postal and office supply support facilities, and self-service laundries.

1. Tattooing Establishment. Any establishment or business engaged in "tattooing" as defined in the Oceanside City Code, excluding "micropigmentation" or "permanent cosmetic makeup" typically provided at beauty salon or day spas.
2. Body Piercing Establishment. Any establishment or business engaged in "body piercing". Body piercing means the creation of an opening in the body of a human being for the purpose of inserting jewelry or other decoration. This includes, but is not limited to, piercing of an ear, lip, tongue, nose, eyebrow, naval, male genitals, female breasts or female genitals. "Body piercing" does not include piercing an ear with a disposable, single-use stud or solid needle that is applied using a mechanical device to force the needle or stud through the ear.
3. Escort Services. Any premises where patrons can purchase the social company or companionship of another person.
4. Limited. Excludes laundry and dry cleaning agencies and self-service laundries.
5. Small-scale. Establishments occupying no more than 2,500 square feet.

AA. Research and Development Services. Establishments primarily engaged in industrial or scientific research, including limited product testing. This classification includes electronic research firms, pharmaceutical research laboratories, and medical testing and analysis, but excludes manufacturing, except of prototypes. This classification excludes Cannabis Medical Testing Laboratories.

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BB. Restaurants, Fast Food. A bona fide restaurant establishment where the principal business is the sale of prepared or rapidly prepared food and beverages to guests via counter, walk up, or window service for consumption on or off the premises. The sale beer and wine for on-site consumption is permitted. As used in this definition, a "bona fide" restaurant shall have suitable kitchen facilities for cooking and/or preparation of meals. The word "meals" means the assortment of food commonly ordered at various hours of the day.

1. Restaurants, Fast Food with Drive-thru or Drive-up. A restaurant establishment providing service from a building to patrons in vehicles through an outdoor service window (Drive-thru) or delivery service to vehicles parked in designated parking spaces (Drive-up). The sale and consumption of alcoholic beverages at a restaurant with a Drive-thru or Drive-up window is prohibited.

CC. Restaurant Full Service. A bona fide restaurant establishment where the principal business is the sale of food and beverages to guests via table service for consumption on the premises. The sale of beer and wine for on-site consumption shall be considered incidental to the full service restaurant. Delivery service to vehicles parked in designated parking spaces (i.e. drive-up) is allowed as an ancillary service to the Restaurant Full Service. As used in this definition, a "bona fide" full service restaurant shall have

suitable kitchen facilities for cooking of complete meals. The word "meals" means the assortment of foods commonly ordered at various hours of the day; the service of only such foods as sandwiches or salads does not meet the bona fide restaurant definition.

1. Restaurants Full Alcohol. A bona fide restaurant establishment authorized to sell distilled spirits for consumption on licensed premises. The sale of liquor is included as an appurtenant use to full service restaurants having table seating and service for more than 50 guests.
2. Restaurants Full Service with Live Entertainment – (Small Scale). Restaurant establishments providing live entertainment to patrons with 5 or fewer performers at restaurant facilities with no dance floor during typical lunch and dinner hours (11:00 a.m. – 11:00 p.m.) and having 75 percent food sales compared to alcohol sales.

DD. Retail Sales. The retail sale of merchandise not specifically listed under another use classification. This classification includes department stores, clothing stores, comprehensive home improvement stores, furniture stores, and businesses retailing the following goods: toys, hobby materials, handcrafted items, jewelry, cameras, photographic supplies (including limited processing), electronic equipment, records, sporting goods, kitchen utensils, hardware, appliances, antiques, art supplies and services, paint and wallpaper, carpeting and floor covering, office supplies, bicycles, and new automotive parts and accessories (excluding service and installation).

1. Limited. Excludes comprehensive home improvement stores, furniture, hardware, paint and wallpaper, carpeting and floor covering, and new automotive parts and accessories.



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2. Pharmacies and Medical Supplies. Establishments primarily selling prescription drugs, and medical supplies and equipment.
  3. Medical Cannabis Delivery (M-Type 9 Non-Storefront Retailer). A M-Type 9 licensed non-storefront retailer conducting retail medical cannabis sales exclusively by delivery as defined in Business and Professions Code section 26001(p) and applicable state regulations. For the purpose of licensing, a medical cannabis delivery non-storefront shall not be considered a medical marijuana dispensary.
- EE. Secondhand Furniture, Appliance, "Collectible" and Clothing Sales. The retail sale of used furniture, appliances, "collectibles" and clothing, and secondhand dealers who are subject to Chapter 22 of the Municipal Code. This classification excludes antique shops primarily engaged in the sale of antique furniture and accessories.
1. Small-scale. Establishments occupying no more than 5,000 square feet.
- FF. Sex Supermarket/Sex Mini-Mall. The establishment or operation within the same building of more than one of any of the following Adult Businesses: adult bookstore or adult video store, adult cabaret, adult entertainment business, adult motion picture theater, adult theater, or peep-show establishment.
- GG. Swap Meets, Recurring. Retail sale or exchange of handcrafted or secondhand merchandise for a maximum period of 48 hours, conducted by a sponsor on a more than twice yearly basis.
- HH. Tobacco and Drug Paraphernalia Establishment. Any tobacco and drug paraphernalia establishment, as defined in the Oceanside City Code.
- II. Travel Services. Establishments providing travel information and reservations to individuals and businesses. This classification excludes car rental agencies.
- JJ. Vehicle/Equipment Sales and Services.
1. Automobile Washing. Washing, waxing, or cleaning of automobiles or similar light vehicles.
  2. Commercial Parking Facility. Lots offering short-term or long-term parking to the public for a fee.
  3. Service Stations. Establishments engaged in the retail sale of gas, diesel fuel, lubricants, parts, and accessories. This classification includes incidental maintenance and repair of automobiles and light trucks, but excludes body and fender work or repair of heavy trucks or vehicles.
  4. Vehicle/Equipment Repair. Repair of automobiles, trucks, motorcycles, mobile homes,
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recreational vehicles, or boats, including the sale, installation, and servicing of related equipment and parts. This classification includes auto repair shops, body and fender shops, wheel and brake shops, and tire sales and installation, but excludes vehicle dismantling or salvage and tire retreading or recapping.

(a) Limited. Excludes body and fender shops.

5. Vehicle/Equipment Sales and Rentals. Sale or rental of automobiles, motorcycles, trucks, tractors, construction or agricultural equipment, mobile homes, and similar equipment, including storage and incidental maintenance.
6. Vehicle Storage. Storage of operative or inoperative vehicles. This classification includes storage of parking tow-aways, impound yards, and storage lots for automobiles, trucks, buses and recreational vehicles, but does not include vehicle dismantling.

(a) Limited. Storage of operable passenger automobiles, standard and small vans and motorcycles.

KK. Visitor Accommodations.

1. Bed and Breakfast Inns. Establishments offering lodging on a less than weekly basis in a converted single-family or multi-family dwelling, with incidental eating and drinking service for registered guests. A Bed and Breakfast may only serve breakfast, or similar early morning meals to its registered guests per Restricted Food Service Facility Regulations Section 113893 of the California Retail Food Code. The price of food must be included in the price of the overnight transient occupancy accommodation. Bed and breakfasts may include incidental amenities for registered guests including spa facilities or swimming pools.

(a) Small-scale. Establishments renting four or fewer rooms.

2. Hotels, Motels, and Time-Share Facilities. Establishments offering commercial lodging on a less than monthly basis. This classification includes incidental eating, drinking, and banquet services intended for the convenience of guests.
3. Single-Room Occupancy (SRO) Residential Hotels. Buildings with six or more guest rooms without kitchen facilities in individual rooms, or kitchen facilities for the exclusive use of guests, and which are also the primary residences of the hotel guests.
4. Vacation Club. Prepaid point or credit based establishments offering lodging on a less than weekly basis and having kitchens. This classification includes eating, drinking and banquet services.

