



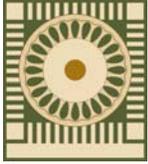
CITY OF
HAYWARD
HEART OF THE BAY

PLANNING COMMISSION

DECEMBER 15, 2011

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CITY OF HAYWARD
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(510) 583-4205 / www.hayward-ca.gov
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AGENDA
HAYWARD PLANNING COMMISSION
THURSDAY, DECEMBER 15, 2011 , AT 7:00 PM
COUNCIL CHAMBERS

MEMBERS OF THE AUDIENCE WISHING TO ADDRESS THE PLANNING COMMISSION:

Obtain a speaker's identification card, fill in the requested information, and give the card to the Commission Secretary. The Secretary will give the card to the Commission Chair who will call on you when the item in which you are interested is being considered. When your name is called, walk to the rostrum, state your name and address for the record and proceed with your comments. The Chair may, at the beginning of the hearing, limit testimony to three (3) minutes per individual and five (5) minutes per an individual representing a group of citizens for organization. Speakers are expected to honor the allotted time.

ROLL CALL

SALUTE TO FLAG

PUBLIC COMMENT: (The PUBLIC COMMENTS section provides an opportunity to address the Planning Commission on items not listed on the agenda. The Commission welcomes your comments and requests that speakers present their remarks in a respectful manner, within established time limits and focus on issues which directly affect the City or are within the jurisdiction of the City. As the Commission is prohibited by State law from discussing items not listed on the agenda, your item will be taken under consideration and may be referred to staff for further action.)

ACTION ITEMS: (The Commission will permit comment as each item is called for Public Hearing. Please submit a speaker card to the Secretary if you wish to speak on a public hearing item.)

PUBLIC HEARINGS: For agenda item No. 1 the decision of the Planning Commission is final unless appealed. The appeal period is 10 days from the date of the decision. If appealed, a public hearing will be scheduled before the City Council for final decision.

1. Conditional Use Permit Application PL-2011-0305 – Good Hands Massage Therapy, Eva C. Huang (Applicant) / Salvatore Marino (Owner) – Request to Operate a Massage Establishment - The Property is Located at 22566 Mission Boulevard, Between A and B Streets in the Central City Commercial (CC-C) Zoning District

[PC Staff Report](#)

[Attachment I - Area Map](#)

[Attachment II - Findings for Approval](#)

[Attachment III - Conditions of Approval](#)



Assistance will be provided to persons requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Persons needing accommodation should contact Sonja Dal Bianco 48 hours in advance of the meeting at (510) 583-4204, or by using the TDD line for those with speech and hearing disabilities at (510) 247-3340.

COMMISSION REPORTS:

2. Oral Report on Planning and Zoning Matters
3. Commissioners' Announcements, Referrals

APPROVAL OF MINUTES

4. None.

ADJOURNMENT

PLEASE TAKE NOTICE that if you file a lawsuit challenging any final decision on any public hearing item listed in this agenda, the issues in the lawsuit may be limited to the issues which were raised at the City's public hearing or presented in writing to the City Clerk at or before the public hearing. **PLEASE TAKE FURTHER NOTICE** that the City Council has adopted Resolution No. 87-181 C.S., which imposes the 90 day deadline set forth in Code of Civil Procedure section 1094.6 for filing of any lawsuit challenging final action on an agenda item which is subject to Code of Civil Procedure section 1094.5.

NOTE: Materials related to an item on this agenda submitted to the Planning Commission after distribution of the agenda packet are available for public inspection in the Permit Center, first floor at the above address. Copies of staff reports for agenda items are available from the Commission Secretary and on the City's website the Friday before the meeting.

DATE: December 15, 2011

TO: Planning Commission

FROM: Tim R. Koonze, Associate Planner

SUBJECT: **Conditional Use Permit Application PL-2011-0305 – Good Hands Massage Therapy, Eva C. Huang (Applicant) / Salvatore Marino (Owner) – Request to Operate a Massage Establishment**

The Property is Located at 22566 Mission Boulevard, Between A and B Streets in the Central City Commercial (CC-C) Zoning District

RECOMMENDATION

That the Planning Commission finds that the proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) Guidelines, Section 15301, Existing Facilities, and approves the conditional use permit, subject to the attached findings and conditions of approval.

