

## **TITLE 5: BUSINESS OPERATION TAXES, PERMITS AND REGULATIONS\***

\* For the statutory provisions authorizing cities to license for revenue and regulatory purposes, see Government Code § 37101; for such authority under the police power, see Business and Professions Code §§ 16000-16003.

### **CHAPTER 01: GENERAL PROVISIONS**

#### **SECTION 5.01.010: Chapter Purpose**

This Chapter is enacted solely to raise revenue for municipal purposes and is not intended for regulation.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

#### **SECTION 5.01.020: Scope**

Any person required to pay a tax for transacting and carrying on any business under this Chapter shall be relieved from the payment of any business tax for the privilege of doing such business that may be required under any other City Ordinance, but shall remain subject to the regulatory provisions of any other Ordinance. This Section shall not apply to inspection fees.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

#### **SECTION 5.01.030: Effect on Past Actions and Obligations**

Neither the adoption of this Chapter nor its superseding of any portion of any other City Ordinance shall in any manner be construed to affect prosecution for violation of any other Ordinance committed prior to July 1, 1969, nor be construed as a waiver of any tax or any penal provisions applicable to any such violation, nor be construed to affect the validity of any bond or cash deposit required by any Ordinance to be posted, filed, or deposited, and all rights and obligations shall continue in full force and effect.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

#### **SECTION 5.01.040: Business Tax Certificate - Required**

(A) There are imposed upon the businesses, trades, professions, callings and occupations specified in this Title, business taxes in the amounts prescribed in this Title. It is unlawful for any person to transact and carry on any business, trade, profession, calling or occupation in the city without first having procured a business operation tax certificate from the City to do so, or without complying with any and all applicable provisions of this Title.

(B) This Section shall not be construed to require any person to obtain a business operation tax certificate prior to doing business within the city if such requirement conflicts with applicable statutes of the United States or of the State of California.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.01.050: Business Operation Tax Certificate -- Procedures for Issuance and Rescission**

(A) **ISSUANCE OF CERTIFICATE.** A business operation tax certificate shall be issued to an applicant by the City's Tax Administrator when the application is fully completed to the satisfaction of the Tax Administrator and the application is otherwise in compliance with City zoning regulations and any other provision of the Municipal Code. In addition, the right is reserved to the Tax Administrator to deny the application if it is found to be otherwise in violation of any federal or state law. Issuance of the certificate is not an endorsement or certification by the City that the proposed business activity will be in compliance with any provision of law. The City may, but is not required to, verify that the applicant is subject to or exempt from licensing by the State of California prior to issuance of a certificate.

(B) **RESCISSION OF TAX CERTIFICATE.** The Tax Administrator may rescind the issuance of a tax certificate if it is determined that:

(1) The application is found to contain incomplete, false, misleading, or incorrect information material to whether the certificate should have been issued in the first instance;

(2) The business activity described in the certificate involves conduct that is proscribed by law.

In the event that a certificate is rescinded by the Tax Administrator, the Tax Administrator shall mail by first class mail a notice to the applicant advising the applicant of the rescission.

The applicant may appeal the rescission action to the City Council within fifteen (15) calendar days of mailing of the notice of rescission.

(C) **TAX ADMINISTRATOR.** The City's Tax Administrator for purposes of this Section is defined to mean the City Manager, or his designated representative. (Ordinance 2808 § 1, 2012; Ordinance 2414 § 1, 1998; effective retroactively within city limits as of January 1, 1997; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.01.060: Business Operation Tax Fee Adjustment**

Business operation tax fees may be adjusted based on the consumer price index at such time as the City Council deems necessary. Business tax fee adjustments become effective at the next formal renewal period following the effective date of the adjustment.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.01.070: Business Tax Deemed Debt**

The amount of any business tax and penalty imposed by the provisions of this Title shall be deemed a debt to the City. An action may be commenced in the name of the City in any court of competent jurisdiction for the amount of any delinquent business tax and penalties.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.01.080: Remedies Cumulative**

All remedies prescribed in this Title shall be cumulative and the use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this Title.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.01.090: Penalty for Failure to Pay Taxes**

For failure to pay taxes when due, the Tax Administrator shall add a penalty of ten percent (10%) of the tax on the last day of each month after the due date thereof, provided the amount of such penalty shall in no event exceed one hundred percent (100%) of the amount of tax due.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.01.100: Violation – Penalty**

Any person violating any of the provisions of this Title, punishment for which is not otherwise provided in this Title, or knowingly or intentionally misrepresenting to any office or employee of the City any material fact in procuring the business tax certificate or permit provided for in this Title, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than five hundred dollars (\$500), or by imprisonment in the county jail for a period of not more than six (6) months, or by both such fine and imprisonment.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**CHAPTER 02: TERMS AND CONDITIONS OF BUSINESS OPERATION TAX CERTIFICATE**

**SECTION 5.02.010: Application Required**

Before any business operation tax certificate is issued to any person, unless otherwise provided in this Code, a written application by the applicant shall be made to the Tax Administrator. Such application shall contain the following information:

- (1) The exact nature or kind of business for which the business operation tax certificate is requested;
- (2) The place where such business is to be carried on, and if the same is not to be carried on at any permanent place of business, the places of residences of the owners of the same;
- (3) Any further information that the Tax Administrator may require to enable him to issue the type of business operation tax certificate applied for; and
- (4) In the event that application is made for the issuance of a business operation tax certificate to a person doing business under a fictitious name, the application shall set forth the names and places of residence of those owning the business.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.02.020: Preparation -- Issuance -- Contents**

All business operation tax certificates, unless otherwise provided in this Code, shall be prepared and issued by the Tax Administrator upon the payment to him of the sum required to be paid hereunder. Each business operation tax certificate issued shall state upon the face thereof the following:

- (1) The persons to whom the certificate is issued;
- (2) The kind of business and the location of the same;
- (3) The date of expiration of such business operation tax certificate;
- (4) Any special conditions relative to the issuance; and
- (5) Such other information as may be necessary for the enforcement of the provisions of this Chapter.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.02.030: Collection of Correct Amount Due**

In no case shall any mistake of the Tax Administrator in stating the amount of a tax prevent or prejudice the collection by the City of what should be actually due from any person carrying on any business subject to a business tax under the provisions of this Chapter.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.02.040: Fees Due Upon Filing**

- (A) MANNER OF PAYMENT. All business tax and recordation fees shall be due and payable when the application is filed for a business operation tax certificate in advance of any business operation.
- (B) DURATION. The business operation tax certificate shall cover the period of one (1) year from the first day of the month in which the business commenced.
- (C) GROSS RECEIPTS. In the case of an original application for a business operation tax certificate, when the tax is based on gross receipts, the entire minimum fee shall be due and payable with application for the business operation tax certificate.
- (D) FLAT RATE. All taxes based upon flat rate shall be due and payable in advance upon the application for the business operation tax certificate.
- (E) OPTIONAL PROVISION. For all business operation tax certificates based upon the optional provision of the tax by reason of having the business outside the city, the tax shall be payable in advance upon application for a business operation tax certificate and shall cover the period of one (1) year from the commencement of the business.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.02.050: Unpaid Taxes to Prevent Issuance**

No tax certificate for any succeeding, current, or unexpired tax period shall knowingly be issued to any person who, at the time of application, is indebted to the City for any unpaid tax. The total indebtedness shall include the total tax due plus penalties for failure to pay tax when due.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.02.060: Separate Certificate for Branch Establishment**

A separate business operation tax certificate must be obtained for each branch establishment or location of the business transacted and carried on, and for each separate type of business and/ or activity at the same location, and each business operation tax certificate shall authorize the taxpayer to transact and carry on only the business taxed thereby at the location or in the manner designated in such business operation tax certificate; provided that any person conducting two (2) or more types of businesses and/or activities at the same location and under the same management, where all types of businesses and/or activities so conducted are subject to tax based on gross receipts, may, at his option, pay only one tax fee calculated on all gross receipts of all of the businesses under the rate applicable to the business activity producing the greatest amount of gross receipts.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.02.070: Posting and Keeping Requirements**

All certificates must be kept and posted in the following manner:

- (1) Any person transacting or carrying on business at a fixed place of business in the city shall keep the certificate posted in a conspicuous place upon the premises where such business is carried on.
- (2) Any person transacting and carrying on business, but not operating at a fixed place of business, shall keep the certificate in his possession at all times while transacting and carrying on such business, and upon demand said taxpayer must show said business operation tax certificate.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.02.080: Duplicate Certificate**

A duplicate certificate may be issued by the Tax Administrator to replace any certificate previously issued hereunder that has been lost or destroyed, upon the person filing a statement of such fact, and upon payment of a duplicate certificate fee, as established by City Council Resolution, to be paid to the Tax Administrator at time of filing.

(Ordinance 2808 § 1, 2012; Ordinance 2290 § 1 (5), 1994; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.02.090: Change of Location - Amendment to Certificate**

A business operation tax certificate issued authorizing a person to carry on a business at a particular place may, upon application and payment of a fee as established by City Council Resolution for the business application tax certificate,

amend the carrying on of such business by the taxpayer at some other location to which the business is to be moved upon zoning approval.

(Ordinance 2808 § 1, 2012; Ordinance 2290 § 1 (6), 1994; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.02.100: Certificate Not Transferable**

No business operation tax certificate issued pursuant to this Title shall be transferable from one person to another person.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.02.110: Refunds**

Any person who has not used a tax certificate obtained from the City may, at any time within thirty (30) days after application for such certificate, request a refund of the amount of money paid for the business tax. The Tax Administrator, upon receiving an affidavit of nonuser of the tax certificate, shall refund the amount of money paid for the business tax, less forty percent (40%) of said amount, to be retained by the City for administrative costs. Recordation fees are non-refundable.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**CHAPTER 03: ADMINISTRATION AND ENFORCEMENT**

**SECTION 5.03.010: Administration**

The Tax Administrator is the tax collector of the City and shall be responsible for the administration of provisions of this Chapter. It shall be the duty of the Tax Administrator to maintain a list of all delinquent business taxes that are due under this Chapter, and proceed to collect the same in his discretion by suit or otherwise.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.03.020: Enforcement**

- (A) It shall be the duty of the Tax Administrator to enforce each and all of the provisions of this Title, and the Police Chief shall render such assistance in the enforcement hereof as may from time to time be required by the Tax Administrator.
  
- (B) Each department or division of the City that issues permits or entitlements of use shall require the production of a valid unexpired business operation tax certificate prior to the issuance of such a permit. The immediately preceding sentence shall not be construed to require any person to obtain a certificate prior to doing business within the city if such requirement conflicts with the constitution or applicable statutes of the United States or of the State of California.
  
- (C) The Tax Administrator and the Police Chief and each and all of their deputies are hereby appointed inspectors of tax certificates and may examine all places of business and persons liable to pay a tax, for the purpose of ascertaining whether the same is obtained and is being exhibited. In addition, all Police Officers shall have and exercise the power to make arrests for the violation of

any of the provisions of this Chapter and shall notify the Tax Administrator in writing of any person violating any of the provisions of this Chapter. (Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.03.030: Examination of Records to Determine Compliance**

The Tax Administrator or the Police Chief, in the exercise of the duties imposed upon them under this Title, and acting through their deputies, shall examine or cause to be examined all places of business in the City to ascertain whether the provisions of this Title have been complied with.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.03.040: Right of Entry**

The Tax Administrator and each and all of his deputies and any Police Officer shall have the power and authority to enter, free of charge, at any time, any place of business required to be taxed herein and demand an exhibition of its business operation tax certificate.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.03.050: Failure to Exhibit Certificate -- Misdemeanor**

Any person having such business operation tax certificate theretofore issued, in his possession or under his control, who willfully fails to exhibit the same on demand of the Tax Administrator or his deputies or duly authorized Peace Officer, shall be guilty of a misdemeanor and subject to the penalties provided for by the provisions of this Title.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.03.060: Failure to File Statement -- Notice of Assessment**

(A) If any person fails to file any required statement within the time frame prescribed, or if, after demand therefore made by the Tax Administrator, he fails to file a corrected statement, the Tax Administrator may determine the amount of business tax due from such person by means of such information as he may be able to obtain.

(B) In the event the Tax Administrator cannot obtain such information, the Tax Administrator shall have the power to establish the tax at the highest rate for that business classification.

(C) If such a determination is made, the Tax Administrator shall give a notice of the amount so assessed by serving it personally or by first class mail postage prepaid, addressed to the person so assessed at his last known address.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.03.070: Notice of Tax Due**

It shall be the duty of the Tax Administrator and each of his deputies to cause a notice of tax due to be issued to any and all persons found to be violating this business tax Title.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.03.080: Extension of Filing Time**

The Tax Administrator shall have the power, for good cause shown, to extend the time for filing any required sworn statement for a period not exceeding thirty (30) days, and in such case to waive any penalty that would otherwise have accrued. (Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.03.090: Deposit of Business Tax Funds -- Report and Record**

All fees, penalties and other moneys received by the Tax Administrator pursuant to the provisions of this Code shall be deposited in the General Fund and/or the Public Safety Fund of this City. The Tax Administrator shall keep full, adequate, and accurate records pertaining to issuance of business tax certificates under this Code and the collection of all taxes, penalties, and other moneys in connection therewith. (Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**CHAPTER 04: ADMINISTRATIVE PROCEDURE**

**SECTION 5.04.010: Affidavit Statement of Gross Receipts**

- (A) In all cases where business tax is based upon gross receipts, the taxpayer must submit to the Tax Administrator for his guidance in ascertaining the amount of the business tax to be paid by the taxpayer, a written statement, upon a form to be provided by the Tax Administrator, written under penalty of perjury, or sworn to before a person authorized to administer oaths, setting forth such gross receipt information concerning the taxpayer's business during the preceding year as may be required by the Tax Administrator to enable him to ascertain the amount of the business tax to be paid by the taxpayer pursuant to the provisions of this Code.
- (B) Said statement shall be submitted on all business taxes based upon gross receipts on or before thirty (30) days following the anniversary date applicable to such business as before set forth, and any additional sums payable by reason of such statement shall accompany the return or statement. No renewal certificate shall be issued until the full amount due and payable by reason of the statement and return for the previous year has been paid.
- (C) In the event that a business taxed under the gross receipts classifications of this Code ceases operation before the end of the certificate period, then the statement shall be submitted on or before thirty (30) days following the ceasing of business. Any additional sums payable by reason of such statement shall accompany such statement. In no event shall any portion of the minimum fee be refundable in the event a business ceases operation.
- (D) The recordation fee and minimum business tax fee payable under the gross receipts classifications shall be due and payable in the case of an original business operation tax certificate before the business operation tax certificate is issued. In the case of a renewal, the business tax fee shall accompany the statement of gross receipts for the prior year on the application for renewal.

- (E) General contractors or contractors employing subcontractors or other services, whether the provider of said services is state licensed or not, shall furnish the Tax Administrator with the names and addresses of the subcontractors or other services and the amount of money that the contractor is paying or proposing to pay to each of his subcontractors or other services. In addition to any other penalties provided by law, in the event the contractor fails, neglects, or refuses to provide the Tax Administrator with such information on subcontractors or other services, the contractor shall be jointly and severally liable to pay the amount of the business tax for each subcontractor or other services so employed.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.04.020: Statements Not Conclusive**

- (A) No statements shall be conclusive as to the matters set forth therein, nor shall the filing of the same preclude the City from collecting by appropriate action such sum as is actually due and payable hereunder. Such statement and each of the several items herein contained shall be subject to audit and verification by the Tax Administrator, his deputies, or authorized employees of the City, who are authorized to examine, audit, and inspect such books and records of any taxpayer or applicant for business operation tax certificate, as may be necessary in their judgment to verify or ascertain the amount of business tax due.

- (B) All applicants for business operation tax certificates and persons engaged in business in the city are required to permit an examination of such books and records for the purposes aforesaid.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.04.030: Information Confidential**

The information furnished or secured pursuant to Sections 5.04.010 and 5.04.020 of this Chapter shall be confidential. Any unauthorized disclosure or use of such information by any officer or employee of the City shall constitute a misdemeanor and such officer or employee shall be subject to the penalty provisions of this Code (Section 5.01.100), in addition to any other penalties provided by law.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.04.040: Appeal of Tax Classification**

- (A) In cases where a taxpayer believes he is placed in the wrong business or class of business or businesses, he may apply in writing to the Tax Administrator for a change in his classification, setting forth in full his reason for requesting such change. The Tax Administrator shall conduct an investigation and shall thereupon render his decision in writing as to the proper classification or classifications.

- (B) If the taxpayer is aggrieved by the Tax Administrator's decisions, he shall have the right of appeal to the City Manager.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.04.050: Appeal to City Manager**

Any person aggrieved by any decision of the Tax Administrator with respect to this Code, may appeal to the City Manager by filing a Notice of Appeal to the City Manager. The City Manager shall thereupon fix a time, within sixty (60) days of receipt of the Notice of Appeal, and a place for hearing such appeal. Notice of the hearing is to be given to the appellant not less than five (5) days before such hearing, either by registered or certified mail, postage prepaid, or in the manner required for the service in civil actions. The City Manager shall render a written decision on the appeal within thirty (30) days after such hearing.  
(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.04.060: No Fixed Place of Business -- Payment of Tax Based on Gross Receipts**

Any person not having a fixed place of business in the city, and covered by Section 5.06.060, who elects to pay a business tax under the gross receipts portion of this Code, shall make such election in writing upon application for business operation tax certificate and shall upon such election be bound by all the provisions of this Code relative to tax based on gross receipts.  
(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.04.070: Sales Tax Number – Reporting Requirements**

Any person who contracts, sells, or delivers any goods, wares, or merchandise in the city for which sales or use tax is payable and who is required to report and pay such sales and use tax to the state, shall furnish the Tax Administrator with his sales tax number and shall report separately in his return to the state the amount of receipts from sales in the city and/or the receipts from sales for use in the city and shall pay the required sales or use tax on such receipts.  
(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**CHAPTER 05: EXEMPTIONS**

**SECTION 5.05.010: Federal and Statutory Law Authority**

Nothing in this Code shall be deemed or construed to apply to any person transacting and carrying on any business exempt by virtue of the Constitution or applicable statutes of the United States or of the State of California from the payment of such taxes as are prescribed in this Code.  
(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.05.020: Business Operation Tax Certificate Required**

A tax certificate, but no tax, shall be required from the businesses exempted by the provisions of this Chapter.  
(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.05.030: Tax Certificate Application Required**

Any person claiming an exemption pursuant to this Chapter shall make written application for a tax certificate as provided in Section 5.02.010, stating the facts upon which the exemption is claimed. The Tax Administrator is authorized to approve exemptions provided by Ordinance.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.05.040: Revocation of Tax Certificate**

The Tax Administrator, after giving notice and a reasonable opportunity for hearing to a person, may revoke any tax certificate granted pursuant to the provisions of this Chapter, if in his opinion, the person is not entitled to the exemption as provided therein.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.05.050: Disabled/Discharged Veterans**

Every honorably discharged military person of the United States, who is physically unable to obtain his livelihood by means of manual labor and who is a qualified voter of the state, shall have the right to hawk, peddle, and vend any goods, wares, or merchandise owned by him, except spirituous malt, vinous, or other intoxicating beverages, without the payment of a business tax. However, this Section does not exclude the applicant from business tax payments as a result of obtaining a livelihood from other than the specific regulatory citations noted above.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.05.060: Charitable and Nonprofit Organizations**

The provisions of this Code shall not be deemed or construed to require the payment of a business tax to conduct, manage, or carry on any business, occupation, or activity from any institution or organization that is conducted, managed, or carried on wholly for the benefit of charitable purposes or from which profit is not derived, either directly or indirectly, by any individual; nor shall any business tax be required for the conducting of any entertainment, concert, exhibition or lecture on scientific, historical, literary, religious, or moral subjects within the city whenever the receipts of any such entertainment, concert, exhibition, or lecture are to be appropriated to any church or school or to any religious or benevolent purpose; nor shall any business tax be required for the conducting of any entertainment, dance, concern, exhibition or lecture by any religious, charitable, fraternal, educational, military, state, county, or municipal organization, or association whenever the receipts of any such entertainment, dance, concern, exhibition, or lecture are to be appropriated for the purpose and objects for which such organization or association was formed and from which profit is not derived, either directly or indirectly, by any individual; provided, however, that nothing in this Section shall be deemed to exempt any such organization or association from complying with any of the provisions of this Code requiring a tax certificate or permit from the Tax Administrator to conduct, manage, or carry on any profession, trade, calling, or occupation.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.05.070: Minors**

Any person of the age of eighteen (18) years or less, a citizen of the city, and who is enrolled in an institution of secondary education shall be exempt from payment of a business tax.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.05.080: Gratuitous Tax Certificate**

Every person unable to obtain a livelihood by manual labor who commences, transacts, and carries on in the city any business in a home in a residential zone whose annual gross receipts from such business is two thousand dollars (\$2,000) or less, shall be exempted from the payment of a business tax hereunder; provided, however, that an annual recordation fee of ten dollars (\$10) shall be due and payable for the issuance of such gratuitous tax certificate; and, further provided that the applicant furnishes conclusive proof to the Tax Administrator that the annual gross receipts of such business does not exceed two thousand dollars (\$2,000).

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.05.090: Local Produce Vendors**

Any person peddling exclusively any fruit or vegetables or other produce raised on his land located within the city limits shall furnish conclusive proof to the Tax Administrator that such produce was raised by him on his land before the issuance of a tax certificate, and any person so peddling shall carry the certificate with him.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**CHAPTER 06: ADJUSTMENTS**

**SECTION 5.06.010: Federal and Statutory Authority**

Nothing in this Title shall be deemed or construed to apply to any person transacting and carrying on any business exempt by virtue of the Constitution or applicable statutes of the United States or of the State of California from the payment of such taxes as are prescribed in this Title.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.06.020: Business Operation Tax Certificate Required**

A tax certificate shall be required by the businesses claiming an adjustment.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.06.030: Tax Certificate Application Required**

Any person claiming an adjustment pursuant to this Chapter shall make written application for a tax certificate as provided in Sections 5.04.010 and 5.04.020, stating the facts upon which adjustment is claimed. The City Manager is authorized to approve adjustments provided by Ordinance.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.06.040: Revocation of Tax Certificate**

The Tax Administrator, after giving notice and a reasonable opportunity for hearing to a person, may revoke any tax certificate granted pursuant to the provisions of this Chapter, if in his opinion, the person is not entitled to the adjustment provided therein.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.06.050: Interstate Commerce**

(A) None of the business taxes provided for by this Title shall be so applied as to occasion an undue burden upon interstate commerce. In any case where a business tax is believed by a taxpayer or applicant for business operation tax certificate to place an undue burden upon such commerce, he may apply to the Tax Administrator for an adjustment of the tax so it shall not be discriminatory or unreasonable as to such commerce. Such application may be made before, at, or within six (6) months after payment of the prescribed business tax. The applicant shall, by affidavit and supporting testimony, show his method of business and the gross volume or estimated gross volume of business and such other information as the Tax Administrator may deem necessary in order to determine the extent, if any, of such undue burden on such commerce. The Tax Administrator shall then conduct an investigation, and shall fix as the business tax for the applicant an amount that is reasonable and nondiscriminatory, or if the business tax has already been paid, shall order a refund of the amount over and above the business tax so fixed. In fixing the business tax to be charged, the Tax Administrator shall have the power to base the business tax upon a percentage of gross receipts or any other measure that will assure that the business tax assessed shall be uniform with that assessed on businesses of like nature, so long as the amount assessed does not exceed the business tax as prescribed by this Title. Should the Tax Administrator determine the gross receipts measure of business tax to be the proper basis, he may require the applicant to submit, either at the time of termination of applicant's business in the city, or at the end of each three (3) month period, a sworn statement of the gross receipts and pay the amount of business tax therefore; provided that no additional business tax during any one (1) calendar year shall be required after the taxpayer has paid an amount equal to the annual business tax as prescribed in this Title.

(B) Any person claiming an adjustment pursuant to this Section shall file a verified statement with the Tax Administrator stating the facts upon which adjustment is claimed on forms to be supplied by that official.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.06.060: Outside Professions, Trades or Business -- Tax**

Every person not having a fixed place of business within the city and engaged in any profession, trade, calling, or business within the city, shall pay the measure of tax that fairly reflects that proportion of the taxed activity actually carried on within the city; provided, however, that such person may elect to pay a business tax of seventy-five (\$75) dollars per year or at the established rate for that particular

classification as outlined in Chapter 5.08 et seq. or as otherwise prescribed by the City Council. In the case of an original application for such a business operation tax certificate that is based upon gross receipts, a fifty dollar (\$50) advance tax deposit shall be due and payable with the application for the business operation tax certificate to offset any tax due should applicant close the business in the middle of a tax year or wish to convert to a flat fee. Unless an adjustment is obtained pursuant to this Chapter, the minimum tax pursuant to this Section shall be fifty dollars (\$50) per year.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

#### **SECTION 5.06.070: Outside Professions or Trades -- Adjustment or Exemption**

Chapters 5.05 et seq. and this Chapter shall not be so applied as to occasion an undue burden on any business done in the city where the business activity is only occasional and incidental to a regularly established business conducted elsewhere. Business conducted on a routine basis with a degree of consistency, however, is not construed as "occasional and incidental."

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

#### **SECTION 5.06.080: Outside Professions or Trades -- Statement of Adjustment or Exemption**

(A) DETERMINATION OF TAX. Any person claiming an adjustment or exemption from the provisions of Chapter 5.05 et seq. and Section 5.06.060 shall file a verified statement with the Tax Administrator on forms to be supplied by that official. The statement shall set forth the applicant's method of conducting business, the total gross volume of business, the gross volume or estimated gross volume of business inside the city, and such other information as the Tax Administrator may deem necessary for an adjustment or exemption to be provided under Section 5.06.070 and this Section. The Tax Administrator shall then conduct an investigation, and shall fix as the business tax for the applicant an amount that is reasonable and nondiscriminatory. In fixing the business tax to be charged, the Tax Administrator shall have the power to base the business tax upon a percentage of gross receipts from business conducted inside the city or any other measure that will assure that the business tax assessed shall be uniform with that assessed on businesses of like nature, so long as the amount assessed does not exceed the business tax as prescribed by this Title. Should the Tax Administrator determine the gross receipts measure of business tax to be the proper basis, he may require the applicant to submit, either at the time of termination of applicant's business in the city, or at the end of each twelve (12) month period, a verified statement of the gross receipts and pay the amount of business tax therefore; provided that no additional business tax during any one (1) calendar year shall be required after the licensee has paid an amount equal to the annual business tax as prescribed in this Title.

(B) ADJUSTMENT OF MINIMUM TAX. Any business operator or person doing business in the city without a fixed place of business in the city may upon

request of that person have his business operations tax calculated upon the gross receipts of business conducted within the city.  
(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.06.090: Outside Professions or Trades -- Revocation of Adjustment or Exemption**

The Tax Administrator after giving notice and reason for revocation and a reasonable opportunity to a person with an adjustment or exemption to respond, may revoke any adjustment or exemption granted pursuant to the provisions of Chapter 5.05 et seq. and this Section and Sections 5.06.060 through 5.06.080 upon information that the person is not entitled to the adjustment or exemption as provided herein.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**CHAPTER 07: DEFINITIONS**

**SECTION 5.07.010: General**

For the purpose of this Chapter, certain words and phrases shall be construed as set forth in this Chapter unless it is apparent from the context that a different meaning is intended.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.07.020: Amusement Center**

"Amusement Center" means any place of business containing four (4), but not more than nine (9), amusement devices, including but not limited to pinball, air hockey, video games, pool tables, and billiard tables, for use by the public at a fee, when incidental to the primary use on the premises.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.07.030: Amusement Devices**

"Amusement Devices" means and includes pool tables, pinball machines, video games, kiddie rides, juke boxes, air hockey machines, viewing machines and any other such device or machine, whether or not owned by the applicant.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.07.040: Arcade**

"Arcade" means any place of business containing ten (10) or more amusement devices, including but not limited to pinball, air hockey, and video games for use by the public at a fee.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.07.050: Builder/Owner**

"Builder/Owner" means an owner of property, who builds or improves structures thereon, or appurtenances thereto, who does such work himself or through his own employees with wages as their sole compensation; provided that such structure, or structures, with or without the appurtenances thereto, is not intended or offered for sale. Proof of the sale or offering for sale of any such structure by the

Builder/Owner within one (1) year after completion of same is presumptive evidence that such structure was undertaken for purposes of sale. (Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.07.060: Business**

"Business" means and includes all professions, trades, occupations and all and every kind of calling, full time or part time, whether or not carried on for profit. (Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.07.070: Business License**

"Business License" means business operation tax certificate. (Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.07.080: Business Operation Tax**

"Business Operation Tax" means the tax required by any and/or all provisions of this Title and shall herein be referred to as "business tax" or "tax," except as otherwise specified. (Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.07.090: Business Operation Tax Certificate**

"Business Operation Tax Certificate" means the receipt for taxes paid as required by any and/or all provisions of this Title and shall herein be referred to as "tax certificate" or "certificate," except as otherwise specified. (Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.07.100: City**

"City" means the City of Garden Grove. (Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.07.110: Contractor**

As used in this Chapter, "Contractor" means any person who is licensed as a contractor by the State of California, and who undertakes to or offers to undertake to or purports to have the capacity to undertake to or submits a bid to, or does himself or by others construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish any building, highway, road, railroad, excavation, or other structure, project, development, or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith. (Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.07.120: Contractor, General**

"General Contractor" means a contractor in the business of construction utilizing the services of two (2) or more unrelated building trades or crafts and licensed as a contractor by the State of California. (Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.07.130: Contractor, Specialty**

"Specialty Contractor" means a contractor whose contracting business involves the use of specialized building trades or crafts and is licensed as a contractor by the State of California.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.07.140: Employees**

"Employees" means all individuals engaged in the operation or conduct of any business, including members of the owner's family, partner, agent, manager, officer, solicitor, and any and all other individuals employed or working in the business.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.07.150: Engaged in Business**

(A) "Engaged in Business" means the conducting, carrying on, managing, or operating a business whether done as owner, or by means of an officer, agent, manager, employee, servant, or lessee or any of them.

(B) "Engaged in Business" further includes the purchase, sale, or any other transaction involving the handling, disposition or providing of any article, service, substance, or commodity for livelihood or profit; the management of office buildings, offices, recreational or amusement enterprises; the maintenance or use of offices, structures, and premises by professions, trades, or occupations rendering services.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.07.160: Evidence of Doing Business**

"Evidence of Doing Business" means and includes whenever any person, by use of signs, circulars, cards, or any other advertising media, holds himself out as, or represents that he is, doing business in the city.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.07.170: Fixed Place of Business**

"Fixed Place of Business" means the premises occupied for the particular purpose of conducting the business at that site, and regularly kept open for that purpose with a competent person in attendance for the purpose of attending to such business, except provided that a warehouse shall be considered a "Fixed Place of Business" whether or not the premises is regularly kept open, and whether or not anyone is in attendance.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.07.180: Gross Receipts**

(A) "Gross Receipts" means and includes the total amount of the sale price of all sales, and the total amount charged or received for the performance of any act or service of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act or service is done as a part of, or in connection with, the sale of materials, goods, wares, or merchandise.

- (B) The following shall be included in "gross receipts": All receipts, cash, credits, and property of any kind or nature without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever.
- (C) The following shall be excluded from "gross receipts":
- (1) Cash discounts allowed and taken on sales;
  - (2) Credit allowed on property accepted as part of the purchase price and which property may later be sold;
  - (3) Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
  - (4) Such part of the sale price of property returned by purchasers upon rescission of the contract of sale as is refunded either in cash or by credit;
  - (5) Amounts collected for others where the business is acting as an agent or trustee to the extent that such amounts are paid to those for whom collected, provided the agent, or trustee has furnished the Tax Administrator with the names and addresses of the others and the amounts paid to them, other than amounts received as commissions or fees earned, or charges of any character made or compensation of any character received for the performance of any service as agent, or trustee; provided that any agent or trustee dealing in stocks or other similar written instruments evidencing a right to participate in the assets of any business, or dealing in bonds or other evidences of indebtedness, who also deals in such property as a principal, shall include in the gross receipts by which the tax is measured the amount of his trading profits resulting therefrom. No deduction from receipts attributable to trading as principle shall be made unless such deduction is provided for in this Section;
  - (6) The difference between the balance owed and paid on a defaulted purchase or finance contract upon repossession by seller and the amount received from resale of the repossessed article by the repossessing seller;
  - (7) Receipts of refundable deposits, except that refundable deposits forfeited and taken into income of the business shall not be excluded;
  - (8) As to alcoholic beverages, that portion of the receipts of a manufacturer, transporter, retailer, or wholesale distributor generated or otherwise collected from the manufacture, sale, possession, or transportation of intoxicating liquors within the state pursuant to Article XX, Section 22 of the State Constitution;

- (9) As to a retail gasoline dealer, a portion of his receipts from the sale of motor vehicle fuels equal to the Motor Vehicle Fuel License Tax imposed by and previously paid under the provisions of Part 2 of Division 2 of the Revenue and Taxation Code of the State of California;
- (10) As to a retail gasoline dealer, the special motor fuel tax imposed by Section 4041 of Title 26 of the United States Code if paid by the dealer or collected by him from the purchaser;
- (11) Cash value of sales, trades, transfers, or other transactions as made between separate departments, divisions, or units of any single business entity;
- (12) Sales for convenience where sales of new goods, wares, or merchandise are made by a person engaged in selling such articles to another person engaged in selling like or similar articles:
  - (a) Where the primary purpose of the particular transaction of sale is to accommodate the purchaser rather than to make a sale in the ordinary course of business and the price paid is essentially the book value of the article;
  - (b) Where, in the particular kind of business involved, a similar manner of dealing is frequent or customary in the circumstances under which the particular sale is made; and
  - (c) Where goods, wares, or merchandise of like or similar kind and of substantially equivalent value to that which was sold is received in consideration.
- (13) The amount of gross receipts that has been subject to a license tax paid to any other city.
- (14) Any license tax or fee imposed by and previously paid under any and/or all provisions of this Chapter.
- (D) As to general contractors and builder/owners who are state licensed contractors and other similar businesses, "gross receipts" shall not include that portion of the receipts of a general contractor or builder/owner that represents payments to subcontractors, provided that such subcontractors are licensed under Chapters 5.01-5.08 of this Title, and provided the general contractor or builder /owner furnishes the Tax Administrator with the names and addresses of the subcontractors and the amounts paid to them.
- (E) As to real estate brokerages, travel agencies, insurance brokerages, bail bond brokerages, and other similar businesses, "gross receipts" shall include the

total gross commissions or other receipts attributable to the local office, agents, brokers, and/or employees.

