CITY OF DANA POINT

AGENDA REPORT

Reviewed By:	
DH	X
CM	X
CA	___

DATE: JUNE 17, 2025

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: KELLY REENDERS, ASSISTANT CITY MANAGER
RAY OROPEZA, CODE ENFORCEMENT SUPERVISOR

SUBJECT: SECOND READING AND ADOPTION OF AN ORDINANCE AMENDING DANA POINT MUNICIPAL CODE TITLE 5, BUSINESS REGULATIONS AND CHAPTER 4.02 TO DEFINE ELECTRIC BIKES OR SCOOTERS

RECOMMENDED ACTION:

That the City Council hold a second reading and adopt an Ordinance entitled:

> AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, AMENDING DANA POINT MUNICIPAL CODE TITLE 5, BUSINESS REGULATIONS AND CHAPTER 4.02 TO DEFINE ELECTRIC BIKES OR SCOOTERS (ACTION DOCUMENT A)

BACKGROUND AND DISCUSSION:

At their regular meeting on June 3, 2025, the City Council held a public hearing and conducted the first reading of an Ordinance amending Municipal Code Title 5, Business Regulations, to eliminate chapters that are no longer relevant or fall within the jurisdiction of another agency, as well as other minor revisions to improve consistency with other chapters and update references to Government Codes. Chapter 4.02, Rollerskating, Skateboarding, and Bicycling, Prohibited in Certain Designated Areas, was also updated to include a definition of electric bikes and scooters.

Adoption of the Ordinance by the City Council would affirm the City Council's June 3, 2025, approval, subject to publishing of the Ordinance in accordance with State and local regulations.

NOTIFICATION AND FOLLOW-UP:

None.

STRATEGIC PLAN IMPLEMENTATION:

Strategic Plan Goal #3, Foster Economic Health and Prosperity.

FISCAL IMPACT:

None.

ACTION DOCUMENT: **PAGE #**

ACTION DOCUMENT A:

ORDINANCE NO. 25-XX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA AMENDING DANA POINT MUNICIPAL CODE TITLE 5, BUSINESS REGULATIONS AND CHAPTER 4.02 TO DEFINE ELECTRIC BIKES OR SCOOTERS

WHEREAS, the City Council's Strategic Plan includes a project directing Staff to review of City Municipal Codes to eliminate outdated sections, comply with Federal and State Laws and to modify sections to meet the City's goals; and

WHEREAS, the City Council completed a preliminary review of the suggested modifications to Title 5, Business Regulations and Chapter 4.02 at its May 6, 2025, meeting and directed staff to return to an upcoming meeting to introduce and hold the first reading of the revised ordinance.

NOW, THEREFORE, the City Council of the City of Dana Point Ordains as follows:

SECTION 1: The foregoing Recitals are incorporated herein and made a part hereof.

SECTION 2: The City Council finds that this Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines Section 15060(c)(2) and 15061(b)(3) in that the proposed changes are not anticipated to result in a direct or reasonably foreseeable indirect physical change in the environment nor will they have the potential of creating a significant effect on the environment.

SECTION 3: Title 5 and Chapter 4.02 of the Dana Point Municipal Code is hereby amended as provided in Exhibit A and Exhibit B, respectively.

SECTION 4: If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid by a final judgment of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subdivision, sentence, clause, phrase, or portion of this Ordinance irrespective of the fact that one or more sections, subdivisions, sentences, clauses, phrases, or portions of this Ordinance be declared invalid.

SECTION 6: The City Clerk is authorized and directed to publish this Ordinance or a summary thereof in the manner provided by law and in accordance with procedures normally taken.

SECTION 7: The City Clerk shall certify to the passage of this Ordinance and cause the same to be published as required by law, and the Ordinance shall take effect thirty (30) days after adoption.

SECTION 8: Upon the effective date of this Ordinance, all former ordinances or parts thereof conflicting or inconsistent with the provisions of this Ordinance are hereby repealed and declared to be of no further force and effect.

APPROVED AND ADOPTED by the City Council of the City of Dana Point at a regular meeting on the ___ day of ___ 2025.

_____
Matthew Pagano
Mayor

ATTEST:

_____
Shayna Sharke
City Clerk

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

I, SHAYNA SHARKE, City Clerk of the City of Dana Point, California, DO HEREBY CERTIFY that the foregoing Ordinance was adopted by the City Council of said City at a regular meeting of said City Council held on the ____ day of ___ 2025 and that it was so adopted by called vote as follows:

AYES:

NOES:

ABSENT:

ABSTAIN:

_____
Shayna Sharke,
City Clerk

EXHIBIT A: REVISED TITLE 5

Title 5

BUSINESS REGULATIONS

Chapter 5.30

CABLE COMMUNICATIONS FRANCHISES

Chapter 5.32

ADULT-ORIENTED BUSINESSES

Chapter 5.36

VIDEO FRANCHISE FEES, CUSTOMER SERVICE AND OTHER VIDEO-RELATED MATTERS

Chapter 5.38

SHORT-TERM RENTAL PERMITS

Chapter 5.40

CANNABIS RELATED USES, COMMERCIAL CANNABIS ACTIVITIES, DELIVERIES, AND CULTIVATION PROHIBITED

Chapter 5.42

SMALL WIRELESS FACILITY AND ELIGIBLE FACILITY REQUEST REGULATIONS

Note: Sections from the Codified Ordinances of the County of Orange have been adopted by reference. For information on these sections, contact the Office of the City Clerk.

CHAPTER 5.02
REGULATION OF STREET VENDING ACTIVITIES

Prior ordinance history: Ord. 91-15.

§ 5.02.010. Definitions.

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

"Commercial vehicle" means a vehicle maintained for the transportation of persons for hire, compensation or profit, or designed, used or maintained primarily for the transportation of property. Passenger vehicles which are not used for the transportation of persons for hire, compensation or profit are not commercial vehicles.

"Driver" means and includes every person who drives or is in actual charge and control of any vehicle or nonmotorized device from which vending takes place.

"Goods or merchandise" includes items and products of every kind and description, including all food, produce and beverage items.

"Highway" means a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel.

"Nonmotorized device" means any device moved exclusively by human power, including but not limited to, any pushcart, wagon, bicycle, tricycle or other wheeled container or conveyance.

"Owner" means and includes every person having legal title to any vehicle, commercial vehicle or nonmotorized device from which vending takes place.

"Person" means any natural person, firm, partnership, association, corporation or other entity of any kind or nature.

"Vehicle" means a device by which any person or property may be propelled, moved or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks.

"Vend" or "vending" means the sale or offering for sale of any goods or merchandise to the public from a vehicle, commercial vehicle or nonmotorized device.

"Vendor" means any person who engages in the act of vending from a vehicle, commercial vehicle or nonmotorized device or who drives or otherwise operates any such vehicle or nonmotorized device for the purpose of vending therefrom.
(Amended by Ord. 96-09, 6/25/96)

§ 5.02.020. Permit Process.

It is unlawful for any person to engage in the act of vending within the City unless that person first obtains a vendor permit from the City and complies with all other provisions of this Chapter. Any person desiring to vend within the City shall first submit an application for a vendor permit . A nonrefundable processing fee and annual vendor permit fee to be set by City Council resolution shall be submitted with the application. Such application shall include, but not be limited to, the following information:

(a) Name;

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

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

(d) A copy of the applicant's State of California driver's license or State of California-issued identification

card;

(e) Current home address of applicant;

(f) The previous home addresses of applicant, if any, for the period of five years immediately prior to date of application;

(g) Business, occupation and/or employment history of applicant for the five years immediately preceding the date of application;

(h) Two sets of fingerprints taken by the Orange County Sheriff's Department;

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

(j) The name and address of the owner of the vehicle, commercial vehicle or nonmotorized device to be used for vending;

(k) Any criminal convictions or offenses within the past 10 years;

(l) Any violations of this Chapter of this Code within the past year;

(m) The make, model and license plate number of all vehicles or commercial vehicles which will be used by the vendor;

(n) A written description and photograph of all nonmotorized devices which will be used by the vendor;

(o) A written description of the food, goods and/or merchandise proposed to be sold by the vendor;

(p) Such other information as may be reasonably required by the City;

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

(r) Authorization for the City and its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application.

Upon receipt of a fully completed application for a vendor permit and the applicable fees, the City shall review the information and conduct a criminal background check for each vendor listed in the application.

(Amended by Ord. 96-09, 6/25/96)

§ 5.02.030. Permit Approval.

The vendor permit shall be approved, conditionally approved or denied by the City Manager or his or her designee based on whether the following criteria have been met:

(a) Payment of all applicable fees;

(b) Receipt and approval by the City Attorney of certificates of insurance of at least $500,000 combined single limit, certifying as to adequate liability insurance for the specific vending business which the vendor will work for or owns, including coverage for all individuals, property and vehicles to be used in the vending. If a vendor will not be using a vehicle or commercial vehicle to vend, then the certificate of insurance will not be required;

(c) A finding that the vendor has not been found guilty or pled no contest to any of the following within the past five years: a crime of moral turpitude; a drug-related misdemeanor or felony, including but not limited to, the sale of a controlled substance; the sale, distribution or display of obscene matter; indecent exposure; selling or disposing of lottery tickets; gambling; bookmaking; or illegal use of food

stamps;

(d) A finding that, within the past year, the vendor has not had a vendor permit revoked or been found guilty of a violation of this Chapter;

(e) Accurate completion of the application.

The decision of the City Manager may be appealed pursuant to Sections 2.04.100 through 2.04.130 of this Code.

If the vendor permit application is approved, the City shall issue a vendor permit and vendor identification card to each vendor. The vendor identification card shall include a photograph of the vendor. The vendor permit and vendor identification card will be valid for a period of one year and must be renewed on or before the one year anniversary of the issuance of the permit if the vendor wishes to continue vending in the City.

Any person found to have misrepresented any information on the application will not be eligible to apply for a vendor permit for a period of one year.

(Amended by Ord. 96-09, 6/25/96)

§ 5.02.040. Vendor Regulations.

(a) All vendors vending fruits, vegetables, ice cream or other foodstuffs shall be in possession of a valid Orange County Health Inspection Sticker. If such foodstuffs are being vended from a vehicle or commercial vehicle, the sticker shall be affixed to the lower right side of the windshield of the vehicle or commercial vehicle and be clearly visible and legible. If such foodstuffs are being vended from a nonmotorized vehicle, the sticker shall be clearly displayed in a prominent location.

(b) While vending, each vendor who operates or vends from a vehicle or commercial vehicle shall have on his or her person a current valid State of California driver's license or State of California identification card which he or she shall make available for inspection by law enforcement officials upon request.

(c) Each vendor shall wear his or her vendor identification card issued by the City in a visible position upon his or her person at all times while vending.

(d) Each vendor shall comply with all requirements of state law relating to the collection of applicable sales tax on any food, goods or merchandise sold within the City of Dana Point.

(e) Vendors may only vend between the hours of 7:00 a.m. and 7:00 p.m.

(Amended by Ord. 96-09, 6/25/96)

§ 5.02.050. Prohibited Conduct.

(a) It is unlawful for any person to vend from any nonmotorized device or operate any nonmotorized device for vending purposes while parked, stopped or standing upon any public street, highway, alley, sidewalk or parkway in the City.

(b) It is unlawful for any person to vend from any vehicle or commercial vehicle unless the driver of such vehicle or commercial vehicle has brought such vehicle to a complete stop and lawfully parked adjacent to a curb. Such vehicle or commercial vehicle shall be deemed to not be lawfully parked for purposes of this Chapter if it is parked in any of the following locations:

(1) Within an intersection;

(2) On a crosswalk;

(3) Within an area designated as "no parking" by either signage or a curb painted red;

(4) Within 15 feet of the driveway entrance to a fire station;

(5) In front of a public or private driveway;

(6) On a sidewalk;

(7) Alongside or opposite any street or highway excavation or obstruction when stopping, standing or parking would obstruct traffic;

(8) On the roadway side of any vehicle stopped, parked or standing at the curb or edge of a highway;

(9) Alongside curb space designated for the loading and unloading of bus passengers;

(10) Upon a bridge;

(11) In front of that portion of a curb which has been cut down, lowered or constructed to provide wheelchair access and which has been designated as such by either signage or red paint on the curb.

(c) It is unlawful for any person to vend from a vehicle while parked, stopped or standing upon any public street, highway, alley, sidewalk or parkway:

(1) Before the hour of 7:00 a.m. or after the hour of 7:00 p.m.;

(2) Within 500 feet of any school property;

(3) In any manner that impedes the flow of traffic;

(4) In any manner that impedes the flow of pedestrians on any sidewalk;

(5) Without clearly displaying the vendor identification card on the vehicle so that it is visible from the public right-of-way.

(d) It is unlawful to engage in vending without first obtaining a vendor permit from the City.

(e) It is unlawful for any vendor or owner to drive or cause to be driven any vehicle or commercial vehicle used for vending which is in a defective, unsafe or unsanitary condition. Every vehicle or commercial vehicle used for vending shall be subject to inspection by any officer of the City at all times during its operation.

(Amended by Ord. 96-09, 6/25/96)

§ 5.02.060. Vending on Private Property.

No vending shall be allowed on private property unless a separate permit is first obtained from the City and such vehicle, commercial vehicle or nonmotorized device is otherwise being operated in compliance with this Chapter and any other applicable state or local laws, including the City's zoning regulations. (Amended by Ord. 96-09, 6/25/96)

§ 5.02.070. Remedies for Violation.

In addition to any other penalties of law, any vendor found to be in violation of this Chapter or who has been convicted or pled no contest to any of the violations outlined in Section 5.02.030(c) shall be subject to the following:

(a) Revocation of the current vendor permit and vendor identification card.

(b) Requirement that the vendor discontinue vending and vacate the area.

(c) Should any vendor fail to discontinue vending at the direction of any officer of the City, all property associated with the vendor's operation shall be impounded at the vendor's cost. In the event that property has been seized, said property will be held until all financial obligations related to impound costs and any other legally imposed fees, fines or costs have been met.

(Amended by Ord. 96-09, 6/25/96)

§ 5.02.080. Appeal of Revocation of Vendor Permit.

In the event of the revocation of a vendor permit, the permittee shall have the right to appeal such revocation to the City Council pursuant to Sections 2.04.100 through 2.04.130 of this Code. In the event the revocation is upheld, the permittee shall not be eligible to apply for a new vendor permit for a period of one year from the date of revocation.

(Amended by Ord. 96-09, 6/25/96)

§ 5.02.090. Violation—Penalty.

Any person or persons who shall violate the provisions of this Chapter shall be guilty of a misdemeanor and subject to punishment in accordance with Section 1.01.220 of this Code. Each and every day during any portion of which the provisions of this Chapter are violated shall constitute a separate offense and may be punished accordingly.

(Amended by Ord. 96-09, 6/25/96)

CHAPTER 5.03
REGULATION OF SIDEWALK VENDORS

§ 5.03.010. Purpose.

(a) The purpose of this chapter is to establish a permitting and regulatory program for sidewalk vendors that complies with Senate Bill 946 (Chapter 459, Statutes 2018). The provisions of this chapter allow the City to encourage small business activities by removing total prohibitions on portable food stands and certain forms of solicitation while still permitting regulation and enforcement of unpermitted sidewalk vending activities to protect the public's health, safety and welfare.

(b) The City Council hereby finds that to promote the public's health, safety and welfare, restrictions on sidewalk vending are necessary to:

(1) Ensure no unreasonable interference with the flow of pedestrian or vehicular traffic including ingress into, or egress from, any residence, public building, or place of business, or from the street to the sidewalk, by persons exiting or entering parked or standing vehicles; and

(2) Provide reasonable access for the use and maintenance of sidewalks, pathways, poles, posts, traffic signs or signals, hydrants, water valves, manholes, storm drains, catch basins, firefighting apparatus, mailboxes or other utilities or appurtenances, as well as access to locations used for public transportation services; and

(3) Reduce exposure to the City for personal injury or property damage claims and litigation; and

(4) Ensure sidewalk vending activities occur only in locations where such activities would not restrict sidewalk and pathway access and enjoyment to all users, particularly those with disabilities.

(c) This Chapter shall not apply to the following:

(1) The sale of agriculture products on the site where the product is grown;

(2) Vending from food trucks and other motorized vehicles on public streets or alleys in accordance with Chapter 5.02 of this Code; or

(3) Vendors under contract for City-sponsored and/or City-approved special events, including, but not limited to, a certified farmers' market, swap meet, street fairs, parades, festivals and outdoor concerts.

(Added by Ord. 19-02, 5/7/19)

§ 5.03.020. Definitions.

As used in this chapter, the following terms and phrases shall have the meaning ascribed to them in this part, unless the context in which they are used clearly requires otherwise. If a term or phrase is not defined in this part, or elsewhere in this code, the most common dictionary definition is presumed to be correct.

"Alcohol" and "alcoholic beverage" shall have the same meaning as defined in Section 13.04.020 of this code, or any successor section.

"Cannabis" means the substances defined in Section 5.40.010 of this code, or any successor section.

"Certified farmers' market" means a location operated in accordance with Chapter 10.5 (commencing with Section 47000) of Division 17 of the Food and Agricultural Code and any regulations adopted pursuant to that chapter, or any successor chapter.

"Curb face" means the vertical or sloping surface on the roadway side of the curb.

"Emergency vehicle access" means the roadway path or other surface that provides police or fire safety vehicular access from the dispatched point of origin to a facility, building, parcel, park or portion thereof. Emergency vehicle access includes, but is not limited to, fire lanes, public and private streets, parking lot lanes, access roadways, and walkways.

"Food" means any item provided in Health and Safety Code Section 113781, or any successor section.

"Hearing officer" means an impartial individual designated by the City Manager to determine appeals pursuant to and in accordance with Section 5.03.080.

"Heating element" means any device used to create heat for food preparation.

"Merchandise" means any item(s) that can be sold and immediately obtained from a sidewalk vendor which is not considered food. Items for rent shall not be considered merchandise.

"Park" means any area dedicated or established as a public park, including, without limitation, active and passive parks.

"Pathway" means a paved path or walkway for pedestrian travel, other than a sidewalk.

"Person" means and includes all domestic and foreign corporations, associations, syndicates, joint stock corporations, partnerships of every kind, clubs, business or common law trusts, societies, and individuals transacting and carrying on any business in the City.

"Pocket park" means any park located in residential neighborhoods smaller than or equal to 30,000 square feet. These parks are situated adjacent to individual private residences.

"Public property" means all property owned or controlled by the City, including, but not limited to, alleys, parks, pathways, streets, parking lots, sidewalks, and walking trails.

"Residential" means any area zoned exclusively as residential in Title 9 of this code, including without limitation RSF 2, RSF 3, RSF 4, RSF 7, RSF 8, and RSF 12 zoning districts and specific plan areas.

"Roaming sidewalk vendor" means a sidewalk vendor who moves from place-to-place and stops only to complete a transaction.

"Sexually-oriented material" means the material defined in Section 5.32.110(l) of this Code, or any successor section.

"Sidewalk" means that portion of a highway, other than the roadway, set apart by curbs, barriers, markings or other delineation for pedestrian travel.

"Sidewalk vending receptacle" means a pushcart, stand, display, wagon, showcase, rack, or non-motorized conveyance used for sidewalk vending activities. "Sidewalk vending receptacle" shall not include pedal driven carts.

"Sidewalk vendor" or "vendor" means a person(s) who sells food or merchandise from a sidewalk vending receptacle or from one's person, upon a public sidewalk or pathway.

"Sidewalk vendor activities" or "sidewalk vending" or "sidewalk vending activities" mean actions that qualify a person as a sidewalk vendor or actions done in anticipation of becoming a sidewalk vendor such as, but not limited to, installation, placement, or maintenance of any sidewalk vendor receptacles.

"Special event" means any temporary permitted event approved by the City, including those permitted in accordance with Section 9.39.070.

"Stationary sidewalk vendor" means a sidewalk vendor who vends from a fixed location.

"Street" means a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel.

"Swap meet" means a location operated in accordance with Article 6 (commencing with Section 21660) of Chapter 9 of Division 8 of the Business and Professions Code, and any regulations adopted pursuant to that

Chapter, or any successor Chapter.

"Tobacco" shall mean any preparation of the nicotine-rich leaves of the tobacco plant, which are cured by a process of drying and fermentation for use in smoking, chewing, absorbing, dissolving, inhaling, snorting, sniffing, or ingesting by any other means into the body.

"Tobacco paraphernalia" shall mean any paraphernalia, equipment, device, or instrument that is primarily designed or manufactured for the smoking, chewing, absorbing, dissolving, inhaling, snorting, sniffing, or ingesting by any other means into the body of tobacco, tobacco products, or other controlled substances as defined in California Health and Safety Code Section 11054 et seq. Items or devices classified as tobacco paraphernalia include, but are not limited to, the following: pipes, punctured metal bowls, bongs, water bongs, electric pipes, e-cigarettes, e-cigarette juice, buzz bombs, vaporizers, hookahs, and devices for holding burning material. Lighters and matches shall be excluded from the definition of tobacco paraphernalia.

"Tobacco product" shall mean any product in leaf, flake, plug, liquid, or any other form, containing nicotine derived from the tobacco plant, or otherwise derived, which is intended to enable human consumption of the tobacco or nicotine in the product, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means.
(Added by Ord. 19-02, 5/7/19)

§ 5.03.030. Permit Required.

(a) Permit Required. No person, either for himself/herself or any other person, shall engage in any sidewalk vendor activities within the City without first applying for and receiving a permit from the City Manager, or designee, in accordance with this Chapter.

(b) Application. A written application for a sidewalk vendor permit shall be filed with the City Manager, or designee, on a form provided by the City and shall contain the following information:

(1) The name, address, and telephone number of the person applying to become a sidewalk vendor;

(2) If the sidewalk vendor is an agent of an individual, company, partnership, or corporation, the name and business address of the principal;

(3) The California driver's license or identification number, individual taxpayer identification number, or municipal identification number (which shall not be available to the public for inspection, is confidential, and shall not be disclosed except as required to administer the permit or comply with a State law or State or Federal court order);

(4) The name, address, and telephone number of the person who will be in charge of any roaming sidewalk vendors, sidewalk vending activity and/or be responsible for the person(s) working at the sidewalk vending receptacle;

(5) The name, address, and telephone number of all persons that will be employed as roaming sidewalk vendors or at a sidewalk vending receptacle;

(6) The number of sidewalk vending receptacles the sidewalk vendor will operate within the City under the permit;

(7) Whether the vendor intends to operate as a stationary sidewalk vendor or a roaming sidewalk vendor;

(8) The day(s) and hours of operation the stationary sidewalk vendor intends to operate at such location(s);

(9) The location(s) in the City where the stationary sidewalk vendor intends to operate;

(10) The dimensions of the sidewalk vendor's sidewalk vending receptacle(s), including a picture of each sidewalk vending receptacle operating under the permit;

(11) If the sidewalk vendor proposes to be a stationary sidewalk vendor, a description or site plan map of the proposed location(s) where vending will take place, showing that the stationary sidewalk vending location maintains a minimum of 36 inches of accessible route area, in compliance with the Americans with Disabilities Act;

(12) Whether the sidewalk vendor will be selling food, merchandise, or both;

(13) If the sidewalk vendor is selling food, a description of the type of food to be sold, whether such foods are prepared on site, and whether the vendor requires a heating element to prepare the food;

(14) If the vendor is selling merchandise, a description of the merchandise to be sold;

(15) A copy of the health permit required for any sidewalk vendors selling food, as required by Chapter 6.30.012 of this Code, or any successor chapter;

(16) Proof of his or her possession of a valid California Department of Tax and Fee Administration seller's permit, which shall be maintained during the pendency of the sidewalk vendor's permit;

(17) An acknowledgment that the sidewalk vendor will comply with all other generally applicable local, State, and Federal laws;

(18) A certification that, to his or her knowledge and belief, the information contained within the application is true and correct;

(19) An agreement by the sidewalk vendor to defend, indemnify, release and hold harmless the City, its City Council, boards, commissions, officers and employees from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to the permit or the vendor's sidewalk vending activities. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, or proceeding whether incurred by the permittee, City, and/or the parties initiating or bringing such proceeding;

(20) An acknowledgement that the sidewalk vendor's use of public property is at their own risk, the City does not take any steps to ensure public property is safe or conducive to the sidewalk vending activities, and the sidewalk vendor uses public property at his or her own risk;

(21) An acknowledgment by the sidewalk vendor that he or she will obtain and at all times during the duration of the permit, maintain any insurance of such types and in such amounts as required by the City's Risk Manager;

(22) An acknowledgment that at least four feet in width shall be maintained outside the vending receptacle and any customers acquiring food or merchandise;

(23) An acknowledgment that the vendor will relocate if any public agency or emergency personnel need to access facilities/appurtenances in the area where the vendor is operating when notified; and

(24) Any other relevant information required by the City Manager.

(c) Application and Permit Fees. Each application for a sidewalk vendor permit shall be accompanied by an application fee as established by resolution of the City Council. The application and permit is only applicable to the individual(s) named on the application. If said permit is approved, it shall not be necessary for the permittee to obtain a City business license to carry on the activities authorized by said permit, unless such permittee maintains a permanent place of business within the City.

(Added by Ord. 19-02, 5/7/19)

§ 5.03.040. Issuance of Permit.

(a) Within 30 calendar days of receiving a complete application determined at the sole discretion of the City Manager or designee, the City Manager may issue a sidewalk vendor permit, with appropriate conditions, as provided for herein, if he or she finds based on all of the relevant information that:

(1) The conduct of the sidewalk vendor will not unduly interfere with traffic or pedestrian movement, or tend to interfere with or endanger the public peace or rights of nearby residents to the quiet and peaceable enjoyment of their property, or otherwise be detrimental to the public peace, health, safety or general welfare;

(2) The conduct of the sidewalk vendor will not unduly interfere with normal governmental or City operations, threaten to result in damage or detriment to public property, or result in the City incurring costs or expenditures in either money or personnel not reimbursed in advance by the vendor;

(3) The conduct of such sidewalk vending activity will not constitute a fire hazard, and all proper safety precautions will be taken;

(4) The conduct of such sidewalk vending activity will not require the diversion of police officers to properly police the area of such activity as to interfere with normal police protection for other areas of the City;

(5) The sidewalk vendor has paid all previous administrative fines, completed all community service, and completed any other alternative disposition associated in any way with a previous violation of this Chapter;

(6) The sidewalk vendor has not had a permit revoked within the same calendar year;

(7) The sidewalk vendor's application contains all required information;

(8) The sidewalk vendor has not made a materially false, misleading, or fraudulent statement of fact to the City in the application process;

(9) The sidewalk vendor has satisfied all the requirements of this Chapter;

(10) The sidewalk vendor has paid all applicable fees as set by City Council resolution;

(11) The sidewalk vendor's sidewalk vending receptacle and proposed activities conform to the requirements of this Chapter;

(12) The sidewalk vendor has adequate insurance to protect the City from liability associated with the sidewalk vendor's activities, including the naming of the City as an additional insured, as determined by the City's Risk Manager; and

(13) The vendor has satisfactorily provided all information requested by the City Manager to consider the vendor's application.

(b) A sidewalk vendor permit is non-transferable. Any change in ownership or operation of a sidewalk vendor or sidewalk vending receptacle requires a new permit under this Chapter.

(c) All permits issued under this chapter, expire one year from the date they were issued.
(Added by Ord. 19-02, 5/7/19)

§ 5.03.050. Operating Conditions.

All sidewalk vendors are subject to the following operating conditions when conducting sidewalk vending activities:

(a) All food and merchandise shall be stored either inside or affixed to the sidewalk vendor receptacle or carried by the sidewalk vendor. Food and merchandise shall not be stored, placed, or kept on any public property. If affixed to the sidewalk vendor receptacle, the overall space taken up by the sidewalk vendor receptacle shall not exceed the size requirements provided in this section.

(b) The sidewalk vendor permit shall be displayed conspicuously at all times on the sidewalk vending receptacle or the sidewalk vendor's person. If multiple sidewalk vendors are staffing a sidewalk vendor receptacle or working as roaming sidewalk vendors, each person shall wear their permit on their person in a conspicuous manner.

(c) Sidewalk vendors shall not leave their sidewalk vending receptacle unattended to solicit business for their sidewalk vending activities. Sidewalk vending receptacles shall not be stored on public property and shall be removed when not in active use by a vendor.

(d) All sidewalk vendors shall allow a City police officer, firefighter, life safety services officer, or code enforcement officer, at any time, to inspect their sidewalk vending receptacle for compliance with the size requirements of this chapter and to ensure the safe operation of any heating elements used to prepare food.

(e) Sidewalk vending receptacles shall not exceed a total height of three feet, a total width of three feet, and a total length of three feet.

(f) No sidewalk vending receptacle shall be motorized or pedal-driven.

(g) If a sidewalk vending receptacle requires more than one person to conduct the sidewalk vending activity, all sidewalk vendors associated with the sidewalk vending receptacle shall be within five feet of the sidewalk vending receptacle when conducting sidewalk vending activities.

(h) Sidewalk vendors that sell food shall maintain a trash container in or on their sidewalk vending receptacle and shall not empty their trash into public trashcans. The size of the vendor's trash container shall be taken into account when assessing the total size limit of a sidewalk vending receptacle.

(i) Sidewalk vendors shall not leave any location without first picking up, removing, and disposing of all trash or refuse from their operation.

(j) Sidewalk vendors shall maintain the vending location in a clean, orderly, and sanitary condition.

(k) Sidewalk vendors shall maintain a minimum four foot clear accessible path free from obstructions, including sidewalk vending receptacles and customer queuing area.

(l) Sidewalk vendors shall comply with the noise standards provided in Chapter 11.10 of this code, and any successor chapters.

(m) Sidewalk vendors shall not approach persons to sell food or merchandise and shall not interfere in any way with anyone engaged in an activity to sell food or merchandise.

(n) Sidewalk vendors shall not vend to or otherwise conduct transactions with persons in moving vehicles or vehicles illegally parked or stopped.

(o) Sidewalk vendors shall immediately clean up any food, grease or other fluid or item related to sidewalk vending activities that falls on public property.

(Added by Ord. 19-02, 5/7/19)

§ 5.03.060. Prohibited Activities and Locations.

(a) Sidewalk vendors shall comply with all operating conditions, including those conditions set forth in Section 5.30.050.

(b) All sidewalk vendors, regardless of whether a roaming sidewalk vendor or stationary sidewalk vendor, are prohibited from conducting sidewalk vending activities between the hours of 10:00 p.m. and 7:00 a.m. daily. In residential areas, all stationary sidewalk vending is prohibited. In residential areas, roaming sidewalk vending activity is prohibited between the hours of 6:00 p.m. or sunset, whichever is earlier, and 9:00 a.m. of the following day, Monday through Saturday, inclusive, and all day on Sundays and federal holidays.

(c) Sidewalk vendors shall not engage in any of the following activities:

(1) Renting merchandise to customers;

(2) Displaying merchandise or food that is not available for immediate sale;

(3) Selling of sexually-oriented material, tobacco, tobacco products or paraphernalia, cannabis, or alcohol;

(4) Using an open flame on or within any sidewalk vending receptacle;

(5) Using sound amplification equipment, music or live entertainment in conjunction with any sidewalk vending activity, including, but not limited to, the use of bells, whistles and horns or bright/flashing lights;

(6) Using free standing signs in conjunction with any sidewalk vending activities;

(7) Continuing to offer food or merchandise for sale, following, or accompanying any person who has been offered food or merchandise after the person has asked the vendor to leave or after the person has declined the offer to purchase food or merchandise;

(8) Knowingly making false statements or misrepresentations during the course of offering food or merchandise for sale;

(9) Blocking or impeding the path of the person(s) being offered food or merchandise to purchase;

(10) Making any statements, gesture, or other communication which a reasonable person in the situation of the person(s) being offered food or merchandise to purchase would perceive to be a threat and which has a reasonable likelihood to produce in the person(s) a fear that the threat will be carried out; and

(11) Touching the person(s) being offered to purchase food or merchandise without that person(s)' consent.

(d) Sidewalk vendors shall not engage in sidewalk vending activities at the following locations:

(1) Within 12 inches of any curb face on all roads;

(2) Within 15 feet of any entrance or exit to a building, structure or facility;

(3) On any designated emergency vehicle access way;

(4) Any public property that does not meet the definition of a sidewalk or pathway including without limitation any alley, park, street, open space trail, roadway or parking lot;

(5) Within 200 feet of an area designated for a temporary special permit issued by the City, during the limited duration of the temporary special permit. If the City provides any notice, business interruption mitigation, or other rights to affected businesses or property owners under the City's temporary special permit, such notice will also be provided to any sidewalk vendors specifically permitted to operate in the area, if applicable;

(6) On any private property without the express written consent of the owner or lessee of the property;

(7) Within 50 feet of another sidewalk vendor;

(8) Within 200 feet of a school, a place of worship, or a child day-care facility;

(9) Within 200 feet of a permitted certified farmers' market or swap meet during the limited operating hours of that certified farmers' market or swap meet;

(10) On sidewalks or pathways with a paved dimension less than 10 feet in width;

(11) Within 25 feet of a:

(A) Fire hydrant,

(B) Curb which has been designated as yellow or red zone, or a bus zone,

(C) Automated teller machine,

(D) Driveway, alley, or street corner; crosswalk or utility box,

(E) Trash or recycling receptacles, bike racks, benches, bus/trolley stops or similar public use items,

(F) Public art objects, items, and displays,

(G) Storm drain catch basin,

(H) Handicapped parking spaces or access ramps, and

(I) Other public utilities;

(12) In a location that would violate provisions of this code relating to visibility requirements for streets, alleys, driveways, and intersections;

(13) In a location that would block access to play equipment, playing fields or park amenities;

(14) For stationary sidewalk vendors, at any park where the City has signed an agreement for concessions that exclusively permits the sale of food or merchandise by a concessionaire;

(15) In pocket parks located in residential areas. These parks are small by design and any vending or commercial activity in them prevents the public from enjoying the natural resources and recreational opportunities in the pocket parks. A prohibition on sidewalk (and all other) vending in these pocket parks will prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park. These parks are situated adjacent to individual residences, and sidewalk vending activity will result in increased traffic, noise, and crowding, resulting in health, welfare, and safety issues;

(16) In Memorial Park. Such restriction is necessary to ensure the public's use and enjoyment of the

natural resources and recreational activities provided by this historical park. Visitors use this park as an escape from commercial activity, and sidewalk vending activities will cause congestion and commercial activity in direct contravention of the park's purpose. This restriction is necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of Memorial Park;

(17) On the Pacific Coast Highway Pedestrian Bridge. Such restriction is necessary to ensure the public's safe use and enjoyment of the bridge. The public use the bridge for safe passage over PCH and sidewalk vending activities will cause congestion and commercial activity in direct contravention with its purpose. This restriction prevents commercial activity that unreasonably interfere with its use;

(18) On any sidewalk with a gradient in excess of 10%;

(19) Within 200 feet of any public safety facility, including, without limitation, police stations, fire stations, and lifeguard towers;

(20) Within 24 inches of a parallel parking space, measured from curb face or edge of pavement;

(21) On any sidewalk where vending equipment and queuing patrons would reduce clearance to less than four feet;

(22) On any sidewalk where vending equipment and queuing patrons would restrict access requirements under the Americans with Disabilities Act; and

(23) On any sidewalk where vending equipment and queuing patrons would jeopardize the fire or life safety of any person.

