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TORRANCE CITY COUNCIL – APRIL 27, 2010

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At 10:32 p.m., the meeting was adjourned to Tuesday, May 4, 2010 at 7:00 p.m. for regular business in the Council Chambers. ***May 4, 2010 is Students and Government Day.***

**MINUTES OF AN ADJOURNED REGULAR
MEETING OF THE TORRANCE CITY COUNCIL**

1. CALL TO ORDER

The Torrance City Council convened in an adjourned regular session at 5:32 p.m. on Tuesday, April 27, 2010 in City Council Chambers at Torrance City Hall.

ROLL CALL

Present: Councilmembers Barnett, Brewer, Furey, Numark, Rhilinger, Sutherland, and Mayor Scotto.

Absent: None.

Also Present: City Manager Jackson, City Attorney Fellows, City Clerk Herbers, and other staff representatives.

Agenda Item 18 was considered out of order at this time.

18. EXECUTIVE SESSION

The City Council immediately recessed to closed session to confer with the City Manager and City Attorney on agenda matters listed under 18A) Conference with Legal Council – Existing Litigation, pursuant to California Government Code §54956.9(a).

The City Council reconvened in open session at 7:02 p.m. No formal action was taken on any matter considered in closed session.

2. FLAG SALUTE/INVOCATION

The flag salute was led by Transit Director Turner.

Councilmember Rhilinger gave the non-sectarian invocation.

3. REPORT OF CITY CLERK ON POSTING OF THE AGENDA / MOTION TO WAIVE FURTHER READING

City Clerk Herbers reported that the agenda was posted on the Public Notice Board at 3031 Torrance Boulevard on Thursday, April 22, 2010.

MOTION: Councilmember Furey moved that after the City Clerk has read aloud the number and title to any resolution or ordinance on the meeting agenda, the further reading thereof shall be waived, reserving and guaranteeing to each Councilmember the right to demand the reading of any such resolution or ordinance in regular order. The motion was seconded by Councilmember Numark and passed by unanimous roll call vote.

4. WITHDRAWN, DEFERRED OR SUPPLEMENTAL ITEMS

None.

5. COUNCIL COMMITTEE MEETINGS AND ANNOUNCEMENTS

Mayor Scotto announced that the Ad Hoc Legislative Committee will meet on Thursday, April 29, at 3:00 p.m. in the Third Floor Assembly Room to discuss the ballot measures on the June 8, 2010 election ballot.

City Clerk Herbers announced the following Candidate Forums: Wednesday, April 28, 7:00 p.m., at Richardson Middle School, 23751 Nancy Lee Lane, sponsored by the Hollywood Riviera Homeowners Association; and Monday, May 3, 7:00 p.m., at Anza Elementary, 21400 Ellinwood Drive, sponsored by the Southwood Homeowners Association. She encouraged anyone who is not able to attend a forum in person to watch the LWVT/ AAUW/ Torrance Council of PTA-sponsored Candidate Forum which will be replayed at 7:00 p.m. nightly April 28 – June 7 on Time Warner - TCTV Ch 28 and Verizon FiOS – Ch 36.

City Clerk Herbers provided information about the June 8 statewide election. She reported that sample ballot pamphlets containing statewide and local office information will be mailed by the Los Angeles Registrar after April 29 and voters may apply for Vote-by-Mail ballots at any time but the Registrar may not mail them out until May 10. She invited voters to visit the City Clerk webpage, League of Women Voters www.SmartVoter.org or Los Angeles County at www.LAvote.net for additional information on the election or for links on becoming a poll worker, verifying voter registration, requesting a Vote-by-Mail ballot, or locating a polling place.

City Clerk Herbers announced that a free Commissioner Certification class will be held on Wednesday, May 26, noting that residents must complete the training to be eligible for appointment to commissions and training must be renewed every two years. Reservations for attendance are required and can be made by contacting the City Manager's office at 310.618.5880 or online www.torranceca.gov/CommissionerCert.htm.

6. COMMUNITY MATTERS

6A. DESIGN APPROVAL/AWARD OF CONTRACT FOR 2011 ROSE PARADE FLOAT Recommendation

Recommendation of the City Council Citizen Development and Enrichment Committee and the Torrance Rose Float Association that City Council:

- 1) Approve the design tentatively entitled "Afternoon Tea with Friends" for the City's float entry in the Pasadena Tournament of Roses Parade on January 1, 2011;
- 2) Approve an agreement between the City of Torrance and Fiesta Parade Floats for the design, construction, parade entry, display and operation of the Torrance float in the 2011 Pasadena Tournament of Roses Parade; and
- 3) Approve the expenditure of \$142,000 for costs related to the float to come from the City Manager Community Promotion Program Budget with \$10,000 to be reimbursed to the City by the Torrance Rose Float Association (TRFA).