- (F) As to accountants, architects, attorneys, chiropractors, clinical social workers, doctors, dentists, marriage, family and child counselors, optometrists, physicians' assistants, podiatrists, psychologists, registered nurses, veterinarians and other similar licensed persons performing professional services, "gross receipts" shall include the total gross fees or other receipts attributable to the local office and/or employees, for services performed or otherwise rendered within the city.
- (G) As to other persons having a fixed place of business within the city and providing a service or plying a trade, or involved in similar businesses, "gross receipts" shall include the total fees, commissions, or other receipts attributable to that local location and/or employees.
- (H) As to a business established outside the city but maintaining an office within the city through an agent, broker, or employee, "gross receipts" shall include the total sales or receipts attributable to the local office or facility, agent, broker, or employee within the taxing jurisdiction.
- (I) In the event separate sales or receipt records are not maintained for said local office or facility, agent, broker, or employee, the business tax shall be based upon an amount that bears the same proportion to the total gross receipts of the business that cost of maintaining said local office, facility, local agent, broker, or employee bears to the total cost of maintaining said business.
- (J) In the event that the business of said local office, facility, agent, broker, or employee is that of performing administrative or storage functions in connection with sales or services performed or rendered elsewhere, the business tax shall be based on an amount equivalent to the cost of doing business.
- (K) As to a business established outside the city but transacting and carrying on business within the city, or otherwise performing or rendering services negotiated, or contracted for within the city, whether or not by a principal or through an agent or employee, "gross receipts" shall include the total fees, commissions, or other receipts attributable to the business activity conducted within the taxing jurisdiction.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.07.190: Home Occupation**

“Home Occupation” means an occupation conducted on the premises by the occupant of the dwelling as a secondary use in which there is no on-site advertising, no display, no stock-in-trade, commodity or equipment sold or stored upon the premises, no customers on site at any time, no persons employed or otherwise associated with the activity working on the premises at any time, and in connection with which no mechanical equipment is used for manufacturing, processing, or assembling, except such mechanical equipment as is necessary for domestic purposes only.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.07.200: Hotel**

“Hotel” means a building in which there are six (6) or more guest rooms, where lodging with or without meals is provided for compensation, and where no provision is made for cooking in any individual room or suite. Occupancy for more than thirty (30) consecutive days is allowed in hotels. A hotel shall not include jails, hospitals, asylums, sanitariums, orphanages, prisons, detention homes, and similar buildings where human beings are housed and detained under legal restraint or for care or treatment.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.07.210: Independent Contractor**

“Independent Contractor” means one who contracts to perform a particular activity or service for another in return for any valuable consideration and is responsible for the result of his work. An independent contractor is generally responsible for his individual tax obligations.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.07.220: Insurance Agent**

“Insurance Agent” means a person authorized, by and on behalf of an insurer, to transact insurance. Normally, an insurance agent has the authority to bind the insurer and to execute insurance policies.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.07.230: Insurance Broker**

“Insurance Broker” means a person who for compensation and on behalf of another person transacts insurance, other than life, with but not on behalf of an insurer. Normally an Insurance Broker does not have authority to bind, and the insurer must first execute the binder or policy.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.07.240: Mobile Home Park**

“Mobile Home Park” means any area or tract of land under single or unified ownership, control or management, where five (5) more mobile manufactured home sites are provided to accommodate manufactured homes used for human habitation.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.07.250: Motel**

"Motel" means a group of attached or detached buildings in which there are individual sleeping units that provide transient occupancy to overnight guests. Not more than ten percent (10%) of the individual living units may contain kitchen facilities. A maximum of ten percent of the customers may remain in any one establishment for thirty (30) consecutive days. No consecutive occupancy shall exceed thirty (30) days, nor shall any nonconsecutive occupancy exceed thirty (30) days in forty-five (45) consecutive days. Adequate parking is to be located adjacent to units.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.07.260: Owner/Builder**

See Section 5.07.050.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.07.270: Person**

"Person" means and includes all domestic and foreign corporations, associations, syndicates, joint stock corporations, partnerships of every kind, clubs, Massachusetts, business, or common law trusts, societies, and individuals transacting and carrying on any business in the city, including any manager, lessee, agent, servant, officer, or any employee of same.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.07.280: Principal**

"Principal" means an individual who has an interest as a stockholder, partner, owner, or partial owner thereof, and who is licensed or otherwise duly qualified to practice the profession in which the business is engaged.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.07.290: Processing**

"Processing" means and includes engaging in the business of converting an article, substance, or commodity into marketable form for the purpose of resale by changing its physical or chemical composition.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.07.300: Professions**

(A) "Professions" means a business where the principal business activity is the furnishing of services and all activities in which any person, for any other person, performs any personal service and all services in which any real or personal property or any money or credits are exchanged, leased, transported, loaned, moved, stored, hauled, improved, maintained, cleaned, repaired, or otherwise handled from one person to or for another person, and any other business where the principal business activity is the furnishing of services, and which business is not specifically listed in some other classification or Section of this Code, will be classified in the above category.

(B) Professions include, but are not limited to, the following:

- (1) Accountant
- (2) Advertising Counsel
- (3) Agricultural Advisor or Counselor
- (4) Appraiser
- (5) Architect
- (6) Assayer
- (7) Attorney at Law
- (8) Auditor
- (9) Bail Bond Broker
- (10) Business Management Consultant
- (11) Certified Public Accountant
- (12) Chemical Engineer
- (13) Chemist
- (14) Child Nurseries (seven (7) children or more)
- (15) Chiropodist
- (16) Chiropractor
- (17) Civil Engineer
- (18) Claims Adjuster
- (19) Construction Engineer
- (20) Consulting Engineer
- (21) Dealer in stocks, bonds, securities, and other commodities
- (22) Dental Laboratory
- (23) Dentist
- (24) Designer

- (25) Detective
- (26) Detective Agency
- (27) Drugless Practitioner
- (28) Electrical Engineer
- (29) Electrologist
- (30) Employment Agency or Bureau
- (31) Fine Arts or Music School
- (32) Geologist
- (33) Herbalist
- (34) Industrial Relations Consultant
- (35) Instructor
- (36) Insurance Adjuster
- (37) Insurance Broker
- (38) Interior Decorator
- (39) Investment Counselor
- (40) Labor relations Consultant
- (41) Landscape Architect
- (42) Lapidary
- (43) Mechanical Engineer
- (44) Mortician
- (45) Naturopath
- (46) Oculist
- (47) Optician
- (48) Optometrist

- (49) Oral Surgeon
- (50) Orchard Care
- (51) Osteopath Physician
- (52) Physician
- (53) Physician and Surgeon
- (54) Private home for the aged (seven (7) persons or more)
- (55) Real Estate Broker
- (56) Rental of personal property
- (57) Sanitation Engineer
- (58) Stocks and Bonds Broker
- (59) Surgeon
- (60) Surveyor
- (61) Taxidermist
- (62) Teacher
- (63) Telephone Answering Service
- (64) Trade or Business School
- (65) Travel Bureau
- (66) Tree removing
- (67) Tree surgery
- (68) Veterinarian
- (69) X-Ray Technician

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.07.310: Real Estate Agent**

"Real Estate Agent" means any person licensed as such by the State and engaged wholly or in part in transacting and carrying on the sale of real estate.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.07.320: Real Estate Broker**

"Real Estate Broker" means any person licensed as such by the State and engaged, wholly or in part, in transacting and carrying on the sale of real estate, including soliciting or offering to buy, sell, or lease real property for others; negotiating and collecting loans for borrowers or lenders; dealing in real property sales contracts and promissory notes; receiving advance fees for real estate listings; and dealing in real estate syndicate securities.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.07.330: Recordation Fee**

A "Recordation Fee" as established by City Council Resolution, is charged to all new businesses in the city for the purpose of including the name, address, description, and other pertinent data of a business in City records and entitlement of related services.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.07.340: Renewal Fee**

"Renewal Fee" means a processing fee, as established by City Council Resolution, charged to process all renewal business tax applications.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.07.350: Rental Property**

Owning rental property is considered a form of doing business. A separate business tax certificate is required for each residential, commercial, and/or industrial parcel located on separate lots, or with separate assessor parcel numbers, or with separate addresses.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.07.355: Services**

"Services" means the business of providing, maintaining, or performing labor for the benefit of another; of supplying some general demand for the benefit of another that does not produce a tangible commodity; of performing any other personal service; or any service in which any real or personal property, stocks or bonds, or other financial instruments, or evidences of debt, or contracts of insurance or any money or credits are exchanged, leased, transferred, or loaned; as well as every business of maintaining, storing, cleaning, improving or repairing tangible commodities whether or not such business is conducted from premises, vehicle, or mobile location within or outside the city. Services do not include professional services as defined in Section 5.07.300.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.07.360: Solicitor**

"Solicitor" means and includes every person engaged in selling or soliciting orders for the sale of any goods, wares or merchandise, magazines, papers, periodicals, services, or any form of business involving canvassing and soliciting from house to house, place to place, or business to business.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.07.370: Vehicle for Hire**

"Vehicle for Hire" means and includes chartered bus, limousine, taxicab, convalescent transport vehicle, and every motor vehicle used in the business of carrying passengers for hire, and the destination and route of which are under the control of passengers being carried therein. Vehicle for hire does not include ambulances.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.07.380: Vending Machines**

"Vending Machines" means and includes machines or devices that disperse tangible items, or other goods or services. Such machines may or may not be coin-operated.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**CHAPTER 08: BUSINESS OPERATION TAX SCHEDULE\***

\*Business Operation Tax shall be set by City Council Resolution.

**SECTION 5.08.010: Advertising.**

(A) BILLBOARD SIGN, BENCH.

- (1) Every person engaged in the business of constructing, erecting, installing, maintaining, or operating any outdoor structure, billboard, sign, painted sign on structures, signboards, benches, or similar devices used for the purpose of exhibiting or displaying advertising matter thereon, shall pay a tax established by City Council Resolution.
- (2) This Section shall not apply to signs affixed to a building in which a business is being operated, which signs refer only to such business, neither to "for sale" nor "for rent" signs on real estate.

(B) WHEELED VEHICLES.

- (1) Every person engaged in the business of operating upon the streets any wheeled vehicle for the primary purpose of advertising any goods or services, and said vehicle is equipped with music or a musical device, loudspeaker or other device for attracting attention, or to which wheeled vehicle there are attached signs, placards, billboards or similar devices displaying advertising matter thereon, shall pay a tax established by City Council Resolution.
- (2) Every person engaged in the business of operating any wheeled vehicle equipped with a searchlight for attracting attention, shall pay a tax established by City Council Resolution.

- (3) This Section shall not apply to any person who incidentally operates such wheeled vehicles for the primary purpose of advertising for civic or political campaigns and/ or civic or political issues.  
(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.08.020: Amusements**

- (A) ARCADE/AMUSEMENT CENTER. Every person engaged in the business of conducting, managing, or operating an arcade or amusement center in which amusement devices are operated automatically upon the deposit of a coin, slug, or other device shall pay a tax established by City Council Resolution.
- (B) AMUSEMENT DEVICES. Every person engaged in the business of conducting, managing, or operating any skee ball, bat ball, handball court, shuffleboard, mechanical amusement device, or any other similar device, equipment, or means of entertainment shall pay a tax established by City Council Resolution. Jukeboxes, devices for playing of records or music automatically upon the deposit of a coin, slug, or other device shall pay a tax established by City Council Resolution.
- (C) BILLIARD PARLOR/POOL HALL. Every person engaged in the business of conducting, managing, or operating a pool hall or billiard parlor, shall pay a tax established by City Council Resolution.
- (D) BOWLING ALLEY. Every person engaged in the business of conducting, managing, or operating any public bowling alley shall pay a tax established by City Council Resolution.
- (E) CARD GAMES. Every person engaged in the business of conducting, operating, or maintaining a place where tables are used by the public for playing cards, and for the use of which a fee or charge is assessed the players shall pay a tax established by City Council Resolution.
- (F) DANCE HALL/NIGHTCLUB. Every person engaged in the business of conducting, managing, or operating a dance hall or nightclub shall pay a tax established by City Council Resolution.
- (G) GOLF COURSE OR OTHER AMUSEMENT ACTIVITY. Every person engaged in the business of conducting, managing, or operating a golf course, miniature golf course, golf driving range, bicycle course, archery range, or other amusement activity shall pay a tax established by City Council Resolution.
- (H) RIDING ACADEMY OR STABLE. Every person engaged in the business of conducting, managing, or operating a riding academy, where instructions in horseback riding are given, or horses or other animals are maintained for hire, or a feed, or livery stable shall pay a tax established by City Council Resolution.

- (I) SHOOTING GALLERY. Every person engaged in the business of conducting, managing, or operating a shooting gallery shall pay a tax established City Council Resolution.
  - (J) SKATING RINK. Every person engaged in the business of conducting, managing, or operating any ice or roller skating rink, enclosure or park shall pay a tax established by City Council Resolution. This shall not apply to any exhibition given in any restaurant, cafe, hotel, or theater when the public is not permitted to participate in such exhibition.
  - (K) THEATER. Every person engaged in the business of conducting, managing, or operating a motion picture theater or any other type of theater shall pay a tax established by City Council Resolution.
  - (L) THEATER, DRIVE-IN. Every person engaged in the business of conducting, managing, or operating a drive-in theater shall pay a tax established by City Council Resolution.
- (Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.08.040: Bankruptcy Sales, Etc.**

Every person engaged in the business of owning, opening, establishing, managing, operating, maintaining, or having charge of any temporary location or place of business of any kind for the selling of any solvent, bankrupt, fire-damaged, or other similar goods, wares, or merchandise, and every itinerant or transient merchant having a temporary place of business, but not having any continuous or permanent place of business in the city, who sells or offers for sale any insolvent, bankrupt, fire-damaged, or other goods, wares, or merchandise shall pay a tax established by City Council Resolution.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.08.050: Baths, Sauna Baths, Massage Parlors and the Like**

Every person engaged in owning, opening, or establishing a business that provides baths, steam baths, sauna baths, electric light baths, electric tub baths, shower baths, sponge baths, massage parlors, or operating any public establishment that maintains in connection therewith either or both a steam room, massage room, plunge, bath, or sleeping accommodations shall pay a tax established by City Council Resolution.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.08.060: Contractor**

Every person licensed by the State as a contractor and who does business as a contractor shall pay a tax proportionate to gross receipts earned within the taxing jurisdiction as established by City Council Resolution.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.08.070: Day Care**

Every person engaged in the business of taking care of seven (7) or more people in his home or at a place of business shall pay a tax proportionate to gross receipts as established by City Council Resolution.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.08.080: Home Occupation**

Every person engaged in a home occupation shall be taxed under the appropriate tax category as provided therein.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.08.090: Hospitals, Rest Homes, and Sanitariums**

Every person engaged in the business of conducting, operating, or maintaining a rest home, nursing home, hospital, sanitarium, or any other institution maintained for healing the sick shall pay a tax proportionate to gross receipts as established by City Council Resolution.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.08.100: Hotel, Motel, RV Park**

Every person engaged in the business of operating a hotel, motel, roominghouse, auto court, motor court, or any other similar type of rental quarters shall pay a tax proportionate to gross receipts earned within the taxing jurisdiction as established by City Council Resolution.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.08.110: Interstate Commerce**

Every person engaged in the business of interstate commerce shall pay a tax proportionate to gross receipts earned within the taxing jurisdiction as established by City Council Resolution.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.08.120: Junk Collector/Dealer**

Every person engaged in the business of collecting, buying, or selling at either retail or wholesale or otherwise dealing in junk and/or rubbish, waste material refuse, and/or any old rags, sacks, bottles, cans, papers, metals, jewelry, precious metals, rubber, bric-a-brac, cordage, truck or automobile tires, truck or automobile parts, truck or automobile accessories, and other like articles, whether the same can be sold or otherwise disposed of in the condition or state of repair as collected, or whether the same is collected, bought or sold, or otherwise disposed of for the purpose of being treated, repaired or prepared so as to be used again in some form shall pay a tax proportionate to gross receipts earned within the taxing jurisdiction as established by City Council Resolution.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.08.130: Manufacturers and Processors**

Every person conducting, maintaining, or operating a business consisting primarily of manufacturing, packing, processing, canning, or fabricating any goods, wares,

merchandise, or produce shall pay a tax proportionate to gross receipts earned within the taxing jurisdiction as established by City Council Resolution. (Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.08.140: Mobile Home Park**

Every person engaged in the business of conducting, maintaining, or operating a mobile home park and/or court shall pay a tax proportionate to gross receipts as established by City Council Resolution. (Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.08.150: Pawnbroker**

Every person engaged in the business of pawnbroker shall pay a tax established by City Council Resolution. (Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.08.160: Peddler, Photographer, Book Agent, Solicitor**

(A) Every person not having a fixed place of business in the city engaged in the business of peddler, book agent, photographer, and every solicitor other than commercial travelers and not otherwise taxed under the provision of this Chapter shall pay a tax established by City Council Resolution.

(B) Every person engaged in the business of a peddler of flags, banners, toy balloons, or similar souvenirs or novelties along parade routes shall pay a tax established by City Council Resolution. (Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.08.170: Principal Solicitor or Peddler**

(A) Any person not having a fixed place of business in the city for a minimum of one hundred eighty (180) days and not otherwise taxed under the provision of this Code, either employing or contracting with one or more individuals to have such individuals solicit the sale of any goods, wares, merchandise, and services may obtain a principal's, solicitor's or peddler's certificate and shall pay a tax established by City Council Resolution.

(B) The Tax Administrator shall not issue such certificate until the applicant files with the Tax Administrator a list of all solicitors and/or peddlers employed by the applicant or with whom the applicant has contracted, and a signed agreement that the applicant, within five (5) days thereafter, will notify the Tax Administrator in writing of every change in personnel of those soliciting and/or peddling for him. (Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.08.180: Professions**

Every person conducting, maintaining, or operating any business enumerated in Chapter 5.07.300 shall pay a tax proportionate to gross receipts earned within the taxing jurisdiction as established by City Council Resolution. (Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.08.190: Public Utilities**

- (A) EXCEPT COMMUNICATIONS. Every person engaged in the business of conducting, maintaining, or operating a public utility in the transportation or transmission of water, electricity, or gas, unless operating under a franchise and paying a franchise to the City, shall pay a tax computed in accordance with the provisions of Section 5.08.210.
  
- (B) COMMUNICATIONS. Every person engaged in the business of conducting, maintaining, or operating a public utility in the transportation or transmission of communications, unless operating under a franchise and paying a franchise to the City, shall pay a tax computed in accordance with the provisions of Section 5.08.130.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.08.200: Rental Property**

Every person conducting, managing, or carrying on the business of operating or leasing rental property shall pay a tax established by City Council Resolution.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.08.210: Retail Sales and Miscellaneous Business**

Every person conducting, operating, or maintaining any business consisting of selling at retail any goods, wares and merchandise or commodities, or any business not otherwise specifically covered by this Chapter by name or description, shall pay a tax proportionate to gross receipts earned as established by City Council Resolution.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.08.220: Rides**

FERRIS WHEEL AND MERRY-GO-ROUND. Every person not having a fixed place of business in the city and engaged in the business of conducting, managing, or operating an amusement enterprise consisting of ferris wheels, merry-go-rounds, whips, or any other similar device or any combination of the foregoing devices for which a gate admission charge is made or a charge is made for entry into or for the use of each device shall pay a tax established by City Council Resolution.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.08.225: Services**

Every person engaged in the business of providing services in the city as defined in 5.07.355 shall pay a tax proportionate to gross receipts as established by City Council Resolution.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.08.230: Shows**

Every person engaged in the business of amusements, entertainment, exhibitions, or similar enterprises shall pay a tax established by City Council Resolution.

- (1) ANIMAL SHOW OR PETTING ZOO. Every person engaged in the business of conducting, managing, or operating a trained animal show or petting

zoo, to which an admission fee is charged or collected or taken, shall pay a tax established by City Council Resolution.

(2) **BOXING OR WRESTLING EXHIBITIONS.** Every person engaged in the business of conducting, managing, or operating any place to which the public is admitted, and an admission fee is charged, and at which any boxing or wrestling match or similar exhibition is presented shall pay a tax established by City Council Resolution.

(3) **CARNIVAL/CIRCUS/SIDE SHOW.** Every person engaged in the business of conducting, managing, or operating a carnival, side show, or circus, shall pay a tax established by City Council Resolution.

(a) Carnival, side show, and/or circus means and includes any tent, canvas, or open-air enclosure, wherein are exhibited any feats of horsemanship, trained animals, clown, acrobatic or trapeze performances, and such other forms of skill or amusement as are commonly given in rings, and combinations of entertainment or exhibitions similar to rodeos and the like.

(b) In addition to paying the taxes required, every such person shall have liability insurance showing the City as an additional insured with limits of one million dollars (\$1,000,000) per occurrence for bodily injury or property damage. A ten (10) day cancellation notice is required.

(4) **TRAVELING THEATRICAL PERFORMANCE.** Every person engaged in the business of conducting, managing, or operating any lecture or traveling theatrical performance under or surrounded or partially enclosed by canvas, or in any open-air enclosure, such as comedy, spoken drama, opera, or concerts, shall pay a tax established by City Council Resolution.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.08.240: City Council Approval Required**

Applications for certificates pursuant to Section 5.08.220 and Section 5.08.230(2) and (3) shall require approval of the City Council before any such certificate will be issued.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.08.250: Swap Meet/Flea Market**

(A) Any persons, firm, or entity conducting, managing, or carrying on the business of, or providing the facilities for, the conduct of any swap meet, seller's meet, flea market, or similar activity shall pay a business revenue tax established by City Council Resolution.

(B) All participants who are sellers of tangible goods are required to possess a valid Resale Number with temporary sales in Garden Grove reported at the address where the sales take place in that taxing jurisdiction.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.08.260: Vehicles for Hire**

(A) Every person engaged in the business or carrying passengers for hire shall pay a tax proportionate to gross receipts earned within the taxing jurisdiction as established by City Council Resolution.

(B) These vehicles would include but not be limited to: convalescent transport services, limousine services, taxicab services, and tow truck services.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**SECTION 5.08.270: Wholesale Sales**

Every person conducting, operating, or maintaining any business consisting of selling at wholesale any goods, wares and merchandise, or commodities not otherwise specifically covered by this Chapter shall pay a tax proportionate to gross receipts earned within the taxing jurisdiction as established by City Council Resolution.

(Ordinance 2808 § 1, 2012; Ordinance 2194 § 2 (part), 1991).

**CHAPTER 09: ANTIQUE SHOP/USED MERCHANDISE SHOP REQUIREMENTS**

**SECTION 5.09.010: Permit Requirements and Fees**

(A) The operator of any antique shop/used merchandise shop may, in lieu of the secondhand dealers permit required by Section 5.38.030, apply for and obtain a special permit to conduct an antiques shop/used merchandise shop. The application shall be filed with the Tax Administrator who shall refer such applications to the Police Chief for investigation to determine whether the application falls within the definition of antique shop/used merchandise shop as set forth in Section 5.09.030.

(B) There shall be an application fee of twenty dollars (\$20), plus any additional tax fees as required for a valid business tax certificate.

(Ordinance 2808 § 1, 2012; Ordinance 2272 § 1 (part), 1993).

**SECTION 5.09.020: Buying, Reporting and Holding Requirements**

A permittee under this Chapter is exempt from requirements set forth in Chapter 5.38, except, however, that when the permittee is buying, in receipt of, handling, disposing or selling serialized secondhand property, precious metals, or jewelry, the following provisions shall apply:

- (1) The permittee shall report all serialized secondhand property, precious metals, or jewelry that permittee has purchased, taken in trade, taken in pawn, accepted for sale on consignment, or accepted for auctioning to the Police Chief not later than twelve noon of the day following the acquisition of such property. Purchase must be made from a person with a valid picture card as set forth in Business and Professions Code Section 21628(b).

- (2) Such reporting, holding, and buying of serialized secondhand property, precious metals, or jewelry by permittee shall be in accordance with Sections 5.38.060 and 5.38.170 of this Code.

(Ordinance 2808 § 1, 2012; Ordinance 2272 § 1 (part), 1993).

#### **SECTION 5.09.030: Antique Shops/Used Merchandise Shop Defined**

As used in this Chapter, antique shop/used merchandise shop means a shop where used merchandise is sold at retail, but where at least ninety percent (90%), measured according to value of the used merchandise on hand at any time, consists of objects of art; bric-a-brac; curios; household furniture or furnishings; clothing; phonograph records, discs or tapes; books/ magazines; or other non-traceable merchandise offered for sale upon the premises express or implied that the value of the property whole or in substantial part is derived from its age or from its historical associations.

(Ordinance 2808 § 1, 2012; Ordinance 2272 § 1 (part), 1993).

### **CHAPTER 10: AMBULANCES**

#### **SECTION 5.10.010: Intent and Purpose**

It is the intent of this Chapter to establish general operating procedures and standards for medical transportation services operating within the incorporated areas of the city in both emergency and other situations, to provide a fair and impartial means of allowing responsible private operators to provide such services in the public interest and to provide a means for the designation of emergency response areas.

(Ordinance 2808 § 1, 2012; Ordinance 1961 § 1 (part), 1986).

#### **SECTION 5.10.020: Definitions**

For purposes of this Chapter, the following terms are defined:

- (1) "Advanced Life Support Service" and "Basic Life Support Service" mean the same as defined in the California Health and Safety Code.
- (2) "Ambulance" means a motor vehicle, helicopter, or similar vehicle, specifically constricted, modified, equipped, or arranged and operated for the purpose of transporting patients requiring immediate or ongoing medical services, excluding the transportation of such persons to or from locations not providing services as defined in this Chapter.
- (3) "Ambulance Service" means the activity, business or service, for hire, profit, or otherwise of transporting one or more persons by ambulance; provided, however, ambulance service shall not include the transportation by ambulance by an employer of his own employees in an ambulance owned and operated by the employer solely for this purpose.
- (4) "Ambulance Service Operator" means any person who operates or owns an ambulance service.

- (5) "Attendant" means a trained, qualified individual who, regardless of whether he also serves as driver is responsible for the care of patients.
- (6) "Board of Supervisors" means the Orange County Board of Supervisors.
- (7) "City" means the City of Garden Grove, County of Orange, State of California.
- (8) "City Council" means the Garden Grove City Council.
- (9) "City Fire Department" means the Garden Grove City Fire Department.
- (10) "County" means the County of Orange, State of California.
- (11) "Department" means the Emergency Medical Services Agency of the County of Orange or the Health Care Agency of the County of Orange, or as otherwise designated by the Board of Supervisors.
- (12) "Dispatcher" means an individual employed by an ambulance service operator responsible for sending an ambulance, to provide ambulance service to a patient.
- (13) "Driver" means an attendant who drives or pilots an ambulance.
- (14) "Emergency" means a sudden, unforeseen event giving rise to a need for ambulance service with basic or advanced life support services.
- (15) "Emergency Response Area" means a geographical location specified by the Fire Chief within which emergency service may be provided under a license.
- (16) "Emergency Service" means ambulance service performed in response to an emergency.
- (17) "Fire Chief" means the Director of Fire Services for the City of Garden Grove.
- (18) "Health Officer" means the Orange County Health Officer or other official designated by the Board of Supervisors of Orange County to perform the Health Officer's functions under this Chapter.
- (19) "Licensee" means an ambulance service operator that has been granted a license under this Chapter to provide ambulance service.
- (20) "Medical Services" means services provided by health care professionals licensed pursuant to the California Business and Professions Code or as specified by regulations adopted pursuant to this Chapter.

(21) "Paramedic" means the same as defined in the California Health and Safety Code.

(22) "Patient" means a wounded, injured, sick, invalid, or otherwise incapacitated person.

(23) "Person" means any individual, firm, corporation, partnership, association, or other group or combination acting as a unit.

(24) "Physician" means a medical doctor or osteopath holding the appropriate license or certificate to practice as such with the State of California pursuant to the Business and Professions Code.

(25) "Public Safety Agency" means any Public Law Enforcement Agency or Fire Protection Agency operating in the County.

(Ordinance 2808 § 1, 2012; Ordinance 1961 § 1 (part), 1986).

#### **SECTION 5.10.030: License Required**

(A) Applications for licenses are obtained and processed through County Health Officer and shall be accompanied by fees set by the Board of Supervisors. This license is in addition to and not in lieu of any business operation tax certificate that is required by the City.

(B) A license may specify the specific geographical area within the city in which it is valid; provided, however, with respect to emergency response areas, reference to the emergency response area by a specific number or similar identification shall be sufficient description of geographic limitation. A license shall be valid for not more than one (1) calendar year or the expiration of the calendar year in which it was issued, whichever is shorter.

(C) The provisions of this Chapter shall not apply to:

(1) Ambulances operated at the request of a public safety agency during any "state of war emergency," "state of emergency," or "local emergency," as defined in the Government Code;

(2) Ambulance service transporting a patient from a location outside of Orange County regardless of destination; and

(3) Ambulance service transporting a patient by a fixed-wing airplane.

(Ordinance 2808 § 1, 2012; Ordinance 1961 § 1 (part), 1986).

#### **SECTION 5.10.040: Transfer and Term of License**

(A) No license issued pursuant to this Chapter can be transferred by operation of law or otherwise. The following shall be considered transfers for purposes of this Section:

- (1) Any change in the business structure of a licensee, including, but not limited to, changes from or to:
    - (a) A sole proprietorship,
    - (b) A partnership, including any change in the partners, and
    - (c) A corporation, including any change in the shareholders, whether by peration of law or otherwise;
  - (2) Bankruptcy, an assignment for the benefit of creditors, or the appointment of a receiver; and
  - (3) A sale or transfer of over ten percent (10%) of the assets of a licensee.
- (B) A licensee may apply to the Health Officer for an amendment to the terms of the license, which request shall be processed in the same manner as an original application.
- (C) Notwithstanding anything in this Section to the contrary, licenses may be suspended, revoked, or terminated prior to the expiration date, pursuant to the provisions of this Chapter.
- (Ordinance 2808 § 1, 2012; Ordinance 1961 § 1 (part), 1986).

**SECTION 5.10.050: Applications**

- (A) Each application for a license shall be accompanied by an application fee, if any, set by the Board of Supervisors, and be made upon forms prescribed by the Health Officer.
- (B) Each applicant shall submit the following:
- (1) The names and addresses of the applicant(s) and the owner(s) of the ambulance(s) and the business and any interest therein.
  - (2) The applicant's training and experience in the transportation and care of patients.
  - (3) The names under which the applicant has engaged, does, or proposes to engage in ambulance service.
  - (4) A description of each ambulance including the make, model, year of manufacture, vehicle identification number, current state license number, the length of time the vehicle has been in use, and the color scheme, insignia, name, monogram, and other distinguishing characteristics of the vehicle, a description of the company's program for maintenance of the vehicle, and a description of the vehicle's radio(s).

- (5) Proof that the applicant has obtained all licenses and permits required by state or local law or regulation for the type of ambulance service proposed, excluding only a license to provide the service for which application is made.
- (6) The names and qualifications of each attendant, driver, or dispatcher employed, or to be employed, in providing ambulance service.
- (7) Proof that the applicant possesses and maintains currently valid California Highway Patrol inspection reports for each vehicle listed in the application.
- (8) A description of the company's training and orientation programs for attendants, drivers, and dispatchers.
- (9) Evidence of such financial responsibility and insurance coverage as may be required by the Health Officer pursuant to regulations adopted in accordance with this Chapter.
- (10) Identification of the geographical area to be served by the applicant, if required by the department.
- (11) As to new applications or transfers as specified in Section 5.10.040, a fingerprint receipt for each principal of the applicant, issued by the Orange County Sheriff-Coroner and indicating that each principal of the applicant has undergone a complete criminal history check, followed by a report from the Orange County Sheriff-Coroner showing no conviction of crimes that would be violations of the provisions of Section 5.10.070(D)(1), (2), (3), (4), (5), (6), or (7).
- (12) A list of all substations or offices where equipment and personnel are, or will be based, including hours of operation.
- (13) A description of whether the service proposed by the applicant will include basic life support services or advanced life support service, and, if so:
  - (a) The number of basic life support service or advanced life support service units to be deployed on each shift,
  - (b) The emergency response area(s) to receive basic life support service or advanced life support service, and
  - (c) The provisions, if any, for continuing education of attendants.
- (14) Such other information as the Health Officer may require in regulations adopted pursuant to this Chapter.

(C) Renewal applications shall be submitted in the same form and require the same materials as original applications except the requirement of Section 5.10.050(B)(11).

(Ordinance 2808 § 1, 2012; Ordinance 1961 § 1 (part), 1986).

#### **SECTION 5.10.060: Investigations**

Upon receipt of a completed application and the required fee, if any, the Health Officer shall make, or cause to be made, such investigation as the Health Officer deems necessary to determine if:

(1) The applicant is a responsible and proper person to conduct, operate or engage in the provision of ambulance services.

(2) The applicant meets the requirements of this Chapter and of other applicable law, Ordinances or regulations.

(Ordinance 2808 § 1, 2012; Ordinance 1961 § 1 (part), 1986).

#### **SECTION 5.10.070: Issuance or Denial of License**

(A) The Health Officer shall issue a license to an applicant if the Health Officer, after completing any investigation required pursuant to this Chapter, determines all requirements of this Chapter have been met and the license fee, if any, set by the Board of Supervisors, has been paid.

(B) In event of denial, the applicant shall be informed in writing of the reasons therefore.

(C) The licensee shall obtain and keep in force, during the term of a license, comprehensive automobile liability insurance and professional liability insurance issued by a company authorized to do business in the State of California, acceptable to the Health Officer, insuring the owner against loss by reason of injury or damage that may result to persons or property from negligent operation or defective construction of such ambulance or from violation of this Chapter or any other law of the State of California, or the United States. The comprehensive automobile liability policy shall be in the sum of not less than five hundred thousand dollars (\$500,000) for combined single limit, bodily injury and property damage. The professional liability insurance shall be in the sum of not less than one million dollars (1,000,000) per person and one million dollars (1,000,000) annual aggregate. Worker's Compensation Insurance shall be carried covering all employees of the license holder. Before the Health Officer shall issue a license, copies of the policies, or certificates evidencing such policies, shall be filed with the Health Officer. All policies shall contain a provision requiring a thirty (30) day notice to be given to the Department prior to cancellation, modification, or reduction in limits. The amount of comprehensive automobile liability insurance shall be subject to review and adjustment by the Health Officer pursuant to regulations adopted under this Chapter. In the use of helicopters, the equivalent insurance requirements shall apply.

- (D) Grounds for denial of a license application shall be:
- (1) Failure to meet the requirements of any provisions of the Chapter.
  - (2) Violation by any principal of an applicant of Penal Code Section 290.
  - (3) Habitual or excessive use of narcotics or dangerous drugs.
  - (4) Conviction during the preceding seven (7) years of any crime relating to the use, sale, possession, or transportation of narcotics, addictives or dangerous drugs.
  - (5) Habitual or excessive use of intoxicating beverages.
  - (6) Conviction during the preceding seven (7) years of any crime punishable as a felony in the State of California.
  - (7) Conviction of any crime involving moral turpitude, including fraud or intentional dishonesty for personal gain.
- (E) In determining the effect of any criminal acts on the issuance or denial of a license, the Health Officer shall consider whether the criminal acts are related to the activities of an ambulance service and shall evaluate the rehabilitation of the persons involved. The Health Officer shall not consider crimes of which the applicant is, or was, accused but not convicted.
- (Ordinance 2808 § 1, 2012; Ordinance 1961 § 1 (part), 1986).

