

DRAFT ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, REPEALING AND REPLACING ARTICLE 22 (MASSAGE ESTABLISHMENTS AND PRACTITIONERS) OF CHAPTER II (REGULATION OF CERTAIN BUSINESSES) OF TITLE 9 (LICENSES AND BUSINESS REGULATIONS) OF THE COSTA MESA MUNICIPAL CODE, RELATING TO MASSAGE THERAPISTS AND PRACTITIONERS, AND MASSAGE ESTABLISHMENTS.

WHEREAS, Section 4600 et seq. of the California Business & Professions Code provides for the certification of massage practitioners and massage therapists by a newly created entity known as the Massage Therapy Organization (“MTO”); and

WHEREAS, as the MTO board was selected, board members officially named the organization the California Massage Therapy Council (CAMTC); and

WHEREAS, the certificates issued by the CAMTC to qualified applicants entitle the holder to practice massage therapy throughout the State of California without the necessity of complying with certain ordinances regulating the practice of massages by city or county government; and

WHEREAS, the City of Costa Mesa is authorized, by virtue of the Constitution of the State of California, and Section 51031 of the California Government Code, to regulate massage establishments by imposing reasonable standards relative to the skill and experience of massage owners and massage therapists or practitioners, and imposing reasonable conditions on the operation of the massage establishment; and

WHEREAS, the City Council of the City of Costa Mesa finds that the permit requirements and restrictions imposed by this article are reasonably necessary to protect the health, safety and welfare of the citizens of the City of Costa Mesa, and are designed to be consistent with the requirements of Section 4600 et seq. of the California Business and Profession Code; and

WHEREAS, the City Council finds that the regulations and restrictions contained in this article constitute reasonable health and safety requirements for massage establishments and businesses, as authorized by Section 4612(a)(3); and

WHEREAS, the City Council finds that the restrictions and requirements contained in this article are intended to reduce the burden of massage establishment regulation on the police department; and

WHEREAS, the City Council finds that the regulations and restrictions contained in this article are intended to prevent massage establishments from degenerating into

houses of prostitution, and the means utilized in this article bear a reasonable and rational relationship to the goals sought to be achieved; and

WHEREAS, on July 5, 2011, the City Council conducted a duly noticed public hearing and considered the staff analysis, public testimony and all information presented to the Council concerning Draft Ordinance No. _____; and

WHEREAS, the City Council finds that the publication of the entire text of this ordinance in a newspaper of general circulation would cost significantly more than the cost of publishing other ordinances and it is infeasible to prepare a fair and accurate summary of the ordinance; and

WHEREAS, pursuant to subdivision (c) of Section 36933 of the California Government Code, the City Council may publish a summary of this ordinance in lieu of the entire text; and

WHEREAS, the City Clerk published a summary of this ordinance in The Daily Pilot and posted a certified copy of the full text of this ordinance in the City Clerk's Office at least five (5) days prior to the date of the City Council meeting at which this ordinance was adopted.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES ORDAIN AS FOLLOWS:

SECTION 1. Article 22 (Massage Establishments and Practitioners) of Chapter II (Regulation of Certain Businesses) of Title 9 (Licenses and Business Regulations) is hereby repealed and replaced with the following:

9-323 Applicability of Article and Deadline for Compliance.

(a) All the provisions of this article shall be immediately applicable to all massage establishments and individual massage service providers, except as provided for in this Section and in Section 9-342.

(b) No person shall engage in the practice of massage therapy for compensation within the city unless that person holds a current and valid massage certificate issued by the CAMTC, except as provided below.

(c) Any individual holding a current and valid city permit to practice massage, issued to that individual pursuant to the provisions of Ordinance No. 01-7, § 1, and Ordinance

No. 06-12, §§ 6, 7, shall obtain a CAMTC certificate within 180 (one hundred and eighty) days from the effective date of this ordinance if that individual wishes to continue practicing massage within the city.

(d) No person shall practice massage therapy within the city prior to obtaining a city registration certificate and photo identification badge from the chief of police.

(e) No business or establishment shall rent space to, employ, or in any way retain the services of any massage therapist or practitioner who does not hold a current and valid CAMTC certificate, provided that a business or establishment may rent space to, employ or retain a city licensed massage practitioner for up to 180 (one hundred and eighty) days after the effective date of this ordinance.

(f) No business or establishment shall rent space to, employ or in any way retain the services of any individual to provide massage therapy within the city without first obtaining a massage establishment permit.

(g) No massage therapist or practitioner shall provide massage services in their own home.

9-324 Findings and Purpose.

The city council finds and declares as follows:

(a) The requirements and restrictions imposed by this article are reasonably necessary to protect the health, safety and welfare of the citizens of the city and are consistent with all applicable laws of the State of California.

(b) The city is authorized, by virtue of the Constitution of the State of California, and Section 51031 of the California Government Code, to regulate massage establishments

by imposing reasonable standards relative to the skill and experience of massage owners and massage therapist or practitioners and imposing reasonable conditions on the operation of the massage establishment.

(c) The courts have long recognized massage as a pervasively regulated activity. There is opportunity for acts of prostitution and other unlawful sexual activity to occur in massage establishments and the establishment of reasonable standards for issuance of permits and restrictions on operations serves to reduce the risk of illegal activity.

(d) The restrictions and requirements contained in this article are intended to reduce the burden of massage establishment regulation on the police department.

(e) The regulations and restrictions contained in this article are intended to discourage massage establishments from degenerating into houses of prostitution and the means utilized in this article bear a reasonable and rational relationship to the goals sought to be achieved.

9-325 Definitions.

For the purposes of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

(1) "Applicant" means any person who is required to file an application for a massage establishment permit.

(2) "Adult oriented merchandise" means sexually oriented implements or paraphernalia, such as, but not limited to: dildos, auto-sucks, sexually-oriented vibrators, Ben Wa balls, inflatable orifices, anatomical balloons with orifices, simulated and battery operated vaginas, and similar sexually-oriented devices which are designed

or marketed primarily for the stimulation of human genital organs or sado-masochistic activity.

(3) "Building and safety division" means the Building and Safety Division of the Development Services Department of the City of Costa Mesa.

(4) "California Massage Therapy Council (CAMTC)" means the nonprofit massage therapy organization formed pursuant to California Business and Professional Code Section 4600.5.

(5) "CAMTC certificate" means the certificate issued by the CAMTC to a certified massage therapist or practitioner pursuant to Section 4601 of the California Business & Professions Code.

(6) "Certified massage practitioner" or "massage practitioner" means any person who legally holds a current and valid CAMTC certificate pursuant to subdivision (b) of Section 4601 of the California Business & Professions Code.

(7) "Certified massage therapist" or "massage therapist" means any person who legally holds a current and valid CAMTC certificate pursuant to subdivision (c) of Section 4601 of the California Business & Profession Code.

(8) "Chief of police" means the Chief of Police of the City of Costa Mesa, or his/her designee.

(9) "City" means the City of Costa Mesa.

(10) "City clerk" means the City Clerk of the City of Costa Mesa, or his/her designee.

(11) "City council" means the City Council of the City of Costa Mesa.

