

**CITY OF DANA POINT**  
**AGENDA REPORT**

<b>Reviewed By:</b>	
DH	<u>X</u>
CM	<u>X</u>
CA	—

**DATE:** SEPTEMBER 15, 2020

**TO:** CITY MANAGER, HONORABLE MAYOR, AND CITY COUNCIL

**FROM:** BRENDA WISNESKI, COMMUNITY DEVELOPMENT DIRECTOR  
LIEUTENANT KIRSTEN MONTELEONE, CHIEF OF POLICE  
JEFF ROSALER, COMMUNITY DEVELOPMENT MANAGER

**SUBJECT:** AMENDMENT OF DANA POINT MUNICIPAL CODE CHAPTER 5.20  
MESSAGE BUSINESS REGULATIONS

**RECOMMENDED ACTION:**

That the City Council introduce and hold a first reading of an Ordinance (Action Document A) entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, AMENDING CHAPTER 5.20 OF THE DANA POINT MUNICIPAL CODE.

**BACKGROUND:**

The City of Dana Point adopted Dana Point Municipal Code (DPMC) Chapter 5.20 Massage Business Regulations in December of 2006 to help regulate the business of massage establishments within the City. For several years, the City's Code Enforcement Division processed permits for massage establishments and individual licenses for massage technicians. In 2008, the State Legislature adopted Senate Bill (SB) 731, Section 4600 et seq. of the Business and Professions Code, relating to massage therapy. The new regulations created a license for both establishments and technicians that superseded local control. As amended in 2011 by Assembly Bill (AB) 619, SB 731 limited the ability of local governments to regulate massage establishments. Specifically, it prohibited the City from regulating massage businesses that provide massage services through employees or independent contractors certified by the California Massage Therapy Council (CAMTC).

Since the enactment of SB 731, the City has experienced an increase in massage establishments. Reports from other Orange County cities shows that the enactment of SB 731 has resulted in, as an unintended consequence, the proliferation of illicit massage establishments that are fronts for prostitution and may also be involved in human

trafficking. Additionally, numerous massage establishments generate reviews on websites and mobile applications where patrons can post reviews and information regarding the sexual services provided at these establishments.

Responding to the concerns of local agencies, the State Legislature substantially revised the law through the adoption of AB 1147, the Massage Therapy Act (MTA). The MTA restores local land use authority over massage establishments by removing SB 731's broad State preemption of local massage ordinances, and provides local governments with greater authority to establish reasonable regulations to manage massage establishments in the best interests of the individual community. Under the new law, responsibility for massage regulations is divided between CAMTC, which regulates the practices of massage and certifies individual massage therapists, and cities and counties, which are now once again expressly authorized to regulate the business providing massages through land use, business licensing and permitting requirements.

On January 20, 2020, investigators from the Orange County Sheriff Department's (OCSD) VICE team called a meeting with City Staff. OCSD's VICE team suggested that the current practice of allowing the State to inspect and enforce regulations on these businesses was not effective, and recommended that the City of Dana Point update local ordinances, using models from other Orange County cities, to gain local control while still complying with State regulations.

#### **DISCUSSION:**

The City has identified 22 businesses that offer massage as part of their business. While most of these identified establishments are upstanding and reputable, OCSD has identified potential problem businesses. The proposed ordinance changes will hold all establishments to a higher standard of service, while guaranteeing that State licensing is obtained and kept on record with both the City and OCSD.

The City prides itself on being a world class destination for new and existing businesses to call their home. Part of the Police Services and Code Enforcement Division's responsibility is to ensure a safe environment for residents, the business community, and visitors. The proposed ordinance maintains these standards while conforming to the State mandates. It clarifies existing language, adds new requirements, and removes requirements that are in conflict with State law.

Significant elements of the amended massage business regulations include the following:

- All practitioners must be CAMTC-certified;
- All massage establishments must obtain a Massage Establishment permit from the City in order to commence and continue operations;
- Owner/operators must provide the City with a complete roster of their employees, and proof of CAMTC certification for all massage practitioners. Thereafter, the City must be notified of any change in staffing;
- Massage establishments may not be open without having at least one CAMTC-certified massage technician and an owner, operator, or manager present;

- Each massage technician must display their CAMPTC-issued ID on their clothing;
- Massage establishments shall not be used for residential or sleeping purposes;
- Owners, operators, and managers are responsible for the onsite conduct of all employees; and
- City officials may make reasonable inspections of massage establishments.

By approving and implementing the recommended amendment to the Massage Ordinance of the Dana Point Municipal Code, Police Services and Code Enforcement Divisions will continue to effectively and efficiently monitor massage establishments and associated massage technicians, while being in compliance with current State laws.

**NOTIFICATION AND FOLLOW-UP:**

None

**STRATEGIC PLAN IMPLEMENTATION:**

Goal #1 Livable community and world class place.  
 Goal #2 Provide world class service to the community and implement continuous service improvement processes.

**FISCAL IMPACT:**

None

**ALTERNATIVE ACTIONS:**

Other Council-directed action.

**ACTION DOCUMENT:**

- A. [Ordinance Amendment.....4](#)

**SUPPORTING DOCUMENT:**

- B. [Existing DPMC Chapter 5.20 Massage Business Regulations.....35](#)

**ACTION DOCUMENT A**

**ORDINANCE NO. 20-XX**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, AMENDING CHAPTER 5.20 OF THE DANA POINT MUNICIPAL CODE**

The City Council of the City of Dana Point does hereby replace Chapter 5.20 of the Dana Point Municipal Code with the following:

**SECTION 1:**

Chapter 5.20 Massage Regulations

- 5.20.10 Definitions.
- 5.20.20 Preemption.
- 5.20.30 Massage establishment license required.
- 5.20.40 Off-premises massage.
- 5.20.50 Massage establishment in athletic club and hotel.
- 5.20.60 Massage therapist state certification required.
- 5.20.70 Display of certificates, licenses.
- 5.20.80 Exemptions and exceptions.
- 5.20.90 Massage establishment license application fee.
- 5.20.100 Application for massage establishment license.
- 5.20.110 Renewal of massage establishment license.
- 5.20.120 Approval or denial of massage establishment license.
- 5.20.130 Request for reconsideration on denial of license.
- 5.20.140 Reapplication after denial.
- 5.20.150 No refund or fee.
- 5.20.160 Business name.
- 5.20.170 Business location change.
- 5.20.180 Sale or transfer of massage establishment interest.
- 5.20.190 Massage establishment facilities and operations requirements.
- 5.20.200 Management of massage establishments.
- 5.20.210 Inspection by officials.
- 5.20.220 Issuance of notice of violation.
- 5.20.230 Massage establishment license suspension or revocation.
- 5.20.240 Notice of revocation.
- 5.20.250 Hearing for revocation of license.
- 5.20.260 Return of license.
- 5.20.270 Violations declared a public nuisance; violations subject to all legal remedies.
- 5.20.280 Violation and penalty.
- 5.20.290 Application to existing establishment.

5.20.300 Conflicting ordinances repealed.

### **5.20.010 Definitions.**

For the purposes of this Chapter, the words, terms, and phrases set forth in this section shall have the meanings herein set forth below unless the context clearly requires a different meaning.

“*Acupressure*” refers to the practice of applying pressure (by means including, but not limited to, the use of the thumbs or fingertips) to the same discrete points on the body stimulated in acupuncture for the therapeutic purpose (such as the relief of tension or pain).

“*Applicant*” means a person or persons submitting an application for a massage establishment permit under this Chapter. “Applicant” includes both the singular and plural.

“*California Massage Therapy Council*” means the State-organized non-profit organization created to regulate the massage industry as set forth in Chapter 10.5 of Division 2 of the California Business and Professions Code (commencing with Section 4600, as amended). The California Massage Therapy Council may also be referred to herein as “CAMTC.”

“*Certified Massage Therapist*” means any person holding a current and valid State certificate issued by the CAMTC pursuant to California Business and Professions Code Section 4600 et seq., as amended.

“*City*” means the City of Dana Point.

“*City Manager*” means the City Manager of the City of Dana Point or his or her designee.

“*City Regulatory Officials*” means Building and Safety Division, Code Enforcement Division, Fire Department and Police Services, and the County Health Department.

“*Completed application*” means an application packet, in the form provided by the City, completed with all required information including, but not limited to, all of the information required under Section 5.20.110 (Exemptions and exceptions) and containing the verified fingerprints of the applicant. The application shall be completed in the manner given, and not altered in any way by the applicant.

“*Conviction*” or “*convicted*” means a guilty plea or verdict, or a conviction following a plea of nolo contendere, where the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing the applicant to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

“*Disqualifying conduct*” means the occurrence, by any person who establishes, maintains, administers, oversees, manages, operates, works at or proposed to be employed at the subject massage establishment, of any of the following events within ten (10) years immediately preceding the date of filing of the application in question or, in the case of revocation or suspension proceedings, within ten (10) years of the date of notice of hearing pursuant to Section 5.20.240 (Notice of revocation):

1. A conviction in a court of competent jurisdiction of any of the following:
  - a. Any infraction, misdemeanor or felony offense that relates directly to the operation of a massage establishment or to the performance of a massage;
  - b. Any felony that occurred on the premises of a massage establishment;
  - c. A violation of any provision of law pursuant to which a person is required to register under the provisions of Penal Code Section 290, or conduct in violation of Penal Code Sections 236.1(a), 236.1(c)(2), 186.10(a), 186.10(b), 243.4(e), 266h, 266i, 314, 315, 316, 318, or subsections (a), (b) or (d) of Penal Code Section 647, or an attempt to commit or conspiracy to commit any of the above mentioned offenses, or any other crime involving dishonesty, fraud, deceit, or moral turpitude or when the prosecution accepted a plea of guilty or nolo contendere to a charge of a violation of Penal Code Section 415, 602 or any lesser included or related offense, in satisfaction of, or as a substitute for, any of the previously listed crimes, or any crime committed while engaged in the ownership of a massage establishment or the practice of massage;
    - (d) Any crime specified in Government Code Section 51032;
    - (e) A violation of Health and Safety Code Section 11550 or any offense involving the illegal sale, distribution or possession of a controlled substance specified in Health and Safety Code Sections 11054, 11055, 11056, 11057 or 11058;
    - (f) Conspiracy or attempt to commit any of the aforesaid offenses;
    - (g) Any lesser-included offense of any of the aforesaid offenses;
    - (h) Any offense in a jurisdiction outside the State of California which is the equivalent of any of the aforesaid offenses.
    - (i) The requirement to register under the provisions of California Penal Code Section 290.
    - (j) Being subject to a permanent injunction against the conducting or maintaining of a nuisance pursuant to California Penal Code Sections 11225 through 11235 or any similar provisions of law in a jurisdiction outside the State of California.

(k) Being subject to a permanent injunction against the conducting or maintaining of a nuisance pursuant to California Health and Safety Code Sections 11570 through 11587 or any similar provisions in a jurisdiction outside the State of California.

(l) Being subject to the denial, non-renewal, suspension, or revocation of any license or permit issued by any State, County, City, or other local government within the United States for the operation of a massage establishment or for the performance of massages, except that denial of license or permit for the operation of a massage establishment shall not be considered if the sole basis for the denial was the prohibition of the use within the zoning or planning district in which the use was proposed to be located.

(m) Touching the genitals, pubic regions, anuses, or female breasts below a point immediately above the top of the areolas, whether or not the same are covered, of oneself or of another person while providing massage services or while within view of a customer or patron of the massage establishment.

(n) Exposing the genitals, pubic regions, anuses, or female breasts below a point immediately above the top of the areola of a customer or patron while providing massage services.

(o) Exposing the genitals, pubic regions, anuses, or female breasts below a point immediately above the top of the areola of oneself or of another person to view while providing massage services or while within view of a customer or patron of the massage establishment.

(p) Allowing a customer or client to masturbate or touch the specified anatomical areas of a massage provider during the course of massage services.

Per Section 5.20.200 (Management of massage establishment interest) of this Chapter, the owner, operator, and designated manager of the massage establishment shall also be responsible for the conduct of all employees and independent contractors while they are on the establishment premises.

*“Employ,”* for purposes of this Chapter, includes contracting with employees and independent contractors. City.

*“Employee”* includes every owner, partner, operator, manager, supervisor, person and worker, whether paid or not, full-time or part-time, who renders personal services of any nature or is otherwise employed or retained in the support of the operation of a massage establishment. For the purposes of this Chapter, the term *“employee”* includes independent contractors.

*“License”* means the license to operate a massage establishment as required by this Chapter.

*“Licensee”* means a person who has been duly licensed by the City pursuant to this Chapter as either a massage establishment owner or operator.