**SECTION 5.10.080: License Suspension or Revocation**

- (A) The Health Officer may suspend or revoke a license for failure by the licensee to comply and maintain compliance with, or for violation of, any applicable provisions, standards, or requirements of state law or regulation of this Chapter, or of any regulations promulgated hereunder. Suspension of a license is not a condition precedent to revocation of a license.
- (B) Before suspension or revocation, the Health Officer shall give written notice to the licensee. The notice shall:
- (1) Specify the reasons for which the action is to be taken.
  - (2) Set a hearing for not more than fifteen (15) days nor less than seven (7) days after the date of the notice.
  - (3) Specify the date, time, and place of the hearing.
  - (4) Be served on the licensee either by delivery to its principal place of business or to its designated agent for service of such notices, if any.

- (C) If the licensee subsequent to service of a suspension or revocation notice under this Section remedies some or all of the conditions to which the notice refers, the Health Officer may rescind a suspension or revocation at any time.
- (D) At the hearing, the Health Officer has the burden of proof and may present evidence as to why such action should be taken and to answer the evidence present by the licensee.
- (E) The Health Officer may reduce the period of time for hearing under a suspension or revocation notice to no less than twenty-four (24) hours when the Health Officer makes written preliminary findings that such action is necessary to protect the public health, safety, and welfare. When as a result of such an emergency proceeding, a license is suspended or revoked, the licensee may request an additional hearing at which the licensee will have the burden of establishing renewed compliance justifying reinstatement of the license. Such additional hearing will be commenced within five (5) days of the licensee's request. The request for and the scheduling of an additional hearing shall not stay operation of the suspension or revocation order.
- (F) Hearings conducted pursuant to this Section shall be conducted before a Hearing Officer designated by the Department. At the conclusion of the hearing, the Hearing Officer shall expeditiously prepare a written summary of the evidence and proposed findings and conclusions for consideration by the Health Care Agency Director.
- (G) The Health Care Agency Director shall issue a written decision within thirty (30) days after conclusion of the hearing.  
(Ordinance 2808 § 1, 2012; Ordinance 1961 § 1 (part), 1986).

**SECTION 5.10.090: Appeal to Board of Supervisors**

In the event of denial, suspension, or revocation of a license, the applicant or licensee shall have the right to request a hearing before the Board of Supervisors, which hearing shall be requested and conducted in the manner specified in the County's Codified Ordinances.

(Ordinance 2808 § 1, 2012; Ordinance 1961 § 1 (part), 1986).

**SECTION 5.10.100: Notification**

The licensee shall notify the Health Officer within twenty-four (24) hours after any change in ownership or management of the licensee, or any interruption of service of more than twenty-four (24) hours duration, or any substantial change in staffing or equipment. For purposes of this Section, "substantial change" shall be as defined by regulation adopted pursuant to this Chapter.

(Ordinance 2808 § 1, 2012; Ordinance 1961 § 1 (part), 1986).

**SECTION 5.10.110: Personnel Standards**

- (A) A licensee shall only employ personnel performing tasks described in this Chapter who comply with the requirements of this Section.

- (B) Attendants shall be at least eighteen (18) years of age and trained and competent in the proper use of all equipment, and shall hold current "EMT IA" certification in compliance with all state laws, rules, and regulations. Additionally, each attendant shall hold a license from the Health Officer indicating compliance with this Section. Applications for such licenses shall be in a form required by the Health Officer and shall be accompanied by the fee, if any, established therefore. All applicants for licenses as an attendant shall be subject to the same criminal history review as required for principals of ambulance companies pursuant to this Chapter no less than once every four (4) years. Certificates may be denied, suspended, or revoked in the same form and fashion as that specified for ambulance service licenses in this Chapter. Licenses shall be valid for two (2) years from the date of issuance or certification as an emergency medical technician-1A, whichever is less. Renewal of a license shall be in the same fashion as issuance of a new license.
  - (C) Each licensee shall have at least one dispatcher. Emergency ambulance service licensees shall have a dispatcher on a twenty-four (24) hour-per-day basis and shall adequately train the dispatcher to radio operation and protocols, and to the emergency response area(s) served before the dispatcher begins dispatching emergency calls. For purposes of this Section, "adequate" training of a dispatcher shall be that which meets state standards, if any, or county requirements.
  - (D) Ambulance drivers shall, in addition to the requirements of this Chapter for attendants, maintain an appropriate license issued by the California Department of Motor Vehicles and, if applicable, the Federal Aviation Administration.
- (Ordinance 2808 § 1, 2012; Ordinance 1961 § 1 (part), 1986).

**SECTION 5.10.120: Rates**

No licensees shall charge more than those rates approved by the City Council for ambulance service.  
 (Ordinance 2808 § 1, 2012; Ordinance 1961 § (part), 1986).

**SECTION 5.10.130: Usage of Ambulance Service Licensees**

- (A) The City shall contract with licensees on a competitive basis for provision of ambulance service in response to emergencies in each emergency response area. The contracts shall provide for one primary contractor per emergency response area, with such other back- up service by other emergency ambulance service providers as deemed necessary by the City. In awarding these contracts, the City shall consider the comparative value of competing proposals in the same fashion as would be the case were the City evaluating proposals from prospective service providers for other City activities, including consideration of:
  - (1) The quality of service to be provided;
  - (2) The level of service to be provided;

- (3) The cost, if any, to the City; and
  - (4) The rates charged for services to be provided.
- (B) The Fire Chief shall administer the contracts for ambulance service awarded by the City Council under this Section. The Fire Chief shall also prepare and keep current emergency response area lists specifying contract providers for each area. The Fire Chief shall include on the list for emergency response area the provider that has entered into an ambulance service agreement with the City as the primary contractor, as well as the emergency ambulance service provider(s) who will provide back-up emergency ambulance service for that area.
- (C) In the event no proposals acceptable to the City under the provisions of this Section are received for one or more emergency response areas, the City shall designate one or more licensees in that emergency response area to provide emergency ambulance services. From the date of such designation until a regular emergency ambulance service agreement is signed for the affected area(s), provision of emergency ambulance service shall be in express condition of the license and unreasonable or unjustified refusal of such calls shall be in violation of this Chapter.
- (D) No person shall provide ambulance service in response to, or as a result of, an emergency, unless that person is a licensee specified in each instance by a physician or public safety agency. A licensee thus specified by a physician need not be a contractor selected pursuant to this Chapter. Any ambulance service operator receiving a request for emergency ambulance service from other than a public safety agency shall immediately, notify a public safety agency designated by regulation of the request by telephone.
- (E) No licensee responding to an emergency shall transport a patient unless:
- (1) A paramedic is present at the location of the patient;
  - (2) A physician is present at the location of the patient and directs transportation in the absence of a paramedic; or
  - (3) A safety-qualified employee of the City's Fire Department, or an appropriate employee of a public safety agency designated by regulation, directs transportation in the absence of a paramedic.
- (F) Unless otherwise directed by a physician present at the location of the patient, a licensee shall transport a patient pursuant to regulations adopted under Section 5.10.140.
- (Ordinance 2808 § 1, 2012; Ordinance 1961 § 1 (part), 1986).

**SECTION 5.10.140: Rules and Regulations**

- (A) As to all Sections of this Chapter except Section 5.10.130, the Health Officer shall make such rules and regulations and as may be necessary to implement this Chapter. Prior to adoption, proposed rules and regulations shall be submitted to the Orange County Emergency Medical Care Committee for comment.
- (B) As to Section 5.10.130, the Fire Chief shall make such rules and regulations and as may be necessary to implement this Chapter. Prior to adoption, the Fire Chief's rules and regulations shall be submitted to the Orange County Emergency Medical Care Committee for comment.
- (C) The Health Officer or the Fire Chief or their designee(s) may inspect the records, facilities, transportation units, equipment, and method of operations of each licensee whenever necessary and, by the Health Officer, at least annually.

(Ordinance 2808 § 1, 2012; Ordinance 1961 § 1 (part), 1986).

**SECTION 5.10.150: Complaints**

The City, the County, the Department, any user, subscriber, public safety agency, or consumer who believes, or has reason to believe, that he or another party has been required to pay an excessive charge for services, received inadequate services, or services provided were not in compliance with the provision of this Chapter, may file a written complaint with the Department setting forth such allegations. The Department shall notify the ambulance service operator of such complaint. The ambulance service operator shall file a written response within fifteen (15) calendar days after receipt of notification.

(Ordinance 2808 § 1, 2012; Ordinance 1961 § 1 (part), 1986).

**SECTION 5.10.160: Variance**

As to all but Section 5.10.130, the Health Officer may grant variances from the terms of this Chapter if he finds such action is necessary to protect the public health, safety, or welfare. As to Section 5.10.130, the Fire Chief may grant variances from the terms of this Chapter if he finds such action is necessary to protect the public health, safety, or welfare. As to the Health Officer, such variances may include the issuance of a temporary license. No variance shall exceed one hundred eighty (180) days in duration.

(Ordinance 2808 § 1, 2012; Ordinance 1961 § 1 (part), 1986).

**SECTION 5.10.170: Violation**

Violation of any provision of this Chapter by an ambulance service operator shall be a misdemeanor.

(Ordinance 2808 § 1, 2012; Ordinance 1961 § 1 (part), 1986).

## **CHAPTER 12: MASSAGE REGULATIONS\***

\*Prior Ordinance history: Ordinance Nos. 674, 714, 1307, 1995, 2290, 2464, 2611.  
Prior Code history: Prior Code Sections: 4191, 4192, 4193, 4193.1, 4194, 4195, 4196, 4196.1, 4196.2 and 4198.

### **SECTION 5.12.010: Findings and Purpose**

The City Council finds and declares as follows:

- (1) The permit requirements and restrictions imposed by this Chapter are necessary to protect the health, safety, and welfare of the citizens of the city.
- (2) The City is authorized by Government Code Section 51031 to regulate massage establishments and impose standards relative to the skills and experience of massage operators and massage technicians and the conditions of operation of the massage establishment.
- (3) There is a significant risk of injury to massage clients with certain medical conditions and this Chapter provides certain safeguards against injury and economic loss.
- (4) The restrictions and requirements contained in this Chapter reduce the burdens on the Police Department and permit the deployment of Police personnel such that more serious crimes may be prevented.
- (5) The regulations and restrictions contained in this Chapter tend to discourage massage establishments from degenerating into houses of prostitution and the means utilized in this Chapter bear a reasonable and rational relationship to the goals sought to be achieved.

(Ordinance 2808 § 1, 2012; Ordinance 2667 § 1 (part), 2005).

### **SECTION 5.12.020: Operator's Permit -- Application and Fee**

- (A) Any person desiring to establish a massage establishment shall file an application with the Police Department for an operator's permit for the establishment. An application fee shall be paid with the filing of the application.
- (B) The following shall be submitted along with the general application information:
  - (1) A complete list of names, including all aliases, and residence addresses of all proposed massage technicians and employees in the massage establishment, and the name and residence address of the manager or managing employee proposed to be principally in charge of the operation of the massage establishment;
  - (2) The following personal information concerning the applicant:

- (a) All residence addresses for the last eight (18) years of the applicant, including owners;
  - (b) Height, weight, color of hair and eyes, and sex;
  - (c) Two front-faced portrait photographs at least two inches in size taken within thirty (30) days of submission of application;
  - (d) The applicant's complete business, occupation, and employment history for eight (8) years preceding the date of application, including, but not limited to, massage and similar business history and experience of the applicant;
  - (e) The complete massage history of the applicant; whether such person has ever had any permit or license issued by any agency, board, city, county, territory, or state; the date of issuance of such permit or license, whether the permit was denied, revoked, or suspended; or if a vocational or professional license or permit was denied, revoked, or suspended, and the reasons therefore;
  - (f) All criminal convictions, including pleas of nolo contendere, within the last ten (10) years, including those dismissed or expunged pursuant to Penal Code Section 1203.4, but excluding minor traffic violations, and the date and place of each such conviction and reason therefore; and
  - (g) A complete set of fingerprints taken by the Police Department.
- (3) The name and address of the owner and lessor of the real property upon or in which the business is to be conducted. In the event the applicant is not the legal owner of the property, the application must be accompanied by a copy of the lease, and a notarized acknowledgment from the owner of the property that a massage establishment will be located on his property.
- (4) Such other identification and information as the Police Chief may require in order to discover the truth of the matters herein specified and as required to be set forth in the application.
- (5) If, during the term of the permit, the permit holder has any change in information submitted on the original or renewal application, the permit holder shall notify the Business License Division of such change in writing within ten (10) business days.
- (Ordinance 2808 § 1, 2012; Ordinance 2667 § 1 (part), 2005).

### **SECTION 5.12.030: Grounds for Denial of Operator's Permit Application**

Upon receipt of a written application for an operator's permit, the Police Chief and any other affected department shall conduct an investigation to ascertain whether the permit application should be denied for any of the following reasons:

- (1) Any person that will be directly engaged or employed in the massage establishment has been convicted or pled nolo contendere to a violation of Health and Safety Code Section 11550 or a violation of Penal Code Sections 266, 266a, 266d, 266e, 266f, 266g, 266i, 266j, 267, 309, 311.2, 311.4, 311.5, 311.6, 311.10, 313.1, 314, 315, 316, 318, 647(a), or 647(b), or has been convicted in any other state of any offense that, if committed or attempted in this state, would have been punished as one or more of the above mentioned offenses, or that any such person is required to register under Penal Code Section 290;
- (2) Any person that will be directly engaged or employed in the massage establishment has been convicted or pled nolo contendere to any felony offense involving the sale of a controlled substance specified in Health and Safety Code Section 11054, 11055, 11056, 11057, or 11058, or has been convicted in any other state, would have been punishable as one or more of the above mentioned offenses;
- (3) Any person that will be directly engaged or employed in the massage establishment has committed an act that, if done by a permittee under this Chapter, would be grounds for suspension or revocation of the permit;
- (4) Any person that will be directly engaged or employed in the massage establishment has been convicted or pled nolo contendere to an act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself, or another, to substantially injure another, or an act of violence, which act is substantially related to the qualifications, functions, or duties of the establishment;
- (5) The operations of the massage establishment would, if allowed, constitute a public nuisance, or would be detrimental to the public health, safety, or general welfare;
- (6) The applicant has made a false, misleading, or fraudulent statement of fact to the City in the permit application process;
- (7) Any person to be providing massage within the establishment fails to meet the testing or other licensing requirements of this Chapter; and
- (8) The applicant has not otherwise satisfied any applicable requirement of this Chapter.

(Ordinance 2808 § 1, 2012; Ordinance 2667 § 1 (part), 2005).

**SECTION 5.12.040: Massage Technician Permit -- Application and Fee**

No person shall perform massage within the city without obtaining a massage technician permit. Application for a massage technician permit, together with the required application fee, shall include the following:

- (1) A statement, in writing, from a licensed physician in the state that he has examined the applicant within the preceding forty-five (45) day period and believes the applicant to be free from all communicable diseases likely to be transmitted when giving a massage. Testing shall include Tuberculosis and Hepatitis A, B, and C;
- (2) All previous residence addresses of the applicant for the past eight (8) years;
- (3) Two face-front portrait photographs at least two (2) inches by two (2) inches in size taken within thirty (30) days of the application;
- (4) A complete employment history of at least the last eight (8) years including the massage business or similar business history experience of the applicant, any and all permits and licenses held and the jurisdiction and dates thereof, including but not limited to, whether or not such person, in previously performing massage services or operating a massage establishment or similar business in this city or other city under license or permit, has had such license or permit denied, revoked or suspended and the reasons therefore;
- (5) A statement as to whether the applicant has pled guilty or nolo contendere to any felony or misdemeanor, and the details of such conviction or plea provided notwithstanding that conviction may have been expunged;
- (6) A complete set of fingerprints taken by the Police Department;
- (7) Authorization for the City, its agents, and employees to seek verification of the information contained in the application;
- (8) Each applicant must furnish a diploma or certificate and a sealed certified transcript of courses taken and grades obtained from an approved school wherein the method, and anatomical and physiological knowledge and practice of massage are taught. The term "approved school" means and includes any school or institution of learning, licensed by the State of California and approved by the State Superintendent of Public Instruction within the preceding twelve (12) month period which school has for its purpose teaching of the theory, the method, profession, or work of massage technicians and which school requires a resident course of study of not less than five hundred (500) hours of progressive education. The applicant must supply a course description, an outline of material

covered, transcript, and letter to the City from the school administrator verifying completion.

The Chief of Police may consider an applicant's study of massage completed outside the state if proof of completion from a formalized course of study in massage practice, anatomy, physiology is provided upon application. Proof of completion shall include, but not be limited to, dates of study, the name of the school attended, and the address and phone number of the school attended. Any outside course of study submitted for approval shall meet the State of California's Office of Post Secondary Education's minimum requirements;

(9) Such other relevant information and identification as deemed necessary by the Police Chief; and

(10) A statement in writing dated by the applicant that he certifies under penalty of perjury that all information contained in the application is true and correct.

(Ordinance 2808 § 1, 2012; Ordinance 2667 § 1 (part), 2005).

**SECTION 5.12.050: Grounds for Denial of Massage Technician Permit**

The Police Chief shall deny a massage technician permit application for any of the following reasons:

- (1) The applicant has been convicted or pled nolo contendere to a violation of Health and Safety Code Section 11550 or a violation of Penal Code Sections 266, 266a, 266b, 266c, 266d, 266e, 266f, 266g, 266h, 266i, 266j, 267, 309, 311.2, 311.4, 311.5, 311.6, 311.10, 313.1, 314, 315, 316, 318, 647(a), or 647(b), or has been convicted in any other state of any offense that, if committed or attempted in this state, would have been punished as one or more of the above mentioned offenses, or that any such person is required to register under Penal Code Section 290;
- (2) The applicant has been convicted or pled nolo contendere to any felony offense involving the sale of a controlled substance specified in Health and Safety Code Sections 11054, 11055, 11056, 11057, or 11058, or has been convicted in any other state of any offense that, if committed or attempted in this state would have been punishable as one or more of the above mentioned offenses;
- (3) The applicant has committed an act that, if done by a permittee under this Chapter, would be grounds for suspension or revocation of the permit;
- (4) The applicant has been convicted of an act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself, or another, or to substantially injure another, or an act of violence, which act or acts are

substantially related to the qualifications, functions, or duties of a massage technician;

- (5) The applicant has knowingly made a false, misleading, or fraudulent statement of fact to the City in the permit application process;
  - (6) The permit application does not contain the required information;
  - (7) The applicant has not otherwise complied with the applicable requirement of this Chapter;
  - (8) The issuance of the permit would be contrary to the public health, safety, or general welfare; and
  - (9) The proof of satisfying the national test requirements of Section 5.12.060 has not been submitted.
- (Ordinance 2808 § 1, 2012; Ordinance 2667 § 1 (part), 2005).

**SECTION 5.12.060: National Test Requirement**

No person shall perform any massage for consideration until that person has passed a national certification through the National Certification Board for Therapeutic Massage and Bodywork. Once certified, each person performing massage shall be required to be re-certified every four (4) years and may not perform any massage until the Police Department has been provided with a current certification for the person performing the massage.

(Ordinance 2808 § 1, 2012; Ordinance 2667 § 1 (part), 2005).

**SECTION 5.12.070: Exemptions/Required Certificate of Exemption**

**Approval**

(A) Cosmetologists, barbers, or persons licensed to practice any healing art, for example doctors, osteopaths, podiatrists, chiropractors, or physical therapists are subject to exemption under this Chapter pursuant to Government Code Section 51033(A). Any person claiming an exemption shall apply for a certificate of exemption with the Police Department.

- (1) However, in no event shall any person claiming exemption under Government Code Section 51033(A) have more than two (2) massage technicians employed or otherwise retained providing massage services on the business premises.
- (B) No exemption shall be allowed for independent contractors working for chiropractors pursuant to Government Code Section 51033(b).
- (1) With regard to employees, a person claiming an employee exemption has the burden of proving a bona fide employee relationship. This obligation shall include providing payroll evidence. Such evidence shall be provided to authorized City representatives at the time of the application process. Submission of quarterly estimates or W-2 forms may be required for a

chiropractor to claim the exemption. Such information shall only be used by the City for licensing purposes.

- (C) Existing licensed persons designated in sub-part (A) above shall obtain a certificate of exemption and otherwise comply with this Section within ninety (90) days from the effective date of this Chapter.
- (D) The Police Department is authorized to develop and implement forms and declarations to document the proof of any exemption.  
(Ordinance 2808 § 1, 2012; Ordinance 2667 § 1 (part), 2005).

**SECTION 5.12.080: Massage Establishment Operational Requirements**

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

- (1) There shall be no display, storage, or use of any instruments, devices, or paraphernalia that are designed for use in connection with "specified sexual activities" as defined in the Municipal Code, including, but not limited to, vibrators, dildos, or condoms, or any goods or items that are replicas of, or that simulate, "specified anatomical areas," as defined in the Municipal Code, on the business premises.
- (2) No person providing massage services shall expose any genitals, pubic regions, buttocks, anuses, or female breasts below a point immediately above the top of the aureole to the view of the customer or patron of the establishment. All customers shall be appropriately draped with a clean opaque towel sufficient to cover their genitals, pubic regions, buttocks, anuses, or female breasts below a point immediately above the top of the aureole while receiving such services.
- (3) 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 establishment. All letters and numbers shall be capitals not less than one inch in height. No service 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 that is not used for administration of massages, baths, or health treatments, unless no other room exists in the establishment.
- (4) No massage establishment shall be kept open for business or operated between the hours of nine (9:00) p.m. and seven (7:00) a.m.
- (5) No alcoholic beverages or controlled substances shall be sold, served, furnished, kept, consumed, or possessed on the premises of any establishment.

(6) The applicant, or the applicant's designee, shall be present on the premises at all times the massage establishment is in operation.  
(Ordinance 2808 § 1, 2012; Ordinance 2667 § 1 (part), 2005)

**SECTION 5.12.090: Duration of Permits and Transfers**

- (A) No permit issued hereunder shall be transferable to any other person or establishment.
- (B) An operator and massage technician permit shall be good for and expire in twelve (12) months from date of issuance, unless renewed in conformance with the requirements of this Chapter.
- (C) Renewal applications with required application fee shall be filed with the Police Department no later than thirty days prior to the expiration of the one (1) year permit term.
- (D) Each applicant for renewal shall file such information as may be required by the Police Department.  
(Ordinance 2808 § 1, 2012; Ordinance 2667 § 1 (part), 2005).

**SECTION 5.12.100: Application to Existing Establishments and Massage Technicians**

Each owner or operator and each massage technician currently doing business in the city under current valid City permits shall conform to the licensing requirements of this Chapter within one (1) year of the Chapter's effective date.  
(Ordinance 2808 § 1, 2012; Ordinance 2667 § 1 (part), 2005).

**SECTION 5.12.110: Appeals**

- (A) The Police Chief, or his designee, shall issue a written determination citing the reasons for the denial with respect to applications for a certificate of exemption, massage establishment and massage technician licenses. The decision shall be served upon the applicant when the review has been completed. The applicant shall have fifteen (15) calendar days to appeal the decision by filing a notice of appeal with the City Clerk.
- (B) The City Manager, or his designee, shall conduct an appeal hearing on the appeal within twenty (20) business days of the filing of the appeal. A written decision on the appeal shall be prepared citing the reasons supporting the decision on appeal. The decision shall be final and binding. The appellant may thereafter seek judicial review of any adverse decision pursuant to Code of Civil Procedure Section 1094.5.  
(Ordinance 2808 § 1, 2012; Ordinance 2667 § 1 (part), 2005).

**SECTION 5.12.120: Revocation of Permit Process**

- (A) **GROUND FOR REVOCATION.** The Police Chief shall have the authority to revoke a permit issued under this Chapter for one or more of the following reasons:

- (1) The business conducted is not substantially the same as that which was permitted under the permit;
  - (2) The business is being operated in violation of any provision of the Municipal Code;
  - (3) The permit was issued under false pretenses, misleading statements, or falsified information; or
  - (4) The permittee has been convicted or pled nolo contendere to any felony or Penal Code misdemeanor as identified in Sections 5.12.030 or 5.12.050.
- (B) PROCEDURE. Upon a determination that a permittee has violated any of the above stated criteria, the Police Chief shall schedule an administrative hearing thereon. Notice of the hearing shall be provided as to the time, date, and location of the hearing. The notice shall provide the licensee with the opportunity to show cause why the permit should not be revoked. The permit may be revoked if the Police Chief can make findings that one or more of the criteria above has been violated.
- (1) A written decision shall be mailed by First Class Mail to the permittee within seven (7) days of the hearing. In the event of revocation, the licensee shall immediately cease doing business. Furthermore, the licensee shall be foreclosed from conducting any such business within the city for a period of one year.
- (C) APPEALS. The decision of the Police Chief may be appealed directly to the City Manager, or his designee, by filing a notice of appeal within ten (10) calendar days from date of the mailing of the decision. The City Manager shall then cause the hearing to be held within twenty (20) business days from date of the filing of the notice of appeal with the City Clerk.
- (1) The appeal hearing shall be held in review of the Chief's decision. The decision of the City Manager shall be in writing, citing reasons for his conclusions and mailed by First Class Mail to the permittee. This decision shall be final. The appellant may seek judicial review of his action pursuant to the Code of Civil Procedure Section 1094.5.
- (Ordinance 2808 § 1, 2012; Ordinance 2667 § 1 (part), 2005).

**SECTION 5.12.130: Enforcement Remedies**

- (A) Violations of this Chapter shall be a misdemeanor and shall be punishable as provided in Municipal Code Section 1.04.010
- (B) Injunctive relief may be instituted by the City Attorney in addition to, or separate from, criminal sanctions pursuant to Municipal Code Section 1.04.090.

(C) In addition to the above described remedies, the City Council hereby authorizes the following administrative abatement process with respect to massage business activity conducted in violation of this Chapter:

- (1) The City Council hereby finds and declares that the conducting of a massage business in violation of any provision of this Chapter to be detrimental to the public health, safety, and general welfare of the community, and therefore a public nuisance as defined by Civil Code Section 3480.
- (2) Whenever the Police Chief determines that any premises or property is operated in violation of any provision of this Chapter, he shall give notice to the responsible party stating the violation of the Chapter and the conditions that constitute a public nuisance. The notice shall set a reasonable date, not less than ten (10) business days from date of service, for a Public Hearing to be held by the City Council as to why the business should not be closed or otherwise subjected to special conditions regarding further operation of the business. The notice shall be personally served or mailed by certified mail to the responsible party.
- (3) After the conduct of the hearing by the City Council, the City Council shall make a determination as to whether a public nuisance exists. The City Council shall adopt an abatement order with written findings in support of its determination. If a public nuisance finding is made, the City Council shall issue an abatement order to close the business or otherwise impose operating conditions on the business so as to bring the business in compliance with this Chapter. The order shall then be served by First Class Mail on the responsible party.
- (4) If such nuisance is not abated as directed in the abatement order, then the City Attorney may file a civil action to enjoin further operation of the business.

(Ordinance 2808 § 1, 2012; Ordinance 2667 § 1 (part), 2005).

#### **SECTION 5.12.140: Definitions**

The following definitions of words shall apply to this Chapter:

- (1) "Applicant" shall mean the operator of the proposed massage establishment, if a sole proprietorship; each partner, if a partnership; each officer and director, if a corporation; and each participant, if a joint venture.
- (2) "Massage" means any method of treating the external parts of the body for remedial, hygienic, or any other reason or purpose, whether by rubbing, stroking, kneading, tapping, or touching parts of the body with the hand or an instrument, or by application of any substance or thing, including, but not limited to, electricity, water, oil, or alcohol, by way of

immersion, transmission, or any other procedure. "Massage" includes accupressure.

- (3) "Massage Establishment" means any business conducted within the city where any person, for money or any other consideration, administers to another person, a massage.
  - (4) "Massage Technician" means any person who administers to another person a massage in a massage establishment.
  - (5) "Massage Technician's Permit" means the permit required by any individual performing massages for any massage establishment.
  - (6) "Operator's Permit" means the permit required pursuant to the provisions of this Chapter to operate a massage establishment.
- (Ordinance 2808 § 1, 2012; Ordinance 2667 § 1 (part), 2005).

## **CHAPTER 16: REGULATION OF MASSAGE SCHOOLS**

### **SECTION 5.16.010: Findings and Intent**

- (A) This Chapter is intended to permit and regulate the specific conditions under which the activity of professional instruction of the art of massage is conducted by persons licensed and qualified to do so by the State of California within the corporate city limits.
  - (B) Notwithstanding any other provision within the Municipal Code to the contrary, the practice of massage instruction shall be deemed to be a legal permitted use within the C-1 and C-2 Zoning Districts of the city.
- (Ordinance 2808 § 1, 2012; Ordinance 2552 § 1 (part), 2001)

### **SECTION 5.16.020: Regulations Affecting Massage Schools and Massage Instruction**

- (A) **MASSAGE SCHOOL OPERATIONS.** No person, firm, or other entity, shall establish and operate a massage school without complying with the following regulations:
  - (1) The school must be certified by the State Bureau of Private Postsecondary and Vocational Education under the auspices of the State Department of Consumer Affairs;
  - (2) If the school is in any manner consolidated with any other organization or business enterprise, the massage students, student records, and curriculum shall be segregated. In the event the applicant is operating a school of cosmetology on the same premises, students from that school may be used as needed for massage training; and

- (3) At no time shall the school be operated in any manner to provide or allow massage therapy and/or instruction to any person not enrolled as a student of the school;
  - (4) School hours of operation shall occur only between 8:00 a.m. and 10:00 p.m.
- (B) MASSAGE INSTRUCTORS. No person shall conduct massage instruction without meeting the following requirements:
- (1) All instructors shall be certified by the State Bureau for Private Postsecondary and Vocational Education under the auspices of the State Department of Consumer Affairs;
  - (2) Each massage instructor must satisfy one of the following standards:
    - (a) A medical doctor licensed to practice medicine within the State of California;
    - (b) A chiropractor licensed by the State of California;
    - (c) A physical therapist certificated by a recognized school of physical therapy;
    - (d) A person with an undergraduate degree from a recognized college or university; or
    - (e) A minimum of six hundred (600) hours of training in massage therapy from a certified massage school.

(Ordinance 2808 § 1, 2012; Ordinance 2552 § 1 (part), 2001).

**SECTION 5.16.030: City Permits for Massage Schools and Massage School Instructors**

- (A) It shall be unlawful for any person, firm, or other entity to establish a massage school and/or conduct massage instruction as an instructor without obtaining a massage school and/or massage school instructors permit from the Police Chief.
- (B) Permit applications containing the requisite information for issuance of a permit shall be provided to the applicant by the Police Department.
- (C) The applicant shall provide the school certification required by this Chapter, a copy of the curriculum and a list of instructors, and a copy of the instructors' certificate as required by this Chapter at the time of submission of the application, and any other applicable information as required by the Police Department.

(D) The permit application shall be granted or denied based upon the criteria set forth in Municipal Code Section 5.12.050.  
(Ordinance 2808 § 1, 2012; Ordinance 2552 § 1 (part), 2001).

**SECTION 5.16.040: Revocation of Massage School/Massage Instructor Permits**

Revocation of Permits issued under this Chapter shall be governed by Municipal Code Sections 5.12.060-5.12.070.  
(Ordinance 2808 § 1, 2012; Ordinance 2552 § 1 (part), 2001).

**CHAPTER 20: CANVASSERS AND SOLICITORS**

**SECTION 5.20.010: Scope**

The purpose of this Chapter is to protect the public health, safety, and welfare by protecting the inhabitants of the residential areas from annoyance during the early or late hours of the day from exposure to canvassers and solicitors with propensities toward violence, rape, burglary, kidnapping, robbery, assault, theft, threats, intimidation, coercion, fraud, misrepresentation, and other acts likely to cause loss or damage to the citizen's property or likely to induce the citizen to act other than freely and voluntarily when contacted by any canvasser or solicitor.  
(Ordinance 2808 § 1, 2012; Ordinance 1449 § 1 (part), 1975).

**SECTION 5.20.020: Definitions**

The terms "canvasser" or "solicitors" as covered by this Chapter mean any person who, for himself, or as agent for another, goes from place to place and from house to house soliciting or procuring for the sale of or other disposition of any merchandise or services, or for the purpose of obtaining information of any nature whether for the purpose of selling merchandise or services or otherwise, and whether or not any moneys are advanced.  
(Ordinance 2808 § 1, 2012; Ordinance 1449 § 1 (part), 1975).

**SECTION 5.20.030: Permit Required**

No canvasser shall go from place to place or from house to house for the purpose of soliciting or procuring the sale of, or the disposition of, any merchandise whatsoever, or for the purpose of obtaining information of any nature, whether for the purpose of selling merchandise or services, or not, and whether or not any moneys are advanced on any such order or sales, without first having procured a written permit from the Police Chief, authorizing the same.  
(Ordinance 2808 § 1, 2012; Ordinance 1449 § 1 (part), 1975).

**SECTION 5.20.040: Chapter Exceptions**

The requirements of this Chapter shall not apply to:

- (1) Any person who engages in solicitation solely as an incident to the conduct of any regular retail or wholesale route, subject to the business operation tax under Chapters 5.01 through 5.08 of this Code.

- (2) Any person canvassing or soliciting business firms within the city that have paid for and received a valid business operations tax certificate.
- (3) Solicitors or canvassers for any state or federally approved nonprofit organization or corporation, nonprofit fraternal, educational, or nationally recognized youth organizations, such as the YMCA, YWCA, scouting, boys' and girls' clubs.

(Ordinance 2808 § 1, 2012; Ordinance 1449 § 1 (part), 1975).

#### **SECTION 5.20.050: Application**

Applicants for permits under this Chapter must file with the Police Chief an application in writing on a form to be furnished by the City that shall give the following information:

- (1) Name and description of the applicant;
- (2) Permanent home address and full local address of the applicant;
- (3) A brief description of the nature of the business and the goods to be sold;
- (4) If employed, the name and address of the employer;
- (5) The length of time for which the right to do business is desired;
- (6) Description of any motor vehicles that applicant proposes to use, including the license numbers, body styles, and names of registered owners;
- (7) A photograph of the applicant, taken within sixty (60) days immediately prior to the date of filing of the application, which picture shall be two (2) inches by two (2) inches showing the head and shoulders of the applicant in a clear and distinguishing manner;
- (8) The fingerprints of the applicant;
- (9) A statement as to whether or not the applicant has been convicted of any felony or misdemeanor involving moral turpitude, physical harm to any person, theft, or unlawfully obtaining of funds and property from any other;
- (10) Individuals canvassing or soliciting for the future delivery of any product or item shall be required to post with the City, or show evidence of, a bond made payable to any person suffering damage by virtue of the items or services being sold for future delivery; and
- (11) Any other information or evidence of identity and past conduct or business activity of applicant as may be required by the Police Chief.

(Ordinance 2808 § 1, 2012; Ordinance 1449 § 1 (part), 1975).