(12) "City manager" means the City Manager or Chief Executive Officer of the City of Costa Mesa, or his/her designee.

(13) "City registration certificate" means the certificate issued to a certified massage practitioner or certified massage therapist pursuant to the city's registration requirement. The certificate shall have the following information: the massage practitioner's or therapist's photograph, the massage practitioner's or therapist's physical description, the massage practitioner's or therapist's CAMTC certificate information, and the name and address of the business where the massage practitioner or therapist will be practicing massage within the city.

(14) "Compensation" means the payment, loan, advance, donation, contribution, deposit, exchange, or gift of money or anything of value.

(15) "Conviction" means a guilty plea, guilty verdict or a conviction following a plea of nolo contendere.

(16) "Customer area" means areas open to customers of the establishment or the general public.

(17) "Development services department" means the Development Services Department of the City of Costa Mesa.

(18) "Director" means the Director of Development Services of the City of Costa Mesa, or his/her designee.

(19) "Employee" means any and all persons, other than a massage therapist, massage practitioner, owner or manager, who renders any service, with or without compensation, for the owner, manager or agent of either an owner or manager of a massage establishment and who has no physical contact with customers or clients. For

purposes of this article the term “employee” shall include salaried employees and independent contractors.

(20) “Fire department” means the Costa Mesa Fire Department.

(21) "Health Department" means the Health Care Agency of the County of Orange.

(22) “Independent contractor” means anyone other than salaried employees who work in or at or render any services to customers that are directly related to the operation of the business whether or not that person receives compensation of any form by the business.

(23) “Lobby” means one room or designated area, adjacent to the public entry, which is used as an entry and/or waiting room for customers or other persons authorized to enter the premises.

(24) “Manager” means the person(s) designated by the owner of the massage establishment to act as the representative and agent of the owner in managing day-to-day operations with corresponding liabilities and responsibilities. Evidence of management includes, but is not limited to, evidence that the individual has the power to direct or hire and dismiss employees, control hours of operation, create policy or rules or purchase supplies. A manager may also be an owner.

(25) "Massage" or “massage therapy” means any method of treating the external parts of the human body for remedial, health, hygienic, relaxation or any other reason or purpose, whether by means of pressure on, friction against, or stroking, kneading, tapping, pounding, vibrating, rubbing or any other manner of touching external parts of the human body with the hands, or with the aid of any mechanical or

electrical apparatus or appliance, with or without supplementary aids such as rubbing alcohol, liniment, antiseptic, oil, powder, cream, ointment or other similar preparations commonly used in this type of business or trade. "Massage therapy" includes the practice of reflexology.

(26) "Massage establishment" means any enterprise or establishment having a fixed place of business conducted within the city, where any person, firm, association, partnership, corporation, or combination of individuals, engages in, conducts, carries on or permits to be conducted or carried on, for money or any other consideration, the administration to another person of a massage, bath or health treatment involving massages or baths including but not limited to fomentation, electric or magnetic treatments, alcohol rubs, or any other type of system for treatment or manipulation of the human body with or without any character of bath, such as Turkish, Russian, Swedish, Japanese, vapor, shower, electric tub, sponge, mineral, fomentation, or any other type of bath.

(27) "Massage establishment permit" means the permit issued pursuant to the provisions of this article required to operate and/or manage a massage establishment.

(28) "Massage practitioner" (see "Certified massage practitioner").

(29) "Massage room" means a cubicle, booth, room or enclosed or semi-enclosed area within a massage establishment where massage services are performed on patrons.

(30) "Massage therapist" (see "Certified massage therapist").

(31) "Rent-space" means the leasing or renting by a massage practitioner or therapist of a room(s) in a massage establishment, or other business or medical suite,

for the purposes of providing massage, without having any employee relationship with the lessor, the property owner, or the business owner.

(32) "Out-call massage" means a massage performed or administered for money or other consideration by a certified massage practitioner/therapist at a location other than a permitted massage establishment.

(33) "Owner" means the individual(s) whose name appears on the city business license and includes any and all persons who have any ownership interest in a massage establishment. An owner may also be a manager.

(34) "Person" means any natural person, individual, corporation, partnership, association or other group or combination of individuals acting as an entity.

(35) "Police department" means the Police Department of the City of Costa Mesa.

(36) "Recognized school of massage" or "school of massage" is defined by California Business & Professions Code Section 4600(a). Recognized school of massage shall not include schools offering a correspondence course not requiring personal attendance.

(37) "Reflexology" means a technique or practice in which a trained reflexology therapist applies finger and thumb pressure to specific reflex points on the hands or feet of a client in order to promote relaxation and healing in the body. The practice does not involve the removal of any clothes other than shoes and socks.

(38) "Seated massage" means any massage of the neck, arms, shoulders and back area above the waist where the client is fully clothed, sitting in a special chair approved by a recognized massage therapy association, designed for upper body

massage and done without the use of supplementary aids, such as rubbing alcohol, liniments, antiseptics, oils, powders, creams, lotions, ointments, or other similar preparations commonly used in this practice.

(39) “Sole proprietorship” means and includes any legal form of business organization where the business owner is the only person employed by that business to provide massage services.

(40) “Table shower” means the washing of the body of a person by another while lying on a table, either face down or on the back, so that particular attention can be paid to the person’s genitals, buttocks, gluteal fold, or anal area of any patron, or the breasts of any female patron.

(41) “Visitor” means any individual not retained or employed by the massage establishment and not receiving or waiting to receive massage therapy services, but excluding law enforcement personnel or government officials performing governmental business.

9-326 Certified Massage Practitioner/Therapist – Registration of CAMTC Certificate Required.

Any certified massage practitioner or therapist practicing massage therapy for compensation within the city shall be required to register with the police department and to obtain a city registration certificate and an identification badge.

(a) The registration application shall include:

- (1) the registrant’s name, residence address and telephone number, employer name, work address and telephone number;

- (2) two (2) full-size color photocopies of the registrant's CAMTC certificate;
- (3) two (2) passport size photos with a white background taken within the preceding 30 days; and
- (4) a copy of a current and valid policy of insurance issued by an insurance company authorized to do business in the State of California, evidencing that the applicant is insured under a liability insurance policy providing minimum coverage of one million dollars (\$1,000,000.00) for injury or death to one person arising out of the administration of a massage.

(b) Upon registration and payment of the required fees, the police department shall issue the registrant a city registration certificate and an identification badge that will be valid for one (1) year. Upon application by the registrant, the city registration certificate shall be renewed annually so long as the certified massage practitioner or therapist is practicing massage therapy within the city and as long as the massage practitioner or therapist holds a current and valid CAMTC certificate.

(c) In the event that a certified massage therapist or practitioner holds continuous employment in the city for two (2) years, the therapist or practitioner may renew his/her registration with the city without payment of the applicable fee every third year registration is required, when the massage therapist or practitioner can show proof of having attended at least ten (10) hours of continuing education relating to massage therapy within the preceding twelve (12) months.

(d) The certified massage practitioner or therapist shall apply to the city to amend the city registration certificate within five (5) business days after any change in the registration information, including, but not limited to, a change in the work address.

