

**CITY OF DANA POINT
AGENDA REPORT**

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

DATE: NOVEMBER 20, 2006

TO: CITY MANAGER/CITY COUNCIL

FROM: KYLE BUTTERWICK, DIRECTOR OF COMMUNITY DEVELOPMENT

SUBJECT: INTRODUCTION OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, AMENDING CHAPTER 5.20 OF THE DANA POINT MUNICIPAL CODE ENTITLED "MESSAGE REGULATIONS"

RECOMMENDATION:

That the City Council introduce and hold first reading of an ordinance entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, AMENDING CHAPTER 5.20 OF THE DANA POINT MUNICIPAL CODE ENTITLED "MESSAGE REGULATIONS"

DISCUSSION:

In recent years, the City continues to be involved in the regular enforcement of illegal massage operations. The Sheriff's Department has reported a number of problems while processing massage applications, including forged diplomas and schools that issue documents without the applicant ever attending class.

In addition, some of these illegal operations have been the subject of criminal investigations for illegal activities such as prostitution, pimping and pandering. In the last two (2) years nearly twenty-five (25) individuals have been arrested for illegal conduct within a massage establishment. These arrests have lead to the prosecution of the convicted individuals as well as the revocation of their massage licenses. The purpose of the proposed Massage Ordinance amendment is to strengthen the minimum requirements to obtain a massage license and discourage illegitimate business operations in the City.

In May 2006, an ordinance amending the City's Municipal Code pertaining to the regulation of Massage Therapy was presented to the City Council. The proposed modifications to the ordinance recommended an increase in the amount of training from 500 hours to 1000 for new massage professionals as well as current massage professionals and that all new and current massage professionals be required to pass a

mandatory National Certification Exam (“NCE”) or a City Standardized Massage Test (“City Test”). Other modifications to the code were for the purpose of clarifying provisions in the Ordinance including the proper draping of the client, specific massage table specifications and to prohibit massage establishments from having habitable living areas. A more complete analysis of the City’s massage regulations appears in the attached staff report dated May 24, 2006 (Supporting Document B).

Council Members had a number of questions and concerns regarding the amended ordinance. Based on public input, a major concern was a potential hardship that the additional training hours and/or testing requirements could impose upon the existing licensed massage professionals. At the request of the City Council, several workshops were conducted that included the City Manager, Police Services, Code Enforcement and several “long term” massage professionals who are employed at the St Regis, the Ritz Carlton and Marriott's Laguna Cliffs Resort. It was the consensus of the group that currently licensed massage professionals operating in the City should be exempt from the proposed testing requirements. However, new applicants would be subject to the test. Furthermore, it was concluded that additional hours of training was unnecessary in lieu of the testing requirements for new applicants. Therefore, the proposed Ordinance does not change the 500 hour minimum training requirement.

Staff is proposing to amend Chapter 5.20 entitled “Massage Regulations” for the purpose of including new requirements as shown below:

- New applicants for a massage technician or practitioner license will be required to show proof of or a passing score on the National Certification Examination for Therapeutic Massage and Bodywork (“NCE”) or a local City Standardized Massage Practitioner Test (“City Test”) administered by a designated massage instructor certified by the Council for Private Post Secondary and Vocational Education pursuant to Education Code section 9431.1. This new requirement is aimed at eliminating those persons attempting to obtain licenses under false pretenses.
- The City Test will be administered by a massage instructor designated by the City, and the City Test will require the competency and ability of the applicant to engage in the practice of massage services, including, but not limited to, the applicant’s knowledge of anatomy, physiology, ethics, hygiene, and the practice and theory of massage. A score of seventy percent (70%) or better will be required to pass the test.
- The City Test will be given in the English language. In the event the applicant requires that the test be given in another language, the applicant shall pay up front any additional fees or costs associated with the City retaining a court-certified and Orange County Sheriff Department approved interpreter for the examination. Proof of valid court certification must be submitted prior to the administration of any such non-English language examination. All applicants will be responsible to pay all examination fees. If an applicant fails the City Test,

they will be required to wait a minimum of ten (10) business days prior to retaking the City Test.