**SECTION 5.20.060: Investigation and Issuance**

- (A) Upon receipt of such application, the Police Chief shall cause an investigation to be made as deemed necessary for the protection of the public good.
  
- (B) If, as a result of such investigation, the applicant provides all required information, the Police Chief shall approve the application and a permit shall be issued, unless it is determined that the applicant has been convicted of a felony or misdemeanor involving moral turpitude, physical harm to any person, theft, or unlawfully obtaining funds and property from another person, fraud, misrepresentation or false statement, in which event, the Police Chief shall disapprove the application and no permit shall be issued.

(Ordinance 2808 § 1, 2012; Ordinance 1602 § 1, 1977; Ordinance 1449 § 1 (part), 1975).

**SECTION 5.20.070: Permit**

The permit shall contain the signature of the Police Chief, name, physical description, and photograph of permittee, the kind of goods to be sold thereunder, the date of issuance and expiration date of permit, and the words "SOLICITOR." Such permit shall, during the time such permittee is engaged in soliciting, be worn constantly by the permittee on the front of his outer garment in such a way as to be conspicuous.

(Ordinance 2808 § 1, 2012; Ordinance 1449 § 1 (part), 1975).

**SECTION 5.20.080: Revocation of Permit**

- (A) Permits issued under the provisions of this Chapter may be revoked by the Police Chief for any of the following causes:
  - (1) Fraud, misrepresentation, or false statement contained in the application for permit;
  - (2) Fraud, misrepresentation, or false statement made in the course of carrying on this business as solicitor or as canvasser;
  - (3) Any violation of this Chapter;
  - (4) Conviction of any felony or misdemeanor involving moral turpitude;
  - (5) Conducting the business of soliciting or of canvassing in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the public.
  
- (B) Notice of the hearing for revocation of the permit shall be given in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the permittee at his last known address at least five (5) days prior to the date set for hearing.

(Ordinance 2808 § 1, 2012; Ordinance 1449 § 1 (part), 1975).

### **SECTION 5.20.090: Appeal**

Any person aggrieved by the action of the Police Chief in the denial or revocation of a permit, as provided in Section 5.20.060 of this Chapter, shall have the right to appeal to the City Council. Such appeal shall be taken by filing with the City Clerk, within fourteen days after notice of the action complained of has been mailed to such person's last known address, a written statement setting forth fully the grounds for the appeal. The City Council shall set a time and place for a Public Hearing on such appeal and notice of such hearing shall be given to the appellant in the same manner as provided in Section 5.20.080 of this Chapter for notice of hearing on revocation. The decision and order of the City Council on such appeal shall be final and conclusive.

(Ordinance 2808 § 1, 2012; Ordinance 1449 § 1 (part), 1975).

### **SECTION 5.20.100: Hours of Soliciting**

Canvassing or soliciting shall be restricted to the hours of eight (8:00) a.m. to one-half hour after sunset.

(Ordinance 2808 § 1, 2012; Ordinance 1449 § 1 (part), 1975).

### **SECTION 5.20.110: Permit Processing Fee**

Each person applying for a solicitor's permit shall pay a nonrefundable processing fee established by City Council Resolution.

(Ordinance 2808 § 1, 2012; Ordinance 1856 § 2, 1984; Ordinance 1449 § 1 (part), 1975).

### **SECTION 5.20.120: Entering Posted Property**

(A) It is unlawful for any person to appear at any private residence and canvass or solicit whereon a sign bearing the words "No Solicitors," "No Solicitors or Peddlers," or words of similar import, indicating that solicitors are not wanted at such residence, is painted, fastened, or exposed to public view.

(B) The provisions of Subsection (A) shall not apply to any person who knocks at any door or rings any bell at the invitation or with the consent of some member of the household at which he so applies for admission.

(Ordinance 2808 § 1, 2012; Ordinance 1449 § 1 (part), 1975).

## **CHAPTER 22: PARADE PEDDLERS**

### **SECTION 5.22.010: Definition**

"Parade Peddler" means any person selling or offering for sale goods, wares, merchandise, or services of any kind, or food or drink, and every person soliciting for business of any kind on parade day routes.

(Ordinance 2808 § 1, 2012; Ordinance 2706 § 1 (part), 2007; Ordinance 1945 § 1 (part), 1986).

### **SECTION 5.22.020: Permit Requirement**

(A) No person shall sell or offer for sale goods, wares, or merchandise of any kind, or food or drink; or solicit for business of any kind on parade routes on parade days or parade weekends without a parade peddler's permit.

- (B) Any person desiring to obtain a permit to act as a parade peddler shall make application to the Finance Director, or his designee, upon business operation tax certificate application, as provided in Section 5.04.110 of this Code. The application shall be accompanied by the required fees and a certification that the applicant has not violated the regulations, requirements, or conditions of permit approval applicable to the peddler within three (3) years prior to the date of the application. The completed application shall be received by the Finance Director on or before the deadline established by the Finance Director for applications for the parade peddler permits associated with that parade day.
- (C) Upon receipt of a completed application, the Finance Director shall consult with law enforcement and public health and safety personnel, and such other City personnel as he believes is appropriate to assess whether any of the grounds for denial of the application under Section 5.22.022 exist.  
(Ordinance 2808 § 1, 2012; Ordinance 2706 § 1 (part), 2007; Ordinance 1945 § 1 (part), 1986).

**SECTION 5.22.022: Permit Denial -- Findings**

- (A) After consulting with law enforcement, public health and safety personnel, the Finance Director shall determine whether any of the following grounds for denial of the application exist:
- (1) The applicant has, within three (3) years prior to the date of application, violated any regulation, requirement, or condition of permit approval applicable to the peddler; or
  - (2) The applicant has otherwise acted in a manner that threatened the public health, safety, or welfare, or that disrupted the safe and orderly conduct of a parade; or
  - (3) Approval of the proposed parade peddler's permit would threaten the public health, safety, or welfare, and that threat cannot be eliminated or adequately reduced through imposition of conditions of permit approval pursuant to Section 5.22.050 below.
- (B) If the Finance Director determines that one or more of the grounds for denial of the application exists, he shall prepare written findings identifying the grounds for denial, and shall deny the permit application. Notice of denial shall be mailed to the applicant.  
(Ordinance 2808 § 1, 2012; Ordinance 2706 § 1 (part), 2007).

**SECTION 5.22.025: Permit Approval**

- (A) If the Finance Director does not make one or more of the findings set forth in Section 5.22.022, the Finance Director, or his designee, shall issue a parade peddler permit card, which card shall bear the true name of the permittee and the name of the business on behalf of which the permittee peddles. Approval

of a permit may be made subject to one or more conditions of approval required pursuant to Section 5.22.050.

- (B) Any person who violates any provision of this Chapter, or any condition of approval of the permit, shall be subject to arrest, and all goods, wares, merchandise, food, or drink shall be subject to impoundment. Except as otherwise required by law, the impounded merchandise shall, upon request, be returned to the violator following the conclusion of the parade or event. (Ordinance 2808 § 1, 2012; Ordinance 2706 § 1 (part), 2007).

**SECTION 5.22.030: Permit Fees**

The permit fees shall be established by City Council Resolution. (Ordinance 2808 § 1, 2012; Ordinance 2706 § 1 (part), 2007; Ordinance 2290 § 1 (8), 1994; Ordinance 1945 § 1 (part), 1986).

**SECTION 5.22.040: Permit Identification**

Parade peddler permit cards shall be worn conspicuously by each parade peddler at all times during the parade or event for which the permit is issued. Such cards shall not be transferable. (Ordinance 2808 § 1, 2012; Ordinance 2706 § 1 (part), 2007; Ordinance 1945 § 1 (part), 1986).

**SECTION 5.22.050: Imposition of Peddler Permit Conditions**

A peddler's permit may be conditioned to restrict the sale or provision of those items set forth in Section 5.22.010 by requiring compliance with one or more conditions:

- (1) Requiring sanitary methods of handling and serving any food or drink;
- (2) Requiring disclosure of product contents or warnings related to the product being sold;
- (3) Requiring compliance with all laws or regulations applicable to the sale or offer for sale of the offered goods, wares, or merchandise;
- (4) Requiring that, as the parade approaches and passes his position, the parade peddler shall move behind spectators or into designated turnout areas provided for that purpose, and shall not in any way interfere with the parade or the public's view and enjoyment of the parade;
- (5) Requiring compliance with the directives of law and public safety officers present on or along parade day routes to ensure the safe, sanitary, orderly, and lawful conduct of the parade peddler and/or the public; and/or
- (6) Requiring compliance with such other conditions as are necessary or appropriate in order to protect the public health, safety and welfare.

(Ordinance 2808 § 1, 2012; Ordinance 2706 § 1 (part), 2007; Ordinance 2442 § 1, 1998; Ordinance 1945 § 1 (part), 1986).

**SECTION 5.22.060: Festival Grounds -- Parade Peddlers Prohibited**

No parade peddlers shall be allowed to enter the Festival grounds to sell their wares. The grounds shall be defined as any City-owned or controlled property used for the conduct of a festival. No parade peddlers shall be allowed to enter private property to sell their wares without written consent of the owner.

(Ordinance 2808 § 1, 2012; Ordinance 2706 § 1 (part), 2007; Ordinance 1945 § 1 (part), 1986).

**SECTION 5.22.070: Appeal of Permit Denial or Permit Conditions**

Within ten (10) calendar days after the date of denial of a parade peddler's permit application or the date of imposition of one or more conditions of approval to which the applicant objects, the applicant may file a written notice of appeal with the City Clerk. The notice of appeal shall identify, by date and applicant's name, the application which was denied, or, if applicable, the condition(s) of approval to which the applicant objects, and shall state all reasons the application should be approved or the condition(s) modified. If desired, the applicant may request in the notice of appeal that the City Manager conduct a hearing on the appeal. The applicant, interested members of the public, and City personnel may present written and/or oral evidence and testimony relevant to determining whether adequate grounds exist under Section 5.22.025 for denial of the permit, or whether conditions imposed pursuant to 5.22.050 are reasonable. The technical rules of evidence applicable to court proceedings shall not apply to the hearing process. The City Manager or his designee shall consider the evidence presented, and shall either grant, conditionally grant or deny the appeal. The decision of the City Manager or his designee shall be final. Notice of the decision shall be given to the applicant at the time of the hearing, or by mail.

(Ordinance 2808 § 1, 2012; Ordinance 2706 § 1 (part), 2007).

**SECTION 5.22.080: Revocation and Confiscation of Peddler Permit**

(A) A peddler's permit may be revoked and confiscated by the City Manager, the Finance Director, or a Police Officer if any of the following occur:

- (1) The peddler sells goods of a sort or in a manner that is not permitted by the permit, or which violates any condition of approval of the permit or of vendor restrictions established in writing for such parade event; or
- (2) The peddler sells or offers for sale goods, wares, merchandise, food, or drink, of a sort, or in a manner that presents a hazard to the health or safety of the public; or
- (3) The peddler causes disruption of the parade route or to a member or members of the gathered public; or
- (4) The peddler violates any law or regulation protecting the health, safety, or welfare of the public; or

- (5) The peddler fails to comply with any directive of a Public Safety Officer or City Official intended to facilitate the conduct of the parade or otherwise protect the health, safety, and welfare of parade participants or the public.
- (B) In the event of revocation of the permit, the peddler shall cease selling or offering to sell any and all items requiring the peddler's permit. Continuation to sell or offer to sell such items after revocation of the permit shall be grounds for arrest and impoundment pursuant to Section 5.22.025.
- (C) Any permittee whose permit is revoked and confiscated may file a written request for hearing with the City Clerk within ten (10) days of the revocation of such permit. The request for hearing shall state all reasons the revocation should be overturned. The permittee, interested members of the public, and City personnel may present written and/or oral evidence and testimony relevant to determining whether adequate grounds existed for the revocation of the permit. The technical rules of evidence applicable to court proceedings shall not apply to the hearing process. The City Manager or his designee shall consider the evidence and determine whether the permit was properly revoked hereunder, or shall restore the permit to the peddler. Notice of the decision shall be given at the time of the hearing or by mail. The decision of the City Manager or his designee shall be final.
- (Ordinance 2808 § 1, 2012; Ordinance 2706 § 1 (part), 2007).

## **CHAPTER 24: CABLE TELEVISION REGULATIONS\***

Prior Ordinance history: 1771, 1797, 2028, 2158

### **SECTION 5.24.010: Intent**

- (A) **AUTHORITY.** The City of Garden Grove pursuant to applicable federal and state law is authorized to grant one or more non-exclusive franchises to construct, operate, maintain, and reconstruct cable systems within city limits.
- (B) **FINDINGS.** The City Council finds that the development of cable systems has the potential of having great benefit and impact upon the residents of the city. Because of the complex and rapidly changing technology associated with cable systems, the City Council further finds that the public convenience, safety, and general welfare can best be served by establishing regulatory powers that should be vested in the City or such persons as the City may designate. It is the intent of this Chapter and subsequent amendments to provide for and specify the means to attain the best possible cable service for the public and any franchises issued pursuant to this Chapter shall be deemed to include this as an integrated finding thereof. It is the further intent of this Chapter to establish regulatory provisions that permit the City to regulate cable system franchises to the extent permitted by federal and state law, including but not limited to the Federal Cable Communications Policy Act of 1984, the Federal Cable Television Consumer Protection and Competition Act of 1992, the

Federal Telecommunications Act of 1996, applicable Federal Communications Commission regulations and applicable State law.  
(Ordinance 2808 § 1, 2012; Ordinance 2578 § 2 (part), 2002).

**SECTION 5.24.020: Short Title**

This Chapter shall constitute the "cable system regulations" of the City of Garden Grove and may be referred to as such.  
(Ordinance 2808 § 1, 2012; Ordinance 2578 § 2 (part), 2002).

**SECTION 5.24.030: Definitions**

For the purpose of this Chapter, the following terms, phrases, words, and their derivations shall have the meaning given herein. Words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. Words not defined shall be given their common and ordinary meaning.

- (1) "Basic Cable Service" means any service tier that includes the retransmission of local television broadcast signals.
- (2) "Cable Operator" means any person or group of persons who:
  - (a) Provide cable services over a cable system and directly or through one or more affiliates owns a significant interest in such cable system; or
  - (b) Otherwise controls or is responsible for, through any arrangement, the management and operation of such cable system.
- (3) "Cable Service" means the total of the following:
  - (a) The one-way transmission to subscribers of
    - (1) Video programming; or
    - (2) Other programming service; and
  - (b) Subscriber interaction, if any, that is required for the selection of such video programming or other programming service.
- (4) "Cable System" or "System," means a facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designated to provide cable service that includes video programming and that is provided to multiple subscribers within a community, but such term does not include:
  - (a) A facility that serves only to retransmit television signals of one or more television broadcast stations;

- (b) A facility that serves subscribers without using any public rights-of-way;
  - (c) A facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Telecommunications Act of 1996, except that such facility shall be considered a cable system (other than for the purposes of Section 621(c)) 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;
  - (d) An open video system that complies with Section 635 of Title 6 of the Telecommunications Act of 1996; or
  - (e) Any facilities of any electric utility used solely for operating its electric utility systems.
- (5) "Channel" or "Cable Channel" means a portion of the electromagnetic frequency spectrum or any other means of transmission that is used in a cable system that is capable of delivering a television channel as defined by the Federal Communications Commission.
- (6) "City Council" means the City Council of the City of Garden Grove.
- (7) "Franchise" means an initial authorization, or renewal thereof, issued by the City Council, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system. Any such authorization, in whatever form granted, shall not supercede the requirement to obtain any other generally applicable, nondiscriminatory license or permit required for the privilege of transacting business within the city as required by the other generally applicable Ordinances and laws of the City.
- (8) "Franchise Agreement" means a franchise grant Ordinance or a contractual agreement containing the specific provisions of the franchise granted, including references, specifications, requirements, and other related matters.
- (9) "Franchise Fee" means any tax, fee, or assessment of any kind imposed by the City or other governmental entity on a grantee or subscriber or both as compensation for the grantee's use of the public rights-of-way. The term "franchise fee" does not include:
- (a) Any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services, but not including a tax, fee, or

assessment that is unduly discriminatory against cable operators or cable subscribers);

- (b) Capital costs that are required by the franchise to be incurred by grantee for public, educational, or governmental access facilities;
  - (c) Requirements or charges incidental to the awarding or enforcing of the franchise, including without limitation payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or
  - (d) Any fee imposed under Title 17 of the United States Code.
- (10) "Grantee" or "Franchisee" means any "person" receiving a franchise pursuant to this Chapter and under the granting franchise Ordinance or agreement, and its lawful successor, transferee, or assignee.
- (11) "Grantor" or "City" means the City of Garden Grove as represented by the City Council or any delegate acting within the scope of its jurisdiction.
- (12) "Gross Annual Cable Services Revenues" means the annual gross revenues received by a grantee from the operations of the cable system within the city to provide cable service utilizing the public rights-of-way for which a franchise is required, excluding any monies collected by the grantee from subscribers for PEG purposes pursuant to this franchise, refundable deposits, rebates, or credits, and any sales, excise, user utility taxes, or other charges imposed externally to the franchise, and collected for direct pass-through to local, state, or federal government.
- (13) "Installation" means the connection of the system to subscribers' terminals and the provision of service.
- (14) "Normal Operating Conditions" means those service conditions that are within the control of the grantee. Those conditions that are not within the control of the grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions that are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view event rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.
- (15) "Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.
- (16) "Public, Educational or Government Access Facilities" or "PEG Access Facilities" means the total of the following:

- (a) Channel capacity designated for noncommercial, public, educational, or government use; and
  - (b) Facilities and equipment for the use of such channel capacity.
- (17) "Section" means any Section, Subsection or provision of this Chapter.
- (18) "Service Area" or "Franchise Area" means the entire geographic area within the municipal boundaries of the city as it is now constituted or may in the future be constituted, unless otherwise specified in the franchise.
- (19) "Service Tier" means a category of cable service provided by the cable operator and for which a separate rate is charged.
- (20) "State" means the State of California.
- (21) "Street" or "Public Way" or "Public Rights-of-Way" means each of the following that have been dedicated to the public or hereafter dedicated to the public and maintained under public authority or by others and located within the service area: streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way, and similar public property.
- (22) "Subscriber" or "Customer" or "Consumer" means any person who or that elects to subscribe to, for any purpose, cable service provided by the grantee by means of or in connection with the cable system, and who pays the charges therefore.
- (Ordinance 2808 § 1, 2012; Ordinance 2578 § 2 (part), 2002).

**SECTION 5.24.040: Franchise Terms and Conditions**

- (A) FRANCHISE PURPOSE. A franchise granted by the City under the provisions of this Chapter shall encompass the following purposes:
- (1) To permit the grantee to engage in the business of providing cable service and such other services as may be permitted by law that grantee provides to subscribers within the designated service area.
  - (2) To permit the grantee to erect, install, construct, repair, rebuild, reconstruct, replace, maintain, and retain cable lines, related electronic equipment, supporting structures, appurtenances, and other property in connection with the operation of the cable system in, on, over, under, upon, along, and across streets or other public places within the designated service area subject to further written consent of the City as to design, placement, and location.
  - (3) To permit the grantee to maintain and operate said franchise properties for the origination, reception, transmission, amplification, distribution, and delivery of cable services.

- (4) To set forth the obligations of the grantee under the franchise.
- (B) **FRANCHISE REQUIRED.** After the effective date of this Chapter it shall be unlawful for any person to construct, install, or operate a cable system in the city within any public way without a properly granted franchise awarded pursuant to the provisions of this Chapter.
- (C) **TERM OF THE FRANCHISE.**
- (1) A franchise granted hereunder shall be for a term established in the franchise agreement commencing on the Grantor's adoption of an Ordinance or Resolution authorizing the franchise.
- (2) A franchise granted hereunder may be renewed upon application by the grantee pursuant to the provisions of applicable state and federal law.
- (D) **FRANCHISE TERRITORY.** Any franchise shall be valid within all the municipal limits of the city, and within any area added to the city during the term of the franchise, unless otherwise specified in the franchise agreement.
- (E) **FEDERAL OR STATE JURISDICTION.** This Chapter shall be construed in a manner consistent with and shall be subject to all applicable federal and state laws, and shall apply to all franchises granted or renewed after the effective date of this Chapter to the extent permitted by applicable law.
- (F) **FRANCHISE NONTRANSFERABLE.**
- (1) The grantee shall not sell, transfer, lease, assign, or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, contract, consolidation, or otherwise, the franchise or any of the rights or privileges therein granted, without the prior consent of the City Council which consent shall not be unreasonably denied, withheld or delayed. Any attempt to sell, transfer, lease, assign, or otherwise dispose of the franchise without consent of the council shall render the franchise null and void.
- (2) The requirements of Subsection (1) shall apply to any change in control of grantee. The word "control" as used herein includes majority ownership, and actual working control in whatever manner exercised. In the event that grantee is a corporation, prior consent of the City Council shall be required where ownership or control of more than thirty-five percent (35%) of the voting stock of the grantee is acquired by a person or group of persons acting in concert, none of whom own or control the voting stock of the grantee as of the effective date of the franchise, singularly, or collectively.
- (3) The grantee shall notify Grantor in writing of any foreclosure or any other judicial sale of all or a substantial part of the franchise property of the

grantee or upon the termination of any lease or interest covering all or a substantial part of said franchise property. Such notification shall be considered by Grantor as notice that a change in control or ownership of the franchise has taken place and the provisions under this Section governing the consent of the Grantor to such change in control or ownership shall apply.

- (4) For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the Grantor may inquire into the legal, technical, and financial qualifications of the prospective transferee or controlling party, and the grantee shall assist the Grantor in such inquiry. In seeking the Grantor's consent to any change of ownership or control, the grantee shall have the responsibility of insuring that the grantee and/or the proposed transferee completes an application in accordance with Federal Communications Commission Form 394 or equivalent. An application shall be submitted to the Grantor not less than one hundred twenty (120) days prior to the proposed date of transfer. If the Grantor has not taken action on the grantee's request for transfer within one hundred twenty (120) days after receiving such request, the Grantor's consent to such transfer shall be deemed given. The consent of the Grantor to such transfer shall not be unreasonably denied or delayed.
- (5) Notwithstanding anything to the contrary herein contained, no consent to transfer or change in control shall be required for any transfer to a person controlling, controlled by, or under the same common control as grantee, provided that the transferee certifies to the Grantor at the time of such transfer the transferee:
  - (a) Is duly authorized to do business in California,
  - (b) Shall assume the obligations and liabilities of the transferor with respect to the franchise,
  - (c) Is under the same operational control as the grantee, and
  - (d) Has the financial ability to provide the services, facilities, and equipment as required by the franchise agreement.
- (6) Any such certification provided shall be deemed a material provision of this agreement.

(G) GEOGRAPHICAL COVERAGE.

- (1) The grantee shall design, construct, and maintain the cable system to have the capability to pass every residential dwelling unit in the service area, subject to any service area line extension requirements of the franchise agreement.

- (2) After service has been established by activating trunk and/or distribution cables for any service area, the grantee shall provide service to any requesting subscriber within the service area within thirty (30) days from the date of request, provided that the grantee is able to secure all rights-of-way, permits, and landlord agreements necessary to extend service to such subscriber within such thirty (30) day period on reasonable terms and conditions.
- (H) NONEXCLUSIVE FRANCHISE. Any franchise granted pursuant to this Chapter shall be nonexclusive. The Grantor specifically reserves the right to grant, at any time, such additional franchises for a cable system, as it deems appropriate, subject to applicable state and federal law and the terms of any existing franchise.
- (I) MULTIPLE FRANCHISES.
- (1) The Grantor may grant any number of franchises subject to the provisions of Subsection (H) of this Section and applicable state and federal law. The Grantor may limit the number of franchises granted, based upon, but not necessarily limited to, the requirements of applicable law and specific local considerations, such as:
    - (a) The capacity of the public rights-of-way to accommodate multiple cables, conduits, and pipes to the utility systems, such as electrical power, telephone, gas, and sewerage.
    - (b) The benefits that may accrue to subscribers as a result of cable system competition, such as lower rates and improved service.
    - (c) The disadvantages that may result from cable system competition, such as requirements for multiple pedestals on residents' property, and the disruption arising from numerous excavations of the public rights-of-way.
  - (2) The Grantor may require that any new entrant, non-incumbent grantee be responsible for its own underground trenching and the costs associated therewith, if, in the Grantor's opinion, the public rights-of-way in any particular area cannot feasibly and reasonably accommodate additional cables.

(Ordinance 2808 § 1, 2012; Ordinance 2578 § 2 (part), 2002).

#### **SECTION 5.24.050: Franchise Application and Renewal**

- (A) FILING OF APPLICATIONS. Any person desiring an initial franchise for a cable system shall file an application with the City. A reasonable nonrefundable initial application fee established by the City shall accompany the initial franchise application to cover all validly documented reasonable costs associated with processing and reviewing the application, including, without limitation, costs of administrative review, financial, legal, and technical

evaluation of the applicant, consultants (including technical and legal experts and all costs incurred by such experts), notice and publication requirements with respect to the consideration of the application, and document preparation expenses. In the event such validly documented reasonable costs exceed the application fee, the selected applicant(s) shall pay the difference to the City within thirty (30) days following receipt of an itemized statement of such costs.

(B) **APPLICATIONS - CONTENTS.** An application for an initial franchise for a cable system shall contain, where applicable:

- (1) A statement as to the proposed franchise and service area;
- (2) A résumé of prior history of the applicant including the expertise of applicant in the cable system field;
- (3) A list of the partners, general and limited, of the applicant, if a partnership, or the percentage of stock owned or controlled by each stockholder having a five percent (5%) or greater interest, if a corporation;
- (4) A list of officers, directors, and managing employees of the applicant, together with a description of the background of each such person;
- (5) The names and addresses of any parent or subsidiary of the applicant or any other business entity owning or controlling the applicant in whole or in part, or owned or controlled in whole or in part by the applicant;
- (6) A current financial statement of the applicant verified by a certified public accountant audit or otherwise certified to be true, complete, and correct to the reasonable satisfaction of the City;
- (7) A proposed construction and service schedule; and
- (8) Any reasonable relevant additional information that the City deems applicable.

(C) **CONSIDERATION OF INITIAL APPLICATIONS.**

- (1) Upon receipt of any application for an initial franchise, the City Manager or a delegate shall prepare a report and make recommendations respecting such application to the City Council.
- (2) A Public Hearing shall be set prior to an initial franchise grant, at a time and date approved by the City Council. Within sixty (60) days after the close of the hearing, the City Council shall make a decision based upon the evidence received at the hearing as to whether or not the initial franchise(s) should be granted, and, if granted, subject to what

conditions. The City Council may grant one or more franchises, or may decline to grant any franchise.

- (D) **FRANCHISE RENEWAL.** Franchise renewals shall be in accordance with applicable law. The Grantor and grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the franchise. (Ordinance 2808 § 1, 2012; Ordinance 2578 § 2 (part), 2002).

**SECTION 5.24.060: Minimum Consumer Protection and Service Standards**

(A) **OPERATIONAL STANDARDS.**

- (1) Except as otherwise provided in the franchise agreement, the grantee shall maintain the necessary facilities, equipment, and personnel to comply with the following consumer protection and service standards under normal operating conditions:
- (a) Sufficient toll-free telephone line capacity during normal business hours to assure that telephone answer time by a customer service representative, including wait time, shall not exceed thirty (30) seconds; and callers needing to be transferred shall not be required to wait more than thirty (30) seconds before being connected to a service representative. Under normal operating conditions, a caller shall receive a busy signal less than three (3%) percent of the time.
  - (b) Emergency toll-free telephone line capacity on a twenty-four (24) hour basis, including weekends and holidays. After normal business hours, the telephone calls may be answered by a service or an automated response system, including an answering machine. Calls received after normal business hours must be responded to by a trained company representative on the next business day. During periods when an answering service or machine is used, the grantee shall provide on-call personnel who shall contact the answering service or machine, at a minimum, every four (4) hours to check on requests for service or complaints.
  - (c) A conveniently located local business and service and/or payment office open during normal business hours where the grantee provides adequate staffing to accept subscriber payments and respond to service requests and complaints. Normal business hours shall include some evening hours, at least one night per week, and/or some weekend hours. The grantee may petition the Grantor to reduce its business hours if the extended hours are not justified by subscriber demand, and Grantor may not unreasonably deny the petition.
  - (d) An emergency system maintenance and repair staff, capable of responding to and repairing major system malfunction on a twenty-four (24) hour per day basis.

- (e) An installation staff, capable of installing service to any subscriber requiring a standard installation within seven (7) days after receipt of a request, in all areas where trunk and feeder cable have been activated. "Standard installations" shall be those that are located up to one hundred twenty-five (125) feet from the existing distribution system, unless otherwise defined in any franchise agreement.
  - (f) The grantee shall schedule, within a specified four (4) hour time period during normal business hours, all appointments with subscribers for installation of service, service calls, and other activities at the subscriber location. The grantee may schedule installation and service calls outside of normal business hours for the express convenience of the customer. The grantee shall not cancel an appointment with a customer after the close of business of the business day prior to the scheduled appointment. If a grantee representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer shall be contacted and the appointment rescheduled, as necessary, at a time that is convenient for the customer.
- (2) Under normal operating conditions, the standards of paragraphs (1)(A)-(1)(B) above shall be met not less than ninety percent (90%) of the time measured on a quarterly basis. The standards of paragraphs (1)(D)-(1)(F) above shall be met not less than ninety-five percent (95%) of the time measured on a quarterly basis.
  - (3) The grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless a historical record of complaints indicates a clear failure to comply.

(B) SERVICE STANDARDS.

- (1) The grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled interruptions, insofar as possible, shall be preceded by notice and shall occur only during a period of minimum use of the cable system, preferably between midnight and six (6:00) a.m. local time.
- (2) The grantee shall maintain a repair force of technicians normally capable of responding to subscriber requests for service within the following time frames:
  - (a) For a system outage: within two (2) hours, including weekends, of receiving subscriber calls or requests for service that, by number, identify a system outage of sound or picture of one or more channels

affecting at least ten percent (10%) of the subscribers of the system.

- (b) For an isolated outage: within twenty-four (24) hours, including weekends, of receiving requests for service identifying an isolated outage of sound or picture for one or more channels that affects five (5) or more subscribers. On weekends, an outage affecting fewer than five (5) subscribers shall result in a service call no later than the next business day.
- (3) The grantee shall be deemed to have responded to a request for service under the provisions of this Section when a technician arrives at the service location and begins work on the problem. In the case of a subscriber not being home when the technician arrives, the technician shall leave written notification of arrival.
- (4) The grantee shall not charge for the repair or replacement of defective or malfunctioning equipment provided by grantee to subscribers, unless the defect was caused by the subscriber, or the equipment owned by the subscriber requires repair or replacement.

(C) BILLING AND INFORMATION STANDARDS.

- (1) Subscriber bills shall be clear, concise, and understandable. Bills shall be fully itemized with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills shall also clearly delineate all activity during the billing period, including optional charges, rebates, and credits.
- (2) In case of a billing dispute, the grantee shall respond to a written complaint from a subscriber within thirty (30) days.
- (3) The grantee shall, upon request, provide credits or refunds to such subscribers whose service has been interrupted for four (4) consecutive hours or more. In the event that the grantee has improperly or inadvertently disconnected cable services to a subscriber, the grantee shall provide for restoration without charge to subscriber as soon as possible, but no later than within two (2) days of discovery of the disconnection. The grantee shall, upon request, credit to any subscriber improperly or inadvertently disconnected from receiving cable services for the period of time without cable service. All credits and refunds for service shall be issued no later than the customer's next billing cycle following the determination that the credit is warranted. For subscribers terminating service, refunds shall be issued promptly, but no later than thirty (30) days after the return of grantee-supplied equipment.

- (4) The grantee shall provide written information on each of the following areas at the time of the installation of service, at least annually to all subscribers, and at any time upon request:
  - (a) Products and services offered;
  - (b) Prices and options for programming services and conditions of subscription to programming and other services;
  - (c) Installation and service maintenance policies;
  - (d) Channel positions of programming carried on the system; and
  - (e) Billing and complaint procedures, including the address and telephone number of the Grantor office designated for dealing with cable-related issues.
- (5) Subscribers shall be notified of any changes in rates, programming services, or channel positions as soon as possible in writing and in accordance with state and federal law. Notice must be given to subscribers a minimum of thirty days in advance of such changes if the change is within the control of the grantee. In addition, the grantee shall notify subscribers thirty (30) days in advance of any material changes in the information required in Subsection (C)(4) of this Section.

(D) VERIFICATION OF COMPLIANCE WITH STANDARDS.

- (1) Upon thirty (30) days prior written notice, the grantee shall respond to a request for information made by the Grantor regarding the grantees compliance with any or all of the standards required in Subsections (A), (B), or (C) of this Section. The grantee shall provide reasonably sufficient documentation to permit the Grantor to verify grantees compliance.
- (2) A repeated and verifiable pattern of non-compliance with the consumer protection standards of Subsections (A) through (C) of this Section, after the grantee's receipt of due notice and a reasonable opportunity to cure, may be deemed a material breach of the franchise agreement.
- (3) Should the grantee have its own telephone equipment that can report on telephone line(s) usage, the grantee, upon request of the Grantor, shall submit such report from its own system. The Grantor, pursuant to Subsection (A)(3) of this Section may require the grantee to acquire equipment to determine compliance with the telephone answering standards of that Section.
- (4) The grantee shall take necessary steps to ensure that adequate telephone lines and/ or staffing are available to permit grantee to satisfy its obligations under this Chapter and the franchise. Consideration shall be

given for periods of promotional activities or outages. The monthly billing period shall be considered as a normal, daily activity for purposes of determining the availability of adequate telephone lines and/or staffing.

(E) SUBSCRIBER COMPLAINTS AND DISPUTES.

- (1) The grantee shall establish written procedures for receiving, acting upon, and resolving subscriber complaints without intervention by the Grantor. The written procedures shall prescribe the manner in which a subscriber may submit a written complaint specifying the subscriber's grounds for dissatisfaction. Upon request, the grantee shall file a copy of these procedures with the Grantor. The written procedures shall include a requirement that the grantee respond to any written complaint from a subscriber within thirty (30) days of receipt.
- (2) Upon prior written request, the Grantor shall have the right to review the grantee's response to any subscriber complaints in order to determine the grantee's compliance with the franchise requirements, subject to the subscriber's right to privacy.
- (3) Subject to applicable law, it shall be the right of all subscribers to continue receiving cable services insofar as their financial and other obligations to the grantee are honored.
- (4) In the event of a change in control of the grantee, or in the event a new operator acquires the system, the original grantee shall cooperate with the Grantor, the new grantee, or the operator in maintaining continuity of service to all subscribers. During such period, the grantee shall be entitled to the revenues for any period during which it operates the system.
- (5) The grantee response to subscriber complaints, as well as complaints made by subscribers to the Grantor and provided by the Grantor to the grantee, shall be initiated within one business day of receipt by the Grantor under normal operating conditions. The resolution of subscriber complaints shall be effected by the grantee not later than three (3) business days after receipt of the complaint. Should a grantee supervisor not be available when requested by a subscriber, a supervisor shall respond to the subscriber's complaint at the earliest possible time, and in no event later than the end of the next business day. For complaints received by the Grantor and provided by the Grantor to the grantee, the grantee shall notify the Grantor of the grantee's progress in responding to, and resolving, said complaints.

