

ORDINANCE NO. 2936

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WHITTIER, CALIFORNIA, REPEALING AND REPLACING CHAPTER 5.40 (MASSAGE PARLORS) OF TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) WITH CHAPTER 18.41 (MASSAGE ESTABLISHMENT) OF TITLE 18 (ZONING) OF THE WHITTIER MUNICIPAL CODE REGARDING MASSAGE OPERATORS, ESTABLISHMENTS, TECHNICIANS AND EMPLOYEES

WHEREAS, California Senate Bill 731 that was signed into law by Governor Schwarzenegger, and commencing on September 1, 2009 provides for the certification of massage practitioners and massage therapist by a newly created entity known as the Massage Therapy Organization ("MTO");

WHEREAS, SB 731 provided that the unofficial name of the organization that will be responsible for the issuance of certificates to massage therapists was the Massage Therapy Organization (MTO). This was only a placeholder in the text of the bill. As the MTO board has been selected, board members have decided to officially name the organization the California Massage Therapy Council (CAMTC);

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

WHEREAS, The City is authorized, by virtue of the Constitution of the State of California, and Section 51031 of the California Government Code, to regulate massage establishments by imposing reasonable standards relative to the skill and experience of massage operators and massage technicians and imposing reasonable conditions on the operation of the massage establishment;

WHEREAS, the permit requirements and restrictions imposed by this chapter are reasonably necessary to protect the health, safety and welfare of the citizens of the City and are designed to be consistent with the requirements of Business and Profession Code Chapter 10.5, Sections 4600-4620. This chapter provides the minimum qualifications and licensing requirements for persons engaged in the business and practice of massage therapy prior to September 1, 2009 and thereafter when Chapter 10.5 becomes operative;

WHEREAS, this Chapter requires that on or after the operative date that the CAMTC first commences the issuance of the CAMTC Certificates, all persons engaged in the practice of massage therapy within the City as defined by this Chapter shall either

obtain the CAMTC Certificate through the State pursuant to Business and Profession Code Chapter 10.5 or to obtain a City issued massage technician permit;

WHEREAS, this Chapter further requires that after September 1, 2009, all Massage Businesses or Establishments as defined herein that retains the services of a CAMTC Certificate holder either as an employee or a contractor shall cause the filing of copies with the City of such persons' CAMTC Certificate;

WHEREAS, the provisions of this Chapter establishes that CAMTC Certificate holders who are Operators of a Massage Business or Establishment as defined herein must also obtain an Operator's Permit as required herein and to cause the filing of copies with the City the Operator's CAMTC Certificate;

WHEREAS, Business and Profession Code Chapter 10.5 will only remain effective until January 1, 2016 unless it is extended by the California legislature prior to that date. Consequently, this Chapter also provides for the minimum licensing requirements that will be imposed upon all individuals engaged in the business and practice of massage therapy upon the expiration of the said Chapter;

WHEREAS, there is a significant risk of injury to massage clients by improperly trained and/or educated massage technicians and this chapter provides reasonable safeguards against injury and economic loss;

WHEREAS, the Courts have long recognized massage as a pervasively regulated activity. There is opportunity for acts of prostitution and other unlawful sexual activity to occur in massage establishments and the establishment of reasonable standards for issuance of permits and restrictions on operations would serve to reduce the risk of illegal activity;

WHEREAS, the restrictions and requirements contained in this chapter are intended to reduce the burden of massage establishment regulation on the Police Department;

WHEREAS, the regulations and restrictions contained in this chapter are intended to discourage massage establishments from degenerating into houses of prostitution and the means utilized in this chapter bear a reasonable and rational relationship to the goals sought to be achieved;

WHEREAS, the current Whittier Municipal Code was enacted prior to the passage of SB 731, therefore, it has some inconsistencies with Business and Profession Code Chapter 10.5 that are addressed by this replacement ordinance;

WHEREAS, the Whittier Planning Commission recommended approval of the draft ordinance to the City Council on July 20, 2009 by a vote of 5-0;

WHEREAS, the City Council conducted a duly noticed public hearing and considered the staff analysis, public testimony and all information presented to the Council concerning Zoning Code Amendment 08-006;

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

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

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

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WHITTIER, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. That Chapter 5.40 (Massage Parlors) of Title 5 (Business Taxes, Licenses and Regulations) of the Whittier Municipal Code is hereby repealed and replaced with Chapter 18.41 (Massage Establishments) of Title 18 (Zoning) of the Whittier Zoning Code is hereby added as follows:

Chapter 18.41

MESSAGE ESTABLISHMENTS

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 - 18.41.240 Permit Term and Renewal.**
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 - 18.41.300 New Application after Denial or Revocation of Permit.**
 - 18.41.310 Surrender of Permit.**
 - 18.41.320 Permissible Locations.**
 - 18.41.330 Fees.**
 - 18.41.340 Violation and Penalty.**
- 18.41.010 Deadline for Compliance.**

Unless there is specific exemption found in this Chapter, it is a violation for:

- A. Any person to engage in the practice of massage therapy for compensation as defined by this chapter prior to the operative date that the California Massage Therapy Council ("CAMTC") first commences the issuance of CAMTC Certificates, and any Massage Establishment to employ or retain such a person unless such person is a holder of a current and valid City issued permit to operate as a massage technician pursuant to the terms of this Chapter.
- B. Any person to engage in the practice of massage therapy as defined by this Chapter on or after the operative date that the CAMTC first commences the issuance of the CAMTC Certificates, and any Massage Establishment to employ or retain such a person, unless such person first obtains and continues to maintain in full force and effect a valid CAMTC certificate.
- C. Any person who holds a current CAMTC Certificate to engage in the practice of massage therapy for compensation as defined by this chapter 12 months after the expiration of Chapter 10.5 of Division 2 of the California Business and Professions Code, and for any Massage Establishment to employ or retain such a person unless such person is a holder of a current and valid City issued permit to operate as a massage technician pursuant to the terms of this Chapter.
- D. Any person, other than an employee of a permitted Massage Establishment, to engage in the practice of massage therapy for compensation as defined by this chapter unless they comply with the terms of this Chapter as well as the business licensing

requirements as set forth by Title 5 of the City's Municipal Code. This shall include all independent contractors.

E. Notwithstanding Paragraph B of this section, any person who holds a current and valid City issued massage technician permit as of the operative date that the CAMTC first commences the issuance of the CAMTC certificates, shall not be required to obtain a CAMTC certificate for so long as that person continues to maintain such permit in full force and effect pursuant to the terms of this Chapter.

18.41.020 Findings and Purpose.

The City Council finds and declares as follows:

A. The permit requirements and restrictions imposed by this chapter are reasonably necessary to protect the health, safety and welfare of the citizens of the City and are consistent with all applicable laws of the State of California.

B. The City is authorized, by virtue of the Constitution of the State of California, and Section 51031 of the California Government Code, to regulate massage establishments by imposing reasonable standards relative to the skill and experience of massage operators and massage technicians and imposing reasonable conditions on the operation of the massage establishment.

