

## Union City Municipal Code

[Up](#)[Previous](#)[Next](#)[Main](#)[Collapse](#)[Search](#)[Print](#)

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**Chapter 9.34 REGULATIONS FOR MASSAGE ESTABLISHMENTS AND MASSAGE TECHNICIANS**

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**9.34.010 Purpose.**

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In enacting these regulations the City Council recognizes that massage therapy is a viable professional field offering the public valuable health and therapeutic services. It is the purpose and intent of the City Council to protect the public health, safety, and welfare and ensure massage services are provided in a lawful and professional manner by doing the following: providing minimum qualifications for massage establishments and massage technicians; and providing minimum building, sanitation, and operation standards for massage services. The City intends to comply with and rely upon Section 4600 et seq., of the California Business and Professions Code, which was adopted as SB 731 by the Legislature in 2008. (Ord. 761-11 § 2, 2011)

**9.34.020 Definitions.**

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For the purpose of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

- A. "CMTC" or "California Massage Therapy Council" means the Massage Therapy Organization created pursuant to Section 4600.5 of the California Business and Professions Code and further defined in Section 4600 (e) of that Code.
- B. "Certificate holder" means the holder of an establishment registration certificate.
- C. "Certified massage establishment" means a massage establishment where each owner and each employee that provides massage is a certified massage technician.
- D. "Certified massage technician" means a massage technician certified by the CMTC as a certified massage practitioner or as a certified massage therapist pursuant to Section 4601(b) or (c) of the California Business and Professions Code.
- E. "Establishment registration certificate" means the establishment registration certificate issued to a massage establishment pursuant to Section 9.34.060.
- F. "Inspector" means an individual designated by the Permit Administrator to conduct any inspections required or permitted under this chapter.
- G. "Massage" means the treatment of the superficial parts of the human body by therapeutic touching, rubbing, pressing, stroking, kneading, tapping, pounding, bathing, vibrating, manipulating or stimulating with the hand(s) or any instrument, in exchange for compensation such as payment, loan, donation, contribution, deposit, exchange, or gift of money or thing of value.
- H. "Massage establishment" means any business or premises, including a sole proprietorship, where massage is provided, whether at a fixed place or at a location designated by the patron.
- I. "Massage technician" or "technician" means any person who massages, excluding any person licensed under Business and Professions Code Sections 2135 through 2139 (medicine), 2630 or 2639 (physical therapy), 2732.1, 2733 or 2742 (nursing), or under the Chiropractic Initiative Act of 1922, as amended.
- J. "Operator permit" means the permit required by Section 9.34.070 to operate a massage establishment.
- K. "Owner" or "operator" means any of the following individuals: the sole technician of a sole

proprietorship operating a massage establishment; any general partner of a general or limited partnership that owns a massage establishment; any person who has ten percent or greater ownership interest in a corporation that owns a massage establishment; any person who is a member of a limited liability company that owns a massage establishment; and all owners of any other type of business entity that owns a massage establishment.

L. “Patron” means an individual not retained or employed by the massage establishment, that is receiving, waiting to receive, or that has just received massage services, but excluding law enforcement personnel or governmental officials performing governmental business.

M. “Permit Administrator” means the City employee designated by the City Manager to oversee the implementation and enforcement of this chapter.

N. “Permittee” means the holder of an operator permit.

O. “Person” means all domestic and foreign individuals, corporations, associations, syndicates, partnerships, firms, joint ventures, limited liability companies, or combination of individuals.

P. “Technician registration certificate” means the technician registration certificate issued to certified massage technicians pursuant to Section 9.34.040.

Q. “Sole proprietorship” means a business where the owner is the only person employed by that business to provide massage.

R. “Visitor” means a person not retained or employed by the massage establishment and not receiving, waiting to receive, or that has just received massage services, but excluding law enforcement personnel or governmental officials performing governmental business. (Ord. 761-11 § 2, 2011)

#### **9.34.030 Certification by CMTC required for technicians.**

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It is unlawful for any person to practice massage within the City unless that person is a certified massage technician. (Ord. 761-11 § 2, 2011)

#### **9.34.040 Massage technicians—Registration.**

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Any certified massage technician practicing massage within the City shall be required to register with the Permit Administrator as provided in this section. There shall be no fee for the registration application or certificate, or any amendment thereof.

A. Application. The registration application shall include the certified massage technician’s name, residence address and telephone number, employer name, work address and telephone number, and a copy of the certified massage technician’s current certification from the CMTC as either a certified massage practitioner or as a certified massage therapist pursuant to Section 4601(b) or (c) of the California Business and Professions Code.