(e) Sidewalk vending receptacles shall not touch, lean against or be affixed at any time to any building or structure, including, but not limited to lampposts, parking meters, mailboxes, traffic signals, fire hydrants, benches, bus shelters, newsstands, trashcans, traffic signs, utility boxes, traffic barriers, or any other public utilities.

(Added by Ord. 19-02, 5/7/19)

§ 5.03.070. Penalties.

(a) Violations of this chapter shall not be prosecuted as infractions or misdemeanors and shall only be punished by the following administrative fine and rescission provisions.

(b) Any violation of this chapter may be punished by:

(1) An administrative fine not exceeding $100 for a first violation;

(2) An administrative fine not exceeding $200 for a second violation within one year of the first violation; and

(3) An administrative fine not exceeding $500 for each additional violation within one year of the first violation.

(c) If a sidewalk vendor violates any portion of this chapter and cannot present the citing officer with a proof of a valid permit, the sidewalk vendor may be punished by:

(1) An administrative fine not exceeding $250 for a first violation;

(2) An administrative fine not exceeding $500 for a second violation within one year of the first violation; and

(3) An administrative fine not exceeding $1,000 for each additional violation within one year of the first violation.

(d) Upon proof of a valid permit issued by the City, the administrative fines set forth in subsection C shall be reduced to the administrative fines set forth in subsection B, or any successor sections.

(e) The City Manager, of designee, may rescind a permit issued to a sidewalk vendor for the term of that permit upon the fourth violation or subsequent violations, or for fraud or misrepresentation in the application for the permit.

(Added by Ord. 19-02, 5/7/19)

§ 5.03.080. Appeals.

(a) Decisions to deny an application for a permit or to impose administrative fines may be appealed by any interested person. Appeals shall be heard and determined by the hearing officer.

(b) Appeals shall be initiated in writing within 15 calendar days of the decision or imposition of administrative fine. Notwithstanding any other provision of law, a person appealing an administrative fine shall pay the administrative fine as a prerequisite to filing an appeal.

(c) Appeals of decisions or administrative fines shall be made in writing to the hearing officer on forms provided by the City. The appeal shall state the facts and basis for the appeal.

(d) Appeals of a decision to deny an application for a permit shall be accompanied by a fee as established by resolution of the City Council.

(e) Decisions regarding administrative fines that are appealed shall not become effective until the appeal is resolved.

(f) The person requesting the hearing shall be notified of the time and place set for the hearing at least 10 calendar days prior to the date of the hearing. The hearing shall be set for a date that is not less than 15 calendar days from the date that a completed request for administrative hearing is filed in accordance with the above provisions.

(g) No hearing shall be held unless and until the fine or penalty has been deposited with the City Clerk or an advance deposit hardship waiver has been issued.

(h) The hearing officer shall give notice in writing to the appellant of the time and location of the appeal hearing. At the hearing, the hearing officer shall review the record of the decision or administrative fine and hear testimony of the appellant, if any, the applicant and any other interested party. The appeal shall be reviewed and determined on a de novo basis.

(1) If an administrative fine is the subject of an appeal, the hearing officer shall take into consideration the person's ability to pay the fine. The hearing officer shall provide the person with notice of his or her right to request an ability-to-pay determination and shall make available instructions or other materials for requesting an ability-to-pay determination. The person may request an ability-to-pay determination at or before the hearing or while the administrative fine remains unpaid.

(2) If the person meets the criteria described in subsection (a) or (b) of Government Code Section 68632, or any successor section, the hearing officer shall accept, in full satisfaction, 20% of the administrative fine imposed pursuant to this chapter.

(3) The hearing officer may allow the person to complete community service in lieu of paying the total administrative fine, may waive the administrative fine, or may offer an alternative disposition.

(i) After the hearing, the hearing officer shall affirm, modify or reverse the original decision or administrative fine. When a decision or administrative fine is modified or reversed, the hearing officer shall state the specific reasons for modification or reversal. Decisions on appeals shall be rendered within 30 calendar days of the close of the hearing. The hearing officer shall mail notice of a decision to the appellant. Such notice shall be mailed within five working days after the date of the decision to the appellant. The decision of the hearing officer shall be final. If the person contesting an administrative citation prevails in a challenge to the citation, the City shall within 30 calendar days refund the full amount of the fine or penalty deposited.

(Added by Ord. 19-02, 5/7/19)

CHAPTER 5.08
FIRE ALARMS, FALSE ALARMS

§ 5.08.010. Definitions.

Wherever used within this Chapter, the following terms shall have the meaning set forth below:

"Alarm" means the giving, signaling, or transmission to the Fire Department, its station(s) or companies or to any officer, or employee thereof, whether by telephone, spoken word, or otherwise, an indication or information to the effect that there is a fire, or other emergency at or near the place indicated by the person, devices, or system giving, signaling, or transmitting such information.

"Alarm system" means any manual, mechanical, or electrically operated circuits, instruments, and/or devices, when activated emits a sound or transmits alarms, a message, and/or trouble signals for the protection of life and property from heat, smoke, fire, hazardous materials, or medical emergency. Provided, however, that this definition shall not include domestic smoke, fire, or burglar alarm devices whose primary purpose is to awaken, or alert persons on the premises and which emit a light, or sound only within the protected premises.

"Alarm business" means the work, occupation, or profession of any person who performs, authorizes, directs, or causes the selling, leasing, maintaining, servicing, inspection, repairing, altering, replacement, moving, or installing of any alarm system, including any business that monitors alarms.

"Alarm subscriber" means any person who purchases, leases, contracts for, or otherwise obtains an alarm system or the servicing or maintenance of an alarm system.

"Automatic communication device" means any electrical, electronic, or mechanical device capable of being programmed to send a prerecorded message, when activated, over a telephone line or dedicated circuit to a central station.

"Direct alarm system" means alarm systems electronically or otherwise connected directly to the emergency response agency from the protected premises.

"Central station" means an office to which remote and supervisory signaling circuits are connected, where personnel are in attendance at all times to supervise the circuits and investigate signals.

"False alarm" means an alarm necessitating response by the Fire Department where an emergency situation does not exist. This shall include mechanical failure, accidental tripping, misoperation, malfunction, misuse, or neglect of an alarm system.

"Fire Department" means the Orange County Fire Department. Fire Department includes and also means the Emergency Response Agency.
(Added by Ord. No. 91-11, 5/28/91)

§ 5.08.012. Alarm Systems, Standards, and Regulations.

All alarm systems shall meet or exceed the standards established by the Fire Department including National Fire Protection Association Codes 72A and 72C, and such other regulations as may be adopted by the Orange County Board of Supervisors and/or the City Council of the City of Dana Point. All alarm systems, equipment, installations, and repairs and all fire and other emergency drills shall comply with rules and regulations promulgated by the Emergency Response Agency or the Fire Department regulating the times and conditions under which such installations, repairs, tests, or drills may be made. All audible alarm systems shall, after activation, limit the generation of the audible sound to a maximum of 15 minutes when the system is protecting residential premises, and 30 minutes when an alarm is protecting any other premises. This limitation shall be incorporated into the equipment at the protected premises. Said systems may include an automatic resetting device causing the alarm system to rearm upon automatic shut off. The Director or designee or the Fire Department may exempt any alarm system or kind or type of alarm system from any or all of the requirements

of this Chapter if in his/her opinion such system does not create a substantial danger of generating false alarms necessitating a response by an Emergency Response Agency or the Fire Department.
(Added by Ord. No. 91-11, 5/28/91)

§ 5.08.014. Central Station Permit.

All central stations or any business which receives signals that an emergency exit at a protected premises and transmits that information to the Emergency Response Agency or the Fire Department shall be required to have a permit from the Fire Department which shall be renewed annually.
(Added by Ord. No. 91-11, 5/28/91)

§ 5.08.016. Automatic Communication Devices.

A. No automatic communication device shall be programmed to the "911" emergency line.

B. Direct alarm systems shall not be connected to any Emergency Response Agency or the Fire Department except with the express written permission of the Emergency Response Agency or said Department.

C. No person shall lease, maintain, install, or use any alarm system which automatically direct dials the telephone number of the Fire Department.

(Added by Ord. No. 91-11, 5/28/91)

§ 5.08.018. Responsibilities of Alarm Business and Alarm System Subscribers or Users.

(a) Each alarm business shall provide accurate and complete instructions to the alarm system user in the proper use and operation of said system which is provided to the user by that business or which is monitored by that business. Specific emphasis shall be placed on the avoidance of false alarms.

(b) The alarm subscriber or user shall maintain the alarm system and equipment in proper working order at all times.

(c) When an alarm system has been activated for an alarm subscriber, the alarm business or central station shall arrange for a representative to have the ability to be present at the location of the alarm within one hour after being requested by the Fire Department. The user of an alarm system which is not connected to an alarm business or central station shall designate a person to be available to respond to the protected property within one hour after being requested by the Fire Department.

(Added by Ord. No. 91-11, 5/28/91)

§ 5.08.020. Alarm Business, Central Station, and False Alarm Service Charges.

In addition to such other fines or penalties established by law, a false alarm service fee is hereby imposed upon the residential occupants and/or commercial owner(s) and/or operator(s) of the premises wherein a false alarm was made and any Central Station owners and operators who initiated the Fire Department's response to such premises. The City Council is hereby authorized to set by Resolution the amount of each fee which shall be charged to those city residents who incur false alarm charges and/or penalties and other miscellaneous charges relating to alarm systems and businesses for services provided by the Fire Department. Said fees are hereby imposed effective January 1, 1991, as may be amended by the City Council from time to time. The County of Orange is hereby authorized to administer and take collection and enforcement action as may be necessary on such fees, charges, and/or penalties. (Added by Ord. No. 91-11, 5/28/91)

§ 5.08.022. Intentional False Alarms; Penalties.

No person shall intentionally initiate a false alarm except for purposes of testing an alarm system and then only

if made in accordance with the rules and regulations of the Fire Department therefor and after having given the Emergency Response Agency or the Fire Department prior notice thereof. Any person who violates this Section shall be guilty of a misdemeanor and subject to punishment in accordance with Section 1.01.220(a) of this Code.
(Added by Ord. No. 91-11, 5/28/91)

§ 5.08.024. Tampering With or Damaging Alarm Systems.

It shall be unlawful and a misdemeanor, subject to punishment in accordance with Section 1.01.220(a) of this Code, for any person to tamper with, render inoperative, or maliciously damage any alarm system maintained for the purpose of sounding or transmitting alarms excepting alarm systems undergoing approved maintenance or repairs.
(Added by Ord. No. 91-11, 5/28/91)

§ 5.08.026. Violations and Enforcement.

Any violations of this Chapter shall be an infraction, subject to punishment in accordance with Section 1.01.220(b) of this Code, unless otherwise noted herein. The provisions of this Chapter may be enforced by the City and the Fire Department.
(Added by Ord. No. 91-11, 5/28/91)

CHAPTER 5.20
MASSAGE REGULATIONS

Prior ordinance history: Ords. 96-07 and 01-01.

§ 5.20.010. Definitions.

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

"Acupressure" refers to the practice of applying pressure (by means including, but not limited to, the use of the thumbs or fingertips) to the same discrete points on the body stimulated in acupuncture for the therapeutic purpose (such as the relief of tension or pain).

"Applicant" means a person or persons submitting an application for a massage establishment permit under this Chapter. "Applicant" includes both the singular and plural.

"California Massage Therapy Council" means the State-organized non-profit organization created to regulate the massage industry as set forth in Chapter 10.5 of Division 2 of the California Business and Professions Code (commencing with Section 4600, as amended). The California Massage Therapy Council may also be referred to herein as "CAMTC."

"Certified Massage Therapist" means any person holding a current and valid State certificate issued by the CAMTC pursuant to California Business and Professions Code Section 4600 et seq., as amended.

"City" means the City of Dana Point.

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

"City Regulatory Officials" means Building and Safety Division, Code Enforcement Division, Fire Department and Police Services, and the County Health Department.

"Completed application" means an application packet, in the form provided by the City, completed with all required information including, but not limited to, all of the information required under Section 5.20.080 (Exemptions and Exceptions) and containing the verified fingerprints of the applicant. The application shall be completed in the manner given, and not altered in any way by the applicant.

"Conviction" or "convicted" means a guilty plea or verdict, or a conviction following a plea of nolo contendere, where the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing the applicant to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

"Disqualifying conduct" means the occurrence, by any person who establishes, maintains, administers, oversees, manages, operates, works at or proposed to be employed at the subject massage establishment, of any of the following events within 10 years immediately preceding the date of filing of the application in question or, in the case of revocation or suspension proceedings, within 10 years of the date of notice of hearing pursuant to Section 5.20.240 (Notice of Revocation):

(a) A conviction in a court of competent jurisdiction of any of the following:

(1) Any infraction, misdemeanor or felony offense that relates directly to the operation of a massage establishment or to the performance of a massage;

(2) Any felony that occurred on the premises of a massage establishment;

(3) 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 Penal Code Sections

236.1(a), 236.1(c)(2), 186.10(a), 186.10(b), 243.4(e), 266h, 266i, 314, 315, 316, 318, or subsections (a), (b) or (d) of Penal Code Section 647, or 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 Penal Code Section 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;

(4) Any crime specified in Government Code Section 51032;

(5) 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;

(6) Conspiracy or attempt to commit any of the aforesaid offenses;

(7) Any lesser-included offense of any of the aforesaid offenses;

(8) Any offense in a jurisdiction outside the State of California which is the equivalent of any of the aforesaid offenses;

(9) The requirement to register under the provisions of California Penal Code Section 290;

(10) Being subject to a permanent injunction against the conducting or maintaining of a nuisance pursuant to California Penal Code Sections 11225 through 11235 or any similar provisions of law in a jurisdiction outside the State of California;

(11) Being subject to a permanent injunction against the conducting or maintaining of a nuisance pursuant to California Health and Safety Code Sections 11570 through 11587 or any similar provisions in a jurisdiction outside the State of California;

(12) Being subject to the denial, non-renewal, suspension, or revocation of any license or permit issued by any State, County, City, or other local government within the United States for the operation of a massage establishment or for the performance of massages, except that denial of license or permit for the operation of a massage establishment shall not be considered if the sole basis for the denial was the prohibition of the use within the zoning or planning district in which the use was proposed to be located;

(13) Touching the genitals, pubic regions, anuses, or female breasts below a point immediately above the top of the areolas, whether or not the same are covered, of oneself or of another person while providing massage services or while within view of a customer or patron of the massage establishment;

(14) Exposing the genitals, pubic regions, anuses, or female breasts below a point immediately above the top of the areola of a customer or patron while providing massage services;

(15) Exposing the genitals, pubic regions, anuses, or female breasts below a point immediately above the top of the areola of oneself or of another person to view while providing massage services or while within view of a customer or patron of the massage establishment;

(16) Allowing a customer or client to masturbate or touch the specified anatomical areas of a massage provider during the course of massage services.

Per Section 5.20.200 (Management of Massage Establishment Interest) of this Chapter, the owner, operator, and designated manager of the massage establishment shall also be responsible for the conduct of all employees

and independent contractors while they are on the establishment premises.

"Employ," for purposes of this Chapter, includes contracting with employees and independent contractors.

"Employee" includes every owner, partner, operator, manager, supervisor, person and worker, whether paid or not, full-time or part-time, who renders personal services of any nature or is otherwise employed or retained in the support of the operation of a massage establishment. For the purposes of this Chapter, the term "employee" includes independent contractors.

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

"Licensee" means a person who has been duly licensed by the City pursuant to this Chapter as either a massage establishment owner or operator.

"Manager" means a person who has been designated by an operator pursuant to Section 5.20.200 (Management of Massage Establishment License) to be responsible for the operation of a licensed massage establishment.

"Massage" or "massage services" means any method of pressure on, or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating the external parts of the human body with the hands or with the aid of any mechanical or electrical apparatus, or other appliances or devices, with or without such supplementary aids as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment, or other similar preparations. The terms "massage" or "massage services" shall not include any act prohibited by this Chapter or by any other applicable law or regulation.

"Massage establishment" means any establishment having a fixed place of business where any individual, person, firm, association, partnership, corporation, joint venture, limited liability company, or combination of individuals that engages in, conducts, carries on, or permits to be engaged in, conducted, or carried on for consideration, massages, baths, or health treatments involving massages or baths as regular functions. The term "massage" also includes the following acts, businesses, callings, or occupations:

(a) Acupressure;

(b) Anatomy care;

(c) Body wrap;

(d) Holstic health center or practitioner;

(e) Holistic therapy;

(f) Hydro therapy;

(g) Public bath;

(h) Reflexology;

(i) Sauna;

(j) Sports massage;

(k) Strss management center;

(l) Toxic herbal massage; or

(m) Massage parlor.

"Massage provider" means any person who provides massage as an employ of a massage establishment.

"Material misstatement" means any untrue statement of a material fact in any application or report filed with the City, or the omission of any material fact in any application or report.

"Operator" means a person who has applied pursuant to Section 5.20.100 (Application for Massage Establishment License) of this Chapter, and who has been issued a license to operate a massage establishment pursuant to Section 5.20.120 (Approval or Denial of Massage Establishment License).

"Operator's permit" means the permit required to engage in massage pursuant to this Chapter.

"Person" means any individual, entity, firm, association, partnership, corporation, joint venture, limited liability company, or combination of individual.

"Police Services Department" shall mean the Police Services Department of the City of Dana Point, whether under contract or with its own forces.

"Public bath" means any place open to the public where there is given steam baths; electric lights baths; electric tub baths; shower baths; sponge baths; sunbaths; mineral baths; mud baths; vapor baths; Russian, Swedish, or Turkish baths; or any other type of baths, fomentations, alcohol rubs or any other types of rubs; or giving salt glows or any type of therapy; any public bathing place which has in connection therewith a steam room, hot dry room, plunge, shower bath, or sleeping accommodations; or any public bathing place where there is communal bathing or communal use of spa or whirlpool facilities and a massage service is also performed.

"Reflexology" is the application of pressure, stretch and movement to the feet and hands of a clothed patron to affect corresponding parts of the body, and is included in the definition of massage.

"Sauna" means an establishment or place primarily in the business of providing a steam bath or massage services.

"Sex-oriented merchandise" means sex-oriented implements or paraphernalia, such as, but not limited to: dildos, sex-oriented vibrators, edible underwear, similar sex-oriented devices which are designed or marketed primarily for the stimulation of human genital organs or sadomasochistic activity, lingerie, and condoms.

"Specified anatomical areas" means and includes any of the following human anatomical areas: genitals, pubic area, buttocks, anus or female breast below a point immediately above the top of the areolae.

"Specified sexual activities" means and includes any of the following:

(a) The fondling or other erotic touching of any specified anatomical area;

(b) Human sex acts, actual or simulated, including intercourse, oral copulation or sodomy;

(c) Human masturbation, actual or simulated;

(d) The actual or simulated infliction of pain by one human upon another or by an individual upon him or herself, for the purpose of the sexual gratification or release of either individual, as a result of flagellation, beating, striking or touching of an erogenous zone, including, without limitation, specified anatomical areas;

(e) Sex acts, actual or simulated, between a human being and an animal, including, but not limited to intercourse, oral copulation, or sodomy; or

(f) Excretory or urinary functions as part of, or in connection with, any of the activities set forth in subsections (a) through (e) of this definition.

"State certification" means a valid and current certificate issued by CAMTC pursuant to California Business and Professions Code Section 4600 et seq., as may be amended.

"Stress management center" means to the degree that such business, calling, or occupation identified above involves any method of massage or massage services as defined above, will still be considered a massage establishment. Such businesses, callings, or occupations are not covered by this definition to the degree the same is done in conjunction with a licensed medical or health care practitioner or facility.
(Amended by Ord. 06-13, 12/13/06; Ord. 20-03, 10/6/20)

§ 5.20.020. Preemption.

This Chapter is intended to comply with and supplement State law. In the event of a conflict between this Chapter and State law, the City shall give effect to State law.
(Amended by Ord. 20-03, 10/6/20)

§ 5.20.030. Massage Establishment License Required.

(a) It is unlawful for any person to own, operate, manage, engage in, conduct, or carry on, in or upon any premises within the City, a massage establishment without a massage establishment license obtained in accordance with this Chapter, unless otherwise exempted in accordance with the provisions of this Chapter.

(b) A massage establishment license shall only be issued to the person signing the application, after compliance with the requirements of this Chapter and all other applicable provisions of this Code including, but not limited to, the payment of the appropriate application license fee and background investigation fee, unless grounds for denial of such license are found to exist.

(c) A separate license shall be obtained for each separate massage establishment owned, operated, or managed by any person.

(Amended by Ord. 06-13, 12/13/06; Ord. 20-03, 10/6/20)

§ 5.20.040. Off-Premises Massage.

(a) No massage regulated by this Chapter shall be performed at a place or location other than at a premises for which a valid massage establishment license has been obtained under this Chapter, except in the following circumstances:

(1) Massage may be performed at premises expressly exempted or excepted by Section 5.20.080 (Exemptions and Exceptions) provided the massage is performed by a person exempt under Section 5.20.080(a) or (b).

(2) A certified massage therapist may perform massages at a place or location other than at a premises for which a valid massage establishment license has been obtained under this Chapter, and other than as provided in subsection (a)(1) hereof, only when such massage is specifically prescribed in writing by a physician, surgeon, chiropractor, or osteopath duly licensed to practice in the State of California. No additional massage service shall be performed for any patron beyond that service which is specifically described in the writing whether or not such patron desires any additional service to be performed.

(Amended by Ord. 20-03, 10/6/20)

§ 5.20.050. Massage Establishment in Athletic Club or Hotel.

A massage establishment may be permitted in an athletic club, hotel or similar establishment provided such massage operations are clearly incidental to the operation of such bona fide athletic club and such athletic club has a valid permit approved by the County of Orange or the City of Dana Point which identifies the massage establishment and its specific location. "Clearly incidental" is defined as no more than 15% of the gross floor area or 1,000 square feet of the athletic club, whichever is greater.
(Amended by Ord. 06-13, 12/13/06; Ord. 20-03, 10/6/20)

§ 5.20.060. Massage Therapist Certificate Required.

(a) It shall be unlawful for any person to perform or administer a massage or advertise to provide massage services in the City of Dana Point, unless such person possesses and maintains a current, valid state certification issued by CAMTC. A massage provider shall provide his or her full name and certificate

number to any representative of the Code Enforcement Division and Police Services or any member of the public upon request.

(b) No certified massage therapist shall provide massage therapy within the City without first providing to the Code Enforcement Division and Police Services a copy of his or her CAMTC certificate and a list of the names and addresses of massage establishments at which he or she will provide massage for compensation. The applicant shall submit to Code Enforcement Division and Police Services in writing any change in employment or residence address within five working days.

(Amended by Ord. 06-13, 12/13/06; Ord. 20-03, 10/6/20)

§ 5.20.070. Display of Permits, Licenses.

Each massage establishment shall display its massage establishment license, and the CAMTC certificate for each certified massage therapist employed or performing massages at the establishment, in an open and conspicuous place that is visible upon first entering the premises. Passport-size photographs of the massage establishment licensee shall be affixed to the massage establishment license on display pursuant to this Section.

Each certified massage therapist shall wear or display their massage technician photo identification card on their clothing in an openly visible manner or displayed in the massage room where their massage services are to be rendered during working hours.

(Amended by Ord. 06-13, 12/13/06; Ord. 20-03, 10/6/20)

§ 5.20.080. Exemptions and Exceptions.

(a) Exemptions. This Chapter shall not apply to the following classes of individuals, and the individuals shall be exempt from massage establishment requirements while engaged in the performance of the duties of their respective professions:

(1) Physicians, surgeons, chiropractors, acupuncturists, or osteopaths ("professionals") duly licensed to practice their respective professions in the State of California under the provisions of the Business and Professions Code, while performing activities encompassed by such professional licenses; however:

(A) Massage providers are required to be certified by CAMTC,

(B) If the professional's facility is used for the purposes of nonmedical massage, the facility itself must be licensed as a massage establishment pursuant to this Chapter;

(2) Registered nurses, licensed vocational nurses or physical therapists who are duly licensed to practice their professions in the State of California under the provisions of the Business and Professions Code, while performing activities encompassed by their respective licenses;

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

(4) Barbers, cosmetologists, estheticians and manicurists duly licensed by the State of California while performing activities encompassed by 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 a barber, cosmetologist, or esthetician, or in the case of a licensed manicurist, the massaging of the forearms, hands, calves and/or feet; and

(5) Coaches and trainers employed by accredited high schools, community colleges or universities

while acting within the scope of their employment, as well as trainers of amateur, semi-professional or professional athletes or athletic teams while acting in that capacity.

(b) Exception. Individuals administering massages or health treatment involving massage to persons participating in road races, track meets, triathlons, and similar athletic or recreational events shall be exempt from the provisions of this Chapter, provided that all of the following conditions are met:

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

(2) The event is open to participation by the general public or a significant segment of the public such as employees of sponsoring or participating corporations, students from the participating schools, members of participating organizations, etc.;

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

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

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

(c) The exemption for professionals shall only apply to the extent that the massages are administered for medical purposes. Professionals that administer nonmedical massages are subject to the licensing requirements of this Chapter.

(d) If any State-licensed professional, who is exempt under this Section, violates any provision of this Chapter, the City may notify the State licensing body that licenses the professional in writing of the professional's Municipal Code violation.

(Amended by Ord. 06-13, 12/13/06; Ord. 20-03, 10/6/20)

§ 5.20.090. Massage Establishment License Application Fee.

Any application for a massage establishment license shall be accompanied by a nonrefundable fee in an amount established by resolution of the City Council. The application fee shall be used to defray the costs of investigation, report, and related application processing issues. An additional background investigation fee, as set by the Police Services Department, shall also accompany any application.

(Amended by Ord. 06-13, 12/13/06; Ord. 20-03, 10/6/20)

§ 5.20.100. Application for Massage Establishment License.

(a) No person shall operate any massage establishment prior to having obtained a massage establishment license pursuant to this Chapter. A completed application for a massage establishment license shall be filed with the City Manager. Incomplete applications shall be returned to the applicant until all the required information, as detailed herein, is provided in full to the City.

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

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

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

(3) The history of the applicant as to the ownership, operation, or management of any massage establishment or similar business or occupation within five years immediately preceding the

filing of the application. Such information shall include, but shall not be limited to, a statement as to whether or not such person, in previously owning, operating, or managing a massage establishment within this State under a permit or license, has had such permit or license revoked or suspended or was the subject of discipline, and the reasons therefor; and the business, activity or occupation the license applicant engaged in subsequent to such action of revocation, suspension, or discipline;

(4) All criminal convictions or offenses including, but not limited to, those described in Section 5.20.010 (Definitions); whether the applicant is required to register under the provisions of California Penal Code Section 290; whether the applicant, including a corporation or partnership, or a former employer of the applicant while so employed, or a building in which the applicant was so employed or a business conducted, was ever subjected to an abatement proceeding under California Penal Code Sections 11225 through 11235, California Health and Safety Code Sections 11570 through 11587, or any similar provisions of law in a jurisdiction outside the State of California;

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

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

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

(8) If the applicant is a corporation, limited liability company, limited liability partnership, general or limited partnership, or other form of business entity other than a sole proprietorship, the name of the business entity shall be set forth exactly as shown in its articles of incorporation or formation document, together with the names and residence addresses of each of its officers, directors, managing members, and/or general partners and each stockholder, member, or limited partner holding more than 5% of the stock of or interest in the business entity, along with the amount of stock or interest held. If one or more of the partners or members is a corporation, the information required herein for the applicant shall also be required for such partners or members. The application shall be signed by the individual who is and shall be responsible for all actions, omissions, and conduct of the applicant licensee;

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

(10) The name of the person(s) designated or appointed as manager(s) of the establishment;

(11) Such other information as may reasonably be deemed necessary by the City Manager or determined to be necessary by the Orange County Sheriff's Department to investigate the accuracy and veracity of the information required in the application;

(12) If the applicant is not the owner of the property proposed as the location for the massage establishment, the applicant shall submit a statement (on a form provided by the City with the

application) signed by the property owner, consenting to the operation of the massage establishment at the location by the applicant and a copy of any lease between the property owner and applicant for the subject property;

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

(14) A sketch or diagram (on a form provided by the City with the application) showing the complete interior configuration of the business, including, without limitation, the location of the restrooms, massage rooms, customer areas, employee-only designated areas, and any facilities requirements as identified in Section 5.20.190 (Massage Establishment Facilities and Operations Requirements). The form need not be professionally prepared, but must accurately and clearly depict all interior areas identified in this Section and Section 5.20.190 (Massage Establishment Facilities and Operations Requirement);

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

(16) Authorization for the City, its employees and agents to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the application for the license. Upon receipt of a completed application, the City manager will cause the massage establishment's proposed site to be inspected for compliance with the requirements of this Chapter and Code. The City will not issue a massage establishment license unless and until inspection of the proposed place of business confirms that the facility complies with the requirements of this Code and Chapter;

(17) A copy of each applicant's social security card;

(18) A copy of each applicant's recently completed Service for Live Scan (on a form provided by City with application);

(19) Acknowledgement in the application that the appointment of a manager by the applicant constitutes consent by the applicant for assumption of responsibility for all acts and conduct of the manager, including service of notices by the City.

(c) Notwithstanding the fact that an application filed hereunder may be a "public record" under Government Code Section 6250 et seq., certain portions of such application contain information vital to the effective administration and enforcement of the licensing and/or permit scheme established herein which is personal, private, confidential, or the disclosure of which could expose the applicant to a risk of harm. Such information includes, but is not limited to, the applicant's residence address and telephone number, the applicant's date of birth and/or age, the applicant's driver's license and/or Social Security number, and/or personal financial data. The City Council in adopting the application and licensing and/or permit system set forth herein has determined in accordance with Government Code Section 6255 that the public interest in disclosure of the information set forth above is outweighed by the public interest in achieving compliance with this Chapter by ensuring that the applicant's privacy, confidentiality, or security interests are protected. To the extent allowed by applicable law, the City Clerk shall cause to be obliterated from any copy of a completed license application made available to any member of the public the information set forth above.

(Amended by Ord. 06-13, 12/13/06; Ord. 20-03, 10/6/20)

§ 5.20.110. Renewal of Massage Establishment License.

(a) Each massage establishment license shall expire after one calendar year from the date of issuance of the license unless renewed in accordance with this Chapter.

(b) The licensee requesting renewal of its massage establishment license shall file an application for renewal with the City Manager at least 90 calendar days prior to the scheduled expiration of the license. The renewal application shall provide all of the information required under Section 5.20.100 (Application for Massage Establishment License), and shall also: (1) state that the licensee is currently operating under a massage establishment license; (2) state the scheduled date for expiration of the license for which the licensee is seeking renewal; and (3) provide either a current copy of the lease agreement under which the licensee has operated the massage establishment or evidence that the licensee owns the property at which the licensee operates the massage establishment.

(c) Any application for renewal of a massage establishment license shall be accompanied by a renewal fee in an amount established by resolution of the City Council. The renewal fee shall be used to defray the costs of investigation, report, and related application processing issues. The application shall also be accompanied by a background investigation fee.

(d) The City Manager shall review the application for renewal and approve or deny the application, pursuant to the criteria in and within the time provided in Section 5.20.120 (Approval or Denial of Massage Establishment License), and shall either issue the renewed license or mail a written statement to the address indicated on the application via U.S. mail and certified mail return receipt requested, denying the license and stating the reasons therefor. The decision of the City Manager is final, unless the applicant files a written request for reconsideration with the City Manager within 10 calendar days of the date stated on the notice, requesting reconsideration. A license for which renewal has been denied shall be of no effect or validity after its scheduled expiration.

(e) If criminal charges are pending against an applicant within a court or public agency, the conviction of which would result in the denial of the application, the City Manager shall suspend review of the application pending the final disposition of the criminal charges. The City Manager shall send written notice to the applicant notifying him or her that the review of their application is suspended pending the final disposition of the current criminal charges. The applicant shall then have the obligation of notifying the City Manager when a final decision is reached, and provide to the City adequate written evidence to substantiate the claimed outcome of the criminal matter is decided (i.e., conviction, dismissal, etc.). The application during the period of suspension shall be treated as if it were never submitted, and the 75 day review period shall be of no effect. Once the City Manager receives notice from the applicant of the final disposition of a criminal matter, the City Manager shall resume the review of the application. The 75 day review period shall commence from the date that the City Manager receives notice deemed adequate by the City of the final disposition of the criminal charges from the applicant. If an applicant fails to notify the City Manager of the final disposition of the criminal charges within 180 calendar days of the disposition, the application shall be deemed expired, and the applicant will be required to submit a new application.

(f) If a license has not been renewed prior to the scheduled expiration of the license, the operator must immediately suspend all operations until the license has been renewed.

(Amended by Ord. 06-13, 12/13/06; Ord. 20-03, 10/6/20)

§ 5.20.120. Approval or Denial of Massage Establishment License.

(a) Within 75 calendar days following receipt of a completed application, the City Manager shall either issue the license or mail a written statement to the address indicated on the application via U.S. mail and certified mail return receipt requested of the reasons for denial thereof, unless such period is continued for good cause as provided herein. The decision of the City Manager is final, subject to Section 5.20.130 (Request for Reconsideration on Denial of License).

(b) The City Manager may continue his/her determination to approve or deny a completed application for a period not to exceed 60 calendar days, in the event that the review of a completed application involves obtaining documents, records, or information from another governmental agency, including, but not limited to, the State of California or Department of Justice, and that agency cannot reasonably respond to the City Manager's request within the time required for the City Manager to complete his or her review of the completed application, or in the event that additional time is necessary to complete the identification of the applicant or persons to be employed by the massage establishment. In the event the City Manager determines to continue the application review period, written notice shall be mailed via U.S. mail to the applicant, at the address indicated on the application, stating the period of the continuance and the reasons therefor.

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

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

(2) The applicant, if an individual; or the stockholders holding more than 5% of the stock of the corporation; the officers and directors and each of them if the applicant be a business entity; or the partners, including limited partners, and each of them, if the applicant be a partnership; the members, and each of them, holding more than 5% of the interest in the entity if the applicant is a limited liability company; the manager or other person principally in charge of the operation of the business, or any such individuals, is a person who has engaged in disqualifying conduct as described in Section 5.20.010 (Definitions) in the 10 years immediately preceding the date of the application;

(3) Any persons to be employed at the massage establishment are persons who have engaged in disqualifying conduct as described in Section 5.20.010 (Definitions) in the 10 years immediately preceding the date of the application;

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

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

(6) The applicant is less than 18 years of age; or

(7) The location of the proposed massage establishment in whole or in part has, within the two year period prior to the submittal of the application, been the site of:

(A) Disqualifying conduct,

(B) A place where violation of this Chapter—or a violation of any similar criminal or civil ordinance, law, rule, or regulation of the State of California or any other public agency related to the operation of massage establishments—has occurred, or

(C) A revocation pursuant to this Chapter of a massage establishment license;

(8) The applicant has not otherwise complied with the applicable requirements of this Chapter or is lacking in the background and qualifications to conduct a bona fide massage establishment; or

(9) The massage establishment is located within a radius of 300 feet of another premises massage establishment, as measured in a straight line, from the nearest point of the premises where said massage establishment is conducted to the nearest property line of any lot or legal parcel upon

which a massage establishment is proposed to be located.

