H-1

OFFICE OF THE CITY ATTORNEY

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Tiffani L. Shin
Linda T. Vu
Amy R. Webber
Theodore B. Zinger

November 19, 2013

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Recommendation to receive documentation into the record, conclude the public hearing and take the following actions relating to the amendment of various provisions of the Long Beach Municipal Code:

1. Declare the following ordinances read the first time and laid over to the next regular meeting of the City Council for final reading:

   A. Amending Sections 5.38 and 21.15.1100 relating to the regulation of fortunetelling;

   B. Amending Section 5.64.010C and 21.15.2008, and deleting Section 21.15.2401 relating to the regulation of secondhand dealers and "cash for gold" businesses; and

   C. Amending Section 21.51.235 relating to the regulation of cottage food operations.

2. Adopt the attached resolution directing the Director of Development Services to submit the ordinance amendments to the California Coastal Commission for a finding of conformance with the Local Costal Plan; and

3. Accept Categorical Exemption CE-13-099. (Citywide)

DISCUSSION

Amendments A and C, above, to the Long Beach Municipal Code (LBMC) Titles 5 (Business License) and 21 (Zoning) are required to be made due to changes in state law and threatened litigation. Amendment B is made at the direction of the City Council.

Regulations governing fortunetelling appear in LBMC Sections 5.38 and 21.15.1100. Correspondence was received by City Attorney's Office in July 2013 threatening litigation related to language that was outdated, unclear and constitutionally offensive. The proposed amendment removes the outdated and offensive language, makes the definition of "fortunetelling" in the Business License section consistent with that in the Zoning section; removes the requirement of a $250,000 bond and background check, but maintains the requirement of a City business license. It further removes the requirement of a Conditional Use Permit, and allows fortunetelling in commercial zones in the same manner as personal services.

Regulations governing secondhand dealers are contained in LBMC Sections 5.64.010C and 21.115.2401. The current definition of secondhand dealer does not capture "cash for gold" businesses. The proposed amendments to LBMC

residential appearance of the premises could not be altered and the property owner would not be allowed to create a separate entrance to the dwelling for the purpose of accommodating the cottage food operation use.

PUBLIC HEARING NOTICE

Public Hearing notices were published in the Long Beach Press-Telegram on November 1, 2013, in accordance with the provisions of the Zoning Ordinance.

ENVIRONMENTAL REVIEW

In accordance with the Guidelines for the implementation of the California Environmental Quality Act, Categorical Exemption (CE-13-099) was issued for the proposed project. (Attachment 1.) In addition, adoption of the attached resolution refers the City-wide amendments affecting the Coastal Zone to the California Coastal Commission, as required by state law

SUGGESTED ACTION:

Approve recommendation.

Very truly yours,

CHARLES PARKIN, City Attorney

By
AMY R. WEBBER
Deputy City Attorney

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City Council Ordinances (w/corresponding redlines)
City Council Resolution
Attachment 1: Categorical Exemption CE-13-099

ATTACHMENT 1

NOTICE of EXEMPTION from CEQA

DEPARTMENT OF DEVELOPMENT SERVICES
333 W. OCEAN BLVD., 5TH FLOOR, LONG BEACH, CA 90802
(562) 570-6194 FAX: (562) 570-6068
lbds.longbeach.gov

TO: ☐ Office of Planning & Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

FROM: Department of Development Services
333 W. Ocean Blvd, 5th Floor
Long Beach, CA 90802

☑ L.A. County Clerk
Environmental Fillings
12400 E. Imperial Hwy. 2nd Floor, Room 2001
Norwalk, CA 90650

Categorical Exemption CE-13-099

Project Location/Address: Citywide

Project/Activity Description: Amend Sections 5.38 and 21.15.1100, including modifying Commercial and Planned Development areas (25, 29, 30 and 32 North and South) use tables. Amendments include revision to Sections 5.64.010 and 21.15.2008, and 21.51.235 pertaining to Secondhand Dealers, Pawn Brokers, Cash for Gold, and Cottage Food operations.