LL. Warehousing and Storage, Limited. Provision of storage space for household or commercial goods within an enclosed building. Access to individual storage units shall be via an

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interior access way. Exterior entry to individual storage units shall not be permitted. This classification includes facilities with a maximum of 5,000 square feet of gross floor area, but excludes Wholesale, Distribution and Storage, and Vehicle Storage. "Limited" vehicle storage as part of a Warehousing and Storage, Limited, facility is permitted subject to the approval of a Conditional Use Permit.

MM. Winery, Craft. A small-scale winemaking facility that includes designated floor area (comprising no less than 20 percent and no more than 40 percent of the total floor area) for product sampling and/or retail sales of wine conforming to state requirements. Retail sales of craft winery merchandise including wine glasses, wine bottles, decanters, corkscrews, home décor, apparel, signs, books, and other wine paraphernalia are also permitted. A craft winery shall produce a minimum of 300 cases annually and not exceed a maximum output of 10,000 standard cases annually

(with a standard case of wine containing twelve 750 ml bottles or nine liters of wine). Facilities housing a craft winery shall not exceed 15,000 square feet of floor area. The category of a craft winery (based upon floor area and scale of operation) shall determine the appropriate review and approval process, as specified below. Such facilities shall be subject to the following limitations:

1. Other than business name and/or logo, such uses shall not display exterior signage (including advertising directed to the exterior from interior spaces) that promotes the availability of alcoholic beverages.
2. There shall be no amusement or video machines maintained on the premises.
3. There shall be no "happy hour" or regular periods of reduced-priced alcoholic beverages.
4. Amplified live entertainment shall require issuance of an Administrative Use Permit (ACUP).
5. Ancillary food service involving outdoor equipment (e.g., food trucks) shall require issuance of an Outdoor Facilities Permit.
6. Delivery/distribution activities involving Class 4 or higher vehicles shall not occur between the hours of 10 p.m. and 7 a.m.
7. Hours of operations shall not extend beyond 10 p.m., unless extended hours of operation are approved through a Conditional Use Permit.

Craft wineries shall be regulated under the following tiered review and approval process:

1. Tier 1: Produces at least 300 and no more than 7,000 standard cases annually and does not exceed 10,000 square feet of floor area. Tier 1 facilities are subject to approval of an Administrative Conditional Use Permit (ACUP) when not abutting residential zoning districts, schools, and/or churches. Tier 1 facilities abutting residential zoning districts, schools, and/or churches are subject to a Conditional Use Permit (CUP).

2. Tier 2: Produces at least 900 and no more than 10,000 standard cases annually and does not exceed 15,000 square feet of floor area. Tier 2 facilities shall be subject to approval of a Conditional Use Permit (CUP).

#### 415 Industrial Use Classifications

- A. Food Processing. Establishments primarily engaged in the manufacturing or processing and packaging of food or beverages for human consumption and wholesale distribution.
    1. Limited. Establishments of less than 2500 square feet of floor area.
  - B. Industry, Custom. Establishments primarily engaged in on-site production of goods by hand manufacturing involving the use of hand tools and small-scale equipment. This use may include affiliated office and support facilities and limited showroom and a retail sales area when clearly secondary and associated with the primary business.
    1. Limited. Includes mechanical equipment not exceeding two horsepower or a single kiln not exceeding eight kilowatts and the incidental direct sale to consumers of only those goods produced on-site. Typical uses include ceramic studios, candle-making shops, and custom jewelry manufacture.
  - C. Industry, General. Manufacturing of products, primarily from extracted or raw materials, or bulk storage and handling of such products and materials. Uses in this classification typically involve a high incidence of truck or rail traffic, and/or outdoor storage of products, materials, equipment, or bulk fuel. This classification includes chemical manufacture or processing, large scale laundry and dry cleaning plants, auto dismantling within an enclosed building, oil and gas refining, stonework and concrete products manufacture, small animal production and processing within an enclosed building and power generation.
    1. Large Scale Laundry and Dry Cleaning Plants. A laundry or dry cleaning facility having any of the following or similar type equipment:
      - (a) Boiler(s) exceeding a total of 15 horsepower;
      - (b) Dry cleaning machine(s) exceeding 60 pounds total capacity;
      - (c) Dryer(s) exceeding 50 pounds total capacity;
      - (d) Wet cleaning washer(s) exceeding 50 pounds total capacity.
  - D. Industry, Limited. Manufacturing of finished parts or products, primarily from previously prepared materials; and provision of industrial services; both within an enclosed building. This classification includes processing, fabrication, assembly, treatment, and packaging, but excludes basic industrial processing from raw materials, and Vehicle/Equipment Services. This classification may include affiliated office and support facilities and a limited showroom and retail sales area when clearly secondary and associated with the primary business.
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1. Small-Scale. Limited to a maximum gross floor area of 5,000 square feet.
- E. Industry, Research and Development. Establishments primarily engaged in the research, development, and controlled production of high-technology electronic, industrial or scientific products or commodities for sale. Uses include biotechnology, films, and non-toxic computer component manufacturers, specifically excluding uses which produce offensive odors, dust, and/or noise. This classification may include affiliated office and support facilities and a limited showroom and retail sales area when clearly secondary and associated with the primary business.
- F. Wholesaling, Distribution and Storage. Storage and distribution facilities. This classification may include affiliated office and support facilities and a limited showroom and retail sales area when clearly secondary and associated with the primary business.
1. Trucking Terminals. Storage and distribution facilities having more than six heavy trucks on the premises at one time, but excluding trucking accessory to a Limited or General Industry classification.
  2. Small-Scale. Wholesaling, distribution and storage having a maximum gross floor area of 5,000 square feet and having no more than two docks or service bays.
- G. Medical Cannabis Distribution Site. A location where cannabis obtained from a licensed medical cannabis cultivator or medical cannabis products from a licensed medical cannabis manufacturer is temporarily stored, prior to delivery to a licensed medical cannabis dispensary and as part of performing a medical cannabis distributor's duties under state law. A medical cannabis distributor is a person engaged in the procurement, sale, and transport of medical cannabis and medical cannabis products between licensees.
- H. Medical Cannabis Manufacturing. The production, preparation and compounding of cannabis and cannabis products, without the use of a volatile solvent. Nonvolatile cannabis manufacturing includes and is not limited to the extraction of a substance from a cannabis plant with nonvolatile solvents, the infusion or mixture of cannabis into another substance, the preparation of an edible item that includes cannabis, and the packaging and labeling of cannabis or cannabis products. Nonvolatile cannabis manufacturing does not include medical cannabis cultivation.
- I. Medical Cannabis Testing Laboratory. Laboratory, facility, or entity that offers or performs tests of medical cannabis or medical cannabis products and that is both of the following: (1) Accredited by an accrediting body that is independent from all other persons involved in commercial cannabis activity in the state. (2) Licensed by the state of California to perform medical cannabis testing consistent with Business and Professions Code section 26001.
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**416 Agricultural and Extractive Use Classifications**