B. Application Fee. There shall be no fee to apply for the technician registration certification.

C. Registration Certificate—Issuance and Renewal. Upon receipt of a completed application, the Permit Administrator shall issue to the certified massage technician a technician registration certificate, valid for one year from the date of issuance. Upon application by the certified massage technician, the technician registration certificate shall be renewed annually as long as the certified massage technician is practicing massage.

D. Notice of Denial—Appeal. If an application for a technician registration certificate is denied, the Permit Administrator shall serve on the applicant, in the manner provided in Section 9.34.130 of this Code, a written notice of denial which shall specify the grounds for the denial and shall indicate the appeal procedures.

E. Registration Certificate—Amendment. A certified massage technician that has received a City registration certificate must apply to the Permit Administrator to amend the technician registration certificate

within thirty business days after any change in the registration information, including, but not limited to, a change in work address. (Ord. 761-11 § 2, 2011)

#### **9.34.050 Massage establishments—Must have establishment registration certificate or operator permit.**

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It is unlawful for any person or persons to operate a massage establishment within the City without first obtaining an establishment registration certificate or an operator permit. (Ord. 761-11 § 2, 2011)

#### **9.34.060 Establishment registration certificate.**

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No certified massage establishment shall operate within the City without first obtaining an establishment registration certificate under this section.

A. Application. All owners of the certified massage establishment, or their duly authorized agent, shall file an application for an establishment registration certificate on a form provided by the Permit Administrator. For purposes of this section, the “applicant” for the establishment registration certificate shall refer to and include each and every owner of the massage establishment. The application shall include the following information:

1. The name, address, and telephone number of the certified massage establishment;
2. The name, residence address and telephone number, and business address and telephone number of the certified massage establishment owner(s) applying for the establishment registration certificate;
3. The form of business under which the applicant will be conducting the massage establishment, i.e., corporation, general or limited partnership, limited liability company, or other legal entity. 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 shareholder holding more than ten percent of the stock of the corporation. If the applicant is a general or limited partnership, the application shall set forth the name and residence address of each of the partners, including limited partners. If one or more of the partners is a corporation, the provisions of this section pertaining to a corporate applicant shall apply. If the applicant is a limited liability company, the application shall set forth the name and residence address of each of the members. If one or more of the members is a partnership, limited liability company, or corporation, the provisions of this section pertaining to a partnership, limited liability company, or corporate applicant shall apply, as applicable;
4. The name and address of the owner of the real property upon, in, or from which the certified massage establishment is to be operated. In the event the applicant is not the legal owner of the property as shown on the latest County assessment roll, the application shall be accompanied by a copy of any written lease between the applicant and the property owner authorizing the use of the premises for a massage establishment, or, alternatively, if there is no written lease, then a written, notarized acknowledgment from the property owner that the property owner has been advised that a massage establishment will be operated by the applicant upon, in, or from the property owner’s property;
5. A description of the proposed certified massage establishment, including the type of treatments to be administered;
6. For each person that the certified massage establishment does or will employ or retain to perform massage, a copy of that person’s current certification from the CMTC as a certified massage technician or as a certified massage therapist and a copy of that person’s CMTC identification card;
7. For each owner of the certified massage establishment, a copy of that person’s current certification from the CMTC as a certified massage technician or as a certified massage therapist and a copy of the person’s CMTC identification card.

B. Application Fee. There shall be no fee to apply for the establishment registration certification.

C. Massage Establishment Facilities and Operations. A certified massage establishment shall comply with the requirements of Section 9.34.090, with one exception for sole proprietorships: the provisions of Section 9.34.090(B)(1) through (3) shall not apply to a certified massage establishment which is a sole proprietorship, even if that sole proprietorship is located in a suite of offices with other businesses.

D. Issuance or Denial.

1. The Permit Administrator shall grant an establishment regulation certificate to an applicant who has satisfied the requirements of this section and all other applicable laws, including, but not limited to, the City's building, zoning, and health regulations.

2. Where the applicant is not the record owner, as shown on the latest County assessment roll, of the property upon, in, or from which the certified massage establishment is to be operated, then upon issuance of an establishment registration certificate, the Permit Administrator may send a written notice to the property owner advising of the issuance of the certificate and of the regulations applicable to the certified massage establishment and the property pursuant to this chapter. Any other notices sent to the applicant pursuant to this chapter at any time before or after issuance of the establishment registration certificate may also be sent to the property owner.

E. Notice of Denial—Appeal. If an application for an establishment registration certificate is denied, the Permit Administrator shall serve on the applicant, in the manner provided in Section 9.34.130 of this Code, a written notice of denial which shall specify the grounds for the denial and shall indicate the appeal procedures.