Public Agency Approving Project: **City of Long Beach, Los Angeles County, California**

Applicant Name: Amy Bodek, Director of Development Services

Mailing Address: 333 W. Ocean Blvd, 3rd Floor, Long Beach, CA 90802

Phone Number: (562) 570-6428 Applicant Signature: A Bodek

BELOW THIS LINE FOR STAFF USE ONLY

Application Number: _____ Planner's Initials: _____

Required Permits: _____

THE ABOVE PROJECT HAS BEEN FOUND TO BE EXEMPT FROM CEQA IN ACCORDANCE WITH STATE GUIDELINES SECTION 15308, Class 8, Actions by Regulatory Agencies

Statement of support for this finding: Regulatory standards by local agency

Contact Person: Craig Chalfant Contact Phone: 562-570-6368

Signature: C Chalfant Date: 10/22/13

NOTICE of EXEMPTION from CEQA

DEPARTMENT OF DEVELOPMENT SERVICES
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☑ L.A. County Clerk
Environmental Fillings
12400 E. Imperial Hwy. 2nd Floor, Room 2001
Norwalk, CA 90650

FROM: Department of Development Services
333 W. Ocean Blvd, 5th Floor
Long Beach, CA 90802

Categorical Exemption CE- 13-074

Project Location/Address: Citywide

Project/Activity Description: Amendments, Revisions, and Additions to the Zoning Ordinance and Planned Development Districts Pertaining to Check Cashing

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LONG BEACH AMENDING THE LONG BEACH MUNICIPAL CODE BY AMENDING SECTION 5.38.010, TABLES 32-1 AND 32-1A IN CHAPTER 21.32, BY AMENDING THE USE DISTRICT TABLES FOR PD-25 (ATLANTIC AVENUE PLANNED DEVELOPMENT DISTRICT), PD-29 (LONG BEACH BLVD PLANNED DEVELOPMENT DISTRICT) AND PD-32 NORTH AND SOUTH (DOUGLAS PARK PLANNED DEVELOPMENT DISTRICT); AND BY REPEALING SECTIONS 5.38.020 THROUGH 5.38.140, ALL RELATING TO FORTUNETELLING

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

Section 1. Section 5.38.010 of the Long Beach Municipal Code is amended to read as follows:

5.38.010 Defined.

"Fortunetelling" means a commercial enterprise involving the foretelling of the future in exchange for financial or other valuable consideration. Fortunetelling includes the use of astrology, augury, card or tea reading, cartomancy, clairvoyance, clairaudience, crystal gazing, divination, mediumship, necromancy, palmistry, psychometry, phrenology, prophecy, spiritual reading or any similar means. Fortune telling does not include forecasting based on historical trends or patterns, religious or political dogma, or any of the previously listed arts when presented in an

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assembly of people who purchase tickets or means in exchange for the presentation at a site licensed for entertainment uses pursuant to Chapter 5.72 of this Code.

Section 2. "Personal Services" section of Table 32-1 "Uses in All Other Commercial Zoning Districts" of Chapter 21.32 of the Long Beach Municipal Code is

Mayor.

I hereby certify that the foregoing ordinance was adopted by the City Council of the City of Long Beach at its meeting of _____, 20__, by the following vote:

Ayes: Councilmembers: _____

_____

_____

_____

Noes: Councilmembers: _____

_____

Absent: Councilmembers: _____

_____

_____

City Clerk

Approved: _____ _____
(Date) Mayor

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EXHIBIT "A"

Table 32-1

Uses In All Other Commercial Zoning Districts

	Neighborhood			Community				Regional	Other	
Personal Services	CNP	CNA	CNR	CCA	CCP	CCR	CCN	CHW	CS	
Basic personal services (barber/beauty shop, diet center, dog/cat grooming, dry cleaner, locksmith, mailbox rental, nail/manicure shop, repair shop for small appliances or electronic equipment, bicycles, tailoring, shoe repair, tanning salon, travel agent, or veterinary clinic without boarding)	Y	Y	Y	Y	Y	Y	Y	Y	N	
Catering, party counseling (without trucks)	Y	Y	Y	Y	Y	Y	Y	Y	N	For catering with trucks, see industrial zones, table 33-1.
Fitness center/health club, dance/karate studio, fortunetelling	Y	Y	Y	Y	Y	Y	Y	Y	N	Limited to 5,000 square feet in neighborhood zones.
Gun repair shop	AP	AP	AP	AP	AP	AP	AP	Y	N	

