

PART 2 MESSAGE ESTABLISHMENTS AND MESSAGE TECHNICIANS**3621 PERMITS REQUIRED/ANNUAL RENEWAL REQUIRED**

No person shall engage in business as a massage technician or as the operator of a massage establishment without having a valid massage technician permit or massage operator permit issued pursuant to this Article. Massage operator permits and massage technician permits shall be valid for a maximum of one (1) year. Each massage technician and massage operator shall renew the permit annually.

(Ord. No. 1252, Sec. II, 6-3-02)

3622 PREREQUISITES FOR MESSAGE OPERATOR PERMIT

No person shall be eligible to receive a massage operator permit until such person has obtained a valid conditional use permit for a massage establishment pursuant to Tustin City Code Sections 9232, 9233, 9234, or 9235. A Healing Arts Practitioner, as defined in Section 3628(a), shall not be required to obtain a conditional use permit to qualify for a massage operator permit.

(Ord. No. 1252, Sec. II, 6-3-02; Ord. No. 1289, Sec. 8, 1-3-05)

3623 APPLICATION REQUIREMENTS FOR MESSAGE OPERATOR PERMIT

In addition to all other information requested on the application form, the application shall contain or be accompanied by the following:

- (1) Information regarding the type of ownership of the business, i.e., whether by individual, partnership, corporation, or otherwise. If the applicant is a corporation, the name 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 and directors, and of each stockholder holding more than five (5) percent of the stock of that corporation. If the applicant is a partnership, the application shall set forth the name and residence of each of the partners, including limited partners. If it is a limited partnership, it shall furnish a copy of its certificate of limited partnership filed with the Secretary of State. If one (1) or more of the partners is a corporation, the provision of this subsection pertaining to corporations shall apply. The applicant corporation or partnership shall designate one of its officers or general partners to act as its responsible managing officer. Such designated persons shall complete and sign all application forms required for an individual applicant under this Chapter.
- (2) The precise name under which the massage establishment is to be conducted.
- (3) The complete address and telephone numbers of the massage establishment.
- (4) A complete current list of the names and residence addresses of all proposed massage technicians and other employees in the massage establishment and the name and residence address(es) of the manager(s). A manager is the person(s) designated by the operator of the massage establishment to act as the representative and agent of the operator in managing day-to-day operations with the same liabilities and responsibilities or who acts with evidence of management. 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. A manager must meet the standards and qualifications for a massage technician permit to qualify as a manager and obtain a massage technician permit.

(5) A description of any other business operated on the same premises, or within the City of Tustin, or within the State of California, which is owned or operated by the applicant.

(6) The following personal information concerning the applicant:

(a) Full complete name and all aliases used by the applicant;

(b) Current address and all previous residential addresses for eight (8) years immediately preceding the present applicant's address;

(c) Proof that the applicant is at least eighteen (18) years of age;

(d) Height, weight, color of hair, eyes, and sex;

(e) Two (2) front faced portrait color photographs at least two (2) inches by two (2) inches in size.

(f) The applicant's complete business, occupation, and employment history for eight (8) years preceding the date of application:

(g) The complete massage permit history of the applicant; whether such person has ever had any 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 was denied, revoked, or suspended; or if a vocational professional license or permit was denied, revoked, or suspended; and the reason therefor;

(h) All criminal convictions, including pleas of nolo contendere, within the last five (5) years, including those 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 therefor; and,

(i) A complete set of fingerprints taken by the Police Department.

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

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

(Ord. No. 1252, Sec. II, 6-3-02; Ord. No. 1289, Sec. 4, 1-3-05)

3624 OPERATOR, MANAGER, AND MESSAGE TECHNICIAN REGULATIONS

Except as required by a State licensed medical practitioner, no massage technician, massage technician aide, or employee shall massage the genital, buttock, or anal area of any patron or the breasts of any female patron, nor shall any operator or manager of a massage establishment allow or permit such massage. No massage operator or designated manager, while performing any task or service associated with the massage business, shall be present in any room with another person unless the person's genitals, buttocks, anus, or, in the case of female, her breasts, are fully covered.

No person, operator or massage technician granted a permit pursuant to this Article 3 shall use

any name or conduct business under any designation not specified in his/her permit.

All massage establishments shall have a manager on the premises at all times the massage establishment is open. The operator and/or manager shall post, on a daily basis, the name of each on-duty manager and each on-duty technician in a conspicuous public place in the lobby of the massage establishment. The operator, or the manager in the operator's absence, shall be responsible for ensuring compliance with this Chapter. All operators and/or on-duty managers must be able to communicate effectively with City officials.