C. There is a significant risk of injury to massage clients by improperly trained and/or educated massage technicians and this chapter provides reasonable safeguards against injury and economic loss.

D. the Courts have long recognized massage as a pervasively regulated activity. There is opportunity for acts of prostitution and other unlawful sexual activity to occur in massage establishments and the establishment of reasonable standards for issuance of permits and restrictions on operations would serve to reduce the risk of illegal activity.

E. The restrictions and requirements contained in this chapter are intended to reduce the burden of massage establishment regulation on the Police Department.

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

18.41.030 Definitions.

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

- A. "Applicant" means any person who is required to file an application for a Massage Therapy License.
- B. "Adult oriented merchandise" means sexually oriented implements or paraphernalia, such as, but not limited to: dildos, auto sucks, sexually-oriented vibrators, Ben Wa balls, inflatable orifices, anatomical balloons with orifices, simulated and battery operated vaginas, and similar sexually-oriented devices which are designed or marketed primarily for the stimulation of human genital organs or sado-masochistic activity.
- C. "Chief of Police" means the Chief of Police of the City of Whittier, or his designee.
- D. "Child day care facility" means a facility which provides nonmedical care to children under eighteen years of age in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a twenty-four hour basis. Child day care facility includes day care centers and family day care homes.
- E. "City" means the City of Whittier.
- F. "City Council" means the City Council of the City of Whittier.
- G. "City Manager" means the City Manager of the City of Whittier, or his designee.
- H. "Compensation" means the payment, loan, advance, donation, contribution, deposit, exchange, or gift of money or anything of value.
- I. "Conviction," or "convicted" means a guilty plea, guilty verdict or a conviction following a plea of nolo contendere.
- J. "Customer area" means areas open to customers of the establishment or the general public.
- K. "Director" means the director of community development for the city.
- L. "Employee" means any and all persons, other than a massage therapist, massage practitioner, operator or manager, who renders any service, with or without compensation, for the owner, operator, manager or agent of either an owner, operator or manager of a massage establishment and who has no physical contact with customers or clients. For purposes of this chapter the term "employee" shall include independent contractors.

- M. "Health Department" means the Health Care Agency of the County of Los Angeles.
- N. "Lobby" means one room or designed area, adjacent to the public entry, which is used for an entry and/or waiting room for customers or other persons authorized to enter the premises.
- O. "Manager" means the person(s) designated by the operator of the massage establishment to act as the representative and agent of the operator in managing day-to-day operations with corresponding liabilities and responsibilities. Evidence of management includes, but is not limited to, evidence that the individual has the power to direct or hire and dismiss employees, control hours of operation, create policy or rules or purchase supplies. A manager may also be an owner. A manager must meet the standards and qualifications set forth hereinbelow to qualify as a manager.
- P. "Massage, Massage therapy, Bodywork" means any method of treating the external parts of the human body for remedial, health, hygienic, relaxation or any other reason or purpose, whether by means of pressure on, friction against or stroking, kneading, tapping, pounding, vibrating, rubbing or any other manner of touching external parts of the human body with the hands, or with the aid of any mechanical or electrical apparatus or appliance, with or without supplementary aids such as rubbing alcohol, liniment, antiseptic, oil, powder, cream, ointment or other similar preparations commonly used in this type of business or trade. The terms Massage, Massage therapy, and Bodywork shall be used interchangeably throughout this Chapter.
- Q. "Massage establishment" means any enterprise or establishment having a fixed place of business conducted within the City of Whittier, where any person, firm, association, partnership, corporation, or combination of individuals, engages in, conducts, carries on or permits to be conducted or carried on, for money or any other consideration, the administration to another person of a massage, bath or health treatment involving massages or baths including but not limited to fomentation, electric or magnetic treatments, alcohol rubs, or any other type of system for treatment or manipulation of the human body with or without any character of bath, such as Turkish, Russian, Swedish, Japanese, vapor, shower, electric tub, sponge, mineral, fomentation, or any other type of bath.
- R. "Massage practitioner" means any person who legally possesses a current and valid CAMTC Certificate pursuant to subdivision (b) of Section 4601 of the California Business and Profession Code, or subdivision (a) or (c) of Section 4604 of the California Business and Profession Code, and who is engaged in the practice of Massage Therapy for compensation.

- S. "Massage room" means a cubicle, booth, room or enclosed or semi-enclosed area within a massage establishment where massage services are performed on patrons.
- T. "Massage technician" means any person who holds a current and valid City issued permit that allows the person to administer to another person a massage as defined herein, within a massage establishment for any form of consideration or in exchange for anything of value whatsoever. The terms "massage trainee," "masseur" or "masseuse" are included within this definition for purposes of this chapter.
- U. "Massage therapist" means any person who legally possesses a current and valid CAMTC Certificate pursuant to subdivision (c) of Section 4601 of the California Business and Profession Code and who is engaged in the practice of Massage Therapy for compensation.
- V. "CAMTC certificate, Massage certificate" means the certificate issued by the CAMTC to Massage Therapists pursuant to subdivision (c) of Section 4601 of the California Business and Profession Code, and to Massage Practitioners pursuant to subdivision (b) of Section 4601 of the California Business and Profession Code, or subdivision (a) or (c) of Section 4604 of the California Business and Profession Code. The terms CAMTC certificate and Massage certificate are used interchangeably in this Chapter.
- W. "Operator" means all persons who supervises, manages, directs, organizes, controls or have an ownership interest in the massage establishment. An operator may also be a manager or an owner.
- X. "Operator's permit" means the permit issued pursuant to the provisions of this chapter required to operate and/or manage a massage establishment.
- Y. "Out Call Massage" means a massage performed or administered for money or other consideration by a licensed massage technician at a location other than a licensed massage establishment.
- Z. "Owner" means the individual(s) whose name appears on the City business license and includes any and all persons who have any ownership interest in a massage establishment. An owner may also be an operator or manager.
- AA. "Person" means any natural person, individual, or corporation, partnership, association or other group or combination of individuals acting as an entity.
- BB. "Police Department" means the Police Department of the City of Whittier.

CC. "Recognized school of massage" means a facility that meets minimum standards for training and curriculum in massage and related subjects and that is approved by any of the following:

- a. The Bureau for Private Postsecondary and Vocational Education pursuant to former Section 94739 of the Education Code prior to July 1, 2007, and as of the date on which an applicant met the requirements of paragraph (2) of subdivision (b) or subparagraph (A) of paragraph (2) of subdivision (c) of Section 4601.
- b. The Department of Consumer Affairs.
- c. An institution accredited by the Accrediting Commission for Senior Colleges and Universities or the Accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges and that is one of the following:
 - i. A public institution.
 - ii. An institution incorporated and lawfully operating as a nonprofit public benefit corporation pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code, and that is not managed by any entity for profit.
 - iii. A for-profit institution.
 - iv. An institution that does not meet all of the criteria in subparagraph (B) that is incorporated and lawfully operating as a nonprofit public benefit corporation pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code, that has been in continuous operation since April 15, 1997, and that is not managed by any entity for profit.
- d. A college or university of the state higher education system, as defined in Section 100850 of the Education Code.
- e. A school of equal or greater training that is approved by the corresponding agency in another state or accredited by an agency recognized by the United States Department of Education.

