ORDINANCE NO. 3716

AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH
AMENDING CHAPTER 5.24 OF THE HUNTINGTON BEACH MUNICIPAL
CODE RELATING TO INSURANCE RECORDS FOR MASSAGE ESTABLISHMENTS

The City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. Section 5.24.170, subsection (n), of the Huntington Beach Municipal Code is hereby amended to read as follows:

5.24.170 Massage establishment operation.

(n) The owner/operator of each massage establishment shall file with the City, documents 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 in an amount set by resolution of the City Council for injury or death to one person arising out of the operation of any massage establishment and the administration of a massage, and shall be kept in full force and effect at all times by such owner or operator. Proof of such insurance shall be kept on the premises at all times. (3267-9/95)

SECTION 2. This ordinance shall become effective 30 days after its adoption.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the _____ day of _____, 2005.

_____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

Jennifer McGrath
City Attorney

REVIEWED AND APPROVED:

Robert F. Beardsley
Acting City Administrator

INITIATED AND APPROVED:

Chief of Police

(Approved for Introduction June 6, 2005)

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Ordinance No. 37116

LEGISLATIVE DRAFT

Chapter 5.24

MASSAGE ESTABLISHMENTS

(1213-6/66, 1293-3/67, 2007-10/75, 2187-6/77, Urg. 2361-3/79, Urg. 2394-8/79, 3173-10/92, 3267-9/95, 3467-6/00)(1/3/05)

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5.24.010 Definitions. Unless the particular provision or the context otherwise requires, the definitions and provisions contained in this section shall govern the construction, meaning, and application of words and phrases used in this chapter.

(a) "Massage" or "massage therapy" means any method of pressure on, or friction against or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating the external parts of the human body with the hands or with the aid of any mechanical or electrical apparatus or appliance, or with or without supplementary aids such as rubbing alcohol, liniment,

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antiseptic, oil, powder, cream, ointment, or other similar preparations commonly used in this practice.

(b) "Massage establishment" means any establishment having a fixed place of business where any individual, firm, association, partnership, corporation, or combination of individuals, engages in, conducts, carries on or permits to be engaged in, conducted or carried on, massages, baths, or health treatments involving massage or baths as fifty percent (50%) or more of the activity carried on in the establishment. (3467-6/00)

(c) "Recognized school of massage" means any school or institution of learning which teaches the theory, ethics, practice, profession, or work of massage, which school or institution complies with the California Education Code section 94310 or 94311, 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 attendance shall not be deemed a recognized school. (2395-11/79, 2466-2/81, 3267-5/95)

(d) "Qualified Massage Association" means any association which meets the following criteria: (3267-5/95)

(1) Has established as a minimum education requirement for membership the completion of at least five hundred (500) hours of training from a recognized school of massage or has a written and practical testing of equivalency administered and overseen by its admission committee or by a national certification program endorsed by the National Commission for Certifying Agencies (NCCA), which will be considered in lieu of the minimum education requirement of five hundred (500) hours. (3267-9/95)

(2) Offers and requires participation and completion by members of a minimum number of hours of specified continuing education as a condition of continuing membership. (3267-9/95)

(3) Is open to members of the general public meeting the requirements for membership on a national basis. (3267-9/95)

(4) Has minimum educational requirements or equivalents, including at least five hundred (500) classroom hours or its equivalent in anatomy, physiology, hygiene, sanitation, massage therapy and practice, ethics of massage practice, first aid and CPR. Equivalency must be verified by written and practical testing by the Association. (3267-9/95)

(5) The Association has established rules of ethics and has enforcement procedures for the suspension or revocation of membership for violation of such rules. (3267-9/95)

(6) The Association requires participation and completion by members of a minimum number of hours of specified continuing education as a condition of continued membership. (3267-9/95)

(e) "Qualifying Exam" means a national certification examination which has been recognized by objective standards to fairly evaluate professional level, skill, safety and competence as determined by a qualified massage association. (3267-9/95)

(f) "Massage Technician" means any person who performs massage in exchange for anything of any value whatsoever, whether or not that person has a valid permit from the City. (3267-9/95, 3467-6/00)

(g) "Owner" means the individual(s) whose name appears on the City of Huntington Beach business license. (3267-9/95)

(h) "Operator" means the individual who manages the establishment. Evidence of management includes but is not limited to evidence that the individual has power to direct or hire and