BACKGROUND

Good Hands Massage Therapy would be located in a 710-square-foot space, formerly occupied by a beauty salon, in a building shared with United Parcel Service. The establishment would be surrounded by other small businesses and is adjacent to Municipal Parking Lot No. 1, which has 110 parking spaces. According to the City's Business Tax Records, there are five establishments in Hayward that have massage therapy as a primary use; two of which are in the CC-C District.

In September 14, 2011, the applicant received a Massage Establishment License from the Hayward Police Department after passing a background check which included Department of Justice fingerprint checks, a massage educational references check and a personal reference check.

DISCUSSION AND STAFF ANALYSIS

Project Description - The establishment would specialize in traditional Swedish, deep tissue, hot stone and facial massages. Special lighting and music would be used throughout the facility to provide a relaxing environment and enhance the client's experience. The establishment would have four treatment rooms, one unisex restroom, a laundry room, an employee break room, and a reception area. There would be three to four employees on site at any one time and the facility would be open from 10 am to 10 pm, seven days a week. The establishment would be open to both men and women.

Permits – Effective January 1, 2009, the State created the non-profit California Massage Therapy Council (CAMTC) to provide voluntary statewide certification to eligible massage professionals. To receive a CAMTC certificate, the massage therapist must demonstrate a certain level of knowledge and skill. Once certified by the CAMTC, a massage therapist could open a massage establishment wherever a professional business is allowed without acquiring a use permit approval from the local agency, as long as all massage therapists working in the establishment have a CAMTC certificate.

Even with a CAMTC certificate, a massage therapist must still comply with local massage requirements. In Hayward, that means a massage therapist must obtain a Massage Therapy Technician Permit from the Police Department pursuant to the City’s Massage Permit Ordinance. The Police conduct background checks, ensure that the technicians are free of certain transmittable diseases, and verify that they have gone through the minimum amount of 500 hours of curriculum and massage therapy.

In this case, the primary therapist is certified by the CAMTC, but there will be therapists working at this establishment that would not be CAMTC certified. Therefore, a conditional use permit is required for this massage establishment. The conditional use permit would ensure harmony with the surrounding area and compliance with City policies (see discussion below), and this public hearing gives surrounding property owners and residents an opportunity to provide comments regarding the proposed use.

The City’s Massage Permit Ordinance requires that the applicant, Ms. Huang, apply for a permit for a Massage Establishment Permit from the Chief of Police. The applicant has complied with this requirement. All massage therapists would have to obtain a Massage Therapy Technician Permit from the City prior to work at the establishment. To obtain a permit, therapists must provide valid identification, proof of adequate training and employment with a massage establishment, and undergo a Police Department background check. Pursuant to the City’s Massage Permit Ordinance, a condition of approval requires both the Massage Establishment and Massage Therapy Technician to have their permits renewed every two years (refer to Conditions of Approval Nos. 1 and 2 in Attachment III).

Use Permit Findings -

In order for the Use Permit Application to be approved, the following findings must be made.

A. *The proposed use is desirable for the public convenience or welfare.*

The massage establishment would be desirable for the public convenience in that it would provide convenient hours and location for Hayward residents, particularly downtown residents, to receive traditional Swedish, deep tissue massage, hot stone treatments and facial massages.

B. *The proposed use will not impair the character and integrity of the zoning district and surrounding areas.*

The massage establishment would not impair the character and integrity of the zoning district and would not impact the surrounding areas in that the business would be conducted entirely within the building and there would be adequate parking, as the property is located adjacent to Municipal Parking Lot 1. The operations would be conducted in a safe, sanitary, healthy manner because the operator and massage technicians would be required to obtain permits and are screened by the Police Department in accordance with City regulations. The applicant passed all background, educational and personal checks and obtained a Massage Establishment and Massage Therapy Technician Permit from the Police Department.

C. *The proposed use will not be detrimental to the public health, safety, or general welfare.*

The proposed use will not be detrimental to the public health, safety, or general welfare in that each massage therapist and the establishment owner are required to meet all the requirements of the Municipal Code, which regulates massage establishments. Each massage therapist is required to obtain a Massage Therapy Technician Permit issued by the Police Department. The applicant is required to obtain a Massage Establishment Permit issued by the Police Department. The applicant has passed the Police Department background check and has obtained the required Massage Establishment and Massage Therapy Technician Permit.