5.38 060 Affidavit of residence

										21.51.243). Special adult entertainment standards for massage parlor (see Section 21.45.110).
Recycling center	N	N	N	N	N	N	N	N	N	Permitted in industrial zones only.
Recycling collection center for cans and bottles (staff attended)	N	N	N	AP	AP	AP	AP	AP	N	
Recycling containers for cans and bottles	A	A	A	A	A	A	A	A	N	Accessory to a grocery store only (see Section 21.51.265
Repair shop (stove, refrigerator, upholstery, lawn mowers, etc.)	N	N	N	C	C	C	C	Y	N	For small appliance repair, see "basic personal services".
Self-storage (indoor only)	N	N	N	N	N	N	N	N	C	
Shoe repair	Y	Y	Y	Y	Y	Y	Y	Y	N	
Shoeshine stand (indoor/ outdoor)	A	A	A	A	A	A	A	A	A	Accessory to barber, car wash, grocery, hotel, office, or restaurant use.
Tattoo parlor	N	N	N	N	N	N	N	C	N	
Termite and pest control	N	N	N	N	N	N	N	C	N	See "miscellaneous storage of hazardous materials".
Veterinary clinic with boarding	N	N	N	C	C	C	C	C	N	See also "basic personal services".
All personal services not listed	AP	AP	AP	AP	AP	AP	AP	AP	N	

Abbreviations:

Y = Yes (permitted use).

N = Not permitted.

C = Conditional use permit required. For special conditions, see Chapter 21.52

A = Accessory use. For special development standards, see Chapter 21.51

AP = Administrative use permit required. For special conditions, see Chapter 21.52

T = Temporary use subject to provisions contained in Chapter 21.53

IP = Interim park use permit required. For special conditions, see Chapter 21.52

Footnotes:

(1) The following alcoholic beverage sales may be exempted from the conditional use permit requirement:

a. Restaurants with alcoholic beverage service only with meals. This generally means any use with a fixed bar is not exempt. A service bar is not considered a fixed bar. A sushi bar, where alcoholic beverages are served at the same bar where meals are served, is considered serving alcoholic beverages only with meal service. A cocktail lounge without a bar, but with primarily service of only hors d'oeuvres and alcoholic beverages is not exempt. Any restaurant with more than thirty percent (30%) of gross sales consisting of alcoholic beverages shall lose its exemption and be required to obtain a

EXHIBIT "B"

Table 32-1A

Uses In All Other Commercial Zoning Districts

Personal Services			
Barber, beauty shops, manicure shops	Y	Y	Y
Bicycle repair	Y	Y	Y
Catering—on-site food preparation	A	A	A
Collection center for recyclables	AP	AP	AP
Dog and cat grooming	N	Y	Y
Laundromat (no on-site dry cleaning)	N	Y	Y
Laundry, commercial customers	N	N	N
Laundry (including on-site cleaning with perchloroethylene or freon 12 systems)	Y	Y	Y
Locksmith	Y	Y	Y
Mail box rental	Y	Y	N
Masseuse/massage parlor	Y*	Y*	Y*
Office for home cleaning service	Y	Y	Y
Office for home improvement or repair uses (contractors, plumbers, electricians, carpenters and cabinetmakers with no on-site storage of materials)	N	Y	Y
Recycling centers for cans and bottles	N	N	N
Reducing salon, health or sports club	Y	Y	Y
Service and repair of home garden equipment	N	C	N

Service and repair of major household items	N	C	N
Shoe repair	Y	Y	Y
Shoe-shine parlor	A	A	A
Tailoring, millinery	Y	Y	Y
Tanning salon	Y	Y	Y
Tattoo parlor	N	C	C
Television, radio, stereo and small appliance repair	N	Y	Y
Termite and pest control	N	Y	Y
Vehicle rental services	C	Y*	C
Veterinary clinic (excluding grooming and pet store)	N	C	N
All Other personal services	AP	AP	AP

EXHIBIT "C"