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dismiss employees, control hours of operation, create policy or rules or purchase supplies. An operator may also be an owner. (3267-9/95)

(i) "Customer area" means areas open to customers of the establishment. (3267-9/95)

(j) A crime of "Moral turpitude" shall be defined as a crime which infringes upon the moral sentiment of the community, as distinguished from statutory *mala prohibita* (acts prohibited by a law). (3267-9/95)

5.24.020 Massage establishment and Massage Technician--Permit required. It shall be unlawful for any person, association, partnership, corporation or other entity to engage in, conduct or carry on, in or upon any premises within the City of Huntington Beach the business of a massage establishment, or to provide massage in exchange for anything of value, without a permit issued by the City of Huntington Beach pursuant to the provisions of this chapter for each and every such massage establishment and such person providing massage services. Education and training requirements contained in this chapter apply equally to massage technicians and massage establishment owners. (2395-11/79, 3267-9/95)

5.24.030 Massage establishment--Application for permit--Fees.

(a) Any person, association, corporation, partnership or other entity desiring to obtain a permit to operate a massage establishment shall make application to the Chief of Police or his designated representative. Prior to submitting such application, a nonrefundable fee as established by resolution of the City Council shall be paid to the City of Huntington Beach to defray, the cost of investigation and report required by this chapter. The City Clerk or the City Treasurer shall issue a receipt showing that such application fee has been paid. The receipt, or a copy thereof, shall be supplied to the Chief of Police at the time such application is submitted. (3267-9/95)

(b) The application for permit does not authorize operation of a massage establishment or performing massage until such permit has been granted. (2395-11/79, 3267-9/95)

5.24.040 Massage establishment--Application--Contents. Each applicant for a massage establishment permit shall furnish the following information:

(a) The full, true name and any other names used by the applicant.

(b) The present address and telephone number of the applicant.

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

(d) Acceptable written proof that the applicant is at least eighteen (18) years of age.

(e) The applicant's height, weight, color of eyes and hair and date and place of birth, unless applicant is a partnership or corporation, in which case this information shall be supplied for the person or persons authorized to execute the application. (3267-9/95)

(f) Two photographs of the applicant at least 2" X 2" taken within the last six (6) months.

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

(h) The business license history of the applicant and whether such applicant, in previous operations in this or any other City, state, or territory under license, has had such license or permit for a massage establishment or other similar type of business revoked or suspended, the reason therefor, and the business activity or occupation subsequent to such action of suspension or revocation.

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(i) All convictions, including ordinance violations, exclusive of traffic violations, stating the dates and places of any such conviction.

(j) If the applicant is: (2395-11/79, 3267-9/95)

(1) a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation or charter, together with the place and date of incorporation, and the names and addresses of each of its current officers and directors, and each stockholder holding more than five percent (5%) of the stock in the corporation. (2395-11/79, 3267-9/95)

(2) a partnership, the applicant shall set forth the name, residence address and dates of birth 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 or more of the partners is a corporation, the provisions of this subsection pertaining to corporations shall apply. (2395-11/79, 3267-9/95)

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 of an individual applicant under this chapter, but only one application fee shall be charged. (2395-11/79, 3267-9/95)

(k) The name and address of the owner and lessor of the real property upon which the business is to be conducted, and, if applicable, a copy of the lease or rental agreement. (2395-11/79, 3267-9/95)

(l) Proof of matriculation from a recognized school of massage, as defined herein. If the applicant is a corporation or partnership, then this proof must be supplied for a member of the corporation or partnership who will actively participate in the management of the establishment. (3267-9/95)

(m) Proof of passage of an independently prepared and administered national certification exam which has been recognized by objective standards to fairly evaluate professional levels of skill, safety and competence, as determined by a qualified massage association. (3267-9/95)

(n) Such other identification and information as the Police Department may require in order to discover the truth of the matters hereinbefore specified as required to be set forth in the application. (2395-11/79, 3267-9/95, 3467-6/00)

(o) The Chief of Police shall require the applicant to furnish fingerprints. (2395-11/79, 3267-9/95, 3467-6/00)

(p) Proof of actual malpractice insurance coverage or the ability to qualify for professional malpractice insurance. (3267-9/95, 3467-6/00)

5.24.050 Massage establishment--Applicant to appear. The applicant, if an individual, or designated responsible managing officer, if a partnership or corporation, shall personally appear at the Police Department of the City of Huntington Beach and produce proof that the application fee as set by resolution of the City Council has been paid and shall present the application containing the aforementioned and described information. (2395-11/79, 3267-9/95)

5.24.060 Massage establishment--Application--Investigation. Upon receipt of the completed application, the Chief of Police shall have sixty (60) days to investigate the application and the background of the applicant, including, but not limited to, any past criminal convictions as provided by the Justice Department or other legally authorized agency. Upon completion of the investigation, the Chief of Police shall grant the permit if he finds: (2395-11/79, 3267-9/95)

(a) The required fee has been paid.