Recognized school of massage shall not include schools offering a correspondence course not requiring personal attendance.

18.41.040 Operator's Permit Required.

A. Except as otherwise provided, it shall be unlawful for any person to engage in, conduct or carry on, or to permit the engagement in, conduct of or carrying on the business or operation of a massage establishment within the City without first obtaining an operator's permit pursuant to the provisions of this chapter, and complying with all other applicable provisions of this Code, including but not limited to securing the necessary business licenses as required by Title 5 of this Code.

B. Massage establishments that utilize or employ only massage therapists and/or massage practitioners in good standing with the CAMTC, irrespective of the employee or independent contractor status of the massage therapist and massage practitioner, shall not be required to obtain a massage establishment operator's permit.

18.41.050 Exceptions

The requirements of this chapter shall not apply to the following individuals while engaged in performing the duties of their respective professions:

A. Physicians, surgeons, chiropractors, physical therapists or osteopaths duly licensed to practice their respective professions in the State of California. The herein exemption only applies if the massage is performed by the aforementioned licensed professionals and/or by a staff member of said licensed professionals in the course of treatment prescribed by said professional and only when said professional is present on the premises.

B. Acupuncturists who are duly licensed to practice their respective profession in the State of California. The exemption herein only applies if the massage therapy is performed by the aforementioned licensed professional to the treated area. If a duly licensed Acupuncturist wished to provide massage therapy by another individual/s said individual/s must obtain and possess a valid Massage Technician Permit or a Massage Certificate and the office (Acupuncturist / Owner) must obtain a Massage Establishment Permit from the city of Whittier in compliance all codes and the California Acupuncture Board.

C. A registered or licensed vocational nurse working on the premises of, and under the direct supervision of, a State licensed physician, surgeon, chiropractor or osteopath. Practical nurses or other persons that do not meet the requisite qualifications for a massage technician, or any other person not otherwise licensed by the State of California or the Massage Therapy Organization (California Business and Professions Code §§ 4600 et. seq.), whether or not employed by physicians, surgeons, chiropractors, osteopaths, acupuncturists, or physical therapists, may not provide massage services or act as a massage technician.

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

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

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

G. Trainers of amateur, semi-professional or professional athletes or athletic teams.

18.41.060 Operator's Permit - Application.

A. Any person desiring to obtain a permit to operate a massage establishment shall submit a written application under penalty of perjury on the required form to the Chief of Police and the Community Development Department. The application shall be accompanied by a non-refundable filing fee established by separate resolution of the City Council to help defray the cost of the investigation required by this chapter.

B. The application shall be completed and signed by the owner of the proposed massage establishment, if a sole proprietorship, or, if the applicant is a corporation or partnership, it shall designate one of its officers or general partners as its authorized representative. The authorized representative shall complete and sign all application forms required for an individual applicant under this chapter.

C. The application and fee required pursuant to this section shall be in addition to any other license, permit or fee required by any other chapter of this Code or ordinance hereafter adopted. Only one application fee shall be charged regardless of the number of owners or operators designated in the application.

D. The application for a permit does not authorize the operation of a massage establishment unless and until such permit has been properly granted, nor does the possession of a valid massage establishment permit authorize the possessor to perform work for which a massage technician permit or a Massage Certificate is required.

E. The application for a massage establishment permit shall contain or be accompanied by the following information:

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

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

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

c. If the applicant is a limited partnership, it shall furnish a copy of its certificate of limited partnership filed with the Secretary of State. If one or more of the partners is a corporation, the provisions of this subsection pertaining to corporations shall apply.

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

3. The present or proposed address where the massage establishment is to be conducted and all telephone numbers for the massage establishment.

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

5. The name and residence addresses of the proposed operator or manager who will be principally in charge of the operation of the massage establishment.

6. A description of any other business operated on the same premises as the proposed massage establishment, or within the City or the State, which is owned or operated by the owner or operator.

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

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

9. The complete massage permit history; whether such person has ever had any similar type of permit or license issued by any Agency, Board, City, County, Territory or State; the date of issuance of such a permit or license, whether the permit or license has been or was ever denied, revoked or suspended; if a vocational or professional license or permit has been or was ever denied, revoked or suspended; if the applicant has ever been required to surrender a permit or license as a result of pending criminal charges or in lieu of said permit or license being suspended or revoked and the reason therefore;

10. All criminal convictions, including pleas of nolo contendere, within the last ten years including those convictions dismissed or expunged pursuant to Penal Code Section 1203.4, but excluding minor traffic violations, and the date and place of each such conviction and reason therefore;

11. A complete set of fingerprints taken by the Police Department. The applicant shall be responsible for payment of any fingerprinting fee.

12. Two (2) portrait photographs at least two (2) inches by two (2) inches in size taken within the last month.

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

14. Such other identification and information as the Chief of Police may reasonably require in order to discover the truth of the matters herein specified and as required to be set forth in the application.

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

16. A certificate of compliance from any affected Department or Agency, including but not limited to, the City's Community Development Department, Building and Safety Division and the Los Angeles County Health Department must be submitted prior to the application's final approval. Any required inspection fees shall be the sole responsibility of the applicant. If the certificates of compliance are not received by the Chief of Police or his/her designee, within ninety (90) calendar days of the date of filing of the application, said application shall be deemed void. If any land use permit or other entitlement for the use of the property as a massage establishment is required, such permit or use entitlement shall be obtained by the applicant prior to the massage establishment permit becoming effective.

F. Every owner and operator shall also provide the following personal information:

1. The full, true name and all aliases used;
2. Date and place of birth, California driver's license, California identification card, Social Security card and resident alien card, if applicable.
3. The current residence address and residence telephone number and all previous residential addresses for a minimum of eight years immediately preceding the present address of the applicant and the dates of residence for each address;

4. Acceptable written proof that the owner and/or operator is at least eighteen (18) years of age;

5. Height, weight, gender and color of hair and eyes;

G. If, during the term of a permit, the permittee has any change in information submitted on the original or renewal application, the permittee shall notify the Police Department in writing of any such change within ten business days thereafter.

H. If an owner or operator also desires to act as a massage technician, he or she shall also satisfy the requirements for the respective permit set forth in this chapter.