PD-25 USE TABLE			
Uses			**Comments**
PERSONAL SERVICES:	Basic Personal Services (barber/beauty shop, diet center, dog/cat grooming, dry cleaner, fortunetelling, locksmith, mailbox rental, nail/manicure shop, repair shop for small appliances/bicycles/ electronic equipment, tailoring, shoe repair, tanning salon, travel agent, or veterinary clinic without boarding)	Y	
	Catering, Party Counseling (w/o trucks)	Y	For catering w/trucks, see Table 33-1
	Fitness Center/Health Club, Dance/Karate Studio	AP	Limited to 5000 sq. ft.
	Gun Repair Shop	N	
	House Cleaning Service	Y	
	Laundromat	Y	
	Laundry (commercial customers)	N	Permitted in Industrial zones only.
	Massage Establishment	Y	
	Recycling Center	N	Permitted in Industrial zones only.
	Recycling Collection Center for cans & bottles (staff attended)	N	
	Recycling Containers for cans & bottles	A	Accessory to grocery store only (See 21.51.265).
	Repair Shop (stove, refrigerator, upholstery, lawn mowers, etc.)	N	For small appliance repair, see "Basic Personal Services".
	Self-storage (indoor only)	N	
	Shoe Repair	Y	
	Shoe-shine Stand	A	Accessory to barber, car wash, grocery, hotel, office, or restaurant use.
	Tattoo Parlor	N	
	Termite & Pest Control	N	See "MISC.-Storage of Haz. Materials".
	Veterinary Clinic w/boarding	N	Also see "Basic Personal Services"

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PD-25 USE TABLE			
Uses			Comments
	All Personal Services Not Listed	AP	

Abbreviations:
Y = Yes (permitted use)
N = Not permitted
C = Conditional Use Permit is required
A = Accessory Use
AP = Administrative Use Permit is required
T = Temporary use subject to provisions contained in Chapter 21.53.

Footnotes:
(1) Any use in excess of 10,000 sq. ft. requires an Administrative Use Permit.
(2) The following alcoholic beverage sales shall be exempted from the CUP permit requirement:
   a. Restaurant with alcoholic beverage service only with meal. This generally means any use with a fixed bar is not exempt. A service bar is not considered a fixed bar. A sushi bar, where alcoholic beverages are served at the same bar where meals are served, is considered serving alcoholic beverages only with meal service. A cocktail lounge with a bar, but with primarily service of only hors d'oeuvres and alcoholic beverages is not exempt. Any restaurant with more than 30 percent of gross sales consisting of alcoholic beverages shall lose its exemption and be required to obtain a condition use permit to continue to sell alcohol.
   b. Use located more than 500 feet from zoning districts allowing residential use.
   c. Department store or florist with accessary sale of alcoholic beverages.
   d. Existing legal, nonconforming uses.

EXHIBIT "D"

PD-29 USE TABLE							
Uses		**Subarea 1a**	**Subarea 1**	**Nodes Subareas 2 & 5**	**Subarea 3**	**Subarea 4**	**Comments**
	Shoe-shine Stand	A	A	A	A	A	
	Tattoo Parlor	N	N	N	N	N	
	Termite & Pest Control	AP	AP	AP	AP	Y	
	All Personal Services Not Listed	AP	AP	AP	AP	AP	

Abbreviations:
Y = Yes (permitted use)
N = Not permitted
C = Conditional Use Permit is required
AP = Administrative Use Permit is required
EXP = Alcoholic beverage sales qualified for CUP exemption (see footnote #1)
A = Accessory use. For special development standards, refer to Chapter 21.51.
T = Temporary use subject to provisions contained in Chapter 21.53.
IP = Interim park use permit required. For special conditions, refer to Chapter 21.52.

Footnote:

(1) The following alcoholic beverage sales shall be exempted from the CUP permit requirement:

a. Restaurant with alcoholic beverage service only with meal. This generally means any use with a fixed bar is not exempt. A service bar is not considered a fixed bar. A sushi bar, where alcoholic beverages are served at the same bar where meals are served, is considered serving alcoholic beverages only with meal service. A cocktail lounge with a bar, but with primarily service of only hors d'oeuvres and alcoholic beverages is not exempt. Any restaurant with more than 30 percent of gross sales consisting of alcoholic beverages shall lose its exemption and be required to obtain a condition use permit to continue to sell alcohol.

b. Use located more than 500 feet from zoning districts allowing residential use.

c. Department store or florist with accessary sale of alcoholic beverages.

d. Existing legal, nonconforming uses.

e. A full line grocery store of 50,000 sq. ft. floor area.