“*Manager*” means a person who has been designated by an operator pursuant to Section 5.20.200 (Management of massage establishment license) to be responsible for the operation of a licensed massage establishment.

“*Massage*” or “*massage services*” means any method of pressure on, or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating the external parts of the human body with the hands or with the aid of any mechanical or electrical apparatus, or other appliances or devices, with or without such supplementary aids as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment, or other similar preparations. The terms “massage” or “massage services” shall not include any act prohibited by this Chapter or by any other applicable law or regulation.

“*Massage establishment*” means any establishment having a fixed place of business where any individual, person, firm, association, partnership, corporation, joint venture, limited liability company, or combination of individuals that engages in, conducts, carries on, or permits to be engaged in, conducted, or carried on for consideration, massages, baths, or health treatments involving massages or baths as regular functions. The term “massage” also includes the following acts, businesses, callings, or occupations:

1. Acupressure;
2. Anatomy care;
3. Body wrap;
4. Holistic health center or practitioner;
5. Holistic therapy;
6. Hydro therapy;
7. Public bath;
8. Reflexology;
9. Sauna;
10. Sports massage;
11. Stress management center;
12. Toxic herbal massage; or
13. Massage parlor.



“*Massage provider*” means any person who provides massage as an employ of a massage establishment.

“*Material misstatement*” means any untrue statement of a material fact in any application or report filed with the City, or the omission of any material fact in any application or report.

“*Operator*” means a person who has applied pursuant to Section 5.20.100 (Application for massage establishment license) of this Chapter, and who has been issued a license to operate a massage establishment pursuant to Section 5.20.120 (Approval or denial of massage establishment license).

“*Operator’s permit*” means the permit required to engage in massage pursuant to this Chapter.

“*Person*” means any individual, entity, firm, association, partnership, corporation, joint venture, limited liability company, or combination of individual.

“*Police Services Department*” shall mean the Police Services Department of the City of Dana Point, whether under contract or with its own forces.

“*Public bath*” means any place open to the public where there is given steam baths; electric lights baths; electric tub baths; shower baths; sponge baths; sunbaths; mineral baths; mud baths; vapor baths; Russian, Swedish, or Turkish baths; or any other type of baths, fomentations, alcohol rubs or any other types of rubs; or giving salt glows or any type of therapy; any public bathing place which has in connection therewith a steam room, hot dry room, plunge, shower bath, or sleeping accommodations; or any public bathing place where there is communal bathing or communal use of spa or whirlpool facilities and a massage service is also performed.

“*Reflexology*” is the application of pressure, stretch and movement to the feet and hands of a clothed patron to affect corresponding parts of the body, and is included in the definition of massage.

“*Sauna*” means an establishment or place primarily in the business of providing a steam bath or massage services.

“*Sex-Oriented Merchandise*” means sex-oriented implements or paraphernalia, such as, but not limited to: dildos, sex-oriented vibrators, edible underwear, similar sex-oriented devices which are designed or marketed primarily for the stimulation of human genital organs or sadomasochistic activity, lingerie, and condoms.

“*Specified anatomical areas*” means and includes any of the following human anatomical areas: genitals, pubic area, buttocks, anus or female breast below a point immediately above the top of the areolae.

“*Specified Sexual Activities*” means and includes any of the following:

1. The fondling or other erotic touching of any specified anatomical area;
2. Human sex acts, actual or simulated, including intercourse, oral copulation or sodomy;
3. Human masturbation, actual or simulated;
4. The actual or simulated infliction of pain by one human upon another or by an individual upon him or herself, for the purpose of the sexual gratification or release of either individual, as a result of flagellation, beating, striking or touching of an erogenous zone, including without limitation, specified anatomical areas;
5. Sex acts, actual or simulated, between a human being and an animal, including, but not limited to intercourse, oral copulation, or sodomy; or
6. Excretory or urinary functions as part of, or in connection with, any of the activities set forth in subsections (1) through (5) of this definition.

*“State Certification”* means a valid and current certificate issued by CAMTC pursuant to California Business and Professions Code Section 4600 et seq., as may be amended.

*“Stress management center”* means to the degree that such business, calling, or occupation identified above involves any method of massage or massage services as defined above, will still be considered a massage establishment. Such businesses, callings, or occupations are not covered by this definition to the degree the same is done in conjunction with a licensed medical or health care practitioner or facility.

#### **5.20.020 Preemption.**

This Chapter is intended to comply with and supplement State law. In the event of a conflict between this Chapter and State law, the City shall give effect to State law.

#### **5.20.030 Massage establishment license required.**

A. It shall be unlawful for any person to own, operate, manage, engage in, conduct, or carry on, in or upon any premises within the City, a massage establishment without a massage establishment license obtained in accordance with this Chapter, unless otherwise exempted in accordance with the provisions of this Chapter.

B. A massage establishment license shall only be issued to the person signing the application, after compliance with the requirements of this Chapter and all other applicable provisions of this Code including, but not limited to, the payment of the appropriate application license fee and background investigation fee, unless grounds for denial of such license are found to exist.

C. A separate license shall be obtained for each separate massage establishment owned, operated, or managed by any person.

**5.20.040 Off-premises massage.**

A. No massage regulated by this Chapter shall be performed at a place or location other than at a premises for which a valid massage establishment license has been obtained under this Chapter, except in the following circumstances:

1. Massage may be performed at premises expressly exempted or excepted by Section 5.20.080 (Exemptions and exceptions) provided the massage is performed by a person exempt under Section 5.20.080(A) or (B).

2. A certified massage therapist may perform massages at a place or location other than at a premises for which a valid massage establishment license has been obtained under this Chapter, and other than as provided in subsection (A)(1) hereof, only when such massage is specifically prescribed in writing by a physician, surgeon, chiropractor, or osteopath duly licensed to practice in the State of California. No additional massage service shall be performed for any patron beyond that service which is specifically described in the writing whether or not such patron desires any additional service to be performed.

**5.20.050 Massage establishment in athletic club or hotel.**

A massage establishment may be permitted in an athletic club, hotel or similar establishment provided such massage operations are clearly incidental to the operation of such bona fide athletic club and such athletic club has a valid permit approved by the County of Orange or City which identifies the massage establishment and its specific location. "Clearly Incidental" is defined as no more than fifteen percent (15%) of the gross floor area or one thousand (1,000) square feet of the athletic club, whichever is greater.

**5.20.060 Massage therapist certificate required.**

A. It shall be unlawful for any person to perform or administer a massage or advertise to provide massage services in the City of Dana Point, unless such person possesses and maintains a current, valid state certification issued by CAMTC . A massage provider shall provide his or her full name and certificate number to any representative of the Code Enforcement Division and Police Services or any member of the public upon request.

B. No certified massage therapist shall provide massage therapy within the City without first providing to the Code Enforcement Division and Police Services a copy of his or her CAMTC certificate and a list of the names and addresses of massage establishments at which he or she will provide massage for compensation. The applicant shall submit to Code Enforcement Division and Police Services in writing any change in employment or residence address within five working days.

**5.20.070 Display of permits, licenses.**

Each massage establishment shall display its massage establishment license, and the CAMTC certificate for each certified massage therapist employed or performing massages at the establishment, in an open and conspicuous place that is visible upon first entering the premises. Passport-size photographs of the massage establishment licensee shall be affixed to the massage establishment license on display pursuant to this section.

Each certified massage therapist shall wear or display their massage technician photo identification card on their clothing in an openly visible manner or displayed in the massage room where their massage services are to be rendered during working hours.

**5.20.080 Exemptions and exceptions.**

A. Exemptions. This Chapter shall not apply to the following classes of individuals, and the individuals shall be exempt from massage establishment requirements while engaged in the performance of the duties of their respective professions:

1. Physicians, surgeons, chiropractors, acupuncturists, or osteopaths (“professionals”) duly licensed to practice their respective professions in the State of California under the provisions of the Business and Professions Code, while performing activities encompassed by such professional licenses; however:

- a. Massage providers are required to be certified by CAMTC,
- b. If the professional’s facility is used for the purposes of nonmedical massage, the facility itself must be licensed as a massage establishment pursuant to this Chapter;

2. Registered nurses, licensed vocational nurses or physical therapists who are duly licensed to practice their professions in the State of California under the provisions of the Business and Professions Code, while performing activities encompassed by their respective licenses;

3. Other health care personnel engaged in the healing arts as regulated and licensed by Division 2 of the Business and Professions Code. Notwithstanding the foregoing, anyone duly exempted under this subsection employing or utilizing either a massage technician or a massage practitioner for the purpose of furnishing a massage shall be required to employ licensed massage technicians and practitioners;

4. Barbers, cosmetologists, estheticians and manicurists duly licensed by the State of California while performing activities encompassed by their respective licenses, except that this exemption applies solely for the massaging of the neck, face and/or scalp of the customer or client of a barber, cosmetologist, or esthetician, or in the case of a licensed manicurist, the massaging of the forearms, hands, calves and/or feet; and

5. Coaches and trainers employed by accredited high schools, community colleges or universities while acting within the scope of their employment, as well as trainers of amateur, semi-professional or professional athletes or athletic teams while acting in that capacity.

B. Exception. Individuals administering massages or health treatment involving massage to persons participating in road races, track meets, triathlons, and similar athletic or recreational events shall be exempt from the provisions of this Chapter, provided that all of the following conditions are met:

1. The massage services are made equally available to all participants in the event;
2. The event is open to participation by the general public or a significant segment of the public such as employees of sponsoring or participating corporations, students from the participating schools, members of participating organizations, etc.;
3. The massage services are provided at the site of the event and either during, immediately preceding, or immediately following the event;
4. The sponsors of the event have been advised of and have approved the provision of massage services; and
5. The persons providing the massage services are not the primary sponsors of the event.

C. The exemption for professionals shall only apply to the extent that the massages are administered for medical purposes. Professionals that administer nonmedical massages are subject to the licensing requirements of this Chapter.

D. If any State-licensed professional, who is exempt under this section, violates any provision of this Chapter, the City may notify the State licensing body that licenses the professional in writing of the professional's Municipal Code violation.

#### **5.20.090 Massage establishment license application fee.**

Any application for a massage establishment license shall be accompanied by a nonrefundable fee in an amount established by resolution of the City Council. The application fee shall be used to defray the costs of investigation, report, and related application processing issues. An additional background investigation fee, as set by the Police Services Department, shall also accompany any application.

#### **5.20.100 Application for massage establishment license.**

A. No person shall operate any massage establishment prior to having obtained a massage establishment license pursuant to this Chapter. A completed application for a massage establishment license shall be filed with the City Manager. Incomplete applications shall be

returned to the applicant until all the required information, as detailed herein, is provided in full to the City.

B. The completed application shall set forth the exact nature of the massage, bath or health treatments to be administered, the proposed place of business and facilities therefor, and the current and valid name and address of the applicant. The applicant shall also furnish the following information:

1. The previous addresses of the applicant, if any, for a period of five (5) years immediately prior to the date of the application and the dates of residence at each;

2. Written proof that the applicant is at least eighteen (18) years of age;

3. The history of the applicant as to the ownership, operation, or management of any massage establishment or similar business or occupation within five (5) years immediately preceding the filing of the application. Such information shall include, but shall not be limited to, a statement as to whether or not such person, in previously owning, operating, or managing a massage establishment within this State under a permit or license, has had such permit or license revoked or suspended or was the subject of discipline, and the reasons therefor; and the business, activity or occupation the license applicant engaged in subsequent to such action of revocation, suspension, or discipline;

4. All criminal convictions or offenses including, but not limited to, those described in Section 5.20.10 (Definitions); whether the applicant is required to register under the provisions of California Penal Code Section 290; whether the applicant, including a corporation or partnership, or a former employer of the applicant while so employed, or a building in which the applicant was so employed or a business conducted, was ever subjected to an abatement proceeding under California Penal Code Sections 11225 through 11235, California Health and Safety Code Sections 11570 through 11587, or any similar provisions of law in a jurisdiction outside the State of California;

5. Applicant's gender, height, weight, and color of eyes and hair;

6. Two (2) prints of a recent passport-size photograph of applicant;

7. Business, occupation, or employment history of the applicant for the five (5) years immediately preceding the date of the application;

8. If the applicant is a corporation, limited liability company, limited liability partnership, general or limited partnership, or other form of business entity other than a sole proprietorship, the name of the business entity shall be set forth exactly as shown in its articles of incorporation or formation document, together with the names and residence addresses of each of its officers, directors, managing members, and/or general partners and each stockholder, member, or limited partner holding more than five percent (5%) of the stock of or interest in the business entity, along with the amount of stock or interest held. If one (1) or more of the partners

or members is a corporation, the information required herein for the applicant shall also be required for such partners or members. The application shall be signed by the individual who is and shall be responsible for all actions, omissions, and conduct of the applicant licensee;