Mary Hoffman, president of Torrance Rose Float Association, reported that millions of people in over 200 countries watch the parade every year and the television coverage the City received during last year's parade was valued at over \$350,000. She noted that Fiesta Parade Floats has designed the City's floats for the past 14 years and the floats have received 11 awards during that period, including last year's first place award for a non-commercial entry.

Tim Estes, president of Fiesta Parade Floats, and Raul Rodriguez of Raul Rodriguez Designs, unveiled the design for the City's 2011 Rose Float entitled "Afternoon Tea with Friends."

Councilmember Brewer, chair of Citizen Development and Enrichment Committee, expressed support for the proposed 2011 Rose Float design.

In response to Councilmember Brewer's inquiry, Mr. Estes stated that should the City drop out of the parade in 2012, it would be difficult to come back in the future because the parade can only accommodate 45 floats.

MOTION: Councilmember Brewer moved to concur with the staff recommendation. The motion was seconded by Councilmember Furey and passed by unanimous roll call vote.

7. ORAL COMMUNICATIONS #1

7A. Terry Ragins, on behalf of TUSD, Torrance Council of PTA's, Torrance Education Foundation, Torrance Parents Organization, Torrance Area Chamber of Commerce, and the City of Torrance, reminded the community that the "Dollar a Day to Save Our Schools" campaign is under way to raise funds for Torrance Unified School District schools. She noted that "Save Our Schools" t-shirts and bracelets are available for purchase at www.tef-sos.org.

7B. Bob Chiota, Sons of Italy, announced that the Torrance branch of Sons of Italy will hold an Open House/Wine Tasting on Sunday, May 16, at 1744 West Carson Street, with bocce ball to begin at 1:30 p.m. followed by lunch and wine tasting at 3:00 p.m.

7C. Jordan Thompson, Torrance Sister City Association, invited the public to attend the 38th Annual Bunka Sai on Saturday, May 1, and Sunday, May 2, 2010 from 11:00 a.m. to 5:00 p.m. at the Ken Miller Recreation Center.

8. CONSENT CALENDAR

8A. SUBSIDY OF FEES FOR SOCCER TOURNAMENT AT COLUMBIA PARK

Recommendation

Recommendation of the Community Services Director that City Council subsidize fees in the amount of \$660 for the 2nd Annual Rotary Club of Del Amo Soccer Tournament to be held at Columbia Park on Saturday, June 5, 2010.

8B. PURCHASE ORDER RE FURNITURE FOR NORTH TORRANCE LIBRARY

Recommendation

Recommendation of the Community Services Director that City Council approve a purchase order with Gaylord Brothers in an amount not to exceed \$20,356.43 for new furniture at the North Torrance Library.

8C. LAND USE COVENANT/ENVIRONMENTAL RESTRICTION RE 18203 WESTERN AVENUE

Recommendation

Recommendation of the Fire Chief that City Council approve the land use covenant and environmental restriction on property located at 18203 Western Avenue, Torrance, CA.

8D. TORRANCE ROSE FLOAT ASSOCIATION 2009-2010 ANNUAL REPORT

Recommendation

Recommendation of the Community Services Director that City Council accept and file the Torrance Rose Float Association 2009-2010 Annual Report for the Association's efforts toward the City of Torrance 2010 Tournament of Roses Parade float.

8E. PURCHASE ORDER FOR COMPUTER HARDWARE AND SOFTWARE

Recommendation

Recommendation of the Information Technology Director that City Council authorize an increase of \$45,000 in the annual purchase order with Dell Computers, Inc., for personal computers, servers, laptops, and other miscellaneous related hardware, software, and disposal services for a new not to exceed amount of \$445,000.

8F. LEASE AMENDMENT RE 2780 SKYPARK DRIVE

Recommendation

Recommendation of the City Manager that City Council approve a sixth amendment to lease with Skypark RPR Associates II, a California limited partnership setting a fair market rent for the period commencing January 1, 2010 for a lease of City-owned property located at 2780 Skypark Drive.

MOTION: Councilmember Brewer moved for the approval of Consent Calendar Items 8A through 8F. The motion was seconded by Councilmember Sutherland and passed by unanimous roll call vote.