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

(e) If criminal charges are pending against an applicant within a court or public agency, the conviction of which would result in the denial of the application, the City Manager shall suspend review of the application pending the final disposition of the criminal charges. The City Manager shall send written notice to the applicant notifying him or her that the review of his or her application is suspended pending the final disposition of the current criminal charges. The applicant shall then have the obligation of notifying the City Manager when a final decision is reached, and the outcome of the criminal matter is decided (i.e., conviction, dismissal, etc.). During the period of suspension the application shall be treated as if it were never submitted, and the 75 day review period shall not commence or run during the period of suspension. Once the City Manager receives notice from the applicant of the final disposition of a criminal matter the City Manager shall resume his or her review of the application. The 75 day review period shall commence on the date that the City Manager receives notice of the final disposition of the criminal charges from the applicant. If an applicant fails to notify the City Manager of the final disposition of the criminal charges within 180 calendar days of the disposition, the application shall be deemed expired, and the applicant will be required to submit a new application.

(Amended by Ord. 06-13, 12/13/06; Ord. 20-03, 10/6/20)

§ 5.20.130. Request for Reconsideration on Denial of License.

If the City Manager denies a massage establishment license as provided in Section 5.20.120 (Approval or Denial of Massage Establishment License), then the decision shall be final, unless the applicant files a written request for reconsideration with the City Manager within 10 calendar days of the date of the City Manager's written notice of denial. Upon receipt of the written request, the City Manager shall reconsider the application together with any new records, documents, or information presented by the applicant, or discovered by the City, within the time and in the manner provided in Section 5.20.120 (Approval or Denial of Massage Establishment License). The City Manager's decision on the reconsideration shall be final. (Amended by Ord. 06-13, 12/13/06; Ord. 20-03, 10/6/20)

§ 5.20.140. Reapplication After Denial.

An applicant for a massage establishment license under this Chapter, whose application for such license has been denied, may not reapply for such license for a period of two years from the date such notice of denial was deposited in the mail or received by the applicant, whichever occurs first. However, a reapplication prior to the expiration of two years may be made if accompanied by evidence that the ground or grounds for denial of the application no longer exist, unless the basis for denial was disqualifying conduct. (Amended by Ord. 06-13, 12/13/06; Ord. 20-03, 10/6/20)

§ 5.20.150. No Refund of Fee.

No refund or rebate of a license fee shall be allowed by reason of the fact that the licensee discontinues an activity for which a license is required pursuant to this Chapter, or that the license is suspended, revoked, or not renewed.

(Amended by Ord. 06-13, 12/13/06; Ord. 20-03, 10/6/20)

§ 5.20.160. Business Name.

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

(Amended by Ord. 06-13, 12/13/06; Ord. 20-03, 10/6/20)

§ 5.20.170. Business Location Change.

Prior to any change of location of a licensed massage establishment, an application shall be made to the City Manager as provided in Section 5.20.100 (Application for Massage Establishment License), and such application shall be granted within the time stated therein, provided all applicable provisions of this Chapter are complied with, and a change of location fee in an amount established by City Council Resolution to defray the costs of investigation and report has been paid to the City.
(Amended by Ord. 06-13, 12/13/06; Ord. 20-03, 10/6/20)

§ 5.20.180. Sale or Transfer of Massage Establishment Interest.

A sale or transfer of any interest in a massage establishment, which interest would be reported as required in this Chapter upon application for a massage establishment license, shall be reported to the City Manager within 30 calendar days prior to the closing of the sale or transfer. The City Manager shall investigate any person receiving any interest in a massage establishment as a result of such sale or transfer, and if such person satisfies the requirements relating to massage establishment license applicants, the existing license shall be endorsed to include such person. A fee as set forth by resolution of the City Council shall be paid to the City for the investigation by the City Manager necessitated by each such sale or transfer.
(Amended by Ord. 06-13, 12/13/06; Ord. 20-03, 10/6/20)

§ 5.20.190. Massage Establishment Facilities and Operations Requirements.

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

(a) All persons conducting a massage at a massage establishment, that are not specifically exempt under Section 5.20.100 (Application for Massage Establishment License) of this Chapter, shall have a valid and current state certificate issued by the CAMTC throughout their employment in the massage establishment and they shall carry identification and proof of CAMTC certification while present in the massage establishment. Such identification and proof of certification shall be provided to City regulatory officials upon demand.

(b) Massage establishments shall be located in a zoning district which permits such use and shall be operated within a structure for which the City has issued all necessary building and other permits of occupancy and operations. The City shall not issue a massage establishment permit unless and until all tenant and other improvements within the massage establishment have been properly permitted as required by the Dana Point Municipal Code and State law. The massage establishment shall comply with all applicable building and site development standards of the Dana Point Municipal Code and State law, including, but not limited to, the California Building Codes, the California Fire Code and the health and safety requirements. The massage establishment shall also comply with all applicable City permit and inspection procedures.

(c) The operator and/or on-duty manager consents to the inspection of the massage establishment by the City's regulatory officials for the purpose of determining that the provisions of this Chapter or other applicable laws or regulations are met including, as follows:

(1) The City's regulatory officials 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 Services 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 this Chapter. During an inspection, the Police Services Department may verify the identity of all on-duty employees.

(2) Inspections of the massage establishment shall be conducted during business hours.

(3) An operator of a massage establishment, his or her agent or employee commits an offense if he or she refuses to permit a lawful inspection of the premises by a City regulatory official at any time it is occupied or open for business.

(d) Each operator shall post and maintain, in compliance with existing State and City laws, 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. Each operator and/or on-duty manager shall display the massage establishment permit in a conspicuous public place in the lobby of the massage establishment. In addition, each operator and/or on-duty manager shall ensure that the current, valid massage therapist certification issued by the CAMTC for each massage provider employed at the establishment (whether on-duty or not) is conspicuously displayed in a public place in the lobby, and that each massage provider is wearing or has in their possession the identification required at all times when in the massage establishment. The operator and/or on-duty manager must also post, on a daily basis in a conspicuous public place in the lobby, the name of the operator and/or on-duty manager, as well as all on-duty massage provider. Finally, the hours of operation must be posted in the front window and clearly visible from the outside.

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

(f) An owner and/or operator and/or massage establishment licensee of a massage establishment shall be responsible for the conduct of all employees or independent contractors working on the premises of the massage establishment.

(g) With the exception of a sole proprietorship, at all times the massage establishment is open for business, one person designated as the manager and one certified massage therapist shall be on premises of the massage establishment. One or more persons shall be registered with the Code Enforcement Division to receive all complaints and, in addition to the holder of the massage establishment permit, shall be responsible for all violations taking place on the premises.

(h) The operator and/or on-duty manager shall maintain a register of all employees showing the name, nicknames and aliases used by the employee, home address, age, birth date, gender, height, weight, color of hair and eyes, phone numbers, social security number, date of employment and termination, if any, duties of each employee and a copy of each massage therapist's state certification issued by the CAMTC. The above information on each employee shall be maintained in the register on the premises for a period of two years following termination; provided, however, that the Chief of Police may establish a policy that would allow for the safeguarding of social security numbers on the premises, while making the full social security numbers available for inspection within 24 hours of demand as provided for herein. The operator and/or on-duty manager shall make the register of employees immediately available for inspection upon demand of a representative of the Police Services Department at all reasonable times.

(i) Every massage establishment shall keep a written record of the date and hour of each treatment

administered, the name and telephone number of each patron, the name of the massage technician administering treatment, and the type of treatment administered, to be recorded on a patron release form. Such written record shall be opened to inspection by officials in charge of enforcement of this Chapter, as authorized by law or court order. Such records shall be kept on the premises of the massage establishment for a period of two years.

(j) The owner must advise the City, in writing, at the time of application for a permit of the business hours and any changes in hours. No person shall operate a massage establishment or administer a massage in any massage establishment or at an outcall location booked by that massage establishment between the hours of 10:00 p.m. and 7:00 a.m. A massage begun any time before 10:00 p.m. must nevertheless terminate at 10:00 p.m. All customers, patrons and visitors shall be excluded from the massage establishment between the hours of 10:00 p.m. and 7:00 a.m. 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.

(k) No massage establishment granted a permit under this Chapter 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 patrons that any service is available other than those services described in this Chapter or otherwise permitted by State law. Nor shall any massage establishment utilize any language in the text of such advertising that would reasonably suggest to a prospective patron that any service is available other than those services authorized by this Chapter or State law.

(l) A minimum of one toilet and wash basin shall be provided in accordance with duly adopted City requirements and all lavatories or wash basins shall be provided with hot and cold running water and soap.

(m) The walls in all rooms where water or steam baths are given shall have a washable, mold-resistant surface. All walls, ceilings, floors, pools, showers, bathtubs, steam rooms and all other physical facilities including appliances and apparatuses of the establishment must be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms, steam or vapor cabinets, shower compartments and toilet rooms shall be thoroughly cleaned and disinfected each day the business is in operation. Bathtubs shall be thoroughly cleaned and disinfected after each use.

(n) Each operator shall provide in each room where massage is given sufficient lighting that complies with the California Building Code. The lighting in each massage room shall be activated at all times while the patron is in such room or enclosure.

(o) Minimum ventilation shall be provided in accordance with the applicable building codes of the City. To allow for adequate ventilation in cubicles, rooms and areas provided for patrons' use, which are not serviced directly by required windows or mechanical systems of ventilation.

(p) All massage establishments shall be provided with clean and sanitary towels, sheets, and linens in sufficient quantity. Towels, sheets, and linens shall not be used by more than one person. Reuse of such linen is prohibited unless the same has first been laundered. Heavy white paper may be substituted for sheets, provided that such paper is used once for each person and then discarded into a sanitary receptacle cabinets or other covered space shall be provided for the storage of clean linen. Safe and sanitary receptacles shall be provided for the storage of all soiled linen and paper towels.

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

(r) A massage table shall be provided in each massage room and all massages shall be performed on the massage table. The tables should have a minimum height of 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 acceptable waterproof material. Beds, floor mattresses, and waterbeds shall not be permitted on the premises.

(s) To assure patrons' health, safety, sanitation, and comfort, all employees and certified massage therapists shall be clean and dressed appropriately in clean, opaque clothing which does not expose the female breasts, genitals, pubic regions, buttocks, or anuses when performing services upon the premises. Attire worn by all employees and certified massage therapists, while engaging in the practice of massage for compensation, or while visible to clients in the massage establishment, may not include the following:

(1) Attire that is transparent, see-through, or substantially exposes the certified massage therapist's undergarments;

(2) Swim attire, if not providing a water-based massage modality approved by CAMTC;

(3) Attire that constitutes a violation of Section 314 of the Penal Code; or

(4) Attire that is otherwise deemed by CAMTC to constitute unprofessional attire based on the custom and practice of the profession in California.

(t) No employee of the massage establishment or any certified massage therapist shall expose any genitals, pubic regions, buttocks, anuses, or female breasts below a point immediately above the top of the areola to the view of a customer or patron of the massage establishment. All customers and patrons shall be appropriately draped with a clean, opaque towel sufficient to cover their genitals, pubic regions, buttocks, anuses, or female breasts below a point immediately above the top of the areola while receiving such services.

(u) No person or persons shall be allowed to reside, dwell, occupy, or live inside the massage establishment at any time and no beds, floor mattresses or waterbeds shall not be permitted on the premises.

(v) No massage establishment shall be equipped with any of the following improvements:

(1) Tinted or "one-way" glass in any room or office;

(2) Door-viewer or peephole designed to look through a door wall;

(3) No surveillance cameras, closed circuit cameras, video or audio recording devices of any type shall be used in any room where massage services are to be rendered, restrooms, lavatories and shower rooms or room where patrons would otherwise have an expectation of privacy when not in the immediate presence of an employee of the establishment. Furthermore, no employee shall record (video or audio) in any of the areas listed above for the purposes of monitoring the performance of a massage, any conversations or other sounds in the massage rooms without the knowledge and consent of the patron; or

(4) No windows into the lobby shall be covered or made opaque in any way, except during daylight hours, when blinds or other equivalent window coverings may be used. Daylight hours are defined as one hour after sunrise through one hour before sunset.

(w) All exterior, reception, hallway and treatment room doors (except back or exterior doors used solely for employee entrance to and exit from the massage establishment) shall be unlocked during business hours, except as may be permitted by applicable law (such as the California Fire Code which allow for safety doors which may be opened from the inside when locked). Notwithstanding the foregoing, the exterior doors to the massage establishment may be locked during business hours if the massage establishment is owned by one person with one or no employees or independent contractors.

Whenever the establishment is open, staff shall be available to assure security for clients and employees who are behind closed/unlocked doors. No massage may be given within any cubicle, room, booth or any area within a massage establishment which is fitted with a lock of any kind (such as a locking door knob, padlock, dead bolt, sliding bar or similar device), unless the only door is an exterior door that would impede inspection to massage treatment rooms.

(x) There shall be no display, storage, use or possession of any instruments, devices or paraphernalia which are designed for use in connection with specified sexual activities, as defined by Section 5.20.010 (Definitions), adult oriented material, or sexually oriented merchandise, as defined by the same section, on the premises of the massage establishment.

(y) No massage provider or other person may, after the commencement of any service for any patron, advise, suggest or otherwise indicate to such patron that any additional service is available or ask or inquire of such patron whether such patron desires any additional service to be performed at that time, except with respect to services that are publicly posted. No massage provider may perform any service for any patron that was not ordered by such patron prior to the commencement of performance of any service requested.

(z) No person(s), other than massage establishment employees and customers, will be allowed anywhere in the massage establishment other than the lobby/reception area during hours of operation. Entry doors to any room shall not be obstructed by any means.

(aa) No alcoholic beverages or controlled substances shall be sold, served, furnished, kept, consumed, imbibed, or possessed on the premises of any massage establishment. No person shall enter, be in, or remain in any part of a massage establishment licensed under this Chapter while in possession of, consuming, using or under the influence of any alcoholic beverage or controlled substance.

(bb) The applicant shall notify the City in writing of the names and nature of the work of any new employees at least 10 calendar days prior to such employee commencing work at the massage establishment. If the new employee is to perform massage, then the applicant shall provide a copy of the employee's valid and current certified massage therapist certificate. "Employee" includes every owner, partner, manager, supervisor, independent contractor, and worker, whether paid or not, who renders personal services of any nature in the operation of a massage establishment.

(cc) The applicant shall notify the City in writing of the name of a newly designated or appointed manager at least 10 calendar days prior to such employee commencing work as the manager.

(dd) The operator or a manager of a massage establishment shall be present on the premises at all times when the establishment is open for business or in operation. The operator is at all times responsible for the operation of the premises in compliance with the terms and conditions of this Chapter, whether he or she is actually present.

(ee) No massage establishment shall be located within a residential structure. (Amended by Ord. 06-13, 12/13/06; Ord. 20-03, 10/6/20)

§ 5.20.200. Management of Massage Establishments.

The owner, operator, and designated manager shall be responsible for the conduct of all employees or independent contractors while they are on the establishment premises. In addition, the owner, operator and any designated manager shall be responsible for compliance with the terms of this Chapter and for receipt of any notices served or delivered to the premises by the City. 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 owner, operator, and designated manager for purposes of determining whether the establishment license shall be revoked, suspended, denied or renewed.
(Amended by Ord. 06-13, 12/13/06; Ord. 20-03, 10/6/20)

§ 5.20.210. Inspection by Officials.

Any and all investigating officials of the City, including Code Enforcement Officers, Police Services, Building Inspectors, and Health and Safety Inspectors, shall have the right to enter massage establishments from time to time during regular business hours to make reasonable inspections to observe and enforce compliance with building, fire, electrical, plumbing, or health regulations, and to ascertain whether there is compliance with the provisions of this Chapter.
(Amended by Ord. 06-13, 12/13/06; Ord. 20-03, 10/6/20)

§ 5.20.220. Issuance of Notice of Violation.

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

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

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

(c) State that failure to comply with any notice issued in accordance with the provisions of this Chapter may result in the Code Enforcement Division filing a complaint for revocation or suspension of the license or permit, or other legal action as permitted under applicable law.

(d) If a certified massage technician violates any of the massage technician operating requirement contained in this Chapter, or any requirement of State law, the City Manager may revoke the massage establishment license and the City may take such legal action as is deemed appropriate.

(Amended by Ord. 06-13, 12/13/06; Ord. 20-03, 10/6/20)

§ 5.20.230. Massage Establishment License Suspension or Revocation.

(a) Any license issued under this Chapter may be revoked or suspended after notice as provided in Section 5.20.240 (Notice of Revocation) and a hearing as provided in Section 5.20.250 (Hearing for Revocation of License) where any of the grounds stated in this Section are determined to exist.

(b) A massage establishment licensee under this Chapter whose license has been revoked or whose application for renewal of a license has been denied may not reapply for such license for a period of two years from the date of such revocation or denial.

(c) A massage establishment license shall not be issued to any location where a massage establishment license has been denied or revoked for a period of two years from the date of such revocation or denial.

(d) At such time as the City has reason to believe that grounds exist to revoke a license issued under this Chapter, the City Manager shall cause an investigation of the licensee and/or massage establishment to be undertaken. If based on the result of the investigation, the City Manager determines that grounds to revoke the license are present, then the City Manager shall commence proceedings to revoke or suspend the license by providing notice of the City's intent to revoke the license as required in Section 5.20.240 (Notice of Revocation), and by scheduling a date for the revocation hearing with a Hearing Officer, which date shall not be less than 30 calendar days from and after the date the notice of intent to revoke the license is mailed.

(e) The occurrence of any of the following are grounds for revocation of a license issued under this Chapter:

(1) The licensee has violated any provisions of this Chapter, including, but not limited to, the requirement that the applicant or the applicant's designee be present at the premises at all times the massage establishment is in operation;

(2) The licensee or any of the establishment managers or employees has engaged in disqualifying conduct as described in Section 5.20.010 (Definitions);

(3) The licensee has made a material misstatement in the application for a license;

(4) The licensee has engaged in fraud, made a misrepresentation, or made a false statement in conducting the massage establishment or in performing massage services;

(5) The licensee has continued to operate the massage establishment after the license has been suspended;

(6) The licensee has failed to comply with one or more of the facilities and operations requirements of Section 5.20.190 (Massage Establishment Facilities and Operations Requirements); or

(7) The licensee has employed or otherwise allowed a person to work as a massage provider at the massage establishment who:

(A) Does not have a valid CAMTC certification, or

(B) Has engaged in disqualifying conduct, as described in Section 5.20.010 (Definitions), at the massage establishment.

(f) The building, structure, equipment, or location used by the massage establishment fails to comply with the applicable building, fire, electrical, plumbing, health, or zoning requirements in the Dana Point Municipal Code or the requirements of this Chapter.

(g) Massage has been provided at the massage establishment by any person who is not a certified massage technician through CAMTC.

(h) Where it is determined that the grounds to revoke a license exist, the City may suspend the license for a period of not less than 30 calendar days, but not more than 90 calendar days following the conclusion of the hearing, where the Hearing Officer has found the existence of mitigating circumstances, which, in the sole discretion of the City, renders suspension appropriate. Mitigating circumstances include, but are not limited to, the following:

(1) The licensee or its manager or employees have not been found to have engaged in disqualifying conduct as defined in Section 5.20.010 (Definitions);

(2) The violation committed by the licensee does not present an immediate threat or danger to the public health, safety, or welfare;

(3) The licensee has not previously been cited for violations of this Chapter or violations of the Code within the 10 years prior to the date of the hearing; and

(4) The licensee has agreed in writing to take specific measures, as approved by the City, to cure or correct the violation within a period of not more than 15 calendar days.

(i) The massage establishment or any licensee or massage technician has committed a violation of this Chapter.

(Amended by Ord. 06-13, 12/13/06; Ord. 20-03, 10/6/20)

§ 5.20.240. Notice of Revocation.

(a) Notice of the City's intent to revoke a license and of the revocation hearing shall be provided in accordance with the provisions of this Section.

(b) Notice shall be delivered to the licensee, and other person(s) designated on the license, at the address(es) designated in the license, via U.S. mail and certified mail return receipt requested.

(c) The notice shall be in writing and shall contain all of the following:

(1) That the City intends to revoke the license;

(2) The grounds for the revocation;

(3) The date, time, and place of the revocation hearing;

(4) That the licensee may appear, be heard, examine witnesses, and present evidence in the licensee's favor; and

(5) That the licensee's failure to appear, be heard, and present evidence in the licensee's favor may result in the revocation of the license.

(Amended by Ord. 06-13, 12/13/06; Ord. 20-03, 10/6/20)

§ 5.20.250. Hearing for Revocation of License.

(a) Hearing Officer Assignment. The City Manager shall designate a Hearing Officer to preside over the revocation of massage establishment licenses. The Hearing Officer shall not be a City employee, and may, but need not be, a qualified attorney, qualified City manager or a hearing officer with the State Office of Administrative Hearings. The Hearing Officer shall be subject to disqualification for bias, prejudice, or material financial interest in the outcome, as provided in subsection (c).

(b) Scheduling of Hearing. The Hearing Officer shall conduct a hearing within 30 calendar days of the City's mailing of the notice required by Section 5.20.240 (Notice of Revocation).

(c) Challenge to Hearing Officer. No later than five days after notice of the hearing date is sent to the appellant, the appellant may challenge the Hearing Officer's impartiality by filing a written statement with the City Manager objecting to the hearing before the Hearing Officer and setting forth the specific grounds for disqualification. General and unsupported claims of bias, prejudice, or material financial interest shall not form a basis for disqualification. The City Manager, or designee, shall issue and serve on the appellant a written decision on the question of disqualification prior to the date of the hearing specified in the notice of hearing.

(d) Recording of Appeal Hearing. All hearings shall be recorded by a video or audio device. Any party to the appeal hearing may also, at his, her, or its own expense, use a court reporter to record the proceeding. If a court reporter is not used, the City will make the video or audio tapes of the hearing available to any party. The City may charge a reasonable fee for reproducing the tapes. If a court reporter is used, a party to the hearing may obtain a copy of the transcript upon payment of any applicable fees or costs charged by the court reporter. The City may destroy such tapes or transcripts following the time during which any and all appeals of the decision are required to be made pursuant to this Chapter or following the time during which such tapes or transcripts are required to be retained by the City pursuant to State law, whichever is later.

(e) Evidentiary Rules. The hearing need not be conducted in accordance with the technical rules of evidence. Each party shall have the right to call and examine witnesses, to introduce exhibits and to cross-examine opposing witnesses who have testified under direct examination. The Hearing Officer

may call and examine any witness. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding, unless it would be admissible over objection in a civil action. The rules of privilege are applicable to the extent they are permitted in civil actions. Any relevant evidence may be admitted if it is the type on which reasonable persons are accustomed to rely 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. Oral evidence may be taken on oath or affirmation. Irrelevant collateral, undue or repetitious evidence shall be excluded.

(f) Hearing Officer Decision. At the conclusion of the hearing, the Hearing Officer shall decide whether grounds for revocation exist. Within 10 calendar days after the conclusion of the hearing, the Hearing Officer shall file with the City Manager, a written decision, supported by written findings based on the evidence submitted, and a statement of his or her order. A copy of such report shall be forwarded by first class and certified mail, postage prepaid, to the licensee on the day it is filed with the City Manager. The order of the Hearing Officer shall become effective three calendar days after its mailing to the licensee, unless timely appealed as provided in this Section.

(g) In the event the Hearing Officer determines that the grounds for revocation exist, the City may request at the conclusion of the hearing that, based on the evidence submitted at the hearing, the Hearing Officer determine whether mitigating circumstances exist as provided under Section 5.20.230 (Massage Establishment License Suspension or Revocation), to suspend the establishment license in lieu of revocation. In the event the Hearing Officer determines that suspension is appropriate, the Hearing Officer shall establish all terms and condition for such suspension.

(h) The decision of the Hearing Officer shall be appealable to the City Council by the filing of a written appeal with the City Clerk within 15 calendar days following the day of mailing of the Hearing Officer's decision and paying the fee for appeals provided under this Code. All such appeals shall be filed with the City Clerk and shall be public records. The City Council shall, at a regularly scheduled meeting within 30 calendar days from the date the written appeal was filed hold a public hearing to consider the appeal, and shall accept all testimony and evidence from the parties that the City Council deems pertinent. At the conclusion of the review, a majority of the City Council members present shall decide to sustain the decision, modify the decision, or order the decision stricken and issue such order as the City Council finds is supported by the entire record. The action of the City Council shall be final and conclusive and there shall be no additional right of appeal.

(Amended by Ord. 20-03, 10/6/20)

§ 5.20.260. Return of License.

In the event that a license or permit is cancelled, suspended, revoked or invalidated, the licensee or permittee shall forward it to the officer who issued it not later than the end of the third business day after notification of the cancellation, suspension, revocation or invalidation.
(Amended by Ord. 06-13, 12/13/06; Ord. 20-03, 10/6/20)

§ 5.20.270. Violations Declared a Public Nuisance—Violations Subject to All Legal Remedies.

In addition to the punishment provided for in this Chapter for a violation of any provision of this Chapter, a violation of any provision hereof, including the failure to obtain a license, or the failure to abide by a condition of approval, constitutes a public nuisance and is subject to abatement as such. Said declaration and abatement of a public nuisance is in addition to and not in lieu of any other remedy or punishment provided at law or in equity. Notwithstanding the foregoing, a violation of any provision of this Chapter may also be subject to any legally available criminal, civil or administrative remedy.
(Amended by Ord. 20-03, 10/6/20)

§ 5.20.280. Violation and Penalty.

It is unlawful and a misdemeanor for any person to violate any provision of this Chapter and shall subject the violator to punishment.
(Amended by Ord. 20-03, 10/6/20)

§ 5.20.290. Application to Existing Establishment.

Each owner or operator of a massage establishment legally doing business on the effective date of this Chapter shall apply for a massage establishment license not later than 180 days from the effective date of this Chapter, January 1, 2021. A written notice of this requirement will be delivered to the owner or operator by first class and certified mail, postage prepaid, by the City. The massage establishment shall comply with all requirements which are prerequisites for issuance of a license before such a license will be issued.
(Amended by Ord. 20-03, 10/6/20)

§ 5.20.300. Conflicting Ordinances Repealed.

All ordinances or parts of ordinances, or regulations, in conflict with the provisions of this Chapter are hereby repealed.
(Amended by Ord. 20-03, 10/6/20)

CHAPTER 5.30
CABLE COMMUNICATIONS FRANCHISES

§ 5.30.010. Title.

This Chapter is known and may be cited as the "Cable Communications Franchise Ordinance." (Added by Ord. 03-12, 6/11/03)

§ 5.30.020. Definitions.

Various terms and phrases used in this Chapter are defined in Section 5.30.160. (Added by Ord. 03-12, 6/11/03)

§ 5.30.030. Grant of Franchise.

(a) Authority to Grant Franchises. The Grantor may grant a franchise to provide Cable Service to any person who offers to provide a system pursuant to this Chapter.

(b) Form. A franchise may, at Grantor's sole option, take the form of an Ordinance, license, permit, contract, resolution, or any other form elected by Grantor.

(c) Grants Not Required. Consistent with applicable state and federal law, no provision of this Chapter requires the granting of a franchise when, in the opinion of the Grantor, it is in the public interest not to do so.

(d) Purpose. The purpose of a franchise is to identify and authorize the operation of a Cable Communications System by a specific Grantee, and to identify and specify those terms, conditions, definitions, itemizations, specifications and other particulars of the agreement between the Grantor and a Grantee. In so doing, a franchise may clarify, extend, and interpret the provisions of this Chapter. Where a franchise and this Chapter conflict, both shall be liberally interpreted to achieve a common meaning or requirement. In the event this is not possible within reasonable limits, the franchise shall prevail. Unless otherwise specifically stated, no provision of this Chapter shall be deemed to be contractually incorporated into any franchise granted hereunder.

(e) Compliance with Law. Neither this Chapter nor a franchise granted under it relieves a Grantee of any requirement of Grantor, or of any Ordinance, rule, regulation, or specification of Grantor now or hereafter in effect pursuant to Grantor's police power, including, but not limited to, the obtaining of a business license, and the payment of all permit and inspection fees required from time to time by the Grantor.

(f) Franchise Non-Exclusive. Grantor may, at its option, grant one or more franchises to construct, operate, maintain, and reconstruct a system. Said franchises shall constitute both a privilege and an obligation to provide the system and services required by this Chapter and the franchise.

(g) Duration. The term of any franchise, and all rights, privileges, obligations and restrictions pertaining thereto, shall be specified in the franchise. The effective date of any franchise shall be as specified in the franchise.

(h) Use of Public Streets and Rights-of-Way. For the purposes of operating and maintaining a system in the franchised service area, a Grantee may place and maintain within the public rights-of-way such property and equipment as meets with the approval and conforms to the standards of the City and as are necessary and appurtenant to the operation of the Cable Communications System. Prior to construction or alteration of the plant in public rights-of-way, a Grantee shall apply for, pay all

applicable fees, and receive all necessary permits.

(i) Use of Other Utilities. Any person who provides a system or services as defined herein shall be deemed a Grantee and must obtain a franchise. If such Grantee uses distribution channels furnished by any telephone company, other public utility, or any other entity which are functionally equivalent to those used by a Cable Operator, said Grantee shall be required to comply with all of the provisions of this Chapter.

(j) Assignment, Transfer or Sale of Franchise.

(1) There shall be no assignment of a franchise, in whole or in part, or any change in control of a Grantee, without the prior express written approval of the Grantor.

(2) Any assignment or transfer, or any change in control, without the Grantor's prior written consent shall constitute a default which will cause a franchise to terminate.

(3) At least 120 days before a proposed assignment or change in control of the franchise is scheduled to become effective, a Grantee shall request in writing the Grantor's written consent. A Grantee shall submit to the Grantor (concurrently with the submission of its written request) an FCC 394 Form (or successor form) together with: (i) any other information or documentation required by the state or federal government (including the FCC); (ii) the information referenced in subsection (7) of this paragraph; (iii) unedited and unredacted copies of the sale or transfer documents with all schedules and exhibits thereto; and (iv) information regarding the financial ability and stability of the proposed assignee with respect to being able to perform all obligations of the existing franchise.

(4) The Grantor shall not unreasonably withhold its consent to such an assignment or change in control. However, in evaluating the request for assignment, transfer, sale, or change in control, the Grantor may, in its sole discretion and among other things, undertake a technical inspection and audit of the system to determine whether the system complies with all applicable technical and safety codes, this Chapter, and the franchise.

(5) If the Grantor determines (as a result of the technical inspection and audit) that the system does not comply with federal, state, or local standards, then a Grantee shall be provided with an opportunity to correct or cure the non-compliance either prior to or after the transfer or change of control. In the alternative, the Grantor may work with both the current and proposed Grantee to cure the non-compliance. The Grantor shall be under no obligation to approve any transfer or assignment if a Grantee is in breach.

(6) Before an assignment or change in control is approved by the Grantor, the proposed assignee, transferee, or buyer shall execute an affidavit acknowledging that it has read, understood, and will abide by both this Chapter and the applicable franchise.

(7) In the event of any approved assignment or change in control, the assignee or transferee shall assume all obligations and liabilities of the former Grantee relating to the franchise unless specifically relieved by the Grantor at the time the assignment or change in control is approved.

(8) If the Grantor disapproves a request for consent, then a Grantee may submit another request or an amended request for consent or seek whatever address is permitted under applicable law. In such a situation, a new 120 day time-frame begins to run from the date of the submission of the new, amended, or modified request or application.

(k) Reimbursement of Processing and Review Costs. Grantee shall reimburse Grantor for Grantor's reasonable processing and review expenses in connection with a transfer of the franchise or a change in control of the franchise, including without limitation, costs of administrative review, financial,

legal, and technical evaluation of the proposed transferee, costs of consultants (including technical and legal experts), notice and publication costs, and document preparation expenses. A reasonable deposit in an amount determined by the City may be required by the City. In addition, prior to any transfer or change in control, Grantee shall reimburse Grantor for all of Grantor's expenses in connection with evaluating or negotiating a renewal of Grantee's franchise, whether or not said renewal was ever finalized or granted. Grantor may send Grantee an itemized description of all such charges, and Grantee shall pay such amount within 20 days after the receipt of such description.

(l) Violation. If a Grantee violates any provision of paragraph (j) of this Section, the franchise shall automatically terminate. The procedures contained in Section 5.30.130 of this Chapter shall not apply to an unlawful transfer or change in control, and the franchise shall automatically terminate upon the occurrence of that violation.

(Added by Ord. 03-12, 6/11/03)

§ 5.30.040. Rights Reserved to the Grantor.

(a) Reservation. Grantor reserves every right it may have in relation to its power of eminent domain over Grantee's franchise and property.

(b) Non-waiver or Bar. Neither the granting of any franchise, nor any provisions of this Chapter, shall constitute or be construed as a waiver or bar to the exercise of any governmental right or power by Grantor.

(c) Delegation of Powers. Any right or power in, or duty retained by or imposed upon Grantor, or any commission, officer, employee, department, or board of Grantor, may be delegated by Grantor to any officer, employee, department or board of Grantor, or to such other person or entity as Grantor may designate to act on its behalf.

(d) Right of Inspection of Construction. The Grantor shall have the right to inspect and approve all construction, installation, or other physical work performed by Grantee in the public rights-of-way and on private property consistent with its generally applicable building codes, so long as said inspection and testing does not unreasonably interfere with Grantee's operations.

(e) Right to Require Removal of Property. Consistent with applicable law, at the expiration of the term or any renewal term or extension for which the franchise is granted, or upon its lawful revocation, expiration, or termination, the Grantor shall have the right to require a Grantee to remove, at Grantee's expense, all portions of its system and any other property from all streets and public rights-of-way within the franchise service area within a reasonable period of time.

(f) Right of Intervention. The Grantor shall have the right of intervention in any suit, proceeding or other judicial or administrative proceeding in which the Grantor has any material interest, and to which a Grantee is party.

(g) Place of Inspection. The Grantor shall have the right to inspect Grantee's local premises, and to request copies of all relevant information that is reasonably necessary for the exercise of Grantor's regulatory authority, upon reasonable notice at any time during normal business hours. Any Grantee records kept at another place shall, within 10 days of Grantor's request, be made available at Grantee's local premises within the County of Orange for Grantor's inspection and copying. All reports and records required pursuant to this Chapter shall be furnished at the sole expense of Grantee, except as otherwise provided in this Chapter or the franchise. (Added by Ord. 03-12, 6/11/03)

§ 5.30.050. Rights of Subscribers.