- A. Agricultural Accessory Structure. Structures that are incidental to the principal permitted or conditionally permitted agricultural use or structure on a site and are customarily on the same site. This classification includes shade structures, hay barns, animal enclosures such as corrals or pens, and agricultural related accessory structures, but excludes horse stables and greenhouses.
- B. Agricultural Food and Product Processing, Limited. Agricultural establishments primarily engaged in the manufacturing or processing and packaging of food or non-alcoholic beverages for human consumption and distribution or agricultural materials, non-food crops, commodities, or bi-products into products, including craft or artisan goods, for retail sale or distribution. The facility shall be accessory to a farm or ranch where the food or product processing involves a primary or signature ingredient produced on the premises or within southern California. Additional ingredients shall be sourced locally or regionally when available. Tours, tastings, sampling and retail sales may be permitted as an accessory use only. Tasting rooms shall not exceed 25% of the square-footage of the facility or 2,500 square-feet, whichever is less. This classification excludes ~~Medical~~ Cannabis Cultivation Facilities.
- C. Agricultural Home Stay. Overnight visitor accommodations located on a farm or ranch that produces agricultural products as its primary source of income. A Home Stay facility shall have six or fewer guestrooms and is restricted to a maximum of 15 guests. The homestay may serve meals and light foods or snacks to its registered guests at any time per Restricted Food Service Facility Regulations Section 113893 of the California Retail Food Code. A home stay established within an existing house or detached structure(s) shall be permitted. Home Stays may include incidental amenities for registered guests including spa facilities or swimming pools.
- D. Agricultural Sales Stand. A 500 square-foot or less sales stand accessory to a property devoted to the growing of agricultural crops that are offered for sale on the premises. Sales shall be limited to agricultural products. No other merchandise shall be offered. All agricultural products sold at the site must be grown by the operator either on the site, or within the region.
- E. Agricultural Sales Store. A store or stand larger than 500 square-feet for the retail sale of agricultural products primarily produced on the premises of a farm or ranch, within southern California. Retail sales of merchandise that is produced by or affiliated with the agricultural operation or has an agricultural theme, including artisan goods, may be permitted as an accessory use only.
- F. Agricultural Supply Services. Retail sale of products supporting agricultural uses including, but not limited to , tack, feed and hay, seed, soil and mulch, hardware, farm equipment, machinery, irrigation supplies, and similar support services for farming operations.



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- G. Animal Boarding. Provision of shelter and care for domestic farm animals or domestic animals on a commercial basis. This classification includes activities such as feeding, exercising, grooming, and incidental medical care.
- H. Animal, Horse and Dog Training and Shows. Animal training, holistic natural animal health care, and dog shows with 50 dogs or less. Shows with greater than 50 dogs shall require a special events permit.
- I. Animal Husbandry. Raising of animals or production of animal products, such as eggs or dairy products, on an agricultural or wholesale commercial basis. Typical uses include grazing, ranching, animal breeding, and dairy farming. For purposes of this section, domestic farm animals includes horses, donkeys, llamas, alpacas, mules, cows, sheep, goats, hogs. Similar animals shall be permitted subject to review and approval by the City Planner. Domestic animals and Exotic animals as defined in Article 3 of the Zoning Ordinance are excluded from this section.
- J. Assembly, ceremonies, and weddings. An activity involving assembly or the intention of attracting people for ceremonial, educational, and celebratory purposes at one specific location. Such assembly includes, but is not limited to: receptions, weddings, recitals, exhibits, private parties, and social gatherings.
- K. Aquaculture. Facility dedicated to the propagation, cultivation, maintenance, and harvesting of fish, shellfish and plants in marine, brackish, and fresh water. This classification includes aquaponics defined as the symbiotic cultivation of plants and aquatic animals in a balanced recirculating environment. Aquaculture is subject to registration and approval by the California Department of Fish and Wildlife.
- L. Aviculture. The breeding and keeping of domestic birds including chicken, turkey, ostriches, goose, fowl, pheasant, quail, pigeons, and similar birds. This classification excludes exotic animals.
- M. Bee Keeping. The keeping of bees shall be permitted pursuant to Section 29000 of the California Food and Agriculture Code. An apiary is defined as a managed honey bee colony(s) or hive(s) that are kept in a structure(s) intentionally provided for honey bee housing, shall be located a minimum of 50-feet from roads and 100 feet from neighboring dwelling units. An apiary with more than 20 colonies shall be located 100 feet from roads and 300 feet from neighboring dwellings. Beekeepers shall register the apiary with the San Diego County Agricultural Commissioner within 30 days of establishing the apiary. Beekeepers shall follow best management practices prescribed by the Agricultural Commissioner.
- N. Campgrounds. An area of an agricultural property dedicated for short term camping as either day use or overnight use. Campsites may include tents, temporary shelters, or permanent structures such as cabins. Restroom facilities shall be provided on the premises. Trailer and RV sites may be provided, but shall not exceed 25% of the designated camp
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sites. For the purposes of this section, "short term camping" shall mean occupancy of a campground by the same persons, equipment, or vehicles for a maximum time limit of 7 consecutive days, not to exceed a total of 30 days in any calendar year. No campground shall be located closer than one thousand, five hundred (1,500) feet from any other campground as measured in a straight line from the defined boundary of each campground.

- O. Commercial Recreation, Outdoor. The use of agricultural properties for outdoor recreational activities including, but not limited to hiking, biking, axe throwing, archery, zip lines, and similar uses.
- P. Composting. A facility where agricultural material or green material is decomposed in a controlled environment into compost, soil amendment, or other products. "Agricultural Material" means waste material of plant or animal origin, which results directly from the conduct of agriculture, animal husbandry, horticulture, aquaculture, vermiculture, viticulture and similar activities undertaken for the production of food or fiber for human or animal consumption or use, which is separated at the point of generation, and which contains no other solid waste. Material that is defined as "food material" or "vegetative food material" is not agricultural material. Agricultural material includes, but is not limited to, manures, orchard and vineyard prunings, grape pomace, and crop residues. "Green Material" means any plant material except food material and vegetative food material that is separated at the point of generation, contains no greater than 1.0 of percent physical contaminants by dry weight. Green material includes, but is not limited to, tree and yard trimmings, untreated wood wastes, natural fiber products, wood waste from silviculture and manufacturing, and construction and demolition wood waste. Green material does not include food material, vegetative food material, biosolids, mixed material, material separated from commingled solid waste collection or processing, wood containing lead-based paint or wood preservative, or mixed construction and demolition debris. Agricultural material that meets this definition of "green material" may be handled as either agricultural material or green material. Additional materials not specifically listed may be considered as part of a use permit.
- Q. Crop Production. Raising and harvesting of tree crops, row crops, greenhouse crops or field crops on sites of greater than 2.5 acres on an agricultural or wholesale commercial basis, including packing and processing. ~~Medical~~ Cannabis Cultivation Facilities are excluded from the definition of Crop Production.
- R. Cultural Institutions. Nonprofit institutions displaying or preserving objects of interest in one or more of the arts or sciences. This classification includes libraries, museums, and art galleries.
- S. Educational Programs. An educational program or facility accessory to a farm or ranch dedicated to teaching students about agriculture, food, natural resources, as well as research and development. Programs are typically affiliated with schools or organizations or operated by the proprietor of the farm or ranch. This classification excludes intermittent field trips or visits to a farm or ranch by schools or organizations unless the field trips are considered part of an enterprise.
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- T. Farm Brewery. A small-scale craft beer manufacturing facility that includes floor area for product sampling and retail sales of beer primarily produced on the premises. The facility shall be accessory to a farm or ranch where a primary or signature ingredient is produced on the premises or within southern California. Additional ingredients shall be sourced locally or regionally when available. A farm brewery shall produce a minimum output of 2,000 barrels annually and shall not exceed a maximum output of 16,000 barrels annually (with a barrel of beer equal to 31 U.S. gallons). A craft brewery shall not occupy more than 15,000 square feet of floor area. Tours, tastings and retail sales may be permitted as an accessory use only. A craft brewery must contain an ancillary tasting and/or retail component that comprises no less than 20 percent and no more than 40 percent of the facility's total floor area.
- U. Farm Distillery. A small-scale craft distilled spirits manufacturing facility that includes floor area for product sampling and retail sales of distilled spirits primarily produced on the premises. The facility shall be accessory to a farm or ranch where a primary or signature ingredient is produced on the premises or within southern California. Additional ingredients shall be sourced locally or regionally when available. A farm distillery shall produce no more than 120,000 750 ml bottles per year or 100,000 gallons, whichever is less. A craft farm distillery shall not occupy more than 15,000 square feet of floor area. Tours, tastings and retail sales may be permitted as an accessory use only. A farm distillery must contain an ancillary tasting and/or retail component that comprises no less than 20 percent and no more than 40 percent of the facility's total floor area. Direct sales of bottles shall be limited to no more than 2.25 liters per day per customer who has attended an instructional tasting conducted by the craft licensee.
- V. Farm Tours. An agricultural operation that allows the general public to tour farm or ranch facilities for recreational or educational purposes. Farm tours are generally guided group tours conducted by a representative of the farming operation. The sale of agricultural products or related merchandise shall be subject to the provisions for Agricultural Sales Stands or Agricultural Sale Stores. Farm tour operations shall be subject to the performance standards outlined in Article 14 of the Zoning Ordinance. A designated parking area shall be provided on the property.
- W. Farmworker Housing. Farmworker housing, as defined in Section 17008(a) of the California Health and Safety Code, may be provided by the employer and maintained in connection with the work or place where work is being performed and must comply with all provisions of Section 17000 of the California Health and Safety Code. Farmworker housing not maintained in connection with any workplace and provided by someone other than an agricultural employer must comply with all provisions of Section 17008(b) of the California Health and Safety Code.
- X. Medical Cannabis Cultivation Facility means a facility wherein ~~medical~~ cannabis is propagated, planted, grown, harvested, dried, cured, graded, labeled, tagged for tracking or trimmed, or that does all or any combination of those activities. This definition excludes the cultivation of no more than six nonmedical marijuana plants by a person
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twenty-one years of age or older for personal use in a private residence provided the cultivation is in a fully enclosed structure that is secure, not visible from a public space and otherwise exempt from state licensing requirements.