(F) OTHER REQUIREMENTS.

- (1) In the event the grantee fails to operate the system for seven (7) consecutive days other than for reasons beyond the control of the grantee, without prior approval or subsequent excuse of the Grantor, the

Grantor may, at its sole option, operate the system or designate an operator until such time as the grantee restores service under conditions acceptable to the Grantor or a permanent operator is elected. If the Grantor should fulfill this obligation for the grantee, then, during such period as the Grantor fulfills such obligation, the Grantor shall be entitled to collect all revenues from the system, and the grantee shall reimburse the Grantor for all reasonable costs or damages in excess of the revenues collected by the Grantor that are the result of the grantee's failure to perform.

- (2) All officers, agents, and employees of the grantee or its contractors or subcontractors who, in the normal course of work, come into contact with members of the public or who require entry onto subscribers' premises shall carry a photo-identification card. The grantee shall account for all identification cards at all times. Every vehicle of the grantee or its major subcontractors shall be clearly identified as working for the grantee.
- (3) Subject to applicable law, additional service standards and standards governing consumer protection and response by the grantee to subscriber complaints not otherwise provided for in this Chapter may be established in the franchise agreement or by separate Ordinance, to the extent expressly permitted by the franchise agreement. A verified and continuing pattern of repeated and substantial noncompliance may be deemed a material breach of the franchise, provided that the grantee shall receive due process, including prior written notification and a reasonable opportunity to cure, prior to any sanction being imposed.

(Ordinance 2808 § 1, 2012; Ordinance 2578 § 2 (part), 2002).

#### **SECTION 5.24.070: Franchise Fee and Financial Requirements**

##### **(A) FRANCHISE FEE.**

- (1) Following the issuance and acceptance of the franchise, the grantee shall pay to the Grantor a franchise fee on gross annual revenues in the amount and at the times set forth in the franchise agreement.
- (2) The Grantor, on an annual basis, shall be furnished a statement within one hundred twenty (120) days of the close of the calendar year, either audited and certified by an independent certified public accountant or certified by an officer of the grantee, reflecting the total amounts of gross revenues for the period covered by the payment. Within three (3) years of the payment of any franchise fee and upon thirty (30) days prior written notice, the Grantor shall have the right to conduct an independent financial audit of the grantee's gross annual revenue and franchise fee records, in accordance with Generally Accepted Accounting Procedures (GAAP), and if such audit indicates a franchise fee underpayment of four (4%) percent or more, the grantee shall assume all reasonable documented costs of such audit.

- (3) Except as otherwise provided by law and subject to the right to audit within three (3) years of the payment of any franchise fee, no acceptance of any payment by the Grantor shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for further or additional sums payable as a franchise fee under this Chapter or for the performance of any other obligation of the grantee.
- (4) In the event that any franchise fee payment or payment of any adjustment to any franchise fee is not made on or before the dates specified in the franchise agreement, unless otherwise excused, the grantee shall pay an interest charge, computed from such due date, at an annual rate of ten percent (10%).
- (5) Franchise fee payments shall be made in accordance with the schedule indicated in the franchise agreement.

(B) SECURITY FUND.

- (1) The Grantor may require the grantee to provide a security fund, in an amount and form established in the franchise agreement. The amount of the security fund shall be established based on the extent of the grantee's obligations under the terms of the franchise.
- (2) The security fund shall be available to the Grantor to satisfy all claims, liens and/or taxes due to the Grantor from the grantee that arise by reason of construction, operation, or maintenance of the system, and to satisfy any actual or liquidated damages arising out of material breach of the franchise agreement, subject to procedures, and amounts designated in the franchise agreement.
- (3) If the security fund is drawn upon by the Grantor in accordance with the procedures established in this Chapter and the franchise agreement, the grantee shall cause the security fund to be replenished to the original amount no later than thirty (30) days after receiving written confirmation from the bank where such security fund is deposited that the Grantor has made a draw against the security fund. Failure to replenish the security fund shall be deemed a material breach of the franchise.

(Ordinance 2808 § 1, 2012; Ordinance 2578 § 2 (part), 2002).

**SECTION 5.24.080: Construction Requirements**

**SYSTEM CONSTRUCTION.**

- (1) The grantee shall not construct any cable system facilities until the grantee has secured the necessary permits from the Grantor, or other responsible public agencies. The grantee shall be subject to all permit and bonding requirements generally applicable to contractors working within the public rights-of-way. No provision of this Chapter or the franchise agreement shall be deemed a waiver of the obligation of a grantee to pay

the Grantor generally applicable, non -discriminatory fees for the issuance of a permit.

- (2) In those areas of the city where transmission lines or distribution facilities of the public utilities providing telephone and electric power service are underground, the grantee likewise shall construct, operate, and maintain its transmission and distribution facilities underground.
- (3) In those areas of the city where the grantee's cables are located on the above-ground transmission and distribution facilities of the public and/or municipal utility providing telephone or electric power services, and in the event that the facilities of both the telephone and electric power utilities subsequently are placed underground, then the grantee likewise shall reconstruct, operate, and maintain its transmission and distribution facilities underground, at the grantee's cost unless the Grantor reimburses any person for such undergrounding, in which event the grantee shall be similarly reimbursed. Certain of grantee's equipment, such as pedestals, amplifiers and power supplies that normally are placed above ground, may continue to remain in above-ground enclosures, unless otherwise provided in the franchise agreement.
- (4) Any changes in or extensions of any poles, anchors, wires, cables, conduits, vaults, laterals, or other fixtures and equipment (herein referred to as "structures"), or the construction of any additional structures, in, upon, along, across, under, or over the streets, alleys and public ways shall be made under the direction of the Public Works Director or a designee, who shall, if the proposed change, extension, or construction conforms to the provisions hereof, issue written permits therefore. The height above public thoroughfares of all aerial wires shall conform to the requirements of the California regulatory body having jurisdiction thereof.
  - (a) All transmission and distribution structures, lines, and equipment erected by the grantee shall be located so as not to interfere with the proper use of the public rights-of-way, and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said public rights-of- way, and not to materially interfere with existing public and municipal utility installations.
  - (b) In the event that any property or improvement of the Grantor in the public rights-of-way is disturbed or damaged by the grantee or any of its contractors, agents, or employees in connection with undertaking any and all work pursuant to the rights granted to the grantee pursuant to this Chapter and the franchise agreement, the grantee shall promptly, at the grantee's sole cost and expense, restore to the Grantor's satisfaction said property or improvement that was so disturbed or damaged. If such property or improvement shall within two (2) years (or in the case of street improvement,

until the street is resurfaced, if resurfaced prior to the expiration of two (2) years) of the date the restoration was completed, become uneven, unsettled, or otherwise require additional restorative work, repair, or replacement because of the initial disturbance or damage of the property by the grantee, then the grantee, as soon as reasonably possible, shall, promptly upon receipt of written notice from the Grantor and at the grantee's sole cost and expense, restore to Grantor's reasonable satisfaction said property or improvement that was disturbed or damaged. Any such restoration by the grantee shall be made in accordance with the Grantor's generally applicable standards.

- (c) Prior to commencing any work on the system in the public rights-of-way, the grantee shall obtain any and all generally applicable non-discriminatory permits, licenses, and authorizations lawfully required for such work. If emergency work on the system in the public right-of-way is required, the grantee shall, with all due diligence, seek to obtain any and all such required permits, licenses, and authorizations within three (3) working days after commencing such emergency work. Prior to performing any work in the public right-of-way, the grantee shall give appropriate notice to the Underground Service Alert (USA), or any similar type service provider.
- (d) There shall be no unreasonable or unnecessary obstruction of the public rights-of-way by the grantee in connection with any of the work provided for herein. The grantee shall maintain any barriers, signs, and warning signals during any work performed on or about the public rights-of-way or adjacent thereto as may be necessary to reasonably avoid injury or damage to life or property.
- (e) If the Grantor lawfully elects to alter or change the grade or location of any public right-of-way, the grantee, in concert with other users of the rights-of-way, shall, upon reasonable notice by the Grantor, and in a timely manner, remove, relay, and relocate its poles, wires, cables, underground conduits, manholes, and other fixtures at its own expense. If the Grantor reimburses any person for such relocation, the grantee shall be similarly reimbursed.
- (f) The grantee shall not place poles, conduits, or other fixtures above or below ground where the same will unreasonably interfere with any existing gas, electric, telephone fixtures, water hydrants, or other utility, and all such poles, conduits, and other fixtures placed in any street shall be so placed as to comply with all generally applicable Ordinances of the Grantor.
- (g) The grantee, on request of any person holding a moving permit issued by the Grantor, shall temporarily raise or lower its wires or fixtures to permit the moving of buildings. The expense of such

temporary raising or lowering of wires or fixtures shall be paid by the person requesting the same, and the grantee shall have the authority to require payment in advance. The grantee shall be given not less than five (5) business days prior written notice to arrange for the temporary wire or equipment changes.

- (h) Subject to provisions of the Municipal Code, the grantee shall have all authority to trim any trees or other natural growth overhanging the public rights-of-way so as to prevent the branches of such trees or other natural growth from coming into contact with the grantee's wires, cables, and other equipment. The Grantor may require all trimming of trees and natural growth to be done under its supervision and direction, at the expense of the grantee.
- (i) The Grantee shall be subject to any and all generally applicable, reasonable requirements established by the Grantor with regard to the placement, location, size, color, design and screening of grantee's facilities and equipment located in the public rights-of-way. In establishing such requirements, the Grantor shall in good faith take into account, but shall not be bound by, practices common to the industry. Such requirements may include, but not be limited to, use of landscaping to screen pedestals and cabinets and requiring that construction be flush with the natural grade of the surrounding area.

(Ordinance 2808 § 1, 2012; Ordinance 2578 § 2 (part), 2002).

#### **SECTION 5.24.090: Technical Standards**

##### **APPLICABLE TECHNICAL STANDARDS.**

- (1) The grantee shall operate and maintain its cable system in a manner consistent with the Federal Communications Commission (FCC) technical standards. In addition, the grantee shall provide to the Grantor, upon written request, a written report of the results of the grantee's periodic proof of performance tests conducted pursuant to FCC and franchise standards and guidelines.
- (2) Should the FCC no longer require proof of performance tests, the grantee shall make and submit proof of performance or like tests and reports in response to a written request from the Grantor documenting substantiated complaints from subscribers. Such report shall be submitted to the Grantor within thirty (30) days of issuance of the Grantor request.

(Ordinance 2808 § 1, 2012; Ordinance 2578 § 2 (part), 2002).

#### **SECTION 5.24.100: Indemnification and Insurance Requirements**

- (A) **HOLD HARMLESS.** The grantee shall indemnify, defend and hold the Grantor, its officers, agents, and employees harmless from any liability, claims, damages, costs, or expenses, to the extent provided in the franchise agreement.

(B) INSURANCE.

- (1) On or before commencement of franchise operations, the grantee shall furnish to the Grantor certificates of insurance for liability, workers' compensation, and property insurance from insurance companies with an AM Best insurance rating of A- or better, which shall be "admitted" in the State of California. The certificates of insurance shall provide that the insurance is in force and will not be cancelled or modified without thirty (30) days prior written notice to the Grantor. The certificates of insurance shall be issued on the industry standard form. The grantee shall maintain at its cost throughout the term of the franchise, the insurance required herein and in the franchise agreement.
- (2) The policy of commercial general liability insurance shall:
  - (a) Include the Grantor, its officers, agents, and employees as additional insureds;
  - (b) Indemnify for all liability from personal and bodily injury, death and damage to property arising from activities conducted and premises used pursuant to this Chapter by providing coverage therefore, including but not limited to negligent acts or omissions of the grantee, and its agents, servants, and employees, committed in the conduct of franchise operations; and
  - (c) Provide a combined single limit for bodily injury and property damage in the amount provided for in the franchise agreement.
- (3) Commercial automobile liability shall provide a combined single limit for bodily and property damage in the amount provided for in the franchise agreement that includes the Grantor, its officers, agents, and employees as additional insureds.
- (4) The policy of workers' compensation insurance shall comply with the laws of the State of California.
- (5) The policy of property insurance shall provide fire insurance with extended coverage on the franchise property used by the grantee in the conduct of franchise operations in an amount equal to the replacement cost value that will enable the grantee to resume franchise operations following occurrence of any risk covered by the insurance.
- (6) The certificate of insurance shall include the following information:
  - (a) The policy number;

- (b) The date upon which the policy will become effective and the date upon which it will expire;
  - (c) The names of the primary insureds and any additional insureds required by the franchise agreement;
  - (d) The subject of the insurance (aka certificate holder);
  - (e) The type of coverage provided by the insurance; and
  - (f) The amount or limit of coverage provided by the insurance.
  - (g) If the certificates of insurance do not provide all of the above information, the Grantor reserves the right to inspect the relevant insurance policies.
- (7) The commencement of franchise operations shall not begin until the grantee has complied with the aforementioned provisions of this Section.
- (8) In the event the grantee fails to maintain any of the above-described policies in full force and effect, the Grantor shall, upon ten (10) days written notice to the grantee, have the right to procure the required insurance and recover the cost thereof from the grantee. The Grantor shall also have the right to suspend the franchise during any period that the grantee fails to maintain said policies in full force and effect. In order to account for increases in consumer prices, no more than once during any five (5) year period, the Grantor shall have the right to order the grantee to increase the amounts of the insurance as provided in the franchise agreement to reflect increases in the Consumer Price Index. Such order may be made by the Grantor after conducting a duly noticed Public Hearing.

(Ordinance 2808 § 1, 2012; Ordinance 2578 § 2 (part), 2002).

#### **SECTION 5.24.110: Records and Reports**

##### **(A) RECORDS REQUIRED.**

- (1) The grantee shall at all times maintain:
  - (a) A written or computer-stored record of all service calls and interruptions or degradation of service experienced for the previous two (2) years, provided that such complaints result in or require a service call, subject to the subscriber's right of privacy.
  - (b) A set of plans showing the location of trunk and feeder of the cable system installed or in use in the city, exclusive of subscriber service drops and equipment provided in subscriber's homes.

- (c) If requested by the Grantor, a summary of service calls, identifying the number, general nature, and disposition of such calls, on a quarterly basis. A summary of such service calls shall be submitted to the Grantor within thirty (30) days following any written request by the Grantor, in a form reasonably acceptable to the Grantor and prepared by the grantee in the ordinary course of business.
- (2) Upon reasonable advance written notice, and during normal business hours, the grantee shall permit examination by any duly authorized representative of the Grantor of all:
- (a) Franchise property and facilities, together with any appurtenant property and facilities of the grantee situated within the service area; and
  - (b) Records relating to the franchise, provided they are necessary to enable the Grantor to determine the grantee's compliance with the material terms of this Chapter or the franchise. The grantee shall have the right to be present at any such examination.
- (B) REPORTS.
- (1) Within ninety (90) days after the end of the calendar year, the grantee shall submit a written report to the Grantor with respect to the preceding calendar year including the following information:
- (a) A summary of the previous year's (or in the case of the initial reporting year, the initial year's) activities in development of the cable system, including but not limited to, services begun or discontinued during the reporting year;
  - (b) A list of the grantee's officers and members of its board of directors if there have been any changes since the last filing;
  - (c) A list of stockholders or other equity investors holding five percent (5%) or more of the voting interest in the grantee if there has been any change since the last filing;
  - (d) Information as to:
    - (1) The number of homes passed,
    - (2) Total subscribers, and
    - (3) The number of basic subscribers.
  - (e) A set of plans showing the location of trunk and feeder cable of the cable system installed or in use in the city, exclusive of subscriber

service drops and equipment provided in subscriber's homes. After the initial submission of a set of drawings, the grantee may satisfy the provisions of this Section by providing updated portions of those sections of the drawings that have changed.

- (2) Information otherwise confidential by law, and so designated by the grantee, which is submitted to the Grantor, shall be retained in confidence by the Grantor and its authorized agents and shall not be made available for public inspection unless disclosure is required by applicable law. To the extent possible, the grantee may provide the Grantor with summaries of any required documents or copies thereof with trade secrets and proprietary matters deleted therefrom. The burden of proof shall be on the grantee to establish the confidential nature of any information submitted, to the reasonable satisfaction of the Grantor.
- (3) The willful refusal, failure, or willful negligence of the grantee to file any of the material required as and when due under this Chapter, may be deemed a material breach of the franchise agreement if such reports are not provided to the Grantor within thirty (30) days after written request therefore, and may subject the grantee to all remedies, legal and equitable, which are available to the Grantor under this Chapter or the franchise agreement.
- (4) Any materially false or misleading statement or representation made knowingly and willfully by the grantee in any report required under this Chapter or under the franchise agreement may be deemed a material breach of the franchise and may subject the grantee to all remedies, legal, or equitable, which are available to the Grantor.

(Ordinance 2808 § 1, 2012; Ordinance 2578 § 2 (part), 2002).

#### **SECTION 5.24.120: Review and System Performance**

##### **(A) PERIODIC REVIEW.**

- (1) Every five (5) years throughout the term of the franchise, if reasonably requested by prior written notice from the Grantor, the Grantor and the grantee shall meet publicly to review system performance and quality of service. The various reports required pursuant to this Chapter, results of technical performance tests, the record of subscriber complaints and the grantee's response to those complaints, and the information acquired in any subscriber surveys, shall be utilized as the basis for review. In addition, any subscriber may submit comments or complaints during review meetings, either orally or in writing, and these shall be considered. Within thirty (30) days after the conclusion of such a review meeting, the Grantor may issue findings with respect to the cable system's franchise compliance and quality of service.
- (2) If the Grantor determines that the grantee is not in compliance with the material requirements of this Chapter or the grantee's franchise

agreement, the Grantor shall provide the grantee, in the form of written findings, the specific details of each alleged noncompliance. The Grantor may then direct the grantee to correct the areas of noncompliance within a reasonable period of time. Failure of the grantee, after due notice, to:

- (a) Correct the area(s) of noncompliance within the period specified therefore;
- (b) Commence compliance within such period and diligently achieve compliance thereafter; or
- (c) Demonstrate that the allegations of noncompliance are incorrect; shall be considered a material breach of the franchise; and the Grantor may exercise any remedy within the scope of this Chapter and the franchise agreement considered appropriate under the circumstances.

(B) SPECIAL REVIEW. When there have been extensive complaints made or where there exists other demonstrative evidence that, in the reasonable judgment of the Grantor, casts reasonable doubt on the reliability or quality of cable service to the effect that the grantee is not in compliance with the material requirements of this Chapter or its franchise, the Grantor shall have the right to compel the grantee to test, analyze, and report on the performance of the cable system in order to protect the public against substandard cable service. The Grantor may not compel the grantee to provide such tests and reports unless and until the Grantor has provided the grantee with at least thirty (30) days prior written notice of its intention to exercise its rights under this Subsection and has provided the grantee with an opportunity to be heard prior to the exercise of such rights. Such test or tests shall be made and the report shall be delivered to the Grantor no later than thirty (30) days after the Grantor notifies the grantee in writing that it is exercising such right, and shall be made at the grantee's sole cost if the results demonstrate that the grantee has failed to meet FCC technical standards. If the results demonstrate that the grantee's system meets FCC technical standards, the Grantor shall be responsible for the costs. Such report shall include the following information: the nature of the complaints that precipitated the special tests, what system component was tested, the equipment used and procedures employed in said testing, the results of such tests, and the method by which such complaints were resolved. Any other information pertinent to the special test shall be recorded.

(Ordinance 2808 § 1, 2012; Ordinance 2578 § 2 (part), 2002).

#### **SECTION 5.24.130: Franchise Violations**

(A) REMEDIES FOR VIOLATIONS. If the grantee fails to perform in a timely manner any material obligation required by this Chapter or the franchise granted hereunder, following reasonable written notice from the Grantor and a reasonable opportunity to cure such nonperformance in accordance with the

provisions of this Section and the franchise, the Grantor may at its option and in its sole discretion:

- (1) Cure the violation and recover the actual cost thereof from the security fund established in the franchise agreement if such violation is not cured within thirty (30) days after written notice to the grantee of the Grantor's intention to cure and draw upon the security fund;
  - (2) Assess against the grantee liquidated damages in an amount set forth in the franchise agreement for any such violation(s) if such violation is not cured, or if the grantee has not commenced a cure within thirty (30) days after written notice to the grantee of the Grantor's intention to assess liquidated damages. Such assessment may be withdrawn from the security fund, and shall not constitute a waiver by the Grantor of any other right or remedy it may have under the franchise or applicable law, including without limitation, its right to recover from the grantee such additional damages, losses, costs, and expenses, including reasonable attorney's fees, as may have been suffered or incurred by the Grantor by reason of or arising out of such material breach of the franchise. In no event shall the foregoing be construed to permit a double recovery by the Grantor for the same violation.
- (B) PROCEDURE FOR REMEDYING FRANCHISE VIOLATIONS. Prior to imposing any remedy or other sanction against the grantee specified in this Chapter, the Grantor shall give grantee written notice and opportunity to be heard on the matter, in accordance with the following procedures:
- (1) The Grantor shall first notify the grantee of the alleged violation in writing by personal delivery or registered or certified mail, and demand correction, or evidence of non-violation, within a reasonable time that shall not be less than fifteen (15) business days in the case of the failure of the grantee to pay any undisputed sum or other amount due the Grantor under this Chapter or the grantee's franchise, and thirty (30) business days in all other cases. If the grantee fails to:
    - (a) Correct the alleged violation within the time prescribed;
    - (b) Commence correction of the alleged violation within the time prescribed and diligently remedy such alleged violation thereafter; or
    - (c) Provide evidence that there is no violation, the Grantor shall then give, by personal delivery or registered or certified mail written notice of not less than thirty (30) days of a Public Hearing to be held before the City Council. Said notice shall set forth in detail each of the violations alleged to have occurred.

- (2) Subsequent to the Public Hearing, the City Council shall hear and consider all other relevant evidence, and thereafter render findings and its decision.
- (3) If the City Council finds that the grantee has corrected the alleged violation; diligently commenced correction of such alleged violation after notice thereof and is diligently proceeding to fully remedy such alleged violation; or no material violation has occurred; the proceedings shall terminate and no penalty or other sanction shall be imposed.
- (4) If the City Council finds that material violations exist and that the grantee has not corrected the same in a satisfactory manner, or has not diligently commenced correction of such violation after notice thereof and is not diligently proceeding to fully remedy such violation, then the City Council may impose one or more of the remedies provided in this Chapter and the franchise agreement as it, in its discretion, deems appropriate under the circumstances. In no event shall the foregoing be construed to permit a double recovery by the Grantor for the same violation.

C) GRANTOR'S POWER TO REVOKE.

- (1) The Grantor may revoke any franchise granted pursuant to this Chapter and rescind all rights and privileges associated with it in the following circumstances, each of which shall represent a default by the grantee and a material breach under the franchise:
  - (a) If the grantee fails to perform any of the material obligations under this Chapter or the franchise agreement and continues such failure to perform after receipt of due written notice and a reasonable opportunity to cure;
  - (b) If the grantee fails to provide or maintain in full force and effect the insurance coverage or security fund as required in the franchise agreement;
  - (c) If the grantee violates any order or ruling of any federal or state regulatory body having jurisdiction over the grantee relative to the grantee's franchise, unless such order or ruling is being contested by the grantee in good faith in an appropriate proceeding;
  - (d) If the grantee knowingly practices any material fraud or deceit upon the Grantor; or
  - (e) If the grantee becomes insolvent, unable, or unwilling to pay its debts, or is adjudged a bankrupt.
- (2) After completing the procedures set forth in Subsection (B) of this Section, the Grantor may make a formal request before the City Council

that the grantee's franchise be revoked. The City Council shall cause to be served on the grantee written notice of its intent to consider revoking the grantee's franchise. Such notice shall be served on the grantee at least thirty (30) days prior to the date of the Public Hearing on the issue. The notice shall contain the time and place of the hearing and shall be published at least once in a newspaper of general circulation within the franchise area ten (10) days prior to the hearing date.

- (3) The City Council shall hear any person(s) interested in the revocation and, within ninety (90) days after the date of hearing, shall make its determination whether the grantee has committed a material breach of the franchise.
- (4) If the Grantor determines that the grantee has committed a material breach, then the Grantor may:
  - (a) Declare the franchise revoked and any security fund or bonds forfeited; or
  - (b) If the material breach is curable by the grantee, direct the grantee to take appropriate remedial action within the time and manner and under the terms and conditions reasonably specified by the Grantor.
- (5) The termination and forfeiture of the grantee's franchise shall in no way affect any right of the Grantor to pursue any remedy under the franchise or any provision of law.

(D) APPEAL OF FINDING OF REVOCATION. The grantee may appeal a finding pursuant to Subsections (A) and (C) of this Section to an appropriate court of jurisdiction. Any such appeal must be taken by the grantee within ninety (90) days of the issuance of the Grantor's final decision.

(Ordinance 2808 § 1, 2012; Ordinance 2578 § 2 (part), 2002).

#### **SECTION 5.24.140: Force Majeure; Grantee's Inability to Perform**

In the event that the grantee's performance of any of the terms, conditions, or obligations required by this Chapter or a franchise granted hereunder is prevented by a cause or event not within grantee's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof; provided, however, that such inability to perform shall not relieve the grantee from the obligations pertaining to refunds and credits for interruptions in service. For the purposes of this Section, causes or events not within the control of the grantee shall include without limitation acts of God, war, strikes, sabotage, riots or civil disturbances, labor disputes, restraints imposed by order of a governmental agency or court, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires, but shall not include financial inability of the grantee to perform.

(Ordinance 2808 § 1, 2012; Ordinance 2578 § 2 (part), 2002).

## **SECTION 5.24.150: Abandonment or Removal of Franchise Property**

### **(A) ABANDONMENT OR REMOVAL.**

- (1) If the grantee discontinues the use of any of its property within the public rights-of-way for a continuous period of twelve (12) months, such property shall be deemed to have been abandoned by the grantee. Any part of the cable system that is parallel or redundant to other parts of the system and is intended for use only when needed as a backup for the system or a part thereof, shall not be deemed to have been abandoned because of lack of use.
- (2) The Grantor, upon such reasonable terms as the Grantor may lawfully impose as to all users of the public rights-of-way, may give the grantee permission exercised in a non-discriminatory manner as to all users of the public right-of-way to abandon, without removing, any facility or equipment laid, directly constructed, operated, or maintained under the franchise. Unless such permission is granted or unless otherwise provided in this Chapter, the grantee shall remove all abandoned above-ground facilities and equipment upon receipt of written notice from the Grantor and shall restore to the Grantor's satisfaction any affected public right-of-way. In removing its plant, structures, and equipment, the grantee shall refill, at its own expense, any excavations that shall be made by it and shall leave all public rights-of-way in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles, or attachments. The Grantor shall have the right to inspect and approve the condition of the public rights-of-way, cables, wires, attachments, and poles prior to and after removal. The liability, indemnity and insurance provisions of this Chapter and the security fund as provided herein shall continue in full force and effect during the period of removal and until full compliance by the grantee with the terms and conditions of this Subsection.
- (3) Upon the approved abandonment of any franchise property, the grantee, if required by the Grantor, shall submit to the Grantor an instrument, satisfactory in form to the Grantor, transferring to the Grantor the ownership of the abandoned franchise property.
- (4) At the expiration, without renewal or extension, of the term for which the franchise is granted, or upon its revocation as provided herein, the Grantor shall have the right to require the grantee to remove, at its own expense, all above-ground portions of the cable system from all streets and public ways within the service area within a reasonable period of time, which shall not be less than one hundred eighty (180) days.
- (5) Notwithstanding anything to the contrary set forth in this Chapter, the grantee may abandon any underground franchise property in place so long as it does not materially interfere with the use of public rights-of-way

in which such property is located or with the use thereof by any public utility or other franchise holder.

(B) RESTORATION BY GRANTOR—REIMBURSEMENT OF COSTS. Upon reasonable written notice and upon the failure of the grantee to commence, pursue, or complete any work to be done in any public right-of-way required by law or by the provisions of this Chapter or the franchise agreement within the time prescribed and to the reasonable satisfaction of the Grantor, the Grantor may cause the work to be commenced and/or completed. The Grantor shall provide to the grantee an itemized work order setting forth in detail the exact nature of the work completed and the supplies used in such work. The grantee shall pay to the Grantor the reasonable costs for such work no later than thirty (30) days after receipt of the itemized work order.

(C) RECEIVERSHIP AND FORECLOSURE.

(1) At the option of the Grantor and subject to applicable law, a franchise granted hereunder may be revoked one hundred twenty (120) days after appointment of a receiver(s) or trustee(s) to take over and conduct the business of the grantee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless:

- (a) The receivership or trusteeship shall have been vacated within said one hundred twenty (120) days;
- (b) Such receivers or trustees within said one hundred twenty (120) days shall have remedied all defaults under the franchise or provided a plan for the remedy of such defaults that is satisfactory to the Grantor; or
- (c) Such receivers or trustees shall, within said one hundred twenty (120) days, have executed an agreement duly approved by the court having jurisdiction whereby such receivers or trustees assume and agree to be bound by each and every term, provision, and limitation of the franchise.

(2) In the case of a foreclosure or other judicial sale of the cable system, in whole or in part, the Grantor may serve notice of revocation upon the grantee and the successful bidder at such sale, and all rights and privileges of the grantee hereunder shall be revoked thirty (30) days after service of such notice, unless:

- (a) The Grantor shall have approved the transfer of the franchise, in the manner provided by law; or
- (b) The successful bidder shall have covenanted and agreed with the Grantor to assume and be bound by all terms and conditions of the franchise.

(Ordinance 2808 § 1, 2012; Ordinance 2578 § 2 (part), 2002).

**SECTION 5.24.160: Grantor and Subscriber Rights**

(A) RESERVATION OF GRANTOR RIGHTS. In addition to any rights specifically reserved to the Grantor by this Chapter, the Grantor reserves to itself every right and power that is required to be reserved by a provision of any Ordinance or under the franchise.

(B) WAIVER.

(1) The Grantor shall have the right to waive any provision of the franchise, except those required by federal or state regulation, if the Grantor determines:

(a) That it is in the public interest to do so; and

(b) That the enforcement of such provision will impose an undue hardship on the grantee or on the subscribers.

(2) To be effective, such waiver shall be evidenced by a statement in writing signed by a duly authorized representative of the Grantor. Waiver of any provision in one instance shall not be deemed a waiver of such provision subsequent to such instance nor be deemed a waiver of any other provision of the franchise unless the statement so recites.

(3) The grantee shall not be excused from complying with any of the requirements of this Chapter or the franchise agreement by any failure of the Grantor on any one or more occasions to require or seek compliance with any such terms and conditions.

(C) RIGHTS OF INDIVIDUALS.

(1) The grantee shall not deny service, deny access, or otherwise discriminate against subscribers, or general citizens, on the basis of race, color, religion, national origin, age, sex, or marital status. The grantee shall comply at all times with all other applicable federal and state laws and regulations relating to nondiscrimination.

(2) Nothing in this Chapter or the franchise shall limit the right of the grantee to deny service to any household or individual that has a negative credit or service history with the grantee, which may include non-payment of bills or theft or damage to the grantee's equipment, or who has threatened or assaulted employees of the grantee in the course of their employment.

- (3) The grantee shall adhere to the applicable equal employment opportunity requirements of federal and state regulations, as now written or as amended from time to time.
- (4) Neither the grantee, nor any person, agency, or entity shall, without the subscriber's consent, tap, or arrange for the tapping, of any cable, line, signal input device, or subscriber outlet or receiver for any purpose, except routine maintenance of the system, detection of unauthorized service, polling with audience participation, or audience viewing surveys to support advertising research regarding viewers where individual viewing behavior cannot be identified.
- (5) In the conduct of providing its cable services or in pursuit of any collateral commercial enterprise resulting therefrom, the grantee shall take reasonable steps to prevent the invasion of a subscriber's or general citizen's right of privacy or other personal rights through the use of the system, as such rights are delineated or defined by applicable law. The grantee shall not without lawful court order or other applicable valid legal authority utilize the system's interactive two-way equipment or capability, if such equipment or capability exists, for unauthorized personal surveillance of any subscriber or general citizen.
- (6) No cable line, wire amplifier, converter, or other piece of equipment owned by the grantee shall be installed by the grantee in the subscriber's premises other than in appropriate easements, without first securing any required consent. If a subscriber requests service, permission to install upon subscriber's property shall be deemed granted.
- (7) The grantee, or any of its agents or employees, shall not sell, or otherwise make available to any party without consent of the subscriber pursuant to state and federal privacy laws:
  - (a) Any list of the names and addresses of subscribers; and
  - (b) Any list that identifies the viewing habits of individual subscribers, without the prior written consent of such subscribers. This does not prohibit the grantee from providing composite ratings of subscriber viewing to any party.

(Ordinance 2808 § 1, 2012; Ordinance 2578 § 2 (part), 2002).

#### **SECTION 5.24.170: Separability**

If any provision of this Chapter is held by any court or by any federal or state agency of competent jurisdiction, to be invalid as conflicting with any federal or state law, rule or regulation now or hereafter in effect, or is held by such court or agency to be modified in any way in order to conform to the requirements of any such law, rule, or regulation, such provision shall be considered a separate, distinct, and independent part of this Chapter, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such law, rule, or

regulation is subsequently repealed, rescinded, or amended or otherwise changed, so that the provision thereof that had previously been held invalid or modified is no longer in conflict with such law, rule, or regulation, said provision shall thereupon return to full force and effect and shall thereafter be binding on the Grantor and the grantee, provided that the Grantor shall give the grantee thirty (30) days written notice of such change before requiring compliance with said provision or such longer period of time as may be reasonably required for the grantee to comply with such provision.

(Ordinance 2808 § 1, 2012; Ordinance 2578 § 2 (part), 2002).

## **CHAPTER 25: STATE VIDEO FRANCHISE HOLDERS**

### **SECTION 5.25.010: Purpose**

(A) This Chapter is designed to regulate video service providers holding state video franchises and operating within the city. As of January 1, 2007, the State of California has the sole authority to grant state video franchises pursuant to the Digital Infrastructure and Video Competition Act of 2006 (DIVCA). Pursuant to DIVCA, the City of Garden Grove may receive a franchise fee and may receive a fee for public, educational, and governmental access (defined in this Chapter as "PEG" or "PEG access channels") from all state video franchise holders operating within the City. Additionally, although DIVCA reserves to the state authority to adopt customer service standards, the City has the responsibility to establish penalties, consistent with state law, for violations of such customer service standards.

(B) It is the purpose of this Chapter to implement within the city the provisions of DIVCA and the rules the California Public Utilities Commission promulgated thereunder that are applicable to a "local franchising entity" or a "local entity" as defined in DIVCA. Consistent with that purpose, the provisions of this Chapter are to be construed in a manner that is consistent with DIVCA and the applicable rules of the Commission promulgated thereunder.