No licensed establishment shall be open for the business of massage without having at least one (1) massage technician holding a current valid permit of the specific establishment on the premises, and on duty, at all times when said establishment is open.

The operator and/or manager(s) shall ensure the massage technician permit for each on-duty massage technician is displayed in a conspicuous public place in the lobby and that each massage technician is wearing or has his/her massage technician permit on his/her person at all times when in the massage establishment. Such identification shall be provided to City officials upon demand.

An operator and/or on-duty manager shall be responsible for the conduct of all employees while the employees are on the licensed premises. Any act or omission of any employee constituting a violation of the provisions of this ordinance shall be deemed the act or omission of the operator for purposes of determining whether the operator's license shall be revoked, suspended, denied, or renewed.

No operator or manager shall employ any person as a massage technician who does not have a valid massage technician permit issued pursuant to this Article 3. Every operator or manager shall report to the Director any change of employees, whether by new or renewed employment, discharge, or termination, on the form and in the manner required by the Director. The report shall contain the name of the employee and the date of hire or termination. The report shall be made within five (5) days of the hire or termination. The operator or designee shall deliver the permit and photo identification card of any massage technician no longer employed by the operator to the Director within five (5) days of termination of employment.

All persons employed in the massage establishment shall be fully clothed. Clothing shall be of a fully opaque material and shall provide complete covering from mid-thigh to three (3) inches below the collarbone.

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, sex, height, weight, color of hair and eyes, phone numbers, social security number, date of employment and termination, if any, and duties of each employee. The above information on each employee shall be maintained in the register on the premises for a period of two (2) years following termination. The operator and/or manager on duty shall make the register of employees available immediately for inspection by police upon demand of a representative of the police department at all reasonable times.

A permittee shall comply with all provisions of this Chapter and any applicable provision of the Tustin Municipal Code.

The massage technician shall have his/her massage technician permit on his/her person at all times when present in the massage establishment. Such identification shall be provided to City officials upon demand. Massage technicians shall not perform any massage at any location other than the location specified on the permit. While on duty, the massage technician shall not use any name other than that specified on the permit.

(Ord. No. 1252, Sec. II, 6-3-02)

3625 APPLICATION REQUIREMENTS FOR MASSAGE TECHNICIAN PERMIT

In addition to the information requested on the application form, first-time applicants and renewal applicants shall provide the following information along with the application form:

- (1) A statement of the exact location at which the applicant will be working as a massage technician, including the full street address and all telephone numbers associated with said location, and the name and address of the massage establishment.
- (2) The following personal information concerning the applicant:
 - (a) Full complete name and all aliases used by the applicant, along with complete residence address and telephone;
 - (b) Residential addresses for eight (8) years immediately preceding the present address of the applicant;
 - (c) Acceptable written proof that the applicant is at least eighteen (18) years of age;
 - (d) Height, weight, color of hair and eyes, and sex;
 - (e) Two (2) front faced portrait color photographs at least two (2) inches by two (2) inches in size;
 - (f) The business, occupation, and employment history of the applicant for eight (8) years immediately preceding the date of the application; and,
 - (g) The complete permit history of the applicant and whether such person has ever had any license or permit issued by any agency, board, city, or other jurisdiction denied, revoked, or suspended and the reasons therefore.
- (3) Criminal convictions, including pleas of nolo contendere, within the last ten (10) years, including those 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.
- (4) A complete set of fingerprints taken by the Police Department.
- (5) Such other information and identification as the Chief of Police may require to discover the truth of the matters herein specified and as required to be set forth in the application.
- (6) Authorization for the City, its agents, and employees to seek verification of the information contained in the application.
- (7) A statement in writing, and dated, by the applicant that he or she certifies under penalty of perjury that all information contained in the application is true and correct.
- (8) If during the term of a permit, a permit holder has any change in information submitted on the original or renewal application, the permit holder shall notify the Director in writing of such change within ten (10) business days thereafter.
- (9) Each applicant must furnish the following information:
 - (a) An original or certified copy of a diploma or certificate and certified transcript of graduation evidencing completion of one thousand (1,000) hours in a progressive course of instruction from a recognized school of massage, wherein the method, practice, profession, theory, ethics, anatomical, and physiological knowledge and practice of a massage technician is taught by State certified instructors. A recognized school of massage means any school or institution of learning which teaches, through State certified instructors, the theory, ethics, practice, profession, or work of massage, which school or institution complies with the California Education Code, including but not limited to section 94900,