- New applicants will still be required to show proof of a minimum of 500 hours of professional training.
- Require that all applicants for a Massage Establishment Permit provide the City a notarized lease or rental agreement signed by the property owner of record according to the County of Orange Assessor’s Roll to prevent the transfer of ownership from one business owner to another (i.e., Massage Establishment Permit holders) without the property owner’s consent.

FINANCIAL CONSIDERATIONS:

None. All processing and licensing fees will be paid by the applicant, including the cost for the Certification Examination.

NOTIFICATION:

All licensed owners of Massage Establishments have been notified of this meeting.

RECOMMENDATION:

By motion, approve the first reading and introduce the attached ordinance amending Chapter 5.20, “Massage Regulations.”

ACTION DOCUMENT:

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A. Chapter 5.20, entitled “Massage Regulations.”	4
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SUPPORTING DOCUMENT:

B. Staff Report Dated, May 24, 2006 (without attachments)	29
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ACTION DOCUMENT A**ORDINANCE NO. 06-_____**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT,
CALIFORNIA AMENDING CHAPTER 5.20 ~~ENTITLED "MESSAGE REGULATIONS"~~
OF THE DANA POINT
MUNICIPAL CODE ENTITLED "MESSAGE REGULATIONS."

WHEREAS, the City of Dana Point ("City") processes applications and issues licenses for Massage Establishments and Massage Technicians and Practitioners; and

WHEREAS, the City recognizes that the requirements of Chapter 5.20 are intended to protect the health, safety, and welfare of the residents and massage clients of the City; and

WHEREAS, the City is authorized by the Constitution of the State of California and Section 51031 of the California Government Code to place reasonable standards relative to the experience and skill of Massage Establishments, Massage Technicians and Massage Practitioners and ~~provides~~ provide safeguards for economic and injury; and

WHEREAS, there is a significant risk of injury to massage clients with improperly trained or educated Massage Technicians ~~and~~ and Massage Practitioners, and Massage Establishment Operators; and

WHEREAS, to provide public confidence in those who provide massage services within the City of Dana Point, the City desires to amend Section 5.20 of the Dana Point Municipal Code.

THE CITY COUNCIL OF THE CITY OF DANA POINT DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 5.20 entitled "Massage Regulations" of the Dana Point Municipal Code is hereby amended to read, in its entirety, as follows:

Chapter 5.20***MESSAGE REGULATIONS*****Sections:****[5.20.010 Definitions.](#)****[5.20.020 Massage Establishment License Required.](#)****[5.20.030 Massage Establishment License Application Fee.](#)****[5.20.040 Application for Massage Establishment License.](#)**

- [5.20.050 Approval or Denial of Massage Establishment License.](#)
- [5.20.060 Massage Establishment Facilities and Operations Requirements.](#)
- [5.20.070 Application to Existing Establishment. **\[Repealed.\]**](#)
- [5.20.080 Inspection by Officials.](#)
- [5.20.090 Issuance of Notice of Violation.](#)
- [5.20.100 Business Name.](#)
- [5.20.110 Business Location Change.](#)
- [5.20.120 Sale or Transfer of Massage Establishment Interest.](#)
- [5.20.130 Display of Permits and Licenses.](#)
- [5.20.140 Massage Technician Permit Required.](#)
- [5.20.150 Massage Technician Application Fee and Renewals.](#)
- [5.20.160 Application for Massage Technician Permit.](#)
- [5.20.170 Massage Practitioner Permit Required.](#)
- [5.20.180 Massage Practitioner Application Fee and Renewal.](#)
- [5.20.190 Application for Massage Practitioner Permit.](#)
- [5.20.195 Testing Requirements.](#)
- [5.20.200 Appeals.](#)
- [5.20.210 Exemptions.](#)
- [5.20.220 Massage Establishment in Athletic Club.](#)
- [5.20.230 Massage Establishment License Suspension or Revocation.](#)
- [5.20.240 Revocation or Suspension of Massage Technician or Practitioner Permit.](#)
- [5.20.250 Appeals.](#)
- [5.20.260 Reapplication After Denial.](#)
- [5.20.270 No Refund of Fee.](#)
- [5.20.280 Return of License or Permit.](#)

5.20.010 Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The organization or association requires that its members meet minimum educational requirements. The educational requirements must include at least

five hundred (500) classroom hours or its equivalent in anatomy, physiology, hygiene, sanitation, massage practice and ethics of massage practice.