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(b) The applicant conforms in all respects to the provisions of this chapter.

(c) The applicant has not knowingly made any false, misleading or fraudulent statements in the application. (2395-11/79, 3267-9/95)

(d) The applicant has fully cooperated in the investigation of his or her application.

(e) The applicant, if an individual, or any officers, directors, or shareholders of the corporation holding more than 5% of the stock, if the applicant is a corporation, or any of the partners, including limited partners, if the applicant is a partnership, has not been convicted in a court of competent jurisdiction of an offense involving conduct which requires registration under California Penal Code section 290, or of conduct violating Penal Code sections 266, 314, 315, 316, 318, 647(a), and 647(b), or convicted of an attempt to commit any of the abovementioned offenses or convicted in any state of any offense which if committed or attempted in this state, or conspiracy to commit any of the above offenses, would have been punishable as one or more of the abovementioned offenses, or any crime involving dishonesty, fraud, deceit, or moral turpitude. (2395-11/79, 3267-9/95)

(f) The massage establishment, as proposed by applicant, would comply with all applicable laws, including but not limited to zoning, fire and safety requirements and standards. (2395-11/79, 3267-9/95)

(g) The applicant is at least eighteen (18) years of age. (2395-11/79, 3267-9/95)

(h) The applicant has not engaged in conduct which would constitute grounds for suspension or revocation under this chapter. (2395-11/79, 3267-9/95)

(i) The applicant has shown proof of malpractice insurance and has complied with all other city ordinances pertaining to insurance coverage. (3267-9/95)

If relevant Department of Justice state summary criminal history information is not received within the sixty-day investigation period, the Chief of Police is authorized to issue a temporary permit. A final decision granting or denying a permit shall be made after receipt of such summary criminal history information. If the permit is granted, its effective date shall be the date of issuance of the temporary permit. If the permit is denied, the temporary permit shall expire upon notice of denial.

5.24.070 Massage establishment and massage technician--Permit--Refusal--Appeal. If the Chief of Police, following investigation of the applicant, finds that the applicant does not fulfill the requirements set forth in this chapter, he shall deny the application and notify the applicant by first-class mail of such denial. Any applicant who is denied a permit by the Chief of Police may appeal such denial to the City Administrator, pursuant to the provisions of this chapter. (2395-11/79, 2726-10/84, 3267-9/95)

5.24.090 Massage technician additional application and fee. In the event a massage technician currently licensed by the City of Huntington Beach seeks employment at a massage establishment other than the establishment indicated on the original application, an additional application and fee as set by resolution of the City Council must be submitted. (2395-11/79, 3267-9/95)

5.24.100 Massage technician permit--Application. Any person desiring to obtain a permit to act as a massage technician shall make application to the Chief of Police or his designated representative. Prior to submitting application, a nonrefundable fee as established by resolution of the City Council shall be paid to the City of Huntington Beach to defray, the cost of investigation and report required by this chapter. The City Clerk or the City Treasurer shall issue a receipt showing that such application fee has been paid. The receipt, or a copy thereof, shall be supplied to the Chief of Police at the time such application is submitted. (2395-11/79, 3267-9/95)

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An application for a permit does not authorize acting as a massage technician until a permit has been granted. (2395-11/79)

5.24.110 Massage technician application--Contents. In addition to all the information required by section 5.24.040 of this chapter, each application for massage technician permit shall contain the name, address and phone number at which the applicant will be employed or in the case of persons providing massage at various locations throughout the City, a permanent address other than a post office box, associated with the business, usually the location for which a City business license has been issued. (2395-11/79, 3267-9/95)

(a) Those individuals are companies providing massage at various locations throughout the City must possess a valid Massage Permit, and a Business License.
(b) Address of record on the Massage Permit and Business License must be the perminant address of permitted person(s), no post office boxes or private mailboxes will be accespted.
(c) No massage, for a fee, shall be done at the residence of the permitted massage technician or in any hotel or motel room in the City.
(d) This section includes all definitions of massage as indicated under 5.24.010(a), and includes Chair Massage Therapy.