F. Display of Establishment Registration Certificate. Each holder of an establishment registration certificate shall display that certificate in an open and conspicuous place on the premises visible from the entrance and/or reception and waiting area of the massage establishment.

G. Term. An establishment registration certificate issued pursuant to the terms of this chapter shall be valid for a term of one year from the date of issuance, and, unless suspended or revoked, shall be renewed annually so long as the massage establishment is operating within the City.

H. Requirement to Amend Application. In addition to the requirements of Sections 9.34.100 and 9.34.110, whenever the information provided in the application for an establishment registration certificate on file with the City changes, for example by a change in employees, the operator shall, within ten business days after such change, file an amendment to the establishment registration certificate application with the Permit Administrator to reflect such change.

I. Violations.

1. Operator Responsible for Employees. For the purpose of enforcing the requirements of this chapter, the operator shall be responsible for the conduct of all massage employees, agents, independent contractors, or other representatives while such persons are on the premises of the certified massage establishment.

2. Revocation. An establishment registration certificate may be suspended or revoked by the Permit Administrator as provided in Section 9.34.120. Upon revocation, the certified massage establishment shall immediately cease operation, and, if so ordered by the Permit Administrator, no other massage establishment shall be permitted to operate at that location by any person for a period of not less than one year. If the operator is not also the legal owner of the real property on which the massage establishment is situated, notice of such revocation and the one-year prohibition shall be provided by the Permit Administrator to the owner of record of the property as shown on the latest County assessment roll.

3. Cumulative Remedies. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity. (Ord. 761-11 § 2, 2011)

### **9.34.070 Operator permit.**

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No massage establishment may operate in the City that does not qualify as a certified massage establishment, unless and until all owners of the massage establishment have applied for and obtained an operator permit from the Permit Administrator pursuant to this section.

A. Application for Operator Permit. All owners of the massage establishment, or their duly authorized agent, shall file an application for an operator permit for the massage establishment on a form provided by the Permit Administrator. For purposes of this section, the “applicant” for the operator permit shall refer to and include each and every owner of the massage establishment. The application shall include the following information:

1. Name, address, and telephone number of the massage establishment;
2. The name, residence address and telephone number, and business address and telephone number of the massage establishment owner(s) applying for the operator permit;
3. The form of business under which the applicant will be conducting the massage establishment, i.e., corporation, general or limited partnership, limited liability company, or other form. 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 shareholder holding more than ten percent of the stock of the corporation. If the applicant is a general or limited partnership, the application shall set forth the name and residence address of each of the partners, including limited partners. If one or more of the partners is a corporation, the provisions of this section pertaining to a corporate applicant shall apply. If the applicant is a limited liability company, the application shall set forth the name and residence address of each of the members. If one or more of the members is a partnership, limited liability company, or corporation, the provisions of this section pertaining to a partnership, limited liability company, or corporate applicant shall apply, as applicable;
4. The name and address of the owner of the real property upon, in, or from which the massage establishment is to be operated. In the event the applicant is not the legal owner of the property, the application shall be accompanied by a copy of any written lease between the applicant and the property owner authorizing use of the premises for a massage establishment, or, alternatively, if there is no written lease, then a written, notarized acknowledgment from the property owner that the property owner has been advised that a massage establishment will be operated by the applicant upon, in, or from the property owner’s property;
5. A description of the proposed massage establishment, including the type of treatments to be administered;
6. The name, residence address and telephone number, and work address and telephone number of each person that the massage establishment employs or retains to perform massage;
7. For each person that the massage establishment employs or retains to perform massage, a copy of that person’s current certification from the CMTC as a certified massage technician or as a certified massage therapist, and a copy of that person’s CMTC identification card;
8. Whether any license or permit has ever been issued to the applicant by any jurisdiction under the provisions of any ordinance or statute governing massage, and as to any such license or permit, the name and address of the issuing authority, the effective dates of such license or permit, whether such license or permit was ever suspended, revoked, withdrawn, or denied; and copies of any documentary materials relating to such suspension, revocation, withdrawal, or denial;
9. Whether the applicant has within the five years immediately preceding the date of application been convicted in any state of any felony;
10. Whether the applicant is currently required to register under the provisions of Section 290 of the California Penal Code;
11. The applicant’s business, occupation, and employment history for five years preceding the date of

application, and the inclusive dates of same;

12. One set of fingerprints for each applicant in a form satisfactory to the Permit Administrator. The fingerprints shall be taken at a place designated by the Permit Administrator, and any required fee for such fingerprinting shall be paid by the applicant;

13. Such other information as may be required by the Permit Administrator to determine compliance with any other eligibility requirements for issuance of the operator permit as specified by Federal, State, or local law. The Permit Administrator may waive any of the requirements of this section for an owner who is also a certified massage technician.