12. ADMINISTRATIVE MATTERS

12A. APPROVAL OF CLASS SPECIFICATION FOR FORENSIC SUPERVISOR

Recommendation

Recommendation of the Human Resources Director and Civil Service Commission that City Council approve the proposed class specification for Forensic Supervisor.

Human Resources Manager Lawrence reported that the Forensic Supervisor would oversee the newly created Forensic Unit.

MOTION: Councilmember Furey moved to concur with the staff recommendation. The motion was seconded by Councilmember Rhilinger and passed by unanimous roll call vote.

12B. SCE LIGHT STANDARD REPLACEMENT PROGRAM

Recommendation

Recommendation of the City Manager that City Council review options and give direction regarding the Southern California Edison proposal to replace all steel light standards in the City of Torrance with Marbelite light standards with overhead power feed.

Assistant to the City Manager Sunshine reported that Southern California Edison (SCE) has proposed replacing the 3200 steel light standards in Torrance with Marbelite standards, with the \$9-11 million cost to be paid by SCE. He advised that in conjunction with the project, staff has explored the possibility of replacing the overhead fed poles with underground power in order to clean up overhead lines. He reviewed the following options: 1) New Marbelite standards as proposed; 2) New Marbelite standards with underground sweep to make conversion to underground feed easier in the future – Cost \$320,000 (\$100 per pole); 3) Use of Rule 20A funds to underground specific areas; and 4) SCE to construct underground feeds to new light standards using maintenance fees. He explained that Option 4 would require the City to appeal the disposition of maintenance fees with the Public Utilities Commission (PUC) because it is SCE's position that maintenance fees

collected in Torrance may be used for maintenance throughout the system and do not have to be expended in Torrance. He stated that staff believes the only viable options at this time are Options 1 and 4, however, Option 4 would delay the replacement of the poles indefinitely pending action by the PUC. He recommended that staff be directed to review the wattage of each light being replaced to ensure that appropriate illumination is used.

Councilmember Brewer suggested that staff look into reducing the number of streetlight poles along streets that are overly illuminated during the replacement process.

Councilmember Sutherland recommended that streetlights in City-owned right-of-way be moved during this project to accommodate future street widening.

Assistant to the City Manager Sunshine related his understanding that SCE must move poles at no cost to the City when streets are widened.

In response to Councilmember Numark's inquiry, Assistant to the City Manager Sunshine reported that the poles to be installed are not made for LED lighting, but could be converted in the future.

Scott Gobble, Southern California Edison, provided clarification regarding the annual maintenance fees/cost ownership fees charged for streetlights and the disposition of these funds. He recommended that the installation of underground sweeps be limited to commercial areas that are more likely to be converted to underground service if the Council chooses Option 2.

Mayor Scotto questioned why the underground sweep is not automatically installed by SCE on the new poles given the relatively small cost per pole.

Mr. Gobble advised that SCE's system-wide replacement program is replacing "like with like" and there is an additional charge for any changes to the service. He noted that SCE is exploring LED technology and will be bringing forward a proposal to the PUC, which would allow for cities to opt for this technology at an additional cost.

Responding to questions from the Council, Mr. Gobble reported that the light standards to be replaced are primarily in residential areas and that the lamp heads to be installed are designed to direct light downward onto the sidewalk and street, however, the City may request different lamp heads for specific areas.

Mayor Scotto voiced his opinion that Option 1 was the only feasible option at this time.

MOTION: Councilmember Numark moved to approve Option 1. The motion was seconded by Councilmember Sutherland and passed by unanimous roll call vote.

12C. RESOLUTION RE SALARY RANGE FOR FORENSIC SUPERVISOR POSITION

Recommendation

Recommendation of the Human Resources Director that Council adopt a Resolution amending the Memorandum of Understanding for the Torrance Professional and Supervisory Association (TPSA) Resolution No. 2007-56 to implement the proposed salary range for Forensic Supervisor. The cost to implement the salary adjustment is \$6359. Funds are available in the Police Department Operating Budget as part of the Fiscal Year 2009-2010 budget as adopted by the City Council.

Human Resources Manager Lawrence advised that the Resolution would implement the proposed salary range for the Forensic Supervisor position approved in Agenda Item 12A.

MOTION: Councilmember Furey moved to concur with the staff recommendation. The motion was seconded by Councilmember Brewer and passed by unanimous roll call vote.