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

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

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

5.20.020 Massage Establishment License Required.

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

5.20.030 Massage Establishment License Application Fee.

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

5.20.040 Application for Massage Establishment License.

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

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

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

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

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

(4) All criminal convictions or offenses described in Section 5.20.010(9); whether the applicant is required to register under the provisions of Section 290 of California Penal Code; whether the applicant, including a corporation or partnership, or a former employer of the applicant while or employed, or a building in which the applicant was so employed or a business conducted, was ever subjected to an abatement proceeding under Sections 11225 through 11235 of the California Penal Code or any similar provisions of law in a jurisdiction outside the State of California;

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

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

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

(8) If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the names and residence addresses of each of its officers, directors and each stockholder holding more than five ~~(5)~~-percent **(5%)** of the stock of the corporation, along with the amount of stock held. If the applicant is a partnership, the application shall set forth the name and residence addresses of each of the partners, including limited partners. If one (1) or more of the partners is a corporation, the provisions of this section pertaining to a corporate applicant shall apply;

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

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

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

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

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

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

(c) Notwithstanding the fact that an application filed hereunder may be a "public record" under Government Code Section 6250 et seq., certain portions of such application contain information vital to the effective administration and enforcement of the licensing and/or permit scheme established herein which is personal, private, confidential or the disclosure of which could expose the applicant to a risk of harm. Such information includes, but is not limited to, the applicant's residence address and telephone number, the applicant's date of birth and/or age, the applicant's driver's

license and/or Social Security number, and/or personal financial data. The City Council in adopting the application and licensing and/or permit system set forth herein has determined in accordance with Government Code Section 2255 that the public interest in disclosure of the information set forth above is outweighed by the public interest in achieving compliance with this Chapter by ensuring that the applicant's privacy, confidentiality or security interests are protected. The City Clerk shall cause to be obliterated from any copy of a completed license application made available to any member of the public, the information set forth above.

5.20.050 Approval or Denial of Massage Establishment License.

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

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

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

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

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

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

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

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

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

(c) In no event shall the decision to grant or deny the license be based on information authorized or required to be kept confidential pursuant to Welfare and Institutions Code Sections 600 to 900.

5.20.060 Massage Establishment Facilities and Operations Requirements.

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

(1) Massage establishments shall comply with all applicable Code requirements.

(2) A minimum of one (1) toilet and wash basin shall be provided in every inside the massage establishment.

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

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

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

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

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

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

(9) All walls, ceilings, floors, pools, showers, bathtubs, steam rooms and all other physical facilities including appliances and apparatuses of the establishment

must be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms, steam or vapor cabinets, shower compartments and toilet rooms shall be thoroughly cleaned and disinfected each day the business is in operation. Bathtubs shall be thoroughly cleaned and disinfected after each use.

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

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

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

(13) Each service offered, the price thereof and the minimum length of time such service shall be performed shall be posted in a conspicuous public location in each massage establishment. All letters and numbers shall be capitals not less than one (1) inch in height. No services shall be performed and no sums shall be charged for such services other than those posted. All arrangements for services to be performed shall be made in a room in the massage establishment which is not used for administration of massages, baths or health treatments, unless no other room exists in the establishment. No massage technician or practitioner shall, after the commencement of any service for any patron, advise, suggest or otherwise indicate to such patron that any additional service is available or ask or inquire of such patron whether such patron desires any additional service to be performed. No massage technician or practitioner shall perform any service for any patron which was not ordered by such patron prior to the commencement of performance of any service rendered.

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

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

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

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

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

(19) No employee of the massage establishment or any massage practitioner or technician shall expose any genitals, pubic regions, buttocks, anuses, or female breasts below a point immediately above the top of the areola to the view of a customer or patron of the massage establishment.