94905, or 94915, and which requires a resident course of study before the student shall be furnished with a diploma or certificate of graduation. Schools offering a correspondence course not requiring actual physical attendance shall not be deemed a recognized school. Duplicate courses shall not be accepted. The applicant must also supply a course description, an outline of material covered, and a letter to the City from the school administrator verifying completion. The Director may consider an applicant's study of massage completed outside the State of California if proof of completion from a formalized and progressive course of study in massage practice, anatomy, and/or physiology is provided with the application. Proof of completion shall include dates of study and the name, address, and telephone number of the school attended. Any outside course of study submitted for approval shall meet the State of California's Office of Post-Secondary Education's minimum requirements and be for completion of one thousand (1,000) hours of on-premises training.

(b) Certification that the applicant has taken and obtained a passing score on the test prescribed by the Director in accordance with this Part.

(i) The Director shall require one (1) of the following eligible testing procedures to be applied to all applicants for massage technician licenses. In the event the Director is apprised of facts indicating that a testing procedure is impractical for the City to verify or to administer, then the Director may prescribe that the other eligible testing procedure shall apply to all applicants for massage technician licenses from and after the date of the Director's determination. The eligible testing procedures that may be prescribed by the Director are:

(a) That all applicants take and pass the then current NCE as developed, administered, and verified by NCBTMB, or any other massage test developed, administered, and verified by NCBTMB; or

(b) That all applicants take and pass the then current "City Standardized Massage Technician/Practitioner Test" ("City Test"). The City Test shall be a written examination testing the applicant's knowledge of the basic subject matter, skills, and abilities needed to perform safe and therapeutic massage. The City Test shall be developed by the Director, who may rely upon tests developed and administered by other state and local organizations. The City Test shall be administered by the Director under conditions adequate to ensure the security and accuracy of the testing procedure. Each City Test shall be designated with a separate identification number for tracking purposes. Applicants shall be required to answer seventy (70) percent of the questions on the City Test correctly in order to pass the City Test. The score shall be calculated based on individual test results and shall not be dependent upon the performance of a group of test takers (i.e., is not graded on a "Bell Curve"). The City Council may, by resolution, set and charge a fee for taking the City Test. An applicant who fails to pass the City Test shall not be eligible to take the City Test until thirty (30) days after the previous City Test. An applicant who fails to pass upon a second attempt shall not again be eligible until six (6) months thereafter. An additional processing fee may be required to be filed with the Director prior to taking each City Test. The City Test will be in English. In the event the applicant does not read and write English sufficient to take and pass the City Test, it shall be the responsibility of the

applicant to, at their own expense, make arrangements with a Court-certified interpreter to interpret the examination. Proof of Court certification must be provided to the City prior to the administration of the examination.

(ii) If the testing procedure prescribed by the Director is the NCE administered by the NCBTMB, then the applicant shall satisfy this subsection by causing the NCBTMB to mail, directly to the City, a certificate indicating the applicant has taken the NCE and that the applicant obtained the score on that NCE required by NCBTMB to pass that NCE. If the testing procedure prescribed by the Director is the City Test, then the applicant shall state the date upon which the City Test was taken and the identification number provided on the test, so that the Director can verify the taking and passing of the test.

(iii) Permits for massage operators and technicians are renewed on a year to year basis provided that the permittees meet the requirements set out in this Section 3625.

(a) Each massage technician whose permit expires between December 6, 2004, and April 4, 2005, must comply with section 3625(9) by April 4, 2005, and his or her massage technician's permit is hereby extended until April 4, 2005, if necessary. If said massage technician does not comply with section 3625(9) by April 4, 2005, then his or her massage technician's permit expires, and he or she must satisfy section 3625's requirements for a new permit.

(b) Each massage technician whose massage technician permit expires after April 4, 2005, must comply with section 3625(9) to renew his or her massage technician permit.

(c) Each first-time or renewal applicant for a massage technician permit who has previously taken and passed the NCE as developed, administered, and verified by NCBTMB is not required to take and pass the NCE a second time. Each applicant for a massage technician permit who has taken and passed the NCE must comply with Section 3625(9)(b)(ii).

(Ord. No. 1252, Sec. II, 6-3-02; Ord. No. 1289, Sec. 5, 1-3-05)

Editor's note: Section 9 of Ord. No. 1289 provided the requirements of amended Section 3625(9) shall apply to any applicant for a massage technician permit who has not been issued a permit as of the time this Ordinance was considered by the Planning Commission.