RESOLUTION NO. 2010-37

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TORRANCE AMENDING RESOLUTION NO. 2007-56 SETTING FORTH CHANGES REGARDING THE HOURS, WAGES, AND WORKING CONDITIONS FOR EMPLOYEES REPRESENTED BY THE TORRANCE PROFESSIONAL AND SUPERVISORY ASSOCIATION (TPSA)

MOTION: Councilmember Rhilinger moved to adopt Resolution No. 2010-37. The motion was seconded by Councilmember Barnett and passed by unanimous roll call vote.

12D. PROGRAM REVISIONS RE 2010 & 2011 4th OF JULY CELEBRATIONS

Recommendation

Recommendation of the Community Services Director that City Council review three program revision options and approve program revision Option A for the 2010 and 2011 Citywide 4th of July Celebrations.

Recreation Services Manager Brunette reported that at the direction of the City Council, staff has reassessed the City's annual 4th of July Celebration at Wilson Park and developed the following three options for consideration: **Option 1** – Phased approach, reducing bazaar vendors in 2010 from 100 to 50, eliminating them in 2011; adding traditional participatory games in both years; adding sponsor-paid "Youth Game Zone" in 2011; increasing onsite parking fees and eliminating oversized vehicle parking in 2011; **Option 2** – City Council to select individual proposed revisions and elements for 2010 and/or 2011; and **Option 3** – Leave 4th of July event as is for 2010, re-evaluate 2011 event in the future. He noted that staff intends to conduct a survey to determine the preferences of attendees at this year's event and to track their zip codes.

Councilmember Sutherland related his understanding that the largest expense associated with the 4th of July Celebration is for the Police Department and asked for an estimate of this expense. Police Chief Neu reported that police officers are deployed throughout the City on the 4th of July at a cost of approximately \$100,000.

Councilmember Brewer recalled that the 4th of July Celebration at Wilson Park was established to provide a place for residents to view fireworks after the sale of "safe and sane" fireworks was prohibited in Torrance.

City Manager Jackson confirmed that there has been a reduction in fireworks-related incidents since the sale of fireworks was banned.

Councilmember Brewer asked about the impact on non-profit organizations should Option 1 be approved. Recreation Services Manager Brunette explained that non-profit organizations typically operate most of the food booths partnering with food vendors that have the necessary health department permits and the number of food booths (20) will remain unchanged.

Councilmember Numark questioned why staff had not considered eliminating the fireworks show as a cost cutting measure. He expressed concerns that the options presented offer only minimal savings and the proposed reduction in bazaar vendors would actually decrease revenues.

Recreation Services Manager Brunette reported that staff considered eliminating the fireworks show but rejected the idea because the show is the main reason people come to Wilson Park and it is also enjoyed by surrounding residents within view of the show.

Community Services Director Jones stated that in addition to reducing costs, staff focused on improving the quality of the event; that the bazaar was originally envisioned as crafts fair but has turned into more of a swap meet; that reducing the number of vendors will allow more space for games; and that the loss in revenue would be offset by the increase in parking fees.

City Manager Jackson noted that the Police Department would still need to be present at Wilson Park even if the fireworks show was eliminated and the use of illegal fireworks could increase with the demise of this event.

In response to Councilmember Numark's inquiry, Recreation Services Manager Brunette provided clarification regarding the proposal to increase parking fees from \$5 to \$10 for residents and to charge \$15 for non-residents. He confirmed that there would be a parking attendant to check driver's licenses to verify residency.

Mayor Scotto expressed support for Option 1.

Councilmember Barnett indicated that he also favored Option 1 and related his belief that the community was well served by the \$20,000 spent on the fireworks show.

Councilmember Rhilinger doubted that eliminating the fireworks show would result in any real savings in terms of police presence because officers would still need to monitor the park.

Councilmember Furey expressed support for Option 1 and commended staff for their efforts. He suggested the possibility of increasing non-resident parking fees to \$20, noting that free parking is available via the shuttle service.

Councilmember Sutherland expressed concerns that the increase in parking fees would encourage people to park on nearby residential streets.

A brief discussion ensued concerning the proposed reduction in bazaar vendors from 100 to 50. Mayor Scotto recommended that Torrance non-profit organizations be given precedence over commercial vendors and suggested the possibility of increasing the fee for a booth from \$100 to \$150 as a means of increasing revenue and reducing the number of vendors.

Community Services Manager Jones reported that bazaar booths are typically given out on a first-come basis but agreed to give Torrance non-profit groups precedence. He doubted that increasing the fee for booths would discourage vendors.