(a) Discriminatory Practices Prohibited. A Grantee shall not deny Cable Service or otherwise discriminate against subscribers or others on the basis of race, color, religion, national origin, sex, age, handicap,

or other protected classes. A Grantee shall strictly adhere to the equal employment opportunity requirements of federal, state, or local governments and shall comply with all applicable laws and executive and administrative orders relating to non-discrimination.

(b) Tapping and Monitoring. A Grantee shall not tap or monitor, or permit any other person controlled by Grantee to tap or monitor, any cable, line, signal input device, or subscriber outlet or receiver, for any purpose whatsoever without the express written consent of the subscriber or a court order therefor; provided, however, that a Grantee may monitor customer service calls for quality control purposes and may conduct system-wide or individually addressed "sweeps" for the purpose of verifying system integrity, monitoring signal levels, or checking for unauthorized connections to the Cable Television System, service levels, or billing-for-pay services.

(c) Data Collection.

(1) Except for its own use, or in connection with the provision of Cable Services or for release of data to the Grantor, the Grantee shall not permit its system to be used for data collection purposes, nor shall it otherwise collect data which would reveal the commercial product or other preferences or opinions of an individual subscriber, members of their families, or their guests, licensees or employees, unless the Grantee shall have received the prior written consent of such subscriber.

(2) In any event, the Grantee shall not disclose or permit the release or sale of data on individual subscribers or groups thereof, but may disclose or permit the release or sale of aggregate data only.

(3) Disclosure of Subscriber Lists. The Grantee shall not disclose, or sell, or permit the disclosure or sale of its subscriber list without the prior written consent of each subscriber on such list; provided that Grantee may use its subscriber list as necessary for the construction, marketing, and maintenance of the Grantee's services and facilities authorized by a franchise, and the billing of subscribers for Cable Services; and provided further, that consistent with applicable law, Grantor may use Grantee's subscriber list for the purpose of communication with subscribers in connection with matters relating to the operation, management, and maintenance of the Cable System.

(4) Grantee shall not disclose individual subscriber preferences, viewing habits, beliefs, philosophy, creeds, or religious beliefs to any third person, firm, agency, governmental unit, or investigating agency without court authority or the prior written consent of the subscriber.

(d) Terms of Subscriber Consent.

(1) Any written consent, if given, shall be limited to a period of time not to exceed one year, or a term agreed upon by the Grantee and the subscriber.

(2) The Grantee shall not condition the delivery or receipt of Cable Services to any subscriber on any such consent.

(3) A subscriber may at any time revoke, without penalty or cost, any consent previously given by delivering to the Grantee in writing a statement of the subscriber's intent to so revoke.

(e) Other Persons Affected. The prohibitions contained in paragraphs (a) through (d), inclusive, of this Section apply to Grantee, as well as to all of the following:

(1) Officers, directors, employees, agents, and general and limited partners of the Grantee;

(2) Any person or combination of persons owning, holding, or controlling any corporate stock or other ownership interests in the Grantee;

(3) Any affiliated or subsidiary entity owned or controlled by Grantee, or in which any officer, director, stockholder, general, or limited partner, or person or group of persons owning, holding or controlling any ownership interest in the Grantee, shall own, hold or control any corporate stock or other ownership interests; and

(4) Any person, firm, or corporation acting or serving in the capacity of a holding or controlling company of the Grantee.

(f) Subscriber Bill of Rights. Grantee shall provide to all subscribers, at the time of initial connection and annually thereafter, a notice in a form previously approved by Grantor (which approval shall not be unreasonably withheld) describing, in understandable language, the subscriber's rights and obligations that are generally provided under the franchise and federal law, including a description of how to contact the Grantee and, if necessary, the Grantor, in the event of an unresolved subscriber complaint.

(g) Notice to New Subscribers. Before providing Cable Service to any subscriber, Grantee shall provide a written notice to the subscriber containing substantially the following information:

"Subscriber understands that Company uses public rights-of-way and other facilities of the City of Dana Point in providing service and that this continued use cannot be guaranteed. Subscriber agrees not to make any claims against the City of Dana Point or its officers or employees in the event that such use is denied for any reason, and Company is unable, in its discretion, to provide service over alternate routes."
(Added by Ord. 03-12, 6/11/03)

§ 5.30.060. Finance.

(a) Payments to the Grantor.

(1) As compensation for any franchise to be granted, and in consideration of permission to use the Grantor's streets and public rights-of-way for the construction, operation, maintenance, and reconstruction of a system, the Grantee shall pay to the Grantor the amounts specified in the franchise.

(2) Payments due the Grantor shall be computed quarterly, and shall be paid within 30 days after the close of each calendar quarter. The payment shall be accompanied by a report showing the basis for the computation and such other relevant facts as may be required by the Grantor to determine the accuracy of the payment. A final annual reconciliation, and payment if any, shall be delivered to Grantor by Grantee within 90 days after the end of each calendar year.

(3) If any franchise payment or recomputed amount is not made on or before the dates specified above in subsection (2), Grantee shall pay as additional compensation the greater of the following:

(A) An interest charge, computed from the applicable due date, at an annual rate equal to the prevailing commercial prime interest rate in effect upon the due date, plus 3%.

(B) A sum of money equal to $4,000 for each month, or part thereof, of delay, which sum shall also bear interest from the due date at an annual rate equal to the prevailing commercial prime interest rate in effect upon the due date, plus 1%.

(4) In addition to any late payment made pursuant to subsection (3) above, if a payment is late by 60 days or more, Grantee shall pay a sum of money equal to 5% of the amount due in order to defray additional expenses and costs incurred by Grantor as a result of such delinquent payment.

(5) No acceptance of any payment shall be construed as a release of, or an accord, or satisfaction of, any claim that the Grantor might have for further or additional sums payable under the terms of this Chapter, or for any other performance by Grantee of an obligation hereunder.

(6) Payments of compensation made by a Grantee to the Grantor pursuant to the provisions of this Chapter are in addition to, and exclusive of, any and all authorized taxes, business license fees, and other fees, levies, or assessments now in effect, or subsequently adopted in accordance with state and federal law.

(b) Security Fund.

(1) Within 30 days after the effective date of the franchise, a Grantee shall deposit into a bank account established by a Grantee, for the benefit of Grantor, and shall maintain on deposit through the term of the franchise, a sum specified in the franchise as security for the faithful performance by Grantee of all of the provisions of the franchise, and compliance with this Chapter and with all orders, permits and directions of the Grantor, or any designated representative of the Grantor having jurisdiction over Grantee's acts or defaults under the franchise or this Chapter, and as security for the payment by a Grantee of any claims, fees, liens, or taxes due the Grantor which arise by reason of the construction, operation, maintenance or reconstruction of the system pursuant to the franchise or this Chapter, and to satisfy any actual or liquidated damages arising out of a franchise breach.

(2) Except as otherwise provided in the franchise, if a Grantee fails, after 20 days written notice, to pay to the Grantor any fees that are due and unpaid, or fails to repay within such 20 days, any damages, costs or expenses which the Grantor is compelled to pay by reason of any act or default of grantee in connection with its franchise; or if Grantee fails to comply with any provision of the franchise or this Chapter and the Grantor determines that such failure was without just cause and, in a manner consistent with the procedures specified in Section 5.30.140 of this Chapter, Grantor reasonably determines it can be remedied by a withdrawal from the security fund or is nevertheless subject to liquidated damages, then, in any such event, the Grantor may immediately withdraw the amount thereof from the security fund, with interest and any liquidated damages. Upon such withdrawal, the Grantor shall notify a Grantee of the amount and the date of withdrawal.

(3) Within 30 days after notice to Grantee that any amount has been withdrawn by Grantor from the security fund, a Grantee shall deposit a sum of money sufficient to restore such security fund to the original amount.

(4) Grantee shall be entitled to the return of the security fund, or portion thereof, with interest, that remains on deposit at the expiration or termination of the franchise, once all amounts due to the Grantor have been paid. Grantee shall also retain its right to challenge any withdrawal from such security fund.

(5) The rights reserved to the Grantor with respect to the security fund are in addition to all other rights of the Grantor, and no action, proceeding or exercise of a right with respect to such security fund shall affect any other right the Grantor may have.

(c) Faithful Performance Bond. Within 30 days after the effective date of the franchise, a Grantee shall furnish proof of the posting of a faithful performance bond in favor of the Grantor, with corporate surety approved by the Grantor in the sum specified in the franchise and conditioned that a Grantee shall well and truly observe, fulfill, and perform each term and condition of the franchise; provided, however, that such bond shall not be required after certification by Grantor of the completion of construction of Grantee's Cable System. The corporate surety must be authorized to issue such bonds in the State of California, and the bond must be obtained and secured through an authorized agent in the County of Orange. During the course of construction, the amount of the bond may from time to time be reduced, as provided in the franchise. Written evidence of payment of premiums shall be filed with the Grantor.

(d) Letter of Credit.

(1) At the option of the Grantor, a Grantee may be authorized, in lieu of creating a security fund or obtaining a faithful performance bond, to post an irrevocable letter of credit, issued by a bank approved by the Grantor, in the amount specified in the franchise. Said letter of credit shall incorporate wording approved by the Grantor enabling it to draw from time to time such funds as the Grantor may determine to be necessary to satisfy any material defaults of Grantee or to make any payments due Grantor under or in connection with this Chapter or Grantee's franchise, upon not more than 10 days written notice to the issuer of the letter of credit. Said letter of credit shall further provide for 60 days written notice by certified mail from its issuer to Grantor of any pending expiration or cancellation, and said notice shall without further cause constitute reason for the Grantor to draw the full sum to be held in its own accounts until such letter of credit is reestablished in a form satisfactory to Grantor.

(2) If Grantor requires such a letter of credit, Grantee shall pay all fees or other charges required to keep it in force and shall, within 30 days of any draw by Grantor, restore its face value to the original amount.

(3) All provisions herein applicable to bonds or security funds shall also apply to letters of credit.

(Added by Ord. 03-12, 6/11/03)

§ 5.30.070. Services.

(a) Services to be Provided. A Cable System shall provide, as a minimum, the broad programming categories specified in the franchise.

(b) Changes in Services. Grantee shall inform Grantor and its subscribers at least 30 days in advance of making any change in a Cable Service, or in the rates charged therefor.

(c) Non-discrimination. Grantee shall not discriminate between or among subscribers within one type or class in the availability of services, at either standard or differential rates according to published rate schedules, except as otherwise authorized by law. No charges may be made for services except as listed in published schedules which are available for inspection by anyone at Grantee's office, quoted by Grantee on the telephone, and displayed or communicated to all potential subscribers.

(d) Prepayment. Grantee may not charge subscribers for services more than one month in advance unless an individual subscriber requests a longer period. Bills may be due and payable upon mailing but shall not be delinquent, and no late charge penalties shall be assessed, until the later of: (i) 22 days from postmark; or (ii) service has actually been provided for the billed period. All bills and billing statements shall clearly indicate the billing period, the actual due date, and the delinquent or late payment or assessment.

(e) Disconnect for Cause. Grantee may disconnect a subscriber only for cause, which shall include, without limitation, the following:

(1) Payment delinquency in excess of 45 days.

(2) Willful or negligent damage to or misappropriation of Grantee's property.

(3) Monitoring, tapping, or tampering with Grantee's system, signals, or service.

(4) Threats of violence to Grantee's employees or property.

(f) Reconnection. Grantee shall, upon subscriber's written request, reconnect service which has been disconnected for payment delinquency when payment has removed the delinquency. If authorized by applicable law, a published standard charge may be made for reconnection. Grantee shall not be required to make more than three reconnections for the same subscriber if the disconnections involved were caused by payment delinquency within any previous 24 month period. Reconnection for

disconnects covered by subsections (e)(2), (3), and (4) of this Section shall be at Grantee's sole discretion.

(g) Installations.

(1) Grantee shall promptly provide and maintain service as specified in the franchise to the residential, commercial, and industrial structures in the franchise service area, as defined in the franchise, upon request of the lawful occupant or owner.

(2) Where a new drop is required to provide service, Grantee shall advise each subscriber that the subscriber has the right to require that installation be done over any route on the subscriber's property, and in any manner the subscriber may elect which is technically feasible and consistent with proper construction practices. If the subscriber requests installation other than a standard installation, then the subscriber may be required to pay a reasonable fee for the time and materials occasioned by that installation.

(3) For purposes of this paragraph, a standard installation shall include installation of drop cable with fittings up to 150 feet from the CATV distribution system measured along the cable from the center line of the street or utility easement through the house wall or, at the subscriber's option, through the floor from a house vent or crawl space directly to the subscriber's television set with five feet of cable from the wall or floor entry to the TV set. Also included as part of a standard installation is the grounding cable, fine tuning of the television set, and the provision by the Grantee of the appropriate literature and information.

(4) After Cable Service has been established by activating trunk or distribution cables for any area, Grantee shall provide service to any person requesting service in that area within seven days from the date of request, provided that the Grantee is able to secure all access rights necessary to extend service to that potential subscriber within that seven day period on reasonable terms and conditions.

(h) Non-Standard Installations. For each non-standard installation, a Grantee may charge the subscriber for the cost of material and labor in excess of that required for a standard installation. Grantee shall provide each subscriber a written estimate of all charges for a non-standard installation prior to installation and obtain subscriber's written authorization in advance for all nonstandard installation charges.

(i) Converters/Terminals. At such time as a converter or terminal is required for subscribers to have access to all services on its system, Grantee shall make them available to subscribers for a fee. Grantee may require each subscriber who elects to install a converter or terminal to furnish a security deposit therefor.

(1) Each converter or terminal device shall be and remain the property of the Grantee unless Grantor approves or requires its sale to the subscriber. Grantee shall be responsible for maintenance and repair of all equipment owned by Grantee and may replace it as Grantee may from time-to-time elect, except that subscriber shall be responsible for loss of or damage to any such device while in the subscriber's possession.

(2) Upon termination or cancellation of subscriber's service, subscriber shall promptly return Grantee's property to Grantee in the same condition as received, reasonable wear and tear excepted.

(3) Grantee may apply the security deposit against any sum due from subscriber for loss of or damage to such converter or terminal exceeding reasonable wear and tear. In the event that no security deposit has been required, the Grantee may charge the subscriber for any such damage exceeding reasonable wear and tear.

(4) If Grantee has no claim against the subscriber's security deposit, Grantee shall return it, or the balance, to the subscriber within 20 days of return of the converter or terminal.

(Added by Ord. 03-12, 6/11/03)

§ 5.30.080. Design and Construction.

(a) System Construction. The system shall be constructed in accordance with the provisions of the franchise.

(b) Construction Components and Techniques. Construction components and techniques shall be in accordance with the franchise and all applicable law.

(c) Construction Notice. Grantee shall give at least 48 hours advance notice to all property owners and to the Grantor prior to installing any above-ground or underground structures upon easements located on private property. Grantee shall be a member of Underground Service Alert ("USA").

(d) System Construction.

(1) The Grantee shall begin to offer Cable Service and any other service authorized by the franchise no later than the date specified in the franchise.

(2) A Grantee shall provide a detailed construction plan including an estimated progress schedule, area construction or reconstruction maps, a system testing plan, and projected dates for offering service to subscribers.

(3) A Grantee shall remove or relocate, at the request of the Grantor and without expense to the Grantor, any facilities installed, used and maintained under any franchise if and when made necessary by any lawful change of grade, alignment or width of any public street, way, alley or place, including the construction of any subway or viaduct by the Grantor.

(4) The City Engineer shall be authorized to direct a Grantee to locate any conduits and appurtenances as may be reasonably necessary to avoid sewers, waterpipes, conduits or other structures lawfully in or under the streets; and before the work of constructing any pipes and appurtenances is commenced, the Grantee shall file with said Engineer plans showing the location thereof, which shall be subject to the approval of said Engineer; and all such construction shall be subject to the inspection of said Engineer and done to his reasonable satisfaction. All street coverings or openings of traps, vaults, and manholes shall at all times be kept flush with the surface of the streets; provided, however, that vents for underground traps, vaults and manholes may extend above the surface of the streets when said vents are located in parkways, between the curb and property lines. All above-ground facilities including, but not limited to, pedestals, nodes, and boxes shall only be placed in those locations specified by the City Engineer and shall be screened in a manner as specified by the City Engineer, to minimize any visual impacts. Installations shall not interfere with pedestrian and traffic flow and shall be consistent with ADA requirements.

(5) If any portion of any street shall be damaged by reason of defects in any of the conduits and appurtenances maintained or constructed pursuant to a franchise, or by reason of any other cause arising from the operation or existence of any pipes and appurtenances constructed or maintained under any other grant, said Grantee shall, at its own cost and expense, immediately repair any such damage and restore such street, or portion of street, to as good condition as existed before such defect or other cause of damage occurred, such work to be done under the direction of the City Engineer, and to his or her satisfaction.

(6) A Grantee shall guarantee the integrity, durability and structural integrity of any street cut repairs necessary for the installation or repair of grantee's facilities for the life of the street. Grantee shall

repair or replace, at no expense to the City, any failed street cut completed by Grantee or Grantee's subcontractor, as determined by the City Engineer.

(e) Geographical Coverage. A Grantee shall construct the Cable System so that it is capable of providing Cable Service to every residential dwelling unit and other structures specified in the franchise within the franchise service area. A Grantee shall take reasonable steps to accommodate future annexations to the franchise service area (as defined and provided by the franchise), with any exceptions requiring specific Grantor approval. Service shall be provided to subscribers in accordance with the schedules specified in the franchise. The route of separate cables serving institutional subscribers shall be as approved by Grantor and specified in the franchise.

(f) Construction Default. Upon the failure, refusal or neglect of Grantee to cause any construction, repair, or the terms of any construction permit, or other necessary work to comply with the terms of the franchise, thereby creating an adverse impact upon public safety, Grantor may (but shall not be required to) cause such work to be completed in whole or in part, and upon so doing shall submit to Grantee an itemized statement of costs. Grantee shall be given reasonable advance notice of Grantor's intent to exercise this power, and 15 days to cure the default. Grantee shall, within 30 days of billing, pay to Grantor the actual costs incurred.

(g) Vacation or Abandonment. In the event any street, alley, public highway, or portion thereof used by a Grantee shall be vacated by the Grantor, or the use thereof discontinued by a Grantee, upon written notice a Grantee shall forthwith remove its facilities therefrom unless specifically permitted to continue the same. On the removal thereof, Grantee shall restore, repair or reconstruct the area where such removal has occurred, to such condition as may be required by the Grantor. In the event of any failure, neglect or refusal of a Grantee, after 30 days' notice by the Grantor, to do such work, Grantor may cause it to be done, and Grantee shall, within 30 days of billing, pay to Grantor the actual costs incurred.

(h) Abandonment in Place. Grantor may, upon written application by Grantee, approve the abandonment of any property in place by Grantee, under such terms and conditions as Grantor may approve. Upon Grantor-approved abandonment of any property in place, Grantee shall cause to be executed, acknowledged, and delivered to Grantor such instruments as Grantor shall prescribe and approve, transferring and conveying the ownership of such property to Grantor.

(i) Removal of System Facilities. In the event that Grantee's plant is deactivated for a continuous period of 30 days, without prior written notice to and approval by Grantor, then Grantee shall, at Grantor's option and demand, and at the sole expense of Grantee, promptly remove from any streets or other areas all property of Grantee. Grantee shall promptly restore the streets or other areas from which such property has been removed to its condition existing prior to Grantee's use thereof; provided that Grantee shall not be required to remove conduit from underground, where Grantor has determined that no damage to the surface of any structures will result from such nonremoval.

(j) Movement of Facilities. In the event it is necessary, at Grantor's discretion, to temporarily move or remove any of a Grantee's property for a public purpose, Grantee, upon reasonable notice, shall move, at the expense of Grantee, its property as may be required to facilitate such public purpose. No such movement shall be deemed a taking of Grantee's property. Nothing herein shall limit the right of Grantee to seek reimbursement from any party other than Grantor.

(k) Undergrounding of Cable. Cables shall be installed underground at Grantee's cost. Previously installed aerial cable shall be installed underground at Grantee's pro rata cost in concert with other utilities, when those other utilities convert from aerial to underground construction.

(l) Facility Agreements. No franchise shall relieve Grantee of any obligations involved in obtaining pole or conduit space from any department of Grantor, any utility company, or from others maintaining

utilities in Grantor's streets.

(m) Extension of Franchise Service Area. If Grantor elects to grant one or more franchises hereunder, and if thereafter one or more of the franchises expires or is otherwise terminated, Grantor may, if it so elects, require a remaining Grantee, or more than one, to extend its system to provide service to the franchise service area previously served under the terminated franchise, unless Grantee demonstrates to Grantor's reasonable satisfaction that it is not commercially practicable to do so. The terms and requirements of such extension shall not exceed those contained in this Chapter or in Grantee's franchise.

(n) Repair of Streets and Public Ways. Grantee shall not cut, trench, or excavate any street which has been constructed or overlaid for five years or slurry-sealed for two years from said construction, overlay, or slurry-seal, as the case may be, without the advance written permission of the City Engineer. The City Engineer's consent shall be conditioned, among other things, upon a requirement that Grantee overlay or slurryseal, as determined by the City Engineer, the entire width of the affected street for the entire length of the project. Any and all streets and public ways, and improvements located within such streets and public ways, disturbed or damaged by a Grantee or its contractors during the construction, operation, maintenance, or reconstruction of the system, shall be restored at Grantee's expense, and within the time frame and limits specified by Grantor, to their original condition unless otherwise authorized in writing by Grantor. Grantee may be required subsequent to completion of construction, from time to time as determined by the City Engineer, to overlay or slurry-seal the affected street in order to maintain the structural integrity and/or aesthetics of the street. All decorative sidewalks (pavers, tiles, etc.) shall be replaced in like kind pursuant to the written direction of the City Engineer.

(o) Erection of Poles Prohibited. Grantee shall not erect any pole on or along any street or public way. If additional poles in an existing aerial route are required, Grantee shall negotiate with the public utility for their installation. Any such installation shall require the advance written approval of the Grantor. Subject to applicable federal and state law, a Grantee shall negotiate the lease of pole space and facilities from the existing pole owners for all aerial construction, under mutually acceptable terms and conditions.

(p) Reservation of Street Rights. Nothing in a franchise shall prevent the Grantor from constructing, repairing, or altering any public work. All such work shall be done, insofar as practicable, in such manner as not to unnecessarily obstruct, injure or prevent the free use and operation of any property of Grantee. However, if any property of Grantee shall interfere with the construction, maintenance, or repair of any public improvement, that property shall be removed or replaced in such manner as directed by Grantor so that the same shall not interfere with the public work, and such removal or replacement shall be at the expense of a Grantee.

(q) No Interference. Grantee shall not place equipment where it will interfere with existing and future uses of the streets, public right-of-way, or public property, with the rights of private property owners, with gas, electric, or telephone fixtures, with water hydrants or mains, with wastewater stations, with any traffic control system, or any other service or facility that benefits the Grantor's or its residents' health, safety or welfare.

(r) Protection of Streets. Grantee, at its own expense and in a manner as directed by the City Engineer, shall protect streets and public rights-of-ways, easements, and support or temporarily disconnect or relocate at its sole cost in the same street or other street or public right-of-way, any property of such Grantee when necessitated by reason of:

(1) Traffic conditions;

(2) Public safety;

(3) Temporary or permanent street closing;

(4) Street construction or resurfacing;

(5) A change or establishment of street grade;

(6) Installation of sewers, drains, water pipes, storm drains, lift stations, force mains, power or signal lines, and any traffic control system; or

(7) Any improvement, construction or repair or any improvement related to the Grantor's residents' health, safety or welfare.

(s) Marking of Facilities. It shall be the responsibility of a Grantee to locate and mark or otherwise visibly indicate and alert others to the location of its underground cable before employees, agents, or independent contractors of any entity perform work in the marked-off area. A Grantee shall participate in and adhere to the practices of Underground Services Alert ("USA") and provide at least 48 hours prior notice to USA prior to any excavation.

(t) Construction Standards.

(1) All construction, installation, maintenance and repair shall treat the aesthetics of the property as a priority, shall not substantially affect the appearance or the integrity of the structure, and shall not be installed on private property without the property owner's permission subject to Section 621 of the Cable Act.

(2) All underground drops shall follow (to the greatest extent possible) property lines, and cross property only at right angles unless otherwise permitted by the property owner, or required due to the physical characteristics of the subsurface, or required under applicable law. The Grantor may, either by way of a generally applicable resolution or through the imposition of routing conditions in any franchise determine the routing or placement of cable, conduit, nodes, pedestals, power supplies, vaults, and other equipment relating to the system.

(3) All construction shall be accomplished between the hours specified by the Grantor in the approved permit or ordinances.

(u) Payment of Fees.

(1) Grantee shall obtain, at its own expense, all permits and licenses required by local law, rule, regulation or applicable ordinance.

(2) As a condition of obtaining all necessary permits and licenses, the Grantee shall pay all applicable permit fees and, in addition, all of the Grantor's direct labor and supervisory costs, including customary and reasonable overhead (the "Labor Payment"). The City Council may, from time to time by resolution, establish the amount of said permit fees. To the extent not inconsistent with applicable law, the permit fees shall be sufficient to reimburse the Grantor for its costs, including the costs of staff, independent consultants, and related overhead, to review the proposed project, processing permits, plan check, inspecting the project including the costs of an outside inspector and, where applicable, the costs of an outside soils engineer or compaction testing expert, and the costs of any required testing to ensure that the construction adheres to standards of this Chapter, any franchise, any permit, and any other requirement of the Grantor.

(3) Both Grantee and Grantor may hire contractors, at Grantee's sole expense, to carry out any work under this agreement. Grantee shall make payment within 10 days of billing from the Grantor. Grantee shall be responsible for any damage caused by the construction including, but not limited to, damage to the public right-of-way, private property, streets, existing utilities, curbs, gutters

and sidewalks. Grantee shall pay the Grantor any costs incurred as a result of such damages including repairs made by the Grantor except for costs incurred as a result of the Grantor's sole negligence or its employees' and agents' sole negligence. Grantee shall complete restoration of or repairs to any damage caused by the construction within 10 days from the date of written notice from the Grantor.

(4) In lieu of the inspection portion of the Labor Payment or permit fees described above, at the Grantor's sole option, the Grantor may require Grantee at Grantee's sole expense, to hire a consultant, who is acceptable to and under the supervision of the Grantor ("Consultant"), to inspect the installation of the facilities on behalf of the Grantor, or provide other services as mutually agreed to by the parties.

(v) Progress of the Construction. Grantee, with the Grantor's assistance, shall develop a construction schedule and submit it to the Grantor at least 90 days prior to the start of work. Prior to the underground construction of any of the facilities or the installation of any of the nodes or power supplies, unless otherwise agreed to, Grantee shall furnish detailed plans of the proposed construction and changes thereto to the Grantor. The proposed node sites must be approved by the Grantor prior to construction of the underground plant. Depending on health and safety issues, and input from residents, the Grantor, at its sole discretion, may require proposed node sites to be relocated by Grantee. In the installation of the facilities, nodes or power supplies, Grantee shall comply with the Grantor's standard construction requirements relating to telephone facilities and other comparable utility installations.

(w) Construction Notification.

(1) Construction Plan. Unless otherwise governed by Grantor's construction regulations and Ordinances, at least 180 days prior to any construction, and from time to time thereafter, Grantee shall file with the City Manager or other designated employees of the City, a general construction plan describing in detail the Facilities construction plans, areas to be served, and an estimated time schedule for such construction ("Construction Plan"). Grantee reserves the right to modify or change its Construction Plan at any time in its sole discretion, provided Grantee provides written notice to the Grantor. Any modifications to construction plans must be reviewed and approved by the Grantor before modifications can be implemented by Grantee.

(2) Notice to the Grantor. The Grantor shall have 30 days following receipt of the Construction Plan, or changes thereto, to approve or disapprove the Construction Plan.

(3) Notice to Other Providers. Grantee shall provide the Grantor with general engineering base maps identifying existing underground and aerial utility routes, streets, parcels, poles, and construction needs including points of connections for existing residences, potential trench routes, and potential locations for nodes, amplifiers, and taps at least four months in advance of any underground construction, unless otherwise agreed to, which may be reviewed in advance by any interested party for the purpose of reducing the impact on the Grantor's infrastructure and for the public's convenience and shall be approved or disapproved by the Grantor within 60 days of receipt.

(4) Traffic Control Plans. Grantee shall furnish detailed traffic control plans, which shall include site-specific hours of construction, to the City Engineer no later than 30 days prior to the commencement of any construction activities which may affect or impact traffic (the "Traffic Control Plan"). The City Engineer shall provide (if any) comments to Grantee within 10 business days of receipt. The City Engineer may specify and limit hours of construction in order to avoid traffic congestion during peak periods. No construction related activities may be conducted in the public right-of-way without an approved Traffic Control Plan. Grantee shall indemnify the City against any claims or actions brought against City as a result of the Traffic Control Plan.

(5) Telephone Contact. During construction, Grantee shall provide the Grantor a telephone contact number, and staff it during regular business hours, to enable the Grantor to report any concerns regarding construction of the Facilities. After business hours such calls will be routed to an on-call supervisor. In the event that the Grantor reports any concerns to Grantee, Grantee shall respond in a timely manner. Grantee shall correct within two business days any adverse impact to the Grantor's use or operations or the use or operations of a third party caused by Grantee's construction activities in the public right-of-way at no cost to the Grantor.

(6) Daily Notice. Every working day during construction, Grantee shall notify the designated Grantor staff member of the location of that next day's construction activities. The number of concurrent construction locations may be limited by the Grantor.

(7) Project Overview. No later than 150 days prior to commencement of construction, Grantee shall file with the City Manager or other designated employee of the Grantor a project overview which shall contain an assessment of the operation of the nodes and power supplies, including without limitation, a noise study prepared by a licensed engineer approved by the Grantor documenting noise generated from the nodes.

Once the project has been satisfactorily defined by Grantee as determined by the Grantor, the Grantor will conduct an initial study to determine the appropriate level of environmental review. Grantee will submit the final engineering plans to the Grantor for review and approval prior to the issuance of any permits.

(8) Public Communication Plans.

(A) Grantee agrees to develop a public communication plan ("Communication Plan") and submit it to the Grantor for the Grantor's review at least 120 days prior to commencement of construction. The Grantor shall approve or disapprove the Communication Plan within 30 business days of its receipt. The Communication Plan shall include the following:

(i) A written notification of property owners adjacent to nodes, power supplies, amplifiers and taps not less than 60 days prior to the installation indicating the proposed location, a photograph of all above-ground or below-ground pedestals and other visible equipment from which their size must be apparent, and a detailed description of the equipment included within the node including: the electronic components, natural gas generator, electrical fans, and the anticipated noise levels during winter and summer months and emergency backup operations. Grantee will provide its non-toll telephone number and a telephone number of the Grantor which may be called if the property owner is concerned about the installation.

(ii) A mailing to all residents in a construction area 30 days in advance of construction activity.

(iii) The hanging of door hangers on all residences in the construction area seven days prior to immediate construction activity.

(iv) A second written notice to the adjacent property owner(s) not less than 15 days prior to installation of such nodes, amplifiers and taps which shall have the same information as set forth in subparagraph (8)(i) above as well as the actual date of the installation of such nodes, amplifiers, power supplies and taps.

(B) Grantee shall furnish the Grantor with the specific locations of the nodes, amplifiers and power supplies at least 60 days in advance of the installation of the nodes. The Grantor will provide notice to property owners at Grantee's expense. Grantee agrees to participate in any public hearings or meetings scheduled by the Grantor and will be prepared to answer

questions concerning Grantee's proposed construction of the facilities. Grantee shall have available at such meetings visual aids as appropriate such as slides, maps and diagrams. The proposed node locations in the City must be approved by the Grantor prior to construction of the underground cable plant. Depending upon health and safety issues, and input from residents, the Grantor, at its sole discretion, may require proposed node, amplifier and power supply sites be relocated by Grantee.

(9) Maps and Plans. Grantee shall maintain accurate maps and improvement plans of the Facilities, in a manner consistent with telecommunications industry standards and which can be integrated into the Grantor's Geographic Information System ("GIS"). Grantee shall furnish to the Grantor two complete sets of as-built construction drawings and a copy of the drawings in AUTOCAD usable format within 60 days of completion of the construction of the Facilities. Maps and improvement drawings shall be furnished to the Grantor and other parties interested in performing work within the public right-of-way, upon request, at no cost to the Grantor. Grantee shall pothole its facilities, at its expense, within 15 days of receipt of a written request from the Grantor unless Grantee can certify, with an associated indemnity approved by the City Attorney, the exact location and depth of the facilities at the location where potholing is requested.

(10) Certification of Completed Facilities. Grantor shall provide Grantee written notice of any street improvement project within Grantor's service area. Upon receipt of said written notice, Grantee shall certify in writing to Grantor that its facilities located in the street improvement project are complete and require no further construction for a period of five years, other than maintenance, or Grantee shall apply for all necessary permits and authorizations so that any necessary facilities will be installed and completed prior to completion of the street improvement project.

(Added by Ord. 03-12, 6/11/03)

§ 5.30.090. Operations and Maintenance.

(a) Customer Service.

(1) A Grantee shall maintain an office in the franchise service area, or at such other location as is approved by the Grantor in writing, or as described in the franchise. That office must be open during all usual business hours, but in no case less than 48 hours per week, including during at least one weekend day per week. Grantor shall have a publicly listed, non-long-distance-charge telephone number that is in operation to receive subscriber complaints and requests on a 24-hour basis. Current information shall be maintained of all complaints and their disposition, and a summary thereof shall be submitted to Grantor.

(2) The Grantee shall respond to requests as follows: (i) within eight hours after receipt of a request for repairs relating to a service interruption affecting at least 10% of the subscribers of the system; (ii) within 24 hours after receipt of requests for service related to all other service interruptions; (iii) and within 48 hours for all other complaints and requests for repair. All Cable System related problems shall be resolved within five business days unless technically infeasible. No charge shall be made to a subscriber for such service or repairs, except that Grantee may charge for service calls not related to its Cable System, or that are caused by the subscriber or members of its household, or the subscriber's agents or guests.

(3) The Grantee shall provide a telephone service system to receive all construction and service complaints. A sufficient number of customer service representatives shall be provided so that callers are not required to wait more than 30 seconds before being connected to a customer service representative 90% of the time, measured quarterly, or to receive busy signals more than 3% of the time, measured quarterly. The telephone number of the local office shall be listed in the telephone directory serving the City of Dana Point. The telephone service system shall accept

complaints 24 hours a day, seven days a week. The telephone service system shall be capable of generating reports relating to answer times, response times, hold times, and abandoned calls.

(4) Customer service personnel shall identify themselves by first names immediately.

(5) Customers shall have the right to speak with a supervisor, and if none is available, a supervisor shall return the customer's call within one working day.

(6) All officers, agents, or employees of the Grantee, including its contractors or subcontractors, who come into contact with members of the public shall wear on their outer clothing a photo-identification card in a form reasonably acceptable to Grantor. Grantee shall account for all identification cards at all times. Every vehicle of Grantee, or its major subcontractors, shall be clearly identifiable as working for Grantee.