(e) No massage practitioner or therapist shall perform or administer a massage, or advertise to provide massage services in the city, unless such person has in effect a valid CAMTC Certificate while Section 4600 et seq. the California Business and Professions Code remains in full force and effect.

(f) No massage practitioner or therapist shall perform or administer a massage, or advertise to provide massage services in the city, unless that person has complied with the registration and other requirements provided for in this article.

9-327 Out-Call Massage.

(a) No out-call massages shall be provided within the city by any person other than a certified massage practitioner or therapist.

(b) Any person wishing to provide out-call massage services within the city shall obtain a city registration certificate and a photo identification badge from the chief of police.

(c) Out-call massages shall not be provided to hotel or motel patrons in guest rooms or anywhere in the hotel or motel, provided that if the hotel or motel has a designated spa or health facility, massage services may be provided at that facility.

(d) Any business, other than a solo practitioner, that provides out-call massage services within the city must obtain a massage establishment permit.

9-328 Massage Practitioner or Therapist - General Conditions.

All massage practitioners or therapists shall comply with the following provisions and any other regulations specified by the terms of this article:

(a) Except to the extent required, in writing, by a State-licensed medical practitioner, no massage practitioner or therapist shall massage or allow an employee to massage the genitals, buttocks, gluteal fold, or anal area of any patron or the breasts of any female patron. Nor shall any massage practitioner or therapist, or employee solicit or allow a patron to touch or massage in any manner the genitals, buttocks, gluteal fold, or anal area of a massage practitioner or therapist, or employee, or the breasts of any female massage practitioner or therapist, or employee. A massage shall not be given and no patron shall be in the presence of a massage practitioner or therapist, owner, manager or other employee of a massage establishment unless the patron's genitals, buttocks, gluteal fold, or anal area, and, if a female patron, the female patron's breasts, are fully covered by a non-transparent covering.

(b) Table showers are prohibited.

(c) The massage practitioner or therapist shall wear a photo identification badge prepared and issued by the city at all times when present in the massage establishment. Such identification shall be provided to the chief of police or to the director upon demand. The identification badge shall be worn on outer clothing with the photo side facing out. If a massage practitioner or therapist changes his/her business address, he/she shall, prior to such change, obtain from the chief of police a new photo identification badge and advise the police department, in writing, of the new business address.

(d) Massage practitioners and therapists shall not perform any massage at any location other than the location specified on the city registration certificate and photo identification badge.

(e) While on duty, the massage practitioners or therapists shall not use any name or designation or conduct business under any other name or designation than the name specified on his or her registration certificate and photo identification badge.

(f) Massage practitioners or therapists, at all times while on the business premises, shall wear clean, nontransparent outer garments solidly covering the shoulders to four inches (4") or less above the knees to the base of the neck, excluding the arms. Skirts, mini-skirts and dresses are not allowed to be worn at any time while on the business premises, only trousers, pants or shorts may be worn while on duty. Further, under no circumstances shall these garments permit the genitals, pubic area, abdomen, back, buttocks, breast or chest to be exposed.

(g) A massage practitioner or therapist shall consent to, and shall not prevent, delay or interfere with, an inspection of the massage establishment, including massage rooms by the city's development services department, fire department, police department and the County of Orange Health Department for the purpose of determining that the provisions of this article or other applicable laws or regulations are met.

9-329 Massage Practitioner or Therapist - Additional or Change in Location.

In the event a massage therapist or practitioner who is currently registered with the city seeks employment at a massage establishment in addition to or different from the establishment indicated on the original application, the massage practitioner or therapist

shall notify the city in writing prior to the date the massage practitioner or therapist is employed by the establishment where he/she is to provide massage services. An additional or replacement city registration certificate and photo identification badge shall issue upon payment of the required fee.

9-330 Massage Establishment Permit Required.

(a) Except as otherwise provided, it shall be unlawful for any person to engage in, conduct, or carry on, or to permit the engagement in, conducting of, or carrying on the business or operation of a massage establishment within the city without a massage establishment permit. Massage establishment permits shall also be required of any permanent or semi-permanent seated massage or reflexology installation.

(b) A massage establishment permit is a facility permit and shall in no way be construed to allow any individual to perform massage services within the City of Costa Mesa without a CAMTC certificate.

9-331 Exceptions.

The requirements of this article relating to massage establishment permits shall not apply to the following while engaged in performing the duties of their respective professions:

(a) Physicians, surgeons, chiropractors, physical therapists or osteopaths duly licensed to practice their respective professions in the State of California. This exemption only applies if the massage is performed by the licensed professionals and/or by a staff member of the licensed professionals in the course of treatment

prescribed by the licensed professional and only when the licensed professional is present on the premises.

(b) Acupuncturists who are duly licensed to practice their respective profession in the State of California. This exemption only applies if the massage therapy is performed by the licensed acupuncturist to the treated area. If a licensed acupuncturist wishes to provide massage therapy by an individual(s) who is not a licensed acupuncturist, that individual(s) must obtain a valid CAMTC certificate prior to providing massage services, and the owner acupuncturist must obtain a massage establishment permit from the city. No massage establishment permit shall issue to any acupuncturist who is not fully in compliance with all the requirements of the California Acupuncture Board.

(c) A registered or licensed vocational nurse working on the premises of, and under the direct supervision of, a State licensed physician, surgeon, chiropractor or osteopath. Practical nurses or other persons that do not meet the requisite qualifications for a massage practitioner or therapist, or any other person not otherwise licensed by the State of California or certified by the CAMTC, whether or not employed by physicians, surgeons, chiropractors, osteopaths, acupuncturists, or physical therapists, may not provide massage services or act as a massage practitioner or therapist.

(d) Hospitals, nursing homes, sanatoriums, or other health care facilities duly licensed by the State of California.

(e) Barbers, beauticians and manicurists who are duly licensed by the State of California while engaging in the practice of their profession and acting within the scope of 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 or beautician or in

the case of a licensed manicurist, the massaging of the forearm, hands, calves and/or feet.

(f) Accredited high schools, junior colleges, and colleges or universities whose coaches and trainers are acting within the scope of their employment.

(g) Trainers of amateur, semi-professional or professional athletes or athletic teams.

(h) Events such as marathons and concerts may provide massage therapy services only through certified massage practitioners and therapists. Provided that, any event that requires that massage therapy is provided for more than 48 hours shall obtain a massage establishment permit.

(i) Massage therapy booths operating at the Orange County Fair and Event Center shall not be required to obtain a massage establishment permit, and shall only allow certified massage therapists and practitioners to provide massage services.

9-332 Massage Establishment Permit - Application.

(a) No person shall operate a massage establishment within the city without obtaining a massage establishment permit prior to commencing operation. Any person wishing to operate a massage establishment must submit a written application under penalty of perjury on the required form to the chief of police. The application shall be accompanied by a non-refundable fee.

(b) The application shall be completed and signed by the owner of the proposed massage establishment, if a sole proprietorship, or, if the applicant is a corporation or partnership, it shall designate one of its officers or general partners as its authorized

representative. The authorized representative shall complete and sign all application forms required for an individual applicant.