B. Application Fee. Any application for an operator permit under this chapter shall be accompanied by a nonrefundable application fee in an amount established by resolution of the City Council and included within the Master Fee Schedule.

C. Issuance or Denial. The Permit Administrator shall grant an operator permit for the massage establishment if the massage establishment owners have satisfied the requirements of this section and all other applicable laws including, but not limited to, the City's building, zoning, and health regulations, unless the Permit Administrator determines any or more of the following to be true:

1. The applicant, or any shareholder, partner, or member of the applicant, within five years immediately preceding the date of filing of the application, has been convicted in a court of competent jurisdiction of any offense that relates directly to the operation of a massage establishment whether as a massage establishment operator or as a person practicing massage, or as an employee of either; or has at any time been convicted in a court of competent jurisdiction of any felony the commission of which occurred on the premises of a massage establishment; or

2. The applicant is currently required to register under the provisions of Section 290 of the California Penal Code; or

3. The applicant, or any shareholder, partner, or member of the applicant, within five years of the date of application, has been convicted in a court of competent jurisdiction of any violation of Section 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), or 653.22 of the California Penal Code, or conspiracy or attempt to commit any such offense, or any offense in a jurisdiction outside of the State of California that is the equivalent of any of the aforesaid offenses; or

4. The applicant, or any shareholder, partner, or member of the applicant, has 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 provision of law in a jurisdiction outside the State of California; or

5. The applicant, or any shareholder, partner, or member of the applicant, has knowingly made a false statement or omission of a material fact in the application for the operator permit; or

6. The applicant, if an individual, has not attained the age of eighteen years; or

7. The applicant, or any shareholder, partner, or member of the applicant, within five years of the date of application, and as established by clear and convincing evidence, has engaged in acts prohibited under California Penal Code Section 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), or 653.22; or

8. The applicant, or any shareholder, partner, or member of the applicant, within five years immediately preceding the date of filing of the application, has had a permit or license to practice massage or to own and/or operate a massage establishment revoked or denied in any jurisdiction.

D. Notice to Property Owner. Where the applicant is not the record owner, as shown on the latest County assessment roll, of the property upon, in, or from which the massage establishment is to be operated, then upon issuance of an operator permit, the Permit Administrator may send a written notice to the property owner advising of the issuance of the permit and of the regulations applicable to the massage establishment and the

property pursuant to this chapter. Any other notices sent to the applicant pursuant to this chapter at any time before or after issuance of the operator permit may also be sent to the property owner.

E. Notice of Denial—Appeal. If an operator permit is denied, the Permit Administrator shall serve on the applicant, in the manner provided in Section 9.34.130 of this Code, a written notice of denial that shall specify the grounds for the denial and shall indicate the appeal procedures.

F. Display of Permit. Each holder of an operator permit shall display that permit in an open and conspicuous place on the premises visible from the entrance and/or reception and waiting area of the massage establishment.

G. Term. An operator permit issued pursuant to the terms of this chapter shall be valid for a term of three years from the date of issuance. A permit that has not expired and has not been suspended or revoked may be renewed for another three-year period, on submittal of a written application and payment of a renewal application fee to be established by resolution of the City Council.

H. Requirement to Amend Operator Permit Application. In addition to the requirements of Sections 9.34.100 and 9.34.110, whenever the information provided in the application for operator permit on file with the City changes, for example by a change in employees, the operator shall, within ten business days after such change, file an amendment to the operator permit application with the Permit Administrator.

I. Violations and Remedies.

1. Operator Responsible for Employees. For the purpose of enforcing the requirements of this chapter, the operator shall be responsible for the conduct of all massage employees, agents, independent contractors, or other representatives while such persons are on the premises of the massage establishment.

2. Revocation. An operator permit may be suspended or revoked by the Permit Administrator as provided in Section 9.34.120. Upon revocation, the massage establishment shall immediately cease operation, and, if so ordered by the Permit Administrator, no other massage establishment shall be permitted to operate at that location by any person for a period of not less than one year. If the operator is not also the legal owner of the real property on which the massage establishment is situated, notice of such revocation and the one-year prohibition shall be provided by the Permit Administrator to the owner of record of the property as shown on the latest County assessment roll.