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

~~5.20.070 Application to Existing Establishment. [Repealed.]~~

~~Each owner or operator of a massage establishment legally doing business on the effective date of the Ordinance codified in this Chapter shall apply for a massage establishment license not later than sixty (60) days therefrom, and shall comply with all requirements which are prerequisites for issuance of a license before such a license will issue.~~

5.20.080 Inspection by Officials.

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

5.20.090 Issuance of Notice of Violation.

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

(1) Set forth the specific violation or violations found;

(2) Establish a specific and reasonable period of time for the correction of the violation or violations. If the City Manager determines that the violation or violations are minor in nature, the City Manager may issue a warning to the licensee or permittee that any further violation of this Chapter may result in the filing of a complaint for revocation or suspension of the license or permit; and

(3) State that failure to comply with any notice issued in accordance with the provisions of this Chapter may result in the City Manager filing a complaint for revocation or suspension of the license or permit.

5.20.100 Business Name.

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

5.20.110 Business Location Change.

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

5.20.120 Sale or Transfer of Massage Establishment Interest.

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

5.20.130 Display of Permits and Licenses.

The owner or operator of a massage establishment shall display the massage establishment license and the permit of each and every massage technician or practitioner employed in the establishment in an open and conspicuous place on the premises. Passport-size photographs of the licensee and permittee shall be affixed to the respective license and permits on display pursuant to this section.

5.20.140 Massage Technician Permit Required.

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

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

(1) The applicant made a material misstatement in the application for a license; or

(2) The applicant is a person who has engaged in disqualifying conduct; or

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

(4) The applicant has failed to meet the training requirements described in Section 5.20.160; or

(5) The applicant has failed to furnish an appropriate medical doctor's certificate as required by Section 5.20.160.

(6) The applicant has practiced massage or operated a massage establishment without a valid license in The City of Dana Point. If the license is denied for this violation, the applicant may reapply twelve (12) months after the date of the violation.

(c) In no event shall the decision to grant or deny the license be based on information authorized or required to be kept confidential pursuant to Welfare and Institutions Code Sections 600 to 900.

5.20.150 Massage Technician Application Fee and Renewals.

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

5.20.160 Application for Massage Technician Permit.

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

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

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

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

(3) The name and address of the recognized school of massage attended, the dates attended, and a copy of the diploma or certificate of graduation awarded the applicant showing the applicant has completed no fewer than five hundred (500) hours of instruction. All applicants may be required to furnish additional evidence of enrollment and attendance of the required class hours and are subject to an oral interview by the City Manager to establish the bona fide completion of educational requirements;

(4) Certificate from a medical doctor stating that the applicant has, within thirty (30) days immediately prior to the filing of the approved, been examined and found to be free from any contagious or communicable disease capable of being transmitted to the public or to fellow employees by the type of conduct and interaction with fellow employees and the public involved in the performance of the job of massage technician; and

(5) A statement in writing by the applicant made under penalty of perjury that the information furnished is true and correct, said statement being duly dated; **and**

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

(c) Notwithstanding the fact that an application filed hereunder may be a "public record" under Government Code Section 6250 et seq., certain portions of such application contain information vital to the effective administration and enforcement of the licensing and/or permit scheme established herein which is personal, private, confidential or the disclosure of which could expose the applicant to a risk of harm.

Such information includes, but is not limited to, the applicant's residence address and telephone number, the applicant's date of birth and/or age, the applicant's driver's license and/or Social Security number, and/or personal financial data. The City Council in adopting the application and licensing and/or permit system set forth herein has determined in accordance with Government Code Section 6255 that the public interest in disclosure of the information set forth above is outweighed by the public interest in achieving compliance with this Chapter by ensuring that the applicant's privacy, confidentiality or security interests are protected. The City Clerk shall cause to be obliterated from any copy of a completed license application made available to any member of the public, the information set forth above.