- Y. Medical Cannabis Nursery means a facility that produces only clones, immature plants, seeds, and other agricultural products used specifically for the propagation and cultivation of ~~medical~~ cannabis.
- Z. Mining and Processing. Places or plants primarily devoted to surface or subsurface mining of metallic and nonmetallic minerals, oil or gas, together with essential on-site processing and production of only nonmetallic mineral products. Typical places are borrow pits, quarries, oil and gas drilling rigs, or concrete batch plants. This classification specifically excludes any activities that are directly or indirectly associated with off-shore oil and gas exploration, production, or processing.
- AA. Petting Zoo. A zoo accessory to a farm or ranch where visitors may handle and feed domestic farm animals in a controlled environment.
- BB. Research & Development Agricultural Products. Research, development, and controlled production of agricultural products or commodities for sale ancillary to a farm or ranch. This classification may include affiliated office, laboratory, and support facilities and a showroom and retail sales area when clearly secondary and associated with the farm or ranch. This classification excludes ~~Medical Cannabis Cultivation Facilities and Medical Cannabis Nurseries~~ per Section 1420.
- CC. Restaurants and Cafes, Farm. A restaurant or café located accessory to a farm or ranch where farm products and value-added farm products are the primary food offerings. Food prepared in the eating establishment shall be sourced on site or within the region to the extent possible. Facilities may include either indoor or outdoor eating areas. The sale of beer and wine for consumption on the premises shall be considered incidental. The sale of distilled spirits for consumption on the premises shall be permitted incidental to a bona fide eating establishment subject to approval of a Conditional Use Permit.
- DD. Retail Nursery. A nursery operation that grows and/or imports plants and trees for direct sale to consumers. This classification excludes ~~Medical Cannabis Nursery~~ per Section 1420.
- EE. Seasonal Attractions. Activities or events occurring on a temporary basis during various growing seasons or holiday periods. Attractions include, but are not limited to, Christmas tree farms, pumpkin patches, and harvest events. A Special Event Permit shall be required. Agricultural crops that are exclusively produced on the premises of a farm or ranch and are offered for sale on the premises shall not be considered a seasonal attraction and can be conducted through and agricultural sales stand, agricultural sales store, or u-pick operation.
- FF. U-Pick. Farming operation that allows the general public to directly harvest and purchase produce or other products from a farm or ranch. U-pick operations shall be subject to the
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performance standards outlined in Article 14 of the Zoning Ordinance.

- GG. Wineries. An agricultural processing facility used for the fermenting and processing of fruit juice into wine; or the refermenting of still wine into sparkling wine. Tours, tastings and retail sales may be permitted as an accessory use only.

**417 Accessory Use Classifications**

- A. Accessory Uses and Structures. Uses and structures that are incidental to the principal permitted or conditionally permitted use or structure on a site and are customarily found on the same site. This classification includes accessory dwelling units ("second units") and home occupations.

**418 Temporary Use Classifications**

- A. Agricultural Specialty Sales, Seasonal. Retail sale of seasonal specialty items for a period not to exceed 45 days (e.g. Christmas Tree Sales, Pumpkin Sales).
- B. Yard/Garage Sales. A sales event advertised by any means at a residential location where members of the public may purchase identifiable or tangible items of personal property; provided however, it shall not mean any event which constitutes a sales activity, wholesale or retail, by any business which has a current business license issued by the City. Items sold shall be limited to personal property owned by the occupant of the property and/or surrounding neighbors.

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**Article 36    Separation of Regulated Uses    (City-wide)****Sections:**

- 3601    Statement of Purpose
- 3601.1 Findings – Adult Oriented Businesses
- 3601.2 Findings – Tattoo Establishments
- 3602    Regulated Uses
- 3603    Definitions
- 3604    Locational Requirements
- 3605    Waiver of Locational Requirements
- 3606    First Amendment Application – Administrative Regulated Use Permit
- 3607    Applicability of Other regulations
- 3608    Severance Clause

**3601. Statement of Purpose**

In the development and execution of this ordinance, it is recognized that there are certain land uses including adult oriented businesses and tattoo establishments which create conditions harmful to the public health, welfare, and safety when such uses are allowed to become numerous or concentrated within a limited geographical area, or when such uses exist near residential neighborhoods, family-oriented uses or sites commonly used by minors. Special regulations separating such uses from each other and from nearby residential areas, family-oriented uses, or sites commonly used by minors, are therefore necessary to protect the community from consequent blight, depreciated property values, law enforcement problems, and interference with residential neighborhoods as well as interference with activities oriented toward families or minors.

**3601.1 Findings – Adult Oriented Businesses**

- A. The City of Oceanside has certain provisions found in its Zoning Ordinance relating to locational criteria including zoning and buffer requirements for adult-oriented businesses that are in need of refinement. The City Council finds that it is necessary and appropriate to amend various provisions of the Zoning Ordinance to add, refine and update the provisions relating to planning and zoning standards for adult-oriented businesses operating within Oceanside. The public health, safety and welfare of the City and its residents require the enactment of this Ordinance in order to: (1) mitigate and reduce the judicially recognized potential adverse secondary effects of adult-oriented businesses, including but not limited to crime, the prevention of blight in neighborhoods and the increased threat of the spread of sexually transmitted diseases; (2) protect the quality of life and neighborhoods in the City, the City's retail and commercial trade, and local property values, and minimize the potential for nuisances related to the operation of sexually oriented businesses; and (3) protect the peace, welfare and privacy of persons who own, operate and/or patronize sexually oriented businesses.
- B. The City Council finds that the revisions to the City's Zoning Ordinance implemented by this Ordinance are necessary in order to respond to recent developments within the regulation of adult uses and case law and in order to protect the City from the potential adverse secondary effects of adult-oriented businesses, including crime, the protection

of the City's retail trade, maintenance of property values, protecting and preserving the quality of the City's neighborhoods and the City's commercial districts, and the protection of the City's quality of life, based on the referenced studies and the findings set forth herein. Specifically, the revisions and amendments to the City's Zoning Ordinance included in this Ordinance are essential and necessary to ensure the orderly land use regulation as to adult-oriented business uses within the City and thereby protect the public peace, safety and general welfare in the City of Oceanside.