3. Cumulative Remedies. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity. (Ord. 761-11 § 2, 2011)

#### **9.34.080 Massage establishment inspection.**

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A. The Inspector shall have the right to enter any massage establishment during regular business hours, without a search or inspection warrant, to make reasonable inspection to ascertain whether there is compliance with the provisions of this chapter.

B. The massage establishment operator shall take immediate action to correct each violation noted by the Inspector. A re-inspection will be performed within thirty business days to ensure that each violation noted by the Inspector has been corrected. (Ord. 761-11 § 2, 2011)

#### **9.34.090 Requirements—All massage establishments.**

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A. Operational Requirements. Except as otherwise specifically provided in this chapter, the following operational requirements shall be applicable to all massage establishments located within the City:

1. No massage establishment shall be open for business between the hours of ten p.m. of one day and seven a.m. of the following day. Massage begun any time before ten p.m. must nevertheless terminate at ten p.m.

The hours of operation shall be displayed in a conspicuous public place in the reception area and in any front window clearly visible from outside of the massage establishment.

2. Patrons and visitors shall be permitted in the massage establishment only during the hours of operation.

3. Except for a patron who is inside a room for the purpose of receiving a massage, no patrons or visitors shall be permitted in or on the massage establishment premises at any time who are less than fully clothed in outer garments of nontransparent material, or who display or expose themselves in underclothing or similar intimate apparel.

4. During the hours of operation, visitors shall not be permitted in massage rooms except as follows: (a) the parents or guardian of a patron who is a minor child may be present in the room with that minor child; (b) the minor child of a patron may be present in the room with the patron when necessary for the supervision of the child; and (c) the conservator, aid, or other caretaker of a patron who is elderly or disabled may be present in the room with that elderly or disabled person.

5. During the hours of operation, patrons shall be permitted in massage rooms only if at least one duly authorized certified massage technician is present on the premises of the massage establishment.

6. A list of services available and the cost of such services shall be posted in an open and conspicuous public place on the premises, or provided to patrons before services are rendered. The services shall be described in English and may also be described in such other languages as may be convenient. No operator shall permit, and no person employed or retained by the massage establishment shall offer to perform, any services or fees other than those posted.

7. For all employees employed or retained by the massage establishment but who do not provide massage, the following documents shall be available to City staff upon inspection pursuant to Section 9.34.080: (a) for individuals over the age of eighteen years old, a copy of a valid driver's license or identification card showing the employee's age; or (b) for individuals under eighteen years of age, a copy of a permit to employ or to work as required by California Labor Code Section 1299 and Education Code Section 49160.

**B. Physical Facility and Building and Fire Code Requirements.** Except as otherwise specifically provided in this chapter, the following physical facility and building code requirements shall be applicable to all massage establishments located within the City:

1. **Front Door and Reception Area.** One front door shall be provided for patron entry, which shall open to an interior patron reception and waiting area immediately inside the front door. All patrons and any persons other than individuals employed or retained by the massage establishment shall be required to enter and exit through the front door.

2. **Visibility.** No massage establishment located in a building or structure with exterior windows fronting a public street, highway, walkway, or parking area shall block visibility into the interior reception and waiting area through the use of curtains, closed blinds, tints, or any other material that obstructs, blurs, or unreasonably darkens the view into the premises.

3. **Locks.** All interior doors, including rooms or cubicles in which massage occurs, but excluding individual dressing rooms and toilet rooms, shall be incapable of being locked and shall not be blocked to prevent opening. Draw drapes, curtain enclosures, or accordion-pleated closures in lieu of doors are acceptable on all inner rooms or cubicles.

4. **Lighting.** Minimum lighting equivalent to at least one forty watt light shall be provided in each room or cubicle in which massage is provided.

5. **Tables, Mats, and Beds.** A massage table shall be used for all massage, with the exception of "Thai," "Shiatsu," and similar forms of therapy, which may be provided on a padded mat on the floor, provided the patron is fully attired in loose clothing, pajamas, scrubs, or similar style of garment. Massage tables shall have a minimum height of eighteen inches. Beds, floor mattresses, and waterbeds are not permitted on the premises of

the massage establishment, and no massage establishment shall be used for residential or sleeping purposes.

6. Lockers. All locker facilities that are provided for the use of patrons shall be fully secured for the protection of the patrons' valuables, and each patron shall be given control of the key or other means of access.

7. Building and Fire Codes. The massage establishment shall comply with all applicable State and local building standards (as adopted in Title 12 of this Code) and the fire code (as adopted in Title 4 of this Code).