The applicant must furnish a statement from a physician, licensed to practice in the state of California, that the applicant has been examined within the past thirty (30) days prior to submitting the application, and has been found free of any communicable disease. (2395-11/79, 2777-7/85, 3267-9/95)

5.24.125 Employed Massage Technicians Massage technicians who are employed by any licensed practitioner listed under Section 5.24.150 are not required to be permitted through the City of Huntington Beach. An employed massage technician must be working under the practitioner's license and the licensed practitioner must be present at least 50% of the time at the licensed establishment during the times the massage technician is employed and caring for patients. To qualify for this exemption, all massage technicians must be employed by a practitioner listed in Section 5.24.150 and their employment must be verified by an application, wage slips, W2 or W4 tax documents. An employed massage technician shall not receive monies paid per individual massage or tips. All documentation showing employment of massage technicians shall be kept by the practitioner for a period of not less than three years. This exemption does not apply to independent contractors.

5.24.130 Massage technician--Permit--Issuance. The Chief of Police shall have thirty (30) days to investigate the application and the background of the applicant. Upon completion of the investigation, the Chief of Police shall grant the permit if, the following requirements have been met: (2395-11/79, 3267-9/95)

(a) The applicant has successfully completed a minimum of 500 hours of instruction in massage or physical therapy at a recognized school of massage, or physical therapy prior to issuance of the permit. Applicant must produce a transcript evidencing such successful completion of training.

(b) The applicant has not had a massage establishment permit or massage technician's permit or other similar license or permit denied or revoked for cause by a licensing authority or by any city, county or state within three (3) years prior to the date of application. (2395-11/79, 3267-9/95)

(c) All applicants must have passed an independently prepared and administered national certification exam which has been recognized by objective standards to fairly evaluate professional levels of skill, safety and competence, as determined by a qualified massage association. (3267-9/95)

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(d) The applicant has not been convicted of any of the offenses listed in Section 5.24.060(e) within the last five (5) years. (3267-9/95, 3467-6/00)

If relevant Department of Justice state summary criminal history information has not been received within the thirty (30) day investigation period, the Chief of Police is authorized to issue a temporary permit. A final decision granting or denying a permit shall be made after receipt of such summary criminal history information. If the permit is granted, its effective date shall be the date of issuance of the temporary permit. If the permit is denied, the temporary permit shall expire upon notice of denial.

5.24.150 Exemptions. Exemptions do not apply to independent contractors of the listed exempted professionals. Each independent contractor must possess a valid massage technician permit. The provisions of this chapter shall not apply to the following classes of individuals or groups while engaged in performing the duties of their respective professions. (2395-11/79, 3267-9/95)

(a) Physicians, surgeons, chiropractors, osteopaths, acupuncturists, and physical therapists duly licensed to practice in the state of California. (3467-6/00)

(b) Hospitals, nursing homes, sanitariums, or other health care facilities duly licensed by the state of California, provided that at all times such physicians, surgeons, chiropractors, osteopaths and physical therapists are acting in adherence with the provisions of the state law which govern this field. (3467-6/00)

(c) Registered or licensed vocational nurses duly registered by the state of California.

(d) Barbershops and beauty parlors, barbers and beauticians but only when engaged in the practice for which they are licensed by the state of California i.e., massage above the neck and shoulders, hands and arms and below the knee.

(e) Accredited high schools and colleges, and coaches and trainers employed therein while acting within the scope of their employment.

(f) Trainers of any amateur, semi-professional or professional athlete or athletic team. (2395-11/79)

(g) No employed or independent contractor massage technician may administer massage or otherwise treat or care for patients other than patients of the practitioner and those patients must have been prescribed massage therapy by a practitioner listed in this section prior to the administration of the massage therapy.

(h) Physical Therapist students, and Massage Therapist students earning practical hours for school/education, and who are currently enrolled in a licensed program for Physical Therapy, through a recognized school/education center, can work, under the direct supervision of an exempted professional as defined in this section. Direct supervision means that an exempted professional, as defined in this section, must be present at all times when a student is performing their duties.

5.24.160 Massage establishment--Facilities. Every massage establishment shall maintain facilities meeting the following requirements:

(a) Sign - subject to applicable provisions of the City's codes, a recognizable and legible sign shall be posted at the main entrance identifying the business as a massage establishment.