(Ordinance 2808 § 1, 2012; Ordinance 2731 § 1 (part), 2008).

### **SECTION 5.25.020: Applicable Definitions**

Terms used in this Chapter shall have the same meaning as established in (1) DIVCA, and, if not defined therein, (2) Commission rules implementing DIVCA, and, if not defined therein, (3) Subchapter V-A of Chapter 5 of Title 47 of the United States Code, and, if not defined therein, (4) their common and ordinary meaning. References to governmental entities (whether persons or entities) shall refer to those entities or their successors in authority. If a specific provision of law referred to in this Chapter should be renumbered, then the reference shall be read to refer to the renumbered provision. References to any law shall be interpreted broadly to cover government actions, however nominated, including any law now in force or subsequently enacted or amended.

(Ordinance 2808 § 1, 2012; Ordinance 2731 § 1 (part), 2008).

**SECTION 5.25.030: State Franchise Required**

- (A) Except as the City Council may authorize by Resolution, and except for franchisees with a valid franchise issued under Chapter 24 of this Title 5 of this Code, no person may construct, operate, maintain, or repair a cable system or video service provider's network in the City without first obtaining a state franchise.
- (B) A state franchise shall not convey rights other than as specified in this Chapter or in DIVCA or other applicable law; no rights shall pass by implication.
- (C) Except as otherwise provided by DIVCA, a state franchise shall not include, or be a substitute for:
  - (1) Compliance with generally applicable requirements for the privilege of transacting and carrying on a business within the city, including, but not limited to, compliance with the conditions that the City may establish before facilities may be constructed, or for providing non-video services;
  - (2) Any permit or authorization, other than a state franchise, required in connection with operations on or in public rights-of-way or public property; and
  - (3) Any permit, agreement, or authorization for occupying any other property of the City or private persons to which access is not specifically granted by the state franchise.
- (D) Except as otherwise provided in DIVCA, a state franchise shall not relieve a franchisee of its duty to comply with all laws, including laws of the City, and every state franchisee shall comply with the same. The City reserves its rights to the lawful exercise of police and other powers the City now has or may later obtain.
- (E) The City reserves the right to construct, operate, maintain, or repair its own cable system or video service provider network.  
(Ordinance 2808 § 1, 2012; Ordinance 2731 § 1 (part), 2008).

**SECTION 5.25.040: Administration and Regulations**

- (A) The City may from time to time adopt rules and regulations to implement the provisions of this Chapter consistent with DIVCA.
- (B) The City Manager, or his designee, is hereby authorized to administer this Chapter and to provide or cause to be provided any notices (including noncompliance notices) and to take any action on behalf of the City that may be required under this Chapter, DIVCA, or under applicable law.
- (C) The failure of the City, upon one or more occasions, to exercise a right or to require compliance or performance under this Chapter or any other applicable

law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing or its exercise by the City is not permitted by DIVCA.

- (D) The City may designate one or more entities, including itself, to control and manage the use of PEG access channels, and any PEG facilities and equipment owned, controlled, or used by the City or the designated entity or entities. (Ordinance 2808 § 1, 2012; Ordinance 2731 § 1 (part), 2008).

**SECTION 5.25.050: Franchise Fee**

A state video franchise holder operating in the city shall pay to the City a franchise fee that is equal to five percent (5%) of the gross revenues of that state video franchise holder generated within City's jurisdictional boundaries. The term "gross revenues" shall be defined as set forth in Public Utilities Code Section 5860.

(Ordinance 2808 § 1, 2012; Ordinance 2731 § 1 (part), 2008).

**SECTION 5.25.060: PEG Fee**

In addition to the franchise fee required pursuant to Section 5.25.050, a state video franchise holder operating in the city shall pay to the City a fee that is equal to one percent (1%) of the gross revenues of that state video franchise holder generated within City's jurisdictional boundaries, which fee shall be used to support PEG channel facilities. The term "gross revenues" shall be defined as set forth in Public Utilities Code Section 5860. Further, pursuant to Public Utilities Code Section 5870, this Section shall become applicable upon the expiration or termination of the incumbent operator's franchise agreement; the terms of Public Utilities Code Section 5870 and the existing franchise agreement shall otherwise apply to the incumbent franchisee until such expiration or termination.

(Ordinance 2808 § 1, 2012; Ordinance 2731 § 1 (part), 2008).

**SECTION 5.25.070: Payment of Fees; Examination of Business Records**

- (A) The franchise fee and PEG fee shall be remitted to the City on a quarterly basis within forty-five (45) days after the end of each quarter for that calendar year. Each payment shall be accompanied by a detailed summary explaining the basis for the calculation of the franchise fee and PEG fee.
- (B) If a state video franchise holder fails to pay the fees when due, or underpays the proper amounts due, the state video franchise holder shall pay a late payment charge at the annual interest rate equal to the highest prime lending rate during the period of delinquency, plus one percent (1%). If the state video franchise holder has overpaid the fees, it may deduct the overpayment from its next quarterly payment.
- (C) Not more than once annually, the City may examine the business records of a state video franchise holder to ensure compliance with all applicable statutes and regulations related to the computation and payment of franchise fees.

(Ordinance 2808 § 1, 2012; Ordinance 2731 § 1 (part), 2008).

**SECTION 5.25.080: Customer Service Penalties Under State Video Franchises**

- (A) The holder of a state video franchise shall comply with California Government Code §§ 53055, 53055.1, 53055.2 and 53088.2; the Federal Communications Commission customer service and notice standards set forth in 47 C.F.R. Part 76.309, 76.1602, 76.1603 and 76.1619; California Penal Code § 637.5; the privacy standards of 47 U.S.C. § 551; and all other applicable state and federal customer service and consumer protection standards pertaining to the provision of video service, including any such standards hereafter enacted or adopted. In case of a conflict, the stricter standard shall apply. All customer service and consumer protection standards under this Section shall be interpreted and applied to accommodate newer or different technologies while meeting or exceeding the goals of the standards.
  
- (B) For material breaches of applicable federal and state customer service and protection standards, any state video franchise holder operating in the city shall be subject to monetary penalties that may be imposed by the City in accordance with California Public Utilities Code Section 5900 as follows:
  - (1) For the first occurrence of a violation, a monetary penalty of five hundred dollars (\$500) shall be imposed for each day the violation remains in effect, not to exceed one thousand five hundred dollars (\$1,500) for each violation.
  
  - (2) For a second violation of the same nature within a twelve (12) month period, a monetary penalty of one thousand dollars (\$1,000) shall be imposed for each day the violation remains in effect, not to exceed three thousand dollars (\$3,000) for each such violation.
  
  - (3) For a third or further violation of the same nature within a 12-month period, a monetary penalty of two thousand five hundred dollars (\$2,500) shall be imposed for each day the violation remains in effect, not to exceed seven thousand five hundred dollars (\$7,500) for each such violation.
  
  - (4) A state video franchise holder may appeal to the City Council, or a hearing officer as the City Council may appoint, a monetary penalty assessed by the City within sixty (60) days after notice of the assessment. After relevant evidence and testimony as may be received, and staff reports as may be submitted, the City Council, or Hearing Officer, may uphold, vacate, or modify the monetary penalty consistent with the evidence presented. The decision of the City Council, or Hearing Officer, on the imposition of a monetary penalty shall be final.

(Ordinance 2808 § 1, 2012; Ordinance 2731 § 1 (part), 2008).

**SECTION 5.25.090: City Response to State Video Franchise Applications**

- (A) Applicants for state video franchises within the boundaries of the city shall concurrently file with the City Clerk one complete copy of any such franchise application or amendment to any such application filed with the California Public Utilities Commission.
  - (B) The City may provide comments to the California Public Utilities Commission regarding an application or an amendment to an application for a state video franchise.
- (Ordinance 2808 § 1, 2012; Ordinance 2731 § 1 (part), 2008).

**SECTION 5.25.100: PEG Channel Capacity**

- (A) A state video franchise holder shall designate sufficient capacity on its network to enable the carriage of at least three PEG access channels. PEG access channels shall be for the exclusive use of the City or its designees to provide public, educational, or governmental programming.
  - (B) A state video franchise holder shall provide additional PEG channels when the standards set forth in Public Utilities Code Section 5870 are satisfied by the City or any entity designated by the City to be responsible for PEG access.
- (Ordinance 2808 § 1, 2012; Ordinance 2731 § 1 (part), 2008).

**SECTION 5.25.110: Emergency Alert System and Emergency Overrides**

A state video franchise holder shall comply with the Emergency Alert System requirements of the Federal Communications Commission so that emergency messages may be distributed over its network.

(Ordinance 2808 § 1, 2012; Ordinance 2731 § 1 (part), 2008).

**CHAPTER 28: FIREWORKS**

**SECTION 5.28.010: Temporary Stand Permits**

Permits for temporary stands for the display and retail sales of fireworks shall be issued by the Finance Director only in accordance with the provisions of this Chapter.

(Ordinance 2808 § 1, 2012; Ordinance 2705 § 1, 2007; Ordinance 1007 § 1 (part), 1968; Ordinance 839 § 2 (part), 1965; prior Code § 6330.1).

**SECTION 5.28.020: Eligible Organizations**

- (A) The City Council finds that locally based tax exempt organizations consistently contribute to the public health and safety of city residents by: donating time and funding to a variety of community events; assisting individuals with medical, educational, and moral support; conducting unique volunteered events contributing to the city's historical and cultural heritage. These organizations further contribute to the city's mission of providing cost effective public services to the community. They are also uniquely qualified to assist in educating city residents in fire safety procedures as further provided herein.

Accordingly, based upon these contributions, the City Council finds and determines that it is appropriate to designate such organizations located within city limits as the only organizations eligible to sell fireworks under the conditions set forth in this Section.

- (B) Only federally certified non-profit tax exempt organizations located within the city limits and primarily benefiting the Garden Grove community are eligible to receive temporary fireworks stand permits. Applicants for temporary fireworks stands shall provide to the City documentation that establishes, to the reasonable satisfaction of the City, compliance with these requirements.
- (C) As a condition to receiving a temporary fireworks stand permit, each permittee shall work with the Fire Chief to prepare and deliver educational material to customers pertaining to fire safety in the use of fireworks at any location. In addition, each permittee agrees to present such educational materials in a programmed manner to its members on an annual basis, and to the public in conjunction with sales from fireworks stands.

(Ordinance 2808 § 1, 2012; Ordinance 2744 § 1, 2009; Ordinance 2599 § 1 (part), 2003; Ordinance 2493 § 1, 1999; Ordinance 839 § 2 (part), 1965; Prior Code § 6330.2).

#### **SECTION 5.28.030: Application Contents**

- (A) An application for a temporary stand permit shall be made in writing on forms prescribed by the Finance Director, and filed therewith not later than May 24th of the year for which the permit is requested.
- (B) Such application and permit shall only be issued to a regular member of the stated organization, and he shall be held responsible for compliance with all rules and regulations.
- (C) Permits are not transferable or assignable, shall only be valid for the dates specified in the permit, and shall be subject to all conditions set forth in the permit.
- (D) A completed permit application package shall include, but not be limited to:
  - (1) Name, address, proper identification, and signature of an authorized representative of the permit applicant;
  - (2) The location of the proposed temporary stand, along with a notarized affidavit from the property owner authorizing locating the stand on such property;
  - (3) Completed application to appeal or solicit on City-prescribed form;
  - (4) Fireworks distributor's (the "company") name, address, telephone number, and point of contact;

- (5) A copy of the sales tax permit from the Board of Equalization, with proof of the filing of such permit application;
- (6) A copy of a valid State Fire Marshal Retail Fireworks License;
- (7) A completed City business tax application; and
- (8) Additional information as reasonably required by the Finance Director or the Fire Chief to evaluate the proposed operation of a temporary stand by the applicant.

(Ordinance 2808 § 1, 2012; Ordinance 2705 § 2, 2007; Ordinance 1007 § 1 (part), 1968; Ordinance 839 § 2 (part), 1965; Prior Code § 6330.3).

**SECTION 5.28.040: Permit Fee**

Each qualified permittee shall pay a five hundred dollar (\$500) permit fee. The permit fee is intended to cover all costs associated with issuance of the permit for temporary stands, including the electrical permit fee, inspection, enforcement, and cleanup costs. Following the fourth of July, the Fire Department shall conduct an accounting of all such costs. If excess funds remain after the pro-rata cost assessment, then those excess funds shall be returned to each permittee on an equal pro-rata basis.

(Ordinance 2808 § 1, 2012; Ordinance 2705 § 3, 2007; Ordinance 2599 § 1 (part), 2003; Ordinance 2290 § 1(9), 1994; Ordinance 839 § 2 (part), 1965; Prior Code § 6330.4).

**SECTION 5.28.050: Limitation on Total Number of Permits**

- (A) Each permittee shall be limited to one (1) stand and permit, except schools, which shall be limited to three (3) stands and permits.
- (B) There shall be a maximum of forty-five (45) permits issued for temporary stands each year.
- (C) At such time as the total number of current qualified permittees falls below the number of forty-five (45), the Fire Department is authorized to implement an appropriate lottery system in bringing the total annual number of permittees to forty-five (45).

(Ordinance 2808 § 1, 2012; Ordinance 2705 § 4, 2007; Ordinance 2599 § 1 (part), 2003; Ordinance 839 § 2 (part), 1965; Prior Code § 6330.5).

**SECTION 5.28.060: Permit Issuance**

The Fire Chief, or his designee, shall approve or deny each application for a permit based upon:

- (1) An assessment of the applicant's proposed operations for compliance with the various provisions of this Chapter;
- (2) If the applicant is a past permit holder, and if the applicant's:

- (a) Prior compliance with the various provisions of this Chapter and any conditions imposed in the prior permit; and if
  - (b) The applicant's prior safety history in the operation of a temporary fireworks stand; and
- (3) An assessment of the proposed operation of the stand relative to the protection of the public health, safety, and welfare. Conditions may be imposed on permit issuance in order to ensure compliance with the provisions of this Chapter and as determined to be appropriate to protect the public health, safety, and welfare from the potential impacts of the operation of the stand.

(Ordinance 2808 § 1, 2012; Ordinance 2705 § 5, 2007; Ordinance 2599 § 1 (part), 2003; Ordinance 1007 § 1 (part), 1968; Ordinance 839 § 2 (part), 1965; Prior Code § 6330.6).

**SECTION 5.28.080: Safe and Sane Fireworks**

Only safe and sane fireworks, bearing the seal of the State Fire Marshal, as defined in Part 2, Division 11 of the Health and Safety Code of the state, may be sold, except that toy cap pistols, caps, and carbide cannons may also be sold.

(Ordinance 2808 § 1, 2012; Ordinance 839 § 2 (part), 1965; Prior Code § 6330.8).

**SECTION 5.28.090: Time Limit on Sales of Fireworks**

Retail sales of safe and sane fireworks shall be limited to only that time between July 1st to July 3rd, from 10:00 a.m. until 11:00 p.m., and on July 4th from 10:00 a.m. until 10:00 p.m.

(Ordinance 2808 § 1, 2012; Ordinance 2599 § 1 (part), 2003; Ordinance 1429 § 1, 1975; Ordinance 839 § 2 (part), 1965; Prior Code § 6330.9).

**SECTION 5.28.100: Temporary Stand Regulations**

All temporary stands, or the display and sale of safe and sane fireworks, shall be located, maintained, and operated subject to the provisions of Sections 5.28.110 through 5.28.180.

(Ordinance 2808 § 1, 2012; Ordinance 839 § 2 (part), 1965; Prior Code § 6330.10).

**SECTION 5.28.110: Complying with Application**

Any persons operating any such stand shall abide by and comply with all matters set forth in the application for such permit, all regulations relating thereto and established by Ordinance, and all restrictions and conditions imposed by the Fire Chief in granting the permit. Failure to comply with such regulations, conditions, or Ordinances is subject to penalty, including the denial of a future permit to the violator.

(Ordinance 2808 § 1, 2012; Ordinance 2599 § 1 (part), 2003; Ordinance 1362 § 1, 1973; Ordinance 1007 § 1 (part), 1968; Ordinance 839 § 2 (part), 1965; Prio Code § 6330.11).

**SECTION 5.28.130: Liability Insurance**

Prior to the erection of any such stand, the permittee shall procure public liability and property damage insurance, naming the City as additional insured, covering its operations in and about the stand and premises in a minimum amount of \$100,000/\$300,000 public liability and five thousand dollars (\$5,000) property damage, and shall file a certificate of such insurance, approved by the City Attorney, with the Chief of Collections.

(Ordinance 2808 § 1, 2012; Ordinance 1362 § 2, 1973; Ordinance 839 § 2 (part), 1965; Prior Code § 6330.13).

**SECTION 5.28.140: Location of Stands**

(A) No such stand shall be erected or maintained in such a manner so as to cause an undue hazard to itself or adjoining property or to the persons working within the stand.

(B) No stands shall be permitted within one thousand (1,000) feet of the following locations: Garden Grove Park; Twin Lakes Park; Village Green Park; and Katella Avenue from Dale Street to Euclid Street.

(Ordinance 2808 § 1, 2012; Ordinance 2599 § 1 (part), 2003; Ordinance 2493 § 3, 1999; Ordinance 839 § 2 (part), 1965; Prior Code § 6330.14).

**SECTION 5.28.150: Exits and Locking Devices**

Each stand erected shall have not less than two (2) exits. Such exits shall be so placed as to provide immediate egress from either end of the stand. Exit doors shall only be locked in such a manner as to be readily openable from the interior without special knowledge, effort or tools, including keys.

(Ordinance 2808 § 1, 2012; Ordinance 839 § 2 (part), 1965; Prior Code § 6330.15).

**SECTION 5.28.160: Fire Extinguisher**

There shall be maintained in each premises or stand within which safe and sane fireworks are sold or offered for sale at least one (1), two and one-half (2 ½) gallon water-type fire extinguisher in good order and condition and approved by the Fire Chief or his authorized representative.

(Ordinance 2808 § 1, 2012; Ordinance 839 § 2 (part), 1965; Prior Code § 6330.16).

**SECTION 5.28.170: Electrical Permit Required**

Prior to the placement of any fireworks in or the sale of any fireworks from a temporary fireworks stand, an electrical permit for electrical conductors installed for service to or within the fireworks stand shall be obtained from the City, as well as a final inspection approval, all in accordance with Title 18 of the Garden Grove Municipal Code.

(Ordinance 2808 § 1, 2012; Ordinance 2705 § 6, 2007; Ordinance 839 § 2 (part), 1965; Prior Code § 6330.17).

**SECTION 5.28.180: Overnight Habitation Prohibited**

There shall be no overnight sleeping by owners, personnel, or anyone within the stand. Nighttime watch service may be permitted, provided persons shall be no closer than fifty (50) feet from the stand.

(Ordinance 2808 § 1, 2012; Ordinance 839 § 2 (part), 1965; Prior Code § 6330.18).

**SECTION 5.28.190: Prohibitions**

- (A) No person engaged in the business of the sale or disposition of fireworks shall sell, furnish, give, or cause to be sold, furnished or given away, any fireworks as defined in Section 5.28.080, to any person under the age of eighteen (18) years.
- (B) No person under the age of eighteen (18) years shall purchase any fireworks, as defined in Section 5.28.080.
- (C) No person under the age of eighteen (18) years shall use or discharge any fireworks within the city except when under the direct supervision and in the presence of an adult.
- (D) No person shall use or discharge any fireworks on any commercial, industrial, or publicly owned parcel within the city, except in conjunction with a validly issued Community Event Permit and a permit from the Fire Chief.
- (E) Except to the extent that safe and sane fireworks, as defined in Section 5.28.080, are authorized pursuant to this Chapter, no person shall sell, offer for sale, purchase, possess, store, use, or discharge any fireworks in the city.
- (F) Except to the extent that safe and sane fireworks, as defined in Section 5.28.080, are authorized pursuant to this Chapter, no person shall cause or allow the sale, purchase, possession, storage, use, or discharge of any fireworks on property that such person owns or controls.
- (G) No person shall allow the use or discharge of any safe and sane fireworks, as defined in Section 5.28.080, within ten (10) feet of any residence, dwelling, or other structure.
- (H) As used in this Chapter, the term "fireworks" shall include all fireworks as defined in Sections 12505 and 12511 of the California Health and Safety Code.
- (I) Nothing in this Chapter shall preclude the City of Garden Grove, or other businesses or entities possessing all required permits, from presenting a "public display of fireworks," as that term is defined in California Health and Safety Code Section 12524 or any successor provision thereto.

(Ordinance 2808 § 1, 2012; Ordinance 2701 § 1, 2007; Ordinance 2493 § 4, 1999; Ordinance 1429 § 2, 1975; Ordinance 1362 § 3 (part), 1973).

### **SECTION 5.28.200: Appeal Provisions**

- (A) The Fire Chief, or his designee, may revoke any temporary stand permit when it is determined that a permittee has:
- (1) Failed to comply with any provisions of this Chapter;
  - (2) Violated any condition of its temporary stand permit; or
  - (3) Operated or is operating a temporary stand in a manner that causes or threatens to cause a danger to the public health, safety, or welfare.
- (B) Upon a determination by the Fire Chief, or his designee, that the operation of the temporary stand creates an imminent or substantial danger to the public health, safety, or welfare, the permit may be suspended immediately and the stand closed.
- (C) The applicant may appeal any permit condition, denial, or revocation by the Fire Chief to the City Council within a period of ten (10) days of action, by filing a notice of appeal with the City Clerk.
- (D) Notwithstanding the foregoing, any determination to immediately suspend a permit and close a stand shall be deemed final upon issuance, and subject to immediate judicial review.

(Ordinance 2808 § 1, 2012; Ordinance 2705 § 7, 2007; Ordinance 1362 § 3 (part), 1973; Ordinance 1007 § 1 (part), 1968; Prio Code § 6330.19).

### **SECTION 5.28.210: Seizure and Disposal of Fireworks**

The Fire Chief, or his designee, shall have the authority to seize, take, remove, cause to be removed, and dispose of all fireworks sold, offered for sale, purchased, possessed, used, or held in violation of this Chapter or otherwise constituting a fire nuisance. Any seizure, removal, or disposal of fireworks pursuant to this Section shall occur in compliance with all applicable statutory, constitutional, and decisional law. In addition to any applicable penalties, fines, or available remedies, the owner and possessor of the fireworks shall be liable to the City for the actual costs of seizure, removal, and disposal of such fireworks.

(Ordinance 2808 § 1, 2012; Ordinance 2701 § 2, 2007)

## **CHAPTER 36: PAWNBROKERS**

### **SECTION 5.36.010: Definitions**

The following words shall have the signification attached to them in this Section, unless otherwise clearly apparent from the context.

- (1) "Loan Office," "Pawnshop" or "Pawn Office" means and includes any room, store or place in the city in which the business of a pawnbroker is engaged in or carried on, or conducted.

- (2) "Pawnbroker" means and includes any person, other than banks, trust companies, or bond brokers who may otherwise be regulated by law and authorized to deal in commercial papers, shares of stock, bonds, and other certificates of value, who keeps a loan or pawn office, or engages in or carries on the business of receiving jewelry, precious stones, valuables, firearms, clothing, or personal property, or any other article or articles of pledge for loans, or as security, or in pawn for the repayment of moneys, and exacts an interest for such loans, or who purchases articles of personal property and agrees to resell such articles so purchased, to the vendors thereof, or their assigns, at prices agreed upon at or before the time of such purchases respectively.

(Ordinance 2808 § 1, 2012; Ordinance 1435 § 2 (part), 1975).

**SECTION 5.36.020: Permit and License Required -- Display**

No person shall engage in, carry on, or conduct the business of a pawnbroker in the city without first having obtained a permit and license from the City, and complying with any and all requirements and regulations contained and set forth in this Chapter. The permit shall be displayed on the premises during business hours.

(Ordinance 2808 § 1, 2012; Ordinance 1435 § 2 (part), 1975).

**SECTION 5.36.030: Permit Application -- Investigation**

(A) Each person, before obtaining a permit to carry on the business of pawnbroker, shall make a written application to and upon blanks furnished by the Police Chief, which application shall be signed by the applicant. In addition to any other information that may reasonably be required by the Police Chief, the application shall show the true name of the applicant, his fictitious name or names (if any), his age, his present address in the city or elsewhere, the name under which the applicant conducted any similar business (if any), and the place of his residence at such time, within twelve (12) months preceding the date of such application. The applicant shall furnish with his application a recent photograph of himself and his fingerprints to the Police Chief.

(B) The Police Chief shall not issue the permit to the applicant unless it reasonably appears to him, after investigation, that the applicant possesses good moral character and is a proper person to conduct such business. The Police Chief shall issue such permit to the applicant or deny such application within sixty (60) days from the date thereof.

(Ordinance 2808 § 1, 2012; Ordinance 1435 § 2 (part), 1975).

**SECTION 5.36.040: Revocation Effect**

(A) The City Council may revoke or suspend the permit and license of any person holding same in the city, upon receiving satisfactory evidence that the permittee or licensee has been convicted of, or has entered a plea of guilty to, any violation of the provisions of this Chapter, or any other law or Ordinance of the City or state relating to such business, or upon the recommendation of the Police Chief.

- (B) Whenever a permit or license has been revoked under the terms of this Section, no other application for a permit to carry on a similar business by such person shall be considered for a period of one (1) year from the date of such revocation.

(Ordinance 2808 § 1, 2012; Ordinance 1435 § 2 (part), 1975).

**SECTION 5.36.050: License Fee -- Indemnity Bond**

- (A) Every person maintaining, carrying on, or conducting the business of a pawnbroker shall pay the license fee required by the licensing provision of this Code, but such license fee shall not include the right to carry on the business of a secondhand dealer. The payment of the license includes the right to employ one (1) or more persons to assist in carrying on the business at the place of business of the pawnbroker.
- (B) Any person desiring to carry on the business of a pawnbroker shall file with the Finance Director a bond of indemnity in the sum of five thousand dollars (\$5,000), to the City, the bond to be in full force and effect during the life of the license under which the person is carrying on such business, executed by a surety company authorized to do business as such in the state, which bond shall be given to ensure good faith and fair dealing on the part of the applicant, and as a guarantee of indemnity for any and all loss, damage, injury, theft, or other unfair dealings suffered by any patron of the applicant during the term of the license therein mentioned. The bond shall be approved as to form by the City Attorney. In lieu of the bond provided above, cash or a time certificate deposit from a financial institution, made payable to the City of Garden Grove may be substituted, subject to the approval as to form by the City Attorney.
- (C) No license issued under the provisions of this Chapter shall be transferable and no person shall conduct the business of a pawnbroker under the permit and license of another person, except as hereinbefore provided.

(Ordinance 2808 § 1, 2012; Ordinance 1458 § 1, 1975; Ordinance 1435 § 2 (part), 1975).

**SECTION 5.36.060: Reports to Police**

Every pawnbroker shall, at the time of purchase or pledge of any property, make out, on forms as prescribed by the Police Chief for pawnbrokers, a full, true, and complete report of all goods or things received on deposit, pledged or purchased by him, and such report shall show the hour of the day when each such article is received, and the true name and address, as nearly as the same is known to, or can be ascertained by, such pawnbroker, as evidenced by an operator's license, vehicle license, work badge number, etc., and the personal signature of the person or persons by whom such article was left on deposit or pledged or sold, together with a description of such person or persons as required by the Police Chief. Such report shall give also the number of the pawn ticket, the amount loaned or the amount of the purchase, as the case may be, and a complete description of each article left on deposit or pledged or purchased. If any article so left on deposit or pledged or purchased bears any number, word or initials, they shall be indicated,

and the report shall also show the number of settings and the number of each kind thereof. A complete description of articles, including manufacturer's name, model numbers, serial numbers, identification marks, inscriptions or other peculiarities and color of the article, shall be included in the report. The forms as prescribed by this Section shall be supplied by the police department. Every pawnbroker shall, on each day before ten (10:00) a.m., deliver, to the Police Chief, the original, third, and fourth copies of such reports made out during the day preceding the filing of such reports.

(Ordinance 2808 § 1, 2012; Ordinance 1435 § 2 (part), 1975).

#### **SECTION 5.36.070: Reports Kept on File**

All reports to be filed with the Police Chief as required in this Chapter shall be kept on file by the Police Chief in a secure place in the Police Department. The reports shall be open to the Police Department, or upon an order of a court of competent jurisdiction made for that specific purpose.

(Ordinance 2808 § 1, 2012; Ordinance 1435 § 2 (part), 1975).

#### **SECTION 5.36.080: Record to be Kept**

Every person engaged in the business of a pawnbroker in the city shall keep a complete copy of the reports required by this Chapter. Every such record, and all goods and things pledged to, or purchased by or received by any such pawnbroker, shall be open at all times during business hours to the inspection of the Police Chief or any Police Officer of the City.

(Ordinance 2808 § 1, 2012; Ordinance 1435 § 2 (part), 1975).

#### **SECTION 5.36.090: Reports and Records in the English Language**

Every report and record required by this Chapter shall be written or printed entirely in the English language in a clear and legible manner.

(Ordinance 2808 § 1, 2012; Ordinance 1435 § 2 (part), 1975).

#### **SECTION 5.36.100: Property Retention -- Sale Delay**

No pawnbroker shall sell or otherwise dispose of any article, goods, or other thing within thirty (30) days after the purchase or receipt thereof. The provisions of this Section shall not apply to a return of any articles, goods, or other things where the return is to the person who originally sold or otherwise made the article or goods available to the pawnbroker.

(Ordinance 2808 § 1, 2012; Ordinance 1435 § 2 (part), 1975).

#### **SECTION 5.36.110: Report of Repledged or Hypothecated Articles**

No person carrying on or conducting the business of a pawnbroker shall repledge or hypothecate any article that he has in his possession, and received in the due course of his business, for the purpose of borrowing money or otherwise, without making a full and true report to the Police Chief, as required by Section 5.36.060, of such article so repledged and hypothecated, the person to whom so pledged or hypothecated, and the amount borrowed on same, together with the name of the original pledgor.

(Ordinance 2808 § 1, 2012; Ordinance 1435 § 2 (part), 1975).

**SECTION 5.36.120: Dealing with Minors**

No pawnbroker shall purchase or take as a pledge, or otherwise, any goods offered him from any minor under the age of eighteen (18) years. Any statement made to such dealer, employee, or purchaser by a person under the age of eighteen (18) years to the effect that he is over eighteen (18) years of age shall not excuse such dealer or employee from any violation of this Section.

(Ordinance 2808 § 1, 2012; Ordinance 1435 § 2 (part), 1975).

**SECTION 5.36.130: Expiration of License**

Upon the expiration of any license issued under the provisions of this Chapter, the holder thereof shall be entitled to a new license for the ensuing year without making a new application and obtaining a new permit therefore, upon payment of the required license fee, provided the Police Chief has endorsed upon the permit his approval, and the issuance of a new license for the ensuing year, provided that bond, as provided in Section 5.36.050, has been furnished.

(Ordinance 2808 § 1, 2012; Ordinance 1435 § 2 (part), 1975).

**SECTION 5.36.140: Hold Order by Peace Officer**

A Peace Officer may place a "hold order" upon property that he has reason to believe is stolen, acquired by a pawnbroker in the course of his business, for a period of ninety (90) days, and upon release of such property the dealer will keep a record of the disposition of such property. It is unlawful for any person to dispose of any property contrary to any hold order by a Peace Officer.

(Ordinance 2808 § 1, 2012; Ordinance 1435 § 2 (part), 1975).

**SECTION 5.36.150: True Name, Age, and Address**

(A) No person who sells or otherwise disposes of goods, wares, or merchandise to a permittee conducting a business listed in this Chapter or to the permittee's employee or agent shall fail or refuse to give his true name, correct age, and correct address.

(B) No person shall use a fictitious name or address when selling, pledging, or leaving any property on deposit as provided in this Chapter.

(Ordinance 2808 § 1, 2012; Ordinance 1435 § 2 (part), 1975).

**SECTION 5.36.160: Articles Left on Consignment**

All articles left on consignment with a pawnbroker shall be reported as such, as prescribed in Section 5.36.060.

(Ordinance 2808 § 1, 2012; Ordinance 1435 § 2 (part), 1975).

**SECTION 5.36.170: Record of Cash Sales**

Every pawnbroker shall keep an account of all cash sales, with date, to whom sold, address of purchaser, and a full description of merchandise sold.

(Ordinance 2808 § 1, 2012; Ordinance 1435 § 2 (part), 1975).

**SECTION 5.36.180: Permittee Records Required**

Pawnbroker's purchases, sales, and reports to the Police Department shall be maintained for at least three (3) years.

(Ordinance 2808 § 1, 2012; Ordinance 1435 § 2 (part), 1975).

**SECTION 5.36.190: Auctions**

It is unlawful for any person operating, managing, or carrying on the business of a pawnbroker to permit, allow, or conduct an auction sale on his premises, except under the following conditions:

- (1) NOTICE TO POLICE DEPARTMENT. The pawnbroker shall give ten (10) days notice, in writing, to the Police Department, prior to commencing such auction sale. Such notice is to contain location of sale, name of auctioneer, date of sale, hours to be conducted, and a complete list of all property to be sold at such sale with detailed identifying description of the property, including the original loan number.
- (2) UNREDEEMED PLEDGES. The only property that may be sold at an auction sale at such location shall be the unredeemed pledges in the original condition in which such property was received by the pawnbroker and as listed in the notice. Each such unredeemed pledge shall have attached to it a tag describing it, the original loan number, and the number of the item on the list in the notice. Property not listed in the notice shall not be sold at such auction sale.
- (3) TWO-DAY LIMIT. The total time during which a pawnbroker may conduct auction sales shall not exceed two (2) days in any calendar month.

(Ordinance 2808 § 1, 2012; Ordinance 1435 § 2 (part), 1975).

**CHAPTER 38: SECONDHAND DEALERS**

**SECTION 5.38.010: Definition**

"Secondhand Dealer" means and includes any person engaged in or conducting the business in the city of buying and selling, as owner or consignee, or exchanging any secondhand goods in any manner other than as a pawnbroker. A secondhand or new car dealer is specifically excluded from this definition, and from compliance with this Chapter.

(Ordinance 2808 § 1, 2012; Ordinance 1436 § 1 (part), 1975).

**SECTION 5.38.020: Exemption**

The provisions of this Chapter have no application to a person whose sales of secondhand merchandise are confined to the disposal of goods accepted in trade and as part payment for new merchandise; provided such person shall be the holder of a valid license issued by the City to cover his regular business activity.

(Ordinance 2808 § 1, 2012; Ordinance 1436 § 1 (part), 1975).

**SECTION 5.38.030: Permit and License Required -- Display**

No person shall engage in, carry on, or conduct the business of a secondhand dealer in the city without first having obtained a permit and license from the City, and complying with any and all requirements and regulations contained and set

forth in this Chapter. The permit shall be displayed on the premises during business hours.

(Ordinance 2808 § 1, 2012; Ordinance 1436 § 1 (part), 1975).