3626 MASSAGE ESTABLISHMENT REGULATIONS

No massage operator permit shall be issued unless an inspection by the City of Tustin reveals that the massage establishment complies with each of the following regulations:

(1) A recognizable and readable sign shall be posted at the main entrance, identifying the establishment as a massage establishment, provided that all such signs shall comply with the Tustin Sign Code.

(2) Minimum lighting shall be provided in accordance with the Uniform Building Code. In addition, a light level of no less than five (5) foot candles shall be maintained in public rooms, walkways, and at any point within each room or enclosure where massage services are performed, at all times such services are being provided.

(3) Minimum ventilation shall be provided in accordance with the Uniform Building Code.

(4) Adequate equipment for disinfecting and sterilizing instruments used in performing the acts of massage shall be provided which are approved by the department or agency designated by the City Manager to make inspections for compliance with health standards.

(5) Pads used on massage tables shall be covered in a workmanlike manner with durable, washable plastic or other waterproof material acceptable to the department or agency designated by the City Manager to make inspections for compliance with health standards.

(6) In any massage establishment in which massage services are rendered only to members of the same sex at any one time, such persons of the same sex may be placed in a single separate room or the massage operator may elect to place such persons of the same sex in separate enclosed rooms or booths having adequate ventilation to an area outside said room or booth while massage services are being performed.

(7) Adequate bathing, dressing, locker, and toilet facilities shall be provided for patrons, except that dressing and locker facilities shall not be required if all patrons remain fully clothed while in the massage establishment, and bathing facilities shall be required only when the massage establishment provides steam rooms or sauna baths. If applicable, a minimum of one tub or shower, one dressing room containing a separate locker for each patron to be served, which locker shall be capable of being locked, as well as a minimum of one (1) toilet and one (1) wash basin shall be provided by the massage establishment, provided, however, that if male and female patrons are to be served simultaneously at the establishment, separate bathing, separate dressing, and separate toilet facilities shall be provided for male and female patrons. Where steam rooms or sauna baths are provided, if male and female patrons are to be served simultaneously, separate steam rooms or sauna rooms shall be provided for male and female patrons. Hot and cold running water under pressure shall be provided to all wash basins, bathtubs, showers, and similar equipment. Each wash basin shall be provided with soap or detergent and sanitary towels placed in permanently installed dispensers. A trash receptacle shall be provided in each toilet room.

(8) All walls, ceilings, floors, pools, showers, bathtubs, steam rooms, and all other physical facilities for the establishment must be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms, or steam or vapor cabinets, shower compartments, and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs shall be thoroughly cleaned after each use.

(9) Clean and sanitary towels and linens shall be provided for each patron of the establishment or each patron receiving massage services. No common use of towels or linens shall be permitted. Towels, sheets, and linens shall be provided in sufficient quantity and shall not be used by more than one (1) person unless they have been first laundered. Separate closed cabinets or containers shall be provided for the storage of clean and soiled linen and shall be plainly marked: "clean linen," "soiled linen."

(10) A minimum of one separate wash basin shall be provided in each massage establishment for the use of employees of any such establishment, which basin shall provide soap or detergent and hot and cold running water at all times, and shall be located within or as close as practicable to the area devoted to the performing of massage services. In addition, there shall be provided at each wash basin sanitary towels placed in permanently installed dispensers.

(Ord. No. 1252, Sec. II, 6-3-02)

3627 CHANGE OF OWNERSHIP

A massage establishment operator shall report to the Director within ten (10) days any and all changes of ownership or management of the massage establishment, including, but not limited to, changes of manager or other person principally in charge, stockholders holding more than five (5) percent of the stock of the corporation, officers, directors, and partners in any and all changes of name, style, or designation under which the business is to be conducted, and all changes of address or telephone numbers of the massage business. A change of location of any premises may be approved by the Director, provided there is compliance with all applicable regulations of the City and a conditional use permit has been approved for the new location.

No massage establishment permit may be sold, transferred, or assigned by a permittee, or by operation of law, to any other person or persons. Any such sale, transfer, or assignment, or attempted sale, transfer, or assignment shall be deemed to constitute a voluntary surrender of such permit and such permit shall thereafter be null and void; provided and excepting, however, that 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 or partners without effecting a surrender or termination of such permit, and in such case, the permit, upon notification to the Director, shall be placed in the name of the surviving partners. A massage establishment permit issued to a corporation shall be deemed terminated and void when either any outstanding stock of the corporation is sold, transferred, or assigned after the issuance of a permit, or any stock authorized but not issued at the time of the granting of a permit is thereafter issued or sold, transferred, or assigned. No massage technician permit may be sold, transferred, or assigned by a permittee, or any operation of law, to any other person or persons.