C. Health and Safety Requirements. Except as otherwise specifically provided in this chapter, the following health and safety requirements shall be applicable to all massage establishments located within the City:

1. Towels and Linens. The massage establishment shall at all times be equipped with an adequate supply of clean sanitary towels, coverings, and linens, and all massage tables shall be covered with a clean sheet or other clean covering for each patron. After a towel, covering, or linen has been used once, it shall be deposited in a closed receptacle and not used again until properly laundered and sanitized. Towels, coverings, and linens shall be laundered either by regular commercial laundering, or by a noncommercial laundering process that includes immersion in water at least one hundred forty degrees Fahrenheit for not less than fifteen minutes during the washing or rinsing operation. Clean towels, coverings, and linens shall be stored in closed, clean cabinets when not in use.

2. Cleaning and Disinfecting. All rooms or cubicles, wet and dry heat rooms, toilet rooms, shower compartments, hot tubs, and pools shall be thoroughly cleaned and disinfected as needed, and at least once each business day when the premises are open and such facilities are in use. All bathtubs shall be thoroughly cleaned and disinfected after each use.

3. Liquids, Creams, and Powders. All liquids, creams, or other preparations used on or made available to patrons shall be kept in clean and closed containers. Powders may be kept in clean shakers. All bottles and containers shall be distinctly and correctly labeled to disclose their contents. When only a portion of a liquid, cream, or other preparation is to be used on or made available to a patron, it shall be removed from the container in such a way as not to contaminate the remaining portion.

4. Invasive Procedures. No invasive procedures shall be performed on any patron. Invasive procedures include, but are not limited to: (a) application of electricity that contracts the muscle; (b) penetration of the skin by metal needles; (c) abrasion of the skin below the nonliving, epidermal layers; (d) removal of skin by means of any razor-edged instrument or other device or tool; and (e) use of any needle-like instrument for the purpose of extracting skin blemishes; and (f) other similar procedures.

5. Garments Provided to Patrons. All bathrobes, bathing suits, and/or other garments that are provided for the use of patrons shall be either fully disposable and not used by more than one patron, or shall be laundered after each use pursuant to subsection (C)(1) of this Section.

6. Combs and Brushes. All combs, brushes, and/or other personal items of grooming or hygiene that are provided for the use of patrons shall be either fully disposable and not used by more than one patron, or shall be fully disinfected after each use.

7. Footwear. No patrons shall be allowed to use any shower facilities of the massage establishment unless such patrons are wearing slip-resistant sandals or flip-flops while in the shower compartment. All footwear such as sandals or flip-flops that are provided for the use of patrons either shall be fully disposable and not used by more than one patron, or shall be fully disinfected after each use.

8. Draping and Contact with Genitals. The patron's genitals, pubic area, anus, and areola must be fully draped at all times while any individual employed or retained by the massage establishment to practice massage, or any other employee or operator, is in the room or cubicle with the patron. No massage shall be provided to a patron that results in intentional contact, or occasional and repetitive contact, with the genitals, pubic area, anus, or areola of a patron.

9. Alcohol. No alcoholic beverages shall be sold, served, or furnished to any patron; nor shall any

alcoholic beverages be kept or possessed on the premises of a massage establishment.

D. Attire and Hygiene. The following attire and physical hygiene requirements shall be applicable to all employees, and any other persons who work permanently or temporarily on the premises of a massage establishment within the City, including, but not limited to, all persons who are employed or retained to practice massage:

1. Garments. All persons shall wear clean and sanitary outer garments at all times. All outer garments shall be of a fully opaque, nontransparent material and provide complete covering from at least the mid-thigh to two inches below the collarbone. The midriff may not be exposed.

2. Exposure. No operator, employee, or visitor shall, while on the premises of a massage establishment, and while in the presence of any patron, customer, employee or visitor, expose his or her genitals, buttocks, or chest.

3. Clean Skin. All persons shall thoroughly wash their hands with soap and water or any equally effective cleansing agent immediately before providing massage. No massage shall be provided upon a surface of the skin or scalp of a patron where such skin is inflamed, broken (e.g., abraded or cut), or where a skin infection or eruption is present.