D. *The proposed use is in harmony with applicable City policies and the intent and purpose of the zoning district involved.*

The proposed use would be in harmony with applicable City policies in that the massage establishment would be consistent with the General Plan Economic Development goal to *undertake adaptive reuse of older commercial structures and create complementary and compatible new development of high quality* in that the business would be located within an older commercial structure and the business would be compatible with the surrounding businesses. The proposed use provides a desired service, thereby conforming to the purpose of the Central City-Commercial (CC-C) District, which promotes establishing a mixture of business and other activities which will enhance the economic vitality of the downtown area. Permitted uses include, but are not limited to, retail, office, service, lodging, entertainment, education, and multi-family residential uses.

ENVIRONMENTAL REVIEW

The proposed project is categorically exempt from environmental impact analysis per the California Environmental Quality Act (CEQA), pursuant to Section 15301, Existing Facilities, of the CEQA guidelines.

PUBLIC OUTREACH

On September 28, 2011, a Referral Notice was mailed to every property owner and occupant within 300 feet of the subject site, as noted on the latest assessor's records. Staff received one response

objecting to the use because, in the complainant's opinion, the massage establishment would be a business which would have a negative effect on business and the vitality of Downtown.

The massage business would be a legitimate business that would adhere to the requirements of the City's Massage Permit Ordinance. The business would be monitored as the massage establishment and the massage therapy technicians would be required to update their permits with the Police Department every two years.

On December 5, 2011, a Notice of Public Hearing for the Planning Commission meeting was mailed. No responses have been received by the time this report was prepared.

SCHEDULE

The Planning Commission decision begins a 10-day appeal period. If approved and there is no appeal within that time period, the applicant may proceed with the approved use. If denied, the decision could be appealed and the application would be scheduled for a public hearing before the City Council.

Prepared by: Tim R. Koonze, Associate Planner

Recommended by:



Richard Patenaude, AICP
Planning Manager

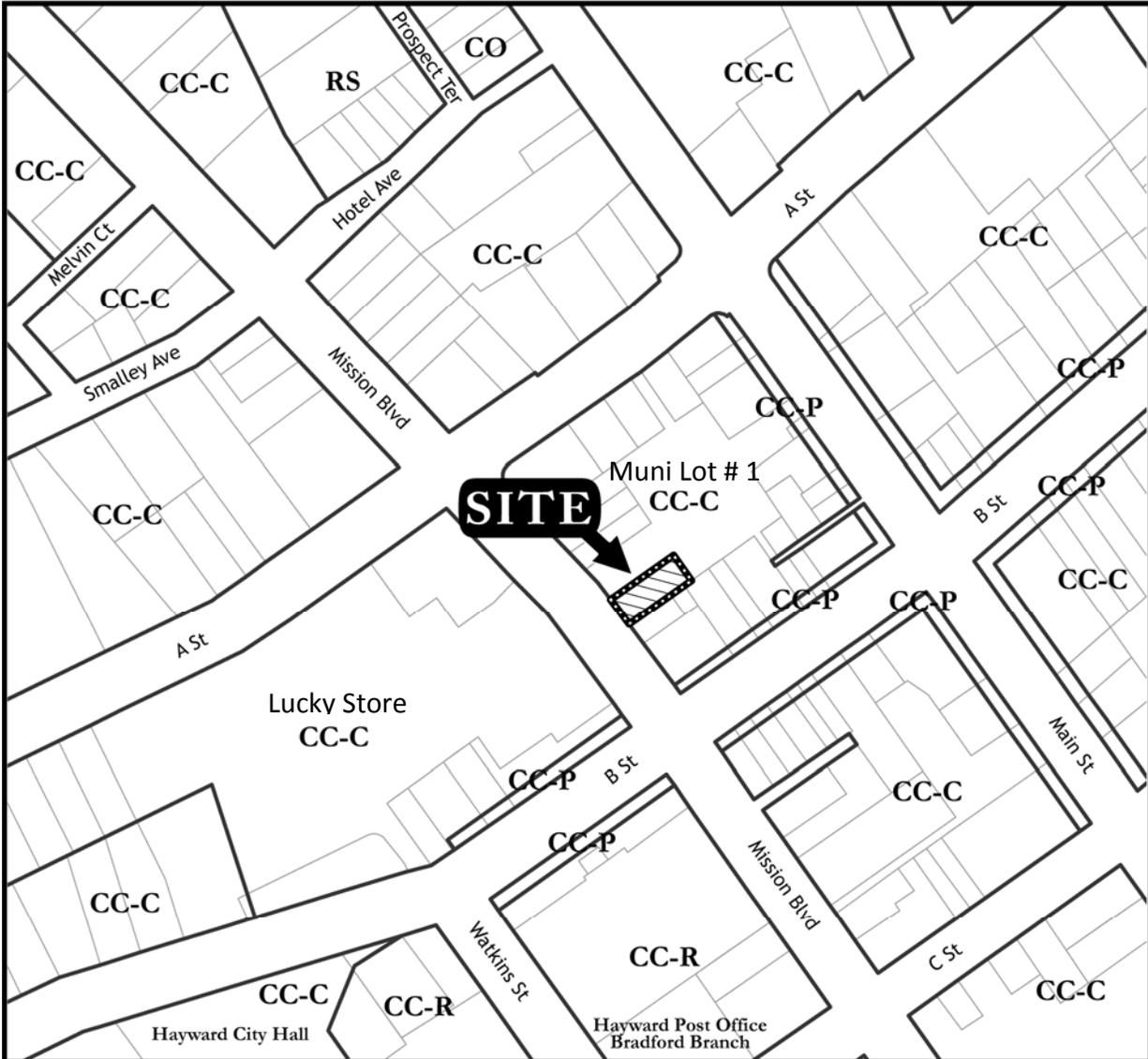
Approved by:



David Rizk, AICP
Development Services Director

Attachments:

- Attachment I Area Map
- Attachment II Findings for Approval
- Attachment III Conditions of Approval



Area & Zoning Map

PL-2011-0305 CUP

Address: 22566 Mission Boulevard

Applicant: Eva Huang

Owner: Salvatore Marino

Zoning Classifications

RESIDENTIAL

RS Single Family Residential, min lot size 5000 sqft

COMMERCIAL

CO Commercial Office

CENTRAL CITY

CC-C Central City - Commercial

CC-P Central City - Plaza

CC-R Central City - Residential



**CITY OF HAYWARD
PLANNING DIVISION**

CONDITIONAL USE PERMIT

December 15, 2011

Conditional Use Permit Application PL-2011-0305 – Good Hands Massage Therapy, Eva C. Huang (Applicant) / Salvatore Marino (Owner) – Request to Operate a Massage Establishment

The Property is Located at 22566 Mission Boulevard, Between A and B Streets in the Central City Commercial (CC-C) Zoning District

FINDINGS FOR APPROVAL

A. *The proposed use is desirable for the public convenience or welfare.*

The massage establishment would be desirable for the public convenience in that it would provide convenient hours and location for Hayward residents, particularly downtown residents, to receive traditional Swedish, deep tissue massage, hot stone treatments and facial massages.

B. *The proposed use will not impair the character and integrity of the zoning district and surrounding areas.*

The massage establishment would not impair the character and integrity of the zoning district and would not impact the surrounding areas in that the business would be conducted entirely within the building and there would be adequate parking as the property is located adjacent to Municipal Parking Lot 1. The operations would be conducted in a safe, sanitary, healthy manner because the operator and massage technicians would be required to obtain permits and are screened by the Police Department in accordance with City regulations. The applicant passed all background, educational and personal checks and obtained a Massage Establishment and Massage Therapy Technician Permit from the Police Department.

C. *The proposed use will not be detrimental to the public health, safety, or general welfare.*

The proposed use will not be detrimental to the public health, safety, or general welfare in that each massage therapist and the establishment owner are required to meet all the requirements of the Municipal Code, which regulates massage establishments. Each massage therapist is required to obtain a Massage Therapy Technician Permit issued by the Police Department. The applicant is required to obtain a Massage Establishment Permit issued by the Police Department. The applicant has passed the Police Department background check and has obtained the required Massage Establishment and Massage Therapy Technician Permit.

D. *The proposed use is in harmony with applicable City policies and the intent and purpose of the zoning district involved.*

The proposed use would be in harmony with applicable City policies in that the massage establishment would be consistent with the General Plan Economic Development goal to *undertake adaptive reuse of older commercial structures and create complementary and compatible new development of high quality* in that the business would be located within an older commercial structure and the business would be compatible with the surrounding businesses. The proposed use provides a desired service thereby conforming to the purpose of the Central City-Commercial (CC-C) District which promotes establishing a mixture of business and other activities which will enhance the economic vitality of the downtown area. Permitted uses include, but are not limited to, retail, office, service, lodging, entertainment, education, and multi-family residential uses.