- C. The City Council, in adopting this Ordinance, takes legislative notice of the existence and content of the following studies concerning the adverse secondary side effects of adult-oriented businesses in other cities: Austin, Texas (1986); Indianapolis, Indiana (1984); Garden Grove, California (1991); Seattle, Washington (1989); Houston, Texas (1997); Phoenix, Arizona (1979); Tucson, Arizona (1990); Chattanooga, Tennessee (2003); Los Angeles, California (1977); Whittier, California (1978); Spokane, Washington (2001); St. Cloud, Minnesota (1994); Littleton, Colorado (2004); Oklahoma City, Oklahoma (1986); Dallas, Texas (1997 and 2007); Ft. Worth, Texas (2004); Kennedale, Texas (2005); Greensboro, North Carolina (2003); Amarillo, Texas (1977); Cleveland, Ohio (1977); Newport News, Virginia (1996); Jackson County, Missouri (2008); Louisville, Kentucky (2004); New York, New York (1994); New York Times Square (1994); Beaumont, Texas (1982); the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses (June 6, 1989, State of Minnesota); A Methodological Critique of the Linz-Paul Report: A Report to the San Diego City Attorney's Office (2003); Summaries of Key Reports Concerning the Negative Secondary Effects of Sexually Oriented Businesses, by Louis Comus III (2001). The City Council finds that these studies are relevant to the problems addressed by the City in enacting this Ordinance to regulate the adverse secondary side effects of adult-oriented businesses, and more specifically finds that these studies provide convincing evidence that:
1. Adult-oriented businesses, as a category of uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, liner, traffic, noise, and sexual assault and exploitation.
  2. The studies from other cities establish by convincing evidence that adult-oriented businesses often have a deleterious effect on nearby businesses and residential areas, causing, among other adverse secondary effects, an increase in crime and a decrease in property values. Buffering and locational regulations for adult-oriented businesses should be developed to prevent deterioration and/or degradation of the vitality of the community before the problem exists, rather than waiting for problems to be created.
- D. In developing this Ordinance, the City Council is mindful of legal principles relating to regulation of adult-oriented businesses, and the City Council does not intend to suppress or infringe upon any expressive activities protected by the First Amendment of the United States and California Constitutions but instead desires to enact reasonable time,

place, and manner regulations that address the adverse secondary effects of adult-oriented businesses. The City Council takes legislative notice of the:

1. Decisions of the United States Supreme Court regarding local regulation of adult-oriented businesses including, but not limited to: *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M. ("Kandyland")*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *N.Y. State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981); *Sewell v. Georgia*, 435 U.S. 982 (1978); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *City of Dallas v. Stanglin*, 490 U.S. 19 (1989).
2. Decisions of the Ninth Circuit Court of Appeals addressing adult-oriented businesses including but not limited to: *Alameda Books, Inc. v. City of Los Angeles*, 631 F.3d 1031 (9th Cir. 2011); *Fantasyland Video, Inc. v. County of San Diego*, 505 F.3d 996 (9th Cir. 2007); *Tollis, Inc. v. County of San Diego*, 505 F.3d 935 (9th Cir. 2007); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005), amended 402 F.3d 875; *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Dream Palace v. County of Maricopa*, 384 F.3d 990 (9th Cir. 2004); *Talk of The Town v. Department of Finance and Business Services*, 343 F.3d 1063 (9th Cir. 2003); *Deja Vu-Everett-Federal Way, Inc. v. City of Federal Way*, 46 Fed.Appx. 409 (9th Cir. 2002); *Clark v. City of Lakewood*, 259 F.3d 996 (9th Cir. 2001); *Isbell v. City of San Diego*, 258 F.3d 1108 (9th Cir. 2001); *Isbell v. City of San Diego*, 450 F.Supp.2d 1143 (S.D. Cal. 2006); *Diamond v. City of Taft*, 215 F.3d 1052 (9th Cir. 2000); *L.J. Concepts, Inc. v. City of Phoenix*, 215 F.3d 1333 (9th Cir. 2000); *Lim v. City of Long Beach*, 217 F.3d 1050 (9th Cir. 2000); *Young v. City of Simi Valley*, 216 F.3d 807 (9th Cir. 2000); *4805 Convoy, Inc. v. City of San Diego*, 183 F.3d 1108 (9th Cir. 1999); *North v. City of Gilroy*, 78 F.3d 594 (9th Cir. 1996); *Spokane Arcade, Inc. v. City of Spokane*, 75 F.3d 663 (9th Cir. 1996); *Topanga Press, Inc. v. City of Los Angeles*, 989 F.2d 1524 (9th Cir. 1993); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986); and *Lydo Entertainment v. Las Vegas*, 745 F.2d 1211 (9th Cir. 1984).
3. Decisions of the State of California addressing adult-oriented businesses including: *Madain v. City of Stanton*, 185 Cal.App.4th 1277 (2010); *Krontz v. City of San Diego*, 136 Cal.App.4th 1126 (2006); *Lacy Street Hospitality Service, Inc. v. City of Los Angeles*, 125 Cal.App.4th 526 (2004); *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board and Renee Vicary*, 99 Cal.App.4th 880 (2002); *Tily B., Inc. v. City of Newport Beach*, 69 Cal.App.4th 1 (1998); *Sundance Saloon, Inc. v. City of San Diego*, 213 Cal.App.3d 807 (1989); *7978 Corporation v. Pitchess*, 41 Cal.App.3d 42 (1974); *Deluxe Theater & Bookstore, Inc. v. City of San Diego*, 175 Cal.App.3d 980 (1985); *E.W.A.P., Inc. v. City of Los Angeles*, 56 Cal.App.4th 310 (1997); *City of Vallejo v. Adult Books*, 167 Cal.App.3d 1169 (1985); *City of National City v. Wiener*, 3 Cal.4th 832 (1992); and *People v. Superior Court (Lucero)*, 49 Cal.3d 14 (1989).