(c) The application and fee required pursuant to this section shall be in addition to any other license, permit or fee required by state or local law. Only one application fee shall be charged regardless of the number of owners designated in the application.

(d) The application for a permit does not authorize the operation of a massage establishment unless and until such permit has been granted.

(e) Applicants shall be at least 18 years of age.

(f) The application for a massage establishment permit shall contain the following information:

(1) The type of ownership of the business, i.e., whether by an individual, partnership, corporation or otherwise.

a. If the applicant is a corporation, the name and number of the corporation shall be set forth exactly as shown in its articles of incorporation or charter together with the State and date of incorporation and the names and residence addresses of each of its current officers, directors and each stockholder holding more than five percent of the stock in that corporation.

b. If the applicant is a partnership, the application shall set forth the name and residence addresses of each of the partners, including limited partners.

c. If the applicant is a limited partnership, it shall furnish a copy of its certificate of limited partnership filed with the Secretary of State. If

one or more of the partners is a corporation, the provisions of this subsection pertaining to corporations shall apply.

(2) The true full and precise name under which the massage establishment is to be conducted.

(3) The address where the massage establishment is to be located and all telephone numbers for the massage establishment.

(4) A complete current list of the names and residence addresses of all proposed massage practitioners or therapist, aides, trainees and other employees who are or will be employed in the massage establishment, if known. If not known at the time of submission of the application, the applicant shall provide the required information no later than ten (10) calendar days prior to opening for business.

(5) A clear, color photocopy of a valid, government issued identification card and a clear, color photocopy of a current CAMTC certificate for each proposed massage practitioner or therapist who will be employed to perform massage therapy either as employees, independent contractors, or in a rent space capacity.

(6) The name and residence addresses of the owner, as well as the manager (if the manager is a different individual), who will be principally in charge of the operation of the massage establishment.

(7) A description of any other business operated within the State, which is owned or operated by the owner.

(8) The name and address of the owner and/or lessor of the real property upon or in which the proposed business is to be conducted. In the event the applicant is not the legal owner of the property, the application must be accompanied by a copy of the lease and a notarized affidavit from the owner of the property acknowledging that a massage establishment will be located on his/her property.

(9) The complete business, occupation and employment history for eight (8) years preceding the date of application, including, but not limited to, a massage establishment or similar type of business history and experience of the applicant.

(10) The complete massage establishment permit history of the owner of the establishment, as follows: whether the owner has ever had any similar type of permit or license issued by any agency, board, city, county, territory or state; the date of issuance of such a permit or license; whether the permit or license has been or was ever denied, revoked or suspended, and the reasons therefore; if any vocational or professional license or permit, other than for massage, has been or was ever denied, revoked or suspended, and the reasons therefore; if the applicant has ever been required to surrender a permit or license as a result of pending criminal charges, the nature of the charges, and the disposition of the charges.

(11) All criminal convictions, including pleas of nolo contendere, within the last ten years including those convictions dismissed or expunged pursuant to Penal Code Section 1203.4, but excluding minor traffic

violations, and the date and place of each such conviction and reason therefore.

(12) A complete set of fingerprints taken by the police department. The applicant shall be responsible for payment of any fingerprinting fee.

(13) Three (3) portrait photographs at least two (2) inches by two (2) inches in size with a white background, taken no earlier than thirty (30) days preceding the filing of the application.

(14) Authorization for the city, its agents and employees to seek verification of the information contained in the application.

(15) Such other identification and information as the chief of police may reasonably require in order to discover the truth of the matters herein specified and as required to be set forth in the application.

(16) A statement in writing and dated by the person providing the information that he or she certifies under penalty of perjury that all information contained in the application is true and correct.

(17) If any land use permit or other entitlement for the use of the property as a massage establishment is required, such permit or use entitlement shall be obtained by the applicant prior to the massage establishment permit becoming effective. Proof of compliance with all applicable state and local codes from any affected department or agency, including but not limited to, the development services department, the building and safety division and the Orange County Health Department must be submitted prior to the application's final approval. Any required

inspection fees shall be the sole responsibility of the applicant. If proof of compliance is not received by the chief of police within ninety (90) calendar days of the date of filing of the application, the application shall be deemed abandoned.

(18) A current and valid policy of insurance issued by an insurance company authorized to do business in the State of California evidencing that the applicant is insured under a liability insurance policy providing minimum coverage of one million dollars (\$1,000,000.00) for injury or death to one person arising out of the operation of any massage establishment and the administration of a massage.

(19) An insurance certificate demonstrating that the applicant is in compliance with the Workers' Compensation insurance coverage requirements of the State of California.

(g) Every applicant owner shall also provide the following personal information:

- (1) The full, true name and all aliases used.
- (2) Date and place of birth.
- (3) Height, weight, gender and color of hair and eyes.
- (4) Valid government issued driver's license or identification card, Social Security card and resident alien card, if applicable.

(h) If the owner shall provide massage services, a full-size color copy of the owner's CAMTC certificate.

(i) If, during the term of a permit, the permittee has any change in the information submitted on the original or any renewal application, the permittee shall notify the police department in writing of any such change within ten (10) business days of the change.

(j) In the event that the chief of police requires further information, or deems the application incomplete, the applicant shall be notified in writing of the required information within twenty (20) days of submitting the application. Additional information shall be provided within fifteen (15) days of the date of the request, after which time the application shall be deemed abandoned. Abandoned and incomplete applications shall be denied.

9-333 Massage Establishment Permit - Issuance or Denial.

(a) Upon receipt of a completed massage establishment permit application, the chief of police shall conduct an investigation to ascertain whether a permit should be issued as requested. The chief of police shall, within sixty (60) calendar days of receipt of the completed application, approve, conditionally approve or deny the application. The sixty (60) day period may be extended for up to thirty (30) additional calendar days, if necessary, to complete the investigation. The chief of police at that time may issue such permit as requested, unless he/she makes any of the following findings:

- (1) The applicant, or any of the officers or directors of the corporation, a partner or any person directly engaged or employed in the massage establishment, has within eight (8) years preceding the date of the application:

- a. Been convicted of 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 California Penal Code Sections 266h, 266i, 314, 315, 316, 318, subsections (a), (b) or (d) of Penal Code Section 647, or convicted of 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 California Penal Code Sections 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.
- b. Been convicted of 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 Section 11054, 11055, 11056, 11057 or 11058.
- c. Been convicted of any offense in any other State or U.S. territory, which is the equivalent of any of the abovementioned offenses.
- d. Been subjected to a 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.

- e. Committed an act in another jurisdiction which, if committed in this State, would have been a violation of law and, which, if done by a permittee under this article, would be grounds for denial, suspension or revocation of the permit.
 - f. Has had a massage establishment permit or massage therapist/practitioner permit or other similar license or permit denied, suspended or revoked for cause by the city, any state, local agency or other licensing authority, or has had to surrender a permit or license as a result of pending criminal charges or in lieu of said permit or license being suspended or revoked.
- (2) The owner has made a false, misleading or fraudulent statement or omission of fact to the city in the permit application process.
 - (3) The application does not contain all of the information required by Section 9-332.
 - (4) The owner is not at least eighteen (18) years of age.
 - (5) The massage establishment, as proposed, does not comply with all applicable laws, including, but not limited to, health, zoning, fire, building and safety requirements and standards.
 - (6) The applicant failed to obtain all the necessary approvals from the affected department or agency, including but not limited to, the city's development services department.
 - (7) The required fee(s) has not been paid and/or all other requirements of this article have not been satisfied within the time specified.