(Ord. No. 1252, Sec. II, 6-3-02)

3628 EXEMPTION

(a) This part does not apply to cosmetologists, barbers, or to persons licensed to practice any healing art pursuant to Business and Professions Code, Division 2, section 500 et seq., or the Chiropractic Act (collectively, "Healing Arts Practitioner"), when performing massage within the scope of his or her license. Such Healing Arts Practitioners shall be required to obtain a massage operator permit if their employees are proposed to engage in massage.

(b) Notwithstanding any other provision of law, this part applies to an employee of any person described in subsection a if the employee is engaged in, or is purported to be engaged in, the business of massage, and is located on the premises of a person described in subsection a.

(c) This part does not apply to City permitted massage technicians who perform chair massage on fully clothed persons at public places.

(Ord. No. 1252, Sec. II, 6-3-02; Ord. No. 1289, Sec. 6, 1-3-05)

PART 4 DEFINITIONS**3141 DEFINITIONS**

As used in this Article, the following terms and phrases shall have the meanings ascribed to them in this Part, unless the context in which they are used clearly requires otherwise. Terms and phrases that are not defined shall have the common meanings ascribed to them in Webster's or other dictionaries recognized as "standard."

Abandoned. Ceased or suspended for one (1) year or more, as determined by the Director.

Adult entertainment. Dancing, modeling, stripping, or other conduct which is distinguished or characterized by an emphasis on depicting or suggesting specified sexual activities or exposing or suggesting the exposure of specified anatomical areas.

Adult entertainment booking agency. A person, as defined herein, who in exchange for a fee, charge, or other form of consideration, provides or arranges for adult entertainment, whether by employee, independent contractor, or other arrangement.

Amusement activity. A carnival, circus, fair, boxing or wrestling exhibition, ferris wheel, marathon, bicycle or road race, zoo, menagerie, merry-go round, rodeo, trained animal show, wild animal show, traveling show, wild west show, street dance, or any other similar or related type of amusement, place, or activity, which takes place on a temporary basis on public property, private property, or in City streets and is open to the public. The term shall not include activities such as petting zoos, pony rides, children's attractions, and other minor amusements that are accessory to City-approved temporary uses.

Autobroker. An auto dealer who engages in the business of brokering motor vehicles.

Auto dealer. A person who:

- (1) For commission, money, or other thing of value, sells, exchanges, buys, or offers for sale, negotiates, or attempts to negotiate, a sale or exchange of an interest in, a motor vehicle, or induces or attempts to induce any person to buy or exchange an interest in a vehicle and who receives or expects to receive a commission, money, brokerage fees, profit, or any other thing of value, from either the seller or purchaser of said vehicle; or
- (2) Is engaged wholly or in part in the business of selling motor vehicles or buying or taking in trade, motor vehicles for the purpose of resale, selling, or offering for sale, or consigned to be sold, or otherwise dealing in motor vehicles, whether or not such motor vehicles are owned by such person.

The term "auto dealer" does not include a person who:

- (1) Does not sell motor vehicles at retail;
- (2) Is regularly employed as a salesperson by an auto dealer licensed under this Part while acting within the scope of that employment;
- (3) Is not engaged in the purchase or sale of motor vehicles as a business; or
- (4) Is a "pawnbroker."

Bingo game. A game of chance in which prizes are awarded on the basis of designated numbers or symbols on a card which conform to numbers or symbols selected at random.

Body piercing. The creation of an opening in a human body for the purpose of inserting jewelry, other decoration, or object. This includes, but is not limited to, piercing of an ear, lip, tongue, nose, or

eyebrow. "Body piercing" does not, for the purpose of this chapter, include piercing an ear with a disposable, single-use stud or solid needle that is applied using a mechanical device to force the needle or stud through the ear.

Brokering. An arrangement under which an auto dealer, for a fee or other consideration, provides or offers to provide the service of arranging, negotiating, assisting, or effectuating the purchase of a new or used motor vehicle, not owned by the auto dealer, for another or others.

Business establishment. Any retail store, food market, theater, restaurant, service station, bar, hotel, motel, or any other establishment which is open to, and provides, the public with any goods or services.

Check casher. A person that for compensation engages in the business of providing pay day loans or cashing checks, warrants, drafts, money orders, or other commercial paper serving the same purpose as cash, not including a state or federally chartered bank, savings association, credit union, industrial loan company, or retail seller engaged primarily in the business of selling consumer goods that cashes checks or issues money orders for a minimum flat fee not exceeding an amount established by State Law, as a service to its customers that is incidental to its main purpose or business.

