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EXHIBIT “A”

The following definitions in Chapter 16.08 shall be renumbered as follows:

Electrical generating stations shall be moved to Section 16.08.207

Electrical substation shall be moved to Section 16.08.208

The following definitions shall be added to Chapter 16.08 (additions are in underlined red text and deletions are shown with ~~red and strikethrough~~):

16.08.187 "Drug Paraphernalia" has the meaning set forth in California Health & Safety Code Section 11014.5, as that Section may be amended from time to time.

16.08.209 "Electronic smoking product and/or device" (also known as "electronic cigarette," "e-cigarette," "electronic nicotine delivery system," "e-cigar," "e-cigarillo," "e-pipe," "e-hookah," "hookah pen," "vape pen" etc.) shall mean a battery operated device used to inhale a vaporized liquid solution that frequently, though not always, contains nicotine.

16.08.227 "Financial Institution" consists of an establishment, facility or institution, such as a bank and credit union, involved in financial transactions, including the custody, deposit, investment, loan, exchange, or issuance of money. A financial institution is also registered with and regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission

16.08.334 "Hydroponic store" shall mean any business whose primary sales consist of product and apparatus used for growing plants without soil or in a non-soil medium such as water or other nutrient rich solutions; with or without an inert medium (i.e. gravel, perlite, etc.), and/or controlled conditions of light, temperature, and humidity. For the purpose of this Title, hydroponic stores also include businesses whose sales include grow lights (i.e. plant lights), artificial light sources, and other supplies typically used for hydroponics as the primary use. Hydroponics stores are also synonymous with aeroponics, aquaculture, fogponics, etc.

16.08.537 "Money service business" consists of a business whose primary function is to provide cash to patrons in exchange for personal and business checks and money orders and to perform similar financial transactions for a service fee or commission. This term also applies to a business that offers a short-term loan in which the borrower's car title, or other personal asset, is used as collateral. Money service businesses include, but are not limited to, payday loan, check cashing and car title loan businesses. "Money service business" does not include a state or federally chartered bank, savings association, credit union or industrial loan company. This term also does not apply to a retail seller engaged primarily in the business of selling consumer goods, including consumables, to retail buyers that cash checks or issues money orders for a minimum flat fee not exceeding two dollars (\$2.00) per transaction as a service to its customer that is incidental to its main purpose or business.

16.08.642 "Pawnshop" any business whose primary operations include lending money on the security of pledged goods left in pawn, or in the business of purchasing tangible personal property to be left in pawn on the condition that it may be redeemed or repurchased by the seller for a fixed price within a fixed period of time. This definition shall also include businesses that purchase tangible personal property such as precious metals with the intent to resell items

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in bulk and/or deconstructed, establishments known variously as gold buying, gold exchange, etc., as determined by Planning Department.

16.08.763 "Smoking lounge" a business establishment that is dedicated, in whole or in part, to the smoking of tobacco or other legal substances and vaporizing, including, but not limited to, establishments known variously as cigar lounges, hookah cafes, hookah lounges, tobacco clubs, tobacco bars, vape, vapor cafes, vapor lounges, etc. (collectively referred to as "smoking lounge(s)).

16.08.764 "Smoke shop" shall mean an establishment that either devotes more than 10 percent of its total floor area to tobacco products, including paraphernalia, or devotes more than a 2 foot depth by 4 foot length section of a single shelf space for display for sale of tobacco paraphernalia.

16.08.843 "Tobacco paraphernalia" shall mean any paraphernalia, equipment, device, or instrument that is primarily designed or manufactured for the smoking, chewing, absorbing, dissolving, inhaling, snorting, sniffing, or ingesting by any other means into the body of tobacco, tobacco products, or other controlled substances as defined in California Health and Safety Code Section 11054 et seq. Items or devices classified as tobacco paraphernalia include but are not limited to the following: pipes, punctured metal bowls, bongs, water bongs, electric pipes, e-cigarettes, e-cigarette juice, buzz bombs, vaporizers, hookahs, and devices for holding burning material. Lighters and matches shall be excluded from the definition of tobacco paraphernalia.

16.08.844 "Tobacco product" product shall mean any product in leaf, flake, plug, liquid, or any other form, containing nicotine derived from the tobacco plant, or otherwise derived, which is intended to enable human consumption of the tobacco or nicotine in the product, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means. For the purposes of this chapter, the term "tobacco product" excludes any product that has been specifically approved by the United States Food and Drug Administration (FDA) for sale as a tobacco/smoking cessation product or for other medical purposes, where such product is marketed and sold solely for such an approved purpose.