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- E. The negative secondary effects from adult-oriented businesses constitutes a harm which the City has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the City's rationale for this Ordinance, exists independent of any comparative analysis between adult-oriented and non-adult-oriented businesses. Additionally, the City's interest in regulating adult-oriented businesses extends to preventing future secondary effects of either current or future adult-oriented businesses that may locate in the City. The City finds that the cases and documentation relied on in this Ordinance are reasonably believed to be relevant to said secondary effects. The City refers to and incorporates by reference, the record of cases and documentation relating to secondary effects associated with adult-oriented businesses which will remain on file with the City Clerk.
- F. Locational criteria are a legitimate and reasonable means of ensuring that adult businesses are conducted in a manner so as to minimize their adverse secondary effects and thereby protect the health, safety, and welfare of the City's residents, protect citizens from increased crime, preserve the quality of life, preserve property values and the character of surrounding neighborhoods and businesses, and deter the spread of urban blight. The locational requirements contained in this Ordinance do not unreasonably restrict the establishment or operation of constitutionally protected adult businesses in Oceanside and a sufficient and reasonable number of alternative locations for adult-oriented businesses are provided by this Ordinance. The City Council takes legislative notice of the United States Supreme Court decision in Renton that requires that adult businesses be provided a reasonable opportunity to open and operate. The City Council also takes legislative notice of the Ninth Circuit's decisions in Topanga Press, Lim and Isbell with respect to availability of sites for adult businesses and finds that under the distance and locational restrictions imposed by this Ordinance there are sufficient sites available for adult-oriented businesses within Oceanside.
- G. Relying on the following, the City finds that adult-oriented businesses in its community may lead to detrimental secondary effects including prostitution and engagement in unlawful sexual activity. The City bases this conclusion on the experiences of Oceanside, as well as that of other California communities, such as La Habra and Arcadia, which the City has a reasonable basis to believe reflect the experiences of its own community, including numerous police reports and affidavits from those communities, and judicial decisions in the public record:
1. Evidence indicates that some dancers, models, entertainers, performers, and other persons who publicly perform specified sexual activities or publicly display specified anatomical areas in adult-oriented businesses (collectively referred to as "performers") have been found to engage in sexual activities with patrons of adult-oriented businesses on the site of the adult-oriented business.
  2. Evidence has demonstrated that performers employed by adult-oriented businesses have been found to offer and provide private shows to patrons who, for a price, are permitted to observe and participate with the performers in live sex shows.
  3. Evidence indicates that performers at adult-oriented businesses have been found to engage in acts of prostitution with patrons of the establishment.
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4. Evidence indicates that fully enclosed booths, individual viewing areas, and other small rooms whose interiors cannot be seen from public areas of the establishment regularly have been found to be used as locations for engaging in unlawful sexual activity.
  5. As a result of the above, and the increase in incidents of HIV, AIDS, and hepatitis B, which are sexually transmitted or blood borne diseases, the City has a substantial interest in adopting regulations that will reduce the possibility for the occurrence of prostitution and unlawful sex acts at adult-oriented businesses in order to protect the health, safety, and well-being of its citizens. The City finds this is relevant to Oceanside and the need to regulate the secondary effects of adult-oriented businesses within the community.
- H. The City Council recognizes and relies on the findings set forth in the 1986 Attorney General's Report on Pornography. A copy of the Attorney General's Report on Pornography is available for public review at the City Clerk's office.
- I. The City Council recognizes the possible harmful effects on children and minors exposed to the effects of adult-oriented businesses and recognizes the need to enact regulations which will minimize and/or eliminate such exposure. The City Council takes legislative notice of the Penal Code provisions authorizing local governments to regulate matter that is harmful to minors (i.e., Penal Code § 313 et seq.). The City Council further takes legislative notice of the cases that recognize that protection of minors from sexually explicit materials is a compelling government interest, including *Crawford v. Lungren*, 96 F.3d 380 (9th Cir. 1996) and *Berry v. City of Santa Barbara*, 40 Cal.App.4th 1075 (1995).
- J. While the City Council is obligated to protect the rights conferred by the United States Constitution to adult-oriented businesses, it does so in a manner that ensures the continued and orderly use and development of property within the City and diminishes, to the greatest extent feasible, those undesirable adverse secondary effects which the above mentioned studies have shown to be associated with the operation of adult-oriented businesses.
- K. Zoning and locational restrictions are a legitimate and reasonable means of helping to reduce the secondary effects from adult-oriented businesses and thereby protect the health, safety, and welfare of Oceanside residents, protect citizens from increased crime, preserve the quality of life, and preserve the character of surrounding neighborhoods and businesses, and deter the spread of urban blight. The zoning and locational requirements contained in this Ordinance do not unreasonably restrict the establishment or operation of constitutionally protected adult-oriented businesses in Oceanside.
- L. The City Council in recognizing that these standards do not preclude reasonable alternative avenues of communication and notes that the proliferation of adult-oriented material on the Internet, satellite television, direct television, CDs, DVDs, all provide alternative avenues of communication. Additionally, the City Council takes note that numerous web-based services, such as [www.sugardvd.com](http://www.sugardvd.com) and [www.wantedlist.com](http://www.wantedlist.com), deliver adult videos and DVDs directly to customers' homes via the mail. The City
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Council recognizes the following review of one of these web-based services: "SugarDVD has made it so easy to rent and view adult movies, you may never leave your house again ... SugarDVD is discreet with quick turnaround times and a massive selection ... SugarDVD offers six rental plans, catering to the casual porn viewer and diehards who can never get enough hard-core fare." (Hustler Magazine, January 2006.) The City Council also considers and relies on published decisions examining the proliferation of communications on the Internet. *Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997) [the principle channel through which many Americans now transmit and receive sexually explicit communication is the Internet]; *Anheuser-Busch v. Schmoke*, 101 F.3d 325 (4th Cir. 1996) [the Fourth Circuit rejected a First Amendment challenge to a Baltimore ordinance restricting alcohol advertisements on billboards acknowledging that the Internet is one available channel of communication]; *U.S. v. Hockings*, 129 F.3d 1069 (9th Cir. 1997); see also *U.S. v. Thomas*, 74 F.3d 701 (6th Cir. 1996) [recognizing the Internet as a medium for transmission of sexually explicit material in the context of obscenity prosecutions]. The Internet brings with it a virtually unlimited additional source of adult-oriented sexual materials available to interested persons in every community with a mere keystroke. An adult-oriented business no longer has to be "actually" physically located in a city to be available in the community.

- M. The City Council recognizes that adult devices (i.e. adult novelties and/or adult related products) such as dildos, fur-lined handcuffs, leather whips, anal beads, and devices that are physical representations of human genital organs, are not speech and enjoy no First Amendment protections. (See *Ford v. State of Texas*, 753 S.W.2d 451, 452-453 (1988); *Sewell v. State of Georgia*, 233 S.E.2d 187, 188-189 (1977); *Chamblee Visuals, LLC v. City of Chamblee*, 506 S.E.2d 113, 115 (1998); and *Red Bluff Drive-In, Inc. v. Vance*, 648 F.2d 1020 (5th Cir. 1981).)
- N. It is not the intent of the City Council in enacting this Ordinance, or any provision thereof, to condone or legitimize the distribution of obscene material, and the City and its Council recognize that state law prohibits the distribution of obscene materials and expect and encourage law enforcement officials to enforce state obscenity statutes against such illegal activities in Oceanside.
- O. The City Council does not intend to regulate in any area preempted by California law including, but not limited to, regulation of obscene speech, nor is it the intent of the City Council to preempt regulations of the state Alcoholic Beverage Control Department ("ABC").
- P. Nothing in this Ordinance is intended to authorize, legalize, or permit the establishment, operation, or maintenance of any business, building, or use which violates any other City ordinance in any respect, or any statute of the State of California regarding public nuisances, unlawful or indecent exposure, sexual conduct, lewdness, obscene or harmful matter, or the exhibition or public display thereof.
- Q. On September 12, 2016, the Planning Commission Council held a duly noticed public hearing during which it allowed for public input and testimony concerning this proposed Ordinance. At the conclusion of the public hearing the Planning Commission



recommended this Ordinance to the City Council for approval.

- R. On September 21, 2016, the City Council held a duly noticed public hearing during which it received input and testimony and considered the adoption of this Ordinance.

### **3601.2 Findings – Tattoo Establishments**

- A. The City Council has a reasonable basis to believe that there are land use compatibility issues relating the siting of tattoo facilities and their customers when located adjacent to residential uses. Through its zoning code provisions, the City of Oceanside seeks to maintain property values, protect tax revenues, provide neighborhood social and economic stability, attract business and industry, and encourage conditions that make the City of Oceanside a pleasant place to live and work.
- B. The City Council has a reasonable basis to believe that it is important from a land use compatibility perspective to buffer tattoo facilities from sensitive land uses such as residential zones, schools, parks, and day care facilities while allowing a wide range of potential alternative sites and, as well, to have a buffer between regulated uses to prevent their concentration within one part of the City. These buffer provisions will serve to: (1) protect the quality of life and neighborhoods in the City; (2) protect the City's retail and commercial trade; (3) minimize the potential for nuisances related to the operation of tattoo establishments; (4) protect the well-being, tranquility and privacy of the home with the residential buffer; and (5) protect the peace, welfare, and privacy of persons who own, operate and/or patronize tattoo establishments.
- C. The City Council also desires to avoid the clustering of tattoo establishments so that the City does not experience a significant change in the character of the community. Tattoo establishments have the potential to have a detrimental impact individually or when located in close proximity to each other, can create a "skid row" atmosphere, and have a deleterious effect upon adjacent areas. For example, Oceanside's downtown area has been the subject of substantial redevelopment and the addition of new businesses that are attractive to families and tourists. It is important that the character of the downtown area remain family and tourist-oriented. The buffer restrictions applicable to tattoo establishments serves to preserve this interest. Furthermore, the area of south Oceanside has seen a revitalization in the past several years and it is important that this residential zoned areas be preserved, and that adjacent neighborhood serving commercial and visitor serving establishments be preserved and maintained. The City recognizes that the tattoo establishments serve as a specialty destination service and accordingly, is not compatible to place such facilities within 500 feet of a residential zone because it would contribute to neighborhood blight and is not consistent with and would not serve to protect the commercial zones that are designed to offer the neighborhood needed commercial services.
- D. The City's certified Local Coastal Program ("LCP") provides that, "[i]n granting approvals for new development within the Coastal Zone, the City shall give priority to visitor serving commercial recreation facilities over private residential, general industrial or general commercial uses". According to the City's Land Use Plan (LUP), a component of the LCP, the visitor serving commercial land use category "encompasses



specialized commercial uses which are directly dependent supportive or related to the coast. Such uses provide services or goods for coastal industries or recreationalists, and include boat sales, supplies, and services; diving, commercial fishing, and sport-fishing establishments; restaurants, snack bars, and convenience markets; gift, sundries, and novelty shops; tourist-cottages, campgrounds, and recreational vehicle parks; and recreational equipment rentals (such as bicycles, roller skates, surfboards)." A tattoo establishment is not a visitor serving use. This Ordinance advances the City's interest in implementing its LCP.