E. Display of Permits and Certifications. Each person employed or retained to perform massage in or on the premises shall display on his or her person a copy of the valid photograph-bearing identification card issued to that employee by the CMTC. A copy of each such identification card shall also be displayed in an open and conspicuous place visible from the entrance and/or reception and waiting area of the massage establishment. The home address of any employee need not be displayed. (Ord. 761-11 § 2, 2011)

#### **9.34.100 Change of business name or location.**

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No person permitted to operate a massage establishment under this chapter shall operate under any name or conduct business under any designation not specified in the establishment registration certificate or operator permit and City business license. Upon a change of location where there is no change of ownership, an application for an amended establishment registration certificate or operator permit shall be made to the Permit Administrator, and such application shall be granted, provided all applicable provisions of this Code are complied with as to the new location. (Ord. 761-11 § 2, 2011)

#### **9.34.110 Sale or transfer of massage establishment or ownership interests.**

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Upon a sale or transfer of any massage establishment, or upon the sale or transfer of some or all of the interest of any massage establishment owner to a person who is not already an owner, a new establishment registration certificate or operator permit shall be required. (Ord. 761-11 § 2, 2011)

#### **9.34.120 Revocation or suspension—Reasons.**

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Any operator permit or establishment registration certificate issued pursuant to this chapter may be suspended or revoked by the Permit Administrator after a hearing, where it is found by clear and convincing evidence that any of the following have occurred:

A. Finding of Violation. The person(s) to whom the operator permit or establishment registration certificate has been issued, or any person employed or retained by the massage establishment, has been found to have violated any provision of this chapter; or

B. Owner not Certified. Any owner of a massage establishment which is operating pursuant to a establishment registration certificate is no longer qualified as a certified massage technician for any reason; or

C. **Prohibited Conduct.** The permittee, certificate holder, or any person employed or retained by the massage establishment has been convicted in a court of competent jurisdiction of having violated, or has engaged in conduct constituting a violation of, any of the following: California Penal Code Section 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), or 653.22, or conspiracy or attempt to commit any such offense, or any offense in a jurisdiction outside of the State of California that is the equivalent of any of the aforesaid offenses; or

D. **Registration under Penal Code Section 290.** The permittee, certificate holder, or any person employed or retained by the massage establishment is required to register under Section 290 of the California Penal Code; or

E. **Nuisance Injunction.** The permittee or certificate holder has been subject to a permanent injunction against the conducting or maintaining of a nuisance pursuant to this Code, or Sections 11225 through 11235 of the California Penal Code, or any similar provision of law in any jurisdiction outside the State of California; or

F. **Fraud or Misrepresentation.** The permittee, certificate holder, or any employee has engaged in fraud or misrepresentation or has knowingly made a misstatement of material fact while working in or for the massage establishment; or

G. **Operation during Suspension.** The permittee or certificate holder has continued to operate the massage establishment after the operator permit or establishment registration certificate has been suspended; or

H. **Massage without Certification.** Massage has been performed on the premises with or without the permittee or certificate holder's actual knowledge, by any person who is not a duly authorized certified massage technician; or

I. **Prohibited Acts.** There have been one or more acts prohibited under California Penal Code Section 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), or 653.22 taking place on the premises, whether or not any criminal prosecution has been pursued or conviction obtained for such acts, and whether or not they occurred with or without the actual knowledge of the permittee or certificate holder; or

J. **Sexual Touching.** The permittee, certificate holder, or any person employed or retained by the massage establishment or any other person on the premises of the massage establishment has engaged in conduct or committed acts that a reasonable person in a patron's position would understand as an offer to perform on or engage in with the patron acts that are sexual in nature or that involve touching of the patron's genitals, pubic area, anus, and areola.

K. **Negligent Supervision.** The permittee or certificate holder failed to provide adequate supervision of the massage establishment, resulting in a pattern of at least three violations of this Code or State or Federal law. (Ord. 761-11 § 2, 2011)

### **9.34.130 Revocation or suspension—Hearing procedure.**

A. **Written Notice Required.** The Permit Administrator, before revoking or suspending any operator permit or establishment registration certificate, shall give the permittee or certificate holder at least ten business days' written notice of the alleged grounds for revocation or suspension and shall conduct a hearing in the matter of whether the permit or certificate shall be revoked or suspended. The hearing shall be conducted at least ten business days from the date of written notice which shall be provided in the following manner:

1. **Service of Notice and Order.** All notices shall be posted on the property and also served upon the record owner and any tenant. A copy of the notice shall also be served on each of the following if known to the Permit Administrator or disclosed from official public records: the holder of any mortgage or deed of trust or other lien or encumbrance; the owner or holder of any lease; and the holder of any other estate or legal interest of record in or to the building or the land on which it is located. The failure of the Permit Administrator to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served to

relieve any such person from any duty or obligation imposed by the provisions of this section.

2. **Method of Service.** Service shall be made upon all persons entitled thereto either personally or by mailing a copy by First Class U.S. Mail to each such person at their address as it appears on the last equalized assessment roll of the county or as known to the Permit Administrator. If no address of any such person appears or is known to the Permit Administrator, then a copy shall be mailed to the address of the parcel of land involved in the proceedings. The failure of any such person to receive such notice shall not affect the validity of any proceedings taken under this section. Service shall be effective on the date of the mailing.