5.20.170 Massage Practitioner Permit Required.

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

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

(1) The applicant made a material misstatement in the application for a license; or

(2) The applicant is a person who has engaged in establishing conduct; or

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

(4) The applicant has failed to meet the training requirements described in Section 5.20.190; or

(5) The applicant has failed to furnish an appropriate medical doctor's certificate as required by Section ~~5.20.190.~~ **5.20.190; or**

(6) The applicant has practiced massage or operated a massage establishment without a valid license in ~~The~~**the** City of Dana Point. If the license is denied for this violation, the applicant may reapply twelve (12) months after the date of the violation.

(c) In no event shall the decision to grant or deny the license be based on information authorized or required to be kept confidential pursuant to Welfare and Institutions Code Sections 600 to 900.

5.20.180 Massage Practitioner Application Fee and Renewal.

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

5.20.190 Application for Massage Practitioner Permit.

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

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

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

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

(3) The applicant shall present to the City Manager proof of membership in good standing of a state or national organization devoted to the massage specialty and health enhancement approach ~~or~~ **and proof that applicant** has completed ~~any one (1)~~ of the following requirements:

(i) One thousand (~~1,000~~**1000**) hours of instruction in the massage specialty and health enhancement approach at a recognized school of massage with a state-approved curriculum and can submit a sworn affidavit of code of ethics to which they will adhere. This code can be from an association or comparable organization as approved by the City Attorney, ~~or~~ ;

(ii) ~~Five hundred (500) hours of such instruction as required under Subsection (b)(3)(i) of this Section, and, in addition)~~ **Of the one thousand (1000) hour requirement**, five hundred (500) hours **must be instruction in the form** of practical experience in the massage specialty and health enhancement

therapeutic approach in the form of paid employment as documented by Internal Revenue Service (IRS) tax returns or other affidavit and submission of a sworn affidavit of code of ethics as in Subsection (b)(3)(i) of this Section, or

~~(iii) Five hundred (500) hours of such instruction as required under Subsection (b)(3)(i) of this Section, and proof of~~ (b) Of the one thousand (1000) hour requirement, five hundred (500) hours additional instruction in any must be in the form of one of the following:

(A1) Continuing educational classes in the massage field and related classes offered by approved schools; ~~or~~

(B2) Classes and workshops as in Subsection (A1) of this Section approved for nursing CE credit; ~~or~~

(C3) Programs as in Subsection (A1) of this Section approved and certified by qualifying professional associations; ~~or~~

(D4) Adult education classes in massage and related topics offered through state-approved colleges and universities; ~~or~~

~~(iv) Has 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;~~

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

(4) Certificate from a medical doctor stating that the applicant has, within thirty (30) days immediately prior to the filing of the application, been examined and found to be free from any contagious or communicable disease capable of being transmitted to the public or to fellow employees by the type of conduct and interaction with fellow employees and the public involved in the performance of the job of massage practitioner; and

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

(c) Notwithstanding the fact that an application filed hereunder may be a "public record" under Government Code Section 6250 et seq., certain portions of such application contain information vital to the effective administration and enforcement of the licensing and/or permit scheme established herein which is personal, private, confidential or the disclosure of which could expose the applicant to a risk of harm. Such information includes, but is not limited to, the applicant's residence address and telephone number, the applicant's date of birth and/or age, the applicant's driver's license and/or Social Security number, and/or personal financial data. The City Council

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

5.20.195 Test Requirements.

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

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

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

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

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

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

5.20.200 Appeals.

All appeals from a denial of a massage establishment license or permit for massage technician or practitioner shall be made in accordance with the provisions of Section 5.20.250 of this Code.

5.20.210 Exemptions.

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

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

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

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

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

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

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

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

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

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

(5) The persons providing the massage services are not the primary sponsors of the event.

5.20.220 Massage Establishment in Athletic Club.

A massage establishment may be permitted in an athletic club or similar establishment provided such massage operations are clearly incidental to the operation of such bona fide athletic club and such athletic club has a valid permit approved by the County of Orange or City which identified the massage establishment. "Clearly Incidental" is defined as no more than fifteen ~~(15)~~ percent **(15%)** of the gross floor area or one thousand ~~(1,000)~~ **1000** square feet of the athletic club, whichever is greater. Any massage establishment duly authorized to operate under the provisions of this Section must comply with all the provisions of this Chapter.