- E. The City has a reasonable basis to believe, based on its own experience, along with those of other communities including Vista, Signal Hill, Santa Clara, Torrance, Hermosa Beach, and Ventura as to the secondary effects of tattoo establishments in its community may lead to detrimental effects including noise, light, traffic, and parking compatibility issues with neighboring residential zones. The City is aware of other communities experience and based on its own experience is concerned for the potential for criminal activity from tattoo parlors and their potential to attract the criminal element, especially gangs.
- F. Specifically, the City takes note of the Oceanside's Police Crime Analysis report dated July 27, 2016 that documents increased criminal activity from tattoo facilities in Oceanside. Such criminal activity is not compatible with adjacent residential uses. The City takes note that within Oceanside, since January 2013, Oceanside PD has received 34 Calls for Police Service (CFS) at Oceanside's 3 tattoo parlors; About Face, Frontline and Body Temple. The About Face Tattoo shop is located downtown at 423 S. Coast Hwy and has generated the most CFS, with 17 calls between 2013 and July 2016. In addition, since January 2005, Oceanside PD has received 73 CFS at About Face Tattoo shop which accounts for 92% more CFS than the neighboring barbershop; and 564% more CFS than the neighboring day spa. CFS at all 3 tattoo shops include calls related to fights, public disturbances, property crimes, calls for violent activity; none of which are compatible with adjacent schools, daycares or residential zones. In one case, a known drug user was displaying a weapon which required police officers to deploy a taser in order to arrest the suspect.
- G. The City Council also takes note of the August 2014 investigation of a felony battery at Power Tattoo located in the neighboring city of Vista where an individual was assaulted by 20-30 people at a tattoo facility event. In addition, the City of Santa Clara Police Department conducted a study on secondary effects of crime from regulated businesses, which include tattoo shops, and concluded that these shops can be a magnet for organized crime, gang activity, loitering, and increased police calls. And, the City also takes note that in May 2011, the Los Angeles Police Department and federal agents with the Bureau of Alcohol, Tobacco, Firearms and Explosives, arrested nineteen alleged members of the gang Venice 13 at a tattoo parlor called 'Villainz Ink' that attracted a number of suspected criminal street gang members and associates who, in the course of a four-month investigation, sold illegal narcotics, committed numerous firearms violations, and sold a firearm to an ATF undercover agent.
- H. The City Council has a reasonable basis to be concerned over the criminal activity associated at tattoo facilities affiliated with the outlaw gang known as the Hells Angels

based on the City's own experience and those of neighboring jurisdictions. The Hells Angels are involved in the production, transportation, and distribution of marijuana and methamphetamine. Additionally, the Hells Angels are involved in the transportation and distribution of cocaine, hashish, heroin, LSD (lysergic-acid diethylamide), ecstasy, PCP (phencyclidine), and diverted pharmaceuticals. The Hells Angels are involved in other criminal activity including assault, extortion, homicide, money laundering, and motorcycle theft." <https://www.justice.gov/criminal-ocgs/gallery/outlaw-motorcycle-gangs-omgs>. Moreover, according to a 2015 report by the National Gang Intelligence Center ("FBI Report"), the most common criminal activities committed by outlaw motorcycle gangs over the past two years have included weapons possession, threats and intimidation, assault, and drug trafficking. The FBI Report documents a March 2014 incident in which two Hells Angels members sought medical treatment for stab wounds sustained during an altercation with rival gang members on a freeway near Temecula, California. The injured Hells Angels members were not willing to cooperate with law enforcement or say who was responsible for their injuries. According to the report, outlaw motorcycle gang members are increasingly involved in self-owned businesses (in particular tattoo parlors) and that some of these businesses are used to facilitate criminal activity. <https://www.fbi.gov/image-repository/pub3.jpg/view>.

- I. Zoning and locational regulations for tattoo establishments are necessary to prevent deterioration and/or degradation of the vitality of the community before the problem exists, rather than waiting for problems to be created. Buffer requirements are a legitimate and reasonable means of ensuring against the negative secondary effects of tattoo facilities and to balance the various land uses in order to minimize and control problems associated with such businesses and thereby protect the health, safety and welfare of Oceanside residents, preserve the quality of life, and preserve the character of surrounding neighborhoods. The buffer requirements of the City do not unreasonably restrict the establishment or operation of constitutionally protected adult businesses in Oceanside. The City Council recognizes that these buffer requirements do not preclude reasonable alternative avenues of communication and that there are several hundred potentially available sites for tattoo establishments. And, Oceanside is already home to three (3) existing tattoo establishments, a fourth is undergoing tenant improvements, and there is a wide menu of potential sites for other prospective users to select from in this seaside community.
- J. The City is concerned as to the health and well-being of adolescents within the community and is aware of prior studies conducted which have shown an association between adolescents who obtain tattoos and their involvement in high-risk behaviors that are detrimental to their health and welfare. The City Council has a reasonable basis to conclude that businesses offering tattoo services may result in negative impacts on sensitive uses, such as residential and educational institutions serving persons under 21 years of age. The City Council reasonably believes that in its community, a buffer from schools decreases the accessibility of such shops to high school aged persons. Similarly, in the south Oceanside area, minors are located in these adjacent residential zones and this buffer will serve to decrease the accessibility to minors as well. The prior study titled "Tattooing and High-Risk Behavior in Adolescents," shows that this type of use (tattoo establishments) demonstrates a link between the tattooing of high school aged

- persons and a propensity to engage in other high-risk behaviors including gang affiliation, substance abuse, and violence. The Council takes legislative note of *Sable Commission of California, Inc. v. FCC* (1989) 492 U.S. 115 wherein the Court found that there is a compelling interest in protecting the physical and psychological well-being of minors.
- K. The City of Oceanside has a reasonable basis to believe that there are serious health issues at play in the provision of tattoos. The City is aware that the practice of providing tattoos, through the use of implements which pierce the skin, create an increased risk of the transfer of blood borne diseases. Tattoo inks, dyes, and pigments have not been approved by the FDA and the health consequences of using these products are unknown. This applies to all tattoo pigments, including those used for ultraviolet (UV) and glow-in-the dark tattoos. Many pigments used in tattoo inks are industrial-grade colors suitable for printers' ink or automobile paint. And, the use of henna in temporary tattoos has not been approved by FDA. Henna is currently approved only for use as a hair dye.
- L. Tattooing carries the risk of infection and transmission of disease if unsanitary conditions are present or unsterile equipment is used. The Centers for Disease Control and Prevention ("CDC") and the United States Food and Drug Administration ("FDA") confirm the significant health risks of tattooing. CDC, *Body Art: Tattoos and Piercings* (Jan. 21, 2008) (noting risks of infection, tuberculosis, Hepatitis B and C, and HIV). FDA, *Tattoos and Permanent Makeup* (Nov. 29, 2000) (discussing the risks of infection, removal problems, potential allergic reactions, and MRI complications). Research has also shown that some pigment migrates from the tattoo site to the body's lymph nodes. Lymph nodes are part of the lymphatic system, a collection of fluid-carrying vessels in the body that filter out disease-causing organisms. Whether the migration of tattoo ink has health consequences or not is still unknown. The National Center for Toxicological Research (NCTR) is doing further research to answer this and other questions about the safety of tattoo inks.
- M. The City Council is mindful of legal principles relating to regulation of tattoo establishments, and the City Council does not intend to suppress or infringe upon any expressive activities protected by the First Amendment of the United States and California Constitutions but instead desires to enact reasonable time, place, and manner regulations that address the adverse effects of tattoo establishments. The City Council has considered the following decisions: *Anderson v. Hermosa Beach* (9th Cir. 2010) 621 F.3d 1051; *Buehrle v. Key West* (11th Cir. 2015) 813 F.3d 973; *Ward v. Rock Against Racism* (1989) 491 U.S. 78; and *City of Renton v. Playtime Theaters* (1986) 475 U.S. 41. As well, the City Council is mindful of the district court decision rendered this past June 2016 by USDC Stephen Wilson in the federal lower court matter of *Tiffany Garcia v. City of Torrance*.