9. The names and residence addresses of all persons currently employed or intended to be employed in the massage establishment, regardless of the nature of the employment, including the names, addresses and copies of the state certificate issued by CAMTC for any certified massage therapist along with the proposed or actual nature of the work performed or to be performed, and recent passport-sized photographs, suitable for the City Manager to process the application of each such employee. The City Manager shall require such employees to furnish fingerprints for the purpose of establishing identification. Any applicant or licensee shall notify the City in writing of the names, addresses and nature of the work, or any new employees, five (5) days prior of such employment, and supply the photographs described in this Subsection. Such new employees shall allow fingerprints to be taken for the purpose of identification upon request. "Employee" includes every owner, partner, manager, supervisor and worker, whether paid or not, who renders personal services of any nature in the operation of a massage establishment;

10. The name of the person(s) designated or appointed as manager(s) of the establishment;

11. Such other information as may reasonably be deemed necessary by the City Manager or determined to be necessary by the Orange County Sheriff's Department to investigate the accuracy and veracity of the information required in the application;

12. If the applicant is not the owner of the property proposed as the location for the massage establishment, the applicant shall submit a statement (on a form provided by the City with the application) signed by the property owner, consenting to the operation of the massage establishment at the location by the applicant and a copy of any lease between the property owner and applicant for the subject property;

13. If the applicant is assuming control over an existing massage establishment, and the existing licensee will not be an owner or operator of the massage establishment for the entire term of the new license, then the new license shall not be issued unless and until the former massage establishment license has been surrendered and relinquished to the City;

14. A sketch or diagram (on a form provided by the City with the application) showing the complete interior configuration of the business, including without limitation, the location of the restrooms, massage rooms, customer areas, employee-only designated areas, and any facilities requirements as identified in Section 5.20.150 (Massage establishment facilities and operations requirements). The form need not be professionally prepared, but must accurately and clearly depict all interior areas identified in this section and Section 5.20.190 (Massage establishment facilities and operations requirement);

15. A statement in writing by the applicant that he or she certifies under penalty of perjury that the foregoing information contained in the application is true and correct, with said statement being duly dated;

16. Authorization for the City, its employees and agents to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the application for the license. Upon receipt of a completed application, the City manager will cause the massage establishment's proposed site to be inspected for compliance with the requirements of this Chapter and code. The City will not issue a massage establishment license unless and until inspection of the proposed place of business confirms that the facility complies with the requirements of this code and Chapter;

17. A copy of each applicant's social security card;

18. A copy of each applicant's recently completed Service for Live Scan (on a form provided by City with application);

19. Acknowledgement in the application that the appointment of a manager by the applicant constitutes consent by the applicant for assumption of responsibility for all acts and conduct of the manager, including service of notices by the City.

C. Notwithstanding the fact that an application filed hereunder may be a "public record" under Government Code Section 6250 et seq., certain portions of such application contain information vital to the effective administration and enforcement of the licensing and/or permit scheme established herein which is personal, private, confidential, or the disclosure of which could expose the applicant to a risk of harm. Such information includes, but is not limited to, the applicant's residence address and telephone number, the applicant's date of birth and/or age, the applicant's driver's license and/or Social Security number, and/or personal financial data. The City Council in adopting the application and licensing and/or permit system set forth herein has determined in accordance with Government Code Section 6255 that the public interest in disclosure of the information set forth above is outweighed by the public interest in achieving compliance with this Chapter by ensuring that the applicant's privacy, confidentiality, or security interests are protected. To the extent allowed by applicable law, the City Clerk shall cause to be obliterated from any copy of a completed license application made available to any member of the public the information set forth above.

#### **5.20.110 Renewal of massage establishment license.**

A. Each massage establishment license shall expire after one (1) calendar year from the date of issuance of the license unless renewed in accordance with this Chapter.

B. The licensee requesting renewal of its massage establishment license shall file an application for renewal with the City Manager at least ninety (90) calendar days prior to the scheduled expiration of the license. The renewal application shall provide all of the information required under Section 5.20.110 (Application for massage establishment license), and shall also:



(1) state that the licensee is currently operating under a massage establishment license; (2) state the scheduled date for expiration of the license for which the licensee is seeking renewal; and (3) provide either a current copy of the lease agreement under which the licensee has operated the massage establishment or evidence that the licensee owns the property at which the licensee operates the massage establishment.

C. Any application for renewal of a massage establishment license shall be accompanied by a renewal fee in an amount established by resolution of the City Council. The renewal fee shall be used to defray the costs of investigation, report, and related application processing issues. The application shall also be accompanied by a background investigation fee.

D. The City Manager shall review the application for renewal and approve or deny the application, pursuant to the criteria in and within the time provided in Section 5.20.120 (Approval or denial of massage establishment license), and shall either issue the renewed license or mail a written statement to the address indicated on the application via U.S. mail and certified mail return receipt requested, denying the license and stating the reasons therefor. The decision of the City Manager is final, unless the applicant files a written request for reconsideration with the City Manager within ten (10) calendar days of the date stated on the notice, requesting reconsideration. A license for which renewal has been denied shall be of no effect or validity after its scheduled expiration.

E. If criminal charges are pending against an applicant within a court or public agency, the conviction of which would result in the denial of the application, the City Manager shall suspend review of the application pending the final disposition of the criminal charges. The City Manager shall send written notice to the applicant notifying him or her that the review of their application is suspended pending the final disposition of the current criminal charges. The applicant shall then have the obligation of notifying the City Manager when a final decision is reached, and provide to the City adequate written evidence to substantiate the claimed outcome of the criminal matter is decided (i.e., conviction, dismissal, etc.). The application during the period of suspension shall be treated as if it were never submitted, and the seventy-five (75) day review period shall be of no effect. Once the City Manager receives notice from the applicant of the final disposition of a criminal matter, the City Manager shall resume the review of the application. The seventy-five (75) day review period shall commence from the date that the City Manager receives notice deemed adequate by the City of the final disposition of the criminal charges from the applicant. If an applicant fails to notify the City Manager of the final disposition of the criminal charges within one hundred eighty (180) calendar days of the disposition, the application shall be deemed expired, and the applicant will be required to submit a new application.

F. If a license has not been renewed prior to the scheduled expiration of the license, the operator must immediately suspend all operations until the license has been renewed.

#### **5.20.120 Approval or denial of massage establishment license.**

A. Within seventy-five (75) calendar days following receipt of a completed application, the City Manager shall either issue the license or mail a written statement to the address indicated

on the application via U.S. mail and certified mail return receipt requested of the reasons for denial thereof, unless such period is continued for good cause as provided herein. The decision of the City Manager is final, subject to Section 5.20.130 (Request for reconsideration on denial of license).

B. The City Manager may continue his/her determination to approve or deny a completed application for a period not to exceed sixty (60) calendar days, in the event that the review of a completed application involves obtaining documents, records, or information from another governmental agency, including, but not limited to, the State of California or Department of Justice, and that agency cannot reasonably respond to the City Manager's request within the time required for the City Manager to complete his or her review of the completed application, or in the event that additional time is necessary to complete the identification of the applicant or persons to be employed by the massage establishment. In the event the City Manager determines to continue the application review period, written notice shall be mailed via U.S. mail to the applicant, at the address indicated on the application, stating the period of the continuance and the reasons therefor.

C. The City Manager shall deny a license to the license applicant where any of the following conditions exist:

1. The applicant has made one (1) or more material misstatements in the completed application for a license;

2. The applicant, if an individual; or the stockholders holding more than five (5) percent of the stock of the corporation; the officers and directors and each of them if the applicant be a business entity; or the partners, including limited partners, and each of them, if the applicant be a partnership; the members, and each of them, holding more than five (5) percent of the interest in the entity if the applicant is a limited liability company; the manager or other person principally in charge of the operation of the business, or any such individuals, is a person who has engaged in disqualifying conduct as described in Section 5.20.10 (Definitions) in the ten (10) years immediately preceding the date of the application;

3. Any persons to be employed at the massage establishment are persons who have engaged in disqualifying conduct as described in Section 5.20.10 (Definitions) in the ten (10) years immediately preceding the date of the application;

4. The massage establishment, as proposed by the applicant, if permitted, would not comply with all the applicable laws, including, but not limited to, all City of the applicable building, fire, zoning, and health regulations;

5. The applicant has violated any provision of this Chapter, or any similar ordinance, law, rule, or regulation of any other public agency which regulates the operation of massage establishments;

6. The applicant is less than eighteen (18) years of age; or

7. The location of the proposed massage establishment in whole or in part has, within the two (2) year period prior to the submittal of the application, been the site of:

- a. Disqualifying conduct,
  - b. A place where violation of this Chapter—or a violation of any similar criminal or civil ordinance, law, rule, or regulation of the State of California or any other public agency related to the operation of massage establishments—has occurred, or
  - c. A revocation pursuant to this Chapter of a massage establishment license; or
  8. The applicant has not otherwise complied with the applicable requirements of this Chapter or is lacking in the background and qualifications to conduct a bona fide massage establishment; or
  9. The massage establishment is located within a radius of three hundred (300) feet of another premises massage establishment, as measured in a straight line, from the nearest point of the premises where said massage establishment is conducted to the nearest property line of any lot or legal parcel upon which a massage establishment is proposed to be located.
- D. In no event shall the decision to grant or deny the license be based on information authorized or required to be kept confidential pursuant to Welfare and Institutions Code Sections 600 to 900.
- E. If criminal charges are pending against an applicant within a court or public agency, the conviction of which would result in the denial of the application, the City Manager shall suspend review of the application pending the final disposition of the criminal charges. The City Manager shall send written notice to the applicant notifying him or her that the review of his or her application is suspended pending the final disposition of the current criminal charges. The applicant shall then have the obligation of notifying the City Manager when a final decision is reached, and the outcome of the criminal matter is decided (i.e., conviction, dismissal, etc.). During the period of suspension the application shall be treated as if it were never submitted, and the seventy-five (75) day review period shall not commence or run during the period of suspension. Once the City Manager receives notice from the applicant of the final disposition of a criminal matter the City Manager shall resume his or her review of the application. The seventy-five (75) day review period shall commence on the date that the City Manager receives notice of the final disposition of the criminal charges from the applicant. If an applicant fails to notify the City Manager of the final disposition of the criminal charges within one hundred eighty (180) calendar days of the disposition, the application shall be deemed expired, and the applicant will be required to submit a new application.

#### **5.20.130 Request for reconsideration on denial of license.**

If the City Manager denies a massage establishment license as provided in Section 5.20.130 (Approval or denial of massage establishment license), then the decision shall be final, unless the applicant files a written request for reconsideration with the City Manager within ten (10) calendar days of the date of the City Manager's written notice of denial. Upon receipt of the written request, the City Manager shall reconsider the application together with any new records, documents, or information presented by the applicant, or discovered by the City,

within the time and in the manner provided in Section 5.20.120 (Approval or denial of massage establishment license). The City Manager's decision on the reconsideration shall be final.

#### **5.20.140 Reapplication after denial.**

An applicant for a massage establishment license under this Chapter, whose application for such license has been denied, may not reapply for such license for a period of two (2) years from the date such notice of denial was deposited in the mail or received by the applicant, whichever occurs first. However, a reapplication prior to the expiration of two (2) years may be made if accompanied by evidence that the ground or grounds for denial of the application no longer exist, unless the basis for denial was disqualifying conduct.

#### **5.20.150 No refund of fee.**

No refund or rebate of a license fee shall be allowed by reason of the fact that the licensee discontinues an activity for which a license is required pursuant to this Chapter, or that the license is suspended, revoked, or not renewed.

#### **5.20.160 Business name.**

No person licensed to operate a massage establishment shall operate under any name or conduct business under any designation not specified in the license.

#### **5.20.170 Business location change.**

Prior to any change of location of a licensed massage establishment, an application shall be made to the City Manager as provided in Section 5.20.100 (Application for massage establishment license), and such application shall be granted within the time stated therein, provided all applicable provisions of this Chapter are complied with, and a change of location fee in an amount established by City Council Resolution to defray the costs of investigation and report has been paid to the City.

#### **5.20.180 Sale or transfer of massage establishment interest.**

A sale or transfer of any interest in a massage establishment, which interest would be reported as required in this Chapter upon application for a massage establishment license, shall be reported to the City Manager within thirty (30) calendar days prior to the closing of the sale or transfer. The City Manager shall investigate any person receiving any interest in a massage establishment as a result of such sale or transfer, and if such person satisfies the requirements relating to massage establishment license applicants, the existing license shall be endorsed to include such person. A fee as set forth by resolution of the City Council shall be paid to the City for the investigation by the City Manager necessitated by each such sale or transfer. (Ord. 324 § 3, 2019; Ord. 323 § 3, 2019)

#### **5.20.190 Massage establishment facilities and operations requirements.**

All massage establishments shall comply with the following facilities and operations requirements:

A. All persons conducting a massage at a massage establishment, that are not specifically exempt under Section 5.20.100 (Application for massage establishment license) of this Chapter, shall have a valid and current state certificate issued by the CAMTC throughout their employment in the massage establishment and they shall carry identification and proof of CAMTC certification while present in the massage establishment. Such identification and proof of certification shall be provided to City regulatory officials upon demand.