(b) If the application is denied for failure to comply with subsection (A)(2) or (3) of this section, the applicant may not reapply for a period of one (1) year from the date the application was denied.

(c) If the chief of police, upon completion of the investigation, determines that the applicant does not fulfill the requirements set forth in this article, the chief of police shall deny the application by dated written notice to the applicant. The applicant shall have the right of appeal as set forth in Section 9-344.

9-334 Operating Requirements - General Conditions.

All owners shall comply with the following general conditions and any other conditions specified by the chief of police.

(a) An owner and/or manager shall be responsible for the conduct of all employees and contractors while they are on the massage establishment premises. Any act or omission of any employee or independent contractor constituting a violation of the provisions of this article shall be deemed the act or omission of the owner or manager for purposes of determining whether the massage establishment permit shall be revoked, suspended, denied or renewed. An owner and/or manager shall also be responsible for the conduct of any rent-space massage therapists or practitioners.

(b) Except to the extent required, in writing, by a State-licensed medical practitioner, no massage practitioner or therapist, employee or contractor shall massage the genitals, buttocks, gluteal fold, or anal area of any patron or the breasts of any female patron, nor shall any owner or manager of a massage establishment allow or permit such a massage to the above specified areas. A massage shall not be given and no

patron shall be in the presence of a massage practitioner or therapist, contractor, owner, manager or other employee of a massage establishment unless the patron's genitals, buttocks, gluteal fold, or anal area, and, if a female patron, the female patron's breasts, are fully covered by a non-transparent covering.

(c) No massage establishment shall provide table showers to patrons.

(d) No person granted a permit pursuant to this article shall use any name or conduct business under any designation not specified on his/her permit.

(e) All massage establishments required to be permitted under this article shall have a manager on the premises at all times the massage establishment is open. The owner of each massage establishment shall file a statement with the chief of police, designating the person or persons with power to act as a manager. The owner and/or on duty manager shall post, on a daily basis, the name and photograph (a minimum size of 4" x 6") of each on-duty manager and each on-duty massage practitioner or therapist in a conspicuous public place in the lobby of the massage establishment. The owner shall be responsible for ensuring compliance with this article.

(f) The hours of operation must be posted in the front window and clearly visible from the outside.

(g) No massage establishment shall open for business unless all the individuals providing massage services are CAMTC certified.

(h) The owner and/or manager shall ensure that the city registration certificate for each on-duty massage therapist or practitioner is conspicuously displayed, visible from the entrance and/or reception and waiting area of the massage establishment, and that each massage practitioner or therapist is wearing the photo identification badge

required by this article at all times when working in the massage establishment. Such identification shall be provided to a city official upon demand.

(i) No owner and/or manager shall employ any person as a massage practitioner or therapist who does not have a valid and current CAMTC certificate in good standing. Every owner or manager shall report to the chief of police any change of employees, whether by new or renewed employment, discharge or termination, on the form and in the manner required by the chief of police. The owner/manager shall provide the name of the employee and the date of hire or termination. The report shall be made prior to the date of hire and within two (2) business days of termination. The owner/manager shall deliver notice of the termination of any massage practitioner or therapist no longer employed by the owner/manager to the chief of police, within two (2) business days of termination.

(j) All employees, including massage practitioners and therapists, shall, at all times while on the business premises, wear clean, nontransparent outer garments solidly covering the shoulders to four inches (4") or less above the knees to the base of the neck, excluding the arms. Skirts, mini-skirts and dresses shall not be worn at any time while on the business premises, only trousers, pants or shorts may be worn while on duty. Further, under no circumstances shall these garments permit the genitals, pubic area, abdomen, back, buttocks, breast or chest to be exposed. All massage practitioners and therapists shall wear their city issued identification badge visibly on their person affixed to the right front of their clothing at all times during business hours.

(k) The owner and/or manager shall maintain a register of all employees. The employee register shall be maintained on the premises for a minimum period of twenty-

four (24) months following an employee's termination. The owner and/or manager shall make the employee register immediately available for inspection upon demand of a representative of the police department at all reasonable times. The employee register shall include, but not be limited to the following information:

- (1) The name, nicknames and/or aliases used by an employee or rent-space massage therapist or practitioner.
- (2) A good quality color photocopy of a valid and current CAMTC certificate for each employee and rent-space therapist or practitioner.
- (3) The employee's or rent-space therapist or practitioner's home address and relevant phone numbers (including but not limited to home, cellular and pager numbers).
- (4) The employee or rent-space therapist or practitioner's age, date of birth, gender, height, weight, color of hair and eyes.
- (5) The date of employment and termination, if any, or, in the case of a rent-space therapist or practitioner, the start and end dates of the lease agreement, as well as a copy of the agreement.
- (6) The duties of each employee.

(l) No massage establishment shall operate as a school of massage, or use the same facilities as that of a school of massage.

(m) During the hours of operation, visitors shall not be permitted in massage therapy rooms except as follows: (1) the parents or guardian of a patron who is a minor child may be present in the massage therapy room with that minor child; (2) the minor child of a patron may be present in the massage therapy room with the patron when necessary

for the supervision of the child; or (3) the conservator, aid, or other caretaker of a patron who is elderly or disabled may be present in the massage therapy room with that elderly or disabled person.

(n) No person shall engage in, conduct or carry on the business of massage therapy or of a massage establishment unless there is on file with the chief of police, in full force and effect at all times, a policy of insurance issued by an insurance company authorized to do business in the State of California evidencing that the permittee is insured under a liability insurance policy providing minimum coverage of one million dollars (\$1,000,000.00) for injury or death to one person arising out of the operation of any massage establishment and the administration of a massage.

(o) No person shall engage in, conduct or carry on the business of massage therapy or of a massage establishment unless there is on file with the chief of police, in full force and effect at all times, an insurance certificate, or some other sufficient evidence of compliance, demonstrating that the permittee is in compliance with the Workers' Compensation insurance coverage requirements of the State of California.

9-335 Operating Requirements – Reflexology.

Any establishment providing reflexology treatments shall be subject to the following additional requirements:

(a) Reflexology shall only be conducted by certified massage therapists or practitioners.

(b) Reflexology shall not be conducted within individual rooms, cubicles, or any partitioned space that is not visible from outside of the establishment, and no

establishment shall contain individual rooms, cubicles or partitioned space, for the purpose of performing any reflexology treatment that is not visible from outside of the establishment.

(c) Reflexology treatments by definition only involve and require contact with the hands or feet of the patron/client. Accordingly, persons administering reflexology treatment are prohibited from making physical contact with any part of the body other than the hands and feet of the patron. Any person administering a reflexology treatment must comply with the following restrictions while the reflexology treatment is being administered:

- (1) While working on the feet, only contact from the foot to the knee is allowed. Any contact above the knee is prohibited.
- (2) While working on the hands, only contact from the fingers up to the elbow is allowed. Any contact above the elbow is prohibited.
- (3) Contact with any other part of the patron's body is strictly prohibited.