(b) Lighting - minimum lighting shall be provided in accordance with the Electrical Code adopted by the City and, in addition, at least one artificial light of not less than forty (40) watts shall be provided in each room or enclosure where massage services are performed on

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patrons and shall be activated at all times while a patron is in such room or enclosure. (3267-9/95)

(c) Equipment - adequate equipment for disinfecting and sterilizing instruments used in performing the acts of massage shall be provided.

(d) Water - hot and cold running water shall be provided at all times.

(e) Linen storage - closed cabinets shall be provided and utilized for storage of clean linens, and approved receptacles shall be provided for the deposit of soiled linen. (2395-11/79, 3267-9/95)

(f) Separation of sexes - if male and female patrons are to be served simultaneously at the massage establishment, a separate massage room or rooms and separate dressing, bathing and toilet facilities shall be provided for male and female patrons. Each separate facility or room shall be clearly marked as such. (2395-11/79, 3267-9/95)

(g) Bathing, dressing, locker, toilet facilities - adequate bathing, dressing, locker, and toilet facilities shall be provided for patrons. 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, and a minimum of one toilet and one wash basin shall be provided for every massage establishment.

(h) Massage table pads - pads used on massage tables shall be covered in a professional manner with durable, washable plastic or other waterproof material acceptable to Orange County Health Department.

5.24.170 Massage establishment operation. Every massage establishment shall comply with the following operating requirements:

(a) (1) Each person employed or acting as a massage technician shall have a valid permit issued by the City of Huntington Beach. (2395-11/79, 3267-9/95, 3467-6/00)

(2) It is unlawful for the owner, operator, responsible managing employee, manager or permittee in charge of or in control of the establishment to employ or permit a person to act as a massage technician, as defined in this chapter, who does not possess a valid massage technician's permit. (3467-6/00)

(3) No business except those exempted under section 5.24.150 herein, may employ anyone to provide massage or allow anyone to provide massage, unless the massage provider possesses a valid permit under this Chapter. (3467-6/00)

(b) Bath and massage operations shall be carried on and the premises shall be open only between the hours of 7 a.m. and 9 p.m. A massage begun any time before 9 p.m. must nevertheless terminate at 9 p.m. No person, whether licensed under this Chapter or not, may provide massage in exchange for anything of value after 9:00 p.m. (2395-11/79, 3267-9/95, 3467-6/00)

(c) A list of services shall be posted in an open, public place on the premises, and shall be described in readily understood language. No owner, operator, responsible managing employee, manager, or permittee shall permit, and no massage technician shall offer to perform any services other than those posted.

(d) The owner/operator of a massage establishment shall display a massage establishment permit and the permit for each and every massage technician employed in the establishment in an open and conspicuous place on the premises, available for examination upon demand by any police officer of the City. (2395-11/79, 3267-9/95)

(e) Each massage technician shall wear a photo identification card prepared and issued by the City while administering a massage. The identification card shall be worn on outer clothing

with the photo side facing out. The massage technician shall not use any name other than specified on the photo identification card while on duty. (3267-9/95)

(f) Massage technicians and attendants shall be fully clothed at all times. Clothing shall be of a fully opaque, non-transparent material and provide the complete covering from mid-thigh to three (3) inches below the collar bone. (3267-9/95)

(g) Areas where massage is to be performed shall be separated by a non-lockable door. Said door shall not be equipped with a "peep hole" or any other device that allows anyone to see into or out of this room when the door is closed.

(h) Towels and linens shall not be used on more than one (1) patron unless they have first been laundered and disinfected. Disposable towels and coverings shall not be used on more than one (1) patron. (2395-11/79, 3267-9/95)

(i) Wet and dry heat rooms, steam or vapor rooms or cabinets, shower rooms and compartments, toilet rooms and pools shall be thoroughly cleaned and disinfected as needed, and at least once each day the premises are open, with a disinfectant approved by the Health Department. Bathtubs shall be thoroughly cleaned after each use. All walls, ceilings, floors, and other physical facilities for the establishment must be in good repair and maintained in a clean and sanitary condition. (2395-11/79, 3267-9/95)

(j) Instruments utilized in performing massage shall not be used on more than one (1) patron unless they have been sterilized using approved sterilizing methods. (2395-11/79, 3267-9/95)

(k) Where a covering is furnished by the massage establishment, it shall not be used by more than one (1) patron until it has first been laundered and disinfected. (2395-11/79, 3267-9/95)