### **3602 Regulated Uses**

The uses subject to compliance with this Article are as follows:

- A. Adult Bookstores/ Novelty Stores/ Video Stores
- B. Adult Cabaret
- C. Adult Entertainment Business
- D. Adult Motel
- E. Adult Motion Picture Theaters
- F. Adult Theaters
- G. Arcades and game Centers
- H. Bars and Cocktail Lounges
- I. Bath Houses
- J. Body Piercing Establishments
- K. Dance Establishments
- L. Escort Services
- M. Figure Studios
- N. Liquor Stores
- O. Massage Establishments
- P. ~~Medical~~ Cannabis Facility
- Q. Payday Loans/ Paycheck Advance Establishments
- R. Peep-Show Establishments
- S. Pool Rooms, Billiard Rooms, and Shooting Galleries
- T. Tattooing Establishments
- U. Tobacco and Drug Paraphernalia Establishments

Regulated Uses that have First Amendment protections shall require an Administrative Regulated Use Permit (ARUP) as called out in Section 3606. The balance of the Regulated Uses listed in this Section, shall require a use permit issued in accord with Article 41, however, the City Council shall have final authority to approve or disapprove the use permit.

### **3603 Definitions**

The definitions appearing in Article 3 and the land use classifications appearing in Article 4 and 4a of this ordinance shall apply to any terms used in Article 36. The term "~~medical~~ cannabis facility" shall have the same meaning in Oceanside City Code section 7.116 ~~7-120.120~~ and shall include a ~~medical~~ cannabis cultivation facility, a ~~medical~~ cannabis nursery, a medical cannabis manufacturer and/or distributor, a medical cannabis delivery service (M-Type 9 Non-storefront retailer) but shall not include the term medical cannabis testing laboratory.

### **3604 Locational Requirements**

- A. It shall be unlawful for any Regulated Use to be located closer than one thousand (1,000) feet to any other Regulated Use, except as noted herein. This distance shall be measured in a straight line, without regard to intervening structures from the closest point on the exterior structure walls of each business.



The separation requirement in this section 3604(A) shall not be applied to prevent a medical cannabis manufacturer from engaging in medical cannabis distribution at the same premises provided a state license and Local License is issued to allow both activities from the same premises or to require separation between ~~medical~~ cannabis cultivation facilities, ~~medical~~ cannabis nurseries, or ~~medical~~ cannabis cultivation facilities and ~~medical~~ cannabis nurseries located on the same or separate lots.

- B. It shall be unlawful for any Regulated Use listed as Items A, B, C, D, E, F, M, P or R of Section 3602 to be located closer than one thousand (1,000) feet from any residential district or any parcel of land which contains any one or more of the following specific land uses:

1. Public or Private School;
2. Park, playground or public beach;
3. Church or other similar religious facility, and
4. Child care or pre-school facility.

(Items 1-4 shall collectively be referred to as "the Sensitive Land Uses")

It shall be unlawful for any Regulated Use not enumerated in this Section B to be located any closer than five hundred (500) feet from any residential district or any Sensitive Land Uses.

- C. The Regulated Use enumerated as T (Tattooing Establishment) in Section 3602 above, shall not be located closer than five hundred (500) feet to any other tattooing establishment, or be located within five hundred (500) feet of any residential district or to any of the Sensitive Land Uses enumerated in Section 3604.B. 1, 2, or 4. No other locational requirements shall apply to tattooing establishments.
- D. The distance between any Regulated Use and any residential district shall be measured in a straight line, without regard to intervening structures, from the closest point on the exterior structure wall of the use to the closest district line of any residential district. The distance between any Regulated Use and any Sensitive Land Uses enumerated in Subdivisions (1) or (2) of Section 3604.B shall be measured in a straight line, without regard to intervening structures, from the closest point of the exterior structure wall of the regulated use to the closest point of the parcel line of such enumerated land use. The distance between any Regulated Use and any Sensitive Land Uses enumerated in Subdivisions (3) or (4) of Section 3604.B shall be measured in a straight line, without regard to intervening structures, from the closest point on the exterior structure wall of the Regulated Use to the closest point on the exterior structure wall of such enumerated land use.

### **3605 Waiver of Locational Requirements**

Any person proposing a permitted Regulated Use as listed in Section 3602 may apply for a waiver of the locational requirements provided in Section 3604, except that no waiver shall be available where the proposed Regulated Use is subject to Section 3606 or is otherwise afforded First Amendment Protections. Such waiver application shall be filed and processed

concurrently with the conditional use permit entitlement request, if applicable, for the proposed use. The City Planner shall set the use permit application, and/or the waiver application, for public hearing before the Planning Commission or Community Development Commission as the case may be, provided that at least ten (10) days written notice of such hearing is given to owners and occupants of all property lying within all applicable distances set forth in the locational requirements.

The Planning Commission shall make recommendations to the City Council for the approval or disapproval of such waiver. No waiver shall be approved unless all of the following findings are made regarding the proposed use:

1. It will not be contrary to the public interest.
2. It will not be contrary to the spirit or intent of this Article.
3. It will not impair nearby property or the integrity of the underlying district.
4. It will not encourage the development of an adult entertainment area or otherwise promote community blight.
5. It will not negatively impact any governmental programs of redevelopment, revitalization, or neighborhood preservation.

### **3606 First Amendment Application – Administrative Regulated Use Permit**

A. Approval of a Regulated Use protected by the First Amendment of the United States Constitution or Article 1, Section 2 of the California Constitution shall require approval of an Administrative Regulated Use Permit (ARUP) by the City Planner and shall not require approval of a Conditional Use Permit (CUP). The ARUP shall be approved by the City Planner provided:

1. The proposed use is allowed by Articles 11, 12 and/or 13 of the Zoning Ordinance;
2. The proposed use meets the locational requirements in Section 3604; and
3. The proposed use meets the operational requirements, if any, set forth for such proposed use in the Oceanside City Code or any other provision of law. No waiver of the locational requirements shall be permitted.

B. The City Planner shall determine within ten (10) business days whether the ARUP application is complete. The City Planner's decision to approve or deny the ARUP application shall be made within sixty (60) days after the application is complete. The City Planner's decision shall be deemed final for purposes of this section upon the date it is mailed by first-class mail, postage prepaid, including a copy of the affidavit or certificate of mailing, to the applicant and all adjacent property owners within five hundred (500) feet of the proposed Regulated Use, as measured in accordance with Section 3604.D. The final City Planner's decision shall not be subject to any administrative appeal. Judicial review of the City Planner's decision shall be in accordance with the procedures set forth in the California Code of Civil Procedure section 1094.8.

### **3607 Applicability of Other Regulations**

The provisions of this article are not intended to provide exclusive regulation of the regulated uses. Such uses must comply with any and all applicable regulations imposed in other articles of this zoning ordinance, other city ordinances, and state and federal law.

**3608 Severance Clause**

If any section, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, or phrases of this ordinance, or the ordinance in its entirety, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of such section, sentence, clause or phrase.