18.41.070 Operator's Permit - Issuance or Denial.

A. Upon receipt of a complete written application for a permit, the Chief of Police or his designee shall conduct an investigation to ascertain whether a permit should be issued as requested. The Chief of Police or his designee, shall, within ninety (90) calendar days of receipt of an application, approve, conditionally approve or deny the application. The ninety (90) day period may be extended for up to thirty (30) additional calendar days, if necessary, to complete the investigation. The Chief of Police at that time may issue such permit as requested, unless he/she makes any of the following findings:

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

a. Been convicted of a violation of any provision of law pursuant to which a person is required to register under the provisions of Penal Code Section 290, or conduct in violation of California Penal Code Sections 266h, 266i, 314, 315, 316, 318, subsections (a), (b) or (d) of Penal Code Section 647, or convicted of an attempt to commit or conspiracy to commit any of the above mentioned offenses, or any other crime involving dishonesty, fraud, deceit, or moral turpitude or when the prosecution accepted a plea of guilty or nolo contendere to a charge of a violation of California Penal Code Sections 415, 602 or any lesser included or related offense, in satisfaction of, or as a substitute for, any of the previously listed crimes, or any crime committed while engaged in the ownership of a massage establishment or the practice of massage.

b. Been convicted of a violation of Health and Safety Code Section 11550 or any offense involving the illegal sale, distribution or possession of a controlled substance specified in Health and Safety Code Section 11054, 11055, 11056, 11057 or 11058.

c. Been convicted of any offense in any other State or U.S. territory, which is the equivalent of any of the abovementioned offenses.

d. Been subjected to a permanent injunction against the conducting or maintaining of a nuisance pursuant to Sections 11225 through 11235 of the California Penal Code, or any similar provisions of law in a jurisdiction outside the State of California.

e. Committed an act in another jurisdiction which, if committed in this State, would have been a violation of law and, which, if done by a permittee under this chapter, would be grounds for denial, suspension or revocation of the permit.

f. Has had a massage operator or massage technician permit or other similar license or permit denied, suspended or revoked for cause by the City, any state, local agency or other licensing authority, or has had to surrender a permit or license as a result of pending criminal charges or in lieu of said permit or license being suspended or revoked.

3. The owner and/or operator has made a false, misleading or fraudulent statement or omission of fact to the City in the permit application process.

4. The application does not contain all of the information required by Section 18.43.060.

5. The owner and/or operator is not at least eighteen (18) years of age.

6. The massage establishment, as proposed, does not comply with all applicable laws, including, but not limited to, health, zoning, fire, building and safety requirements and standards.

7. The applicant failed to obtain a Certificate of Compliance from the affected Department or Agency, including but not limited to, the City's Community Development Department.

8. The required fee(s) has not been paid and/or all other requirements of this chapter have not been satisfied in the time specified if applicable.

B. If the application is denied for failure to comply with subsection (A)(2) or (3) of this section, the applicant may not reapply for a period of six (6) months from the date the application was denied.

C. If the Chief of Police, upon completion of the investigation, determines that the applicant does not fulfill the requirements as set forth in this chapter, the Chief of Police

shall deny said application by dated written notice to the applicant. The applicant shall have the right of appeal as set forth in Section 18.43.280.

18.41.080 Operating Requirements - General Conditions

All owners and operators shall comply with the following general conditions and any other conditions specified by the Chief of Police.

A. Except to the extent required, in writing, by a State-licensed medical practitioner, no massage technician, employee or contractor shall massage the genitals, gluteal fold, or anal area of any patron or the breasts of any female patron, nor shall any operator or manager of a massage establishment allow or permit such a massage to the above specified areas. A massage shall not be given and no patron shall be in the presence of a massage technician, contractor, operator, manager or other employee of a massage establishment unless the patron's genitals, gluteal fold, anus, and, if a female patron, the female patron's breasts, are fully covered by a non-transparent covering.

B. No person granted a permit pursuant to this chapter shall use any name or conduct business under any designation not specified in his or her permit.

C. All massage establishments required to be licensed under this chapter shall have a manager on the premises at all times the massage establishment is open. The operator of each massage establishment shall file a statement with the Chief of Police or his designee, designating the person or persons with power to act as a manager. The operator and/or on duty manager shall post, on a daily basis, the name and photograph (a minimum size of 4" x 6") of each on-duty manager and each on-duty technician in a conspicuous public place in the lobby of the massage establishment. The operator, or the manager in the operator's absence, shall be responsible for ensuring compliance with this chapter.

D. The operator's permit shall be displayed in a conspicuous public place in the lobby of the massage establishment.

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

F. No massage establishment required to be licensed under this chapter shall open for business without having at least one massage technician who holds a current valid massage technician's permit for that specific massage establishment or a Massage Certificate. There shall be at least one massage technician who holds a current valid massage technician's permit or a Massage Certificate on the premises, and on duty, at all times when the establishment is open.

G. The operator and/or manager shall ensure that the massage technician permit and/or Massage Certificate for each on-duty massage technician is conspicuously displayed in a public place in the lobby and that each massage technician is wearing the identification required by Section 18.43.200(B) at all times when working in the massage establishment. Such identification shall be provided to a city official upon demand.

H. An operator and/or manager shall be responsible for the conduct of all employees and contractors while they are on the massage establishment premises. Any act or omission of any employee or independent contractor constituting a violation of the provisions of this chapter shall be deemed the act or omission of the operator or manager for purposes of determining whether the operator's license shall be revoked, suspended, denied or renewed.

I. No operator and/or manager shall employ any person as a massage technician who does not have a valid massage technician permit issued pursuant to this chapter or a Massage Certificate in good standing. Every operator or manager shall report to the Chief of Police or his designee, any change of employees, whether by new or renewed employment, discharge or termination, on the form and in the manner required by the Chief of Police. The report shall contain the name of the employee and the date of hire or termination. The report shall be made within five (5) calendar days of the date of hire or termination. The operator or manager shall deliver notice of the termination of any massage technician no longer employed by the operator or manager to the Chief of Police or his designee, within five (5) calendar days of termination.

J. All employees, including massage technicians, shall, at all times while on the business premises, wear clean, nontransparent outer garments solidly covering the shoulders to four inches (4") or less above the knees. Under no circumstances shall these garments permit the genitals, pubic area, abdomen, back, buttocks, breasts or chest to be exposed. Massage technicians shall maintain the massage technician permit badge or the Massage Certificate badge visibly on their person affixed to the right front of their required smock at all times during business hours.

K. The operator and/or manager shall maintain a register of all employees and contractors including any employees and contractors who is holding a current CAMTC Certificate. The employee and contractor register shall be maintained on the premises for a minimum period of two years following an employee's termination. The operator and/or manager shall make the employee and contractor register immediately available for inspection upon demand of a representative of the Police Department at all reasonable times. The employee and contractor register shall include, but not be limited to the following information:

1. The name, nicknames and/or aliases used by an employee.

2. The employee or contractor's home address and relevant phone numbers (including but not limited to home, cellular and pager numbers).

3. The employee or contractor's age, date of birth, gender, height, weight, color of hair and eyes.

4. The employee or contractor's social security number.

5. The date of employment and termination, if any.

6. The duties of each employee and contractor.

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

M. At all times, the operator, manager and employees shall comply with all provisions of this chapter and any applicable provisions of this Code.

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

O. Workers' Compensation Insurance. No person shall engage in, conduct or carry on the business of a massage establishment unless there is on file with the City's Business License Department, in full force and effect at all times, an insurance certificate, or some other sufficient evidence of compliance, demonstrating that the permittee is in compliance with the Workers' Compensation insurance coverage requirements of the State of California.

18.41.090 Operating Requirements - Facilities

All owners, operators and managers shall comply with the following operating requirement for facilities and any other conditions specified by the Chief of Police.