(l) The owner or operator of the massage establishment shall keep a complete and current list of the names and residence addresses of all massage technicians and employees of the massage establishment and the name and residence addresses of the manager or managing employee purported to be principally in charge of the operation of the massage establishment. This roster shall be kept at the premises and be available for inspection by officials charged with enforcement of this chapter. (3267-9/95)

(m)Every massage establishment shall keep a written record of the date and hour of each treatment administered, the name and address of each patron, the name of the massage therapist administering treatment, and the type of treatment administered, to be recorded on a patron release form. Such written record shall be open to inspection by officials charged with the enforcement of this chapter. Such records shall be kept on the premises of the massage establishment for a period of two (2) years. (3267-9/95)

(n) The owner/operator of each massage establishment shall file with the City ~~Clerk~~, documents 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 in an amount set by resolution of the City Council for injury or death to one person arising out of the operation of any massage establishment and the administration of a massage, and shall be kept in full force and effect at all times by such owner or operator. Proof of such insurance shall be kept on the premises at all times. (3267-9/95)

(o) No part of the establishment shall be used for residential or sleeping purposes. No cooking or food preparation shall be allowed on the premises unless a full service kitchen is installed. Such a kitchen shall be for the sole use of employees, and shall be installed in an "employees only" area. The full service kitchen shall have a minimum of a sink with hot and cold running water, a refrigerator, a stove and sufficient cabinets to store cooking utensils. (3267-9/95)

(p) No person shall enter, be, or remain in any part of a massage establishment while in the possession of, consuming, or using any alcoholic beverage or drug except a prescription drug.

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The responsible owner, operator, managing employee, manager or permittee shall not permit any such person to enter or remain upon such premises. (2395-11/79, 3267-9/95)

(q) Every massage establishment shall be open at all times during hours during which massage is being provided for inspection by any officer of the City of Huntington Beach. (2395-11/79, 3267-9/95, 3467-6/00)

(r) All exterior doors shall remain unlocked from the inside during business hours. All doors leading to the business or leading to the customer areas are to remain unlocked during business hours. (2395-11/79, 3267-9/95)

(s) No massage establishment shall simultaneously operate as a school of massage, or share facilities with a school of massage. (2395-11/79, 2466-2/81, 3267-9/95)

5.24.190 Permit renewal. Permits for massage establishments and massage technicians shall be renewed on a year-to-year basis provided that the permittees continue to meet the requirements set out in this chapter. The renewal fee for massage establishments and massage technicians shall be set by resolution of the City Council. The application for permit renewal shall contain the same information as required under this chapter for the original application. (2395-11/79, 3267-9/95)

5.24.200 Permits nontransferable. 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 Chief of Police, 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 by operation of law, to any other person or persons. (2395-11/79, 3267-9/95)

5.24.210 Number of establishments limited. No more than ten (10) valid permits for massage establishments shall be authorized by the City Council to operate in the City of Huntington Beach. (2395-11/79)

5.24.220 Massage establishment--Change of location or name.

(a) No massage establishment shall move from the location specified on its permit until a change of location fee in the sum set by resolution of the City Council has been paid to the City of Huntington Beach, and approval has been obtained from the Chief of Police and the Department of Community Development. Such approval shall not be given unless all requirements and regulations, as contained in the City's codes, have been met. (2395-11/79, 3267-9/95)

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

(c) Any application for an extension or expansion of a building or other place of business where a massage establishment is located shall require inspection and shall comply with the provisions and regulations of this chapter and all other city ordinances including zoning ordinances. (2395-11/79, 3267-9/95)

5.24.225 Other business establishments providing massage. Those businesses that provide massage, as defined herein, to paying customers, said service representing less than fifty percent (50%) of the activity carried on at the business, must comply with Sections 5.24.160 (a)-(g), and (i), and 5.24.170(a), (b), (e), (f), (h), (i), (j) (k), (p), (q), (r) and (s) of this Chapter.

(a) No massage, as defined in this Chapter, shall be provided in a hotel or motel room or in a private residence or business not providing massage services without a permit issued pursuant to this Chapter.

(b) In a private residence or business not providing massage services, no massage may be provided between 7:00 p.m. and 8:00 a.m.