E. The proposed project is categorically exempt from environmental impact analysis of the California Environmental Quality Act (CEQA), pursuant to Section 15301, Existing Facilities, of the CEQA guidelines.

**CITY OF HAYWARD
CONDITIONS OF APPROVAL**

USE PERMIT APPLICATION NO. PL-2011-0305

December 15, 2011

Conditional Use Permit Application PL-2011-0305 – Good Hands Massage Therapy, Eva C. Huang (Applicant) / Salvatore Marino (Owner) – Request to Operate a Massage Establishment

The Property is Located at 22566 Mission Boulevard, Between A and B Streets in the Central City Commercial (CC-C) Zoning District

Conditional Use Permit Application PL-2011-0305 approving the operation of a massage establishment is approved subject to the plan labeled “Exhibit A” and the conditions listed below.

This permit becomes void three years after the effective date of approval, unless prior to that time and a Massage Establishment Permit has been approved and operation of the establishment has commenced. A request for a one-year extension, approval of which is not guaranteed, must be submitted to the Planning Division at least 15 days prior to December 15, 2014.

Any modification to the approved plans or conditions shall require review and approval by the Planning Director. If determined to be necessary for the public safety and general welfare, the City may impose additional conditions or restrictions on this permit.

CONDITIONS OF APPROVAL

1. Prior to the commencement of massage services a Massage Establishment Permit shall be obtained from the Hayward Police Department. The permit shall be renewed with the Hayward Police Department at least every two years.
2. Prior to performing any massage therapy, all massage technicians shall obtain a Massage Therapy Technician Permit from the Hayward Police Department. Each permit shall be renewed with the Hayward Police Department at least every two years.
3. Massage therapy shall be provided or given only between the hours of 10:00 am to 10:00 pm. The massage establishment shall not be opened and no client shall be in the establishment between 10:00 pm and 10:00 am.
4. The massage establishment permit and a copy of the permit of each and every massage therapy technician employed in the establishment shall be displayed in an open and conspicuous place on the premises. The business owner or operator shall maintain a register of all persons employed as massage technicians and their permit numbers. Such register shall be available for inspection at all times during regular business hours.
5. The business owner/operator shall permit City of Hayward officials the right to enter the

premises used by the massage technicians from time to time during regular business hours for the purpose of making reasonable inspections to enforce compliance with building, fire, electrical, plumbing, or health codes, the California Penal Code, and the Hayward Municipal Code.

6. The massage establishment and every massage therapy technician shall comply with standards established by the Alameda County Public Health Department for such businesses and practitioners and the following facilities and operation requirements:
 - a. The massage establishments premises and facilities shall meet and be maintained in a condition to comply with all applicable code requirements of the city, county, and state, including, but not limited to, those related to the safety of structures, adequacy of the plumbing, lighting, heating, ventilation, and the health and cleanliness of the facility.
 - b. The massage establishments and massage therapy technicians shall, at all times, have an adequate supply of clean sanitary towels, covering, and linens. Towels, non-disposable coverings, and linens shall not to be used on more than one client, unless they have first been laundered and disinfected. Disposable towels and disposable coverings shall not be used on more than one client. Soiled linens and paper towels shall be disposed in separate receptacles.
 - c. In the massage establishment, the restroom and basin shall be thoroughly cleaned and disinfected as needed, and at least once a day when the premises are opened, with a disinfectant. All walls, ceilings, floors, and other physical facilities for the establishment shall be in good repair, and maintained in a clean and sanitary condition.
 - d. All equipment used in the massage therapy operation shall be maintained in a clean and sanitary condition. Instruments utilized in performing massage therapy shall not be used on more than one client unless they have been sterilized, using standard sterilization methods.
 - e. Toilet facilities shall be provided in a convenient location within the massage establishment and shall consist of at least one unisex toilet with a wash basin provided with soap and both hot and cold running water either in the toilet room or vestibule.
 - f. A minimum of one wash basin for employees shall be provided at all times. The basin shall be located within or as close as possible to the area devoted to performing of massage therapy services. Soap and sanitary towels shall also be provided at each basin.
 - g. No alcoholic beverages shall be sold, served, furnished, kept, consumed, or possessed on the premises.
 - h. Controlled substances shall not be consumed in the massage establishment unless the person has a prescription for the substance.
 - i. No permittee or employee of the massage establishment shall place, publish or distribute or cause to be placed, published or distributed by any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective customers that a service is available that is prohibited under the provisions of the Massage Ordinance, nor shall any massage establishment employ language in any advertising text or business name that would reasonably suggest to a prospective client that any service is available that is prohibited by the provisions of the Massage Ordinance.