#### **SECTION 5.38.040: Permit Application -- Investigation**

(A) Each person, before obtaining a permit to carry on the business of a secondhand dealer, shall make a written application to, and upon blanks furnished by, the Police Chief, which application shall be signed by the applicant. In addition to any other information that may reasonably be required by the Police Chief, the application shall show the true name of the applicant, his fictitious name or names, if any, his age, his present address in the city or elsewhere, the name under which the applicant conducted any similar business, if any, and the place of his residence at such time, within twelve (12) months preceding the date of such application. The applicant shall furnish with his application a recent photograph of himself and his fingerprints to the Police Chief.

(B) The Police Chief shall not issue the permit to the applicant unless it reasonably appears to him, after investigation, that the applicant possesses good moral character and is a proper person to conduct such business. The Police Chief shall issue such permit to the applicant or deny such application within sixty (60) days from the date thereof.

(Ordinance 2808 § 1, 2012; Ordinance 1436 § 1 (part), 1975).

#### **SECTION 5.38.050: Revocation Effect**

(A) The City Council may revoke or suspend the permit and license of any person holding same in the city, upon receiving satisfactory evidence that the permittee or licensee has been convicted of or has entered a plea of guilty to any violation of the provisions of this Chapter, or any other law or Ordinance of the City or state relating to such business, or upon the recommendation of the Police Chief.

(B) Whenever a permit or license has been revoked under the terms of this Section, no other application for a permit to carry on a similar business by such person shall be considered for a period of one (1) year from the date of such revocation.

(Ordinance 2808 § 1, 2012; Ordinance 1436 § 1 (part), 1975).

#### **SECTION 5.38.060: Reports to the Police**

(A) For purposes of this Chapter, only those items designated on official information orders of the Garden Grove Police Department shall have to be reported.

(B) Those items reported shall show the hour of the day when each such article is received, and the true name and address, as nearly as the same is known to, or can be ascertained by, such secondhand dealer as evidenced by an operator's license, vehicle license, work badge number, etc., and the personal signature of the person or persons from which such article was received,

together with a description of such person or persons as required by the Police Chief.

- (C) Such report shall provide a complete description of each article reported. If any article bears any number, word or initials, they shall be indicated, and the report shall also show the number of settings and the number of each kind thereof. A complete description of articles, including manufacturer's name, model numbers, serial numbers, identification marks, inscriptions, or other peculiarities and color of the article, shall be included in the report.
- (D) The forms as prescribed by this Section shall be supplied by the Garden Grove Police Department.
- (E) Every secondhand dealer shall deliver, to the Police Chief, the original, third, and fourth copies of such reports made out during the seventy-two (72) hours preceding the filing of such reports.  
(Ordinance 2808 § 1, 2012; Ordinance 1436 § 1 (part), 1975).

**SECTION 5.38.070: Reports Kept on File**

All reports to be filed with the Police Chief as required in this chapter shall be kept on file by the Police Chief in a secure place in the Police Department. The reports shall be open to the Police Department, or upon an order of a court of competent jurisdiction made for that specific purpose.  
(Ordinance 2808 § 1, 2012; Ordinance 1436 § 1 (part), 1975).

**SECTION 5.38.080: Record to be Kept**

Every person engaged in the business of a secondhand dealer in the city shall keep a complete copy of the reports required by this Chapter. Every such record, and all goods and things pledged to, or purchased by, or received by any such secondhand dealer, shall be open at all times during business hours to the inspection of the Police Chief or any Police Officer of the City.  
(Ordinance 2808 § 1, 2012; Ordinance 1436 § 1 (part), 1975).

**SECTION 5.38.090: Reports and Records in the English Language**

Every report and record required by this Chapter shall be written or printed entirely in the English language in a clear and legible manner.  
(Ordinance 2808 § 1, 2012; Ordinance 1436 § 1 (part), 1975).

**SECTION 5.38.100: Property Retention -- Sale Delay**

No secondhand dealer shall sell or otherwise dispose of any article, goods, or other thing within thirty (30) days after the purchase or receipt thereof. The provisions of this Section shall not apply to a return of any article, goods, or other things where the return is to the person who originally sold or otherwise made the article or goods available to the secondhand dealer. This Section shall apply only to those items listed on any information order adopted by the Garden Grove Police Department pursuant to Section 5.38.060.  
(Ordinance 2808 § 1, 2012; Ordinance 1436 § 1 (part), 1975).

**SECTION 5.38.110: Dealing with Minors**

No secondhand dealer shall purchase or take as a pledge, or otherwise, any goods offered to him from any minor under the age of eighteen (18) years. Any statement made to such dealer, employee or purchaser by a person under the age of eighteen (18) years to the effect that he is over eighteen (18) years of age shall not excuse such dealer or employee from any violation of this Section.

(Ordinance 2808 § 1, 2012; Ordinance 1436 § 1 (part), 1975).

**SECTION 5.38.120: Expiration of Licenses**

Upon the expiration of any license issued under the provisions of this Chapter, the holder thereof shall be entitled to a new license for the ensuing year, without making a new application and obtaining a new permit therefore, upon the payment of the required license fee, provided the Police Chief has not placed a stop upon the permit.

(Ordinance 2808 § 1, 2012; Ordinance 1436 § 1 (part), 1975).

**SECTION 5.38.130: Hold Order by Peace Officer**

A Peace Officer may place a "hold order" upon property that he has reason to believe is stolen, acquired by the secondhand dealer in the course of his business, for a period of ninety (90) days, and upon release of such property the dealer will keep a record of the disposition of such property. It is unlawful for any person to dispose of any property contrary to any hold order by a Peace Officer.

(Ordinance 2808 § 1, 2012; Ordinance 1436 § 1 (part), 1975).

**SECTION 5.38.140: True Name, Age and Address**

(A) No person who sells or otherwise disposes of goods, wares, or merchandise to a permittee conducting a business listed in this Chapter or to the permittee's employee or agent shall fail or refuse to give his true name, correct age, and correct address.

(B) No person shall use a fictitious name or address when selling, pledging, or leaving any property on deposit as provided in this Chapter.

(Ordinance 2808 § 1, 2012; Ordinance 1436 § 1 (part), 1975).

**SECTION 5.38.150: Articles Left on Consignment**

All articles left on consignment with a secondhand dealer shall be reported as such as prescribed in Section 5.38.060.

(Ordinance 2808 § 1, 2012; Ordinance 1436 § 1 (part), 1975).

**SECTION 5.38.160: Record of Cash Sales**

Every secondhand dealer shall keep an account of all cash sales, with date, to whom sold, address of purchaser, and a full description of merchandise sold. This Section shall apply only to those items listed on any information order adopted by the Garden Grove Police Department pursuant to Section 5.38.060.

(Ordinance 2808 § 1, 2012; Ordinance 1436 § 1 (part), 1975).

**SECTION 5.38.170: Permittee Records Required**

Secondhand dealer's purchases, sales, and reports to the Police Department shall be maintained for at least three (3) years.

(Ordinance 2808 § 1, 2012; Ordinance 1436 § 1 (part), 1975).

**CHAPTER 40: POOL ROOMS**

**SECTION 5.40.010: Building Requirements**

A Pool Room shall be constructed as a single room without partitions, anterooms, or closet rooms, other than water closets or lavatories, and entirely inaccessible from any other room, cellar or attic; provided, however, that the main entrance or vestibule from the public street shall have colorless, clear glass panel doors. These doors shall be at all times clean, transparent, and unobstructed so that all parts of the room will be open to view. An exception to this Section for office and/or storage area may be made, subject to the approval of the Police Chief. Before any building permit is issued, the floor plans for the proposed establishment shall be submitted to the Police Chief for approval of compliance with this Section, and one (1) copy of the plans shall be provided for Police Department files.

(Ordinance 2808 § 1, 2012; Ordinance 1914 § 1 (part), 1985; Ordinance 674 § 4, 1963; Ordinance 651 § 1 (part), 1963; Prior Code § 4180).

**SECTION 5.40.020: Permit and License Required**

No person shall engage in, carry on, or conduct a Pool Room business without first having obtained a permit and license from the City and complying with any and all requirements and regulations as contained and set forth in this Chapter. The permit shall be displayed on the premises during business hours.

(Ordinance 2808 § 1, 2012; Ordinance 1914 § 1 (part), 1985; Ordinance 651 § 1 (part), 1963; Prior Code § 4181).

**SECTION 5.40.030: Application for Permit -- Denial and Issuance**

(A) APPLICATION PROCESS. Each person, before obtaining a permit to carry on a Pool Room business, shall make a written application to, and upon blanks furnished by the Police Chief, which shall be signed by such applicant. In addition to any other information that may be reasonably required by the Police Chief, the applicant shall show the true name of the applicant; his fictitious name, or names, if any; his age; his present address in the city or elsewhere; his proposed business address in the city; the name under which the applicant conducted any similar business, if any; and the place of his residence at such time; together with such application. The applicant shall furnish a recent photograph of himself and his fingerprints to the Police Chief. The applicant shall further state whether he has been convicted of a felony, or Penal Code Sections 311 through 318, Penal Code Sections 330 through 337, or whether applicant has become a registrant under Penal Code Section 290, or Health and Safety Code Section 11590.

(B) DENIAL IN ISSUANCE OF PERMIT. The Police Chief shall not issue such permit to an applicant who has been convicted or pled guilty to a felony; has been

convicted of Penal Code Sections 311 through 318, or Penal Code Sections 330 through 337; or has become a registrant under Penal Code Section 290, or Health and Safety Code Section 11590.

- (C) The Police Chief shall issue such permit to the applicant or deny such application within sixty (60) days from date thereof.  
(Ordinance 2808 § 1, 2012; Ordinance 2332 § 1 (1), 1995; Ordinance 1914 § 1 (part), 1985; Ordinance 651 § 1 (part), 1963; Prior Code § 4182).

#### **SECTION 5.40.040: Pool Room Permit Revocations and Suspensions**

A Pool Room business may be revoked, suspended, or made subject to conditions in the event that the business has become a civil nuisance, as defined in the California Civil Code, or the permittee has been convicted of, or has entered a plea of guilty to, any violation of the provisions of this Chapter or any other law or Ordinance of the City or the state relating to such business.

- (1) The Police Chief shall institute a revocation, suspension, or conditional suspension hearing when he receives evidence that the business and/or owner falls within the criteria set forth herein.
- (2) The Police Chief shall give a minimum of seven (7) calendar days notice of the hearing, in writing, setting forth the nature and purpose of the hearing. The hearing shall be an informal administrative hearing.
- (3) Upon conclusion of the hearing, the Police Chief may make a written determination to revoke, suspend, or impose conditions on the Pool Room permit, based upon written findings and substantial evidence that one or more conditions listed in this Section exist. The decision shall be made within five (5) days from date of the hearing.
- (4) The decision of the Police Chief shall be appealable to the City Manager by filing a notice of appeal with the City Clerk within five (5) business days from date of receipt of the written decision. The City Manager, or his designee, shall conduct an informal administrative hearing in review of the Police Chief's decision. The City Manager shall then render a written decision that shall be mailed to the owner within five (5) business days from date of the hearing. The decision of the City Manager shall be final, subject only to judicial challenge in a court of competent jurisdiction.

(Ordinance 2808 § 1, 2012; Ordinance 2332 § 1 (2), 1995; Ordinance 651 § 1 (part), 1963; Prior Code § 4183).

#### **SECTION 5.40.050: Windows and Entrance Kept Open**

All windows and entrances to and into said Pool Rooms shall be left open, clear, and unobstructed so as to allow an unimpaired line of sight by a Peace Officer into the interior of the business premises during business hours, unless otherwise approved by the Police Chief.

(Ordinance 2808 § 1, 2012; Ordinance 2332 § 1 (3), 1995; Ordinance 1914 § 2 (part), 1985; Ordinance 744 § 1(A), 1964; Ordinance 744A § 1(A), 1964; Ordinance 651 § 1 (part), 1963; Prior Code § 4184).

**SECTION 5.40.060: Other Games of Chance Prohibited**

No games of cards, dice, or other games of chance shall be carried on in any Pool Room or in any room accessible therefrom.

(Ordinance 2808 § 1, 2012; Ordinance 1914 § 2 (part), 1985; Ordinance 651 § 1 (part), 1963; Prior Code § 4185).

**SECTION 5.40.070: Minors on Premises**

No person under eighteen (18) years of age shall be permitted to enter into or remain in any Pool Room, except when such person is accompanied by his parent or legal guardian.

(Ordinance 2808 § 1, 2012; Ordinance 2332 § 1 (4), 1995; Ordinance 1914 § 2 (part) 1985; Ordinance 1164 § 1, 1970; Ordinance 744 § 1(B), 1964; Ordinance 744A § 1(B), 1964; Ordinance 651 § 1 (part), 1963; Prior Code § 4186).

**SECTION 5.40.080: Hours of Operation**

All Pool Room businesses operated in the city shall be closed between two (2:00) a.m. and six (6:00) a.m. During said four (4) hour period the playing of billiards, pool, bagatelle, snooker, bumper, or similar games, whether or not for profit, shall be prohibited on the premises of said business.

(Ordinance 2808 § 1, 2012; Ordinance 1914 § 2 (part), 1985; Ordinance 1212 § 3, 1971; Ordinance 1123 § 3, 1970; Ordinance 974 § 1, 1967; Ordinance 651 § 1 (part), 1963; Prior Code § 4187).

**SECTION 5.40.090: Building Requirement Exception**

When any room where games of billiards, pool, bagatelle, snooker, bumper, or similar games are conducted for profit is maintained in a building or place wherein eight (8) or more bowling alleys, all under the same management, are maintained, and which building or place is kept open on a twenty-four (24) hour basis, the room where billiards, pool, bagatelle, snooker, bumper, or similar games are played shall be exempt from the provisions of Section 5.40.010, except that the entrance to the room or place shall be at all times open or have clean, uncolored, clear glass so as to give unobstructed view into the room.

(Ordinance 2808 § 1, 2012; Ordinance 1914 § 2 (part), 1985; Ordinance 651 § 1 (part), 1963; Prior Code § 4188).

**SECTION 5.40.100: Youth Serving Agencies Excepted**

Youth serving agencies that offer billiards as a form of recreation without charge and under supervision are exempt from this Chapter.

(Ordinance 2808 § 1, 2012; Ordinance 1164 § 2, 1970; Prior Code § 4189).

**SECTION 5.40.110: Incidental Use**

Operation of a Pool Room with a total of three (3) or fewer pool, billiard, bagatelle, snooker, bumper, or similar game tables is a permitted incidental use in conjunction with operation of a restaurant business or business licensed for sale of

alcoholic beverages for consumption on premises established pursuant to this Code, and is exempt from the provisions of Sections 5.40.010, 5.40.020, 5.40.030 and 5.40.040 of this Chapter. Establishment and operation of a Pool Room with a total of three (3) or fewer pool or billiard tables in conjunction with a primary business that requires a Conditional Use Permit shall also be subject to the requirement of a Conditional Use Permit. Such incidental use may be set forth as a condition on the face of the Conditional Use Permit for the primary use. No additional Conditional Use Permit fee shall be required when the incidental use is requested at the time of application for the primary business.

(Ordinance 2808 § 1, 2012; Ordinance 1914 § 3, 1985).

#### **SECTION 5.40.120: Pool Room Definition**

(A) "Pool Room" means a business which primary purpose is to offer to the public a building structure or portion thereof in which are located one, or more tables designed or used for play of the game of pool, billiards, bagatelle, snooker, bumper pool, or similar games.

(B) The term "Pool Room" shall not include any residential dwelling unit that contains a table for the play of pool, billiards, and similar games, for which no pecuniary compensation is required or given for such play.

(Ordinance 2808 § 1, 2012; Ordinance 2332 § 1(5), 1995; Ordinance 1914 § 4, 1985).

#### **SECTION 5.40.130: Application to Existing Pool Rooms**

Any existing Pool Room within the city shall comply with the requirements of this Chapter, not later than sixty (60) days from the effective date of the Ordinance codified in this Chapter.

(Ordinance 2808 § 1, 2012; Ordinance 2332 § 1 (6), 1995).

### **CHAPTER 44: PRIVATE PATROL SERVICE -- SECURITY OFFICERS**

#### **SECTION 5.44.010: Definitions**

(A) "Private Patrol Service" means that activity or business carried on by a person who purports to furnish, or who does furnish, or who otherwise makes available to another, any watchman, guard, or any other individual to patrol any portion of the city or to guard or watch any property, including guarding against theft, fire, or both, or to perform any service usually and customarily performed by a Peace Officer.

(B) "Private Patrol Service" does not include the guarding of property of a single owner while such property is not open to the public, when such guarding is done by one (1) or more individuals whose entire salary or wage is paid by such owner; nor does it include service of any nature performed by an employee whose main or principal duty is not that of guarding or protecting property.

(C) "Security Officer" means a person engaged in one or more of the activities referred to in Subsection (A), as the owner, member, or employee of a private patrol service.

(Ordinance 2808 § 1, 2012; Ordinance 1366 § 2 (part), 1973).

**SECTION 5.44.020: Permit Required**

No person shall carry on a business of a private patrol service or engage in the business of a security officer, private policeman, watchman, or guard in the city without possessing a valid state identification card issued by the Bureau of Security and Investigative Services. Proof of application may be substituted for the state permit for a period of ninety (90) days from date of application.

(Ordinance 2808 § 1, 2012; Ordinance 1366 § 2 (part), 1973).

**SECTION 5.44.030: Motor Vehicle Restrictions**

No operator of a private patrol service shall permit any security officer, nor shall himself, use a vehicle in the performance of his duties that is painted in such a manner, or bears any emblem, insignia, or equipment of a pattern or design that may be mistaken for or resembles that of a regular Police vehicle, such as used by law enforcement agencies and generally known and recognized by a reasonable person as a Police Car.

(Ordinance 2808 § 1, 2012; Ordinance 1366 § 2 (part), 1973).

**SECTION 5.44.040: Uniforms**

Uniforms to be worn by any private patrol service, security officer, guard, or watchman shall be of such style as, in the opinion of the Police Chief, will be clearly distinguishable from the uniforms of the City Police Department, official Sheriff's uniform, or the official uniform of any Police Department within the county or an official uniform of any State Officer.

(Ordinance 2808 § 1, 2012; Ordinance 1366 § 2 (part), 1973).

**SECTION 5.44.050: Badges -- Display of State Permit**

(A) The size, shape, and inscription of the badge to be worn by security officers is subject to approval of the Police Chief. The design shall be such as not to be readily mistaken as an official state or county badge, sheriff's badge, marshal's badge, or any official police badge of any city within the county or of any State Officer.

(B) While engaged in his duties as such, a security officer shall keep his state permit or proof of application for such permit (as provided for in Section 5.44.020) upon his person at all times.

(Ordinance 2808 § 1, 2012; Ordinance 1366 § 2 (part), 1973).

**SECTION 5.44.060: Rank and Title**

(A) No security officer shall assume or use a rank or title the same as, or similar to, any rank or title adopted and used by the City Police Department, the Sheriff, or any Police Department within the county.

(B) No private patrol service shall use, grant, bestow, or permit any security officer to assume or use any rank or title the same as, or similar to, any rank or title adopted and used by the City Police Department, the Sheriff, or any Police Department within the county.

(C) Titles to be used, if any, shall be principal supervisor, leadman, security officer, or any such title as may be approved by the Police Chief.  
(Ordinance 2808 § 1, 2012; Ordinance 1366 § 2 (part), 1973).

**SECTION 5.44.070: Equipment Specifications**

The Police Chief shall specify the equipment, including weapons, that a security officer may wear or utilize on duty. The security officer shall not wear or utilize any equipment or weapon, or carry any weapon, not so specified.  
(Ordinance 2808 § 1, 2012; Ordinance 1366 § 2 (part), 1973).

**SECTION 5.44.080: Rule and Regulation Authority**

The Police Chief may make such rules and regulations, not inconsistent with the requirements of this Chapter, governing private patrol services and security officers.  
(Ordinance 2808 § 1, 2012; Ordinance 1366 § 2 (part), 1973).

**CHAPTER 48: TAXICAB REGULATIONS\***

\*Prior Ordinance history: Prior Code Sections 6350.1-6350.33; Ordinance Nos. 849, 1048, 1375, 1786, 1856, 1878, 1946 and 2080.

**SECTION 5.48.010: Definitions**

For the purpose of this Chapter, the words and phrases herein defined shall be construed in accordance with the following definitions:

- (1) "City" means the City of Garden Grove.
- (2) "City Authorization" means City authorization to operate a taxicab business in the city.
- (3) "Driver" means a person who drives or controls the movements of taxicab.
- (4) "Driver's Permit" means a valid permit issued by OCTAP authorizing a person to drive or control the movements of a taxicab.
- (5) "OCTAP" means the Orange County Taxi Administration Program administered by the Orange County Transportation Authority.
- (6) "Operate a taxicab" means to drive a taxicab and either solicit or pick up passengers for hire in the city.
- (7) "Owner" means the registered owner or lessor of a taxicab.

- (8) "Person" includes natural person, firm, association, organization, partnership, business, trust, corporation, or public entity.
- (9) "Taxicab" means a vehicle operated within the jurisdiction of the city, capable of carrying not more than eight (8) persons, excluding the driver, and used to carry passengers for hire. The term shall exclude a vehicle operating as a charter party carrier licensed as such by any state agency, including the Public Utilities Commission, or any other vehicle having a certificate of public convenience and necessity issued by any state agency, including the Public Utilities Commission.
- (10) "Taxicab Business Permit" means a valid permit issued by OCTAP authorizing a person to operate a taxicab business.
- (11) "Taxicab Vehicle Permit" means a valid permit issued by OCTAP authorizing a particular vehicle to be operated as a taxicab.  
(Ordinance 2808 § 1, 2012; Ordinance 2408 § 1 (part), 1997).

**SECTION 5.48.020: City Authorization Required**

- (A) A person shall only operate a taxicab if the owner of that taxicab is authorized by the City to operate a taxicab business in the city.
- (B) An owner shall only allow a taxicab owned by the owner to be operated if the owner is authorized by the City to operate a taxicab business in the city.
- (C) The procedures for City authorization to operate a taxicab business in the city shall be established by separate City Council Resolution or Ordinance.  
(Ordinance 2808 § 1, 2012; Ordinance 2408 § 1 (part), 1997).

**SECTION 5.48.030: Driver's Permit Required**

A person shall only operate a taxicab if that person possesses a driver's permit and if City authorization has been obtained. An owner shall only allow a driver to operate a taxicab owned by the owner if that driver possesses a driver's permit and if City authorization has been obtained.  
(Ordinance 2808 § 1, 2012; Ordinance 2408 § 1 (part), 1997).

**SECTION 5.48.040: Taxicab Vehicle Permit Required**

A person shall only operate a taxicab if that vehicle displays a taxicab vehicle permit and if City authorization has been obtained. An owner shall only allow a taxicab owned by the owner to be operated in the city if that vehicle displays a taxicab vehicle permit and if City authorization has been obtained.  
(Ordinance 2808 § 1, 2012; Ordinance 2408 § 1 (part), 1997).

**SECTION 5.48.050: Taxicab Business Permit Required**

A person shall only operate a taxicab business in the city if that person possesses a taxicab business permit and if City authorization has been obtained.  
(Ordinance 2808 § 1, 2012; Ordinance 2408 § 1 (part), 1997).

**SECTION 5.48.060: Application for Permits**

Application for a driver's permit, taxicab vehicle permit, or taxicab business permit shall be made to OCTAP, upon a form provided by OCTAP and shall be accompanied by an application fee sufficient to cover the administrative costs of processing such application as established by the Orange County Transportation Authority. (Ordinance 2808 § 1, 2012; Ordinance 2408 § 1 (part), 1997).

**SECTION 5.48.070: Testing for Controlled Substances and Alcohol**

A driver shall test negative for controlled substances and alcohol as required by applicable state statutes. (Ordinance 2808 § 1, 2012; Ordinance 2408 § 1 (part), 1997).

**SECTION 5.48.080: Insurance Required**

A driver operating a taxicab in the city shall carry with him at all times proof of insurance covering that vehicle, with such policy limits and coverage as established by OCTAP and adopted by separate City Council Resolution. Such proof of insurance must clearly identify the vehicle covered. (Ordinance 2808 § 1, 2012; Ordinance 2408 § 1 (part), 1997).

**SECTION 5.48.090: Nontransferability**

No permit issued under this Chapter shall be assigned to, or used by, any person or vehicle other than the person or vehicle named in such permit. (Ordinance 2808 § 1, 2012; Ordinance 2408 § 1 (part), 1997).

**SECTION 5.48.100: Equipment**

A taxicab operated under the authority of this Chapter shall be equipped according to the standards established by OCTAP and adopted by separate City Council Resolution. (Ordinance 2808 § 1, 2012; Ordinance 2408 § 1 (part), 1997).

**SECTION 5.48.110: Mechanical Condition**

A taxicab operated under the authority of this Chapter shall be maintained according to the standards established by OCTAP and adopted by separate City Council Resolution. (Ordinance 2808 § 1, 2012; Ordinance 2408 § 1 (part), 1997).

**SECTION 5.48.120: Operational Requirements**

- (A) A driver shall only carry a passenger to his destination by the most direct and accessible route.
- (B) A taxicab shall have all permits issued by OCTAP conspicuously displayed according to the standards established by OCTAP and adopted by separate City Council Resolution.
- (C) A taxicab shall have the following information continuously posted in a prominent location in the taxicab passenger's compartment according to the

standards established by OCTAP and adopted by separate City Council Resolution:

- (1) A schedule of rates and charges for the hire of said taxicab;
  - (2) The driver's name and address;
  - (3) The owner's name, address, and telephone number;
  - (4) The taxicab identification number;
  - (5) The driver's permit issued pursuant to this Chapter;
  - (6) The taxicab vehicle permit issued pursuant to this Chapter; and
  - (7) Any other information required by the City.
- (D) A driver shall give a receipt for the amount charged upon the request of the person paying the fare.
- (E) A taxicab shall only be operated if the passenger compartment is kept in a clean and sanitary condition.
- (F) A driver shall not leave his taxicab to solicit passengers.
- (G) The name or trade name of the owner and the number by which the taxicab is designated shall be printed, stamped, or stenciled conspicuously on the outside of each taxicab according to the standards established by OCTAP and adopted by separate City Council Resolution.  
(Ordinance 2808 § 1, 2012; Ordinance 2408 § 1 (part), 1997).

#### **SECTION 5.48.130: Rates and Charges**

No driver shall charge rates and charges other than those established by OCTAP and adopted by separate City Council Resolution.  
(Ordinance 2808 § 1, 2012; Ordinance 2408 § 1 (part), 1997).

#### **SECTION 5.48.140: Separate from Business Licensing**

The requirements of this Chapter are separate and independent from the business licensing and any other provisions under the City Code.  
(Ordinance 2808 § 1, 2012; Ordinance 2408 § 1 (part), 1997).

#### **CHAPTER 52: TOW TRUCKS\***

\*Prior Ordinance history: Ordinance Nos. 1475 § 1 (part) and 1776.

#### **SECTION 5.52.010: Definitions**

As used in this Chapter:

- (1) "Illegally parked vehicle" means any vehicle that is parked in violation of the laws of the city, County of Orange or the State of California.

- (2) "Official police tow" means a tow service which is under contract with the city to respond to police-initiated requests for tow services.
- (3) "Owner" means and includes every person, partnership, firm, or corporation owning or controlling any tow truck.
- (4) "Public automotive storage facility" means any vehicle storage facility which provides to the public the service of storing or holding vehicles.
- (5) "Tow services" means any service where vehicles are towed or otherwise moved from one place to another.
- (6) "Tow truck" means any vehicle or device used to tow or otherwise remove vehicles from one place to another. This includes a motor vehicle which has been altered or designed and equipped for, and used in, the business of towing vehicles by means of a wheel lift, crane, hoist, tow-bar, tow-line rollback, or dolly or is otherwise used to render assistance to other vehicles.
- (7) "Tow truck driver" means and includes a person who drives or is in actual physical control of a tow truck.

(Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

#### **SECTION 5.52.020: Towing Operation Defined**

As used in this Chapter, "tow operation" or "tow service" means the activity of towing and/or storing of vehicles, including the removal of vehicles from private property, and the performance of other services incidental to towing, for compensation within the city, and shall include any official police tow service, designated by City Council Resolution.

(Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

#### **SECTION 5.52.030: Exceptions**

The provisions of this Chapter shall not apply to any towing operation that:

- (A) Provides tow services exclusively to members of an association, automobile club or similar organization, and receives remuneration only from the sponsoring association, automobile club or similar organization;
- (B) Provides tow services without charge or fee for other vehicles owned or operated by the individual or organization furnishing the tow service;
- (C) Provides tow service for other vehicles owned or operated by the individual or organization furnishing the tow service, but which are being operated under terms of a rent or lease agreement or contract, and such towing is performed on a nonprofit basis or the fee is part of the rent or lease agreement or contract;

- (D) That provides tow service for vehicles in the city on a nonemergency towing assignment. A nonemergency includes the towing of vehicles that have been involved in a collision, but have been removed from the scene; that have experienced mechanical failure, but have been removed from the roadway and no longer constitute a hazard; or that, being mechanically operative, are towed for convenience. All nonemergency towing assignments require authorization from the registered owner, legal owner, driver, or other person in control of the vehicle. Persons soliciting for such nonemergency towing assignments within the city shall operate within the provisions of this Chapter and are required to have a permit.

The above exemption from regulatory provisions of this Chapter does not constitute and exemption from business tax.

(Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

#### **SECTION 5.52.040: Permit Required**

Except the exemptions in Section 5.52.030, no person, company or corporation shall engage in, manage, conduct or operate a towing service business within the city, including towing and/or storing of vehicles from private property, in the absence of a towing operation permit issued pursuant to the provisions in this Chapter and a business tax certificate issued pursuant to Chapter 5.01.

(Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

#### **SECTION 5.52.050: Display of permits**

- (A) The tow service permittee shall carry in each tow truck an original or a photocopy of a current business tax certificate and a valid tow service permit.

- (1) The tow service permittee or its drivers shall on demand show the current business tax certificate and a valid tow service permit to a police officer or a person duly authorized to enforce this Code.

- (B) Every tow truck driver shall have on his person a valid tow truck driver's permit issued pursuant to this chapter when driving a tow truck in the city. The permit shall bear the name, physical description, thumb print, photograph of the permittee, and the name of the tow service employing the permittee.

- (1) The tow truck driver on demand shall show the permit to a police officer or a person duly authorized to enforce this Code.

- (2) It is the obligation of tow service permittee to insure that the tow truck driver's permit is returned to the Police Department immediately upon suspension, revocation, or termination of employment of the tow driver.

(Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

#### **SECTION 5.52.060: Application fee**

- (A) Any person, company or corporation desiring to obtain or renew a tow operation permit to engage in, manage, conduct, or operate a towing service within the city shall apply as provided in Section 5.52.090 of this Chapter.

(B) Each application submitted will be accompanied by a nonrefundable application fee as established by City Council Resolution.

(Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

**SECTION 5.52.070: Violation and Penalty**

(A) Every person, whether acting as an individual owner, employee of the owner, operator or employee of the operator, or whether acting as a mere helper for the owner, employer or operator, or whether acting as a participant or worker in any way, who operates or conducts a towing service pursuant to this chapter without first obtaining a permit from the City or who shall violate any provisions of this Chapter, shall be guilty of a misdemeanor.

(B) Each person shall be guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provision of this Chapter is committed, continued or permitted to be committed or continued.

(C) Any tow service establishment operated, conducted or maintained contrary to the provisions of this Chapter is unlawful and will be considered a public nuisance, and the City Attorney may, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings for the abatement, removal from and of, in the manner provided by law and shall take such other steps as deemed necessary and shall apply to such court or courts as may have jurisdiction to grant such relief to abate or remove such tow services from the city.

(Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

**SECTION 5.52.080: Application Contents**

The City shall keep all information provided on applications for tow service permits confidential, pursuant to any state laws.

The completed application shall include but is not limited to the following:

(A) If a sole proprietor, the full name, date of birth, driver's license number, business and residence address of the applicant; or if a corporation, its name, date and place of incorporation, address of its principal place of business, and the names of its principal officers, together with their respective residence addresses; or if a partnership, association or unincorporated company, the name of the partners, or the persons comprising such association or company, and the business and residence of each partner and person;

(B) The addresses of all available public automobile storage facilities that the applicant will use for the storage of towed vehicles;

(C) Written proof that the applicant is over eighteen (18) years of age;

(D) The names, addresses and driver's license number, and all information required of all tow truck drivers employed by the applicant. The applicant will

provide this information for any change in employee status within ten business days from the date of the change, after the issuance of the permit;

- (E) The year of manufacture, make, model, vehicle identification number, license number, unladen weight, load gross vehicle weight rating (GVWR) capacity weight and type of each tow unit which the applicant proposes to use in the operation of the business;
  - (F) The business, occupation or employment history of the applicant for the three years immediately preceding the date of the application;
  - (G) The business license and permit history of the applicant, owner or profit interest holder in the tow service;
  - (H) All criminal convictions or proceedings in which a plea of guilty or nolo contendere was entered including vehicle code violations;
  - (I) A certificate of insurance pursuant to Section 5.52.130;
  - (J) Any other identification and documentation that is reasonably necessary to effectuate the purpose of this Chapter.
- (Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

#### **SECTION 5.52.090: Permit Procedures**

- (A) Any applicant for a permit pursuant to these provisions shall first obtain, complete and return a business tax application to the business tax office. A letter of business intent will be prepared in triplicate by the business tax clerk to be handcarried by applicant to the police department. The applicant shall obtain a permit application at the Police Department, complete and return along with a copy of the company's insurance policy to the Police Department. The Chief of Police or his designee, shall have a reasonable time in which to investigate the application and the background of the applicant. Based upon such investigation, the Chief of Police, or his designee, shall issue a permit or deny same.
- (B) The City Building Division and the Fire Department, on request of the Chief of Police, shall inspect the premises proposed to be devoted to that of a public automobile storage facility and shall make recommendations to the Chief of Police or his designee.
- (C) The Police Department Traffic Division shall inspect the tow trucks and towing equipment and make recommendations to the Chief of Police or his designee.
- (D) The Chief of Police or his designee shall not issue a permit if, based upon his investigation, he finds any one or more of the following:
  - (1) Evidence shows that the permit applicant has deliberately falsified or not completed the application;

- (2) The permit applicant fails to furnish the information and documents required by this Chapter;
- (3) The preceding record of such permit applicant reveals a conviction or a plea of nolo contendere or guilty of a misdemeanor or felony crime involving sexual offenses or moral turpitude or a felony involving sale or use of a controlled substances within the last ten (10) years;
- (4) The applicant has been convicted or pled nolo contendere or guilty to a misdemeanor or a felony crime involving theft or embezzlement within the last ten (10) years;
- (5) The preceding record reveals that the permit applicant permitted, through an act of omission or commission, his or her employees or agent to engage in any type of offense, misdemeanor, or felony, involving moral turpitude. Under such circumstances, the conduct of the applicant's employee or agent, if such conduct resulted in a conviction or a plea of nolo contendere or guilty, will be considered imputed to the permit applicant for purposes of denial;
- (6) An inspection or investigation by the City Building Division, Police Department, or Fire Department reveals a deficiency, violation or course of conduct that endangers the peace, health, safety, and general welfare of the public;
- (7) The operation as proposed by the applicant, if permitted, would not comply with all applicable laws including, but not limited to, the Garden Grove Municipal Code;
- (8) The applicant is not eighteen (18) years old or older;
- (9) The applicant has a record of excessive violations of the vehicle code which has resulted in the suspension or revocation of their driver's license or a second driving under the influence or reckless driving conviction within the last three (3) years;
- (10) The applicant is unable to produce an insurance policy as described in Section 5.52.130;
- (11) The tow trucks or towing equipment of the applicant failed the initial inspection and the applicant was unable to make the necessary repairs to pass a reinspection by the Police Department Traffic Division;
- (12) The applicant, his agent, or any person connected or associated with the applicant as partner, director, officer, stockholder, associate or manager has been refused a tow operation permit or had a tow operation permit

suspended or revoked by another city, within a year of applying for a tow operation permit with the City.