City. The City of Tustin.

Convicted, conviction. A plea or verdict of guilty or a conviction following a plea of nolo contendere.

Director. The Director of the Community Development Department or designee.

Employee. An individual who works for another in return for financial or other compensation, including an independent contractor.

Establish an adult entertainment booking agency. Includes any of the following:

- (1) To open or commence an adult entertainment booking agency, as a new business;
- (2) To add adult entertainment booking agency services to an existing business; or
- (3) To relocate any adult entertainment booking agency.

Firearm. Any device, designed to be used as a weapon, from which is expelled through a barrel a projectile by the force of any explosion or other form of combustion.

For pay. The exchange of a service or merchandise for a fee, reward, donation, loan, or receipt of anything of value.

Fortunetelling. The telling of fortunes, forecasting of fortunes, or furnishing of any information not otherwise obtainable by ordinary process of knowledge, by means of any occult, psychic power, clairvoyance, clairaudience, cartomancy, phrenology, spirits, tea leaves, or other such reading, mediumship, augury, astrology, palmistry, necromancy, mindreading, telepathy, or other craft, art, science, cards, talisman, charm, potion, magnetism, magnetized article or substance, gypsy cunning or foresight, crystal gazing, oriental mysteries or magic, of any kind or nature.

Garage sale. A garage, yard, lawn, patio, or similar type sale held anywhere on the premises in any residential property for the purpose of disposing of personal property owned by the person or persons conducting the sale.

Goods. Tangible personal property, including motor vehicles, but excluding secondhand items such as books, sports equipment, clothing, and furniture.

Large outdoor gathering. A music festival, dance festival, public dance, show, exhibition, fair, or any other organized outdoor gathering or activity, which takes place on a temporary basis on public property or private property with the property owner's consent, and is anticipated to be attended by more than five hundred (500) persons at any one time. Parades, marches, or organized gatherings involving more than twenty-five (25) people on City streets or sidewalks are not governed by this Article

3.

Live entertainment. Includes live music, dance, comedy, fashion, illusionist, or dramatic performances in bars, restaurants, public spaces at shopping malls, other places open to the public, or on public property with the property owner's consent. Except that for purposes of this Article, live entertainment does not include single performers, duos, disc jockeys, karaoke singers, or sexually oriented businesses.

Massage. Any method of treating the external parts of the body for remedial, hygienic, relation, or any other reason or purpose, whether by means of pressure on, friction against or stroking, kneading, tapping, pounding, vibrating, rubbing, or other manner of touching external parts of the 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 practice.

Massage establishment. Any business where any person, firm, association, partnership, corporation, or combination of individuals engages in, conducts, carries on or permits to be engaged in, conducted or carried on for money or any other consideration, administers to another person a massage, bath, or health treatment involving massages or baths.

Massage operator. Includes all persons who have an ownership interest in a massage establishment.

Massage technician. Any person who administers to another person a massage within a massage establishment in exchange for anything of any value whatsoever. The terms "massage therapist" and "massage practitioner" are included within this definition for purposes of this Section.

Mobile automobile service. A service that has no regular fixed location or services and generally comes to businesses to provide vehicle washing, cleaning, and/or maintenance. The term shall not include temporary car wash fundraisers that have temporary use permits.

Mobile vendor, mobile vending. Mobile Vendor means persons who operate a mobile vending business, including an owner or operator of the vehicle used in the business. A mobile vending business offers products, food, or services for sale from a vehicle on a public street or while parked on a public street. Mobile vending does not include mobile automobile services, delivery services, plumbers, electricians, landscapers, roofers, pizza or restaurant delivery services or the delivery of stamps to a postal box by the United States Postal Service.

Motor vehicles. Vehicles of a type subject to registration or motorcycles of a type subject to identification or State registration.

National Certification Board for Therapeutic Massage and Bodywork and NCBTMB. The National Certification Board for Therapeutic Massage and Bodywork, which is a not-for-profit organization, accredited by the National Commission for Certifying Agencies having its principal offices located at 8201 Greensboro Drive, Suite 300, McLean, VA 22102.

National Certification Examination in Therapeutic Massage and Bodywork and NCE. The National Certification Examination for Therapeutic Massage and Bodywork developed and administered by the NCBTMB.

Pattern of violation. Three (3) or more violations within two (2) years.