Section 16.16.074 shall be amended as follows (additions are in underlined red text and deletions are shown with ~~red and strikethrough~~):

16.16.074 – Commercial Community Enhancement Ordinance ~~Internet sweepstakes café prohibited.~~

The following uses are prohibited because it has been determined that such uses contribute to the decline of the health, safety and welfare of City residents and create blight, deter quality businesses from operating or otherwise create a sense of economic decline in commercial neighborhoods. This Ordinance is applies City-wide, including areas within the Main Street and Freeway Corridor Specific Plan.

The uses listed below are not a comprehensive list of all prohibited uses. Other uses not listed as either permitted and conditional permitted or within this prohibited use section, may be determined permitted or prohibited by the Director Development Services or designee based upon the similarity of other uses. Any use which violates local, state or federal laws is also prohibited.

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(a) Prohibited uses

- (1) Gold exchange businesses (unless accessory to a jewelry store).
- (2) Hydroponic shops (unless accessory to a home improvement store).
- (3) Money service businesses.
- (4) Pawn shops.
- (5) Smoking lounges.
- (6) Smoke shops.
- (7) An internet sweepstakes café, as defined in Section 16.08.347, is prohibited within the City of Hesperia.

C. Tobacco product and paraphernalia sales requirements

- (1) No license may be issued to authorize retail tobacco product and paraphernalia sales at any location that is not licensed under state law to sell alcoholic beverages for consumption off the premises (e.g. an "off-sale" license issued by the California Department of Alcoholic Beverage Control).
- (2) The display area of tobacco products, including paraphernalia, shall not exceed 10 percent of the total floor area of a business establishment.
- (3) The display area devoted to tobacco paraphernalia shall not exceed a 2 foot in depth by 4 foot in length section of a single shelf space.
- (4) The display of tobacco products and paraphernalia shall be located behind a service counter in a manner that prohibits self-service by the customer.
- (5) It shall be a violation of this municipal code for any licensee or any of the licensee's agents or employees to violate any local, state, or federal law regulating controlled substances or Drug Paraphernalia, such as, for example, California Health and Safety Code section 11364.7.
- (6) No smoking or vaping shall be permitted on the premises at any time.
- (7) The sale of tobacco products and paraphernalia to a minor is prohibited.
- (8) No sales may be solicited or conducted on the premises by minors.
- (9) No distribution of free or low-cost tobacco, tobacco products or tobacco paraphernalia, as well as coupons for said items, shall be permitted.

Editor's note shall be deleted from Section 16.16.074 as follows:

- ~~• Editor's note — It should be noted that Ord. No. 2013-04 and Ord. No. 2013-05 both provide,~~

~~"A. The City Council further finds as follows: xin ql~~

~~(1) The City of Hesperia is presently developing regulations for internet sweepstakes cafés to establish reasonable, prudent and thorough regulations concerning the location and design of these facilities in the community that are least likely to injure the general welfare of persons and property in the City of Hesperia. xin qa~~

~~(2) Without such internet sweepstakes café regulations, the establishment of any internet sweepstakes cafés, based on current regulations, would frustrate and contradict the ultimate goal of such regulations. Pending completion of the internet sweepstakes café regulations, it is foreseeable that additional internet sweepstakes cafés will be established which would contradict such goals and objectives of such regulations; and, xin ql~~

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~~(3) Pending approval of the internet sweepstakes café regulations, the establishment of any additional internet sweepstakes cafés will result in an immediate threat to the public health, safety or welfare of persons and properties within the City of Hesperia.~~

~~B. "Computerized sweepstakes device" shall mean any computer, machine, game or apparatus which, upon insertion of a coin, token, access number, magnetic card or similar object, or upon payment of anything of value, may be operated by the public generally for use in a contest of skill, entertainment, amusement or chance whether or not registering a score, and which provides the user with a chance to win anything of value or any cash payout or anything that could be redeemed, directly or indirectly, for any cash payout and which is not otherwise permitted as gambling, a lottery or as a gaming device under state law.~~

~~C. "Internet sweepstakes café" shall mean any premises upon which a computerized sweepstakes device is located for the use or entertainment of the public, whether or not such premises has other business purposes of any nature whatsoever.~~

~~D. Pending the completion and implementation of the internet sweepstakes café regulations for the Zoning Ordinance, the establishment of any new internet sweepstakes cafés is hereby prohibited and no application for any applicable permits shall be accepted, acted upon or approved.~~

~~E. If any section, subsection, sentence, clause, phrase or any portion of this section is for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction or pre-emptive legislation, such decision or legislation shall not affect the validity of the remaining portions of this section. The city council of the City of Hesperia hereby declares that it would have adopted this section and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions be declared invalid or unconstitutional or preempted by legislation.~~