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

B. Signs. Any signs shall be in conformance with the current sign ordinances of the City. Each operator and/or manager shall post and maintain, adjacent to the main entrance and the front of the business, a readable sign identifying the premises as a massage establishment. The sign, and the front of the business, shall not be illuminated by strobe or flashing lights.

C. Services List. Each operator and/or manager shall post and maintain a list of services available and the cost of such services in the lobby of the massage establishment in a conspicuous public place and in any other location on the premises as the operator and/or manager deems appropriate. No operator or manager shall permit, and no massage technician shall offer or perform, any service other than those posted.

D. Lighting. The interior of the business shall maintain adequate illumination to make the conduct of patrons and employees within the premises readily discernable. The actual lighting level shall be approved in advance by the Police Chief and maintained during all hours of operation. No strobe, flashing lights or dimmer switches shall be used. No colored lights shall be used nor shall any coverings be used which change the color of the primary light source.

E. Ventilation. The operator and/or manager shall provide in each massage room, minimum ventilation in accordance with the Section 1203.4 of the current California Building Code (CCR Title 24, Part 2, Volume 1 of 2) or successor provision or provisions and the applicable provisions of the current International Building Code as published by the International Code Council.

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

G. Bathing, Dressing and Locker Facilities. A minimum of one shower and one dressing room containing a separate locker capable of being locked, shall be provided for patrons to be served at the massage establishment. The shower facility shall be equipped with soap or detergent and hot and cold running water at all times and shall be located within close proximity to the massage rooms. Bar soaps shall not be used.

H. Separate Rooms. If male and female patrons are to be treated simultaneously at the same massage establishment separate massage rooms, dressing, bathing and toilet facilities shall be provided for male and female patrons. Each separate facility or room shall be clearly marked as such. The requirements of this subsection will be met and "couples massages" are allowed in a single room if the massage establishment is

operated as an accessory use within, and as part of spa services offered in an approved day spa facility, health club, athletic club, or gym. Couples massages are permitted within a single room subject to all the requirements of this chapter, including, but not limited to the provision of a separate massage table and massage technician for each patron. The separate massage tables used during the couples massage must remain separated as to allow free passage and movements of the massage technicians during the course of the treatment. Any room used for couples massage shall be large enough to comply with any applicable Building and Fire Codes and to permit free passage and movements of the massage technicians. For the purpose of this subsection, accessory use shall mean a use which is not more than twenty-five (25) percent of the floor area of the related health or athletic activities of the primary use.

I. Maintenance. Wet and dry heat rooms, steam or vapor rooms or cabinets, toilet rooms, shower and bath rooms, tanning booths, whirlpool baths and pools shall be thoroughly cleaned and disinfected with a disinfectant approved by the County Health Department, as needed, but at least once each day the premises are open. All facilities for the massage establishment must be in good repair and shall be thoroughly cleaned and sanitized at least on a daily basis when the business is in operation. All walls, floors and ceilings of each restroom and shower area shall be constructed with materials that are smooth and easily cleanable. No carpeting shall be installed in any of these specified areas.

J. Massage Tables. A massage table shall be provided in each massage room and all massages shall be performed on the massage table. No more than one patron may occupy a massage table at the same time. The tables should have a minimum height of eighteen (18) inches. Two-inch thick foam pads with a maximum width of four feet may be used on a massage table and must be covered with durable, washable plastic or other waterproof material acceptable to the County Health Department. Beds, floor mattresses and waterbeds shall not be permitted on the premises.

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

18.41.100 Operating Requirements - Operations

All owners, operators and managers shall comply with the following operating requirements and any other conditions specified by the Chief of Police:

A. Equipment. Each operator and/or manager shall provide and maintain on the premises adequate equipment for disinfecting and sterilizing instruments used in massage.

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

C. Living Quarters Prohibited. No person or persons shall be allowed to reside, dwell, occupy or live inside the massage establishment at any time. Living quarters, if any, shall be completely separate from the massage establishment. No cooking or food preparation of any kind shall be prepared for sale or sold in the establishment unless an appropriate food vending permit is granted by the City and the County of Los Angeles and a full service kitchen is installed. Such a kitchen, if any, 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.

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

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

F. Recordings. No building or part thereof where massage or massage services are being conducted shall be equipped with any electronic, mechanical or artificial device used, or capable of being used, for recording or videotaping, for monitoring the activities, conversation, or other sounds in the treatment room or room used by customers.

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

H. Records. Every operator and/or manager shall keep a record of the dates and hours of each treatment or service, the name and address of the patron, the name of technician administering such service and a description of the treatment or service rendered. A short medical history form shall be completed by the operator and/or manager to determine if the patron has any communicable diseases, areas of pain, high blood pressure or any physical condition which may be adversely affected by massage. These records shall be prepared prior to administering any massage or treatment and

shall be retained for a period of twenty-four (24) months after such treatment or service. These records shall be open to inspection upon demand only by officials charged with enforcement of this chapter or emergency personnel for emergency purposes and for no other purpose. The Police Department may periodically inspect the records to ensure compliance with this section. The information furnished or secured as a result of any such records shall be used only to ensure and enforce compliance with this chapter, or any other applicable State or Federal laws and shall remain confidential. Any unauthorized disclosure or use of such information by any officer or employee of the City shall constitute a misdemeanor.

I. Hours of Operation. Massage operations shall be carried on or conducted, and the premises shall be open, only between the hours of seven (7:00) a.m. and nine (9:00) p.m. The operator and/or manager must advise the City, in writing, at the time of submission of the application for a massage establishment permit of the hours of operation within the times set forth above. The operator and/or manager shall notify the City, in writing, at least thirty (30) calendar days prior to the date of the effective change, of any changes in the hours of operation. No person shall operate a massage establishment or administer a massage in any massage establishment between the hours of nine (9:00) p.m. and seven (7:00) a.m. A massage begun any time before nine (9:00) p.m. must nevertheless terminate at nine (9:00) p.m. All customers, patrons and visitors shall be excluded from the massage establishment during these hours and be advised of these hours. The hours of operation must be displayed in a conspicuous public place in the lobby within the massage establishment and in the front window clearly visible from the outside.

J. Advertising. No massage establishment shall place, publish or distribute or cause to be placed, published or distributed any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective customers or clients that any service is available other than those services described in this chapter and posted on the premises as required by this chapter, nor shall any massage establishment employ language in the text of any advertising that would reasonably suggest to a prospective patron that any service is available other than those services described in this chapter and posted on the premises as required by this chapter.

K. Handicapped Areas. All massage establishments must comply with all State and Federal laws and regulations for handicapped customers.

L. Compliance. Proof of compliance with all applicable provisions of this Code shall be provided.

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

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

N. Massage and Dressing Room Doors. All massage and dressing rooms shall be screened off by curtains, draw drapes, or in the alternative, swinging doors, so long as such doors are mounted at least eighteen inches from the floor and not less than ten inches from the top of the door frame. A full door may be used if it does not have a locking mechanism and contains a reverse peephole, allowing visual inspections from outside the room. No other type of door shall be used except those provided for in this section for massage and dressing room doors. No massage may be given within any massage room within a massage establishment, which is fitted with a door capable of being locked.