Pawnbroker. Any person, partnership, firm, or corporation engaged in the business of receiving goods in pledge as security for a loan. "Receiving goods as security for a loan" does not include the good faith, outright purchase of goods.

Permanent cosmetics. The application of pigments to or under human skin for the purpose of permanently changing the color or other appearance of the skin. This includes, but is not limited to, permanent eyeliner, eye shadow, or lip color.

Permit. An official document or certificate issued by the Director, Planning Commission, or City

Council authorizing performance of a specified activity.

Person. An individual, partnership, or corporation.

Property. Something tangible or intangible to which its owner has legal titles.

Secondhand dealer. Includes any person engaged in the business of buying, selling, trading, accepting for sale on consignment, accepting for auctioning, auctioning, or taking in pawn secondhand tangible personal property. "Secondhand Dealer" does not include:

- (1) A coin dealer or participants at gun shows or events, as those terms are defined in Business and Professions Code Section 21626 or successor provisions;
- (2) A person performing the services of an auctioneer for a fee or salary; or
- (3) A person whose business is limited to the reconditioning and selling of major household appliances, provided the appliances are not traded, taken in pawn, accepted for drop off, accepted for sale on consignment, accepted for auction, auctioned, or bought except in bulk.

Sexually oriented business. An adult arcade, adult bookstore, adult novelty shop, adult video store, adult cabaret, adult motel, adult motion picture theater, adult tanning salon, adult theater, adult stripper or dancer, sexual encounter establishment, sex supermarket/sex mini-mall, or nude model studio.

Specified anatomical areas. Include any of the following:

- (1) Less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breasts below a point immediately above the top of the areola;
- (2) Human male genitals in discernibly turgid state, even if completely and opaquely covered; or
- (3) Any device, costume, or covering that simulates any of the body parts included in subsections (1) or (2) above.

Specified sexual activities. Include any of the following:

- (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts, whether of self or another;
- (2) Sex acts, actual or simulated, including intercourse, oral copulation, or sodomy;
- (3) Masturbation, actual or simulated;
- (4) Excretory functions as part of or in connection with any of the activities described in subdivision (1) through (3) of this subsection;
- (5) Striptease, or the removal of clothing, or the wearing of transparent or diaphanous clothing, including models dressed only in lingerie to the point where specified anatomical areas are exposed;
- (6) Human genitals in a state of sexual stimulation, arousal, or tumescence; or
- (7) The actual or simulated infliction of pain by one human upon another, or by an individual upon himself/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, the thigh region, genitals, buttocks, pubic region, or, if such person is a female, a breast.

State check casher permit. A permit issued by the California Department of Justice authorizing a person to engage in the business of check casher.

Tangible personal property. Includes, but is not limited to, the following:

(1) All secondhand personal property, excluding motor vehicles, which bears, or at the time acquired by the dealer bears, evidence of having had a serial number or personalized initials or inscription;

(2) All tangible personal property, new or used, including motor vehicles, received in pledge by a pawnbroker;

(3) All personal property for which a report is required to be made under the provisions of Division 8 of the Financial Code regarding pawnbroker regulations, and Chapter 9 of Division 8 of the Business and Professions Code regarding secondhand goods, or successor provisions.

The term shall not include secondhand books, CDs, sports equipment, clothing, or furniture.

Tattooing. To insert pigment under the surface of human skin, by pricking with a needle or otherwise, to produce an indelible mark or figure visible through the skin.

Transfer of ownership. Includes any of the following:

(1) The sale, lease, or sublease of the business;

(2) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or

(3) The establishment of a trust, gift, or other similar legal device which transfers ownership or control of the business, including the transfer by bequest or other operation of law upon the death of a person possessing the ownership or control.

Weapon. Any firearm or explosive device, or any device designed to be used in offensive or defensive combat or for sport, whether or not the weapon will be so used, and which is otherwise allowed by law to be possessed or sold.

(Ord. No. 1252, Sec. II, 6-3-02; Ord. No. 1274, Sec. 5, 4-21-03; Ord. No. 1289, Sec. 3, 1-3-05)