(d) Nothing in this section should be construed to mean that an establishment providing reflexology treatments is not subject to all requirements for massage establishments.

9-336 Operating Requirements – Facilities.

All owners and managers shall comply with the following operating requirement for facilities and any other conditions specified by the chief of police.

(a) Structure. Massage establishments shall be carried on in a structure, which is located in a zoning district, which permits such use. When a massage establishment is newly constructed, three sets of plans shall be submitted to the city and the County Health Care Agency for approval and shall be accompanied by the appropriate plan check fee.

(b) Signs. Any signs shall be in conformance with the current sign ordinances of the city. Each owner and/or manager shall post and maintain, adjacent to the main entrance and the front of the business, 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. Any internally or externally illuminated signs, including neon signs, that face residential properties must be turned off no later than 8:00 p.m.

(c) Services List. Each owner and/or manager shall post and maintain a list of services available and the cost of such services in the lobby of the massage establishment in a conspicuous public place and in any other location on the premises as the owner and/or manager deems appropriate. The services shall be described in English and may also be described in such other languages as may be convenient. No massage establishment owner shall permit, and no person employed or retained by the massage establishment shall offer to perform, any services or fees other than those posted.

(d) Lighting. The interior of the business shall maintain adequate illumination to make the conduct of patrons and employees within the premises readily discernable. The lighting in each massage room shall be at least one (1) sixty (60) watt white light bulb and shall be activated at all times while the patron is in a massage room. No

strobe, flashing lights or dimmer switches shall be used. No colored lights shall be used nor shall any coverings be used which change the color of the primary light source.

(e) Ventilation. In each massage room, the owner and/or manager shall provide minimum ventilation in accordance with the applicable building and fire codes.

(f) Toilet Facilities. A minimum of one (1) toilet and one (1) separate wash basin shall be provided for patrons in each massage establishment, which basin shall provide soap or detergent and hot and cold running water at all times and shall be located within close proximity to the massage rooms. A permanently installed soap dispenser, filled with soap, and a single service towel dispenser shall be provided at the restroom washbasin. Bar soaps shall not be used. A trash receptacle shall be provided in each toilet room.

(g) Bathing, Dressing and Locker Facilities. If showers are provided, then there shall be a minimum of one (1) shower and one (1) dressing room containing a separate locker capable of being locked shall be provided for patrons to be served at the massage establishment. The shower facility shall be equipped with soap or detergent and hot and cold running water at all times and shall be located within close proximity to the massage rooms. Bar soaps shall not be used. Massage tables are not allowed to be in a shower and only one patron may utilize a shower at a time. At no time will an employee, a massage practitioner or therapist or independent contractor be allowed to occupy the shower being utilized by the patron.

(h) Separate Rooms. If male and female patrons are to be treated simultaneously at the same massage establishment separate massage rooms, dressing, bathing and toilet facilities shall be provided for male and female patrons. Each separate facility or room

shall be clearly marked as such. The requirements of this subsection will be met and “couples massages” are allowed in a single room if the massage establishment is operated as an accessory use within, and as part of, spa services offered in an approved day spa facility, health club, athletic club, or gym. Couples massages are permitted within a single room subject to all the requirements of this article, including, but not limited to the provision of a separate massage table and massage therapist or practitioner for each patron. The separate massage tables used during the couples massage must remain separated as to allow free passage and movements of the massage therapists or practitioners during the course of the treatment. Any room used for couples massage shall be large enough to comply with any applicable building and fire codes and to permit free passage and movements of the massage therapists or practitioners. For the purpose of this subsection, accessory use shall mean a use which is not more than twenty-five (25) percent of the floor area of the related health or athletic activities of the primary use.

(i) Window Coverings. Any windows into the lobby shall not be covered. The lobby must be clearly visible from the exterior of the business at all times.

(j) Maintenance. Wet and dry heat rooms, steam or vapor rooms or cabinets, toilet rooms, shower and bath rooms, tanning booths, whirlpool baths and pools shall be thoroughly cleaned and disinfected with a disinfectant approved by the County Health Department, as needed, but at least once each day the premises are open. All facilities for the massage establishment must be in good repair and shall be thoroughly cleaned and sanitized at least on a daily basis when the business is in operation. All walls, floors and ceilings of each restroom and shower area shall be constructed with materials that

are smooth and easily cleanable. No carpeting shall be installed in any of these specified areas.

(k) Massage Tables. All massages shall be conducted on a massage table. No massages are allowed to take place on the floor or mats on the floor. A massage table shall be provided in each massage room and all massages shall be performed on the massage table. No more than one patron may occupy a massage table at the same time. The tables should have a minimum height of eighteen (18) inches. Two-inch (2") 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 waterproof material acceptable to the County Health Department. Beds, floor mattresses and waterbeds shall not be permitted on the premises.

(l) Front Door. One front door that enters into the lobby and/or other waiting room shall be provided for customer use. All customers and any other persons other than employees shall be required to enter and exit through the front door of the establishment.

(m) Reflexology. No reflexology treatments shall be provided on carpeted flooring. The floor in the area of the establishment where reflexology treatments are provided must be constructed with materials that are smooth and easily cleanable.

9-337 Operating Requirements - Operations.

All owners and managers shall comply with the following operating requirements and any other conditions specified by the chief of police:

(a) Equipment. Each owner and/or manager shall provide and maintain on the premises adequate equipment for disinfecting and sterilizing instruments used in massage.

(b) Linen. Common use of towels or linen shall not be permitted. Towels and linen shall be laundered or changed promptly after each use. Separate enclosed cabinets shall be provided for the storage of clean and soiled linen and shall be plainly marked “clean linen” and “soiled linen” and shall have doors or covers. 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.

(c) Living Quarters Prohibited. No person or persons shall be allowed to reside, dwell, occupy or live inside the massage establishment at any time. Living quarters, if any, shall be completely separate from the massage establishment. No cooking or food of any kind shall be prepared for sale or sold in the establishment unless an appropriate food vending permit is granted by the city and the County of Orange and a full service kitchen is installed. Absent a food vending permit, a kitchen, if any, shall be for the sole use of employees, and shall be installed in an “employees only” area.

(d) Alcoholic Beverages/Drugs. No person shall enter, be in or on, or remain in or on, any part of a massage establishment while in possession of, consuming, using or under the influence of, any alcoholic beverage or controlled substance. The owner and/or manager shall be responsible to ensure that no such person shall enter or remain upon the premises of the massage establishment. Service of alcoholic beverages shall not be permitted.

(e) Adult Oriented Merchandise Prohibited. The use or possession of adult oriented merchandise in or on any part of a massage establishment is expressly prohibited.

(f) Recordings. No building or part thereof where massage or massage services are being conducted shall be equipped with any electronic, mechanical or artificial device used, or capable of being used, for recording or videotaping or monitoring the activities, conversation, or other sounds in the treatment room or room used by customers. No electronic, mechanical or artificial device used, or capable of being used, for recording or videotaping or monitoring the lobby and hallway areas shall be used unless the areas being recorded, videotaped or monitored are clearly posted, advising patrons of such recording, videotaping or monitoring.