~~F. This section is enacted under the authority of California Government Code Section 65858(b) and shall be of no further force and effect as of April 2, 2015, unless extended pursuant to the provisions of California Government Code Section 65858.~~

~~G. This section is hereby declared to be an urgency measure pursuant to the terms of California Government Code Section 65858 and 36937(b) and this section shall take effect immediately upon its adoption.~~

~~H. The city clerk shall certify to the adoption of this section and shall cause the same to be posted in three public places within the City of Hesperia pursuant to the provisions of Resolution 93-78.~~

The following shall be added to Chapter 5.20 - Massage Facilities And Massage Technicians (additions are in underlined red text and deletions are shown with ~~red and strikethrough~~):

Section 5.20.028 Distance Limitation Requirements

No massage establishment may be located within three thousand (3,000) feet of another massage establishment or within two thousand (2000) feet of an elementary, secondary or high school.

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5.20.020 - License application.

A. Any person, firm, corporation or partnership desiring to obtain a permit to operate a massage facility establishment shall file a complete application with all required documentation under penalty of perjury of the laws of the state.

B. Each application for a massage facility license ~~or a massage technician license~~, shall be accompanied by a nonrefundable investigative fee, as specified in Section 5.04.070.

C. An applicant for a license under this chapter shall submit the following information:

1. The full name, driver's license number and aliases, and any aliases heretofore or currently used, for each individual, partner, corporate officer, director or stockholder of applicant;

2. All previous residence addresses for the five years immediately preceding the application for each individual, partner, corporate officer, director or stockholder of applicant;

3. The height, weight, eye color, and hair color of each individual, partner, corporate officer, director or stockholder of the applicant;

4. The business, occupation or employment history of each individual, partner, corporate officer, director or stockholder of each applicant for five years immediately preceding the date of the application;

5. The street address where the licensed activities will be conducted. ~~In the case of a massage technician application, the employer must be a licensed massage facility or licensed massage facilities;~~

6. Disclosure of any prior revocation or suspension of any prior massage facility business license at any location, the reason therefor, and a statement setting forth all massage business activities subsequent to such suspension or revocation. This duty of disclosure shall apply to each individual, partner, corporate officer, director or stockholder of applicant;

7. Disclosure of whether any individual, partner, corporate officer, director, stockholder or other massage personnel of applicant have ever been convicted of an offense involving conduct which requires registration under California Penal Code, Section 290, or of conduct which is a violation of the provisions of California Penal Code, Sections 266i, 315, 316, 318 or 647(b), or for any felony involving the sale of a controlled substance pursuant to Sections 11054 through 11058 of the California Health and Safety Code, or who have been convicted in any other state of an offense which, if committed or attempted in California, would have been punishable as one or more of the laws enumerated in this subsection;

8. ~~Written proof or identification which is acceptable to the city that the applicant for a massage technician license is at least eighteen (18) years of age;~~

9. ~~Two current photographs at least, two inches by two inches in size, for each applicant for a massage technician license;~~

10. Every person performing massage services for compensation shall obtain and maintain a valid state massage certification from the State Massage Therapy Council. ~~In the case of a massage technician application or massage practitioner and massage therapist a written statement from the county health officer stating that the applicant has, within thirty (30) days immediately prior thereto, been examined by a duly licensed physician and found to be free of infectious or communicable disease. Such examination shall include those laboratory tests reasonably related to the license sought and published by the health officer and performed by a laboratory approved or licensed by the state of California, Department of Health Services. Applicants for massage technician licenses shall submit a written report from their private physician and the laboratory reports to the health officer; except that the health officer may require payment of a fee consistent with the fee schedule for the department of public health to cover the cost of the examination and laboratory services if the applicant elects to have the examination and testing conducted by the health officer. An additional fee consistent with the fee schedule for the department of public health shall be required if a chest x-ray is deemed necessary and is conducted by the health officer. Each massage technician shall biannually submit a certificate from a medical doctor designating that the massage technician has, within~~

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~~thirty (30) days immediately thereto, been examined and found to be free of communicable disease.~~

~~11. In the case of a massage technician application, proof of passage of the independently prepared and administered national examination through the National Certification Board for Therapeutic Massage and Bodywork (NCTMB).~~

~~12. In the case of a massage technician application, a diploma or certificate of graduation from five hundred (500) hours of cumulative education in the theory, ethics, practice, profession and work of massage, and setting forth the beginning and ending dates of the course from a recognized school of massage as defined in this chapter.~~