5.20.230 Massage Establishment License Suspension or Revocation.

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

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

5.20.240 Revocation or Suspension of Massage Technician or Practitioner Permit.

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

(1) The permittee has violated any provision of this Chapter; or

(2) The permittee is a person who has engaged in disqualifying conduct;

or

(3) The permittee has continued to function as a massage technician or practitioner after the permit has been suspended; or

(4) The permittee has failed to comply with the requirements of either Section 5.20.160 or Section 5.20.190, whichever is applicable; or

(5) The permittee has made a material misstatement in the application for a permit; or

(6) A massage technician has performed out call massage therapy.

5.20.250 Appeals.

- (a) In the event the City Manager denies the issuance or renewal of a permit, revokes a permit, or imposes conditions which the applicant wishes to challenge, the applicant may appeal to the City Council by filing with the City Council a written notice of appeal within ten (10) days from the date of such denial, or from the date notice of such revocation is mailed to applicant, or from the date applicant is informed of such conditions.
- (b) If such an appeal is filed, the City Council shall at the next regularly scheduled City Council meeting held more than five (5) days after receipt of such notice of appeal, review the matter and shall determine whether the City Council or the Hearing Officer will hear the appeal.
- (c) Once a determination is made either the City Council or the Hearing Officer, as the case may be, shall set a date, not less than five (5) days, not more than twenty-one (21) days from the date such determination is made by the City Council for the hearing of the appeal. The hearing may be continued for good cause. The hearing shall be a de novo hearing on the action appealed from.
- (d) Upon the conclusion of such hearing the City Council or the Hearing Officer, as the case may be, may uphold such denial or revocation or the

imposition of conditions, or may order the issuance, or the renewal, or the reinstatement of such permit, or the imposition of such conditions.

- (e) If the hearing is conducted by the Hearing Officer, the Hearing Officer shall cause a transcript of the hearing to be taken and shall issue findings and determinations in writing within ten (10) days of the conclusion of the hearing. The written findings and determinations shall be delivered or mailed to the applicant and shall be effective within five (5) days following the date of mailing, unless such appeal is heard by the Hearing Officer and the denial, or revocation, or imposition of conditions is upheld, and within such five (5) day period the applicant files with the Hearing Officer and the City Clerk a demand for City Council review.
- (f) If such a demand for a review is filed, the City Council shall at the next regularly scheduled Council meeting held more than five (5) days after the filing of such demand review the transcript of the hearing proceedings, and, at the conclusion of such review may uphold such denial, or revocation, or imposition of conditions, or may order that the permit be issued, renewed, or reinstated, or that the conditions be modified or stricken. Such review shall be comprised of a review of the entire record, including the transcript of the hearing proceedings, and any oral or written arguments which may be offered to the City Council. No additional testimony shall be taken. The action of the City Council shall be final and conclusive, and there shall be no additional right of appeal.
- (g) In the event such denial, or revocation, or imposition of conditions is upheld by the City Council the denial, or revocation, or imposition of conditions shall be effective on the date of the action by the City Council, and that action shall be final and conclusive.

5.20.260 Reapplication After Denial.

An applicant for either a license or a permit under this Chapter whose application for such license or permit has been denied may not reapply for such license or permit for a period of one (1) year from the date such notice of denial may be deposited in the mail or received by the applicant, whichever occurs first. However a reapplication prior to the termination of one (1) year may be made if accompanied by evidence that the ground or grounds for denial of the application no longer exists.

5.20.270 No Refund of Fee.

The cost of a license or permit shall not be refunded if the licensee or permittee discontinues an activity for which a license or permit is required pursuant to this Chapter or if the license or permit is suspended or revoked.

5.20.280 Return of License or Permit.

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

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

SECTION 3. The City Clerk shall certify as to the adoption of this Ordinance and shall cause a summary thereof to be published within fifteen (15) days of the adoption and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this _____ day of _____, 2006.