MOTION: Councilmember Furey moved to concur with staff's recommendation to reduce the number of bazaar vendors from 100 to 50 in 2010. The motion was seconded by Councilmember Rhilinger and passed by a 6-1 roll call vote, with Councilmember Numark dissenting.

A brief discussion ensued concerning the proposed addition of traditional participatory games like the balloon toss. Councilmember Sutherland expressed concerns about this added expense due to the loss in revenue from the elimination of 50 booths.

Recreation Services Manager Brunette stated that staff was confident that the increased parking fees would cover the loss in revenue from the reduction in booths as well as the \$1,000 cost for the games.

Councilmember Numark noted that he voted against the previous motion because he favored increasing the fee for the bazaar booths to \$200 to offset the loss in revenue.

MOTION: Councilmember Rhilinger moved to concur with the staff recommendation to add traditional participatory games beginning in 2010. The motion was seconded by Councilmember Furey and passed by unanimous roll call vote.

A brief discussion ensued concerning the proposed increase in parking fees. Mayor Scotto indicated that he favored eliminating oversized vehicle parking. Councilmember Sutherland noted that an RV is a convenient way to attend the event and proposed increasing the fee for RVs to cover the number of parking spaces used.

Recreation Services Manager Brunette advised that one of the reasons staff has recommended the elimination of RV parking is due to the consumption of alcohol inside the RVs.

MOTION: Councilmember Rhilinger moved to concur with the staff recommendation to increase parking fees to \$10 for residents and \$15 for non-residents for vehicles/trucks. The motion was seconded by Councilmember Furey and passed by unanimous roll call vote.

MOTION: Councilmember Rhilinger moved to charge oversize vehicles for the spaces used for 2010 and to eliminate oversize vehicle parking in 2011. The motion was seconded by Councilmember Barnett and passed by a 6-1 roll call vote, with Councilmember Sutherland dissenting.

A brief discussion ensued regarding the proposal to implement a sponsor-paid "Youth Game Zone" in 2011.

MOTION: Councilmember Rhilinger moved to concur with the staff recommendation to implement a "Youth Game Zone" in 2011. The motion was seconded by Councilmember Furey and passed by unanimous roll call vote.

A brief discussion ensued concerning the proposal to eliminate bazaar vendors in 2011.

MOTION: Councilmember Brewer moved to concur with the staff recommendation to eliminate bazaar vendors in 2011. The motion died for lack of a second.

MOTION: Councilmember Rhilinger moved to delay making a decision on the elimination of bazaar vendors pending staff's assessment of this year's event to be submitted to the Council no later than September 2010. The motion was seconded by Councilmember Sutherland and passed by unanimous roll call vote.

12E. RESOLUTION AMENDING TPOA MOU UPDATING REQUIREMENT FOR FIELD TRAINING OFFICER REQUIREMENTS

Recommendation

Recommendation of the City Manager that City Council adopt a Resolution pursuant to a Memorandum of Understanding amending Resolution No. 2009-17 setting forth hours, wages and working conditions for employees represented by the Torrance Police Officers Association (TPOA) to update the requirements for the Field Training Officer (FTO) assignment.

Assistant to the City Manager Chaparyan reported that the proposed changes in requirements for Field Training Officers would enlarge the pool of qualified officers.

MOTION: Councilmember Furey moved to concur with the staff recommendation. The motion was seconded by Councilmember Rhilinger and passed by unanimous roll call vote.

RESOLUTION NO. 2010-38

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TORRANCE AMENDING RESOLUTION NO. 2009-17 SETTING FORTH CHANGES REGARDING THE HOURS, WAGES, AND WORKING CONDITIONS FOR EMPLOYEES REPRESENTED BY THE TORRANCE POLICE OFFICERS ASSOCIATION (TPOA)

MOTION: Councilmember Rhilinger moved to adopt Resolution No. 2010-38. The motion was seconded by Councilmember Barnett and passed by unanimous roll call vote.

The Council briefly recessed from 9:02 p.m. to 9:20 p.m.

14. APPEALS

14A. HEALTHY SPA MASSAGE BUSINESS LICENSE REVOCATION

Recommendation

Recommendation of the Finance Director that City Council concur with the decision of the License Review Board to revoke the business license issued to Healthy Spa Massage (located at 1515 Crenshaw Boulevard, Units 102 and 103), for numerous violations of the City of Torrance Municipal Code.

Mayor Scotto reviewed the procedure for the hearing.