(7) Grantee shall provide subscribers with the option of scheduling a four hour period, either in the morning or afternoon, in which a service call will be made.

(8) If a Grantee representative is running late for an appointment with a customer, or will not be able to keep the appointment as scheduled, the customer will be contacted and the appointment will be rescheduled, as necessary, at a time which is convenient for the customer. The customer has the option of rescheduling the appointment within a specified two hour period.

(b) Remedies for Inadequate Performance. Except for rebuild or planned service interruptions for which Grantee receives prior approval from the Grantor, in the event that one-third or more of its service to any subscriber is interrupted for six consecutive hours, or for a total of 12 nonconsecutive hours within any 30 day period, and subscriber notifies Grantee of said service interruption within 24 hours of subscriber discovery thereof, Grantee shall provide a 10% rebate of the monthly fees to affected subscribers for each such consecutive six-hour or nonconsecutive twelve-hour service interruption period. Grantor shall provide a 50% rebate of the monthly fees to all affected subscribers for each failure to make a service call within the specified four hour period. In no case shall such rebate exceed the monthly fee charged to the subscriber.

(c) Biennial Audit of Performance.

(1) Grantor may require, at its option, that performance audits of the system be conducted every two years by an independent technical consultant selected and employed by Grantor to verify that the system complies with all technical standards and other specifications of the franchise.

(2) Upon completion of a performance audit, the Grantor and Grantee shall meet to review the performance of the Cable System. The reports required by this Chapter regarding subscriber complaints, the records of performance audits and tests, and the opinion survey report shall be utilized as the basis for review. In addition, any subscriber may submit complaints prior to or during the review meetings, either orally or in writing, and these shall also be considered.

(3) Within 30 days after the conclusion of the system performance review meetings, Grantor shall issue findings with respect to the adequacy of system performance and quality of service. If areas of non-compliance are found, Grantor may direct Grantee to correct the non-compliance within such period of time as Grantor determines is reasonable.

(4) Participation by the Grantor and the Grantee in this process shall not waive any rights they may possess under applicable federal or state law.

(5) In addition to the biennial audit described above, Grantor may conduct an annual audit of the same or lesser magnitude, at its sole expense, when and if determined necessary or appropriate by Grantor.

(d) System Technical Data. Grantee shall provide Grantor with a computer disk or other data storage device requested by Grantor, in format approved by Grantor, which details and documents all of Grantee's equipment and facilities and their geographic location in the City. Such computer disk or other device shall be in a format specified by the City and data shall be updated annually and whenever there have been significant changes in the location of Grantee's equipment and facilities. In addition, Grantee shall maintain in its local office, a complete and up-to-date set of as-built system maps upon completion of construction or reconstruction, equipment specification and maintenance publications, and signal level diagrams for each active piece of electronic equipment in the system. As-built drawings shall show all lines and installed equipment, and tap values and spigots. The scale of maps and drawings shall be sufficient to show the required details in easily readable form and size. Technical data at the local office shall also include approved pole applications, details and documentation of satellite and microwave equipment, mobile radio units, heavy construction vehicles and equipment, and video and audio equipment normally used in the operation of the system. If Grantor requires use of technical data in its own offices, it may make copies of any items at Grantor's expense.

(e) Availability of Technical Data. All technical data reasonably necessary to demonstrate a Grantee's compliance with FCC regulations and the franchise shall be available for Grantor's inspection during normal business hours upon two business days notice. In the event of system failure or other operating emergency, the technical data will be made available at any time, so long as the provision of said data does not unreasonably interfere with Grantee's operations.

(f) Emergency Repair Capability. It shall be Grantee's responsibility to assure that its personnel, qualified to make repairs, are available at all reasonable times and that they are supplied with keys, equipment location instructions, and technical information necessary to begin repairs upon notification of the need to maintain or restore continuous service to the system.

(g) Customer Service Standards and Procedures.

(1) Information to Customers. The Grantee shall, at the time service is initiated, provide each new subscriber with written information covering:

(A) The time allowed to pay outstanding bills.

(B) Grounds for termination of service.

(C) The steps the Grantee must take before terminating service.

(D) How the customer can resolve billing disputes.

(E) The steps necessary to have service reconnected after involuntary termination.

(F) The fact that customer service personnel must identify themselves by first names immediately.

(G) The fact that subscribers have the right to speak with a supervisor, and if none is available, a supervisor shall return the subscriber's call within one working day.

(H) The appropriate regulatory authority with which to register a complaint and how to contact that authority.

In addition, at least once each calendar year, Grantee shall notify each subscriber that information is available upon request concerning items (A) through (H) above.

(2) Written Notices. Written notice of all terms of the customer agreement, the name, address and telephone number of the Cable Operator, all equipment and fee options, the availability of A/B

switches, the availability of parental control devices, any reduced rates for seniors or other subscribers, company billing and credit practices, company practices with respect to privacy of subscribers, the telephone numbers for customer complaints, the telephone number of the Grantor, and other relevant information, shall be made by Grantee to subscribers before service is commenced, at least once each calendar year, at any time upon the request of the subscriber, and whenever changes to such policies are made.

(3) Advance Notice of Changes. Except as otherwise provided by applicable law, advance notice of increases in fees or charges, and changes in channel lineup of stations or services, shall be sent to Grantor and to subscribers at least 30 days before the changes are made, except for changes not known sufficiently in advance by Grantee and not under Grantee's control, or where Grantor's waiver is obtained. Notices must be clearly identified and in print large enough to be easily readable.

(4) Billing.

(A) Billing Frequency and Format. Bills for service shall be rendered monthly unless service is rendered for a period less than one month. All bills shall contain a telephone number and a mailing address for billing inquiries or disputes and shall clearly delineate all changes and the basis for those changes.

(B) Disputed Bills.

(i) In the event of a dispute between a subscriber and the Grantee regarding the bill, the Grantee shall promptly make such investigation as is required by the particular case and report the results to the subscriber. If the dispute is not resolved to the satisfaction of both parties, the Grantee shall inform the subscriber of the Grantee's complaint procedures. If the subscriber wishes to obtain the benefits of subparagraphs (2) and (3) of this paragraph, notification of the disputed bill must be given by the subscriber to the Grantee in writing within 30 days after the bill date.

(ii) The subscriber shall not be required to pay the disputed portion of the bill until the earlier of the following:

(I) Resolution of the dispute; or

(II) Expiration of the 45 day period beginning on the date of the subscriber's written notification, provided that the procedures established in subparagraph (1) above have been followed.

(5) Suspension of Collection Efforts. Pending resolution of the billing dispute, Grantee shall ensure that no termination notices are issued for the disputed portions of the bill, and that no other collection procedures are initiated for the disputed amount. Any such activity may be interpreted as an attempt to avoid the provisions of these rules and may constitute a violation of these rules.

(6) Referral of Accounts to Collection Agencies.

(A) Uncollected accounts may be referred to private collection agencies for appropriate action if the bill has not been paid by the earlier of (i) 30 days following date of involuntary termination; or (ii) the sixty-first (61st) day following the billing date of the original uncollected amount, provided that no notification of a billing dispute has been made.

(B) If the account was voluntarily terminated by subscriber, for any reason, the account may not be referred to a private collection agency until at least 30 days following submission of the final bill. If notification of a billing dispute is made, all collection procedures shall be

delayed as required in subsection (4)(B) above entitled "Disputed Bills." Referral to a collection agent shall then occur no sooner than the ninety-first (91st) day following the billing date of the original uncollected amount.

(7) Termination for Non-Payment. Bills shall not be delinquent earlier than 22 days from the date of the bill, which must be mailed to subscribers within five working days prior to the stated due date. subscribers must be notified in writing of a proposed disconnection for non-payment at least 15 days prior to disconnection.

(h) Refund. When a subscriber voluntarily discontinues service, Grantee shall refund, within 20 days of the discontinuance of service, the unused portion of any advance payments after deducting any charges currently due through the date of such discontinuance. Unused payment portions shall be the percentage of time for which subscriber has paid for service and will not receive it because of the subscriber's discontinuation of service.

(Added by Ord. 03-12, 6/11/03)

§ 5.30.100. Violations.

(a) Use of Public Streets. From and after the effective date of this Chapter, it shall be unlawful for any person to construct, install, or maintain in any public place within Grantor's territory, or upon any easement owned or controlled by a public utility, or within any other public property of Grantor, or within any privately-owned area within Grantor's jurisdiction which is not yet, but is designated as, a proposed public place on a tentative subdivision map approved by Grantor, any equipment, facilities, or system for distributing signals or services through a cable television system, unless a franchise has first been obtained hereunder, and is in full force and effect.

(b) Unauthorized Connections. It shall be unlawful for any person to make or use any unauthorized connection to, or to monitor, tap, receive or send any signal or service via a franchised system, or to enable any person to receive or use any service, television or radio signal, picture, program, or sound, or any other signal without payment to the owner of said system.

(c) Tampering with Facilities. It shall be unlawful, without the consent of the owner, to willfully attach to, tamper with, modify, remove or injure any physical part of or signals on a franchised Cable Television System.

(Added by Ord. 03-12, 6/11/03)

§ 5.30.110. Termination and Forfeiture.

(a) Revocation. Consistent with applicable law, and in addition to any rights set out elsewhere in this Chapter, the Grantor reserves the right to revoke a franchise, subject to the procedural guidelines set forth in Section 5.30.140 of this Chapter, in the event that:

(1) A Grantee willfully or negligently, on a repeated basis, violates any material provision of this Chapter or its franchise.

(2) A Grantee's construction schedule, as set forth in any franchise, is materially delayed, and such delay is within the control of Grantee.

(b) Forfeiture. Upon failure of a Grantee to comply with any material term of this Chapter or its franchise, the Grantor may, subject to the procedural guidelines set forth in Section 5.30.140 of this Chapter, declare a forfeiture. A Grantee may be required to remove its structures or property from the Grantor's streets and to restore those streets to their prior condition within a reasonable period of time. Upon failure to do so, the Grantor may perform the work and collect all costs, including direct and indirect costs, from a Grantee. At Grantor's discretion, the cost thereof may be placed as a lien upon all plant, property, or other assets of a Grantee.

(Added by Ord. 03-12, 6/11/03)

§ 5.30.120. Franchise Applications.

Applicants for a franchise shall submit to the Grantor, or to its designated representative, written application in a format provided by the Grantor, at the time and place specified by the Grantor for accepting applications, and accompanied by the designated application fee. A nonrefundable application fee, established by resolution of the Grantor, shall accompany the application to cover all costs associated with processing the application, including without limitation, costs of administrative review, financial, legal and technical evaluation of the applicant, the costs of consultants (including technical and legal experts), notice and publication requirements, and document preparation expenses. In the event such costs exceed the application fee, the applicant shall pay the difference to Grantor within 20 days following receipt of an itemized statement of such costs. This provision is procedural and shall not constitute the grant of any right to a Grantee.
(Added by Ord. 03-12, 6/11/03)

§ 5.30.130. Records; Reports; Right to Inspect and Audit; Experts.

(a) Grantee to Provide Records. All reports and records required under this Section shall be furnished at the sole expense of Grantee.

(b) Records. Grantor must maintain in its local offices, and make available for inspection during normal business hours, a separate and complete set of business records for the franchise. The Grantee shall provide that information in such form as may be required by the Grantor, as well as copies of any records of Grantee upon Grantor's request, so long as said information is directly or indirectly related to the scope of Grantor's rights under this Chapter, the franchise, or Grantor's regulatory functions.

(c) Maintenance and Inspection of Records. Grantee shall keep true and accurate books and records in conformity with generally accepted accounting principles, consistently applied, located in the franchise area that reasonably demonstrate a Grantee's compliance with the obligations set forth in its franchise. Grantor shall, upon two business days notice, have the right to inspect said records and receive copies thereof to the extent said information is reasonably related to the scope of the Grantor's rights under this Chapter, the franchise, or the Grantor's regulatory functions. Any Grantee records kept at another place shall, within 10 days of Grantor's request, be made available at Grantee's local premises within the County of Orange.

(d) Reports of Financial and Operating Activity.

(1) No later than 90 days after the close of Grantee's fiscal year, Grantee shall submit an audited written report to the Grantor which shall include:

(A) A financial report, audited and certified by a financial officer of Grantee, for all Cable System activity during the previous fiscal year, including gross receipts from all sources and gross subscriber revenues from each service. The report must set out separately all gross receipts from all sources in the City and gross subscriber revenues from each service in the City, and all payments, deductions, and computations of franchise fees.

(B) A summary of the previous year's activities, including, but not limited to, subscriber totals and new services offered and system construction activity.

(C) A current list of Grantee's officers, directors, and other principals if there has been any change in the previous year.

(D) A list of stockholders or other equity investors holding 5% or more of the voting interests in Grantee if there has been any change in the previous year.

(E) A summary of complaints received and remedial actions taken.

(2) Performance Tests and Compliance Reports. No later than April 15 of each year, the Grantee shall provide a written report of any FCC or other performance tests required or conducted. In addition, the Grantee shall provide reports of the test and compliance procedures required by its franchise, or by this Chapter, no later than 30 days after the completion of those tests and compliance procedures.

(3) Additional Reports. The Grantee shall prepare and furnish to the Grantor in writing, at the times and in the form prescribed by Grantor, such additional reports or information as Grantor may reasonably require to confirm and verify Grantee's compliance with the provisions of its franchise and this Chapter.

(e) Examination of Facilities. Upon two business days notice, and during normal business hours, Grantee shall permit examination, by any duly authorized representative of Grantor, of all franchise property and facilities, together with any appurtenant property and facilities of Grantee situated within the public rights-of-way which are directly or indirectly related to the Cable System.

(f) Right to Audit.

(1) In addition to any other inspection rights under this Chapter or the franchise, upon 30 days prior written notice, Grantor shall have the right to inspect, examine, or audit, during normal business hours, all documents pertaining to a Grantee or any affiliated person which are reasonably necessary to ascertain a Grantee's compliance with its franchise or this Chapter. Grantor may not exercise said right more frequently than once in any 12 month period. All such documents shall be made available at the local office of a Grantee. All such documents pertaining to financial matters which may be the subject of an audit by the Grantor as set forth herein shall be retained by a Grantee for a minimum of five years during the term of and following the termination of a franchise. Access by the Grantor to any of the documents covered by this paragraph shall not be denied by the Grantee on grounds that such documents are alleged by the Grantee to contain proprietary information.

(2) Grantor may require written certification by a Grantee's directors, officers, or other employees with respect to all documents referred to in this paragraph.

(3) Any audit conducted by the Grantor pursuant to this paragraph shall be conducted at the sole expense of the Grantor, and the Grantor shall prepare a written report containing its findings, a copy of which shall be mailed to a Grantee; provided, however, that a Grantee shall reimburse the Grantor for the expense of any such audit if, as the result of said audit, it is determined that there is a shortfall of more than 2% in the amount of franchise fees or other payments which have been made or will be made by a Grantee to the Grantor pursuant to the terms of the franchise.

(g) Retention of Experts. In the exercise of its rights under this Chapter, the Grantor shall have the further right to retain technical experts and other consultants on a periodic basis for the purpose of monitoring, testing, and inspecting any construction, operation, maintenance or reconstruction of the system, and all parts thereof, or to ensure compliance with and enforcement of the provisions of this Chapter and the franchise. The Grantor shall bear the cost of retaining such experts, provided that the Grantee shall reimburse the Grantor for all expenses related to the retention of said experts where this Chapter or the franchise so provide, or under either of the following circumstances:

(1) The Grantee has initiated proceedings which would normally require the Grantor to retain such experts, such as the filing of a request for approval of a transfer or change in control, renewal to the extent allowed by law, expansion of the franchise service area, or the modification or

amendment of the franchise; or

(2) The reports of such experts submitted to the Grantor reveal that the Grantee has failed to substantially comply with the terms and conditions of this Chapter or of the franchise.

If Grantee is required to reimburse Grantor pursuant to this paragraph, Grantor shall send Grantee an itemized description of such charges, and Grantee shall pay such amount within 20 days after the receipt of such description.

(Added by Ord. 03-12, 6/11/03)

§ 5.30.140. Enforcement Mechanism.

(a) Notice and Hearing for Franchise Default.

(1) Unless otherwise provided in this Chapter or in the franchise, prior to formal consideration by Grantor of termination, revocation, or forfeiture of Grantee's franchise, or any other penalty or administrative remedy available to the Grantor, including liquidated damages, attributable to Grantee's failure, willful, negligent, or otherwise, to adhere to the terms and conditions of the franchise or this Chapter, Grantor shall make written demand on Grantee to correct the alleged default. Such written demand shall identify with specificity the alleged default, including the provision of the franchise, Ordinance, or regulation that is being violated, and the necessary action to cure the default. Grantor and Grantee shall expeditiously meet to discuss the alleged default, at which time Grantee shall indicate, in writing, the amount of time necessary to resolve the alleged problem. Giving due consideration to Grantee's request, Grantor shall, in writing, state the amount of time Grantor will allow Grantee to resolve the problem. During this time period, but in no event less than 10 days before the final date for correction, Grantee may request additional time to correct the problem, and Grantor shall grant said request if Grantor determines, in the exercise of its discretion, that such time is necessary due to delays beyond Grantee's control. If the default continues for a period of 10 days following the deadline for corrections, plus any extension thereof, a hearing before the legislative body of the Grantor shall be scheduled by Grantor on such franchise termination, revocation, forfeiture, or any other penalty or administrative remedy.

(2) The Grantor shall provide written notice of such hearing, to a Grantee no less than 10 days before the hearing on the matter. Within five days after the receipt of said notice, Grantee shall file any written objections to said notice. Any objections not raised within said five day periods shall be deemed waived. At the hearing, Grantor shall hear Grantee, and any person interested in the matter, and shall determine, at that or subsequent public meetings, an appropriate course of action for enforcement or termination of Grantee's franchise.

(b) Delegation of Enforcement Mechanisms. Such liquidated damages as Grantor may assess against Grantee pursuant to a Grantee's franchise which do not include loss of the franchise may, at Grantor's option, be determined by an officer or agency of the Grantor to which it may delegate such administrative decisions, subject to due process and the criteria contained in this Chapter and the franchise, and subject to appeal to the City Council.

(Added by Ord. 03-12, 6/11/03)

§ 5.30.150. Miscellaneous Provisions.

(a) Captions. The section, subsection, paragraph, and subparagraph numbers and letters, and the captions throughout this Chapter, are intended to facilitate reading and reference. Such numbers, letters, and captions shall not affect the meaning or interpretation of any part of this Chapter.

(b) Franchise References. A franchise which cites, refers to, or otherwise incorporates this Chapter, or portions thereof, shall be deemed to be a franchise issued under and subject to this Chapter.

(c) Filing. When not otherwise specified in this Chapter, all documents required to be filed with Grantor shall be filed with the Grantor's representative as designated by Grantor.

(d) Non-enforcement by the Grantor. A Grantee shall not be relieved of its obligation to comply with all provisions of this Chapter, and of its franchise, and all laws and regulations, by reason of any failure of the Grantor to demand prompt compliance.

(e) Continuity of Service. It is the right of all subscribers to receive Cable Services so long as their financial and other obligations to a Grantee are honored. In the event that a Grantee elects to rebuild, modify, or sell the system, a Grantee shall use due diligence and reasonable care to ensure that all subscribers receive continuous, uninterrupted service. In the event of a transfer of the system by Grantee, the current Grantee shall cooperate with the Grantor or new Grantee to operate the system for a temporary period, in order to maintain continuity of service to all subscribers. In the event that Grantee, through its own fault, discontinues system-wide service for 72 continuous hours, and Grantee is in material default of its franchise, or if the franchise is revoked by Grantor (but not if Grantor fails to renew the franchise), Grantor may, by resolution, when it deems reasonable cause to exist, assume operation of the system for the purpose of maintaining continuity of service. Grantor's operation of the system may continue until the circumstances which, in the judgment of the Grantor, threaten the continuity of service are resolved to Grantor's satisfaction. Grantor shall be entitled to the revenues for any period during which it operates the system.

(f) Operation By Grantor. During any period when the system is being operated by Grantor pursuant to paragraph e above, Grantor shall, as it may deem necessary, make any changes in any aspect of operations that, in Grantor's sole judgment, are required for the preservation of quality of service and its continuity.

(g) Management By Grantor. Grantor may, upon assuming operation of a system franchised hereunder, appoint a manager to act for it in conducting the system's affairs. Such manager shall have such authority as may be delegated by Grantor and shall be solely responsible to Grantor for management of the system. Grantee shall reimburse Grantor for all its reasonable costs, in excess of system revenues, incurred during Grantor's operation if the franchise is in full force and effect during the period of Grantor's operation.

(h) Notices. All notices and other communications to Grantee shall be addressed to it at the local address at which Grantee conducts its business or as otherwise set forth in the franchise. All notices and other communications to Grantor shall be addressed to Dana Point City Hall, or such other address as may be designated by Grantor.

(i) Force Majeure; Grantee's Inability to Perform. In the event Grantee's performance of any of the terms, conditions, obligations, or requirements of this Chapter, or any franchise granted hereunder, is prevented or impaired due to any cause beyond its reasonable control and not reasonably foreseeable, such inability to perform shall be deemed to be excused, and no penalties or sanctions shall be imposed as a result thereof. Such causes beyond Grantee's reasonable control and not reasonably foreseeable shall include, but not be limited to, any acts of God, civil emergencies, labor unrest, strikes, utility interruptions, inability to obtain access to an individual's property on reasonable terms, and any inability of a Grantee to secure all required authorizations or permits to utilize necessary poles or conduits, so long as Grantee uses due diligence to timely obtain said authorization or permits.

(j) Application. All of the provisions of this Chapter shall be applicable to all Cable Operators and Cable Systems to the greatest extent permissible under applicable law.

(k) Severability. If any provision of this Chapter is determined to be void or invalid by any administrative

or judicial tribunal, said provision shall be deemed severable and such invalidation shall not invalidate the entirety of this Chapter or any other provision thereof.

(Added by Ord. 03-12, 6/11/03)

§ 5.30.160. Definitions.

(a) For the purposes of this Chapter, the following words, terms, phrases, and their derivations have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, and words in the singular number include the plural number.

"Additional service" means any service not included in "Basic service" or "Institutional service."

"Administrative officer" means the City Manager or the City Manager's designee.

"Affiliated person" or "affiliates" means each person who falls into one or more of the following categories: (i) each person having, directly or indirectly, a controlling interest in Grantee; (ii) each person in which Grantee has, directly or indirectly, a controlling interest; (iii) each officer, director, general partner, limited partner holding an interest of 5% or more, joint venturer, or joint venture partner in Grantee's Cable System in the City; and (iv) each person, directly or indirectly, controlling, controlled by, or under common control with Grantee; provided that "affiliated person" excludes the Grantor, any limited partner holding an interest of less than 5% in a Grantee, or any creditor of Grantee, solely by virtue of its status as a creditor, and which is not otherwise an affiliated person by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with Grantee.

"Agency subscriber" means a subscriber who receives a service in a government or public agency, school, or nonprofit corporation facility.

"Basic service" or "basic cable service" or "basic service tier" means the lowest service tier which includes the retransmission of local television broadcast signals and public, educational, and governmental access channels.

"Broadcast signal" means a signal transmitted over the air to a geographically dispersed public audience and received by a Cable System.

"1984 Cable Act" means the Cable Communications Policy Act of 1984.

"1992 Cable Act" means the Cable Television Consumer Protection and Competition Act of 1992.

"Cable Act" means the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 and by the Telecommunications Act of 1996.

"Cable operator" means any person or group of persons (i) who provides Cable Service over a Cable System in the City and, directly or through one or more affiliates, owns a significant interest in that Cable System; or (ii) who otherwise controls or is responsible for, through any arrangement, the management and operation of a Cable System in the City.

"Cable service" means (i) the one-way transmission to subscribers of video programming or other programming service; and (ii) subscriber interaction which is required for the selection of or use of such video programming or such other programming service.

"Cable system" or "cable communications system" or "system" means a facility, consisting of a set of closed transmission paths and associated signal generation reception, and control equipment that is designed to provide Cable Service, which includes video programming, and which is provided to multiple subscribers within the City; but this term does not include: (i) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (ii) a facility that serves subscribers without using any public right-of-way; (iii) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934 (47 U.S.C. § 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) of the Cable Act) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (iv) an open video system that complies with Section 653 of the Cable Act; or

(v) any facilities of any electric utility used solely for operating its electric utility systems.

"Cablecast signal" means a Non-Broadcast Signal that originates within the facilities of the Cable System, whether from a live or recorded source.

"City" means the City of Dana Point, California.

"Closed circuit" or "institutional service" means services provided to institutional users on an individual or collective basis. The information contained in such a service may or may not be simultaneously available to other system subscribers or users.

"Channel" means a frequency band capable of carrying a standard video signal or some combination of video signals.

"Commercial subscriber" means a subscriber who receives a Cable Service in a place other than a residential dwelling unit.

"Complaint" means a dispute in which a subscriber notifies Grantee of an outage or degradation in picture quality, billing or other issue pertaining to the subscriber's Cable Service which is not corrected during the initial telephone or service call.

"Control" or "controlling interest" means actual working control in whatever manner exercised, including, without limitation, working control through ownership, management, debt instruments, or negative control, as the case may be, of the Cable System or a Grantee. A rebuttable presumption of the existence of control or a controlling interest shall arise from the beneficial ownership, directly or indirectly, by any person or group of persons acting in concert (other than underwriters during the period in which they are offering securities to the public) of 20% or more of any person (which person or group of persons is referred to as "Controlling Person"), or being a party to a management contract.

"Converter" or "terminal" means a device located at a subscriber's premises that converts signals from one frequency to another or otherwise processes signals for use by subscribers.

"Drop" means the cable connecting the Cable System's plant to equipment at the subscriber's premises.

"Education channel" means any channel capacity where non-profit, non-commercial educational institutions are the primary designated Programmers.

"Facilities" shall mean any equipment located, in whole or in part, in, above, or below streets, public rights-of-way, or other public property used by the Grantor in its system including without limitation, conduits, cables, cabinets, nodes, structures, headend equipment, receive only earthstations, down link equipment and antennas, electronics, fiber cable, coaxial cable, drops and switching equipment.

"FCC" means the Federal Communications Commission or its designated representatives.

"Franchise" means a written legal undertaking or action of the Grantor which authorizes a specific person to use the Grantor's streets and public ways for the purpose of installing, operating, maintaining, or reconstructing a Cable System to provide Cable Service.

"Government channel" means any channel capacity where local government agencies are the primary designated programmers, and programming is informational programming regarding government activities and programs.

"Grantee" means the person granted a franchise to install, operate, maintain, or reconstruct a Cable System and the lawful successors, transferees, or assignees of that person.

"Grantor" means the City, acting by and through its elected governing body, or such representative as the governing body may designate to act on cable matters in its behalf.

"Gross annual revenue" or "gross annual receipts" or "gross receipts" means all revenue, as determined in accordance with generally accepted accounting principles, which is received, directly or indirectly, by Grantee and by each affiliated person from or in connection with the distribution of any Cable Service, and any other service which may, under now or then applicable federal law, be included in the Cable Act definition for the

purpose of calculating and collecting the maximum allowable franchise fee for operation of the system, whether or not authorized by any franchise, including, without limitation, leased or access channel revenues received, directly or indirectly, from or in connection with the distribution of any Cable Service. It is intended that all revenue collected by the Grantee, and by each affiliated person, from the provision of Cable Service over the system, whether or not authorized by the franchise, be included in this definition. Gross Annual Revenue also specifically includes: (i) the fair market value of any nonmonetary (i.e., barter) transactions between Grantee and any person, other than an affiliated person, but not less than the customary prices paid in connection with equivalent transactions; (ii) the fair market value of any nonmonetary (i.e., barter) transaction between Grantee and any affiliated persons, but not less than the customary prices paid in connection with equivalent transactions conducted with persons who are not affiliated persons; (iii) any revenues generated from the provision of internet and/or broadband services which utilize the Cable System for delivery and must not be excluded pursuant to applicable law; and (iv) any revenue received, as reasonably determined from time to time by the Grantor, through any means which is intended to have the effect of avoiding the payment of compensation that would otherwise be paid to the Grantor for the franchise granted. Gross Annual Revenue also includes any bad debts recovered. Gross Annual Revenue also includes all advertising revenue which is received directly or indirectly by Grantee, any affiliated person, or any other person from or in connection with the distribution of any service over the system or the provision of any service-related activity in connection with the system. Gross Annual Revenue does not include: (i) the revenue of any person to the extent that said revenue is also included in the Gross Annual Revenue of Grantee; (ii) taxes imposed by law on subscribers which Grantee is obligated to collect; and (iii) amounts which must be excluded pursuant to applicable law.

"Headend" means that central portion of the system where signals are introduced into the system.

"Institutional network" or "institutional system" means a system or portion of a system intended primarily to service non-residential subscribers.

"Lease channel" means any channel where someone other than Grantor or Grantee is sold the rights to air programming.

"Local origination channel" means any channel where a Grantee is the primary designated programmer.

"Monitoring" or "tapping" means observing or receiving a signal, where the observer is neither the sending nor receiving party and is not authorized by the sending or receiving party to observe said signal, whether the signal is observed or received by visual, electronic, or any other means whatsoever.

"Node" shall mean the cabinet or housing and equipment, power supply, fans, gas generators, batteries and optical to electrical converters, which is the point where fiber facilities and coaxial facilities are connected.

"Non-broadcast signal" means a signal that is not involved in over-the-air broadcast for general public reception.

"Open channel" means any channel that can be received by all subscribers without the use of special equipment not normally possessed by, or available to, anyone who may become a subscriber.

"Pay cable," "pay service," "premium-service" or "pay television" means signals for which there is a fee or charge to users over and above the charge for basic service, including any tiers of service; provided, however, the sale or lease of studio facilities, equipment, or tapes to local users shall not be deemed pay or premium services.

"Pedestal" shall mean an above-ground or below-ground enclosure which houses active and/or passive electronic equipment used to serve subscribers.

"PEG channel" means collectively, the channel capacity dedicated Public, Education or Government channel.

"Person" means any corporation, partnership, proprietorship, individual, or organization authorized to do business in the State of California.

"Plant" means the transmitting medium and related equipment which transmits signals between the headend and subscribers, including drops.

"Pole attachment agreement" or "attachment agreement" means any agreement with the Grantor, any other

governmental entity, or any public utility relating to a Grantee's use of any utility poles, ducts, or conduits.

"Program" or "programming" means the information content of a signal and the act or process of creating such content, whether that content is intended to be pictures and sound, sound only, or any other form of information whatsoever.

"Programmer" means any person who provides program material or information for transmission by means of a system.

"Property of grantee" means all property owned or leased within the franchise service area by Grantee in the conduct of its system business under a franchise.

"Public channel," "access channel," "community service channel" or "community channel" means any channel capacity for which members of the public, or any community organization, may provide non-advertiser supported programming; provided, however, sponsorship identification fees may be paid and accepted to further community programming.

"Public right-of-way" means any public street, public way, public place or rights-of-way, now laid out or dedicated, and the space on, above or below it, and all extensions thereof, and additions thereto, under the jurisdiction of Grantor.

"Pull box" shall mean a flush mounted or above-ground housing which encloses one or more conduit openings.

"Resident" means any person residing in the franchise service area, or as otherwise defined by applicable law.

"Residential dwelling unit" or "dwelling unit" means a home, mobile home, condominium, apartment, cooperative unit, and any other individual dwelling unit.

"Residential subscriber" means a subscriber who receives a service in a dwelling unit.

"Service" means any kind of service or type of benefit provided by Grantee, or any group of related benefits obtained or made available to any person, involving the use of a signal transmitted via a Cable Communications System, whether the signal and its content constitute the entire service or comprise only a part of a service which involves other elements of any number or kind.

"Service area" or "franchise service area" means the entirety of the City of Dana Point. "Service

interruption" means the loss of picture or sound on one or more cable channels.

"Service tier" or "tier" means a category of Cable Service or other services provided by a Cable Operator and for which a separate rate is charged by the Cable Operator, other than per channel or per event programming or legitimate packages of per channel or per event programming.

"Streets and public ways" means the surface of, and the space above and below, any public street, sidewalk, alley, or other public way or right-of-way of any type whatsoever.

"Subscriber" means any person that lawfully subscribes to and receives, a Cable Service provided by Grantee by means of or in connection with its Cable System.

"Tap" means the point of interconnection between that portion of the Cable System located in the public rights-of-way and a drop.

"Telecommunications Act" means the Telecommunications Act of 1996.

"Unit" means a discrete place where system services are used, such as a residence, apartment, office, store, etc.

"User(s)" means any person who either receives services from a Cable System or who accomplishes any purpose by, in part or in whole, transmitting or receiving information via a Cable System, or who creates programming for that purpose, or who receives and uses programming.

(b) Terms Not Defined. Words, terms, or phrases not defined herein shall first have the meaning as defined in the Cable Act, and then the special meanings or connotations used in any industry, business, trade, or profession where they commonly carry such special meanings. If those special meanings are

not common, they will have the standard definitions as set forth in commonly used and accepted dictionaries of the English language.

(Added by Ord. 03-12, 6/11/03)

CHAPTER 5.32
ADULT-ORIENTED BUSINESSES

§ 5.32.010. Intent.

(a) The intent of this chapter is to regulate adult-oriented businesses which, because of their very nature, are believed to have any of the recognized significant secondary effects on the community which include, but are not limited to: depreciated property values and increased vacancies in residential and commercial areas in the vicinity of the adult-oriented businesses; higher crime rates, noise, debris or vandalism in the vicinity of adult-oriented businesses; and blighting conditions such as low-level maintenance of commercial premises and parking lots which thereby have a deleterious effect upon adjacent areas. Special regulation of these uses is necessary to insure that these adverse effects will not contribute to the blighting or downgrading of the neighborhoods in the vicinity of the adult-oriented businesses. It is neither the intent, nor effect of this section to impose limitations or restrictions on the content of any communicative material. Similarly, it is neither the intent, nor effect of this section to restrict or deny access by adults to sexually-oriented materials or merchandise protected by the First Amendment, or to deny access by the distributors or exhibitors of adult-oriented business to their intended market.

(b) Nothing in this section is intended to authorize, legalize or permit the establishment, operation or maintenance of any business, building or use which violates any City ordinance or any statute of the state regarding public nuisances, unlawful exposure, sexual conduct, lewdness or obscene or harmful matter or the exhibition or public display thereof.

(Added by Ord. 03-06, 4/9/03)

§ 5.32.020. Permit Required.

No adult-oriented business shall be permitted to operate, engage in, conduct or carry on business within the City unless the owner of the business first obtains both an adult-oriented business permit and a business license from the City.

(Added by Ord. 03-06, 4/9/03)

§ 5.32.030. Application Requirements.

(a) Persons Eligible. The property owner, or authorized agent of the property owner, is eligible to request an adult-oriented business permit. A single adult-oriented business permit shall suffice for the operation of any adult-oriented business within the City.