~~a. An existing school or institution of learning outside of the state of California may be used if submitted with certified transcripts of the applicant's school records showing date of enrollment, hours of instruction and graduation from a course having at least the minimum requirements prescribed by Article 3 of subchapter 3 of Chapter 21 of Division 1 of Title 5 of the California Code of Regulations, wherein the theory, method, profession and work of massage is taught, and a copy of the school's approval by the state board of education.~~

~~13. A massage practitioner or massage therapist certified by the California Massage Therapy Council (CAMTC) is not subject to undergo the criminal background checks and education requirements of this chapter. A massage facility where the owner is the only person employed by that business and certified by the CAMTC is not required to undergo criminal background checks. Any person performing massage, as defined in this chapter, and not certified by the CAMTC is subject to all the requirements in this chapter.~~

A massage practitioner or massage therapist shall maintain on the premises at all times evidence of their certification for review by local municipal officials.

b. A massage practitioner or massage therapist shall file a copy of the certificate by the CAMTC with the city.

c. A massage practitioner or massage therapist shall maintain their certification while performing massage, as defined in this chapter, in the city.

d. The city shall revoke a license or permit issued to a massage facility if violations of California Business and Professions Code Sections 4600 thru 4620 or the local ordinance, occur on the business premises.

e. The city shall deny or restrict a business license if a massage facility, massage practitioner or massage therapist has provided materially false information.

f. An owner or operator of a massage facility certified by the CAMTC shall be responsible for the conduct of all employees or independent contractors working on the premises of the business.

g. An owner or operator of a massage facility certified by the CAMTC shall notify the city of any rename, management change, or exchange the business to another person occurs.

14. All documents, including a site plan and floor plan, demonstrating compliance with Section 5.04.050, Required Facilities, shall be submitted with any application for a license under this section.

D. The city shall promptly reject as incomplete any application which does not meet all the requirements of this section, and upon written request of the applicant, shall notify the applicant in writing, by first class mail, postage prepaid, to the address supplied to the city by the applicant, of the deficiencies in the application.

E. No application for renewal of a license shall be accepted earlier than ninety (90) days prior to expiration of the license.

5.20.050 - License procedures.

A. Upon payment of all fees and successful verifications of the qualifications of the applicant, a ~~massage technician~~, massage practitioner, and massage therapist license shall be issued to the applicant by the city, except as provided in this chapter. A ~~massage technician~~,

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massage practitioner, massage therapist or massage facility license shall be denied if the applicant has not met the requirements of this chapter and applicable laws. A ~~massage technician~~, massage practitioner, massage therapist, or massage facility license shall also be denied if the police reports that the applicant, if the application is for a ~~massage technician license~~, or the applicant, massage personnel, owners, operators, partners (if a partnership), or officers, directors or persons holding more than five percent of the stock, if a corporation, or any of them, of the massage business in the case of application for a massage facility license, has, within ten years immediately preceding the date of the application, been convicted of any of the offenses set forth in this chapter or has, within the same time frame, been convicted of any offense in another state which, if committed, or attempted in this state, would have been punishable as one or more of the offenses enumerated in this chapter, or is required to register under Section 290 of the Penal Code, or that a massage facility or ~~massage technician~~ license or similar license or permit held by the applicant or any of the persons referenced in this chapter, has been revoked or suspended for cause within five years prior to the application, or that there were inaccurate statements or misrepresentations or an omission of a material fact in the application or in any document or statement submitted in support thereof. The city shall give notice of denial of a license application by first class mail, return receipt requested, to the applicant at the applicant's address listed in the application.

B. Any person denied a license pursuant to this chapter may appeal the denial to the city council in writing, under the provisions specified in Section 5.04.200.

C. All massage facility licenses issued under this chapter are nontransferable, both as to location and as to the person holding a license. All massage technician licenses issued under this chapter are nontransferable as to the person holding the license.

D. Any massage technician or massage establishment with a valid business license issued prior to the effective date of this chapter may continue to operate under the previous regulations indefinitely, provided that:

1. Their license remains continuously in effect with fees paid;
2. That the licensee is not convicted of a crime of moral turpitude, including the offences listed in Section 5.20.030(C)(7).

The following definitions in Section 1.04.050 shall be amendment as follows:

"Massage technician" means and includes any person licensed by the City prior to July 1, 2017 who gives, performs or administers to another person a massage as defined in this section as a matter of business and for consideration whether or not actually received. If the license for a massage technician lapses as described in Section 5.20.050(D), then the massage professional shall become CAMTC certified to resume performing massage services in the City.

~~National certification. The term "national certification" means an independently prepared and administered national certification exam, which has been recognized by objective standards to fairly evaluate professional levels of skill, safety and competence, as determined by the National Commission for Certifying Agencies (NCCA).~~