B. Massage establishments shall be located in a zoning district which permits such use and shall be operated within a structure for which the City has issued all necessary building and other permits of occupancy and operations. The City shall not issue a massage establishment permit unless and until all tenant and other improvements within the massage establishment have been properly permitted as required by the Dana Point Municipal Code and State law. The massage establishment shall comply with all applicable building and site development standards of the Dana Point Municipal Code and State law, including, but not limited to, the California Building Codes, the California Fire Code and the health and safety requirements. The massage establishment shall also comply with all applicable City permit and inspection procedures.

C. The operator and/or on-duty manager consents to the inspection of the massage establishment by the City's regulatory officials for the purpose of determining that the provisions of this Chapter or other applicable laws or regulations are met including, as follows:

1. The City's regulatory officials may, from time to time, make an inspection of each massage establishment for the purpose of determining that the provisions of this Chapter, State law or other applicable laws or regulations are met. Criminal investigations may be conducted, as directed by the Chief of Police. The Police Services Department may inspect the occupied massage rooms for the purpose of determining that the provisions of this Chapter are met upon occurrence of any of the conditions described in this Chapter. During an inspection, the Police Services Department may verify the identity of all on-duty employees.

2. Inspections of the massage establishment shall be conducted during business hours.

3. An operator of a massage establishment, his or her agent or employee commits an offense if he or she refuses to permit a lawful inspection of the premises by a City regulatory official at any time it is occupied or open for business.

D. Each operator shall post and maintain, in compliance with existing state and City laws, a readable sign identifying the premises as a massage establishment. The sign and the front of the business shall not be illuminated by strobe or flashing lights. Each operator and/or on-duty manager shall display the massage establishment permit in a conspicuous public place in the lobby of the massage establishment. In addition, each operator and/or on-duty manager shall

ensure that the current, valid massage therapist certification issued by the CAMTC for each massage provider employed at the establishment (whether on-duty or not) is conspicuously displayed in a public place in the lobby, and that each massage provider is wearing or has in their possession the identification required at all times when in the massage establishment. The operator and/or on-duty manager must also post, on a daily basis in a conspicuous public place in the lobby, the name of the operator and/or on-duty manager, as well as all on-duty massage provider. Finally, the hours of operation must be posted in the front window and clearly visible from the outside.

E. Each service offered, the price thereof, and the minimum length of time such service shall be performed shall be posted in a conspicuous public location in each massage establishment. All letters and numbers shall be capitals not less than one inch in height. No services shall be performed and no sums shall be charged for such services other than those posted. All arrangements for services to be performed shall be made in a room in the massage establishment which is not used for administration of massages, baths or health treatments, unless no other room exists in the establishment. No massage technician or provider shall, after the commencement of any service for any patron, advise, suggest or otherwise indicate to such patron that any additional service is available or ask or inquire of such patron whether such patron desires any additional service to be performed. No massage provider shall perform any service for any patron which was not ordered by such patron prior to the commencement of performance of any service rendered;

F. An owner and/or operator and/or massage establishment licensee of a massage establishment shall be responsible for the conduct of all employees or independent contractors working on the premises of the massage establishment.

G. With the exception of a sole proprietorship, at all times the massage establishment is open for business, one person designated as the manager and one certified massage therapist shall be on premises of the massage establishment. One or more persons shall be registered with the Code Enforcement Division to receive all complaints and, in addition to the holder of the massage establishment permit, shall be responsible for all violations taking place on the premises.

H. The operator and/or on-duty manager shall maintain a register of all employees showing the name, nicknames and aliases used by the employee, home address, age, birth date, gender, height, weight, color of hair and eyes, phone numbers, social security number, date of employment and termination, if any, duties of each employee and a copy of each massage therapist's state certification issued by the CAMTC. The above information on each employee shall be maintained in the register on the premises for a period of two years following termination; provided, however, that the Chief of Police may establish a policy that would allow for the safeguarding of social security numbers on the premises, while making the full social security numbers available for inspection within 24 hours of demand as provided for herein. The operator and/or on-duty manager shall make the register of employees immediately available for inspection upon demand of a representative of the Police Services Department at all reasonable times.

I. Every massage establishment shall keep a written record of the date and hour of each treatment administered, the name and telephone number of each patron, the name of the massage technician administering treatment, and the type of treatment administered, to be recorded on a patron release form. Such written record shall be opened to inspection by officials in charge of enforcement of this Chapter, as authorized by law or court order. Such records shall be kept on the premises of the massage establishment for a period of two (2) years.

J. The owner must advise the City, in writing, at the time of application for a permit of the business hours and any changes in hours. No person shall operate a massage establishment or administer a massage in any massage establishment or at an outcall location booked by that massage establishment between the hours of 10:00 p.m. and 7:00 a.m. A massage begun any time before 10:00 p.m. must nevertheless terminate at 10:00 p.m. All customers, patrons and visitors shall be excluded from the massage establishment between the hours of 10:00 p.m. and 7:00 a.m. and be advised of these hours. The hours of operation must be displayed in a conspicuous public place in the lobby within the massage establishment and in the front window clearly visible from the outside.

K. No massage establishment granted a permit under this Chapter shall place, publish or distribute, or cause to be placed, published or distributed, any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective patrons that any service is available other than those services described in this Chapter or otherwise permitted by state law. Nor shall any massage establishment utilize any language in the text of such advertising that would reasonably suggest to a prospective patron that any service is available other than those services authorized by this Chapter or state law.

L. A minimum of one (1) toilet and wash basin shall be provided in accordance with duly adopted City requirements and all lavatories or wash basins shall be provided with hot and cold running water and soap.

M. The walls in all rooms where water or steam baths are given shall have a washable, mold-resistant surface. All walls, ceilings, floors, pools, showers, bathtubs, steam rooms and all other physical facilities including appliances and apparatuses of the establishment must be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms, steam or vapor cabinets, shower compartments and toilet rooms shall be thoroughly cleaned and disinfected each day the business is in operation. Bathtubs shall be thoroughly cleaned and disinfected after each use.

N. Each operator shall provide in each room where massage is given sufficient lighting that complies with the California Building Code. The lighting in each massage room shall be activated at all times while the patron is in such room or enclosure.

O. Minimum ventilation shall be provided in accordance with the applicable building codes of the City. To allow for adequate ventilation in cubicles, rooms and areas provided for patrons' use, which are not serviced directly by required windows or mechanical systems of ventilation.

P. All massage establishments shall be provided with clean and sanitary towels, sheets, and linens in sufficient quantity. Towels, sheets, and linens shall not be used by more than one (1) person. Reuse of such linen is prohibited unless the same has first been laundered. Heavy white paper may be substituted for sheets, provided that such paper is used once for each person and then discarded into a sanitary receptacle cabinets or other covered space shall be provided for the storage of clean linen. Safe and sanitary receptacles shall be provided for the storage of all soiled linen and paper towels.

Q. Disinfecting agents and sterilizing equipment shall be provided for any instruments used in performing any type of massage and said instruments shall be disinfected and sterilized after each use.

R. A massage table shall be provided in each massage room and all massages shall be performed on the massage table. The tables should have a minimum height of eighteen (18) inches. Two (2) inch thick foam pads with a maximum width of four (4) feet may be used on a massage table and must be covered with durable, washable plastic or other acceptable waterproof material. Beds, floor mattresses, and waterbeds shall not be permitted on the premises.

S. To assure patrons' health, safety, sanitation, and comfort, all employees and certified massage therapists shall be clean and dressed appropriately in clean, opaque clothing which does not expose the female breasts, genitals, pubic regions, buttocks, or anuses when performing services upon the premises. Attire worn by all employees and certified massage therapists, while engaging in the practice of massage for compensation, or while visible to clients in the massage establishment, may not include the following:

1. Attire that is transparent, see-through, or substantially exposes the certified massage therapist's undergarments;
2. Swim attire, if not providing a water-based massage modality approved by CAMTC;
3. Attire that constitutes a violation of Section 314 of the Penal Code; or
4. Attire that is otherwise deemed by CAMTC to constitute unprofessional attire based on the custom and practice of the profession in California.

T. No employee of the massage establishment or any certified massage therapist shall expose any genitals, pubic regions, buttocks, anuses, or female breasts below a point immediately above the top of the areola to the view of a customer or patron of the massage establishment. All customers and patrons shall be appropriately draped with a clean, opaque



towel sufficient to cover their genitals, pubic regions, buttocks, anuses, or female breasts below a point immediately above the top of the areola while receiving such services.

U. No person or persons shall be allowed to reside, dwell, occupy, or live inside the massage establishment at any time and no beds, floor mattresses or waterbeds shall not be permitted on the premises.

V. No massage establishment shall be equipped with any of the following improvements:

1. Tinted or "one-way" glass in any room or office;

2. Door-viewer or peephole designed to look through a door wall;

3. No surveillance cameras, closed circuit cameras, video or audio recording devices of any type shall be used in in any room where massage services are to be rendered, restrooms, lavatories and shower rooms or room where patrons would otherwise have an expectation of privacy when not in the immediate presence of an employee of the establishment. Furthermore, no employee shall record (video or audio) in any of the areas listed above for the purposes of monitoring the performance of a massage, any conversations or other sounds in the massage rooms without the knowledge and consent of the patron; or

4. No windows into the lobby shall be covered or made opaque in any way, except during daylight hours, when blinds or other equivalent window coverings may be used. Daylight hours are defined as one hour after sunrise through one hour before sunset.

W. All exterior, reception, hallway and treatment room doors (except back or exterior doors used solely for employee entrance to and exit from the massage establishment) shall be unlocked during business hours, except as may be permitted by applicable law (such as the California Fire Code which allow for safety doors which may be opened from the inside when locked). Notwithstanding the foregoing, the exterior doors to the massage establishment may be locked during business hours if the massage establishment is owned by one person with one or no employees or independent contractors. Whenever the establishment is open, staff shall be available to assure security for clients and employees who are behind closed/unlocked doors. No massage may be given within any cubicle, room, booth or any area within a massage establishment which is fitted with a lock of any kind (such as a locking door knob, padlock, dead bolt, sliding bar or similar device), unless the only door is an exterior door that would impede inspection to massage treatment rooms.

X. There shall be no display, storage, use or possession of any instruments, devices or paraphernalia which are designed for use in connection with specified sexual activities, as defined by Section 5.20.010 (Definitions), adult oriented material, or sexually oriented merchandise, as defined by the same section, on the premises of the massage establishment.

Y. No massage provider or other person may, after the commencement of any service for any patron, advise, suggest or otherwise indicate to such patron that any additional service is available or ask or inquire of such patron whether such patron desires any additional service to

be performed at that time, except with respect to services that are publicly posted. No massage provider may perform any service for any patron that was not ordered by such patron prior to the commencement of performance of any service requested.

Z. No person(s), other than massage establishment employees and customers, will be allowed anywhere in the massage establishment other than the lobby/reception area during hours of operation. Entry doors to any room shall not be obstructed by any means.

AA. No alcoholic beverages or controlled substances shall be sold, served, furnished, kept, consumed, imbibed, or possessed on the premises of any massage establishment. No person shall enter, be in, or remain in any part of a massage establishment licensed under this Chapter while in possession of, consuming, using or under the influence of any alcoholic beverage or controlled substance.

BB. The applicant shall notify the City in writing of the names and nature of the work of any new employees at least ten (10) calendar days prior to such employee commencing work at the massage establishment. If the new employee is to perform massage, then the applicant shall provide a copy of the employee's valid and current certified massage therapist certificate. "Employee" includes every owner, partner, manager, supervisor, independent contractor, and worker, whether paid or not, who renders personal services of any nature in the operation of a massage establishment.

CC. The applicant shall notify the City in writing of the name of a newly designated or appointed manager at least ten (10) calendar days prior to such employee commencing work as the manager.

DD. The operator or a manager of a massage establishment shall be present on the premises at all times when the establishment is open for business or in operation. The operator is at all times responsible for the operation of the premises in compliance with the terms and conditions of this Chapter, whether he or she is actually present.

EE. No massage establishment shall be located within a residential structure.