(c) In the case of a business which does not provide massage services:

1. No alcohol may be served any where on the premises where a massage is being performed;

2. Both patron and technician must be fully clothed;

3. No massage shall be performed behind closed doors.

5.24.230 Prohibited conduct.

(a) A massage technician shall not violate the provisions of sections 647(a) and (b) of the California Penal Code, or any other state law involving a crime of moral turpitude, and such practices shall not be allowed or permitted by the massage establishment permittee. (2395-11/79, 3267-9/95)

(b) A massage technician shall be fully clothed at all times and shall not expose their genitals, pubic area, buttocks, or in the case of female technicians, their breasts, and such practices shall not be allowed or permitted by the massage establishment permittee. (2395-11/79, 3267-9/95)

(c) A massage technician shall not massage a patron of one sex within the view of a patron of the opposite sex, and such practices shall not be allowed or permitted by the massage establishment permittee. (2395-11/79, 3267-9/95)

(d) A massage technician shall not give massages at any location other than on the premises of a massage establishment with a valid permit, or at business location establishment other than the one specified on the technician's permit(s). (2395-11/79, 3267-9/95, 3467-6/00)

(e) A massage technician shall not massage, fondle, or otherwise have intentional contact with the genitals or anus of any patron, or the breasts of a female patron, and such practices shall not be allowed or permitted by the massage establishment permittee. (2395-11/79, 3267-9/95)

(f) A massage technician shall not give a massage unless the breasts of female patrons are covered and the genitals of all patrons are covered, and such practices shall not be allowed or permitted by the massage establishment permittee. (2395-11/79, 3267-9/95)

Proof of knowledge of any violation of this section shall not be required to be shown where a massage establishment permit is suspended or revoked. (2395-11/79, 2726-10/84)

5.24.240 Violation--Penalty. Any person violating this chapter shall be guilty of a MISDEMEANOR, punishable by a fine of one-thousand dollars ($1,000) or by imprisonment in the county jail for a period not to exceed six (6) months, or by both such fine and imprisonment. (2395-11/79, 2726-10/84, 3173-10/92, 3267-9/95, 3467-6/00)

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5.24.250 Permit suspension and revocation. The Chief of Police, or his designee, may suspend or revoke a permit if a permittee has:

(a) Knowingly made any false, misleading, or fraudulent statements in the applications; or (2395-11/79, 3267-9/95)

(b) Violated any provision of this chapter or of any statute relating to his or her permitted activity; or (3467-6/00)

(c) Been convicted of a felony or misdemeanor involving moral turpitude or been convicted of a felony or misdemeanor while engaged in the practice of giving massage or the operation of a massage establishment. (2395-11/79, 3267-9/95)

The permittee shall be provided with written notice by first class mail, postage prepaid, of such suspension or revocation. The permittee may file an appeal with the City Clerk within fifteen (15) days of the date of mailing of the notice of denial, suspension or revocation. In the event an appeal is timely filed, the suspension or revocation shall not take effect until final decision has been rendered by the City Administrator, or his designee, unless permittee has requested a continuance, as provided elsewhere in this chapter. If no appeal is filed, the suspension or revocation shall become effective upon expiration of the period for filing appeals. (2395-11/79, 2726-10/84, 2777-7/85)

5.24.260 Appeal procedure.

(a) Any permittee whose permit has been revoked, suspended, or not renewed by the Chief of Police or any applicant whose request for a permit has been denied may contest the decision of the Chief of Police by filing a request for an Administrative Hearing. To obtain a hearing, a signed written request must be made indicating the grounds for contesting the decision.

(b) To be effective and complete, the request must be received by the City Attorney within 15 days of the date the written notice of decision was received. The notice will be deemed received if not returned within ten (10) days of mailing. All requests for a hearing shall be date stamped upon receipt. The City Attorney is authorized to designate an address to which such requests shall be mailed in satisfaction of this subsection. The City Attorney, or his/her designee, shall schedule a hearing to be held within fifteen (15) days after the filing of the notice of appeal. Notice of the date, time and place of the hearing shall be mailed, postage prepaid, at least ten (10) days prior thereto to the permittee at the address given in the notice of appeal, or if none is provided, to the address set forth in the permit application.

(c) The person requesting the Administrative Hearing may file a written declaration with the City Attorney before the hearing or personally attend the hearing on the date, time and place specified. A failure to file a written declaration before the hearing or personally attend the hearing, unless continued pursuant to this Chapter, will be considered a non-appearance. Non-appearance shall constitute an abandonment of the request, for the hearing. The failure to appear by the appellant shall be noted on the Notice of Decision by the Hearing Officer which will be mailed to the permittee by the City Attorney.