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

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

Q. Notices. The Chief of Police shall require that the following notice be posted in the event that any employee of the massage establishment or any person who has been aided and abetted by an employee of the massage establishment has been found, after full hearing by administrative proceeding or by a State Court, to have violated any of the offenses that would be grounds for denial under Section 18.43.070 or 18.43.180:

NOTICE TO ALL PATRONS

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

1. The language for said notice set forth above shall be provided by the Chief of Police. Every owner, operator and/or manager required to post such notice shall be required to pay for the cost of any and all notices required by this section.

2. The notice shall be conspicuously posted in a location within the massage establishment that is easily visible to any person entering the premises and in each

massage room. The notices shall be posted for twelve (12) months following the violation of any of the offenses set forth above.

18.41.110. Inspections.

A. The Police Chief and the County Health Department, or their authorized representatives, shall have the right to enter the massage establishment at any time during business hours for the purpose of making reasonable unscheduled inspections to observe and enforce compliance with applicable regulations, laws, and provisions of this chapter. During an inspection, the Police Department may also verify the identity of all employees.

B. The City's Community Development Department, Fire Department, Police Department and the County Health Department may, from time to time, make an inspection of each massage establishment for the purpose of determining that the provisions of this chapter, State law or other applicable laws or regulations are met. Criminal investigations may be conducted as directed by the Chief of Police. The Police Department may inspect the occupied massage rooms for the purpose of determining that the provisions of this chapter are met upon occurrence of any of the conditions described in Section 18.43.100(Q), which would require the posting of the "Notice To All Patrons".

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

D. An operator, manager, their agents, servants or employees commits a punishable offense if he or she refuses to permit, delays or interferes with a lawful inspection of the premises by a representative of the Police Department at any time it is occupied or open for business.

18.41.120 Operator's Permit - Non-Assignability.

No operator's 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 except as hereinafter set forth.

18.41.130 Operator's Permit - Change in Ownership of Business.

A. If the permittee is a partnership and one or more of the partners should die, one or more of the surviving partners may acquire, by purchase or otherwise, the interest of the deceased partner 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. One (1) or more proposed partners in a partnership granted a permit hereunder may make application to the Chief of Police, together with the fee established by the City Council therefor, to amend the original application providing all information as required for partners in the first instance and, upon approval thereof, the transfer of the interests of one (1) or more partners to the proposed partner or partners may occur.

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

18.41.140 Operator's Permit - Change of Location or Name.

A. Every operator and/or manager shall report immediately to the Police Department and the Community Development Department any and all changes of name or designation under which the business is to be conducted, and all changes of address or telephone numbers of the massage establishment. A change of location of the massage establishment may be approved by the Chief of Police provided there is compliance with all applicable regulations of the City and the new location is zoned for such a use.

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

C. Any application for an extension or expansion of a building or other place of business of a massage establishment shall require inspection(s) and shall comply with the provisions and regulations of this chapter and all other City ordinances including but not limited to zoning ordinances and building, safety and occupancy standards.

18.41.150 Applicability to Existing Massage Establishments.

A. Commencing on the effective date of the ordinance codified in this chapter, all permits for a massage establishment are to be issued in accordance with the provisions of this chapter.

B. The provisions of this chapter shall be applicable to all persons and businesses described herein whether the described activities were established before or after the effective date of this article, except that massage establishments legally in business

prior to the effective date hereof shall have three (3) months or until the expiration of their current business license, whichever is greater, to comply with the terms hereof.

18.41.160 Massage Technician Permit Required.

A. No person shall perform or administer a massage, or advertise to provide massage services in the City, unless such person has in effect a valid massage technician permit issued pursuant to Section 18.43.180 of this chapter. Each massage technician permit holder shall be issued a photo identification badge and a massage technician permit by the City. The permit or certificate holder shall wear the identification badge on his or her person, at all times when working in the massage establishment and shall ensure that the massage technician permit or Massage Certificate is displayed in a conspicuous place in the lobby during business hours. Each permit holder shall immediately surrender to the Chief of Police any identification badge and massage technician permit issued by the City upon the suspension, revocation, or expiration of such permit.

B. Persons holding a valid CAMTC Certificate while Chapter 10.5 of Division 2 of the California Business and Professions Code remains in full force and effect may provide massage services in the City without obtaining a massage technician permit issued by the City.

18.41.170 Massage Technician Permit- Application.

A. Any person desiring to obtain a massage technician permit shall file a written application under penalty of perjury on the required form with the Chief of Police. The application shall be accompanied by a non-refundable filing fee established by separate resolution of the City Council to help defray the cost of the investigation required by this chapter.

B. The application and fee required pursuant to this section shall be in addition to any other license, permit or fee required by any other chapter of this Code or ordinance hereafter adopted.

C. The application for a massage technician permit shall contain or be accompanied by the following information:

1. A statement of the exact location at which the applicant will be working as a massage technician, including the full street address and all telephone numbers associated with said location.

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

3. The complete massage technician permit history of the applicant; whether such person has ever had any similar type of permit or license issued by any Agency, Board, City, County, Territory or State; the date of issuance of such a permit or license, whether the permit or license has been or was ever denied, revoked or suspended; if a vocational or professional license or permit has been or was ever denied, revoked or suspended; if the applicant has ever surrendered a permit or license as a result of pending criminal charges or in lieu of said permit or license being suspended or revoked and the reason therefore;

4. All criminal convictions, including pleas of nolo contendere, within the last ten years including those dismissed or expunged pursuant to Penal Code Section 1203.4, but excluding minor traffic violations, and the date and place of each such conviction and reason therefor;

5. A complete set of fingerprints taken by the Police Department. The applicant shall be responsible for payment of any fingerprinting fee.

6. Three (3) portrait photographs of the applicant at least two (2) inches by two (2) inches in size taken within the last month.

7. Such other information and identification as the Chief of Police or his designee may require in order to discover the truth of the matters herein specified and as required to be set forth in the application.

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

9. A statement in writing, and dated, by the applicant that he or she certifies under penalty of perjury that all information contained in the application is true and correct.

D. Each applicant shall also provide the following personal information concerning the applicant:

1. The full, true name and all aliases used by the applicant;

2. Date and place of birth, California driver's license or California identification card, Social Security card and resident alien card, if applicable.

3. The current residence address and residence telephone number and all previous residential addresses for a minimum of eight (8) years immediately preceding the present address of the applicant and the dates of residence for each address;

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

5. Height, weight, color of hair, eyes and gender.

E. If, during the term of a permit, a permit holder has any change in information submitted on the original or renewal application, the permit holder shall notify the Police Department of such change within ten business days thereafter, in writing.

F. In addition to the above information, each applicant must also furnish either:

1. An original or certified copy of a diploma or certificate and certified transcript of graduation from a recognized school of massage; or

2. 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; or

3. Proof of membership or the ability to obtain membership in a qualified massage association.

G. The applicant must also supply a course description, an outline of material covered, and a letter to the City from the school administrator verifying completion.