#### **5.20.200 Management of massage establishments.**

The owner, operator, and designated manager shall be responsible for the conduct of all employees or independent contractors while they are on the establishment premises. In addition, the owner, operator and any designated manager shall be responsible for compliance with the terms of this Chapter and for receipt of any notices served or delivered to the premises by the City. Any act or omission of any employee or independent contractor constituting a violation of the provisions of this Chapter shall be deemed the act or omission of the owner, operator, and designated manager for purposes of determining whether the establishment license shall be revoked, suspended, denied or renewed.

#### **5.20.210 Inspection by officials.**

Any and all investigating officials of the City, including Code Enforcement Officers, Police Services, Building Inspectors, and Health and Safety Inspectors, shall have the right to enter massage establishments from time to time during regular business hours to make reasonable inspections to observe and enforce compliance with building, fire, electrical, plumbing, or health regulations, and to ascertain whether there is compliance with the provisions of this Chapter.

#### **5.20.220 Issuance of notice of violation.**

Whenever City Regulatory Officials makes an inspection of a massage establishment and finds that any provision of this Chapter has been violated, Code Enforcement Division shall give notice of such violation by means of an inspection report or other written notice. In any such notification, the Code Enforcement Division shall:

1. Set forth the specific violation or violations found;
2. Establish a specific and reasonable period of time for the correction of the violation or violations. If the Code Enforcement Division determines that the violation or violations are minor in nature, the Code Enforcement Division may issue a warning to the licensee or permittee that any further violation of this Chapter may result in the filing of a complaint for revocation or suspension of the license or permit; and
3. State that failure to comply with any notice issued in accordance with the provisions of this Chapter may result in the Code Enforcement Division filing a complaint for revocation or suspension of the license or permit, or other legal action as permitted under applicable law.
4. If a certified massage technician violates any of the massage technician operating requirement contained in this Chapter, or any requirement of State law, the City Manager may revoke the massage establishment license and the City may take such legal action as is deemed appropriate.

#### **5.20.230 Massage establishment license suspension or revocation.**

A. Any license issued under this Chapter may be revoked or suspended after notice as provided in Section 5.20.240 (Notice of revocation) and a hearing as provided in Section 5.20.240 (Hearing for revocation of license) where any of the grounds stated in this section are determined to exist.

B. A massage establishment licensee under this Chapter whose license has been revoked or whose application for renewal of a license has been denied may not reapply for such license for a period of two (2) years from the date of such revocation or denial.

C. A massage establishment license shall not be issued to any location where a massage establishment license has been denied or revoked for a period of two (2) years from the date of such revocation or denial.

D. At such time as the City has reason to believe that grounds exist to revoke a license issued under this Chapter, the City Manager shall cause an investigation of the licensee and/or massage establishment to be undertaken. If based on the result of the investigation, the City Manager determines that grounds to revoke the license are present, then the City Manager shall commence proceedings to revoke or suspend the license by providing notice of the City's intent to revoke the license as required in Section 5.20.240 (Notice of revocation), and by scheduling a date for the revocation hearing with a Hearing Officer, which date shall not be less than thirty (30) calendar days from and after the date the notice of intent to revoke the license is mailed.

E. The occurrence of any of the following are grounds for revocation of a license issued under this Chapter:

1. The licensee has violated any provisions of this Chapter, including, but not limited to, the requirement that the applicant or the applicant's designee be present at the premises at all times the massage establishment is in operation;

2. The licensee or any of the establishment managers or employees has engaged in disqualifying conduct as described in Section 5.20.010 (Definitions);

3. The licensee has made a material misstatement in the application for a license;

4. The licensee has engaged in fraud, made a misrepresentation, or made a false statement in conducting the massage establishment or in performing massage services;

5. The licensee has continued to operate the massage establishment after the license has been suspended;

6. The licensee has failed to comply with one (1) or more of the facilities and operations requirements of Section 5.20.190 (Massage establishment facilities and operations requirements); or

7. The licensee has employed or otherwise allowed a person to work as a massage provider at the massage establishment who:

a. Does not have a valid CAMTC certification, or

b. Has engaged in disqualifying conduct, as described in Section 5.20.010 (Definitions), at the massage establishment.

F. The building, structure, equipment, or location used by the massage establishment fails to comply with the applicable building, fire, electrical, plumbing, health, or zoning requirements in the Dana Point Municipal Code or the requirements of this Chapter.

G. Massage has been provided at the massage establishment by any person who is not a certified massage technician through CAMTC.

H. Where it is determined that the grounds to revoke a license exist, the City may suspend the license for a period of not less than thirty (30) calendar days, but not more than ninety (90) calendar days following the conclusion of the hearing, where the Hearing Officer has found the existence of mitigating circumstances, which, in the sole discretion of the City, renders suspension appropriate. Mitigating circumstances include, but are not limited to, the following:

1. The licensee or its manager or employees have not been found to have engaged in disqualifying conduct as defined in Section 5.20.010 (Definitions);

2. The violation committed by the licensee does not present an immediate threat or danger to the public health, safety, or welfare;

3. The licensee has not previously been cited for violations of this Chapter or violations of the Code within the ten (10) years prior to the date of the hearing; and

4. The licensee has agreed in writing to take specific measures, as approved by the City, to cure or correct the violation within a period of not more than fifteen (15) calendar days.

I. The massage establishment or any licensee or massage technician has committed a violation of this Chapter.

#### **5.20.240 Notice of revocation.**

A. Notice of the City's intent to revoke a license and of the revocation hearing shall be provided in accordance with the provisions of this section.

B. Notice shall be delivered to the licensee, and other person(s) designated on the license, at the address(es) designated in the license, via U.S. mail and certified mail return receipt requested.

C. The notice shall be in writing and shall contain all of the following:

1. That the City intends to revoke the license;

2. The grounds for the revocation;

3. The date, time, and place of the revocation hearing;

4. That the licensee may appear, be heard, examine witnesses, and present evidence in the licensee's favor; and

5. That the licensee's failure to appear, be heard, and present evidence in the licensee's favor may result in the revocation of the license.

**5.20.250 Hearing for revocation of license.**

A. Hearing Officer Assignment. The City Manager shall designate a Hearing Officer to preside over the revocation of massage establishment licenses. The Hearing Officer shall not be a City employee, and may, but need not be, a qualified attorney, qualified City manager or a hearing officer with the State Office of Administrative Hearings. The Hearing Officer shall be subject to disqualification for bias, prejudice, or material financial interest in the outcome, as provided in subsection C.

B. Scheduling of Hearing. The Hearing Officer shall conduct a hearing within thirty (30) calendar days of the City's mailing of the notice required by Section 5.20.240 (Notice of revocation).

C. Challenge to Hearing Officer. No later than five (5) days after notice of the hearing date is sent to the appellant, the appellant may challenge the Hearing Officer's impartiality by filing a written statement with the City Manager objecting to the hearing before the Hearing Officer and setting forth the specific grounds for disqualification. General and unsupported claims of bias, prejudice, or material financial interest shall not form a basis for disqualification. The City Manager, or designee, shall issue and serve on the appellant a written decision on the question of disqualification prior to the date of the hearing specified in the notice of hearing.

D. Recording of Appeal Hearing. All hearings shall be recorded by a video or audio device. Any party to the appeal hearing may also, at his, her, or its own expense, use a court reporter to record the proceeding. If a court reporter is not used, the City will make the video or audio tapes of the hearing available to any party. The City may charge a reasonable fee for reproducing the tapes. If a court reporter is used, a party to the hearing may obtain a copy of the transcript upon payment of any applicable fees or costs charged by the court reporter. The City may destroy such tapes or transcripts following the time during which any and all appeals of the decision are required to be made pursuant to this Chapter or following the time during which such tapes or transcripts are required to be retained by the City pursuant to State law, whichever is later.

E. Evidentiary Rules. The hearing need not be conducted in accordance with the technical rules of evidence. Each party shall have the right to call and examine witnesses, to introduce exhibits and to cross-examine opposing witnesses who have testified under direct examination. The Hearing Officer may call and examine any witness. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding, unless it would be admissible over objection in a civil action. The

rules of privilege are applicable to the extent they are permitted in civil actions. Any relevant evidence may be admitted if it is the type on which reasonable persons are accustomed to rely in the conduct of their affairs, regardless of the existence of any common law or statutory rule which might make admission of such evidence improper over objection in civil actions. Oral evidence may be taken on oath or affirmation. Irrelevant collateral, undue or repetitious evidence shall be excluded.

F. Hearing Officer Decision. At the conclusion of the hearing, the Hearing Officer shall decide whether grounds for revocation exist. Within ten (10) calendar days after the conclusion of the hearing, the Hearing Officer shall file with the City Manager, a written decision, supported by written findings based on the evidence submitted, and a statement of his or her order. A copy of such report shall be forwarded by first class and certified mail, postage prepaid, to the licensee on the day it is filed with the City Manager. The order of the Hearing Officer shall become effective three (3) calendar days after its mailing to the licensee, unless timely appealed as provided in this section.

G. In the event the Hearing Officer determines that the grounds for revocation exist, the City may request at the conclusion of the hearing that, based on the evidence submitted at the hearing, the Hearing Officer determine whether mitigating circumstances exist as provided under Section 5.20.230 (Massage establishment license suspension or revocation), to suspend the establishment license in lieu of revocation. In the event the Hearing Officer determines that suspension is appropriate, the Hearing Officer shall establish all terms and condition for such suspension.

H. The decision of the Hearing Officer shall be appealable to the City Council by the filing of a written appeal with the City Clerk within fifteen (15) calendar days following the day of mailing of the Hearing Officer's decision and paying the fee for appeals provided under this Code. All such appeals shall be filed with the City Clerk and shall be public records. The City Council shall, at a regularly scheduled meeting within thirty (30) calendar days from the date the written appeal was filed hold a public hearing to consider the appeal, and shall accept all testimony and evidence from the parties that the City Council deems pertinent. At the conclusion of the review, a majority of the City Council members present shall decide to sustain the decision, modify the decision, or order the decision stricken and issue such order as the City Council finds is supported by the entire record. The action of the City Council shall be final and conclusive and there shall be no additional right of appeal. (Ord. 324 § 3, 2019; Ord. 323 § 3, 2019)

#### **5.20.260 Return of license.**

In the event that a license or permit is cancelled, suspended, revoked or invalidated, the licensee or permittee shall forward it to the officer who issued it not later than the end of the third business day after notification of the cancellation, suspension, revocation or invalidation.

#### **5.20.270 Violations declared a public nuisance; violations subject to all legal remedies.**

In addition to the punishment provided for in this Chapter for a violation of any provision of this Chapter, a violation of any provision hereof, including the failure to obtain a license, or the failure to abide by a condition of approval, constitutes a public nuisance and is subject to abatement as such. Said declaration and abatement of a public nuisance is in addition to and not in lieu of any other remedy or punishment provided at law or in equity. Notwithstanding the foregoing, a violation of any provision of this Chapter may also be subject to any legally available criminal, civil or administrative remedy.

#### **5.20.280 Violation and penalty.**

It is unlawful and a misdemeanor for any person to violate any provision of this Chapter and shall subject the violator to punishment.

#### **5.02.290 Application to existing establishment.**

Each owner or operator of a massage establishment legally doing business on the effective date of this Chapter shall apply for a massage establishment license not later than 180 days from the effective date of this chapter, January 1, 2021. A written notice of this requirement will be delivered to the owner or operator by first class and certified mail, postage prepaid, by the City. The massage establishment shall comply with all requirements which are prerequisites for issuance of a license before such a license will be issued.

#### **5.20.300 Conflicting ordinances repealed.**

All ordinances or parts of ordinances, or regulations, in conflict with the provisions of this Chapter are hereby repealed.

**SECTION 2: Severability.** If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more section, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared unconstitutional.

**SECTION 3: Effective Date.** This Ordinance shall become effective thirty (30) days after its passage and adoption. Within fifteen (15) days of the date of adoption of this Ordinance, the City Clerk shall post a copy of said Ordinance in places designated for such posting and shall certify to the same. The City Clerk shall certify the passage of this Ordinance and shall cause the same to be published as required by law.