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EXHIBIT "E"

PD-32 North

Table 2 : Uses by Sub Area

Use	1 Zone	2 Zone	3 Zone	Notes
Personal Services				
Basic personal services (barber/beauty shop, catering, party counseling (w/o trucks), diet center, dog/cat grooming, dry cleaner, fitness center/health club, dance/karate studio, locksmith, mailbox rental, nail/manicure shop, repair shop for small appliances or electronic repair equipment, bicycles, tailoring, shoe repair, tanning salon, travel agent, or veterinary clinic w/o boarding).	Y	AP	N	
House cleaning service	N	AP	N	
Laundromat	N	N	N	
Laundry, cleaning and garment services (SIC Code 721)	N	N	Y	
Massage therapy	A*	N	N	See special conditions in LBMC Section 21.51.243. Special adult entertainment standards for massage parlor (see LBMC Section 21.45.110).
Recycling center	N	N	N	
Recycling collection center for cans and bottles (staff attended)	N	N	N	
Recycling containers for cans and bottles	A	N	N	Accessory to a grocery store only (see LBMC Section 21.51.265).
Repair shop (stove, refrigerator, upholstery, lawn mowers, etc.) - (SIC Code 76)	N	N	Y	For small appliance repair, see "Basic Personal Services." Repair service limited to inside enclosed structure.
Repair services with outdoor operations (SIC Code 76)	N	N	N	
Self storage (indoor only)	N	N	N	
Shoe-shine stand (indoor/outdoor)	A	A	N	Accessory to barber, car wash, grocery, hotel, office, or restaurant use.
Tattoo parlor	N	N	N	
Termite and pest control	N	N	N	See "Misc. – Storage of Hazardous Materials."
Veterinary Services for Animal Specialties (SIC Code 0742) Animal Specialty Services, Boarding, Kennels, Shelters (SIC Code 0752)	N	N	C	Also see "Basic Personal Services."
All personal services not listed	AP	AP	N	

* Applies to Retail Expansion Areas in subareas 1 and 2.

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5.38.030 Exception—Religious ceremony.

N ... n hall be required to pa an fee or take out an pe for condu t ... ipating ... y religious ceremony or service wh ch person holds ... of ordination as a minister from any bona fide chur r gious association maintainin a churc and holding regular services and hav ng a creed or set of religious principl t a i ... l ... l ke fait ; ... f her, that e fees, gr lu , d profits thereof l be regularly accounted for and paid solely to or for the benefit of the church or religious association; provided, further, that the person holding a certificate of ordination from such bona fide church or religious association, as set forth in this Section, shall, before practicing the profession specified in this Chapter, file with the Director of Financial Management a certified copy of his certificate of ordination with his name, age, and street address in this City where he intends to carry on the business; and provided further that such person shall also file with the Director of Financial Management, as indication of the bona fide nature of the church or religious association of which such person is a minister, copies of exemption determinations by the Internal Revenue Service pursuant to section 501(c)(3) of the Internal Revenue Code, and the California Franchise Tax Board pursuant to section 23701(d) of the Revenue and Taxation Code. Such bona fide church or religious association, as defined in this Section, may, however, pay to its ministers or workers a salary or compensation based upon a percentage basis; provided that the agreement between the church and the minister is

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Each and every person desiring to practice any of the aforesaid arts, professions, or businesses included in this Chapter shall, at the time of the making of the aforesaid application, make and file with the Director of Financial Management an affidavit showing the residence of the applicant, by street number, in the City during the twelve (12) months immediately prior to the making of the application, and upon request of the Director of Financial Management, the applicant shall furnish to the Director of Financial Management affidavits or such other proof as he may require to establish the fact of such residence.

5.38. 0 Permit— r for each person.