(b) The following information is required at the time an adult-oriented business permit is submitted to the Community Development Department:

(1) A completed adult-oriented business permit application signed by the property owner or authorized representative;

(2) A nonrefundable deposit or fee as set forth by ordinance or resolution of the City Council;

(3) A letter of justification describing the proposed project and explaining how it will comply with the findings/requirements contained in Section 5.32.050;

(4) Information required for public hearings pursuant to Section 9.61.050 of this code; and

(5) All other information as required by the City adult-oriented business permit information sheet.

(Added by Ord. 03-06, 4/9/03)

§ 5.32.040. Determination on Application.

(a) Determination of Completeness. The City Manager or his or her designee shall, within seven days of receipt of an application for an adult-oriented business, determine whether the application contains all the information required by the provisions of Section 5.32.030. If it is determined that the application is not complete, the applicant shall be notified in writing within 10 business days of the date of receipt of the application that the application is not complete and the reasons therefor, including any additional information necessary to render the application complete. The applicant shall have 30 calendar days to submit additional information to render the application complete. Failure to do so within the 30 day period shall render the application null and void. Within five business days following the receipt of an amended application or supplemental information, the City Manager or his or her designee shall again determine whether the application is complete in accordance with the procedures set forth above. Evaluation and notification shall occur as provided above until such time as the application is found to be complete. Once the application is found to be complete, the applicant shall be notified within five business days of that fact. All notices required by this chapter shall be deemed given upon the date they are either deposited in the United States mail, or the date upon which personal service of such notice is provided.

(b) Issuance of Permit. The City Manager shall issue an adult-oriented business permit within 15 calendar days of receipt of a completed application if he or she finds that the application fully complies with the findings/locational and operational requirements contained in Section 5.32.150. The applicant shall be notified within five business days of the date the City Manager issues the adult-oriented business permit in the manner provided above. The decision of the City Manager to issue or deny a permit shall be final. Failure to render a decision prior to the expiration of that period shall result in the permit being deemed issued unless the applicant agrees in writing to an extension of that time.

(c) Prompt Judicial Review. Any applicant whose permit has been denied pursuant to this chapter has the opportunity to petition the court for review of the City's decision as provided by Code of Civil Procedure Section 1094.8.

(Added by Ord. 03-06, 4/9/03)

§ 5.32.050. Findings and Requirements.

The City Manager issue an adult-oriented business permit if it finds that:

(a) The adult-oriented business shall be located in the City's Community Commercial/Vehicle (CC/V), Visitor/Recreation Commercial (V/RC), and/or Industrial/Business (I/B) zoning districts.[1]

(b) An adult-oriented business shall not be located within 300 feet of any residentially zoned property or any residential use properly approved by the City.

(c) The adult-oriented business shall not be located within 300 feet of any lot upon which there is properly located a religious institution, public park or school.[2]

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1. **All measurements referenced in Section 5.32.050 subsections (b)-(d) inclusive shall be measured in a straight line without regard to intervening objects or structures from the nearest point on the property line of residential structure, religious institution, public park or school to the closest point of the building or unit within the building proposed to house the adult-oriented business.**
2. **All measurements referenced in Section 5.32.050 subsections (b)-(d) inclusive shall be measured in a straight line without regard to intervening objects or structures from the nearest point on the property line of residential structure, religious institution, public park or school to the closest point of the building or unit within the building proposed to house the adult-oriented business.**

(d) The adult-oriented business shall not be located within 300 feet of any lot upon which there is located another adult oriented business.

(e) An adult-oriented business may not be operated in the same building, structure, or portion thereof, containing another adult-oriented business.

(f) The adult-oriented business complies with the City's parking standards for the underlying use (i.e. an adult bookstore shall comply with the parking regulations for a bookstore). Where no City parking standards exist for a particular underlying use, the applicant shall prepare a parking study for the use in question. The study shall demonstrate that the adult-oriented business for which the applicant is seeking approval provides adequate parking.

(g) The adult-oriented business shall not be located completely or partially within any mobile structure or pushcart.

(h) The adult-oriented business shall not stage any special events, promotions, festivals, concerts or similar events which would increase the demand for parking beyond the approved number of spaces for the particular use.

(i) The adult-oriented business shall not conduct any massage, acupressure, or escort services on the premises.

(j) The adult-oriented business shall provide a security system that visually records and monitors all parking lot areas. All indoor areas of the adult-oriented business shall be open to public view at all times with the exception of restroom facilities. "Accessible to the public" shall include but not be limited to those areas which are only accessible to members of the public who pay a fee and/or join a private club or organization.

(k) The adult-oriented business complies with the objective requirements of the City's sign regulations.

(l) The adult-oriented business complies with the objective development and design requirements of the zone in which it is to be located.

(m) The adult-oriented business shall not display any sexually-oriented material or sexually-oriented merchandise which would be visible from any location other than from within the adult-oriented business.

(n) The adult-oriented business shall not allow admittance to any person under the age of 18 if no liquor is served, or under the age of 21 if liquor is served.

(o) The adult-oriented business shall not operate between the hours of ten (10:00) p.m. and seven (7:00) am.

(p) Neither the applicant, if an individual, nor any of the officers or general partners, if a corporation or partnership, of the adult-oriented business shall have been found guilty within the past two years of violating any of the provisions of an adult-oriented business permit or similar permit or license in any city, county, territory or state, or of any misdemeanor or felony classified by the state as a sex-related offence including but not limited to a violation of the following penal code sections and their subparts and subsections: 220, 261, 262, 264, 264.1, 265, 266, (inc. 266a-266k) 267, 286, 286.5, 288, 288a, 289, 647, 647b, 647d, 647.6.

(q) The adult-oriented business will provide separate restroom facilities for male and female

patrons. The restroom will be free from adult-oriented materials and adult-oriented merchandise. Only one person will be allowed in the restroom at any time unless otherwise required by law, in which case the adult- oriented business will employ a restroom attendant of the same sex as the restroom users who shall be present in the public portion of the restroom during operating hours. The attendant will insure that no person of the opposite sex is permitted into the restroom, that not more than one person is permitted to enter a restroom stall, and, with the exception of urination and excretion, that no persons engage in any specified sexual activity in the public portion of the restroom.

(r) The interior of the adult-oriented business will be configured such that there is an unobstructed view, by use of the naked eye, and unaided by video, closed circuit cameras or any other means, of every public area of the premises, including but not limited to the interior of all individual viewing areas, from a manager's station which is no larger than 32 square feet of floor area with no single dimension being greater than eight feet and located in a public portion of the establishment. No public area, including but not limited to the interior of any individual viewing area, will be obscured by any door, curtain, wall, two-way mirror, or other device which would prohibit a person from seeing into the interior of the individual viewing area, solely with the use of the naked eye and unaided by video, closed circuit cameras or any other means, from the manager's station. A manager will be stationed in the manager's station at all times the business is in operation or open to the public in order to enforce all rules and regulations. No individual viewing area will be designated or operated to permit occupancy of more than one person at any one time.

(s) All areas of adult-oriented businesses shall be illuminated at a minimum of the following foot candles, minimally maintained and equally distributed at ground level:

Book Stores	20 foot candles
Retail Establishments (other than those listed herein)	20 foot candles
Theaters (except during performances at which time lighting shall be at least 1.25 foot candles)	5 foot candles
Cabarets, Restaurants, etc.	5 foot candles
Motion Picture Arcade	10 foot candles

(t) The individual viewing areas of the adult-oriented business shall be operated and maintained with no holes, openings or other means of direct visual or physical access between the interior space of two or more individual viewing areas.

(u) A traffic study has been prepared for the adult-oriented business in conformance with the City's traffic study guidelines. The applicant shall comply with the recommendations of the traffic study necessary to ensure the adult oriented business project does not cause the streets, highways, or arterials to exceed their approved level of service as that level of service is contained in the circulation element of the City's general plan. All required fees and improvements shall be made conditions of project approval.

(v) The adult-oriented business shall comply with the noise element of the General Plan, Interior and Exterior Noise Standards and any mitigation measures necessary to reduce the project's

noise impacts to the City's articulated noise standard.

(w) The adult-oriented business shall comply with all building and construction standards of the Uniform Building Code, Title 8 of this Code, Title 24 of the California Code of Regulations, and all other federal, state and City-adopted standards for the specific use.

(x) Live entertainment will only be performed either: (a) on a stage raised at least 18 inches above the floor and separated from patrons by a fixed rail at least 30 inches in height placed at a distance of not less than six feet around the perimeter of the stage; or (b) in a location other than on a stage such that no portion of the performer is, at any time within six feet of any patron. This provision will not apply to an individual viewing area where the performer is completely separated from the area in which the performer is viewed by an individual by a permanent, floor to ceiling solid barrier which completely encases the performer.

(y) No patron will directly pay or give any gratuity to any performer, and no performer will accept any direct payment from any patron. For the purposes of this section, the phrase "directly pay" shall mean the person to person transfer of the gratuity. This section shall not prohibit the establishment of a non-human gratuity receptacle placed at least six feet from the stage or area occupied by the performer.

(z) No performer will intentionally touch, fondle or caress (herein "touch") any patron of the adult oriented business and no patron shall touch any performer as the terms touch, fondle or caress are defined in Kev, Inc. v. County of Kitsap (9th cir.) 793 F.2d 1053. This prohibition applies to touching accomplished between any part of the body of a patron and performer, and regardless of if the touching occurs through clothing.

(aa) At least one security guard will be on duty outside the premises, patrolling the grounds at all times the business is open to the public. The security guard shall be charged with preventing violations of law and enforcing the provisions of this chapter. All security guards will be uniformed so as to be readily identifiable as a security guard by the public. No person acting as a security guard shall act as a doorman, ticket taker or seller, or perform any other function while acting as a security guard. For all adult-oriented businesses providing live entertainment, an additional security guard will be required with each increase in maximum occupancy of 50 persons. All security guards shall be licensed under the California State Private Security Services Act, Business and Professions Code Section 7580 et seq.

(bb) Public nudity will be prohibited on the premises at all times. For the purposes of this section, the term "public nudity" shall mean appearing in a state such that the individual is clothed in less than pasties and a G-string. The phrase "G-string" shall mean an article of clothing that opaquely covers the buttocks at least one inch on either side of the natal cleft and covers the entirety of the genitalia and pubis. The term "pasties" shall mean an article of clothing that opaquely covers the nipple and areola of the female breast and is not designed to nor appears to look like the nipple and/or areola of the female breast.

(cc) A person who has managerial control over the daily operation of the adult-oriented business shall inform each employee of the business of the requirements imposed under this Chapter.

(Added by Ord. 03-06, 4/9/03)

§ 5.32.080. Permits Nontransferable—Use Specific.

No adult-oriented business permit may be sold, transferred, or assigned by any permittee or by operation of law, to any other person, group, partnership, corporation or any other entity. Any such sale, transfer or assignment or attempted sale, transfer or assignment shall be deemed to constitute a voluntary

surrender of the permit and the permit shall be thereafter null and void. An adult-oriented business permit held by a corporation or partnership is subject to the same rules of transferability as contained above. Any change in the nature or composition of the adult-oriented business from one element of an adult-oriented business to another element of an adult-oriented business or any increase of 10% or more of the floor area of the adult-oriented business shall also render the permit null and void. An adult-oriented business permit shall only be valid for the exact location specified on the permit.
(Added by Ord. 03-06, 4/9/03)

§ 5.32.090. Enforcement and Revocation.

(a) Inspections. Due to the potential harm associated with the secondary effects found to be created by adult-oriented businesses, the permittee shall permit officers of the City of Dana Point, the County of Orange, and each of their authorized representatives to conduct unscheduled inspections of the premises of the adult-oriented business for the purpose of ensuring compliance with the law at any time the adult-oriented business is open for business or occupied.

(b) Revocation Grounds. The Director of Community Development may revoke an adult-oriented business permit when he or she discovers that any of the following have occurred:

(1) Any of the Findings and Requirements contained in Section 5.32.050 above ceases to be satisfied;

(2) The application contains incorrect, false or misleading information;

(3) The applicant, and/or any of the officers or general partners, if a corporation or partnership, of the adult-oriented business has been found guilty of violating any of the provisions of an adult- oriented business permit or similar permit or license in any city, county, territory or state, or of any misdemeanor or felony classified by the state as a sex-related offence including but not limited to a violation of the following Penal Code sections and their subparts and subsections: 220, 261, 262, 264, 264.1, 265, 266, (inc. 266a-266k) 267, 286, 286.5, 288, 288a, 289, 647, 647b, 647d, 647.6.

(4) Any person has been convicted of a sex-related offense as a result of his or her activity on the premises of the adult-oriented business.

(c) Revocation Notice. Upon determining that the grounds for permit revocation exist, the Director of Community Development shall furnish written notice of the proposed revocation to the permittee. Such notice shall summarize the principal reasons for the proposed revocation, shall state that the permittee may appeal the decision within 15 calendar days of the posting or the post-marked date on the notice. The notice shall be delivered both by posting the notice at the location of the adult-oriented business and by sending the same, certified mail, return receipt requested and postage pre-paid, to the permittee as that name and address appears on the permit. Not later than 15 calendar days after the latter of the mailing or posting of the notice, the permittee may file an appeal of the Director of Community Development's determination with the City Clerk. If the appeal is filed within 15 calendar days of the mailing or posting of the notice referenced above, the appeal hearing shall be provided as contained in subsection (d) of this Section.

(d) Appeal. Upon receipt of a written appeal request, the City Clerk shall schedule an appeal to be heard before the City Council or, if determined appropriate by the City Manager, a Hearing Officer, within 30 calendar days of receipt of such request. Notice of the appeal hearing shall

be provided in the manner required under Section 17.32.100 of this code. Notice of the time and place of the hearing shall be sent to the permittee via certified mail, return receipt requested and postage prepaid at least 15 calendar days in advance of the date set for the hearing. At the hearing, the permittee and the City shall be entitled to present relevant evidence, testify under oath, and call witnesses who shall testify under oath. The City Council, or Hearing Officer, as applicable, shall not be bound by the traditional rules of evidence in a hearing, except that hearsay evidence may not be the sole basis for the decision of the City Council or the Hearing Officer, as applicable. The City Council or the Hearing Officer, as applicable, may continue the hearing as it deems necessary. Within 15 calendar days after the conclusion of the hearing, the City Council or the Hearing Officer shall rule on the appeal.

(e) Rule Application After Revocation. No person, corporation, partnership or member thereof or any other entity may obtain an adult-oriented business permit within two years of the date its permit has been revoked.

(f) Maintenance of Status Quo. The status quo shall be maintained pending conclusion of the revocation hearing. If a judicial action is commenced challenging the revocation, the status quo shall be maintained until such time as a judicial decision is rendered from the court in which the action is filed.

(Added by Ord. 03-06, 4/9/03)

§ 5.32.100. Violation—Penalty.

Any establishment operated, conducted or maintained contrary to the provisions of this chapter is unlawful and a public nuisance, and the City Attorney may commence an action or actions, proceeding or proceedings for the abatement, removal and enjoinment thereof in the manner provided by law, and/or institute any proceeding to revoke or suspend any and all permits issued to the adult oriented business and/or 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 adult-oriented business and restrain and enjoin any person from operating, conducting or maintaining such an establishment contrary to the provisions of this chapter. (Added by Ord. 03-06, 4/9/03)

§ 5.32.110. Definitions.

The following terms shall have the definitions ascribed below:

"Adult bookstore". Any establishment, which as a regular and substantial course of conduct, displays and/or distributes sexually oriented merchandise, books, periodicals, magazines, photographs, drawings, sculptures, motion pictures, videos, slides, films, or other written, oral or visual representations which are distinguished or characterized by an emphasis on a matter depicting, describing or relating to specified sexual activities or specified anatomical parts.

"Adult cabaret". A nightclub, bar, lounge, restaurant or similar establishment or concern which features as a regular and substantial course of conduct, any type of live entertainment, films, motion pictures, videos, slides, other photographic reproductions, or other oral, written, or visual representations which are characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical parts.

"Adult hotel/motel". A hotel or motel, which as a regular and substantial course of conduct provides to its patrons, through the provision of rooms equipped with closed-circuit television or other medium, material which is distinguished or characterized by the emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical parts and which rents, leases, or lets any

room for less than a 12-hour period and/or rents, leases or lets any room more than once in a 24-hour period and which advertises the availability of any of the above.

"Adult model studio". Any premises where as a regular and substantial course of conduct, there is furnished, provided or procured a figure model or models who pose in any manner which is characterized by its emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical parts for the purpose of being observed or viewed by any person or being sketched, painted, drawn, sculptured, photographed, filmed, or videotaped before any person who pays a fee, or any other thing of value, as a consideration, compensation, or gratuity for the right or opportunity to so observe the model or remain on the premises. Adult Model Studio shall not include any Live Art Class or any studio or classroom which is operated by any public agency, or any private educational institution authorized to issue and confer a diploma or degree under Section 94300 et seq. of the Education Code.

"Adult motion picture arcade". Any business establishment or concern which as a regular and substantial course of conduct provides, for a fee, the use of manually or electronically controlled still, motion picture or video machines, projectors, computer generated or displayed images or other image producing devices which serve less than five persons at any one time and are maintained to display images distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical parts.

"Adult entertainment business". Any business establishment or concern which as a regular and substantial course of conduct performs as an Adult Bookstore, Adult Theater, Adult Motion Picture Arcade, Adult Cabaret, Stripper, Adult Model Studio, Adult Motel/Hotel; or any other business establishment or concern which as a regular and substantial course of conduct offers to its patrons products, merchandise, services or entertainment characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical parts. "Adult Entertainment Business" does not include those uses or activities, the regulation of which is preempted by state law. "Adult Entertainment Business" shall also include any business establishment or concern which, as a regular and substantial course of conduct provides or allows performers, models, actors, actresses, or employees to appear in any place in lingerie or similar attire which does not opaquely cover specified anatomical parts. For the purposes of this Section, a business establishment or concern has established the provision of products, merchandise, services or entertainment characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical parts as a regular and substantial course of conduct when one or more of the following conditions exist:

(1) The area devoted to sexually-oriented merchandise and/or sexually-oriented material exceeds more than 25 percent of the total display area or floor space area open to the public;

(2) The business establishment or concern presents any type of live entertainment which is characterized by an emphasis on specified sexual activity or specified anatomical parts on any ten or more days in a thirty consecutive day period;

(3) Twenty per cent (20%) of the businesses revenues are derived from the provisions of services or merchandise characterized by an emphasis on specified sexual activity or specified anatomical parts.

"Adult motion picture theater". a business establishment or concern with one or more viewing rooms with the capacity for fifty or more persons which, as a regular and substantial course of conduct, presents for any form of consideration films, motion pictures, videos, slide photographs, computer generated or displayed images or other pictures or visual reproductions which are distinguished or characterized by

their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical parts.

"Adult mini-motion picture theater". a business establishment or concern with one or more viewing rooms with the capacity of more than five, but less that fifty persons, where, for any form of consideration, films, motions pictures, video cassettes, slides, computer generated or displayed images or similar graphic reproductions are shown and material whose dominant or predominant character and theme is the depiction of specified sexual activities or specified anatomical areas for observation is shown on any ten or more days in a thirty consecutive day period.

"Live art class". Any premises on which all of the following occur: there is conducted a program of instruction involving the drawing, photographing, or sculpting of live models exposing specified anatomical parts; instruction is offered in a series of at least two classes; the instruction is offered indoors; an instructor is present in the classroom while any participants are present; and pre-registration is required at least 24 hours in advance of participation in the class.

"Performer". any dancer, model, entertainer, and/or other person who publicly performs any specified sexual activities or publicly display any specified anatomical part in adult entertainment businesses.

"Sexually-oriented material". Any element of Sexually-Oriented Merchandise, or any book, periodical, magazine, photograph, drawing, sculpture, motion picture film, or other written, oral, or visual representation characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical parts. This definition also includes, but is not limited to sexual novelties depicting, designed or shaped as specified anatomical parts or which depict specific sexual activities.

"Sexually-oriented merchandise". Sexually-oriented implements and paraphernalia, such as, but not limited to: dildos, auto sucks, sexually-oriented vibrators, edible underwear, benwa 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 sadomasochistic activity.

"Specified anatomical parts".

(1) Less than completely and opaquely covered human genitals; pubic region; buttocks; or female breast below a point immediately above the top of the areola; or

(2) Exposed human male genitals or human male genitals in a discernibly turgid state, regardless of whether they are completely and opaquely covered.

"Specified sexual activities".

(1) Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral anal copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory function in the context of a sexual relationship, any of the following depicted sexually-oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zooerastia; or

(2) Clearly depicted human genitals in a state of sexual stimulation, arousal or tumescence; or

(3) Use of human or animal ejaculation, sodomy, oral copulation, coitus, or masturbation; or

(4) Fondling or touching of nude human genitals, pubic region, buttocks or female breast; or

(5) Masochism, erotic or sexually-oriented torture, beating or the infliction of pain; or

(6) Erotic or lewd touching, fondling or other sexually-oriented contact with an animal by a human being; or

(7) Human excretion, urination, menstruation, vaginal or anal irrigation.

(8) Striptease; or any act involving the public removal of clothing to the point where specified anatomical parts are displayed; or the public appearance of any person in a state where specified anatomical parts are displayed, or the public appearance of any person where specified anatomical parts are only covered by attire commonly referred to as pasties or a G-string, or any other opaque covering which does not expose the areola or nipples of the female breast, and while covering the natal cleft and pubic area covers less than one inch on either side of the entire length of the natal cleft and two inches across the pubic area. For the purposes of this definition, appearance in "public" shall include a situation when a single employee, agent or other non-patron of the adult entertainment business is in the presence of a single patron of the adult oriented business.

(Added by Ord. 03-06, 4/9/03)

§ 5.32.120. Severability.

Should any section, subsection, clause or provision of Ordinance 1239, codified in Sections 5.32.040, 5.32.050 and 5.32.090, for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of Ordinance 1239, codified in Sections 5.32.040, 5.32.050 and 5.32.090; it being hereby expressly declared that Ordinance 1239, and each section, subsection, sentence, clause and phrase thereof would have been prepared, proposed, approved, adopted and/or ratified irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional including, but not limited to, the locational and operational requirements contained in Section 5.32.050. In the event a court of competent jurisdiction renders a decision invalidating the permit issuance process contained in this chapter, any adult-oriented business which operates in the City shall be deemed to be operating under a de facto permit subject to the requirements contained in Section 5.32.050. The de facto permit shall remain subject to the remaining provisions of this chapter which have not been invalidated including but not limited to Section 5.32.080 (Permits Nontransferable-Use specific); Section 5.32.090 (Enforcement and Revocation); and Section 5.32.100 (Violation-Penalty).
(Added by Ord. 03-06, 4/9/03)

CHAPTER 5.36

VIDEO FRANCHISE FEES, CUSTOMER SERVICE AND OTHER VIDEO-RELATED MATTERS

§ 5.36.010. Regulation of State Video Franchises and City Video Franchises.

Under State law effective January 1, 2007, the California Public Utilities Commission ("PUC") will have the authority to grant State Video Franchises ("State Franchises"). The City of Dana Point (the "City") will acquire certain rights and responsibilities with respect to State Video Franchise holders. These include the receipt of a franchise fee and a fee for Public, Educational and Government ("PEG") purposes, both based on a percentage of the gross revenues of State Franchise holders, as well as the establishment and enforcement of penalties for violations of customer service rules.
(Added by Ord. 07-08, 6/19/07)

§ 5.36.020. State Video Franchise Fees.

(a) Any State Video Franchise holder ("State Franchisee") operating within the boundaries of the City of Dana Point shall pay a fee to the City equal to 5% of the gross revenue of that State Franchisee.

(b) Any State Franchisee operating within the boundaries of the City of Dana Point shall pay an additional fee to the City equal to 1% of the gross revenue of that State Franchisee, which fee shall be used by the City for PEG purposes consistent with State and Federal law.

(c) Gross revenue, for the purposes of subsections (a) and (b) above, shall have the definition set forth in California Public Utilities Code Section 5860.

(Added by Ord. 07-08, 6/19/07; amended by Ord. 17-02, 4/18/17)

§ 5.36.030. Audit Authority.

Not more than once annually, the City may examine and perform an audit of the business records of a State Franchisee to ensure compliance with Section 5.36.020.
(Added by Ord. 07-08, 6/19/07)

§ 5.36.040. Customer Service Penalties Under State Franchises.

(a) The holder of a State Franchise shall comply with all applicable State and Federal customer service and protection standards pertaining to the provision of video service.

(b) The City Manager, or designee, shall monitor the compliance of State Franchisee(s) with respect to State and Federal customer service and protection standards. The City Manager, or designee, shall provide the State Franchisee(s) written notice of any material breaches of applicable customer service standards, and shall allow the State Franchisee(s) 30 days from the receipt of the notice to remedy the specified material breach. Material breaches not remedied within the 30 day time period shall be subject to the following penalties by the City Manager, or designee.

(1) For the first occurrence of a violation, a fine of $500 shall be imposed for each day the violation remains in effect, not to exceed $1,500 for each violation.

(2) For a second violation of the same nature within 12 months, a fine of $1,000 shall be imposed for each day the violation remains in effect, not to exceed $3,000 for each

violation.

(c) A State Franchisee may appeal a penalty assessed to the City Council within 60 days. After relevant speakers are heard, and any necessary staff reports are submitted, the City Council will vote to either uphold or vacate the penalty. The City Council's decision on the imposition of a penalty shall be final.

(Added by Ord. 07-08, 6/19/07)

§ 5.36.050. City Response to State Franchise Applications.

(a) Applicants for State Franchises within the boundaries of the City of Dana Point must concurrently provide complete copies to the City of any application or amendments to applications filed with the PUC. One complete copy must be provided to the City Clerk, and one complete copy to the City Manager.

(b) The City Manager shall provide any appropriate comments to the PUC regarding an application or an amendment to an application for a State Franchise.

(Added by Ord. 07-08, 6/19/07)

CHAPTER 5.38
SHORT-TERM RENTAL PERMITS

§ 5.38.010. Purpose.

It is the intent of this Chapter to establish a permit requirement for all short-term rentals ("STRs") within the City of Dana Point, and accordingly Section 5.38.045 hereof is intended to and shall apply to STRs located both within and outside of the City's Coastal Zone. The remaining provisions of this Chapter set forth rules and regulations applicable to STRs located outside of the City's Coastal Zone; and except for Section 5.38.045 regulations applicable to STRs located within the City's Coastal Zone are addressed in Coastal Development Permit No. CDP22-0010 (A-5-DPT-22-0038), as it may be amended from time to time. The purpose of the regulations set for herein is to protect public health safety and welfare by limiting the total number of STRs which may exist, and to require the owner or owners of a residential dwelling that operates as an STR to apply for and secure a permit authorizing such use in a manner that will safeguard the peace, safety and general welfare of the residents of Dana Point, their guests, and out of town visitors, by eliminating excessive noise, disorderly conduct, vandalism, overcrowding, traffic congestion, illegal vehicle parking, and the accumulation of refuse which are directly related to STRs. There are currently existing STR permits in the City. These existing STR permits are subject to the provisions of this Chapter on a moving forward basis, including the provisions hereof related to renewals; but, they are "grandfathered" in the sense they continue to remain valid provided their permits are renewed, and the holders of such STR permits do not need to submit a new initial application.
(Added by Ord. 13-01, 4/2/13; amended by Ord. 21-02, 6/1/21; Ord. 23-01, 2/7/23)

§ 5.38.020. Definitions.

For the purpose of this Chapter, the following definitions shall apply:

"Accessory dwelling unit" shall mean an attached or a detached residential dwelling that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single family or multiple family dwelling is or will be situated. An accessory dwelling unit also includes the following: (1) An efficiency unit; and (2) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

"Agent" shall mean the representative, if any, designated by the owner in accordance with Section 5.38.040.

"City Manager" shall mean the City Manager of the City of Dana Point or designee.

"Community Development Director" shall mean the Community Development Director of the City of Dana Point or designee.

"Dwelling unit" or "dwelling" shall have the same meaning as set forth in Section 9.75.050 of the Municipal Code.

"Home stay short-term rental" shall mean an STR at a dwelling (as defined in the Municipal Code) at which the property owner rents a portion of the dwelling unit for use as an STR while continuing to live in the dwelling unit during the period of the rental.

"Junior accessory dwelling unit" shall mean a unit that is no more than 500 square feet in size and contained entirely within a single family residence. A junior accessory dwelling unit may include separate sanitation facilities or share sanitation facilities with the existing structure.

"Mixed-use parcel" shall mean a parcel upon which the City's zoning permits commercial and residential uses to exist at the same time (i.e., commercial on first floor and residential on upper floors). By way of example only, as of the effective date of this Chapter, parcels located in the following zoning districts in the City would meet the definition of mixed-use parcel: C/R; R/C-18; P/R; TC-MU.

"Mixed-use parcel STR permit" shall mean a permit for either a non-primary STR or a multiple family home stay STR issued for an STR located in a dwelling on a mixed-use parcel.

"Multiple family home stay short-term rental" shall mean an STR at a parcel upon which a multiple family dwelling (i.e., a duplex, triplex, etc.) lawfully exists, and at which all the following conditions also exist:
(1) the property owner owns two or more dwellings on the parcel; and (2) the property owner resides in one of the dwellings on the parcel and such dwelling unit is the property owner's primary residence; and (3) one of the dwellings owned by the property owner is used for STR purposes.

"Non-primary short-term rental" shall mean a dwelling used for short-term rental purposes other than a home stay, multiple family home stay or primary residence short-term rental.

"Permittee" shall mean the holder of an STR permit.

"Primary residence" shall mean a dwelling which a permittee uses as his or her domicile and permanent principle home for legal purposes.

"Primary residence short-term rental" shall mean an STR at a dwelling which is the property owner's primary residence, as evidenced per the provisions hereof, which is being rented for STR purposes when the property owner is traveling or living elsewhere.

"Property owner" shall mean a person who holds a recorded interest in a parcel upon which a dwelling exists which is used for, or proposed to be used for an STR. In the case of a trust, both the trustees and any person or entity holding a beneficial interest of more than 5% in the trust are deemed to be the property owner. In the case of a business entity, any person having an ownership interest of more than 5% in the entity shall be deemed to be a property owner.

"Short-term rental" or "STR" shall mean the rental of any structure or any portion of any structure for occupancy, dwelling, lodging or sleeping purposes for at least two consecutive nights, but no more than 30, consecutive calendar days in duration in a zoning district where residential uses are allowed, including, but not limited to, detached single family dwellings, condominiums, duplexes, triplexes, townhomes and multiple family dwellings.

"STR permit" means a permit issued to the property owner to authorize use of a dwelling for STR purposes pursuant to this Chapter.
(Added by Ord. 13-01, 4/2/13; amended by Ord. 23-01, 2/7/23)

§ 5.38.030. Short-Term Rental Permit Limitations.

(a) A total maximum of 115 STR permits may be issued for any type of STR located at dwellings outside the City's Coastal Zone. Any STR permits issued as of the effective date of this Chapter outside the City's Coastal Zone shall continue to be valid, and shall count towards this numerical cap.

(b) One goal of this Chapter is to encourage home stay STRs, primary residence STRs, multiple family home stay STRs, and STRs on mixed-use parcels which are deemed to be preferred over non-primary STRs. Towards this end, the following provisions shall apply:

(1) The STR permit fee for home stay STRs, primary residence STRs, multiple family home

stay STRs, and STRs on mixed-use parcels shall be calculated as follows: (Total STR permit fee established by the City Council x 0.75).

(2) Permit applications for home stay STRs, primary residence STRs, multiple family home stay STRs, and STRs on mixed-use parcels shall be given priority when selected from the City's STR permit waitlist.

(3) In addition, no more than 60 of the available STR permits shall be for non-primary STRs.

(c) When a parcel upon which a dwelling exists for which an STR permit has been issued is sold, the STR permit shall expire upon the date the title to such parcel transfers, and the STR permit shall not transfer to the new property owner. Should the new property owner desire to use any dwelling on the parcel as an STR, such new property owner must apply for and receive an STR permit.

(d) Notwithstanding the foregoing, if a parcel upon which a dwelling exists for which an STR permit has been issued changes ownership through an inheritance, or as a result of a family transfer that results in no new property tax assessment of the parcel, the STR permit may be transferred provided the new property owner(s) is/are family members of the prior property owner. In such circumstance, the new property. Owner may apply for an STR permit transfer. The STR permit transfer shall be subject to such requirements as may be imposed by the Community Development Director to confirm the new property owner(s) is(are) a family member(s) of the prior property owner(s). Prior to the first use of any dwelling on a parcel as an STR after a change of ownership as a result of an inheritance, an STR permit transfer shall have been approved by the City. The Community Development Director shall determine if a familial relationship exists, and shall base that decision on the totality of the facts of any given circumstance in a manner that carries out the intent of this provision consistent with applicable laws.

(e) While 115 total STR permits are authorized by this Chapter, the Community Development Director shall make available no more than 25 new STR permits before July 1, 2023. Thereafter, before any additional new STR permits are issued, the Community Development Director shall present a report to the City Council which shall assess the program created by this Chapter and Coastal Development Permit No. CDP22-0010 (A-5-DPT-22-0038).

(f) Upon issuing the maximum number of STR permits authorized by this Chapter, the City will establish a waitlist for the issuance of additional STR permits when they become available.

(g) Upon the effective date of this Chapter, STR permits shall be limited to one STR permit per property owner without regard to the category of STR to which such STR permit applies (i.e., whether for a home stay, non-primary, multiple family home stay, mixed-use parcel, or primary residence short- term rental.) Any STR permits issued prior to the effective date of this Chapter which conflict with this provision shall be deemed to be "grandfathered" and will remain valid, subject to all other provisions hereof until such time as the pre-existing STR permit(s) expire(s) or is (are) revoked.

(h) An STR permit shall not be issued for a dwelling located in a multiple family structure if issuance of such permit would result in the creation of a "hotel", as defined by the Dana Point Zoning Code (i.e., six or more guest rooms or suites located in a structure or group of structures). Additionally, properties with five or fewer residential units that are located in a structure or group of structures may only convert a maximum of one unit into an STR, and properties with six or more residential units that are located in a structure or group of structures

may only convert a maximum of 20% of the total number of residential units into STRs.

(i) Every three years the Community Development Director will review the regulations set forth in this Chapter to determine if a change to the maximum number of STR permits outside the Coastal Zone, or any other changes, should be recommended to the City Council; provided, however, the Council may change the maximum number of such permits, or any other provision of this Chapter, at any time.

(Added by Ord. 23-01, 2/7/23)

§ 5.38.040. Permit Holder/Agents.

(a) STR permits shall be issued only to the property owner of the parcel upon which a dwelling exists that is proposed to be used as an STR. The property owner shall be responsible for compliance with the provisions of this Chapter, and any STR permit.

(b) A property owner may retain an agent or a representative to comply with the requirements of this Chapter, including, without limitation, the filing of an application for an STR permit, the management of the STR, and the compliance with the conditions to the STR permit. The property owner shall sign and notarize an agreement satisfactory to the Community Development Director demonstrating the creation of an agent relationship. The failure of an agent to comply with this Chapter or any STR permit condition shall be deemed non-compliance by both the property owner and agent, and both shall be subject to any adverse action by the City related to a violation, including imposition of fines and STR permit revocation.