PASSED, APPROVED and ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
RICHARD VICZOREK, MAYOR

ATTEST:

\_\_\_\_\_  
KATHY M. WARD, CITY CLERK

STATE OF CALIFORNIA    )  
COUNTY OF ORANGE    ) ss.  
CITY OF DANA POINT    )

I, Kathy M. Ward, City Clerk of the City of Dana Point, do hereby certify that the foregoing Ordinance No. 20-XX was duly introduced at a regular meeting of the City Council on the, 2020, and was duly adopted and passed at a regular meeting of the City Council on the \_\_\_\_ day of \_\_\_\_\_, 2020, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
KATHY M. WARD, CITY CLERK

STATE OF CALIFORNIA)  
COUNTY OF ORANGE ) ss  
CITY OF DANA POINT )

AFFIDAVIT OF POSTING  
AND PUBLISHING

KATHY WARD, being first duly sworn, deposes, and says:

That she is the duly appointed and qualified City Clerk of the City of Dana Point;

That in compliance with State Laws of the State of California, ORDINANCE NO. 20-XX, being:

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, AMENDING CHAPTER 5.20 OF THE DANA POINT MUNICIPAL CODE.**

was published in summary in the Dana Point Times on the \_\_\_\_\_ day of \_\_\_\_\_, 2020, and, in further compliance with City Resolution No. 91-10-08-01, on the \_\_\_\_\_ day of \_\_\_\_\_, 2020, and the \_\_\_\_\_ day of \_\_\_\_\_, 2020, was caused to be posted in three (3) public places in the City of Dana Point, to wit:

- Dana Point City Hall
- Capistrano Beach Post Office
- Dana Point Post Office

\_\_\_\_\_  
KATHY WARD, CITY CLERK  
Dana Point, California

**SUPPORTING DOCUMENT B:****Existing DPMC Chapter 5.20 Massage Business Regulations****Chapter 5.20 MASSAGE REGULATIONS****5.20.010 Definitions.**

For the purposes of this Chapter, the words, terms and phrases set forth in this Section shall have the meanings herein set forth unless the context clearly requires a different meaning:

“City Manager” means the City Manager of the City of Dana Point or his or her designee.

“Completed application” means an application packet that contains the verified fingerprints of the applicant.

“License” means the license to operate a massage establishment as required by this Chapter.

“Massage” means any method of pressure on, or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating the external parts of the human body with the hands or with the aid of any mechanical or electrical apparatus, or other appliances or devices, with or without such supplementary aids as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment or other similar preparations.

“Massage establishment” means any establishment having a fixed place of business where any individual, firm, association, partnership, corporation, joint venture or combination of individuals engaged in, conducts, carries on or permits to be engaged in, conducted or carried on for consideration, massages, baths or health treatments involving massages or baths as regular functions.

“Massage practitioner” means a nonmedical health care practitioner who uses a massage specialty and health enhancement approach in caring for clients.

“Massage technician” means any person who administers massages, baths or nonmedical health treatments involving massages or baths as the principal functions to another person for any consideration whatsoever.

“Permit” means the permit to engage in massage required by this Chapter.

“Person” means any individual, firm, association, partnership, corporation, joint venture or combination of individuals.

“Person who has engaged in disqualifying conduct” means a person who:

(a) Within five (5) years of the date of filing of the application in question or, in the case of revocation or suspension proceedings, within five (5) years of the date of notice of hearing pursuant to Section 5.20.250, has been convicted in a court of competent jurisdiction of:

(1) Any misdemeanor or felony offense which relates directly to the operation of a massage establishment, whether as a massage establishment owner or operator, or as a massage technician or massage practitioner, or

(2) Any felony the commission of which occurred on the premises of a massage establishment; or

(b) Within five (5) years of the date of the filing of the application in question or, in the case of revocation or suspension proceedings, within five (5) years of the date of notice of revocation or suspension hearing, whichever is applicable, has had any massage establishment, operator, technician, practitioner or trainee license or permit issued by any State, County or City suspended or revoked; or

(c) Within five (5) years of the date of the filing of the application, or in the case of revocation or suspension proceedings, within five (5) years of the date of notice of revocation or suspension hearing, whichever is applicable, has been convicted in a court of competent jurisdiction of:

(1) Any violation of Sections 266(h), 266(i), 315, 316, 318 and/or Subdivision (b) of Section 674 of the California Penal Code,

(2) Conspiracy or attempt to commit any such offense, or

(3) Any offense in a jurisdiction outside the State of California which is the equivalent of any of the aforesaid offenses and contains all of the same elements; or

(d) Is required to register under the provisions of Section 290 of the California Penal Code;

(e) Has been subjected to permanent injunction against the conducting or maintaining of a nuisance pursuant to Sections 11225 through 11235 of the California Penal Code or any similar provisions of law in a jurisdiction outside the State of California; or

(f) Has touched specified anatomical areas including the genitals, pubic regions, buttocks, anuses, or female breasts below a point immediately above the top of the areola whether or not the same are covered while providing massage therapy.

“Recognized school of massage” means any school or institution of learning which teaches the theory, ethics, practice, profession and work of massage, which school or institution of learning requires a residence course of study of not fewer than five hundred (500) hours to be given in not more than three (3) calendar months before the student shall be furnished with a diploma or certificate of graduation from such school or institution of learning following the successful completion of such course of study or learning, and which school has been approved pursuant to California Education Code Section 94311 or, if said school is not located in California, has complied with standards commensurate with those required by this Section and has obtained certification under any similar state certification program, if such exists. Any school or institution of learning offering or allowing correspondence course credit not requiring actual attendance at class, or courses of a massage technician not approved by the California Department of Education shall not be deemed a “recognized school of massage.”

“State or national organization devoted to the massage specialty and therapeutic approach” means an organization which the City Manager determines meets each of the following requirements:

(a) Has tax exempt status under Section 501(c) of the Internal Revenue Code;

(b) The organization or association requires that its members meet minimum educational requirements. The educational requirements must include at least five hundred (500) classroom hours or its equivalent in anatomy, physiology, hygiene, sanitation, massage practice and ethics of massage practice;

(c) The organization or association requires participation in continuing education programs as a condition of continuing membership;

(d) The organization or association has established rules of ethics and has enforcement procedures for the suspension and revocation of membership of persons violating the rules of ethics;

(e) The organization is open to members of the general public meeting the requirements for membership on either a statewide or national basis and, in fact, maintains a membership which reflects substantial statewide or national participation by persons engaged in the business of therapeutic massage. (Amended by 06-13, 12/13/06)

#### **5.20.020 Massage Establishment License Required.**

It is unlawful for any person as owner or operator to engage in, conduct or carry on, in or upon any premises within the City the operation of a massage establishment without a massage establishment license obtained from the City Manager as required by this Chapter. A separate license shall be obtained for each separate massage establishment operated by such person. Upon payment of the appropriate license application fee, a massage establishment license shall be issued to any person who has complied with the requirements of this Chapter and all other applicable provisions of this Code, unless grounds for denial of such license are found to exist. (Amended by 06-13, 12/13/06)

#### **5.20.030 Massage Establishment License Application Fee.**

Any application for a license to operate a massage establishment shall be submitted with a nonrefundable fee in an amount established by resolution of the City Council. The application fee shall be used to defray the costs of investigation and report. A license to operate a massage establishment shall be renewed annually. Individuals wishing to renew their massage establishment license must update the information required in the original massage establishment license application. The City shall renew the massage establishment license if the application satisfies all of the currently enacted criteria unless, pursuant to Section 5.20.050, a condition or conditions for denial of the license exist(s). The licensee shall pay a nonrefundable renewal fee for such renewal, in an amount established by City Council resolution. (Amended by 06-13, 12/13/06)

#### **5.20.040 Application for Massage Establishment License.**

(a) No person shall operate any massage establishment prior to having obtained a massage establishment license pursuant to this Chapter. Any application for a massage establishment license shall be made with the City Manager.

(b) The application shall set forth the exact nature of the massage, bath or health treatments to be administered, the proposed place of business and facilities therefor, and the name and address of the applicant. The applicant must furnish fingerprints for purposes of establishing identification. The applicant shall also furnish the following information:

(1) The previous addresses of applicant, if any, for a period of five (5) years immediately prior to the date of the application and the dates of residence at each;

(2) Written proof that the applicant is at least eighteen (18) years of age;

(3) The history of the applicant as to the operation of any massage establishment or similar business or occupation within five (5) years of the filing of the application. Such information shall include, but shall not be limited to, a statement as to whether or not such person, in operating a massage establishment under a permit or license, has had such permit or license revoked or suspended and the reasons therefor; and the business, activity or occupation the license applicant engaged in subsequent to such action of revocation or suspension;

(4) All criminal convictions or offenses described in Section 5.20.010; whether the applicant is required to register under the provisions of Section 290 of California Penal Code; whether the applicant, including a corporation or partnership, or a former employer of the applicant while or employed, or a building in which the applicant was so employed or a business conducted, was ever subjected to an abatement proceeding under Sections 11225 through 11235 of the California Penal Code or any similar provisions of law in a jurisdiction outside the State of California;

(5) Applicant's height, weight, and color of eyes and hair;

(6) Two (2) prints of a recent passport-size photograph of applicant;

(7) Business, occupation or employment history of the applicant for the five (5) years immediately preceding the date of the application;

(8) If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the names and residence addresses of each of its officers, directors and each stockholder holding more than five percent (5%) of the stock of the corporation, along with the amount of stock held. If the applicant is a partnership, the application shall set forth the name and residence addresses of each of the partners, including limited partners. If one or more of the partners is a corporation, the provisions of this Section pertaining to a corporate applicant shall apply;

(9) The names and residence addresses of all persons currently employed or intended to be employed in the massage establishment, regardless of the nature of the employment, including the names and addresses of any person licensed pursuant to Sections 5.20.140 and 5.20.170 along with the proposed or actual nature of the work performed or to be performed, and recent passport-sized photographs, suitable for the City Manager to process the application of each such employee. The City Manager shall require such employees to furnish fingerprints for the purpose of establishing identification. Any applicant or licensee shall notify the City in writing of the names, addresses and nature of the work, or any new employees, within five (5) days of such employment, and supply the photographs described in this Subsection. Such new employees shall allow fingerprints to be taken for the purpose of identification upon request. "Employee" includes every owner, partner, manager, supervisor and worker, whether paid or not, who renders personal services of any nature in the operation of a massage establishment;

(10) Such other information as may reasonably be deemed necessary by the City Manager;

(11) A statement in writing by the applicant that he or she certifies under penalty of perjury that the foregoing information contained in the application is true and correct, said statement being duly dated;

(12) Authorization for the City, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the application for the license;

(13) If the applicant is not the owner of the property proposed as the location for the massage establishment, the applicant shall submit a notarized statement signed by the property owner consenting to the operation by the applicant of the massage establishment at the location and a copy of the lease between the property owner and the applicant for the proposed establishment's location; and

(14) If the applicant is assuming control over an existing massage establishment, and the existing licensee will not be an owner or operator of the massage establishment for the entire term of the new license, then the new license shall not be issued unless and until the former massage establishment license has been surrendered and relinquished to the City.

(c) Notwithstanding the fact that an application filed hereunder may be a "public record" under Government Code Section 6250 et seq., certain portions of such application contain information vital to the effective administration and enforcement of the licensing and/or permit scheme established herein which is personal, private, confidential or the disclosure of which could expose the applicant to a risk of harm. Such information includes, but is not limited to, the applicant's residence address and telephone number, the applicant's date of birth and/or age, the applicant's driver's license and/or Social Security number, and/or personal financial data. The City Council in adopting the application and licensing and/or permit system set forth herein has determined in accordance with Government Code Section 2255 that the public interest in disclosure of the information set forth above is outweighed by the public interest in achieving compliance with this Chapter by ensuring that the applicant's privacy, confidentiality or security interests are protected. The City Clerk shall cause to be obliterated from any copy of a completed license application made available to any member of the public, the information set forth above. (Amended by 06-13, 12/13/06)

#### **5.20.050 Approval or Denial of Massage Establishment License.**

(a) Within sixty (60) days following receipt of a completed application, the City Manager shall either issue the license or mail a written statement of the reasons for denial thereof.

(b) The City Manager shall deny a license to the license applicant where any of the following conditions exist:

(1) The applicant has made one or more material misstatements in the application for a license;

(2) The applicant, if an individual; or the stockholders holding more than five percent (5%) of the stock of the corporation; the officers and directors and each of them if the applicant be a corporation, or the partners, including limited partners, and each of them, if the applicant be a partnership; and the manager or other person principally in charge of the operation of the business, or any such individuals, is a person who has engaged in disqualifying conduct within five (5) years;

(3) The massage establishment, as proposed by the license applicant, if permitted, would not comply with all the applicable laws, including, but not limited to, all the City's building, fire, zoning and health regulations;

(4) The applicant is lacking in the background and qualifications to conduct a bona fide massage establishment;

(5) Any person to be employed by applicant is a person who has engaged in disqualifying conduct;

(6) The applicant has violated any provision of this Chapter, or any similar ordinance, law, rule or regulation of any other public agency which regulates the operation of massage establishments; or

(7) The applicant is less than eighteen (18) years of age.