Ted L. Yoon, legal counsel for Jun Nam Choi, owner of Healthy Spa Massage, provided background information about his client, reporting that Mr. Choi recently came to the United States from Korea and built the business, Healthy Spa Massage, from scratch and it was duly licensed in August 2008. He stated that the grounds for the appeal are Torrance Municipal Code (TMC) §35.11.5(a)(2), §31.9.10(f) and §35.11.2(a). He explained that §35.11.5(a)(2) provides that if a business owner "permitted through an act of omission or commission" an employee to engage in an illegal act, the conduct of the employee will be "considered imputed" to the licensee. He reported that Mr. Choi's license was revoked based on the actions of massage technician, Xia Li Taylor, who was arrested on April 15, 2009 and subsequently convicted of California Penal Code (PC) §647(b), however, neither Mr. Choi nor the business was implicated in the arrest and no evidence has been presented that the illegal act was permitted by Mr. Choi through an act

of omission or commission. Additionally, he stated that the words “considered imputed” mean that the offense is not automatically imputed to the business owner and other factors must be taken into account. He contended that the License Review Board misinterpreted §35.11.5(a)(2) and revoked Mr. Choi’s business license based on the actions of one “bad apple.”

Mr. Choi voiced his opinion that the License Review Board misapplied TMC §31.9.10(f), which states that any business that engages in an act that endangers the health, morals, safety or general welfare of the City of Torrance will be subject to the revocation or suspension of their business license, because the subject business has not been charged with such wrongdoing. He disputed the claim that seminal fluid was found in massage room No. 7, noting that no laboratory test was performed to confirm the source of the stain, which was found during an investigation using an alternative light source (ALS). He reported that his client strictly enforced the City’s regulations and went so far as to post them in each massage room and had them translated into Korean. He pointed out that the business never received a citation for any violation. With regard to TMC §35.11.2(a), he contended that the License Review Board misused its discretionary power to revoke a business license and urged the Council to reverse the Board’s decision. He emphasized that his client has never been convicted of any offense and was diligent in running his business, as evidenced by his record keeping. He stated that Xia Li Taylor was punished for her offense so there was no need for further retribution and asserted that the most his client should receive is a one-month suspension of his business license.

Deputy City Attorney Jocelyn Poblete, representing the Finance Department, urged the Council to uphold the License Review Board’s unanimous decision to revoke Healthy Spa Massage’s business license. She noted that per TMC §31.9.10(f), the License Review Board has the discretion to revoke a business license if the Board finds revocation is necessary to preserve the public health, morals, safety or general welfare. She reported that the Torrance Police Department conducted an undercover investigation of Healthy Spa Massage on April 15, 2009, which resulted in the arrest of an employee for California Penal Code §647(b), commonly known prostitution, and testimony detailing the employee’s lewd acts was presented at the LRB hearing. She explained that it is the City’s position that a business owner who employs a massage technician who performs lewd acts poses a danger to the health, morals, safety and general welfare of the City. She advised that the employee was subsequently convicted on July 24, 2009 of violating §647(b); that TMC §35.11.5(a)(2) states that a conviction of an employee for a crime involving sexual misconduct will be imputed to the business owner; and that PC §647(b) is a crime involving sexual misconduct, therefore it was rightfully imputed to the appellant. Additionally, she reported that a presumptive chemical test performed by the Los Angeles Sheriff’s Department on a stain in massage room No. 7 tested positive for semen.

Deputy City Attorney Poblete noted that evidence was presented during the LRB hearing that the responsibilities involved in operating this type of business were thoroughly explained to the appellant during an interview with the Police Department along with pertinent code sections, including TMC §35.11.5(a)(2). She asserted that the Torrance Municipal Code is clear that massage establishment owners are responsible for the actions of their employees and the appellant has cited no legal authority that would allow him to escape this responsibility. She stated that Mr. Yoon has claimed that the License Review Board abused its discretion by revoking the appellant’s business license based on the actions of one employee, however the appellant has not disputed that a crime of prostitution occurred at his business and this conviction alone is grounds for the revocation of his business license.

Noting that he was representing the City Council in this matter, Assistant City Attorney Sullivan disclosed that he and Jocelyn Poblete work in the City Attorney's office, however, they have created an ethical barrier and do not discuss cases in which they are both involved and this is allowed pursuant to the Morongo Band of Mission Indians case.