CHAPTER 2 ENTERTAINMENT

CHAPTER INDEX

PART 1 AMUSEMENT ACTIVITY

3211 AMUSEMENT ACTIVITY PERMIT REQUIRED

3212 INVESTIGATION

3213 APPLICATION REQUIREMENTS

3214 EXEMPTIONS

PART 2 BINGO GAMES

3221 BINGO PERMIT REQUIRED

3222 ELIGIBLE ORGANIZATIONS

3223 APPLICATION REQUIREMENTS

3224 REGULATION FOR GAMES

PART 3 LIVE ENTERTAINMENT

3231 LIVE ENTERTAINMENT PERMIT REQUIRED

3232 PREREQUISITES FOR LIVE ENTERTAINMENT PERMIT

3233 INVESTIGATION

3234 APPLICATION REQUIREMENTS

3235 EXEMPTIONS

3236 REGULATION OF LIVE ENTERTAINMENT

3237 MODIFICATION OF PERMIT

PART 4 LARGE OUTDOOR GATHERINGS

3241 LARGE OUTDOOR GATHERING PERMIT REQUIRED

3242 INVESTIGATION

3243 APPLICATION REQUIREMENTS

3244 EXEMPTIONS

3245 NO OBSTRUCTION OF PUBLIC WAYS BY PATRONS OF LARGE GATHERING

CHAPTER 7 PERMIT PROCEDURES

PART 1 ISSUANCE OF PERMITS/TERM/ANNUAL UPDATE/RENEWAL

3711 GENERAL

Applicants for City permits required by this Article shall obtain an application form from the Director and shall pay any applicable application fee. The fee shall be as provided by resolution of the City Council to cover the cost of processing and investigation. Upon determining that the application is complete, the Director shall make such investigation and review to determine the fitness and qualifications of the applicant and the effect, if any, of the application on the public peace, safety, welfare, and safety of the City. The Director may issue a permit with conditions necessary to protect the health, safety, or welfare of the City or deny a permit. Alternatively, the Director may report the results of the investigation to the Planning Commission and request the Planning Commission to hold a hearing and make the permit decision. All permit issuance decisions shall be in writing with reasons given for a denial. An appeal may be filed on the Director's or the Planning Commission's decision in accordance with Part 3 of this Chapter.

(Ord. No. 1252, Sec. II, 6-3-02)

3712 DENIAL

An application for a permit, including renewal of a permit, may be denied for any of the following reasons:

- (1) The applicant has made material misrepresentations of fact or omitted material information required by the application;
- (2) The applicant does not meet the prerequisites for a permit as specified in this Article. The Director or the Planning Commission has the discretion to evaluate information presented to satisfy prerequisites and to determine its credibility or reliability;
- (3) In the case of a renewal, the permit may be also denied if the permittee has failed to abide by the operational regulations specified in this code or the conditions of the permit. The proposed denial of the renewal of a permit for these reasons shall be heard and decided by the Director or the Planning Commission.
- (4) In the case of an adult entertainment booking agency, massage operator, massage technician, or mobile ice cream vendor, if the applicant or any of his/her managers, supervisors, or employees have been convicted within the last five (5) years of any offense classified by the State of California as an offense involving sexual crimes against children, sexual abuse, rape, kidnapping, distribution of obscene material or material harmful to minors, prostitution or pandering, including, but not necessarily limited to, the violation of any crime requiring registration under California Penal Code Section 290, or any violation of Penal Code sections 243.4, 261, 261.5, 264.1, 266, 266a through 266k, inclusive, 267, 286, 286.5, 288, 288a, 311 through 311.10, inclusive, 314, 315, 316, or 647, or any offense outside the State of California that would constitute any of the above-described offenses if committed within the State of California, or if the applicant or any of his/her agents, managers, supervisors, employees, or independent contractors have been convicted within the five (5) years immediately preceding the application of any offense involving the sale of a controlled substance specified in Health and Safety

Code Sections 11054, 11055, 11056, 11057 or 11058, or the possession for sale and/or possession of a controlled substance, as specified above.

Denial of permits, including renewals of permits, may be appealed in accordance with Part 3 of this Chapter.

(Ord. No. 1252, Sec. II, 6-3-02)

3713 TERM

Unless a different term is specified in this Article, permits shall be valid from the date of issuance until revoked or abandoned. Massage operator permits and massage technician permits shall be valid for a maximum of one (1) year.

(Ord. No. 1252, Sec. II, 6-3-02)

3714 ANNUAL UPDATE

Information required on the application for the original permit shall be updated and corrected by the applicant as appropriate on an annual basis, or as required by condition(s) of the permit.

(Ord. No. 1252, Sec. II, 6-3-02)

3715 RENEWAL

An application for the renewal of a permit shall be filed with the Director by the applicant at least thirty (30) days prior to the permit expiration date. Information required on the application for the original permit shall be updated and corrected as appropriate in the renewal application. Renewal decisions of the Director or the Planning Commission may be appealed in accordance with this Article.

(Ord. No. 1252, Sec. II, 6-3-02)