(c) In no event shall the decision to grant or deny the license be based on information authorized or required to be kept confidential pursuant to Welfare and Institutions Code Sections 600 to 900. (Amended by 06-13, 12/13/06)

#### **5.20.060 Massage Establishment Facilities and Operations Requirements.**

All massage establishments shall comply with the following facilities and operations requirements:

(a) Massage establishments shall comply with all applicable Code requirements;

(b) A minimum of one toilet and wash basin shall be provided inside the massage establishment;

(c) Cabinets or other covered space shall be provided for the storage of clean linen. Approved receptacles shall be provided for the storage of all soiled linen and paper towels;

(d) Minimum ventilation shall be provided in accordance with the applicable building codes of the City. To allow for adequate ventilation in cubicles, rooms and areas provided for patrons' use, which are not serviced directly by required windows or mechanical systems of ventilation, partitions shall be constructed so that the height of partition does not exceed seventy-five percent (75%) of the floor-to-ceiling height of the area in which they are located;

(e) All plumbing and electrical installations shall be installed under permit and inspection of the buildings inspection department and such installations shall be installed in accordance with the applicable provisions of the Uniform Building Code, Uniform Plumbing Code and other applicable codes;

(f) The walls in all rooms where water or steam baths are given shall have a washable, mold-resistant surface;

(g) All lavatories or wash basins shall be provided with hot and cold running water, soap and single service towels in wall-mounted dispensers;

(h) All massage establishments shall be provided with clean and sanitary towels, sheets and linens in sufficient quantity. Towels, sheet and linens shall not be used by more than one person. Reuse of such linen is prohibited unless the same has first been laundered. Heavy white paper may be substituted for sheets; provided, that such paper is used once for each person and then discarded into a sanitary receptacle;

(i) All walls, ceilings, floors, pools, showers, bathtubs, steam rooms and all other physical facilities including appliances and apparatuses of the establishment must be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms, steam or vapor cabinets, shower compartments and toilet rooms shall be



thoroughly cleaned and disinfected each day the business is in operation. Bathtubs shall be thoroughly cleaned and disinfected after each use;

(j) Disinfecting agents and sterilizing equipment shall be provided for any instruments used in performing any massage and said instruments shall be disinfected and sterilized after each use;

(k) A massage table shall be provided in each massage room and all massages shall be performed on the massage table. The tables should have a minimum height of eighteen (18) inches. Two (2) inch thick foam pads with a maximum width of four (4) feet may be used on a massage table and must be covered with durable, washable plastic or other acceptable waterproof material. Beds, floor mattresses, and waterbeds shall not be permitted on the premises;

(l) To protect patrons from potential health and sanitary hazards, all employees and massage technicians and practitioners shall be clean and shall perform all services on the premises in full, clean outer garments. All persons employed in the massage establishment shall be fully clothed at all times. Clothing shall be of a fully opaque, non-transparent material and shall provide complete covering from mid-thigh to three (3) inches below the collarbone;

(m) Each service offered, the price thereof and the minimum length of time such service shall be performed shall be posted in a conspicuous public location in each massage establishment. All letters and numbers shall be capitals not less than one inch in height. No services shall be performed and no sums shall be charged for such services other than those posted. All arrangements for services to be performed shall be made in a room in the massage establishment which is not used for administration of massages, baths or health treatments, unless no other room exists in the establishment. No massage technician or practitioner shall, after the commencement of any service for any patron, advise, suggest or otherwise indicate to such patron that any additional service is available or ask or inquire of such patron whether such patron desires any additional service to be performed. No massage technician or practitioner shall perform any service for any patron which was not ordered by such patron prior to the commencement of performance of any service rendered;

(n) No massage establishment shall be kept open for business between the hours of 10:00 p.m. and 7:00 a.m.;

(o) No alcoholic beverages shall be sold, served, furnished, kept or possessed on the premises of any massage establishment;

(p) That the City Building and Safety, and Code Enforcement Division inspect each and every massage establishment prior to the business opening to ensure that the business conforms with current City standards and regulations and meets all requirements of this Chapter;

(q) Out call massage therapy services must originate from a licensed massage establishment. Only massage practitioners may provide out call massage therapy;

(r) No person or persons shall be allowed to reside, dwell, occupy, or live inside the massage establishment at any time;

(s) No employee of the massage establishment or any massage practitioner or technician shall expose any genitals, pubic regions, buttocks, anuses, or female breasts below a point

immediately above the top of the areola to the view of a customer or patron of the massage establishment;

(t) All customers shall be appropriately draped with a clean, opaque towel sufficient to cover their genitals, pubic regions, buttocks, anuses, or female breasts below a point immediately above the top of the areola while receiving services. (Amended by 06-13, 12/13/06)

**5.20.070 Reserved.**

(Amended by 06-13, 12/13/06)

**5.20.080 Inspection by Officials.**

Any and all investigating officials of the City shall have the right to enter massage establishments from time to time during regular business hours to make reasonable inspections to observe and enforce compliance with building, fire, electrical, plumbing or health regulations, and to ascertain whether there is compliance with the provisions of this Chapter. (Amended by 06-13, 12/13/06)

**5.20.090 Issuance of Notice of Violation.**

Whenever the City Manager makes an inspection of a massage establishment and finds that any provision of this Chapter has been violated, the City Manager shall give notice of such violation by means of an inspection report or other written notice. In any such notification, the City Manager shall:

- (a) Set forth the specific violation or violations found;
- (b) Establish a specific and reasonable period of time for the correction of the violation or violations. If the City Manager determines that the violation or violations are minor in nature, the City Manager may issue a warning to the licensee or permittee that any further violation of this Chapter may result in the filing of a complaint for revocation or suspension of the license or permit; and
- (c) State that failure to comply with any notice issued in accordance with the provisions of this Chapter may result in the City Manager filing a complaint for revocation or suspension of the license or permit. (Amended by 06-13, 12/13/06)

**5.20.100 Business Name.**

No person licensed to operate a massage establishment shall operate under any name or conduct business under any designation not specified in the license. (Amended by 06-13, 12/13/06)

**5.20.110 Business Location Change.**

Upon a change of location of a massage establishment, an application to the City Manager shall be made. Such application shall be granted, provided all applicable provisions of this Chapter are complied with and a change of location fee in an amount established by City Council resolution to defray the costs of investigation and report has been paid to the City. (Amended by 06-13, 12/13/06)

**5.20.120 Sale or Transfer of Massage Establishment Interest.**

A sale or transfer of any interest in a massage establishment, which interest would be reported as required in this Chapter upon application for a massage establishment license, shall be reported to the City Manager within ten (10) days of such sale or transfer. The City Manager shall investigate any person receiving any interest in a massage establishment as a result of such sale or transfer, and if such person satisfies the requirements relating to massage establishment license applicants, the existing license shall be endorsed to include such person. A fee as set forth by resolution of the City Council shall be paid to the City for the investigation by the City Manager necessitated by each such sale or transfer. (Amended by 06-13, 12/13/06)

**5.20.130 Display of Permits and Licenses.**

The owner or operator of a massage establishment shall display the massage establishment license and the permit of each and every massage technician or practitioner employed in the establishment in an open and conspicuous place on the premises. Passport-size photographs of the licensee and permittee shall be affixed to the respective license and permits on display pursuant to this Section. (Amended by 06-13, 12/13/06)

**5.20.140 Massage Technician Permit Required.**

(a) It is unlawful for any person to act as a massage technician unless such person holds a valid permit issued by the City Manager.

(b) A massage technician permit shall be issued to any person who has fulfilled the requirements of Section 5.20.160, and all other applicable provisions of this Chapter, unless grounds for denial of such permit are found to exist. The City Manager may deny a permit to the permit applicant if:

- (1) The applicant made a material misstatement in the application for a license;
- (2) The applicant is a person who has engaged in disqualifying conduct;
- (3) The applicant has violated any provision of this Chapter, or of any similar ordinance, law, rule or regulation of another public agency which regulates the operation of massage technicians;
- (4) The applicant has failed to meet the training requirements described in Section 5.20.160;
- (5) The applicant has failed to furnish an appropriate medical doctor's certificate as required by Section 5.20.160; or
- (6) The applicant has practiced massage or operated a massage establishment without a valid license in the City of Dana Point. If the license is denied for this violation, the applicant may reapply twelve (12) months after the date of the violation.

(c) In no event shall the decision to grant or deny the license be based on information authorized or required to be kept confidential pursuant to Welfare and Institutions Code Sections 600 to 900. (Amended by 06-13, 12/13/06)

**5.20.150 Massage Technician Application Fee and Renewals.**

Any application for a massage technician permit shall be accompanied by a nonrefundable fee. A massage technician permit shall be renewed annually and a renewal fee shall be paid. Individuals wishing to renew their massage technician license must update the information required in the original massage technician license application. The City shall renew the massage technician license if the applicant satisfies all of the currently enacted criteria unless, pursuant to Section 5.20.140, a ground or grounds for denial of the license exist. The massage technician permit fee and the renewal permit shall be in amounts set by City Council resolution. (Amended by 06-13, 12/13/06)

**5.20.160 Application for Massage Technician Permit.**

- (a) Any application for a massage technician permit shall be made with the City Manager.
- (b) Within sixty (60) days following receipt of a completed application, the City Manager shall either issue the permit or mail a written statement of the reasons for denial thereof. The City Manager shall require that the applicant furnish fingerprints for the purpose of establishing identification. The applicant shall furnish the information required under Sections 5.20.040(b)(1), (2), (4), (5), (6), (7), (10) and (12), and the following additional information:
  - (1) Social Security number and driver's license number, if any;
  - (2) The name and address of the establishment where the applicant is to be employed or engage in the practice of massage if self-employed and the name of the owner or operator of the same. Any massage technician granted a permit pursuant to this Section must report any change in massage establishment employment within five (5) days of said change;
  - (3) The name and address of the recognized school of massage attended, the dates attended, and a copy of the diploma or certificate of graduation awarded the applicant showing the applicant has completed no fewer than five hundred (500) hours of instruction. All applicants may be required to furnish additional evidence of enrollment and attendance of the required class hours and are subject to an oral interview by the City Manager to establish the bona fide completion of educational requirements;
  - (4) Certificate from a medical doctor stating that the applicant has, within thirty (30) days immediately prior to the filing of the approved, been examined and found to be free from any contagious or communicable disease capable of being transmitted to the public or to fellow employees by the type of conduct and interaction with fellow employees and the public involved in the performance of the job of massage technician;
  - (5) A statement in writing by the applicant made under penalty of perjury that the information furnished is true and correct, said statement being duly dated; and
  - (6) Has successfully passed a City administered test or the National Certification Examination from the Therapeutic Massage and Bodywork (NCBTMB) in accordance with the provisions of Section 5.20.195.
- (c) Notwithstanding the fact that an application filed hereunder may be a "public record" under Government Code Section 6250 et seq., certain portions of such application contain information vital to the effective administration and enforcement of the licensing and/or permit scheme established herein which is personal, private, confidential or the disclosure of which could expose the applicant to a risk of harm. Such information includes, but is not limited to, the applicant's residence address and telephone number, the applicant's date of birth and/or age,

the applicant's driver's license and/or Social Security number, and/or personal financial data. The City Council in adopting the application and licensing and/or permit system set forth herein has determined in accordance with Government Code Section 6255 that the public interest in disclosure of the information set forth above is outweighed by the public interest in achieving compliance with this Chapter by ensuring that the applicant's privacy, confidentiality or security interests are protected. The City Clerk shall cause to be obliterated from any copy of a completed license application made available to any member of the public, the information set forth above. (Amended by 06-13, 12/13/06)

**5.20.170 Massage Practitioner Permit Required.**

(a) It is unlawful for any person to act as a massage practitioner unless such person holds a valid permit issued by the City Manager.

(b) A massage practitioner permit shall be issued to any person who has fulfilled the requirements of Section 5.20.190 and all other applicable provisions of this Chapter unless grounds for denial of such permit are found to exist. The City Manager may deny a permit to the permit applicant if:

- (1) The applicant made a material misstatement in the application for a license;
- (2) The applicant is a person who has engaged in disqualifying conduct;
- (3) The applicant has violated any provision of this Chapter or of any similar ordinance, law, rule or regulation of another public agency which regulates the operation of massage practitioners;
- (4) The applicant has failed to meet the training requirements described in Section 5.20.190;
- (5) The applicant has failed to furnish an appropriate medical doctor's certificate as required by Section 5.20.190; or
- (6) The applicant has practiced massage or operated a massage establishment without a valid license in the City of Dana Point. If the license is denied for this violation, the applicant may reapply twelve (12) months after the date of the violation.