(Added by Ord. 13-01, 4/2/13; amended by Ord. 23-01, 2/7/23)

§ 5.38.045. Permit Required—Permit Compliance.

(a) No person shall rent, offer to rent, or advertise for rent a dwelling for use as an STR without a valid STR permit approved and issued by the City of Dana Point for the dwelling.

(b) Every permittee shall comply with the provisions of this Chapter or Coastal Development Permit No. CDP22-0010 (A-5-DPT-22-0038), as applicable, with applicability dependent upon whether the permittee's STR permit applies to a dwelling located within or outside of the City's Coastal Zone.

(Added by Ord. 13-01, 4/2/13; amended by Ord. 23-01, 2/7/23)

§ 5.38.050. Application for Permit.

The property owner of the parcel upon which a dwelling exists that is proposed to be used as an STR shall submit an application for an STR permit to the Community Development Director. The application for an STR permit shall be upon forms provided by the City and shall contain the following information:

(a) The name, address, email, and telephone number of the property owner, and all persons or entities that are property owners, of the parcel upon which a dwelling exists that is proposed for use as an STR and for which the STR permit is requested.

(b) The name, address, email, and telephone number of the property owner's agent, if any.

(c) The address of the dwelling proposed to be used as an STR.

(d) Evidence of a valid transient occupancy tax registration certificate issued by the City in

connection with the proposed STR.

(e) Proof of general liability insurance in the amount of one million dollars ($1,000,000.00) combined single limit and an executed agreement to indemnify, defend, and save the City harmless from any and all claims and liabilities of any kind whatsoever resulting from or arising out of the issuance of the STR permit or the use of the dwelling to which the STR permit applies as an STR.

(f) In connection with an application for a primary residence, or home stay STR the property owner shall provide evidence that the dwelling proposed to be used as an STR is the property owner's primary residence which shall at a minimum include evidence that the property owner has filed for and received a homeowner's exemption for the dwelling as part of its most recent property tax assessment and a secondary form of evidence designating the dwelling as the property owner's domicile such as an income tax return, car registration, driver's license or similar official record satisfactory to the Community Development Director.

(g) In connection with an application for a multiple family home stay short-term rental, the property owner shall provide evidence that one of the dwellings on the parcel where the proposed STR is located is the property owner's primary residence which shall at a minimum include evidence that the property owner has filed for and received a homeowner's exemption for the dwelling as part of its most recent property tax assessment and a secondary form of evidence designating the dwelling as the property owner's domicile such as an income tax return, car registration, driver's license or similar official record satisfactory to the Community Development Director.

(h) Acknowledgement that the property owner (and agent if applicable) received a copy of, reviewed and understands the regulations pertaining to the operation of an STR within the City.

(i) The STR to which the permit applies shall not be prohibited by any homeowners' association conditions, covenants, and restrictions ("CC&Rs") or any other community standards/guidelines applicable to the parcel where the dwelling to be used as an STR is located.

(j) Such other information as the Community Development Director deems reasonably necessary to administer this Chapter.

(k) Permits shall only be issued to the property owner of the parcel upon which a dwelling exists that is proposed to be used as an STR. If multiple property owners exist, one such owner may be designated as the agent, subject to the provisions hereof related to agents.

(l) Only one STR permit, for one dwelling, shall be issued to any person or entity that meets the definition of a property owner hereunder; and, when an STR permit is issued for a dwelling, it is deemed to be issued to all property owners of such dwelling.

(m) The fee for issuance of an STR permit as established by the City Council. (Added by Ord. 13-01, 4/2/13; amended by Ord. 23-01, 2/7/23)

§ 5.38.060. Application for Waitlist.

A property owner desiring to be added to the City's STR permit waitlist shall submit a waitlist application.

Once received, the property owner will be added to the City's STR permit waitlist.

(a) Property owners on the STR permit waitlist must provide an application annually to verify continued eligibility to preserve their position on the STR permit waitlist.

(b) A property owner's position on the STR permit waitlist is not transferable.

(c) The application for the STR permit waitlist shall be upon forms provided by the City and shall contain the following information:

(1) The name, address, email, and telephone number of the property owner of the parcel upon which a dwelling exists that is proposed for use as an STR and for which the STR permit is requested.

(2) The address of the dwelling proposed to be used as an STR.

(3) Additional information as the Community Development Director deems reasonably necessary to administer this Chapter.

(d) The STR permit waitlist fee shall be the same as the STR permit fee. Upon selection and STR permit issuance, the STR permit waitlist fee paid will be applied toward the first year's STR permit fee.

(e) Upon selection from the STR permit waitlist, the property owner shall have 14 days to submit a complete STR permit application to the City.

(f) A property owner on the STR permit waitlist may request to be removed from such waitlist in writing, and upon receipt of such a request the City will remove the property owner from the waitlist and refund the STR permit waitlist fee.

(Added by Ord. 23-01, 2/7/23)

§ 5.38.070. Renewal of Permit.

(a) All property owner's holding STR permits shall apply for and renew their STR permit annually on March 1st or an alternative date as determined by the Community Development Director. STR permit renewals shall include any changes to the information or requirements set forth in these regulations, as well as proof of current general liability insurance as required by Section 5.38.050(e).

(b) In the case of renewal of STR permits issued for primary residence and home stay STRs, the property owner shall provide evidence that the dwelling proposed to be used as an STR continues to be the property owner's primary residence which shall at a minimum include evidence that the property owner has filed for and continues to receive a homeowner's exemption for the dwelling as part of its most recent property tax assessment and a secondary form of evidence designating the dwelling as the property owners domicile such as an income tax return, car registration, driver's license or similar official record satisfactory to the Community Development Director.

(c) In the case of renewal of STR permits issued for multiple family home stay STRs, the property owner shall provide evidence that one of the dwellings on the parcel where the proposed STR is located continues to be the property owner's primary residence which shall at a minimum include evidence that the property owner has filed for and received a homeowner's exemption for the dwelling as part of its most recent property tax assessment and a secondary form of

evidence designating the dwelling as the property owner's domicile such as an income tax return, car registration, driver's license or similar official record satisfactory to the Community Development Director.

(d) Any STR permit that is inactive during a permit year (meaning no rentals occurred during the year) will not be renewed. The inactivity requirement can be waived if the dwelling to which the STR permit renewal applies is under renovation, as evidenced by validly issued, unexpired building permits, or for good cause as determined by the Community Development Director. Any STR permit inactive for two permit years shall not be renewed.

(Added by Ord. 23-01, 2/7/23)

§ 5.38.080. Conditions of Permit Issuance and Renewal.

(a) Permits and renewals issued pursuant to this Chapter are subject to the following standard conditions:

(1) All STR permits shall comply with the terms of this Chapter and the provisions of this Chapter are deemed to be included in all STR permits.

(2) The property owner (or agent if applicable) shall ensure that the STR complies with all applicable codes regarding fire, building and safety, and all other relevant laws and ordinances.

(3) The property owner (or agent if applicable) shall provide proof that the STR to which the permit applies is not legally prohibited by any homeowners' association conditions, covenants and restrictions ("CC&Rs") or any other community standards/guidelines, applicable to the parcel where the dwelling to be used as an STR is located.

(4) Concurrent with the issuance of the STR permit, and annually upon its renewal, City staff shall provide notice of the proposed action on the STR permit to all property owners and tenants abutting the parcel, or in the case of an STR in a multiple family dwelling the owners and tenants of all other dwelling units on the parcel and/or in the same structure, upon which the dwelling proposed to operate as an STR is located. The notice shall also provide the contact information for the property owner (and agent if applicable) and their 24 hour emergency contact phone number. The notification package shall also identify the City's 24 hour STR hotline phone number, Code Enforcement phone number, and Orange County Sheriff's Department phone number. The notice shall not afford the abutting owners/tenants any protest, appeal, or other related rights; rather, its intent is to provide the abutting property owners/tenants with an annual reminder as to the contact information for the various individuals and entities responsible for enforcement in the event that an issue arises with the operation of the STR.

(5) The dwelling for which an STR permit is requested must pass an initial inspection by the City prior to STR permit issuance. The City may conduct additional inspections as deemed necessary or prudent at any reasonable time, including prior to subsequent renewals.

(6) The property owner shall provide a 24 hour emergency contact that will be available to respond to issues at the STR.

(7) The STR must have and maintain a minimum of two off-street parking spaces.

(8) The STR must have a visible house number easily seen from the street, day or night.

(9) All advertising for the STR shall include the City issued STR permit number in the subject line and in the description of the STR. In addition, all photographs maps, and diagrams of the STR that are used for advertising purposes shall impose the City-issued STR permit number in the lower right-hand corner in a font, style, size, and color to be reasonably legible, with any dispute as to the meaning of this provision subject to interpretation by the Community Development Director.

(10) The primary overnight and daytime renter, who shall also be residing as a guest in the STR during any STR rental period must be an adult 25 years of age or older. This adult must provide a telephone number to the property owner (or agent if applicable) and shall be accessible to the property owner by telephone at all times.

(11) Prior to occupancy, the property owner (or agent if applicable) shall obtain the name, address, and driver's license number or a copy of the passport of the primary adult occupant of the STR. The property owner (or agent if applicable) shall require that same adult to sign a formal acknowledgment that he or she is legally responsible for compliance by all occupants and guests of the STR with the provisions of this Chapter, as well as a copy of the City's Good Neighbor Acknowledgment. An unsigned copy of the City's Good Neighbor Acknowledgment shall be posted in a conspicuous location within the STR, along with a copy of this Chapter. This information shall be readily available upon request of any police officer or employee of the City authorized to enforce this Chapter or State law.

(12) The property owner (or agent if applicable) shall rent the STR for a minimum stay of two consecutive nights.

(13) The maximum overnight occupancy of the STR shall be limited to two persons per bedroom plus two additional persons within the STR. The Community Development Director may, when unusual size, interior layout, parking, or other physical characteristics are shown, approve a greater maximum number of overnight occupants as part of an STR permit application or renewal. The maximum daytime occupancy shall be limited to two and a half (2.5) times the overnight occupancy and not exceed 20 persons; however, the Community Development Director may, when unusual size, or other physical characteristics, approve a greater maximum number of daytime occupants as part of an STR permit application or renewal.

(14) The maximum number of vehicles allowed at the STR shall be limited to one vehicle per one bedroom unit or two vehicles maximum with two or more bedrooms within the STR. The Community Development Director may, when unusual size, parking or other physical characteristics are shown, approve a greater maximum number of vehicles as part of an STR permit application or renewal. The property owner must ensure a sufficient number of parking spaces are accessible to tenants to accommodate the maximum number of vehicles allowed.

(15) No on-site exterior signs are to be posted on a parcel advertising an STR at the location.

(16) Trash and refuse shall not be left stored within public view, except in proper containers for the purpose of collection by the responsible trash hauler and between the hours of 5:00 p.m. the day before and 8:00 a.m. the day after the scheduled trash collection days, as provided in Chapter 6.10 of the Dana Point Municipal Code. In the event the property

owner fails to comply with this provision, he or she shall be required to sign up for walk-up trash service provided by the City's waste disposal franchisee and provide proof to the City of the same. The property owner shall provide sufficient trash collection containers and services to meet the demand of the occupants of the STR.

(17) Each lease or rental agreement for an STR shall include the following terms, notifications and disclosures, which shall also be posted in a conspicuous location inside the STR:

(A) The maximum number of occupants that are permitted and notification that failure to conform to the maximum occupancy is a violation of this Chapter.

(B) The number of parking spaces provided and, if not adjacent to the STR, the location of assigned parking and the maximum number of vehicles that are permitted.

(C) The trash pick-up day(s) and applicable rules and regulations pertaining to leaving or storing trash on the exterior of buildings on the parcel.

(D) Notification that the occupant may be cited or fined by the City and/or immediately evicted by the property owner (or agent as applicable) for violating any and all applicable laws.

(E) The name of the property owner or agent, and a telephone number at which that party may be reached at all times and 9-1-1 Emergency information.

(F) Summary of applicable homeowners' association conditions, covenants and restrictions (CC&Rs) and bylaws, including pool location and hours.

(G) The terms, notifications, and disclosures must be posted during the registration process.

(18) The property owner shall ensure that the occupants of the STR do not create unreasonable noise or disturbances, engage in disorderly conduct, or violate provisions of the Municipal Code or any State Law pertaining to noise, disorderly conduct, overcrowding, alcohol consumption, or the use of illegal drugs. Property owners are expected to take any measures necessary to abate disturbances, including, but not limited to, directing the tenant, calling for law enforcement services, or City code enforcement officers, evicting the tenant, or any other action necessary to immediately abate the disturbance.

(19) The property owner or agent as applicable shall, upon notification that occupants or tenants of an STR have created unreasonable noise or disturbances, engaged in disorderly conduct, or committed violations of the Municipal Code or State Law pertaining to, but not limited to, noise, disorderly conduct, and/or overcrowding, take action to abate the issue within 30 minutes of the property owner or agent being notified of a complaint and prevent a recurrence of such conduct by those occupants or guests. In some instances, the property owner or agent may be required to arrive on site within 30 minutes of a received complaint to address the issue and ensure there is not a re-occurrence.

(20) No outside noise from the STR shall be heard during quiet hours of 10:00 p.m. to 7:00 a.m.

(21) The property owner or agent as applicable shall include ADA information, if available, in all advertisements for the STR (e.g., stairs, signage, ingress/egress, parking, storage,

utilities, showers and lavatories, air conditioning, etc.).

(22) Advertisements, and information provided in the STR itself, shall disclose whether bicycles or other means of transport (scooters, skateboards, carpooling, rideshare, etc.) are available.

(b) The Community Development Director shall have the authority at any time to impose additional standard conditions, applicable to all STRs, as necessary to achieve the objectives of this Chapter.

(c) The Community Development Director shall have the authority to impose additional conditions on any STR permit in the event of any violation of the conditions to the permit or the provisions of this Chapter subject to compliance with the procedures specified in Section 5.38.100.

(d) The property owner or agent as applicable shall maintain a valid transient occupancy tax registration certificate issued by the City for the STR, and shall collect and remit transient occupancy tax as required by Chapter 3.25 of the Municipal Code.

(Added by Ord. 13-01, 4/2/13; amended by Ord. 21-02, 6/1/21; Ord. 23-01, 2/7/23)

§ 5.38.090. Short-Term Rental Operator Regulations.

The following are additional regulations and clarifications applicable to all property owners or agents if applicable for the operation of STRs. These regulations may be updated periodically by the Community Development Director for clarification of situations that may develop based on the implementation of this Chapter and regulations within the City.

(a) No person shall rent, offer to rent, or advertise for rent a dwelling for use as an STR if such dwelling is an accessory dwelling unit, junior accessory dwelling unit, created as part of single-family residential duplex (as defined by Zoning Code Section 9.72), or designated as an affordable housing unit, and no STR permit shall be issued for any such dwelling.

(b) No person shall rent, offer to rent, or advertise for rent a dwelling for use as an STR unless such dwelling is in a zoning district where residential uses are allowed, including, but not limited to, detached single family dwellings, condominiums, duplexes, triplexes, townhomes, and multiple family dwellings, and no STR permit shall be issued for a dwelling that does not meet this criteria.

(c) Home stay STR and multiple family home stay STR shall be subject to the following:

(1) Notwithstanding any other provision of this Chapter to the contrary, the property owner of a home stay short-term rental or multiple family home stay short-term rental shall be present at the parcel upon which the STR is located during the rental period between the hours of 10:00 p.m. to 7:00 a.m.

(2) A maximum of one home stay STR permit may be issued for any parcel upon which multiple dwellings exist.

(3) In no instance shall a home stay STR permittee allow the use of an on-site camper, RV, or tent by renters as part of the STR use on a parcel.

(d) Primary residence STR shall be subject to the following:

(1) A property owner to whom an STR permit for a primary residence STR is issued shall be

limited to renting the dwelling to which the STR permit applies for a maximum of 60 days per 12 month period, (with the date starting on the date the STR permit is issued) unless further restricted by CC&R regulations. Compliance will be monitored by the transient occupancy tax annual submittal, and such other means as deemed necessary and appropriate by the Community Development Director.

(Added by Ord. 23-01, 2/7/23)

§ 5.38.100. Violations/Penalties.

(a) Any violation of this Chapter, any relevant provision of the Municipal Code, or any permit condition, including any of the following, shall constitute a violation for which the penalties specified in this Section may be imposed, or for which the STR permit may be revoked:

(1) The property owner and/or agent has failed to comply with any standard conditions which are part of an STR permit;

(2) The property owner and/or agent has failed to comply with conditions imposed by the Community Development Director on an STR permit;

(3) The property owner and/or agent has willfully violated the provisions of this Chapter;

(4) The property owner and/or agent has failed to comply and pay any fines imposed pursuant to subsection (b) within 30 days of the date of notification; or

(5) The property owner and/or agent has failed to comply and pay the transient occupancy tax or submit a report as required by Chapter 3.25 of the Municipal Code within the required time limit.

(b) Penalties. The penalties for violations imposed per subsection (a) above, or the Municipal Code, shall be the responsibility of the property owner, and/or the agent if applicable, and are issued per day and per violation as follows:

(1) For the first violation the penalty shall be the maximum monetary amount allowed per State law;

(2) For a second violation the penalty shall be the maximum monetary amount allowed per State law;

(3) For a third violation the penalty shall result in the immediate revocation of the STR permit. In the event the STR permit has been revoked, the property owner shall thereafter be ineligible to receive an STR permit for any category of STR to be operated on the same parcel upon which the STR for which the permit was revoked existed.

(Added by Ord. 13-01, 4/2/13; amended by Ord. 21-02, 6/1/21; Ord. 21-08, 11/16/21; Ord. 23-01, 2/7/23)

§ 5.38.110. Procedure for Imposition of Penalties/Revocation.

Penalties shall be imposed, and STR permits shall be revoked, in the manner provided in this section. The Community Development Director shall conduct an investigation whenever he or she has reason to believe that a property owner (or agent as applicable) has committed a violation described in this Chapter. Should the investigation reveal substantial evidence to support a finding that a violation occurred, the Community Development Director shall issue written notice of intention to impose a penalty and/or revoke the STR permit. The written notice shall be served on the property owner, and agent if applicable, and shall specify the facts which, in the opinion of the Community Development

Director, constitute substantial evidence to establish grounds for imposition of the penalties and/or revocation, and specify that the penalties will be imposed and/or the STR permit will be revoked within 30 days from the date the notice is given unless the property owner, or agent if applicable, files with the City Clerk before the penalties or revocation becomes effective, a request for hearing before the City Manager.
(Added by Ord. 13-01, 4/2/13; amended by Ord. 23-01, 2/7/23)

CHAPTER 5.40

CANNABIS RELATED USES, COMMERCIAL CANNABIS ACTIVITIES, DELIVERIES, AND CULTIVATION PROHIBITED

§ 5.40.010. Definitions.

"Cannabis" shall mean all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from marijuana. "Cannabis" also means "marijuana" as defined by Section 11018 of the California Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. The term "Cannabis" shall also have the same meaning as set forth in Section 19300.5(f) of the California Business and Professions Code, as may be amended from time to time. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this chapter, "cannabis" does not mean "industrial hemp" as defined by Section 81000 of the California Food and Agricultural Code or Section 11018.5 of the California Health and Safety Code.

"Caregiver" or "primary caregiver" shall have the same meaning as set forth in Section 11362.7 of the California Health and Safety Code, as may be amended from time to time.

"Commercial cannabis activity" shall include the cultivation, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products.

"Cooperative" shall mean two or more persons collectively or cooperatively cultivating, using, transporting, possessing, administering, delivering, or making available marijuana, with or without cultivation.

"Cultivation" or "cultivate" shall mean any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of medical cannabis..

"Delivery" shall have the same mean the commercial transfer of medical cannabis or medical cannabis products from a dispensary, up to an amount determined by the bureau to a primary caregiver or qualified patient as defined in Section 11362.7 of the Health and Safety Code, or a testing laboratory. ‘Delivery’ also includes the use by a dispensary of any technology platform owned and controlled by the dispensary, or independently licensed under this Chapter, that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products.

"Dispensary" shall mean a premises where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers, pursuant to Section 19340, medical cannabis and medical cannabis products as part of a retail sale. For purposes of this Chapter, Dispensary shall also include a Cooperative. Dispensary shall not include the following uses: (1) a clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code; (2) a health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code; (3) a residential care facility for persons with chronic life threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the California Health and Safety Code; (4) a residential care facility for

the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code; (5) a residential hospice or home health agency licensed pursuant to Chapter 8 of Division 2 of the California Health and Safety Code.

"Medical cannabis" "medical cannabis product," or "cannabis product" means a product containing cannabis, including, but not limited to, concentrates and extractions, intended to be sold for use by medical cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code. For the purposes of this chapter, "medical cannabis" does not include "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code..

"Medical Marijuana Regulation and Safety Act" or "MMRSA" shall mean and refer to the following three bills signed into law on October 9, 2015, as the same may be amended from time to time: AB 243, AB 266, SB 643.

"Qualifying patient" or "qualified patient" shall have the same meaning as set forth in Section 11362.7 of the California Health and Safety Code, as may be amended from time to time.
(Added by Ord. 16-01, 1/19/16)

§ 5.40.020. Prohibitions.

All cannabis related uses, including, but not limited to, dispensaries, deliveries, cultivation and all other commercial cannabis activities for which a State license is required under the MMRSA, are prohibited in all zones throughout the City. Accordingly, the City shall not issue any permit, or process any license or other entitlement for any cannabis related use or any other activity for which a State license is required under the MMRSA.

(a) Cannabis Related Uses. All cannabis related uses, including, but not limited to, cultivation, dispensaries, and deliveries are prohibited in all zones and all specific plan areas in the City, regardless of whether the cannabis is used for medicinal purposes or whether such uses qualify as commercial cannabis activities under the MMRSA. No person shall establish, operate, conduct, permit or allow any cannabis related use anywhere within the City.

(b) Medical Cannabis Uses. All medical cannabis related uses, including cultivation, dispensaries, and deliveries are expressly prohibited in all zones and all specific plan areas in the City, regardless of whether such uses qualify as commercial cannabis activities under the MMRSA. No person shall establish, operate, conduct, permit or allow any medical cannabis related land use anywhere within the City.

(c) Commercial Cannabis Activities. All commercial cannabis activities, including, but not limited to, cooperatives, dispensaries, cultivation, and deliveries, are expressly prohibited in all zones and all specific plan areas in the City. No person shall establish, operate, conduct, permit or allow a commercial cannabis activity anywhere within the City.

(d) Cannabis Deliveries. All deliveries of cannabis and medical cannabis are expressly prohibited in the City. No person shall conduct any deliveries of cannabis or medical cannabis that either originate or terminate at any location within the City.

(e) Cannabis Cultivation. The cultivation of cannabis, regardless of whether for commercial or non- commercial purposes, and including cultivation by a qualified patient or primary caregiver is expressly prohibited in all zones and all specific plan areas in the City. No person, including, but not limited to, a qualified patient or primary caregiver, shall cultivate any amount of cannabis in the City, regardless of whether or not the cannabis is intended to be

used for medical purposes.
(Added by Ord. 16-01, 1/19/16)

§ 5.40.030. Public Nuisance.

Any use or condition caused, or permitted to exist, in violation of any provision of this Chapter shall be, and is hereby declared to be, a public nuisance and may be summarily abated by the City pursuant to Section 731 of the California Code of Civil Procedure or any other remedy available at law.
(Added by Ord. 16-01, 1/19/16)

§ 5.40.040. Civil Penalties.

In addition to any other enforcement permitted by the Dana Point Municipal Code, the City Attorney may bring a civil action for injunctive relief and civil penalties against any person who violates any provision of this Chapter. In any civil action that is brought pursuant to this Chapter, a court of competent jurisdiction may award civil penalties and costs to the prevailing party.
(Added by Ord. 16-01, 1/19/16)

§ 5.40.050. Provisions in Chapter Cumulative.

The prohibitions and provisions in this Chapter are cumulative to any and all other prohibitions and regulations in the Dana Point Municipal Code concerning cannabis, medical cannabis, and marijuana, including, but not limited to, the City's ban on marijuana related uses via its permissive zoning regulations. Nothing in this Chapter supersedes or shall be construed to conflict with any other prohibitions or regulations in the Dana Point Municipal Code.
(Added by Ord. 16-01, 1/19/16)

CHAPTER 5.42
SMALL WIRELESS FACILITY AND ELIGIBLE FACILITY REQUEST REGULATIONS

§ 5.42.010. Purpose.

This Chapter establishes a small wireless facility ("SWF") permit, and sets forth definitions, permitting requirements and application processes for Small Wireless Facilities within the public right-of-way ("PROW") in the City and as otherwise required by law, including reasonable, uniform and objective aesthetic standards. This Chapter also establishes an eligible facilities request permit and sets forth definitions, permitting requirements, and the application process for eligible facilities requests. This Chapter addresses batch processing standards for substantially similar broadband projects.
(Added by Ord. 21-01, 2/16/21; amended by Ord. 24-01, 4/16/2024)

§ 5.42.020. Definitions.

The following definitions are applicable to this Chapter:

"Accessory equipment" means any equipment associated with the installation of a small wireless facility or modifications that qualify as an eligible facilities request, including, but not limited to: cabling, generators, fans, air conditioning units, electrical panels, equipment shelters, equipment cabinets, equipment buildings, pedestals, meters, vaults, splice boxes, utilities, fiber-line, surface location markers, covering furniture or decorative features.

"Antenna" means that part of a small wireless facility designed to radiate or receive radio frequency signals.

"Applicant" means the entity applying for the small wireless facility permit that will own and operate said facility, and any entity acting on such entity's behalf.

"Batch small wireless facility application" means an application for multiple small wireless facilities at multiple locations, or multiple applications for separate facilities at multiple locations submitted to the City at one time.

"Broadband projects" means both the proposed facility, and support structures and equipment comprised of components such as wireless facilities, fiber optic connections, and other supporting equipment.

"Colocation" shall mean the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

"Director of Community Development" means the City's Director of Community Development, or appointed designee.

"Eligible facilities request" shall have the same definition provided by Federal law via 47 U.S.C. Section 1455(a). Eligible facilities request for purposes of this subsection, the term "eligible facilities request" means any request for modification of an existing wireless tower or base station that involves: (1) collocation of new transmission equipment; (2) removal of transmission equipment; or (3) replacement of transmission equipment.

"Existing support structure" means a structure, such as a street light, that is existing prior to the City's receipt of an application for a small wireless facility permit, which will not have to be replaced or substantially modified to support the installation of a small wireless facility. Notwithstanding the foregoing, in-kind replacement structures are considered existing support structures for the purposes of

this Chapter.

"Existing wireless tower" shall mean any structure built for the sole or primary purpose of supporting any commission-licensed or authorized antennas and their associated facilities.

"Facility" means small wireless facility.

"In-kind replacement support structure" means a new structure that replaces existing vertical infrastructure in the PROW that is constructed to support the other parts of the small wireless facility, and is identical to the existing vertical infrastructure it replaces with respect to size, height, diameter, style, and exterior materials.

"Modification" shall mean any addition, removal or replacements of an antenna or any other transmission equipment associated with an existing supporting structure.

"New support structure" means a structure that is constructed solely to support the other parts of the small wireless facility or accessory equipment.

"Permittee" for the purposes of this Chapter, shall mean and refer to the entity or person that has been issued a permit under this Chapter and is operating a facility or modification approved under this Chapter, or any entity acting on behalf of such an entity or person. Should the permittee later sell a facility or modification constructed pursuant to a permit issued under this Chapter, the term permittee shall apply to that subsequent owner.

"Replacement support structure" means a new structure that replaces existing vertical infrastructure in the PROW that is constructed solely to support the other parts of the small wireless facility, except for in-kind replacement structures.

"SCADA" is an acronym that stands for supervisory control and data acquisition (SCADA), which is a control system architecture comprising computers, networked data communications and graphical user interfaces for high-level process supervisory management, while also comprising other peripheral devices like programmable logic controllers and discrete proportional-integral-derivative controllers to interface with process plant or machinery. All SCADA deployments that meet the definition of a facility to be placed in the City will be considered as small wireless facilities and will require SWF ministerial permits per this Chapter.

"Single application" means an application for a single small wireless facility at a single location.

"Small wireless facility" means any equipment that facilitates transmission for any commission-licensed or authorized wireless communication service or other similar service, including, but not limited to, radio receivers, antennas and other relevant equipment associated with and necessary to their operation, including coaxial or fiber optic cable, regular and back and power supplies, support structures and meets each of the following conditions:

(1) Support Structure.

(A) Installation on an Existing Support Structure. Where the facility will be installed on an existing support structure, the structure on which the facilities will be mounted:

(i) Is 50 feet or less in height with the added antennas, or

(ii) Is no more than 10% taller that other adjacent structures, or

(iii) Is not extended to a new height more than 50 feet or 10% above its preexisting height, as a result of the collocation of new facility (including the height of

the facility); or

(B) Installation on a New Support Structure. Where the facility will be installed on a new support structure, including a replacement structure, the structure on which the facilities will be mounted:

(i) Is 50 feet or less in height with the added antennas, or

(ii) Is no more than 10% taller than other adjacent support structures with the added antennas, or

(2) Each antenna (excluding the associated equipment) is no more than three cubic feet in volume; and

(3) All associated equipment with a small wireless facility is cumulatively no more than 28 cubic feet in volume; and

(4) The facility does not require antenna structure registration under Part 17 of Title 47 of the Code of Federal Regulations as that code is amended from time to time;

(5) The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards that specified in 47 C.F.R. § 1.1307.

(6) For the purpose of this Section, "small wireless facility" shall only include the antennas, and the "equipment associated with the facility."

(7) For the purpose of this Section small wireless facilities will also include all SCADA poles and antennas.

(8) Exemptions the term "small wireless facility" does not apply to the following:

(A) Government owned and operated telecommunication facilities.

(B) Emergency medical care provided owned and operated telecommunications facilities.

(C) Mobiles services providing public information coverage of news events of a temporary nature.

(D) Any wireless telecommunications facilities exempted from this Code by Federal or State law.

"Street light" means a light illuminating a road, mounted on a pole and within the PROW.

"Structure" means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of services).

"Substantially similar" nearly identical to another broadband project in terms of equipment and general design, but not in terms of location, as determined by the Director of Community Development in their reasonable discretion and subject to applicable law regulating broadband projects.

"Support structure" means either an existing support structure, new support structure, or replacement of support structure, which are all considered part of a small wireless facility.

"Zoning Administrator" means the Director of Community Development who reviews and approves or denies administrative level entitlement permits.

(Added by Ord. 21-01, 2/16/21; amended by Ord. 24-01, 4/16/2024)

§ 5.42.030. Permits Required.

(a) Prior to the construction or installation of any small wireless facility in the PROW, the applicant shall obtain a small wireless facility permit pursuant to the procedures, requirements, and restrictions of this Chapter, in addition to a review for structural calculations and encroachment permit as defined in Ch. 14.01. An improvement plan and inspection is required for a new support structure or a replacement support structure.

(b) Unless specifically exempt by Federal or State law, all applications for modifications to existing support structures within the PROW that constitute "eligible facilities requests" within the meaning of 47 U.S.C. Section 1455(a) require the approval of an eligible facilities request (or "EFR") permit prior to construction of such eligible facility.

(c) Any wireless communication facility that does not meet the definition of a small wireless facility pursuant to this Chapter being installed in the PROW or an eligible facilities request, shall comply with and acquire the requisite permits in Section 9.07.020, Antennas.

(d) Nothing in this Chapter prohibits the City from requiring a conditional use permit and an antenna use permit pursuant to Section 9.07.020 of this Code for a proposed wireless communication facility outside of the PROW, or as otherwise required by the City's Code.

(Added by Ord. 21-01, 2/16/21; amended by Ord. 24-01, 4/16/2024)

§ 5.42.040. Approval Authority.

(a) The Community Development Director shall be the approval body for all small wireless facility permits and eligible facilities request permits. However, the Director in his or her sole and absolute discretion shall have the authority to refer any application under this Chapter to the Planning Commission for the City of Dana Point. At that point, the Planning Commission shall act in the role of the Community Development Director as outlined in this Chapter.

(b) The decision of the Community Development Director or Planning Commission made pursuant to this Chapter shall be considered a final decision for the purpose of any subsequent judicial review.

(c) The Community Development Director or Planning Commission shall only approve a small wireless facility permit or an eligible facilities request permit if all the necessary findings of this Chapter can be met. Furthermore, the permit(s) shall include a condition that the permittee and project will meet the siting, concealment, and operating standards applicable to those projects on an ongoing basis, these will act as conditions of approval of the facility.

(d) There will not be a notification process or public hearing required for small wireless facility permits or eligible facilities request permits, unless the Community Development Director determines that the application should be placed on an upcoming Zoning Administrator or Planning Commission meeting agenda for review. If an application is referred to the Zoning Administrator or Planning Commission, then a public hearing must be conducted in accordance with the requirements of Dana Point Municipal Code Section 9.61.050.

(Added by Ord. 21-01, 2/16/21; amended by Ord. 24-01, 4/16/2024)

§ 5.42.050. Application Requirements for Small Wireless Facility Permit.

(a) Before receiving a small wireless facility permit, the applicant must submit an application in accordance with the requirements of this Section.

(b) Before submitting an application, all applicants are advised and strongly urged, but not required, to participate in a wholly voluntary pre-application meeting with appropriate City staff.

(c) Consistent with Assembly Bill 965, an applicant may submit a "batched" application for up to 25 broadband projects, including for broadband projects which would require a small wireless facility permit. Batched applications will be processed simultaneously and shall be approved in a single permit, or uniformly denied, based on whether the batched applications comply with all requirements in this Chapter applicable to the underlying project type. Batch processing is not permitted for eligible facilities requests. The applicant shall submit separate materials for each broadband project that is a part of the application demonstrating that each broadband project is substantially similar. If any particular broadband project in a batch is not substantially similar to the others in the batch, it may be rejected from the remaining batch and may require separate processing.

(d) All applications for small wireless facility permits shall include the following information:

(1) A completed small wireless facility application. This form may be updated by the Director of Community Development from time to time, at his or her reasonable discretion. At a minimum, the following application materials shall be required:

(A) Detailed plans, including, but not limited to, the following:

(i) Construction Plans. The applicant shall submit true and correct construction drawings, prepared, signed and stamped by a California licensed or registered engineer, that depict all the existing and proposed improvements, equipment and conditions related to the proposed project, which includes, without limitation: any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholes, manholes, fire hydrants, equipment cabinets, antennas, cables, trees and other landscape features. The construction drawings shall: (a) contain cut sheets that contain the technical specifications for all existing and proposed antennas and accessory equipment, which includes, without limitation, the manufacturer, model number, and physical dimensions; (b) identify all structures within 250 feet from the proposed project site and call out such structures' overall height above ground level; (c) depict the applicant's plan for electric and data backhaul utilities, which shall include the locations for all conduits, cables, wires, handholes, junctions, transformers, meters, disconnect switches, and points of connection; and (d) demonstrate that proposed project will be in full compliance with all applicable health and safety laws, regulations or other rules, which includes, without limitation, all building codes, electric codes, local street standards and specifications, and public utility regulations and orders.