Responding to questions from the Council, Assistant Finance Director Flewellyn reported that approximately 12 massage establishments have been the subject of revocation proceedings; that 8 or 9 have had their licenses revoked; and that 3 have appealed the License Review Board's decision.

Councilmember Brewer asked if the License Review Board would have revoked the license without the information regarding the stain in massage room No. 7.

Assistant City Attorney Sullivan advised that the Findings of Fact and Conclusions of Law indicate that the Board believed the 947(b) conviction alone was sufficient grounds for revocation.

Councilmember Numark questioned whether other massage establishments have had their licenses revoked based solely on the conviction of one employee for prostitution.

Assistant Finance Director Flewellyn reported that typically there are other violations, i.e. failure to keep required business records.

Assistant City Attorney Sullivan recalled that the License Review Board revoked a massage establishment's business license when the only other violation, in addition to an incident involving sexual misconduct, was the failure to keep towels in a closed cabinet.

Mayor Scotto questioned why TMC §31.9.10(f) states that the Board "may" revoke the license instead of "shall" revoke the license.

Assistant City Attorney advised that the section was written this way to give the Board discretion in deciding whether to revoke or suspend a license based on the evidence.

Mayor Scotto asked if any hearings have resulted in the suspension of a business license rather than revocation, and Assistant Finance Director Flewellyn reported that two or three businesses have had their licenses suspended for varying periods of time.

Councilmember Furey questioned whether any of the suspensions involved convictions for PC §647(b). Assistant Finance Director Flewellyn reported that the suspensions involved lesser offenses and staff had recommended revocation, but the Board decided on suspension after hearing evidence.

Ms. Poblete clarified that the suspensions involved violations, such as employing an unlicensed technician, having an expired business license, or failure to wear proper garments, and they did not involve convictions for §647 (a) or (b) and in some cases the City and the licensee reached an agreement prior to the LRB hearing.

In response to Councilmember Brewer's inquiry, Ms. Poblete confirmed that the massage technician left the room during the massage of the undercover officer in order to get permission to extend the massage for less than the going rate.

Responding to Councilmember Numark's inquiry, Assistant Finance Director Flewellyn reported that it is the City's practice to conduct a background investigation when

people apply for a massage technician license and the background check of Xia Li Taylor revealed no prior convictions.

Noting that the record indicates that the cost of the massage was split either 60/40 or 40/60 between the owner and the massage technician, Councilmember Rhilinger suggested that this financial interest supports the idea that the owner should know exactly what type of massage is occurring and how long it is taking place.

Councilmember Rhilinger pointed out that the record indicates that Xia Li Taylor was granted a massage technician's license on January 29, 2009 and the application indicates that she would be working at Massage Health Clinic at the same address as Healthy Spa Massage, 1515 Crenshaw Boulevard, however, the appellant claims that Ms. Taylor began her employment with him shortly before the incident that occurred on April 15, 2009.

Assistant City Attorney suggested that "Massage Health Clinic" on the application could have been a typographical error because at the top of the same page Healthy Spa Massage is listed with the same address.

Mr. Yoon reported that the appellant has only operated the business under the name "Healthy Spa Massage."

Mayor Scotto invited Mr. Yoon to give his rebuttal argument.

Mr. Yoon noted his disagreement with Ms. Poblete's interpretation of TMC §35.11.5(a)(2) and reiterated his position that the illicit act must have been permitted by his client through an act of omission or commission in order for it to be imputed to him and that "considered imputed" means that the act should not automatically be imputed to his client. He noted that both §31.9.10(f) and §35.11.2 use the word "may" instead of "shall" revoke, which means that the Board/Council has discretion in this matter. Regarding the semen stain, he clarified that it was mentioned during the LRB hearing that Xia Li Taylor had worked in massage room No. 7. He maintained that his client is an innocent man who follows the rules; expressed concerns that his client has been singled out by the City and made an example; and voiced his opinion that his client should not be penalized for one bad act by one bad employee.

Councilmember Sutherland asked if the owner was present at the business at the time of the April 15, 2009 incident, and Mr. Yoon related his understanding the both the owner Mr. Choi and his manager Susan Lee were present.

Mayor Scotto questioned whether it was Mr. Choi who approved Ms. Taylor's request to extend the undercover officer's massage at a reduced fee.

Assistant City Attorney Sullivan cautioned that this hearing was based on the transcript from the License Review Board hearing and only matters contained in the transcript could be discussed. After reviewing the record, he reported that it mentions only that the manager approved Ms. Taylor's request.