LARA ANDERSON, MAYOR

ATTEST:

KATHY WARD, ACTING CITY CLERK

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

I, Kathy M. Ward, Acting City Clerk of the City of Dana Point, do hereby certify that the foregoing Ordinance No. 06-, introduced at a special meeting of the City Council held on the 20th day of November, 2006, and passed and adopted at a regular meeting held the ____ day of _____, 2006, by the following roll-call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

(SEAL)

KATHY M. WARD
ACTING CITY CLERK

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

AFFIDAVIT OF POSTING
AND PUBLISHING

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

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

That in compliance with State Laws of the State of California, ORDINANCE NO. 06-XX being:

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

was published in summary in the Dana Point News on the _____ day of _____, 2006, and the _____ day of _____, 2006, and, in further compliance with City Resolution No. 91-10-08-1, on the _____ day of _____, 2006, and the _____ day of _____, 2006, was caused to be posted in four (4) public places in the City of Dana Point, to wit:

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

KATHY M. WARD
ACTING CITY CLERK
Dana Point, California

SUPPORTING DOCUMENT B**CITY OF DANA POINT
AGENDA REPORT**

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

DATE: MAY 24, 2006

TO: CITY MANAGER/CITY COUNCIL

FROM: KYLE BUTTERWICK, DIRECTOR OF COMMUNITY DEVELOPMENT

SUBJECT: INTRODUCTION OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, AMENDING CHAPTER 5.20 OF THE DANA POINT MUNICIPAL CODE ENTITLED "MASSAGE REGULATIONS"

RECOMMENDATION:

That the City Council introduce and hold first reading of an ordinance entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, AMENDING CHAPTER 5.20 OF THE DANA POINT MUNICIPAL CODE ENTITLED "MASSAGE REGULATIONS"

DISCUSSION:

In 1996, the City Council added Chapter 5.20 to the City of Dana Point Municipal Code relating to regulation of massage services in the City. The new regulations replaced the County regulations previously in effect, and provided a comprehensive regulatory procedure for licensing of individuals wishing to provide massage services within the City. In 2001, the City amended Chapter 5.20 to increase the minimum number of training hours required to obtain a permit for massage services from two hundred (200) hours to five hundred (500) hours. The training hours must come from a recognized and accredited school of massage.

There are currently two licenses that can be issued for the practice of massage: (1) the massage technician license which requires a minimum of five hundred (500) hours of training, and (2) the massage practitioner license which requires a minimum of one-thousand (1000) hours of training from a recognized and accredited school of massage. As defined by the Code, the term "massage practitioner" means "a non-medical health care practitioner who uses a massage specialty and health enhancement approach in caring for clients" while the term "massage technician" means "any person who administers massages, baths or health treatments involving massages or baths as the

principal functions to another person for any consideration whatsoever.” The Orange County Sheriff’s Department assists the City with processing applications for both licensees by conducting criminal background checks and reviewing educational transcripts. Over the last few years, the Sheriff’s Department has reported a number of problems while processing massage applications, including forged diplomas and schools that issue documents without applicants ever having attended class.

Currently, the City does not require any testing of massage technicians or practitioners as a condition to securing either City license to practice. The cities of Lake Forest, Newport Beach, Costa Mesa, San Juan Capistrano, and Laguna Hills have amended their ordinances to include testing procedures. The number of training hours required by said cities range from a minimum of two hundred (200) hours to one thousand (1000) hours. Staff believes that due to Dana Point’s less stringent licensing requirements there has been an increase in the number of arrests within the City for illegal activity in connection with massage services. Improperly trained and/or educated masseuses pose a significant risk of injury to massage clients and also pose a risk to the health, safety, and welfare of the public.