(g) Coverings. Each massage establishment shall provide to all patrons clean, sanitary and opaque coverings of a minimum size of 30" x 60", capable of covering the patrons' specified anatomical areas, including but not limited to the genital area, buttocks and female breasts. No common use of such coverings shall be permitted and re-use is specifically prohibited unless adequately cleaned prior to its re-use.

(h) Records. Every owner and/or manager shall keep a record of the dates and hours of each treatment or service, the name and address of the patron, the name of massage therapist or practitioner administering such service and a description of the treatment or service rendered. A short medical history form shall be completed by the owner and/or manager to determine if the patron has any communicable diseases, areas of pain, high blood pressure or any physical condition which may be adversely affected by massage. These records shall be prepared prior to administering any massage or treatment and shall be retained for a period of twenty-four (24) months after

such treatment or service. These records shall be open to inspection upon demand only by officials charged with enforcement of this article or emergency personnel for emergency purposes and for no other purpose. The police department may periodically inspect the records to ensure compliance with this section. The information furnished or secured as a result of any such records shall be used only to ensure and enforce compliance with this article, or any other applicable State or federal laws and shall remain confidential. Any unauthorized disclosure or use of such information by any officer or employee of the city shall constitute a misdemeanor.

(i) Hours of Operation. Massage operations shall be carried on or conducted, and the premises shall be open, only between the hours of 7:00 a.m. and 10:00 p.m. The owner and/or manager must advise the city, in writing, at the time of submission of the application for a massage establishment permit of the hours of operation within the times set forth above. The owner and/or manager shall notify the city, in writing, at least thirty (30) calendar days prior to the date of the effective change, of any changes in the hours of operation. A massage begun any time before 10:00 p.m. must terminate no later than 10:00 p.m. 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. For massage establishments that are adjacent on any side of the property to residences or R zones, the hours of operation shall be limited to 7:00 a.m. to 9:00 p.m.

(j) Advertising.

(1) Any advertising matter published or distributed shall include in visible print the massage establishment permit number.

(2) No advertising matter shall depict individual persons unless those persons are employees of the establishment, and the employee's CAMTC's certificate number shall also be displayed in visible print on the advertisement.

(3) No massage establishment shall place, publish or distribute or cause to be placed, published or distributed any advertising matter that:

- a. depicts any portion of the human body that would reasonably suggest to prospective patrons that any service is available other than legitimate massage services; or
- b. depicts individuals in suggestive poses that would reasonably suggest to prospective patrons that any service is available other than legitimate massage services; or
- c. employs language in the text of any advertising that would reasonably suggest to prospective patrons that any service is available other than legitimate massage services.

(k) Handicapped Areas. All massage establishments must comply with all State and federal laws and regulations for handicapped customers.

(l) Compliance. Proof of compliance with all applicable provisions of this ordinance shall be provided upon request by the chief of police.

(m) Doors. All exterior doors (except back or rear exterior doors used only for employee entrance to and exit from the massage establishment) shall remain unlocked during business hours. All interior doors, including but not limited to all doors leading to customer areas, the front reception, hallway or front exterior doors, shall not have any

locking mechanisms. A door leading from the lobby area to customer areas, if any, shall not have any locking mechanism or be capable of being locked or blocked to prevent entry, in any manner.

(n) Massage and Dressing Room Doors. All massage and dressing rooms shall be screened off by curtains, draw drapes, or in the alternative, swinging doors, so long as such doors are mounted at least eighteen (18) inches from the floor and not less than ten (10) inches from the top of the door frame. A full door may be used if it does not have a locking mechanism and contains a reverse peephole, allowing visual inspections from outside the room. No other type of door shall be used except those provided for in this section for massage and dressing room doors. No massage may be given within any massage room within a massage establishment, which is fitted with a door capable of being locked. Provided that, in the event of a sole proprietorship operating out of a room that leads directly onto a common hallway that is shared with other, unrelated businesses, the door may remain locked for privacy and security reasons. Such a door must be easily unlocked from the inside in the event of an emergency.

(o) Access. No person(s) other than the owner, manager, employees and customers will be allowed beyond the front lobby, which lobby shall be located directly inside the front door entrance, during the hours of operation. Any other person(s) found beyond the first interior door leading to the inside of the business including, but not limited to, hallways, massage rooms, reception/business offices or lounge area will be in violation of this section. Entry doors to any room shall not be obstructed by any means.

(p) Discrimination. No massage establishment may discriminate or exclude patrons on the basis of race, sex, religion, age or handicap.

(q) Notices. The chief of police shall require that the following notice be posted in the event that any employee of the massage establishment or any person who has been aided and abetted by an employee of the massage establishment has been found, after full hearing by administrative proceeding or by a State court, to have violated any of the offenses that would be grounds for denial under the terms of this article:

NOTICE TO ALL PATRONS

THIS MASSAGE ESTABLISHMENT AND THE MASSAGE ROOMS DO NOT PROVIDE COMPLETE PRIVACY AND ARE SUBJECT TO INSPECTION BY THE COSTA MESA POLICE DEPARTMENT WITHOUT PRIOR NOTICE.

(1) Every owner and/or manager required to post such notice shall be required to pay for the cost of any and all notices required by this section.

(2) The notice shall be conspicuously posted in a location within the massage establishment that is easily visible to any person entering the premises, and shall be conspicuously posted in each massage room. The notices shall be posted for twelve (12) months following the violation of any of the offenses set forth above.

9-338 Inspections.

(a) The chief of police shall have the right to enter the massage establishment at any time during business hours for the purpose of making reasonable unscheduled inspections to observe and enforce compliance with applicable regulations, laws, and provisions of this article. During an inspection, the police department may also verify the identity of all employees.

(b) The city's development services department, fire department, police department and the County Health Department may, from time to time, make reasonable unscheduled inspections during business hours of each massage establishment for the purpose of determining that the provisions of this article, State law or other applicable laws or regulations are met.

9-339 Massage Establishment Permit - Non-Assignability.

No massage establishment permit may be sold, transferred or assigned by a permittee to any other person or entity. Any such sale, transfer or assignment, or attempted sale, transfer or assignment shall be deemed to constitute a voluntary surrender of the massage establishment permit and such permit shall thereafter be null and void except as set forth in Section 9-340.

9-340 Massage Establishment Permit - Change in Ownership of Business.

(a) If the permittee is a partnership and one or more of the partners should die, one or more of the surviving partners may acquire, by purchase or otherwise, the interest of the deceased partner(s) without affecting a surrender or termination of the permit, and in such case, the permit, upon notification to the chief of police, shall be placed in the name of the surviving partners. One (1) or more of the partners in a partnership granted a permit hereunder may make application to the chief of police, together with the application fee, to amend the original application providing all information as required for partners by Section 9-332, as well as all information relating to the new partner(s). Upon

the chief of police's approval of the amendment to the permit, the transfer of the interests of one (1) or more partners to the proposed partner or partners may occur.