(ii) Site Survey. For any small wireless facility proposed to be located within the PROW, the applicant shall submit a survey prepared, signed, and stamped by a California licensed or registered surveyor. The survey must identify and depict all existing boundaries, encroachments and other structures within 250 feet from the proposed project site, which includes, without limitation all: (a)

traffic lanes; (b) all private properties and property lines; (c) above and below-grade utilities and related structures and encroachments; (d) fire hydrants, roadside call boxes and other public safety infrastructure; (e) streetlights, decorative poles, traffic signals and permanent signage; (f) sidewalks, driveways, parkways, curbs, gutters and storm drains; (g) benches, trash cans, mailboxes, kiosks and other street furniture; and h existing trees, planters and other landscaping features.

(iii) Photo Simulations. The applicant shall submit site photographs and 360 degree photo realistic simulations that show the existing location and proposed small wireless facility in context from at least three vantage points within the public streets or other publicly accessible spaces, together with a vicinity map that shows the proposed site location and the photo location for each vantage point. Staff may require additional simulations depending on the proposed location.

(iv) Project Narrative. The applicant shall submit a written statement that explains in plain factual detail whether and why the proposed wireless facility qualifies as a small wireless facility. A complete written narrative analysis will state the applicable standard and all the facts that allow the City to conclude the standard has been met — bare conclusions not factually supported do not constitute a complete written analysis. Where applicable, as part of the written statement the applicant must also include: (a) whether and why the proposed support is a structure as defined by the FCC in 47 C.F.R. Section 1.6002(m); and (b) whether and why the proposed wireless facility meets each required finding for a small wireless facility.

(v) Site Justification Letter(s). The applicant shall submit site justification letter(s) justifying the need or requirement for the proposed location and design of the small wireless facility, and whether or not collocation of additional facilities owned by different carriers is feasible. The letter shall include other sites that were analyzed but not selected, with an explanation as to why the analyzed sites did not meet the objectives (including engineering, coverage and location justification), and why the collocation of the proposed wireless communication facility with others in the area cannot be accomplished.

(vi) Radio Frequency (RF) Exposure Compliance Report. The applicant shall submit an RF exposure compliance report that certifies that the proposed small wireless facility, as well as any collocated wireless facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must be prepared and certified by an RF engineer acceptable to the City. The RF report must include the actual frequency and power levels (in watts ERP) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.

(vii) Mechanical engineering specifications of the facilities specifying maximum

noise exposure levels of the facility to be in compliance with the City's Exterior Noise Standards, set forth in Section 11.10.010. The applicant shall submit a noise study for review and approval by the Director of Community Development which demonstrates that the equipment complies with the Noise Ordinance. The study shall include cut-sheets detailing the following information:

a. The ambient noise levels in the immediate areas.

b. The maximum dB levels emitted from the equipment cabinet without sound attenuation measures installed.

c. If the equipment cabinet noise levels can be heard above ambient or are in excess of the City's Noise Ordinance standard, the noise study shall recommend attenuation measures that are in keeping with the wireless facility's surroundings and overall design contact;

d. The maximum dB level emitted from the equipment cabinet with the recommend attenuation measure(s).

(viii) A utility plan showing equipment layout and utility connections.

(ix) Regulatory Authorization. The applicant shall submit evidence of the applicant's regulatory status under Federal and California law to provide the services and construct the SWF proposed in the application.

(x) Site Agreement for City Property. For any small wireless facility proposed to be installed on any structure owned or controlled by the City and located within the public rights-of-way, the applicant must enter into a site agreement prepared on a form prepared by the City and approved by the City attorney that states the terms and conditions for such non-exclusive use by the applicant. No changes shall be permitted to the City's form site agreement except as may be indicated on the form itself. Any unpermitted changes to the City's form site agreement shall be deemed a basis to deem the application incomplete.

(xi) Property Owner Authorization. The applicant must submit a written authorization form from the support structure owner(s), as well as the underlying property owner, that authorizes the applicant to submit and accept a small wireless facility permit in connection with the subject structure, and further indicates that the property owner agrees to be subject to the conditions of approval associated with said permit.

(xii) Maximum Possible Exposure MPE Report. A report specifying the facilities compliance with the FCC's (MPE) levels in inhabited areas within 500 feet of the facility prepared by a qualified electrical engineer licensed by the State of California. Proof of compliance shall be a certification provided by the engineer who prepared the original based upon measurements after the facility is in operation, but prior to City final engineering inspection. The City may require, at the applicant's expense, independent verification of the results of the analysis at any time during operations.

(xiii) Structural Analysis. The applicant shall submit a report prepared and certified by a California licensed or registered engineer that evaluates whether the underlying pole or support structure has the structural integrity to support all the proposed equipment and attachments. At a minimum the analysis must be consistent with all applicable requirements in CPUC General Order 95, the National Electric Safety Code and any safety and construction standards required by law and the utility provider.

(xiv) Environmental Impact Assessment. If applicable, the applicant shall submit an environmental impact assessment on the current form prepared by the City to determine whether the proposed project is categorically exempt under Article 19 of CEQA guidelines, or whether the proposed project will require a negative declaration, mitigated negative declaration or an EIR.

(xv) Encroachment Permit. For all applications within the City ROW, the applicant must also include a completed application for an Encroachment Permit for submittal into City's Public Works and Engineering Department for review and approval.

(B) Payment of all deposits or fees as required for processing of the associated permits as outlined in the City's Fee Schedule, as may be amended from time to time.

(C) A document evidencing the applicant's written consent and agreement to be bound and operate in accordance with the Operating Conditions found in Section 5.42.130 of this Chapter.

(D) Written acknowledgement that in instances where the City is not a property owner, the applicant and property owner agree in writing to indemnify, defend and hold harmless the City, its designees, employees, and assigns, from any and all liability resulting from the City's approval of the small wireless facility, the operation of the small wireless facility, and/or the City's enforcement of this Chapter as it relates to any small wireless facility owned and/or operated by the applicant.

(2) When submitting a batch small wireless facility application, the applicant shall submit separate materials for each facility that is a part of the application. A separate fee is required for each facility, as applicable.

(Added by Ord. 21-01, 2/16/21; amended by Ord. 24-01, 4/16/2024)

§ 5.42.060. Application Requirements for Eligible Facilities Request Permit.

An application for an eligible facilities request permit must contain all of the same information required in Section 5.42.050, but also include any additional information necessary to demonstrate that the proposed project meets the definition of an Eligible Facilities Request as defined by Federal law. The Community Development Director is hereby authorized to develop and adopt those forms necessary to streamline the City's consideration of application that constitute an eligible facilities request.
(Added by Ord. 21-01, 2/16/21; amended by Ord. 24-01, 4/16/2024)

§ 5.42.070. Findings Required for Small Wireless Facility.

(a) Prior to issuance of a small wireless facility permit pursuant to this Chapter, the following findings shall be made to the satisfaction of the Director of Community Development:

(1) A complete application has been submitted to the satisfaction of the Community Development Director as required by this Chapter.

(2) The proposed facility meets all the requirements concerning concealment as defined in Section 5.42.090.

(3) The proposed facility meets all the requirements concerning siting as defined in Section 5.42.100.

(4) The applicant has agreed to comply with the operating conditions found in Section 5.42.130.

(5) The proposed facility and applicant satisfies the requirements set forth in this Chapter.

(6) The proposed facility is not detrimental to the public health, safety, or general welfare.

(7) Opportunities for colocation were investigated as a part of the project to the extent technically feasible.

(8) The proposed facility will function in compliance with all applicable Federal, State and local regulations, including (where applicable) regulations of the Federal Communications Commission.

(9) The applicant has demonstrated the proposed installation is designed such that the proposed installation represents the least intrusive means possible and supported by factual evidence and a meaningful comparative analysis to show that all alternative locations and designs identified in the application review process were technically infeasible or unavailable.

(10) The applicant has paid all necessary City fees and deposits associated with the application, and the proposed facility.

(11) The applicant has satisfied and/or acquired other permits and associated fees to work in the PROW. If other permits are required after approval of a facility permit, the applicant shall agree to acquire and comply with the remaining necessary permits.

(12) All public notices required for the application, if any, have been given.

(13) The facility complies with the City's applicable building, structural, electrical and safety codes and all applicable Americans with Disabilities Act requirements.

(b) Where the Director of Community Development issues a small wireless facility permit, the approval shall be conditioned on a requirement that the applicant/permittee comply with all the standards, conditions and other requirements articulated in this Chapter on an ongoing basis.

(c) If the Director of Community Development or Planning Commission, or on appeal, the appeal authority, cannot make the required findings, the approval authority shall deny the permit with a written explanation as to why any such finding could not be made.

(Added by Ord. 21-01, 2/16/21; amended by Ord. 24-01, 4/16/2024)

§ 5.42.080. Findings for Eligible Facilities Request Permit.

(a) Prior to issuance of an eligible facilities request permit pursuant to this Chapter, the following findings shall be made to the satisfaction of the Community Development Director:

(1) A complete application has been submitted.

(2) The proposed eligible facilities permit qualifies as an eligible facilities request, as defined by Federal law.

(3) The proposed eligible facilities request permit does not defeat any of the concealment elements of the underlying approval applicable to the existing support structure.

(4) All illegal structures or facilities, or other issues relating to non-compliance with applicable laws and regulations, excluding legal non-conforming uses, have been corrected.

(b) If the Director of Community Development cannot make the required findings, the approval authority shall deny the permit with a written explanation as to why any such finding could not be made.

(Added by Ord. 21-01, 2/16/21; amended by Ord. 24-01, 4/16/2024)

§ 5.42.090. Concealment Standards for Small Wireless Facilities.

The following concealment standards have been developed to ensure that proposed small wireless facilities avoid or remedy unsightly or out-of-character deployments. Unless otherwise noted, these requirements apply to all facilities subject to this Chapter.

(a) The diameter of the facility and support structure, including any concealment elements, shall be a maximum of 36 inches, unless the Director of Community Development, in his or her sole discretion, determines that a larger structure will not result in an unsightly or out of character deployment taking into account the surrounding uses.

(b) All antennas shall be mounted and concealed on the support structure to minimize the aesthetic impact of the antennas, to the satisfaction of the Director of Community Development. There shall be no exposed equipment (conductors, wires, conduit, etc.) or backpack type installations.

(c) Where the proposed facility includes a new support structure (including replacement support structure), all other equipment associated with the antennas shall either be mounted in the same shroud that houses the antennas, within the support structure, or underground and shall be considered part of the "equipment associated with the facility."

(d) Where the facility will be installed on an existing support structure, all equipment associated with the facility shall be located and arranged on the existing support structure so as to replicate the color, size, texture, and shape of the existing support structure, so that the facility is integrated with the surrounding visual background including buildings, landscape and/or uses in the area or those likely to exist in the area, and should prevent the facility from visually dominating the surrounding area. There shall be no exposed wiring, backpacks, or other equipment.

(e) All equipment required to be undergrounded, including any pull boxes or other cabinetry, shall be located entirely underground and flush with existing sidewalk or ground surface. All undergrounded equipment shall be considered a part of the "equipment associated with the facility."

(f) Except as otherwise required by law, all signage colors must be consistent with the color of

the structure and shall be located a maximum of two feet below the proposed antenna shroud.

(g) Small wireless facilities shall not include above-ground equipment of any kind that is not fully enclosed within the support structure or shroud. Further, any part of the facility located on the ground must be located below ground-level.

(h) The facility shall be architecturally integrated with support structures and screened from view to the largest extent feasible. The facility shall consist of the smallest, least visually intrusive antennas and other necessary associated equipment available.

(i) No associated equipment shall be ground mounted.

(j) No portion of a facility is permitted to obstruct the view of any traffic sign, way-finding sign, traffic signal, or similar facility, nor be located within the sight triangle.

(k) The fire hydrant port that runs perpendicular to the street center line must remain unobstructed.

(l) The facility must not be designed in such a way that it requires antenna structure registration under Part 17 of Title 47 of the Code of Federal Regulations.

(m) Each facility shall include emergency contact information visible from the sidewalk with the wireless carrier, the frequency band, a single point of contact in the permittee's engineering and maintenance departments (name, phone number, fax number, and email address), and a 24 hour phone number to which interference problems may be reported. All radio frequency warning and notice signage shall at all times be maintained in good condition by the permittee.

(n) Light standard-mounted or traffic control standard-mounted antenna facilities shall be designed to be unobtrusive, in the opinion of the City, and shall locate equipment cables within the light standard or traffic control standard; place related electronic equipment in underground vaults (except for environmental air conditioning units needing above-ground access).

(o) Freestanding antenna facilities shall be architecturally compatible with the surrounding land uses, buildings, structures, landscaping and other improvements by blending with the existing characteristics to the greatest extent possible.

(Added by Ord. 21-01, 2/16/21; amended by Ord. 24-01, 4/16/2024)

§ 5.42.100. Objective Siting Requirements for Small Wireless Facilities.

(a) Freestanding facilities (either located on a new or existing support structure) shall avoid being a visually dominant intrusion into a given view shed by locating the facilities near other vertical elements such as existing structures, walls or trees.

(b) The applicant must make all commercially reasonable efforts to collocate facilities on existing support structures.

(c) The preferred support structure for any small wireless facility is existing street lights, or other qualified existing support structures. The applicant must make all efforts to utilize a street light or other qualified existing support structure. If a new or replacement support structure is required due to technical infeasibility, the applicant must provide the documentation required by this Chapter demonstrating the same to the satisfaction of the Director of Community Development. Further, the applicant must explore and document the infeasibility of a replacement support structure before a facility requiring a new support structure will be approved.

(d) Required Setbacks for New Support Structures, Replacement Support Structures and Equipment and Accessory Structures Associated with a Small Wireless Facility.

(1) All portions of a facility must be set back a minimum of 48 inches from any traffic signal facilities, or less if approved by the City Engineer to adequately preserve the function of such traffic signal facilities.

(2) The setback for all portions of a small wireless facility from any part of an existing tree shall be a minimum of forty-eight (48) inches unless a qualified arborist can demonstrate to the satisfaction of the Director of Community Development that a lesser setback would not harm the tree.

(3) A minimum of four feet, or lesser amount determined by the City Engineer to provide sufficient pedestrian clearance, from any portion of a facility, free of all obstacles for an unobstructed walkway, must be maintained at all times.

(4) All portions of a facility (including its support structure) must be set back a minimum of seven feet from any fire hydrant, driveway, curb ramp or blue zone parking space or lesser amount determined by the City Engineer to allow adequate clearance.

(5) All new support structures and replacement support structures shall provide the same setbacks as adjacent structures of a similar style. However, if the applicant can demonstrate that this limit would cause the facility to physically interfere with existing underground utilities, the setback can be modified, provided the facility otherwise complies with setback regulations set forth in this Section and all pertinent laws and regulations, including, but not limited to, the Americans with Disabilities Act.

(6) Any new or replacement support structure shall not be located along the street frontage adjacent to any Pre-K through 12 school or daycare center.

(7) New structures may not be located within 10 feet of any pre-existing support structure exceeding 10 feet in height or any pre-existing small wireless facility, as measured along a horizontal line between the closest points of the subject piece of infrastructure and closest portion of the proposed facility. This setback may be reduced further by both the City Engineer and Director of Community Development on a case-by-case basis when the applicant demonstrates a substantially better design.

(e) To the fullest extent permitted by law, small wireless facilities approved under this Chapter shall only be located within the PROW. Other small wireless facilities (to the extent required to be permitted pursuant to superseding law), shall comply with all applicable requirements of this Chapter as the same may be modified by superseding law.

(Added by Ord. 21-01, 2/16/21; amended by Ord. 24-01, 4/16/2024)

§ 5.42.110. Standards for Eligible Facilities Request Permit.

All applications for repairs, replacements, or modifications to existing support structures that currently house wireless communications facilities that also constitute an "eligible facilities request" under 47 U.S.C. Section 1455(a) shall be required to comply with the following objective standards:

(a) Each such repaired, replaced, or modified facility shall comply with all conditions of approval applicable to the facility and existing support structure as it existed immediately prior to the proposed repair, replacement, or modification.

(b) Each such repaired, replaced, or modified facility shall demonstrate compliance with the City's applicable building, structural, electrical, and safety codes, or with other laws codifying objective standards reasonably related to health and safety.

(c) Each such repaired, replaced, or modified facility shall comply with the City's Noise Ordinance.

(d) Each such repaired, replaced, or modified facility shall comply with the Federal Communication Commission regulations regarding radio frequency emissions, as they may be amended from time to time.

(e) The approval body may place a condition on any eligible facilities permit that calls for the expiration of the permit, or, in the City's discretion, reconsideration of the permit by the original approval authority at the end of a specified time period (to be no less than 10 years) from the date of the original permit approval. Items to be reviewed may include any matter permitted by State and Federal law, including but not limited to, conformance with all conditions of approval, availability of new technologies, conformance with the concealment elements imposed on the repaired, replaced, or modified facility, operation of the repaired, replaced, or modified facility in its intended manner, conformance with all applicable radio frequency standards and regulations (as they may be amended from time to time), and compliance with the City's Noise Ordinance.

(1) Compliance with eligible support structures concealment/camouflage elements: Pursuant to 47

U.S.C. Section 1455, applicants requesting an eligible facilities permit pursuant to this Chapter must demonstrate that their proposed modification does not defeat the concealment elements that have been imposed on the underlying eligible support structure. In order to comply with this requirement, the proposed modification must meet the standards laid out below in Section 5.42.120, provided that the eligible support structure is subject to those requirements.
(Added by Ord. 21-01, 2/16/21; amended by Ord. 24-01, 4/16/2024)

§ 5.42.120. Conditions of Approval and Operation.

In addition to the foregoing conditions, which shall also be included as conditions of approval where appropriate, a permit issued under this Chapter shall also be subject to the following conditions, where applicable:

(a) Prior to issuance of any building permits, the permittee shall provide to the Orange County Sheriff Communication bureau a letter identifying the location of the proposed facility, the wireless carrier, the frequency band, a single point of contact in the carrier's engineering and maintenance departments (name, phone number, fax number, and e-mail address), and a 24 hour phone number to which interference problems may be reported. A copy of this letter shall be provided to the Community Development Department.

(b) Permanent power shall not be connected to a facility, nor shall signal transmission or reception occur by way of temporary power, nor shall the electrical meter be released, or permanent power be otherwise provided for unattended site operation until final inspection has been approved.

(c) Any camouflaging and aesthetic conditions imposed on a facility shall be inspected and verified to have been satisfied.

(d) The antennas shall be activated and energized upon preliminary approval of the small wireless

facility or an eligible facilities request by the Community Development Director to allow for proof of compliance certification provided by the engineer who prepared the original MPE report based upon measurements after the facility is in operation, but prior to the City's final engineering inspection. The City may require, at the applicant's expense, independent verification of the results of the analysis at any time during operations.

(e) All facilities and related equipment and improvements shall be maintained in good repair. Any damage from any cause shall be repaired as soon as reasonably possible to minimize occurrences of dangerous conditions or visual blight.

(f) Each facility shall be operated and maintained to comply with all conditions of approval. The permittee, when directed by the City, must perform an inspection of the facility and submit a report to the public works director on the condition of the facility to include any identified concerns and corrective action taken. Additionally, as the City performs maintenance on City-owned infrastructure, additional maintenance concerns may be identified. These will be reported to the permittee. The City shall give the permittee 30 days to correct the identified maintenance concerns after which the City reserves the right to take any action it deems necessary, which could include revocation of the permit. The burden is on the permittee to demonstrate that it complies with the requirements herein. Prior to issuance of a permit under this Chapter, the owner of the facility and the property owner shall sign an affidavit attesting to understanding the City's requirement for performance of annual inspections and reporting.

(g) Ongoing maintenance, upkeep and operation of a facility or modification approved pursuant to this Chapter (including its support structure) and surrounding landscaping is required and is the responsibility of the applicant. This includes, but is not limited to:

(1) Subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to City streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind or nature, or utility lines and systems, underground utility line and systems (water, sewer, storm drains, gas, oil, electrical, etc.) that result from any activities performed in connection with the installation and/or maintenance of a wireless facility in the PROW;

(2) General dirt and grease;

(3) Chipped, faded, peeling, and cracked paint;

(4) Rust and corrosion;

(5) Cracks, dents, and discoloration;

(6) Missing, discolored or damaged artificial foliage or other camouflage;

(7) Graffiti, bills, stickers, advertisements, litter and debris. All graffiti on facilities must be removed at the sole expense of the permittee within 48 hours after notification from the City;

(8) Broken and misshapen structural parts;

(9) Any damage from any cause; and

(10) Any visual blight.

(h) All trees, foliage or other landscaping elements approved as part of the facility shall be

maintained in neat, safe and good condition at all times, and the permittee, owner and operator of the facility shall be responsible for replacing any damaged, dead or decayed landscaping. No amendment to any approved landscaping plan may be made until it is submitted to and approved in writing by the Community Development Director.

(i) The owner and/or operator of a facility shall routinely and regularly inspect the site to ensure compliance with the standards set forth in the permit. Each operator of a facility approved pursuant to this Chapter shall provide the Community Development Director with the name, address and 24 hour local or toll-free contact phone number of the permittee, the owner, the operator and the agent responsible for the maintenance of the facility ("contact information"). Contact information shall be updated within seven days of any change.

(j) Any modification of a facility approved pursuant to this Chapter that does not constitute an eligible facilities request that shall be processed by this Chapter, shall require submittal, review, and approval of a subsequent permit as dictated by the City's code.

(k) Term of Permits.

(1) A small wireless facility permit issued under this Chapter shall remain effective for a period of 10 years from the day of the City's issuance of the same.

(2) An eligible facilities request permit issued under this Chapter shall remain effective for a period of 10 years from the day of the City's issuance of the same; or for until the permit that authorized the original eligible support structure expires, whichever is shorter.

(3) Unless a permit's term is extended via a subsequent approval by the City, the permittee shall be responsible for removing the facility or modification within 60 days following the expiration of the permit.

(l) The owner or operator of a small wireless facility shall remove, at its sole responsibility and expense, all portions of a facility and restore the existing support structure to its original condition, subject to approval of the Director of Community Development, within 30 days of ceasing operation of any facility or modification approved pursuant to this Chapter.

(m) The owner or operator of any facility or modification approved pursuant to this Chapter shall be required to modify, remove, or relocate its facility, or portion thereof, without cost or expense to the City, within 60 days of the City's notice, if and when made necessary, in the City's discretion, by:

(1) Any public improvement project, including, but not limited to, the construction, maintenance, or operation of any underground or aboveground facilities including, but not limited to, sewers, storm drains, conduits, gas, water, electric, or other utility systems or pipes owned by the City or any other public agency;

(2) Any abandonment of any street, sidewalk, or other public facility;

(3) Any change of grade, alignment or width of any street, sidewalk, or other public facility; or

(4) A determination by the Director of Community Development that the facility has become a risk to public health, safety, welfare, or the public's use of the PROW.

(n) In the case of an emergency or other exigent circumstances, the City may modify, remove, or relocate any facility or modification approved pursuant to this Chapter without prior notice to

the permittee provided the permittee is notified within 30 days thereafter.

(o) Applicant agrees to remunerate to the City, and to otherwise repair or rehabilitate any and all landscaping and/or hardscaping that is damaged, removed, or otherwise harmed during the installation, maintenance, or removal of the wireless facility and/or structure upon which the facility is mounted.

(p) The permittee shall pay all charges related to the processing of any permit within 30 days of issuance of the final invoice for such project. Failure to pay all charges shall result in delays in the issuance of required ministerial permits (i.e. building permits, encroachment permits, etc.), or may result in the revocation of the approval of the application.

(q) For all facilities and modifications located within the PROW, the permittee shall obtain an encroachment permit consistent with Chapter 14.01. Maintenance vehicles shall not impact pedestrian, bike or vehicle traffic in any way within the PROW without approval of an encroachment permit.

(r) The applicant or any successor-in-interest shall defend, indemnify and hold harmless the City of Dana Point, it agents, officers, or employees from any claim, action, or proceeding against the City, its agents, officers or employees to attack, set aside, void, or annul an approval or any other action of the City, its advisory agencies, appeal boards, or legislative body concerning the project. Applicant's duty to defend, indemnify, and hold harmless the City shall include paying the City's Attorney fees, costs and expenses incurred concerning the claim, action, or proceeding.

(s) The applicant or any successor-in-interest shall further protect, defend, indemnify and hold harmless the City, its officers, employees, and agents from any and all action claims, actions or proceedings against the City, its officers, employees or agents arising out of or resulting from the negligence of the applicant or the applicants, agents, employees, or contractors. Applicant's duty to defend, indemnify and hold harmless the City shall include paying the City's Attorney fees, costs and expenses incurred concerning the claim, action, or proceeding. The applicant shall also reimburse the City for City Attorney fees and costs associated with the review of the proposed project and any other related documentation.

(Added by Ord. 21-01, 2/16/21; amended by Ord. 24-01, 4/16/2024)

§ 5.42.130. City Standard Small Wireless Facility Preapproved Design.

(a) To expedite the review process and encourage collaborative designs among applicants and the City, the Community Development Director may designate one or more preapproved designs for a facility.

(b) The Director may establish a pre-approved design. When the Director finds a proposed pre-approved design meets and exceeds the design standards set forth in this Chapter shall be made available to all applicants.

(c) A design approved pursuant to this Section, shall be deemed to comply with Section 5.42.090 (Concealment Standards for Small Wireless Facilities).

(Added by Ord. 21-01, 2/16/21; amended by Ord. 24-01, 4/16/2024)

§ 5.42.140. Processing Times.

Small wireless facility permit applications and eligible facilities request permit applications shall be

processed as provided in this Section 5.42.140. This Section 5.42.140 is intended to reflect the applicable requirements of Federal Law and is not intended to modify, abrogate, or supersede Federal Law. To the extent this Section 5.42.140 does not reflect applicable Federal Law, Federal Law shall control.

(a) Within 30 days of submission of an application which includes all of the documents required by the City for the permit, the Director of Community Development or designee will provide notice to the applicant of whether the application is complete. If no notice if provided in this timeframe, the application will be deemed complete.

(b) A notice of an incomplete application will toll all other processing times under this Section until the missing information is submitted. The Director of Community Development or designee shall review the additional information within 10 days and shall provide notice to the application of whether the application is complete within that time.

(c) When an application is determined to be or deemed to be complete, the applicable permit shall be approved or denied in the following timeframes:

(1) Within 60 days for small wireless facility permit applications proposed to be located on an existing support structure or wireless tower.

(2) Within 60 days for eligible facilities request permit applications.

(3) Within 90 days for small wireless facility permit applications proposed to be located on a new structure.

Where permitted by applicable law, the City and applicant may enter into a written agreement to toll, extend, or otherwise adjust the processing times provided herein.

(Added by Ord. 24-01, 4/16/2024)

§ 5.42.150. Preemption and Severability.

Notwithstanding any other provision of this Chapter to the contrary, an applicant may request an exemption to excuse it from having to comply with any portion of this Chapter on the grounds that the requirement or action taken by the City would violate State or Federal law. The City shall grant the exemption or excuse an applicant from compliance with all or a portion of this Chapter, if it finds based on substantial evidence in the record that the challenged requirement or action is, in fact, preempted by State or Federal law. Such an exemption shall not affect the enforceability of the remainder of this Chapter. If any provision of this Chapter is found by a court of competent jurisdiction to be unlawful, void or for any reason unenforceable, it shall be deemed severable from, and shall in no way affect the validity or enforceability of, the remaining provisions of this Chapter, which shall be enforced to the fullest extent possible.
(Added by Ord. 21-01, 2/16/21; amended by Ord. 24-01, 4/16/2024)

§ 5.42.160. Reservation of Rights to Review Permit.

The City reserves the right to reconsider the permit at the end of a 10 year time period from the date of the original permit approval. Reconsideration items to be reviewed may include, but are not limited to, conformance with all applicable objective standards, availability of new technologies, conformance with the objective concealment standards imposed on the facility, operation of applicable

radio frequency standards and regulations (as they may be amended from time to time), and compliance with Federal, State and local regulations, including the City's Noise Ordinance.
(Added by Ord. 21-01, 2/16/21; amended by Ord. 24-01, 4/16/2024)

§ 5.42.170. Removal of Abandoned Small Wireless Facilities.

Within 30 days of terminating the operation of any facility approved under this Section, for any reason, including, but not limited to, inoperable equipment, abandonment or technical obsolescence, the applicant shall notify the City of such termination. Said notification shall be in writing, shall specify the date of termination and shall include reference to the applicable permit number. At the applicant's sole expense and responsibility, all component elements of a terminated wireless communication facility shall be removed in accordance with applicable health and safety requirements and the site restored to its condition prior to the installation of the facility within 90 days from the date the use of the facility is terminated.

At any time after 90 days of discontinued use and/or operation of a facility, the City may remove the facility, repair any and all damage to the premises caused by such removal, and otherwise restore the premises as is appropriate to be in compliance with applicable code. The City may, but shall not be required to, store the facility (or any part thereof). The owner of the premises upon which the abandoned facility was located, and all prior operators of the facility, shall be jointly liable for the entire cost of such removal, repair, restoration, and storage, and shall remit payment to the City promptly after demand therefore is made. The City may, in lieu of storing the removed facility, convert it to the City's use, sell it, or dispose of it in any manner deemed appropriate by the City.
(Added by Ord. 21-01, 2/16/21; amended by Ord. 24-01, 4/16/2024)

EXHIBIT B: REVISED CHAPTER 4.02

CHAPTER 4.02
ROLLERSKATING, SKATEBOARDING, BICYCLING, MOTORIZED OR ELECTRIC BIKING, AND SCOOTERING PROHIBITED IN CERTAIN DESIGNATED AREAS

§ 4.02.010. Definitions.

For the purpose of this Chapter, the following words shall have the meanings ascribed below:

"Business district" shall be defined as designated in Section 235 of the California Vehicle Code.

“Motorized or electric bikes or scooters” shall be defined as vehicles with two or three wheels where power is supplied by a battery that drives one or more affixed motors, electric or otherwise. Scooters are distinguished from bikes by having a step-through frame, instead of being straddled.

"Private property" shall mean any real property, irrespective of ownership, which is not open to the general public.

"Public property" shall mean any property owned or controlled by the City, including, but not limited to, alleys, parks, pathways, streets, parking lots, sidewalks, and walking trails.

"Rollerskate" shall mean any footwear, or device which may be attached to the foot or footwear, to which wheels are attached and such wheels may be used to aid the wearer in moving or propulsion.

"Skateboard" shall mean a board of any material, which has wheels attached to it and which is propelled or moved by human, gravitational, or mechanical power, and to which there is not fixed any device or mechanism to turn or control the wheels.
(Added by Ord. 91-2, 1/22/91)

§ 4.02.012. General Prohibition.

It shall be unlawful and subject to punishment in accordance with Section 4.02.022 of this Chapter, for any person utilizing or riding upon rollerskates, bicycles, motorized or electric bikes or scooters, skateboards, or similar devices to ride or move about in or on any public or private property when the same has been designated by Resolution of the City Council and posted as a no rollerskating, skateboarding, motorized or electric bikes or scooters, bicycling, or similar devices area.
(Added by Ord. 91-2, 1/22/91)

§ 4.02.014. Designation of Public Property as No Rollerskating, Skateboarding, Motorized or Electric Bikes or Scooters, or Bicycling Area.

The City Council may, upon review and recommendation by the City Engineer, designate any public roadway, sidewalk, or other public property as a no rollerskating, skateboarding, motorized or electric bikes or scooters, bicycling, or similar devices area. The City Council shall designate such area by Resolution and order the posting of appropriate signage in accordance with Section 4.02.018 of this Chapter.
(Added by Ord. 91-2, 1/22/91)

§ 4.02.016. Designation of Private Property as No Rollerskating, Skateboarding, Motorized or Electric Bikes or Scooters, or Bicycling Area.

(a) This Section shall only be applicable to private properties located within a business district and private properties which are primarily used for commercial recreational purposes.

(a) An owner of such of private property which is owner/occupier may designate the private property or any specific area within the private property as a no rollerskating, skateboarding, motorized or electric bikes or scooters, bicycling, or similar devices area by posting the property in accordance with Section 4.02.018.

(b) Tenants which occupy a private property may enter into a written agreement executed by a majority of the tenants on the property and the property owner, which agreement designates the private property or any specified area thereon as a no rollerskates, skateboards, motorized or electric bikes or scooters, bicycles, or similar device area. The area covered by the agreement shall be posted by the tenants and/or owners in accordance with Section 4.02.018.

(c) This Section shall not impair or abrogate any obligation or right of a party under an agreement, regulation, covenant or other binding document.

(Added by Ord. 91-2, 1/22/91; amended by Ord. 07-04, 4/3/07)

§ 4.02.018. Posting of Signs Required, Contents.

Prior to the enforcement of the prohibition of rollerskating, skateboarding, motorized or electric bikes or scooters, bicycling, or similar device area so designated shall be posted with signs which provide substantially as follows:

"Rollerskating, skateboarding, use of motorized or electric bikes or scooters, bicycling, and use of similar devices are prohibited by Dana Point Municipal Code Section 4.02.012. Any violation is punishable by a fine of $25.00 for a first offense."

Such prohibition shall apply to the property or area so designated once posted in plain view at all entrances to the property or area, and on signs which are not less than 17 by 21 inches in size with lettering not less than one inch in height.
(Added by Ord. 91-2, 1/22/91)

§ 4.02.020. Fees Set by Resolution.

The City Council, may by Resolution, establish fees for the receipt and processing of applications and petitions for no rollerskating, skateboarding, motorized or electric bikes or scooters, bicycling, or similar device areas. In addition, the City Council may, by Resolution, establish fees sufficient to cover the costs of developing, printing, and posting signs in the areas designated pursuant to this Chapter. (Added by Ord. 91-2, 1/22/91)

§ 4.02.022. Penalties.

Any violation of this Chapter is deemed an infraction, punishable by a fine of Twenty- Five Dollars, ($25.00). A second violation of this Chapter shall be punishable by a fine of Fifty Dollars, ($50.00), and a third and subsequent violation shall be deemed a misdemeanor punishable in accordance with Sections 1.01.200 to 1.01.230 of this Code. (Added by Ord. 91-2, 1/22/91)

§ 4.02.024. Exemption From the Provisions of this Chapter.

Any devices designed, intended, and used solely for the transportation of infants, people with disabilities, or incapacitated persons, or devices designed, intended, and used for the transportation of merchandise to and from the place of purchase and other wheeled devices, when being used for either

of these purposes, shall be exempt from the provisions of this Chapter. Furthermore, the City Council may, by Resolution, suspend the enforcement of the provisions of this Chapter to accommodate special events when so requested by the event organizer.
(Added by Ord. 91-2, 1/22/91)