- j. The use or possession of adult oriented merchandise in any part of the massage establishment is prohibited.
 - k. Condoms shall not be kept on the premises or used for any purpose in the massage establishment.
 - l. No electrical, mechanical or artificial device shall be used by the operator and or manager, massage therapy technician and any employee of the massage establishment for audio and/or recording for monitoring the performance of the massage therapy, or the conversation or other sounds in the massage room without the knowledge and written consent of the patron.
 - m. Surveillance cameras may not be installed on the interior of the massage establishment. Other surveillance cameras must be maintained or operated so as to provide surveillance of the exterior of the massage establishment or the surrounding area.
 - n. No massage therapy shall be conducted within any space on the premises of the massage therapy business which is fitted with a lock.
 - o. All entrance and exit doors on the premises of the massage therapy business shall remain unlocked during business hours.
 - p. All massage services shall be paid for in the reception area. The massage establishment may utilize a system where tip envelopes are provided in the massage area and at each massage station, to be utilized and deposited by the client in the reception area.
 - q. The massage establishment shall not be used for residential or sleeping purposes.
 - r. Massage establishment personnel or any massage technician may not inquire as to whether any client is a police officer.
7. New signs are subject to the City's sign regulation ordinance. A sign permit is required to be approved prior to the installation of any new signs.
 8. The owner shall maintain in good repair all building exteriors, walls, lighting, drainage facilities, driveway and parking area. The premises shall be kept clean.
 9. Any graffiti painted on the property shall be painted out or removed within 48 hours of occurrence.
 9. Adequate exterior lighting shall be provided at the front customer entrance to assure the safety of customers and the employees. The lighting shall comply with the City of Hayward's Security Ordinance. The design of the lighting fixtures shall be approved by the Planning Director prior to installation.
 10. If it comes to the attention of the Planning Director that the conditions of approval have been violated, the Planning Director may call the use permit application up to the Planning Commission for consideration of imposing additional conditions or revocation.

Utilities

11. Prior to issuance of a building permit for tenant improvements:

- a. The 5/8" domestic meter is shared by all tenant spaces within the building. If this arrangement is not going to change, the demand for all water fixtures in the building must be taken into account in gallons per minute. As an alternative to providing the domestic demand, show all water fixtures in the building, including those in the all other tenant spaces. If new water services will be installed, then only those fixtures attached to the new water system need to be shown or accounted for. Any modifications needed to the water service and/or water meter (upsized, downsized, relocate, etc.) must be performed by City Water Distribution Personnel at the applicant's/owner's expense. If the existing water meter is not sufficient enough to serve the new tenant and the existing meter cannot be reused, it must be abandoned by City Water Distribution Personnel at the applicant's/owner's expense.
- b. Show on the tenant improvement plans the location of the existing and/or proposed water meters, service lines and Reduced Pressure Backflow Prevention Assemblies which shall be placed on each domestic and irrigation water meter, per City Standard SD-202.
- c. The building currently has an existing commercial sewer service. Show the location and size of the existing sanitary sewer laterals on plans. In addition, the applicant shall submit a completed Industrial/Commercial Sanitary Sewer Connection Fee form that will determine whether or not additional sewer charges would be required for the additional sewage output proposed by the massage establishment. If additional fees are required, the user would be charged at the rates in effect at the time of purchase, prior to discharge.
- d. The following note shall appear on the building plans: "Only City Water Distribution Personnel shall perform operation of valves on the Hayward Water System."
- e. The following note shall appear on the building plans: "Water and Sewer Services are available and subject to standard conditions and fees in effect at the time of application and payment."
- f. The following note shall appear on the building plans: "The Sewer Capacity Fee is due and payable prior to final inspection."