Under the current City ordinance, there are certain exceptions to the permit requirements which allow physicians, surgeons, chiropractors, osteopaths, physical therapists, acupuncturists, and naturopathic doctors who are licensed by the State of California to perform activities allowed by such professional licenses. Nurses or physical therapists who are duly licensed by the State of California are also exempt from the permit requirements. However, persons who are unlicensed or who do not meet the requisite qualifications for a massage practitioner may not work “under the doctor’s license” to provide massage services or act as a massage practitioner. Likewise, a massage practitioner trainee or intern may not administer massages or health treatments to any member of the general public while on the premise of a licensed massage establishment. Also, barbers, cosmetologists, aestheticians, and manicurists who are duly licensed by the State of California are also exempt under the City’s regulations. The exemption for the professionals mentioned in the preceding sentence applies solely for the massaging of the neck, face, and/or scalp for an aesthetician, barber, or cosmetologist, and of the forearm, hands, calfs, and/or feet for the manicurist or aesthetician.

Currently, the Code also does not have a requirement that an applicant for a Massage Establishment Permit provide to the City a notarized lease or rental agreement signed by the property owner of record according to the County of Orange Assessor’s Roll. Staff believes that requiring a notarized agreement would prevent the transfer of ownership from one business owner to another without the property owner’s consent.

Staff is proposing to amend Chapter 5.20 to include new requirements as shown below:

- The current distinction between massage practitioners and massage technicians with respect to training hour requirements will be replaced by requiring both massage practitioners and massage technicians to provide proof of a minimum of

one thousand (1000) hours of training from a certified school required to obtain permits for to practice the respective services. All currently licensed practitioners and technicians in Dana Point will be required to obtain the required one thousand (1000) hours within twenty four (24) months.

- New and renewal applicants for a massage Practitioner license will be required to show proof of or a passing score on the National Certification Examination for Therapeutic Massage and Bodywork (“NCE”) or a City Standardized Massage Practitioner Test (“City Test”) administered by a designated massage instructor certified by the Council for Private Post Secondary and Vocational Education pursuant to Education Code section 9431.1. This new requirement is aimed at eliminating those persons attempting to obtain licenses under false pretenses. All currently licensed practitioners and technicians in Dana Point will be required to pass the NCE test or City Test prior to renewing their licenses within one year.
- The City Test will be administered by a massage instructor designated by the City, and the City Test will require the competency and ability of the applicant to engage in the practice of massage services, including, but not limited to, the applicant’s knowledge of anatomy, physiology, ethics, hygiene, and the practice and theory of massage. A score of seventy percent (70%) or better will be required to pass the test.
- The City Test will be given in the English language. In the event the applicant requires that the test be given in another language, the applicant shall pay up front any additional fees or costs associated with the City retaining a court-certified and Orange County Sheriff Department approved interpreter for the examination. Proof of valid court certification must be submitted prior to the administration of any such non-English language examination. All applicants will be responsible to pay all examination fees. If an applicant fails either the NCE test or the City test, they will be required to wait a minimum of sixty (60) days prior to retaking either exam.
- Require that all applicants for a Massage Establishment Permit provide the City a notarized lease or rental agreement signed by the property owner of record according to the County of Orange Assessor’s Roll to prevent the transfer of ownership from one business owner to another (i.e., Massage Establishment Permit holders) without the property owner’s consent.
- A provision is being added to Chapter 5.20 that will require that all clients of massage be properly draped with a clean, opaque sheet or towel covering specific anatomical areas.
- The new ordinance will require specific massage table specifications and prohibit beds, floor mattresses, and waterbeds on the premises. In addition, Massage Establishments shall not be used as a dwelling unit and shall not include habitable living areas.

Staff believes that the new regulations will not put any undue burden on legitimate massage practitioners and technicians, but will help to ensure that only properly trained individuals who are devoted to the healing benefits of massage will be licensed in the City.

COMMISSION/BOARD REVIEW AND RECOMMENDATIONS:

None.

FINANCIAL CONSIDERATIONS:

None. All processing and licensing fees will be paid by the applicant, including the cost for the Certification Examination.

NOTIFICATION:

All licensed owners of Massage Establishments have been notified of this meeting.

RECOMMENDATION:

By motion, approve the first reading and introduce the attached ordinance amending Chapter 5.20, "Massage Regulations."

ACTION DOCUMENT:

Page No.

C. Chapter 5.20, entitled "Massage Regulations" 5

SUPPORTING DOCUMENT

None.