H. The applicant must also supply an original, valid State CPR certificate.

I. Any outside course of study submitted for approval shall meet the State of California's Office of Post-secondary Education's minimum requirements and be for completion of five hundred (500) hours of on-premises training.

18.41.180 Massage Technician Permit - Issuance and Denial.

A. Upon receipt of a complete written application for a permit, the Chief of Police or his designee shall conduct an investigation to ascertain whether a permit should be issued as requested. The Chief of Police or his designee, shall, within ninety (90) calendar days of receipt of an application, approve, conditionally approve or deny the application. The ninety (90) day period may be extended for up to thirty (30) additional calendar days, if necessary, to complete the investigation. The Chief of Police at that time may issue such permit as requested, unless he/she makes any of the following findings:

1. The applicant has not passed every section of the practical and written examination as required by this chapter.

The applicant has, within ten (10) years preceding the date of the application, been convicted of any of the following:

a. A violation of any provision of law pursuant to which a person is required to register under the provisions of Penal Code Section 290, or conduct in violation of California Penal Code Sections 266h, 266i, 314, 315, 316, 318, subsections (a), (b) or (d) of Penal Code Section 647, or convicted of an attempt to commit or conspiracy to commit any of the above mentioned offenses, or any other crime involving dishonesty, fraud, deceit, moral turpitude or an act of violence or when the prosecution accepted a plea of guilty or nolo contendere to a charge of a violation of California Penal Code Sections 415, 602 or any lesser included or related offense, in satisfaction of, or as a substitute for, any of the previously listed crimes , or any crime committed while engaged in the ownership of a massage establishment or the practice of massage;

b. A violation of Health and Safety Code Section 11550 or any offense involving the illegal sale, distribution or possession of a controlled substance specified in Health and Safety Code Sections 11054, 11055, 11056, 11057 or 11058; or

c. Any offense in any other State, which is the equivalent of any of the above-mentioned offenses.

3. That the applicant has committed an act in another jurisdiction, which, if committed in this State, would have been a violation of law and, which, if done by a permittee under this chapter, would be grounds for denial, suspension or revocation of the permit.

4. That the applicant has engaged in conduct which would constitute grounds for suspension or revocation under Section 18.43.300 of this chapter.

5. The applicant has had a massage operator or massage technician permit or other similar license or permit denied, suspended or revoked for cause by the City, any state, local agency or other licensing authority, or has had to surrender a permit or license as a result of pending criminal charges or in lieu of said permit or license being suspended or revoked within eight (8) years prior to the date of the application.

6. The applicant has knowingly made a false, misleading or fraudulent statement or omission of fact to the City in the permit application process.

7. The application does not contain the information required by Section 18.43.170.

8. The applicant is not at least eighteen (18) years of age.

9. The applicant has not paid the required fee(s) and/or satisfied all other requirements of this chapter in the time specified.

B. If the application is denied for failure to comply with subsection (5) or (6) of this section, the applicant may not reapply for a period of six (6) months from the date the application was denied.

C. If the Chief of Police, upon completion of the investigation, determines that the applicant does not fulfill the requirements as set forth in this chapter, the Chief of Police shall deny said application by dated written notice to the applicant. The applicant shall have the right of appeal as set forth in Section 18.43.280.

18.41.200 Massage Technician Permit/Massage Certificate - General Conditions

All massage technicians shall comply with the following conditions and any other conditions specified by the Chief of Police on issuance of the massage technician's permit (the following conditions also apply to Massage Certificate holders):

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

B. The massage technician shall wear a photo identification card prepared and issued by the City at all times when present in the massage establishment. Such identification shall be provided to the Chief of Police upon demand. The identification card shall be worn on outer clothing with the photo side facing out. If a massage technician changes his or her business address, he or she shall, prior to such change, obtain from the Chief of Police a new photo identification card and advise the Police Department, in writing, of the new business address.

C. Massage technicians shall not perform any massage at any location other than the location specified on the permit.

D. While on duty, the massage technician shall not use any name or designation or conduct business under any other name or designation than the name specified in his or her permit and photo identification card.

E. Massage attendants, at all times while on the business premises, shall wear clean, nontransparent outer garments solidly covering the shoulders to four inches (4") or less above the knees. Under no circumstances shall these garments permit the genitals, pubic area, buttocks or chest to be exposed. Massage technicians shall maintain the massage technician permit visibly on their person affixed to the right front of their required smock at all times during business hours.

F. A massage technician shall consent to, and shall not prevent, delay or interfere with an inspection of the massage establishment by the City's Community Development Services, Fire Department, Police Department and the Health Department for the purpose of determining that the provisions of this chapter or other applicable laws or regulations are met. The massage technician shall consent to the inspection of the occupied massage rooms by the Police Department for the purpose of determining that the provisions of this chapter are met.

18.41.210 Massage Technician Permit - Non-Assignability.

No massage technician permit may be sold, transferred or assigned by a permittee, or any 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.

18.41.220 Massage Technician - Additional or Change in Location.

In the event a massage technician currently licensed by the City seeks employment at a massage establishment in addition to or different from the establishment indicated on the original application, the permittee shall notify the City in writing within ten (10) calendar days from the date the permittee is employed by the establishment where the permittee is to provide massage services. No additional fee shall be required.

18.41.230 Applicability to Existing Massage Technicians.

A. Commencing on the effective date of the ordinance codified in this chapter, all permits for a massage technician are to be issued in accordance with the provisions of this chapter.

B. The provisions of this chapter shall be applicable to all persons and businesses described herein whether the described activities were established before or after the effective date of this article.

18.41.240 Permit Term and Renewal

A. Permits for massage establishments, massage technicians shall be for a period of one year, unless sooner revoked as set forth in this chapter.

B. No permit granted herein shall confer any vested right to any person or business for more than the permit period. All massage operators and technicians subject to this chapter shall comply with the provisions of this chapter as they may be amended hereafter.

C. Applications for the renewal of a permit shall be filed with the Chief of Police at least sixty (60) calendar days before the expiration of the then current permit to be renewed. Temporary permits will not be issued. Any permittee allowing his or her permit to lapse, or which permit expires during a suspension, shall be required to submit a new application and pay the corresponding original application fees.

D. Any person desiring to obtain a renewal of his/her respective permit shall file a written application under penalty of perjury on the required form with the Chief of Police, who shall conduct an investigation. The application shall be accompanied by a non-refundable filing fee established by separate resolution of the City Council to help defray the cost of the investigation required by this chapter. An applicant shall be required to update the information contained in his/her original permit application and provide any new and/or additional information as may be reasonably required by the Chief of Police in order to determine whether said permit should be renewed.

E. A massage technician permittee shall also be required to submit with his or her renewal application proof of completion of at least thirty (30) hours of continuing education courses in massage from a recognized school of massage. Failure to provide this documentation shall be grounds for non-renewal of the massage technician's permit.

F. The Chief of Police shall have sixty (60) calendar days to investigate the renewal application and shall render a decision within said sixty (60) calendar days, but no later than the date of expiration of the permit.