5.24.270 Appeal--Hearing. The following rules of evidence shall apply:

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

(b) Each party shall have the right to call and examine witnesses, to introduce exhibits, and to cross-examine opposing witnesses who have testified under direct examination. The hearing officer may call and examine any witness.

(c) Technical rules relating to evidence and witnesses shall not apply to hearings provided for herein. 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 which might make admission of such evidence improper over objection in civil actions. Hearsay testimony may be 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 that they now, or are hereafter permitted in civil actions; and irrelevant, collateral, undue, and repetitious testimony shall be excluded. (2395-11/79, 2726-10/84)

(d) The hearing shall be conducted by a Hearing Officer either: (i) on the date, time and place specified in the notice, or (ii) on the date designated on the original notice of decision by the Chief of Police.

(e) The City Attorney's Office or the City Attorney's designee shall ensure that the pertinent records are delivered to the Hearing Officer for the hearing. The City Attorney's Office, or the City Attorney's designee, shall also make available to the appellant before the hearing a copy of any additional reports that are provided to the Hearing Officer.

(f) Any reports prepared by the Police Department concerning the denial, suspension, or revocation of the permit that are provided to the Hearing Officer shall be accepted by the Hearing Officer as prima facie evidence of the reasons for such action on the permit and the facts stated in such documents.

(g) Neither the Police Officer who denied, revoked or suspended the permit nor any other representative of the City shall be required to attend the hearing, nor shall the Hearing Officer require that there be submitted any evidence, other than the reasons for denial stated in the documents presented to the Hearing Officer, that may exist among the public records of the City. However, any such appearance and/or submission may be made at the discretion of any City employee or agent.

(h) The Hearing Officer may continue a hearing if a request is made showing good cause by the appellant or a representative of the City. All continuance requests shall either: (i) be made in person at the hearing by the appellant or his or her representative if the appellant is physically unable to attend, or (ii) be made by a written request received by the City Attorney at least 24 hours before the hearing date. If the continuance is granted, a new hearing date shall be set within 45 days. If the continuance is denied, the hearing shall proceed then and there as scheduled, and if the appellant is not present the request(s) shall be deemed abandoned in accordance with the subsection below. The Hearing Officer's decision is final and he or she shall either personally give the Notice of Decision to the appellant or the representative if present at the end of the hearing or request that the notice be mailed by the City Attorney.

(i) The hearing shall be conducted informally and the legal rules of evidence need not be followed. The Hearing Officer does not have the authority to issue a subpoena.

(j) Abandonment of the request for hearing, constitutes a failure to exhaust administrative remedies.

5.24.275 Administrative Hearing Decision.

(a) After considering all the evidence and testimony submitted at the administrative hearing, the Hearing Officer shall issue a written decision to uphold or reverse the decision on the permit. The Hearing Officer has no discretion or authority to issue a permit. The decision will be made on a Notice of Decision form and will state the reasons and evidence considered for the decision. The decision of the Hearing Officer shall be made at the conclusion of the hearing and shall be final. The Notice of Decision for the Administrative Hearing shall be delivered to the appellant at the conclusion of the hearing.

(b) The Hearing Officer's continued employment, performance evaluation, compensation, and benefits shall not directly or indirectly be linked to the decision rendered.

5.24.285 Right to Judicial Review.

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(a) The appellant may seek judicial review of the Administrative Hearing decision by filing an appeal with the West Justice Center of the Superior Court within 20 calendar days after the appellant receives a copy of the Notice of Decision at the conclusion of the hearing. The appeal filed with the court must also contain a proof of service showing a copy of the appeal was served upon "City of Huntington Beach (Attention: City Attorney).

(b) The City Attorney shall forward to the Court within 15 days of its request, the pertinent documents for any case appealed to that court.

5.24.340 Unlawful operation declared nuisance. Any massage establishment operated, conducted or maintained contrary to the provisions of this chapter shall be and the same is hereby declared to be unlawful and a public nuisance. The City Attorney may, in addition to, or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings for abatement, removal or enjoinment thereof, in the manner provided by law. The City Attorney shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as shall abate or remove such massage establishment and restrain and enjoin any person from operating, conducting or maintaining a massage establishment contrary to the provisions of this chapter. (2395-11/79, 3267-9/95) 6/00

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