With the aid of an interpreter, Mr. Choi indicated that Susan Lee was the manager on that date.

Councilmember Rhilinger stated that Mr. Choi, as owner of the business, had the responsibility of supervising what was happening in massage rooms, a responsibility he omitted, and that she believed TMC §35.11.5(a)(2) is very clear that when an employee

commits this type of violation, it will be imputed to the business owner. She indicated that nothing in the record or the testimony at this hearing had convinced her that the LRB's decision should be reversed and voiced her opinion that License Review Board members had not misused their discretion, but rather they had weighed the options and chose the one they felt was the most responsible.

Councilmember Furey explained that the City has a policy of zero tolerance with regard to massage establishments and neither Healthy Spa Massage nor Mr. Choi was singled out. He noted that prior to the hearing, Councilmembers were provided with an extensive record, which includes briefs from both sides, several exhibits and a complete transcript of the License Review Board hearing, and it was clear from this information that an employee of Healthy Spa Massage was convicted of PC §647(b). He related his belief that the acts of an employee are imputed to the business owner in any type of business situation. He voiced his opinion that the LRB did not act capriciously or arbitrarily and it was within the Board's discretion to revoke Healthy Spa Massage's business license based on the massage technician's conviction. He noted that the Council has asked that laws regarding sexual misconduct be strictly enforced because they impact the peace and dignity of the City.

Councilmember Numark stated that he disagreed with Mr. Yoon's interpretation of TMC §35.11.5(a)(2) and believes the correct interpretation of "shall be considered imputed to the principal" means that the illegal acts shall be attributed to the principal as if the principal had committed the acts himself. He voiced his opinion that the LRB clearly had the authority to revoke the business license based on the employee's conviction, so the only question remaining was whether the offense rises to the level that the LRB should exercise its authority to revoke the license as opposed to suspending it. He noted that according to testimony at this hearing, the Board chose to revoke the licenses of other massage establishments in cases involving this type of violation, therefore the Board's decision in this case was consistent and he believed it should be upheld.

Councilmember Sutherland related his belief that both the owner and the manager knew what was going on at the business; doubted that the offense was a one-time occurrence as evidenced by the fact that the massage technician left the room to get permission to extend the massage; and voiced his opinion that license should definitely be revoked and under no circumstances should this business be allowed to reopen.

MOTION: Councilmember Sutherland moved to uphold the License Review Board's decision to revoke the business license of Healthy Spa Massage. The motion was seconded by Councilmember Rhilinger and passed by unanimous roll call vote.

Assistant City Attorney Sullivan noted that Findings of Fact and Conclusions of Law will be brought back for the Council's adoption at next week's meeting.

17. ORAL COMMUNICATIONS #2

17A. Councilmember Rhilinger reminded the public that the 38th Annual Bunka Sai cultural festival will be held on Saturday, May 1, and Sunday, May 2, from 11:00 a.m. to 5:00 p.m. at the Ken Miller Recreation Center, with proceeds to benefit Torrance Sister City's cultural exchange program.

17B. Councilmember Sutherland reported on the upcoming 51st Annual Armed Forces Day Celebration to be held Friday, May 14, through Sunday, May 16, which includes military exhibits at Del Amo Fashion Center; concerts by the United States Coast Guard Band at the Armstrong Theatre on May 14; and the Armed Forces Day Parade on May 15 at 1:30 p.m.

17C. Councilmember Sutherland announced that the Torrance Education Foundation and the Torrance Rotary Club will be holding a fundraiser for TUSD music programs at The Depot restaurant on Sunday, June 13, from noon to 4:00 p.m.

17D. Councilmember Brewer announced that the Torrance All City Track and Field Meet for students K through 8 will be held on Saturday, May 1, at West High School, with registration beginning at 7:00 a.m.

17E. Mayor Scotto announced that next Tuesday, May 4, will be Students and Government Day and 22 eighth-grade students from Torrance middle schools will be conducting a portion of the City Council meeting. He encouraged everyone to support the students by attending the meeting.

18. EXECUTIVE SESSION

Considered earlier in the meeting, see page 1.

19. ADJOURNMENT

At 10:32 p.m., the meeting was adjourned to Tuesday, May 4, 2010 at 7:00 p.m. for regular business in the Council Chambers. ***May 4, 2010 is Students and Government Day.***

Attest:

/s/ Frank Scotto

Mayor of the City of Torrance

/s/ Sue Herbers

Sue Herbers,
City Clerk of the City of Torrance

Approved on June 7, 2010