18.41.250 Suspension, Revocation, Denial and Appeal.

A. Violation and Noncompliance. Failure of a permittee to comply with any requirement imposed by this chapter or any other conditions imposed pursuant to the permit shall be grounds for non-renewal, suspension or revocation of the permit.

B. Suspension, Non-Renewal or Revocation of Operator's Permit. The Chief of Police may suspend, revoke or refuse to renew an operator's permit if any of the following conditions exists:

1. A violation of any of the provisions of this chapter, or if an operator or manager has been convicted of any law specified in Section 18.43.070(A).

2. The Chief of Police makes any of the findings necessary to deny a permit under Section 18.43.070.

3. If there have been three (3) or more violations of the provisions of this chapter within a 12-month period which demonstrate that the operator and/or manager is unable to operate or manage the massage establishment in a law abiding manner.

C. Suspension, Non-Renewal or Revocation of Massage Technician Permit. The Chief of Police may suspend, revoke or refuse to renew a massage technician permit if any of the following conditions exists:

1. A violation of any of the provisions of this chapter, or if a massage technician has been convicted of any law specified in Section 18.43.070(A); or

2. The Chief of Police makes any of the findings necessary to deny a permit under Section 18.43.180.

18.41.260 Notice.

When the Chief of Police concludes that grounds for denial, suspension, revocation or refusal to renew a permit exist, the Chief of Police shall serve the applicant or permit holder, either personally or by certified mail addressed to the address listed on the application, with a notice of denial, non-renewal or notice of intent to suspend or revoke a permit (the "Notice"). This Notice shall state the reasons for the proposed action, the effective date of the decision, the right of the applicant or permit holder to appeal the decision to the City Manager and that the Chief of Police's decision will be final if no appeal is filed within the time stated.

18.41.270 Appeal.

A. The right to appeal to the City Manager shall terminate upon the expiration of fifteen (15) calendar days from the date of personal service or the date of acknowledgment on the certified mail of the above Notice. The appeal shall be personally delivered to or sent by certified mail to the Chief of Police.

B. In the event an appeal is timely filed, the suspension or revocation shall not become effective until a final decision has been rendered by the City Manager. If no appeal is filed, the suspension or revocation shall become effective upon the expiration of the period for filing appeals.

C. The City Manager shall set a date, time and place for a hearing on appeal and shall notify the appellant of such date, time and place of the hearing. Said notice shall be sent by certified mail with proof of service attached, to the appellant, applicant or permittee at least ten (10) calendar days prior to the date of the hearing, addressed to

the address listed on the respective application or, the address given in the notice of appeal. The appellant, applicant or permittee shall be entitled to notice of the basis for the proposed action, a copy of the documents upon which the Notice was based and will have the opportunity to present contrary evidence at the hearing.

D. The City Manager, in his sole discretion, may grant or deny a request for a continuance.

E. The City Manager shall preside over the hearing on appeal or, in the alternative, the City Manager may appoint a hearing officer to conduct the hearing and receive relevant evidence. The City Manager or his designee shall render a written decision within forty-five (45) calendar days from the date of the hearing. The decision of the City Manager or his designee shall be final.

F. The following rules of evidence shall apply at the hearing:

1. Oral evidence shall be taken only under oath or affirmation. The City Manager or designee shall have authority to administer oaths, and to receive and rule on admissibility of evidence.

2. Each party shall have the right to call and examine witnesses, to introduce exhibits, and to cross-examine opposing witnesses who have testified under direct examination. The City Manager or his or her designee may also call and examine any witness.

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

18.41.280 New Application after Denial or Revocation of Permit

A person may not apply for a permit pursuant to this chapter within one (1) year from the denial or revocation of such permit.

18.41.300 Surrender of Permit.

Any person to whom a permit has been issued pursuant to this chapter shall immediately surrender his or her permit to the Chief of Police upon its suspension or revocation.

18.41.310 Permissible Locations.

Unless the owner or operator is a holder of a valid CAMTC Certificate throughout the terms of the business, a massage establishment shall not be located within a five hundred (500) foot radius of a church, temple, and other places of religious worship, park, school, Child day care facility or residentially zoned property. The distance between a proposed massage establishment and a church, temple, and other places of religious worship, park, school, daycare facility or residential zone shall be measured from property line to property line, along a straight line extended between the two points. This requirement shall not apply to massage establishments legally existing on or before January 1, 2009.

18.41.320 Fees.

The City Council shall establish by resolution, and from time to time may amend, the fees for the administration of this chapter. The City shall include in this resolution a health services fee schedule prescribing annual fees to be paid by the operator of each massage establishment, such fees to be paid directly to the County of Los Angeles Health Department and retained by the County as reimbursement for said services related to this chapter. Fees required by this chapter shall be in addition to any other fees that may be required under any other chapter of this Code.

18.41.330 Violation and Penalty.

A. Any person who violates any provision of this chapter is guilty of a misdemeanor.

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

C. The penalties set forth herein, including but not limited to the requirement for posting the notice described in section 18.43.100(Q), are cumulative and in addition to all other remedies, violations and penalties set forth in this chapter, or in any other ordinances,

laws, rules or regulations of the City of Whittier, County of Los Angeles and the State of California.

SECTION 2. The City Council has determined that the project, under Zoning Code Amendment 08-006, qualifies as a Categorical Exemption pursuant to Section 15305 (Class 5 – Minor Alternations in Land-use Limitations) of the California Environmental Quality Act (CEQA).

SECTION 3. The City Council hereby ordains the adoption of the provisions contained within Zoning Code Amendment 08-006 to be incorporated within the Whittier Municipal Code

SECTION 4. Any provision of the Whittier Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to affect the provisions of this Ordinance.

SECTION 5. If any section, subsection, 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 of the City of Whittier hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

SECTION 6. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause a display advertisement of at least one-quarter of a page to be published once in the official newspaper within 15 days after the adoption of the Ordinance, which advertisement indicates the general nature of the Ordinance and information about the Ordinance, including how to obtain copies of the complete text of the Ordinance. This ordinance shall become effective thirty (30) days after its adoption.

APPROVED AND ADOPTED this 27th day of October 2009.

BOB HENDERSON, Mayor

ATTEST:

KATHRYN A. MARSHALL
City Clerk-Treasurer

CITY OF WHITTIER)
) SS
STATE OF CALIFORNIA)

I, Kathryn A. Marshall, City Clerk-Treasurer in and for the City of Whittier, California, hereby certify that the foregoing ordinance was duly introduced at a regular meeting of the City Council of the City of Whittier on the 13th day of October 2009, and adopted at a regular meeting of the City Council of the City of Whittier on the 27th day of October 2009 by the following roll call vote:

AYES: J. A. Vinatieri C. Warner O. Newcomer

 J. G. Nordbak R. L. Henderson

NOES: None

ABSENT: None

WITNESS my hand and the official seal of the City of Whittier, California, this
_____ day of _____ 2009.

KATHRYN A. MARSHALL
City Clerk-Treasurer

Published as required by law: November 10, 2009