(b) If the permit is issued to a corporation, stock may be sold, transferred, issued, or assigned to stockholders who have been named on the application. If any stock is sold, transferred, issued, or assigned to a person not listed on the application as a stockholder, the permit shall be deemed terminated and void; provided, however, the proposed transferee may submit to the chief of police, together with a fee established by the city council, an application to amend the original application providing all information as required for stockholders in the first instance, and, upon approval thereof, the transfer may then occur.

9-341 Massage Establishment Permit - Change of Location or Name.

(a) Every owner and/or manager shall report immediately to the police department and the development services department any and all changes of name or designation under which the business is to be conducted, and all changes of address or telephone numbers of the massage establishment. A change of location of the massage establishment may be approved by the chief of police provided there is compliance with all applicable regulations of the city and the new location is zoned for such a use.

(b) No permittee shall operate, conduct, manage, engage in, or carry on the business of a massage establishment under any name other than the person's name and the name of the massage establishment specified on the permit.

(c) Any application for an extension or expansion of a building or other place of business of a massage establishment shall require inspection(s) and shall comply with

the provisions and regulations of this article and all other city ordinances including but not limited to zoning ordinances and building, safety and occupancy standards.

9-342 Applicability to Existing Massage Establishments.

All existing massage establishments must submit a completed application pursuant to the provisions of Section 9-332 at the time of renewal of their current massage establishment permit, but in no event later than twelve (12) months after the effective date of this ordinance.

9-343 Massage Establishment Permit -- Revocation.

(a) Failure of an owner or a massage practitioner or therapist to comply with any requirement imposed by this ordinance or with any other conditions imposed pursuant to this article is hereby declared to be a public nuisance.

(b) Whenever the chief of police finds the existence of a violation and noncompliance at an establishment, he/she shall issue a Notice of Intent to Revoke Massage Establishment Permit, and the grounds therefore. The recipient of the notice may appeal the chief of police's decision to the city manager.

(c) The Notice of Intent to Revoke shall refer to the permittee's right of appeal, including the form and timing to properly appeal.

9-344 Appeal.

(a) The right to appeal to the city manager shall terminate upon the expiration of fifteen (15) calendar days from the date of the Notice of Intent to Revoke. The appeal

shall be personally delivered to or sent by certified mail to the office of the city clerk. The time for filing an appeal shall begin from the date of personal service or the date of acknowledgment on the certified mail of the above notice.

(b) In the event an appeal is timely filed, the suspension or revocation shall not become effective until a final decision has been rendered by the city manager. If no appeal is filed, the suspension or revocation shall become effective upon the expiration of the period for filing an appeal.

(c) The city manager shall set a date, time and place for a hearing on appeal and shall notify the appellant of the date, time and place of the hearing. The notice of the hearing date shall be sent by certified mail with proof of service attached, to the appellant at least ten (10) calendar days prior to the date of the hearing, addressed to the address listed on the respective application, or to the address given in the notice of appeal. The appellant shall be entitled to a copy of the documents upon which the intent to revoke is based and will have the opportunity to present contrary evidence at the hearing.

(d) The city manager, for good cause shown, may grant the appellant a request for a continuance. Only one (1) continuance will be granted.

(e) The city manager shall preside over the hearing on appeal or, in the alternative, the city manager may appoint a hearing officer to conduct the hearing and receive relevant evidence. The city manager or hearing officer shall render a written decision within forty-five (45) calendar days from the date of the hearing. The decision of the city manager or hearing officer shall be final. The statement of decision shall include reference to Sections 1094.5 and 1094.6 of the California Code of Civil Procedure.

(f) The following rules and evidence shall apply at the hearing:

(1) Oral evidence shall be taken only under oath or affirmation. The city manager or hearing officer shall have authority to administer oaths, and to receive and rule on the admissibility of evidence.

(2) 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 city manager or hearing officer may also call and examine any witness.

(3) Technical rules relating to evidence and witnesses shall not apply to hearings provided for in this chapter. Any relevant evidence may be admitted if it is material and is evidence customarily relied upon by responsible persons in the conduct of their affairs regardless of the existence of any common law or statutory rule that might make admission of such evidence improper over objection in court actions. Hearsay testimony may be admissible and used for the purpose of supplementing or explaining any evidence given in direct examination, but shall not be sufficient in itself to support a finding unless such testimony would be admissible over objection in civil actions. The rules of privilege shall be applicable to the extent they are now, or are hereafter permitted in court actions. Irrelevant, collateral, undue, and repetitious testimony shall be excluded.

(g) In the event that the city manager or hearing officer revokes the massage establishment permit, the establishment must cease operation immediately upon receipt of the notice of decision.

9-345 New Application after Denial or Revocation of Massage Establishment Permit.

(a) A person or entity may not apply for a new massage establishment permit within one (1) year from the denial or revocation of such permit.

(b) In the event a massage establishment permit is revoked, no new massage establishment permit may issue at the location of the revoked permit for one (1) year.

9-346 Fees.

The city council shall establish by resolution, and from time to time may amend, the fees for the administration of this article. The city council shall include in the resolution a health services fee schedule prescribing annual fees to be paid by the owner of each massage establishment, such fees to be paid directly to the County of Orange Health Department and retained by the County as reimbursement for its services related to massage businesses. Fees required by this article shall be in addition to any other fees that may be required under any other chapter of this Code.

9-347 Violation and Penalty.

(a) Any person who violates any provision of this article is guilty of a misdemeanor.

(b) Any massage establishment operated, conducted or maintained contrary to the provisions of this article shall be, and the same is declared to be, unlawful and a public nuisance, and the city may, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action(s) or proceeding(s) for the abatement, removal and enjoinder thereof, in any manner provided by law, and shall take such other steps and shall apply to such court(s) as may have jurisdiction to grant such relief as will abate or remove such massage establishments and restrain and enjoin any person from operating, conducting or maintaining a massage establishment contrary to the provisions of this article.

SECTION 2. Inconsistencies. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

SECTION 3. Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person, 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 portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared

invalid or unconstitutional. No portion of this Ordinance shall supersede any local, State, or Federal law, regulation, or codes dealing with life safety factors.

SECTION 4. This Ordinance shall take effect and be in full force thirty (30) days from and after the passage thereof, and prior to the expiration of fifteen (15) days from its passage shall be published once in the DAILY PILOT, a newspaper of general circulation, printed and published in the City of Costa Mesa or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post in the office of the City Clerk a certified copy of this Ordinance together with the names and member of the City Council voting for and against the same.

PASSED AND ADOPTED this _____ day of _____, 2011.

Mayor of the City of Costa Mesa

ATTEST:

City Clerk of the City of Costa Mesa

APPROVED AS TO FORM:

City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE)ss
CITY OF COSTA MESA)

I, Julie Folcik, City Clerk and ex-officio clerk of the City Council of the City of Costa Mesa, hereby certify that the above and foregoing Ordinance No. 11-__ was introduced and considered section by section at a regular meeting of said City Council held on the ____ day of _____, 2011, and thereafter passed and adopted as a whole at a regular meeting of said City Council held on the ____ day of _____, 2011, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of Costa Mesa this ____ day of _____, 2011.

City Clerk and ex-officio Clerk of the
City Council of the City of Costa Mesa