3. **Proof of Service.** At the time of service, each person affecting service shall complete a written declaration under penalty of perjury, which declares the time, date and manner in which service was made. The declaration shall be affixed to the copy of the notice and order retained by the Permit Administrator.

B. **Hearing.** The Permit Administrator shall consider all evidence at the hearing. The hearing may, after being commenced within the time specified pursuant to subsection A of this section, be continued for good cause by the Permit Administrator from time to time. The Permit Administrator shall, at the conclusion of the hearing, make findings of fact based upon the evidence submitted and shall decide whether or not the permit or certificate shall be revoked or suspended.

C. **Notice of Decision.** The Permit Administrator's written notice of decision shall be served on the permittee or certificate holder, within thirty business days of the conclusion of the hearing, in the manner provided in subsection A, and, in the case of a revocation or suspension, such notice of decision shall indicate the appeal procedures as set forth hereinafter.

D. **Appeal.** Any applicant, permittee, or certificate holder shall have the right to appeal from a decision by the Permit Administrator to deny a permit or certificate application or renewal application, or to approve such an application with conditions, or to suspend or revoke an operator permit or establishment registration certificate, by filing with the City Clerk a written notice of appeal specifying the grounds for such appeal, within ten business days after the decision has been served on the applicant or permittee or certificate holder. The appeal must also include the appeal fee established by resolution of the City Council and included within the Master Fee Schedule. Such appeal shall be heard by an administrative hearing officer appointed by the City Manager or designee, upon not less than ten business days written notice to the appellant. The designated administrative hearing officer shall consider all relevant evidence at the hearing, may continue the hearing for good cause, and shall require such legal briefing as may be required to address any issues raised by the appeal. Within a reasonable time, but not more than twenty business days following the conclusion of the hearing, the administrative hearing officer shall issue a written decision affirming, denying, or modifying the decision from which the appeal was taken, supported by factual findings and determinations referenced by supporting evidence. The written decision shall be served on the appellant as provided in Code of Civil Procedure Section 1094.6(b), with a copy submitted to the City Clerk and the City Attorney. The written decision of the administrative hearing officer shall be final and shall be subject to judicial review according to the provisions and time limits set forth in Code of Civil Procedure Section 1094.6. (Ord. 761-11 § 2, 2011)

#### **9.34.140 Business license required.**

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The requirements of this chapter shall be in addition to any business license and business license tax requirements imposed pursuant to Chapter 5.04 of this Code for operation of a massage establishment. (Ord. 761-11 § 2, 2011)

#### **9.34.150 Exemptions.**

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This chapter shall not apply to the following classes of individuals while engaged in the performance of the duties of their respective professions:

- A. Physicians, surgeons, chiropractors, osteopaths, podiatrists, physical therapists, nurses, or any other person licensed to practice any healing art under the provisions of Division 2 (commencing with Section 500) of the Business and Professions Code when engaging in such practice within the scope of his or her license;
- B. Trainers of any amateur, semi-professional, or professional athlete or athletic team, so long as such persons do not practice massage as their primary occupation at any location where they provide such services in the City;
- C. Barbers, estheticians and cosmetologists who are duly licensed under the laws of the State of California, while engaging in practices within the scope of their licenses;
- D. Individuals in the City temporarily for educational events or disaster relief;
- E. Individuals administering massages or health treatments involving massage to persons participating in road races, track meets, triathlons, educational events, conferences or similar single-occurrence athletic, recreational, or educational events;
- F. Somatic technicians who use no physical touch of any kind at any time in their practice;
- G. Enrolled students of a school of massage when they are performing massage within the City as part of a formal supervised internship or training program operated by the school, without compensation other than school credit, on the premises of a massage establishment duly authorized to operate pursuant to the terms of this chapter; and provided that the operator has first notified the Permit Administrator in writing of the name, residence address, and school of the students and the dates of the trainings. (Ord. 761-11 § 2, 2011)

#### **9.34.160 Violations a misdemeanor and a nuisance.**

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Any massage provided or massage establishment operated, conducted, or maintained contrary to the provisions of this chapter shall be, and the same is hereby declared to be, a misdemeanor and a public nuisance, and the City Attorney may, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings, for the abatement, removal and enjoinder thereof, in the manner provided by law. Such remedies shall be in addition to any other judicial and administrative penalties and remedies available to the City under this Code or State or Federal law. (Ord. 761-11 § 2, 2011)