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Each and v r i n, or business

specified in Section 5.38.010 shall, at the time of making the application referred to in this Chapter, file with the Police Department his/her photograph and his/her fingerprints and shall leave the photograph and fingerprint impressions with the Police Department as a part of the records of the Police Department for the purpose of enabling the Police Department to make an investigation of any complaints which may have been made, if any, against the applicant at any time or place. If no adverse report has been made by the Police Department as to the record of the applicant, the application shall be deemed completed and a permit shall be issued upon payment of the prescribed permit fee and the filing of a bond as prescribed in regulations issued by the City Manager pursuant to Section 2.84.040.

5.38.090 Bond—Termination.

On termination of liability by the surety on any bond required by Section 5.38.080, the permit of the principal of the bond shall be automatically revoked.

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5.38.100 Permit—Issuance.

If the application is in compliance with this Chapter and all other requirements of law, including, but not limited to, all requirements of Title 21 of this Municipal Code, and if the bond has been duly approved by the City Attorney and City Manager, the Director of Financial Management shall issue a permit for a period of one (1) year to practice the profession, art or arts specified in the application. In the event any permit under this Chapter is denied, the application therefor shall be retained by the Director of Financial Management on file in his office for future reference.

5.38.110 Permit—Cancellation.

Upon the discovery of any false or misleading statement in misrepresentation by the applicant in procuring the permit, or upon the failure, neglect, or refusal of the applicant to promptly, voluntarily and without notice, furnish and file a new bond when the surety on any bond has terminated its liability, and cause the same to be approved by the City Manager as to sufficiency of sureties and by the City Attorney as to form, or in case of death, bankruptcy or removal from the City of any one (1) or both of the sureties on bond, then in that event, the Council may, upon five (5) days' notice to the applicant, cancel and annul the permit; whereupon the applicant shall be amenable to the penalties prescribed in this Title 5, from and after the date of the cancellation, as though in this Title the permit had never been granted.

5.38.120 Permit—Conformance required.

No person shall commence, engage in, carry on, or advertise that he will engage in or carry on any trade, calling, profession, or occupation specified in Section 5.38.010 without first having procured a permit as required by this Chapter or

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without complying with any and all regulations of such trade, calling, profession or occupation contained in this Chapter or any other ordinance of the City; and the carrying on of any trade, calling, profession or occupation mentioned in this Chapter without first having procured such a permit when required so to do, or without complying with any and all regulations of such trade, calling, profession, or occupation contained in this Chapter, shall constitute a separate violation of this Chapter for each and every day that such trade, calling, profession, or occupation is so advertised, engaged in or carried on.

5.38.130 Advertising restricted.

A. No person shall announce or advertise in any newspaper, magazine, or other publication, or by handbill, pamphlet or poster, that any such person practices or engages in a calling, occupation, profession, or art specified in Section 5.38.010, or print, publish or circulate or permit to be printed, published or circulated any newspaper, magazine, handbill or other publication containing any such advertisement or announcement; provided, however, that any person holding a permit from the City to engage in, practice, or carry on any of the callings, occupations, professions or arts may advertise in newspapers, magazines or other publications or by handbills, pamphlets, posters or cards only the name, address, telephone number and hours of business of such person, together with the name or names of the calling, occupation, profession or art carried on, engaged in or practiced.

B. Nothing in this Section shall be deemed to prohibit any bona fide church or religious organization from publishing or announcing notices of the meetings or services of such church or religious organization, nor to prohibit any minister or worker of such church or religious organization from having printed or from using a business card in the ordinary form of business cards.

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~~5.38.140 Information prohibited.~~

~~No person engaged in any of the practices enumerated in this Chapter shall, while so engaged in such practice, discuss, reveal or purport to foretell anything pertaining to military camps, emplacements, troops movements, supply movements, military ordnance, location of plants or factories engaged in filling military orders, harbors, air fields, shipping or ship movements, or any other thing similar in nature, which might be detrimental to internal or military security.~~

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I hereby certify that the foregoing resolution was adopted by the City Council of the City of Long Beach at its meeting of _____, 2013, by the following vote:

Ayes: Councilmembers: _____

_____

_____

_____

Noes: Councilmembers: _____

_____

Absent: Councilmembers: _____

_____

_____

City Clerk

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