(c) In no event shall the decision to grant or deny the license be based on information authorized or required to be kept confidential pursuant to Welfare and Institutions Code Sections 600 to 900. (Amended by 06-13, 12/13/06)

**5.20.180 Massage Practitioner Application Fee and Renewal.**

Any application for a massage practitioner permit shall be accompanied by a nonrefundable fee. A massage practitioner permit shall be renewed annually and a nonrefundable renewal fee shall be paid. Individuals wishing to renew their massage practitioner license must update the information required in the original massage practitioner license application. The City shall renew the massage practitioner license unless, pursuant to Section 5.20.170, a ground or grounds for denial of the license exists. The massage practitioner permit fee and the renewal permit fee shall be in amounts as determined by City Council resolution. (Amended by 06-13, 12/13/06)

**5.20.190 Application for Massage Practitioner Permit.**

(a) Any application for a massage practitioner permit shall be made with the City Manager.

(b) Within sixty (60) working days following receipt of a completed application, the City Manager shall either issue the permit or mail a written statement of the reasons for denial thereof. The City Manager shall require that the applicant furnish fingerprints for the purpose of establishing identification. The applicant shall furnish the information required under Sections 5.20.040(b)(1), (2), (4), (5), (6), (7), (10) and (12), and the following additional information:

(1) Social Security number and driver's license number, if any;

(2) The name and address of the establishment where the applicant is to be employed or engage in the practice of massage if self-employed; and the name of the owner operator of the same. Any massage practitioner granted a permit pursuant to this Section must report any change in massage establishment employment within five (5) days of said change;

(3) The applicant shall present to the City Manager proof of membership in good standing of a state or national organization devoted to the massage specialty and health enhancement approach and proof that applicant has completed the following requirements:

(A) One thousand (1,000) hours of instruction in the massage specialty and health enhancement approach at a recognized school of massage with a state-approved curriculum and can submit a sworn affidavit of Code of Ethics to which they will adhere. This Code can be from an association or comparable organization as approved by the City Attorney:

(i) Of the one thousand (1,000) hour requirement, five hundred (500) hours must be instruction in the form of practical experience in the massage specialty and health enhancement therapeutic approach in the form of paid employment as documented by Internal Revenue Service (IRS) tax returns or other affidavit and submission of a sworn affidavit of Code of Ethics as in Subsection (b)(3)(A)(i) of this Section, or

(ii) Of the one thousand (1,000) hour requirement, five hundred (500) hours must be in the form of one of the following:

a. Continuing educational classes in the massage field and related classes offered by approved schools,

b. Classes and workshops as in Subsection (b)(3)(A)(ii)(a) of this Section approved for nursing CE credit,

c. Programs as in Subsection (b)(3)(A)(ii)(a) of this Section approved and certified by qualifying professional associations, or

d. Adult education classes in massage and related topics offered through State-approved colleges and universities.

(B) Has successfully passed a City administered test or the National Certification Examination from the Therapeutic Massage and Bodywork (NCBTMB) in accordance with the provisions of Section 5.20.195;

(4) Certificate from a medical doctor stating that the applicant has, within thirty (30) days immediately prior to the filing of the application, been examined and found to be free from any contagious or communicable disease capable of being transmitted to the public or to fellow

employees by the type of conduct and interaction with fellow employees and the public involved in the performance of the job of massage practitioner; and

(5) Statement written by the applicant made under penalty of perjury that the information furnished is true and correct, said statement being duly dated.

(c) Notwithstanding the fact that an application filed hereunder may be a "public record" under Government Code Section 6250 et seq., certain portions of such application contain information vital to the effective administration and enforcement of the licensing and/or permit scheme established herein which is personal, private, confidential or the disclosure of which could expose the applicant to a risk of harm. Such information includes, but is not limited to, the applicant's residence address and telephone number, the applicant's date of birth and/or age, the applicant's driver's license and/or Social Security number, and/or personal financial data. The City Council in adopting the application and licensing and/or permit system set forth herein has determined in accordance with Government Code Section 6255 that the public interest in disclosure of the information set forth above is outweighed by the public interest in achieving compliance with this Chapter by ensuring that the applicant's privacy, confidentiality or security interests are protected. The City Clerk shall cause to be obliterated from any copy of a completed license application made available to any member of the public, the information set forth above. (Amended by 06-13, 12/13/06)

#### **5.20.195 Test Requirements.**

(a) All applicants shall submit proof that he or she has taken and passed within four (4) years of applicant's date of permit application submittal one of the following tests: (1) National Certification Examination from the Therapeutic Massage and Bodywork (NCBTMB), or (2) City Test consistent with the provisions of this Section.

(b) The City Manager is authorized but not required to establish an alternative testing examination to be administered by the City. The test shall be referred to as the City of Dana Point Massage Practitioner Test or City Test. The City Test shall assess the applicant's knowledge of basic skills and abilities in both practical application of massage services and in written knowledge of basic massage subject matter needed to perform safe and therapeutic massages, including knowledge of City regulations relating to providing massage services.

(c) The City Test shall be administered, prepared, and graded by a massage instructor who is certified by the Council for Private Post Secondary and Vocational Education pursuant to Education Code Section 94311.1.

(d) Each Section of the City Test shall require a score of seventy percent (70%) or better for a passing grade. A failing score shall make the applicant not eligible for re-testing for a period of ten (10) days from the date of testing.

(e) A second failing score on the test shall make the applicant not eligible for re-testing for a period of three (3) months from the date of testing.

(f) Any applicant who fails to pass the City Test after a third attempt shall not be eligible to re-apply to take the examination for a period of six (6) months thereafter. (Amended by 06-13, 12/13/06)

#### **5.20.200 Appeals.**

All appeals from a denial of a massage establishment license or permit for massage technician or practitioner shall be made in accordance with the provisions of Section 5.20.250 of this Code. (Amended by 06-13, 12/13/06)

#### **5.20.210 Exemptions.**

(a) This Chapter shall not apply to the following classes of individuals while engaged in the performance of the duties of their respective professionals:

(1) Physicians, surgeons, chiropractors or osteopaths who are duly licensed to practice their respective professions in the State of California, while performing activities encompassed by such professional licenses;

(2) Nurses or physical therapists who are duly licensed to practice their professions in the State of California, while performing activities encompassed by such professional licenses;

(3) Barbers, beauticians, aestheticians and manicurists who are duly licensed by the State of California while engaging in the practice within the scope of their respective professions, except that this exemption applies solely for the massaging of the neck, face, and/or scalp of the customer or client of said barber or beautician or in the case of a licensed manicurist, the massaging of the forearm, hands, calves and/or feet;

(4) Other health care personnel engaged in the healing arts as regulated and licensed by Division 2 of the Business and Professions Code. Notwithstanding the foregoing, any one duly exempted under this Subsection employing or utilizing either a massage technician or a massage practitioner for the purpose of furnishing a massage shall be required to employ licensed massage technicians and practitioners.

(b) Individuals administering massages or health treatment involving massage to persons participating in road races, track meets, triathlons and similar single occurrence athletic or recreational events; provided, that all of the following conditions are met:

(1) The massage services are made equally available to all participants in the event;

(2) The event is open to participation by the general public or a significant segment of the public such as employees of sponsoring or participating corporations;

(3) The massage services are provided at the site of the event and either during, immediately preceding or immediately following the event;

(4) The sponsors of the event have been advised of and have approved the provision of massage services;

(5) The persons providing the massage services are not the primary sponsors of the event. (Amended by 06-13, 12/13/06)

#### **5.20.220 Massage Establishment in Athletic Club.**

A massage establishment may be permitted in an athletic club or similar establishment provided such massage operations are clearly incidental to the operation of such bona fide athletic club and such athletic club has a valid permit approved by the County of Orange or City which identified the massage establishment. "Clearly Incidental" is defined as no more than fifteen percent (15%) of the gross floor area or one thousand (1,000) square feet of the athletic club, whichever is greater. Any massage establishment duly authorized to operate under the



provisions of this Section must comply with all the provisions of this Chapter. (Amended by 06-13, 12/13/06)

**5.20.230 Massage Establishment License Suspension or Revocation.**

(a) After an investigation, notice and hearing, any license issued for a massage establishment may be revoked or suspended by the City Manager where any of the following is found:

- (1) The licensee has violated any provisions of this Chapter;
  - (2) The licensee is a person who has engaged in disqualifying conduct;
  - (3) The licensee has failed to comply with one or more of the facilities and operations requirements of Section 5.20.060;
  - (4) The licensee has engaged in fraud, misrepresentation or false statement in conducting the massage establishment;
  - (5) The licensee has continued to operate the massage establishment after the license has been suspended; or
  - (6) The licensee has allowed a person to work as a massage technician or practitioner who:
    - (A) Does not have a valid permit, or
    - (B) Has engaged in conduct or has been convicted of an offense described in Section 5.20.010 when the licensee has actual or constructive knowledge of such conduct or conviction.
- (Amended by 06-13, 12/13/06)

**5.20.240 Revocation or Suspension of Massage Technician or Practitioner Permit.**

After an investigation, notice and hearing, any massage technician or practitioner permit may be revoked or suspended by the City Manager where it is found that:

- (a) The permittee has violated any provision of this Chapter;
- (b) The permittee is a person who has engaged in disqualifying conduct;
- (c) The permittee has continued to function as a massage technician or practitioner after the permit has been suspended;
- (d) The permittee has failed to comply with the requirements of either Section 5.20.160 or 5.20.190, whichever is applicable;
- (e) The permittee has made a material misstatement in the application for a permit; or
- (f) A massage technician has performed out call massage therapy.

(Amended by 06-13, 12/13/06)

**5.20.250 Appeals.**

(a) In the event the City Manager denies the issuance or renewal of a permit, revokes a permit, or imposes conditions which the applicant wishes to challenge, the applicant may appeal to the City Council by filing with the City Council a written notice of appeal within ten (10) days

from the date of such denial, or from the date notice of such revocation is mailed to applicant, or from the date applicant is informed of such conditions.

(b) If such an appeal is filed, the City Council shall at the next regularly scheduled City Council meeting held more than five (5) days after receipt of such notice of appeal, review the matter and shall determine whether the City Council or the Hearing Officer will hear the appeal.

(c) Once a determination is made either the City Council or the Hearing Officer, as the case may be, shall set a date, not less than five (5) days, not more than twenty-one (21) days from the date such determination is made by the City Council for the hearing of the appeal. The hearing may be continued for good cause. The hearing shall be a de novo hearing on the action appealed from.

(d) Upon the conclusion of such hearing the City Council or the Hearing Officer, as the case may be, may uphold such denial or revocation or the imposition of conditions, or may order the issuance, or the renewal, or the reinstatement of such permit, or the imposition of such conditions.

(e) If the hearing is conducted by the Hearing Officer, the Hearing Officer shall cause a transcript of the hearing to be taken and shall issue findings and determinations in writing within ten (10) days of the conclusion of the hearing. The written findings and determinations shall be delivered or mailed to the applicant and shall be effective within five (5) days following the date of mailing, unless such appeal is heard by the Hearing Officer and the denial, or revocation, or imposition of conditions is upheld, and within such five (5) day period the applicant files with the Hearing Officer and the City Clerk a demand for City Council review.

(f) If such a demand for a review is filed, the City Council shall at the next regularly scheduled Council meeting held more than five (5) days after the filing of such demand review the transcript of the hearing proceedings, and, at the conclusion of such review may uphold such denial, or revocation, or imposition of conditions, or may order that the permit be issued, renewed or reinstated, or that the conditions be modified or stricken. Such review shall be comprised of a review of the entire record, including the transcript of the hearing proceedings, and any oral or written arguments which may be offered to the City Council. No additional testimony shall be taken. The action of the City Council shall be final and conclusive, and there shall be no additional right of appeal.

(g) In the event such denial, or revocation, or imposition of conditions is upheld by the City Council the denial, or revocation, or imposition of conditions shall be effective on the date of the action by the City Council, and that action shall be final and conclusive. (Amended by 06-13, 12/13/06)

#### **5.20.260 Reapplication After Denial.**

An applicant for either a license or a permit under this Chapter whose application for such license or permit has been denied may not reapply for such license or permit for a period of one year from the date such notice of denial may be deposited in the mail or received by the applicant, whichever occurs first. However a reapplication prior to the termination of one year may be made if accompanied by evidence that the ground or grounds for denial of the application no longer exists. (Amended by 06-13, 12/13/06)

**5.20.270 No Refund of Fee.**

The cost of a license or permit shall not be refunded if the licensee or permittee discontinues an activity for which a license or permit is required pursuant to this Chapter or if the license or permit is suspended or revoked. (Amended by 06-13, 12/13/06)

**5.20.280 Return of License or Permit.**

In the event that a license or permit is cancelled, suspended, revoked or invalidated, the licensee or permittee shall forward it to the officer who issued it not later than the end of the third business day after notification of the cancellation, suspension, revocation or invalidation. (Amended by 06-13, 12/13/06)