- (E) In the event the permit is denied by the Chief of Police or his designee, written notice of such denial shall be given to the applicant specifying the grounds for such denial. Notice of the denial of the permit shall be deemed to have been served upon personal service of the applicant or when deposited in the United States mail with postage prepaid and addressed to the applicant at his last known address. Within fifteen (15) business days from date of denial, any person denied a permit pursuant to these provisions may request a hearing, as described in Section 5.52.420.

(Ordinance 2830 § 1, 2013; Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

**SECTION 5.52.100: Tow Service Permit Renewal**

A permit shall expire after a term of one (1) year. The permit can thereafter be renewed. Applications for renewal shall be subject to all provisions of this Chapter and Chapter 5.01.

(Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

**SECTION 5.52.110: Business License**

Nothing herein shall constitute a waiver of the requirements for the issuance and possession of a business tax certificate.

(Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

**SECTION 5.52.120: Insurance Required**

The tow service permittee shall file with the Police Department Traffic Division and will keep in full force and effect, a certificate of insurance, insuring the public against any loss or damage that can result to any person or property from the performance of towing service activities or any incidental acts required by this Chapter.

(Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

**SECTION 5.52.130: Insurance Requirements**

The minimum liability limits shall be as follows:

- (A) For injury to any one person or death of any one person in any one accident or occurrence, one million dollars;
- (B) For injury to two or more persons or death of two or more persons in any one accident or occurrence, one million dollars;
- (C) For damage or destruction of property in any one accident, fifty thousand dollars;
- (D) All policies shall contain a provision for the continuing liability up to the full amount of the penalty, notwithstanding any recovery;

- (E) The policy shall contain a provision or endorsement that the policy shall not be changed, canceled or terminated until notice in writing has been given to the Police Department Traffic Division, at least thirty (30) days prior to the time the cancellation shall become effective;
- (F) The tow service shall maintain workers compensation insurance if applicable. The tow services shall require all subcontractors to provide workers compensation insurance;
- (G) Endorsements for the policies shall designate the City as additional insured. The tow service shall provide to the City proof of insurance in the form of a certificate of insurance or an endorsement form signed by an authorized representative of the insurance company. The forms shall be approved by the insurance administrator.

(Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

**SECTION 5.52.140: Permit For Each Location Required**

No tow service permittee shall conduct a towing operation at a location other than the location specified in the permit.

(Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

**SECTION 5.52.150: Nontransferable Permit**

Tow service permits shall not be transferable except as provided herein. Business tax certificates are nontransferable.

(Ordinance 2830 § 2, 2013; Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

**SECTION 5.52.160: Change of Ownership**

When a towing operation for which a permit has been issued is sold or transferred to one of the transferees listed in this Section, the Chief of Police or his designee may endorse a change of ownership on such permit upon written application by the transferee. Only the following transferee or successors shall be entitled to such transfer of the permit:

- (A) Duly qualified representatives of permittee regularly appointed by the courts of competent jurisdiction, assignees for the benefit of creditors, and spouses or children of permittee;
- (B) The surviving partner or partners of a dissolved partnership;
- (C) A new partnership consisting of the members of a predecessor partnership, plus their spouse or spouses of any such members;
- (D) A new corporation, organized and controlled by an individual or unincorporated permittee for the purpose of acquiring, or which has acquired the assets of the business previously owned and operated by the permittee;

(E) Upon dissolution of a closely held corporation, the stockholders to whom the assets are distributed.

(Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

**SECTION 5.52.170: Change of Ownership--Application Fee**

A transferee or successor entitled to a transfer of permit must file an application for the transfer with the Chief of Police within thirty (30) days after he or she assumes control of the towing operation. The Chief of Police or his designee may require evidence of the transfer of ownership or control as he deems necessary. A fee equal to fifty percent (50%) of the original fee for the permit shall accompany the application.

(Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

**SECTION 5.52.180: Change of Ownership--Action On**

The Chief of Police or his designee may allow the transfer of the permit to a transferee if he finds the transfer will not adversely affect the peace, health, safety, convenience and general welfare of the public, and the transferee possesses the qualifications required of original applicants.

(Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

**SECTION 5.52.190: Business Location**

Any person conducting a towing operation shall maintain a physical location from which said business is conducted. Such physical location shall provide an office with an adjacent yard for vehicle storage. Such location, whether situated within or outside the city, shall be approved by the Chief of Police or his designee, prior to a permit being issued. A permittee may establish and maintain an additional location within or outside the city as a yard for vehicle storage. Such additional location shall be approved by the Chief of Police, or his designee.

(Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

**SECTION 5.52.200: Change of Location**

Where no conflict exists with the City's zoning regulation or other provisions of this Code, a change of location may be endorsed on the permit by the Chief of Police, or his designee. A change of location form must be submitted to the Business Tax Office and the Police Department Traffic Division, accompanied by a change of location fee as established by City Council Resolution.

(Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

**SECTION 5.52.210: Business Records**

(A) The tow service shall maintain business records of the tow service including: a description of the vehicle, nature of service, time, location, tow truck driver handling the call and an itemized total charge. Inspection of these business records by the Garden Grove Police shall be limited to issues pertaining to a violation of the suspension or revocation criteria set forth in this Chapter.

(B) The tow services shall maintain these records at the permittee's business office and shall be kept for a minimum period of two (2) years plus the current year. The year is based on the calendar year.

(Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

**SECTION 5.52.220: Inspection**

- (A) An initial inspection of each tow service’s facility or facilities, records, vehicles and equipment will be conducted by the Police Department Traffic Division and/or the California Highway Patrol.
- (B) Subject to Subsection (C), below, and in addition to any inspections conducted by the California Highway Patrol, with the exception of the tow services on the Police Rotational Tow List, which shall be subject to inspection by the Police Department up to two (2) times per year (semi-annually), all other tow service permittees’ towing equipment, facility or facilities shall be subject to inspection up to one (1) time per year (annually) with notice, during normal business hours by the Police Department Traffic Division, and a report filed thereon.
- (C) Notwithstanding Subsection (B), above, each tow service permittee's towing equipment, facility or facilities can be inspected with cause, with twenty-four (24) hours notice, during normal business hours by the Police Department Traffic Division, and a report filed thereon. The Police Department may rely on inspections conducted by the California Highway Patrol. If any deficiencies or equipment violations are discovered during any Police Department of California Highway Patrol inspection, the tow service will be so advised in writing. The tow service will be given ten (10) business days to rectify the deficiency or violation. Failure to comply may result in the tow service permit being suspended.
- (D) If in the opinion of the Police Department Traffic Division, the deficiencies or equipment violations which are discovered during any Police Department or California Highway Patrol inspection prevent any vehicle from being operated in a safe manner, the vehicle shall be taken out of service. Failure to comply may result in the tow service being suspended.

(Ordinance 2830 § 3, 2013; Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

**SECTION 5.52.230: Inspection Fee**

Inspections and reinspection fees shall be established by City Council Resolution. Inspection and reinspection fees are nonrefundable.

(Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

**SECTION 5.52.240: Towing Authorization**

With the exception of tow service calls dispatched to rotation tow services by the Police Department, a tow service permittee or a tow truck driver shall not attach a vehicle to a tow truck without first receiving written authorization to do so by the registered owner, the legal owner, driver, or other person in control of said vehicle. Such authorization shall list the service offered and the rates required. A copy of such authorization shall be furnished to the person authorizing the tow, and shall list the name, address and telephone number of the towing service business and the days and hours the business is open for the release of vehicle. The

authorization shall also be signed by the tow truck driver performing the authorized service.

(Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

**SECTION 5.52.250: Itemized Statement When Requested**

(A) A permittee shall furnish an itemized statement to the person authorizing the towing service, or his agent. Such permittee shall furnish an itemized statement of service performed including, labor and special equipment used in towing the vehicle upon the request of:

- (1) The registered owner; or
- (2) The legal owner; or
- (3) The insurance carrier of either (a) or (b) of this Section; or d. The duly authorized agent of any of the foregoing.

(B) Such permittee shall furnish a copy of the statement to any person authorized to receive the statement without demanding payment as a condition precedent.

(Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

**SECTION 5.52.260: Release of Vehicle**

(A) The tow service permittee shall provide for the release of vehicles Monday through Friday from eight (8:00) a.m. to five (5:00) p.m. excluding officially recognized holidays. A tow service permittee may additionally release vehicles on other days and hours.

(B) Upon application to the Chief of Police, or his designee, and a showing of a hardship by the permittee, an adjustment in the days and hours during which vehicles may be released may be made.

(Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

**SECTION 5.52.270: Rates and Charges--Signs--Change of**

(A) The permittee shall maintain on file with the Police Department a current schedule of rates and charges for each offered service. No charges other than the rates and charges specified in such schedule shall be made, except:

- (1) The rates for towing and storage of illegally parked vehicles removed from private property shall not be more than the rates established for the tow services on the police tow rotation.
- (2) All tow services on the Police Department tow rotation list shall charge reasonable fees for police rotation calls. The rates or fees charged by the tow service for accident or impound calls will be those fees as established by the Chief of Police or his designee. Rates or fees per tow shall include all cleanup per California Vehicle Code Section 27700.

- (B) A tow service shall post and maintain, conspicuously, in the office and/or any location where customer's financial transactions take place, a list of the rates and charges for all service offered.
  - (C) When a tow service makes a change in rates and charges, it shall provide the Police Department Traffic Division a copy of the new schedule of rates, at least ten (10) business days prior to becoming effective. A duplicate copy of such notice shall be posted next to the schedule of the existing rates and charges for a period of ten (10) business days in the office of the tow service permittee.
  - (D) Each tow truck shall carry a printed copy, listing the charge rates for each service provided by the tow operator for the general public.
  - (E) When requested, the tow truck driver shall allow a citizen, whose car is being towed, or a Police Officer or other designated employee of the City to review the rate list.
  - (F) Rates for lien fees are to comply with the California Vehicle Code, Section 22851.12.
  - (G) Payment of tow fees shall be accepted as prescribed within California Vehicle Code Section 22651.1 by cash or a valid bank card or at the option of the tow service, check or other acceptable forms. The tow service shall keep a reasonable amount of cash on hand to make change for cash transactions during normal business hours.
- (Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

**SECTION 5.52.280: Independent Contractor**

In the performance of the services by the tow service, the tow service shall act and be an independent contractor and not an agent or employee of the City, and shall obtain no rights or any benefits which accrue to the City's employees.  
(Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

**SECTION 5.52.290: Limitations Upon Subcontracting and Assignment**

The tow service shall not contract with any other entity to perform the services required without the written approval of the Police Department. Neither this agreement nor any interest may be assigned voluntarily or by the operation of law, without the prior written approval of the Police Department. If the tow service is permitted to subcontract any part of this agreement, the tow service shall be fully responsible to the city for the acts and omissions of the subcontractor as it is for the acts and omissions of persons directly employed. There shall be no contractual relationships between any subcontractor and the City. All persons engaged in the work, including subcontractors, will be considered employees of the tow service. The City will deal directly with the tow service permittee.  
(Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

**SECTION 5.52.300: Vehicle Repair or Alteration--When Permitted**

(A) No permittee shall make any repair or alteration to a vehicle without first being authorized by:

- (1) The registered owner; or
- (2) The legal owner; or
- (3) The insurance agent of either (1) or (2) of this Section; or
- (4) The authorized agent of any of the above.

(B) Parts, personal property or accessories shall not be removed from any vehicle without authorization except as necessary for security purposes. Under such circumstances, the parts, personal property or accessories removed; stored in the business office and shall be listed on an itemized statement and a copy of this statement shall be placed in the vehicle. This Section shall not be construed as prohibiting the permittee from making emergency alterations necessary to permit the removal by towing of such vehicle.

(Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

**SECTION 5.52.310: Applicability of Regulations to Existing Businesses**

The provisions of this Chapter shall be applicable to all persons and businesses described herein whether the herein described activities were established before or after the effective date of this Chapter, except those in business as of the date of the enactment of the Ordinance codified in this Chapter shall have thirty (30) days to comply with the terms herein.

(Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

**SECTION 5.52.320: Display of "Official Police Tow"**

Unless specifically approved by the Police Department, a tow service which is issued a permit to tow, and/or store vehicles, or impound illegally parked vehicle from private property is not an official police tow. The tow service shall not display, either on the premises or on a tow truck any words, insignia, or other indication that the tow truck service is an official police tow truck service.

(Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

**SECTION 5.52.330: Tow Truck Driver--Permit Required/Renewal of Same**

The City shall keep all information provided on applications for tow truck drivers confidential, pursuant to any state laws.

(A) No person shall operate or drive a tow truck, as defined in Subsection (a) of Section 615 of the California Vehicle Code without a written tow truck driver's permit from the Chief of Police to act as a tow truck driver.

- (B) No person shall be employed as a tow truck driver until such time as said person has received a written permit from the Chief of Police to act as a tow truck driver.
- (C) Tow truck driver's permit issued pursuant to the provisions of this Chapter, unless sooner revoked, suspended or canceled, shall be effective for a period of two (2) years from the date of issuance and can be renewed for successive two-year periods of time. Applications for renewal shall be treated as an application for a tow truck driver's permit, subject to all applicable provisions of this Title. Applications for renewal, and the appropriate fee, shall be filed with the Chief of Police not later than thirty (30) days before the expiration of the tow truck driver's permit.
- (D) It shall be the responsibility of the tow service permittee to have all tow truck drivers in their employ obtain a tow truck driver's permit from the Chief of Police.
- (E) An application for a tow driver's permit shall be obtained from the Police Department. The completed application shall be returned to the Police Department accompanied by a nonrefundable fee, in an amount established by a City Council Resolution and shall contain the following information:
  - (1) The full name, date of birth, place of birth, driver's license number, resident address, and the name and business address of his employer;
  - (2) The occupation and employment history of the applicant for three (3) years immediately preceding the date of the application;
  - (3) Written proof that the applicant is over eighteen (18) years of age;
  - (4) All criminal convictions or proceedings in which a plea of guilty or nolo contendere was entered including vehicle code violations;
  - (5) Two (2) complete sets of the applicant's fingerprints;
  - (6) Other identification and documentation as reasonably necessary to effectuate the purpose of this Chapter.
- (F) The Chief of Police, or his designee, within thirty (30) days or longer upon a showing of good cause, shall conduct an investigation of the applicant, and the application for a tow truck driver's permit may be denied within the same period of time for any one of the following:
  - (1) Evidence showing the applicant has deliberately falsified the application or omitted information requested on the said application;
  - (2) The applicant fails to furnish the information and documents required by this Chapter;

- (3) The preceding record of the permit applicant reveals a conviction or a plea of nolo contendere or guilty of a misdemeanor or a felony crime involving sexual offenses or moral turpitude or a felony involving sales or use of a controlled substance within the last ten (10) years;
  - (4) The applicant is not of the age of eighteen (18) years or older;
  - (5) The applicant has a record of excessive violations of the vehicle code which has resulted in the suspension or revocation of their driver's license or a second driving under the influence or reckless driving conviction within the last three (3) years;
  - (6) The applicant does not hold a valid California driver's license or any certificate or license applicable to his job as a tow truck driver, as required by federal, state or county laws and/or regulations;
  - (7) The applicant has been convicted or pled nolo contendere or guilty to a misdemeanor or a felony crime involving theft or embezzlement within the last ten (10) years;
  - (8) The applicant is a narcotics offender or uses dangerous drugs.
- (G) In the event the permit is denied by the Chief of police or his designee, written notice of such denial shall be given to the applicant specifying the grounds for such denial. Notice of the denial of the permit shall be deemed to have been served upon personal service of the applicant or when deposited in the United States mail with postage prepaid and addressed to the applicant at his last known address. Within fifteen (15) business days from the date of the denial, any person denied a permit pursuant to these provisions can request a hearing, as described in Section 5.52.420.
- (Ordinance 2830 § 4, 2013; Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

**SECTION 5.52.340: Information Regarding New or Terminated Tow Truck Driver**

- (A) Each tow service permittee under this Chapter shall file with the traffic division of the Police Department the name, address, birthday, birthplace, driver's license number, and all other information required of any tow truck driver employed by the permittee subsequent to the date of the tow truck driver application which information shall be filed not later than ten (10) business days following the date of such employment.
- (B) Each tow service permittee under this Chapter shall notify the Traffic Division of the Police Department of the name of any tow truck driver no longer employed by such permittee. This notification shall be given to the Traffic Division no later than ten (10) business days following the last date of such operator's employment by said permittee.

(C) A tow driver's permit is transferable from one approved Police Department tow service permittee to another.

(1) The driver shall update his application on file with the Police Department Traffic Division;

(2) The driver shall pay a transfer fee as established by City Council Resolution.

(Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

**SECTION 5.52.350: Tow Drivers Training**

Tow drivers shall be proficient in the use of the tow truck they are driving and related equipment, including, but not limited to the procedure necessary for the safe towing and recovery of various types of vehicles. It is the responsibility of the tow service permittee to ensure, its drivers are qualified and competent employees of the business.

(Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

**SECTION 5.52.360: Additional Requirements for Rotational Tow Services**

Requirements for police rotational tow services will include the aforementioned Municipal Code Sections, as well as Subsections (A) through (Z) of this Section:

(A) The Police Department has determined that a rotation list of tow services is necessary to ensure that service is adequate at all times and calls for service are distributed in an equitable manner. Each year the Chief of Police or his designee shall reevaluate the number of tow services participating in the Police Department rotation tow service and depending on the needs of the Police Department the number of tow services may be raised or lowered.

(B) Tow services participating on the Police Department rotation list will be per a contract with the Police Department. The tow service shall abide by this Chapter and any rules or regulations included in the contract. A rotational tow service who fails to abide by this Chapter and any rules or regulations included in the contract can be suspended for cause from the rotational tow list for up to one (1) year.

(C) In the event a tow service is unable to respond to calls at the request of the Police Department, it shall be understood that the Police Department has the right to call the next tow service on the rotation list. The original tow service will be placed on the bottom of the rotation list. It is incumbent upon the tow service to advise the Police Dispatcher of any problems that may arise to adversely affect response time.

(D) The tow service shall have its business office and storage lots within two and one-half (2 ½) miles of the city limits, as measured by a straight line, without regard to intervening structures or objects, from the nearest point on the

property line of the parcel where the tow service is located to the nearest point on the city limit boundary.

- (E) The Police Department, in order to expedite service can request a tow service out of order on the rotation list. The tow service requested will not lose its place on the rotation list.
- (F) Vehicles brought to the Police Department or a designated facility from the scene for processing and then towed to the tow yard will incur an additional second tow fee equal to one-half of the regular tow fee. Storage fees will not start until this vehicle is stored at the towing facility.
- (G) The tow services shall maintain twenty-four-hour-a-day service. Telephone service maintained by the tow services shall be adequate to receive police calls without delay. The telephone terminals shall be monitored at all times. Recording machines or similar devices are not allowed. If a call from the Police Department is not answered within six (6) rings or the line is busy, or placed on hold for more than a minute, the call will be terminated, the tow service will be placed on the bottom of the rotation list and the tow service next in line will be called.
- (H) The tow service will be responsible and held accountable for personal property, vehicle accessories and the vehicle upon receipt of the vehicle from the Police Department. The City, its officers, agents or employees shall not be liable for loss of, or damage to any vehicle, accessory, equipment or personal property towed or stored upon the receiving tow truck driver receipting for the vehicle by his/her signature on the stored vehicle report form.
- (I) The tow service shall not dispose of or otherwise relinquish control of any vehicle stored or impounded by the Police Department without a written authorization to do so. The written authorization is required for any vehicle stored or impounded by the Police Department for which the tow truck driver signs a stored vehicle report form and receives a copy of the stored vehicle report. The Police Department stored automobile release form will be the normal form for release.
- (J) The release of property from a vehicle will be handled in the same manner as a vehicle release. The stored automobile release form will again be used, but a stamp, "property only" will be utilized at the top of the form. The person who authorizes the release of the property will make the modification and will be specific as to description of the property to be released.
- (K) Vehicles will be released during the business hours of eight (8:00) a.m. to five (5:00) p.m., Monday through Friday, "excluding holidays and weekends." There will be, however, occasions arising that can require "after hours releases" of certain vehicles. When the circumstances appear to justify an "after hour release" of a vehicle, approval of the release must be secured from the On-Duty Police Supervisor.

- (L) An "after hours release" fee will be included on the fee schedule established by the City.
- (M) For purposes of clarity, vehicles towed or stored at the request of citizens, for which no stored vehicle report is utilized, will not require a stored automobile release. Citizens requesting the towing of vehicles under their control shall enter into an agreement with the tow service and the Police Department will act as an avenue of communication between the citizen and the tow service.
- (N) When a party obtains a Police Department stored vehicle release and presents it to the tow service, the vehicle and/or property shall be released to that person upon verification of identity and the payment of the fees. The "property only" releases will be paid by the registered owner to the Police Department Records counter and an after hours fee will be paid to the tow service for "property only" or vehicle releases after the normal business hours of the tow service.
- (O) Once the tow service has received the Police Department stored automobile release, the tow service is no longer obligated to the Police Department for the continued safe storage of the vehicle and/or property taken.
- (P) If after a "property only" release is obtained, the registered owner may return to the records counter, produce the paid receipt for the "property only" release and request a vehicle impound release at no extra charge.
- (Q) In the event a vehicle has been stored or impounded by the Police Department due to error or negligence, no charges or fees shall be paid and the vehicle shall be released to the owner or the owner's agent. Nor shall the Police Department or the City be liable for any such charges or fees, except the initial tow fee. If the error is not discovered for a period of five business days after the vehicle is stored and the tow service has initiated lien sale process, as required by California Vehicle Code Section 22851.8, the tow service shall be entitled to also recover actual costs incurred to initiate the lien.
- (R) In the event a tow truck driver has hooked up a vehicle at the direction of the Police Department and the vehicle owner or person in control of the vehicle appears, and the officer decides the vehicle can be released at the scene, then a payment of one-half of the tow charge will be paid to the tow truck driver by the vehicle owner or person in control of the vehicle prior to the vehicle being dropped. The Police Department Officer will complete the stored vehicle report noting the release and payment. The officer will then give the tow truck driver the copy as though the tow had been completed. A case number will be assigned to the release of the vehicle, no SVS entry will be made.
- (S) In the case of a vehicle stored or impounded by the Police Department that is of low value and qualifies as a junk vehicle as described within California Vehicle Code Section 22670 or California Vehicle Code Section 22851.10, the

tow service may request D.M.V. Form 462, Public Agency Authorization to Dispose of a Vehicle to a Scrap Iron Processor or Dismantler, in lieu of obtaining the stored automobile release to process a lien sale for the vehicle. This form will suffice for final disposition of the vehicle and no other release is necessary. Form 462 cannot be issued for fifteen (15) days from the day first stored at the tow facility.

- (T) In addition to the storage yard the tow service shall maintain a closed building that affords storage of two (2) additional full size vehicles. This enclosure shall be of such size and construction to allow for forensic services examination of the cars in a dry environment during inclement weather. Access to this enclosed storage building shall be severely limited by the investigator assigned the case for which the vehicle has been impounded.
- (U) A tow service must advise the Police Department Traffic Division in writing within ten (10) business days, if a person picking up a vehicle, complains to the tow service of damage to the vehicle which the tow service permittee denies responsibility; or any missing vehicle accessories or personal property from the vehicle.
- (V) All employees of the tow service who have access to the storage yard or the personal property which is taken out of a vehicle for safe keeping, must provide a complete set of finger prints and complete an application.
- (W) All towing equipment, recovery equipment, and carrier ratings are based on structural factors only. Actual towing, carrying, and recovery capacity can be limited by the capacity of the chassis and the optional equipment selected. The criteria to determine the safe towing limits are:
  - (1) The total weight of the truck, including the lifted load, must fall within the manufacturer's gross vehicle weight rating (GVWR) and not exceed either the front or rear axle weight ratings (FAWR, RAWR);
  - (2) The truck must meet all applicable state and/or federal standards;
  - (3) A tow driver when towing a vehicle shall not exceed the GVWR and the axle weight rating (AWR) for the tow truck.
- (X) The following equipment is required to be on the Police Department, tow service rotation:
  - (1) A minimum of three (3) operational tow trucks, as listed below, with two (2) having a minimum GVWR of fourteen thousand (14,000) pounds. A tow service cannot use a tow truck with a class rating of less than one ton;
    - (a) Two conventional sling or wheel lift type tow trucks,

- (b) One rollback car carrier,
  - (c) A tow service permittee who has only two (2) tow trucks operational must advise the Police Department Traffic Division,
  - (d) A tow service permittee with two (2) or less tow trucks operational for a period of ten (10) days, excluding holidays and weekends, will be removed from the rotational list, until the service has three (3) tow trucks operational;
- (2) Two (2) trash cans and absorbent;
  - (3) Lockout tools;
  - (4) Two way radios (base to truck, not C.B.'s);
  - (5) Miscellaneous hand tools (required to remove a driveshaft if necessary);
  - (6) Portable or collapsible, functional dollies on wheel lift and conventional tow trucks;
  - (7) All equipment as required by the California Vehicle Code.
- (Y) Response times are required for the Police Department rotation tow operators per the administrative orders of the Chief of Police. The response time is measured from the time the tow operator is notified by the Police Dispatcher to the time of arrival at the scene by the tow truck. It is understood there are occasions that a longer response time is required during peak traffic periods from 0700-0900 and 1500-1800 hours. It is incumbent upon the tow operator to advise the Police Dispatcher of any problems that may occur to adversely affect the tow trucks response time at the scene.
- (Z) Every tow service shall maintain an enclosed facility or storage yard. Access to the yard shall be restricted to current employees and law enforcement officials conducting official business. All others given access to the facility shall be escorted by either an employee or a law enforcement official.
- (1) The storage yard shall be of a size that a minimum of seventy-five (75) cars may be reasonably stored. The storage yard shall be enclosed with a concrete block wall or chain-link type fence of a height of not less than six (6) feet. The top of the fence shall be equipped with two (2) or more strands of barbed wire installed in such a manner as to discourage access by climbing the fence. Concertina type razor wire may be substituted for barbed wire, subject to Police Department approval.
  - (2) The bottom edge of the fence shall not rise more than two (2) inches above the finished surface of the parking area of the storage yard. A

secure locking system shall be a part of the gate and it shall otherwise meet the same standards for security as described for the fence.

- (3) All yard fencing, walls, roof, gates, doors, locks, etc. shall be maintained in good repair. Any damage affecting security of vehicles and/or evidence shall be repaired within a twenty-four-hour period.

(Ordinance 2830 § 5, 2013; Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

### **SECTION 5.52.370: Compliance to State Regulations and California Vehicle Codes**

This Code does not replace the California Vehicle Code or any federal, county, or state regulations and laws relating to the towing, impounding and storage of vehicles from private property. Any person, association, firm, or corporation shall conduct or carry on the business of towing, impounding and storing illegally parked vehicles from private property located within the city pursuant to this Chapter, the California Vehicle Code, and/or any state, federal and county laws and regulations. (Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

### **SECTION 5.52.380: Removal of Vehicles from Private Property**

(A) Notification. Before authorizing a tow service to remove any illegally parked vehicle from private property, the owner or person in lawful possession of the private property must notify the Police Department of:

- (1) The name, address, and phone number of the person authorizing removal of the illegally parked vehicle from private property;
- (2) The location of the private property from which the vehicle is to be removed;
- (3) The name of the tow company towing the vehicle;
- (4) The license number, vehicle identification number, model, and color of the vehicle to be removed;
- (5) The name and address of the person reporting the private property impound if different than the person authorizing the removal.

(B) The owner, or in the case of an apartment or condominium, the association, may designate an agent to enforce the provisions of this chapter. However, such agent designated, cannot be made to any owner, operator, affiliate or employee of any towing company. The person, partnership or corporation so designated as an agent cannot enforce the provisions of this Chapter without:

- (1) Filing with the Police Department Traffic Division a copy of the agreement delegating the responsibility to enforce the provisions of this Chapter;
- (2) If applicable, a current business tax certificate to do business in the city;

- (3) Permits or certificates as required to do business in the state of California, the County of Orange and the city;
  - (4) An application on file with the Police Department, as provided by the Police Department. If the agent lives on the premises in which they are enforcing the provisions of this Chapter, they are exempt from filing an application with the Police Department. This exemption does not constitute an exemption from business tax or any permits or certificates as required to do business in the state of California, the County of Orange and the city, if applicable.
- (C) It is the responsibility of the tow service permittee or his tow truck driver to verify that the Police Department has been notified by the owner, agent or person in lawful possession of the private property prior to the tow truck driver removing any illegally parked vehicle.
- (D) If the owner, agent or person in lawful possession of the private property can not locate a license plate or V.I.N number on the vehicle, the vehicle cannot be removed from private property, until the Police Department is able to respond and verifies the vehicle is not stolen. The owner, agent or person in lawful possession of the private property can request the assistance of a tow service permittee or his driver in locating the V.I.N number on a vehicle.
- (E) The tow service shall notify the police department within thirty (30) minutes after an illegally parked vehicle has been towed from private property.
- (F) No vehicle shall be removed from private property, unless the person authorizing the impound is physically present and at that time, gives written authorization to the tow service. The permittee shall within one (1) business day forward to the Police Department Traffic Division a copy of the signed authorization.
- (G) The signed authorization form shall be preapproved by the Police Department Traffic Division and contain:
- (1) The name of the tow company towing the vehicle;
  - (2) The name of the tow driver;
  - (3) The date and time of the impound;
  - (4) The make, model, color, license number and vehicle identification number;
  - (5) The reason for the removal of the vehicle from private property;
  - (6) The address of the property where the vehicle was impounded from;

- (7) The name and address of the person reporting the private property impound if different than the person authorizing the removal;
  - (8) The printed name and signature of the person authorizing the impound.
- (H) When the owner or the person in charge of the vehicle arrives at the scene prior to the vehicle being removed and disputes the tow truck driver's authority to remove the vehicle, it shall be the duty of the tow truck driver to remain at the location for the arrival of the Police. This is after the tow truck driver has been advised the person has or is going to summon the Police. There shall be no additional charges for the time required for the arrival of the Police or for the Police to resolve the matter.
- (I) A tow truck driver may enter a locked vehicle in order to remove it from legally posted private property; however, he shall be liable (under provisions of Section 22658(d) of the California Vehicle Code) for any damage to the vehicle resulting from any intentional or negligent act of any person causing the removal of, or removing the vehicle.
- (J) Every tow truck driver who removes a vehicle from private property shall cause a written inventory to be made describing the condition of the vehicle, including mileage. In the event the vehicle has been opened by the tow truck driver or any other employee or agent of the tow service, the inventory shall also include a complete listing of all property contained in the vehicle. A copy of the inventory shall be made available to the vehicle owner or person in lawful charge of the vehicle without charge and a copy shall be delivered or mailed to the police traffic division within forty-eight hours, excluding Saturday, Sunday and holidays.
- (K) A tow service shall at all times keep a copy of the private property impound rules and regulations posted in a conspicuous place on the premises. The tow services shall furnish upon request of and without demanding payment as a condition precedent, a copy of these rules and regulations to:
- (1) The registered owner;
  - (2) The legal owner;
  - (3) The insurance carrier of either (a) or (b) of this section;
  - (4) The duly authorized agent of any of the foregoing.
- (L) An illegally parked vehicle removed from private property shall be towed or otherwise transported to the nearest available public automobile storage facility. The nearest available public automobile storage facility is defined as that facility which is closest to the private property from which the illegally parked vehicle was towed or otherwise removed, or a storage lot of the

permittee which is within one-half mile of the city limits, if approved by the Police Department.

- (M) The public automobile storage facility used to store illegally parked vehicles removed from private property shall be the permittee's primary storage lot or a lot with an office, personnel and facilities for customers to handle financial transactions and for vehicles to be released to and picked up by the owner or person in lawful possession of the vehicles.
- (N) No permittee may use a public automobile storage facility to store illegally parked vehicles removed from private property which is more than one-half mile from the city limits, unless otherwise approved by the Police Department Traffic Division.
- (O) The permittee shall not tow from private property unless the private property has displayed signs visible from twenty-five (25) feet at each vehicular entrance. There shall also be displayed one additional sign, visible from twenty-five (25) feet, every one hundred (100) feet thereafter. The type of sign shall comply with Section 10.56.220. Each sign shall contain the following message:

NO PARKING  
UNAUTHORIZED VEHICLES SUBJECT TO  
TOW-AWAY AT OWNER'S EXPENSE  
CVC 22658  
GARDEN GROVE POLICE TELEPHONE (714)741-5704

(Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

#### **SECTION 5.52.390: Permit Suspension and Revocation**

- (A) The Chief of Police or his designee can, at his discretion or upon the verified complaint in writing of any person, investigate the action of any tow service permittee or tow truck driver, and based on evidence that any provision of this Chapter has been violated, suspend for up to one year or revoke a permit of any permittee.
- (B) The permittee shall be provided with written notice specifying the grounds for such suspension or revocation, by First Class Mail, postage prepaid, or by delivering the same to such person or by leaving such notice at the place of business or residence of the permittee. The permittee may request a hearing, in writing and within fifteen (15) business days of the mailing of the notice of suspension or revocation, as described in Section 5.52.420. In the event an appeal is timely filed, the suspension or revocation shall not take effect until a decision has been rendered by the Chief of police or his designee, or the appellate body where an appeal has been filed, unless it is necessary to immediately suspend or revoke the permit in order to protect evidence of a crime or to preserve the public health, safety or welfare. If no appeal is filed,

the suspension or revocation shall become effective upon expiration of the period for filing the appeal.

- (C) It is unlawful for any person to conduct or carry on a tow operation business until a permit, suspended or revoked, has been reinstated by the Chief of Police or his designee.

(Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

**SECTION 5.52.400: Grounds for Suspension or Revocation of All Permits**

- (A) It shall be grounds for suspension or revocation of a tow service permit, if any permittee, his agent or employee or any person connected or associated with the permittee as an operator, director, officer, stockholder, general manager, or person who is exercising managerial authority of or on behalf of the permittee has committed any one of the following acts:

- (1) Has been convicted of a felony or any crime involving theft, embezzlement, stolen property, fraud or crimes of violence within the last ten (10) years;
- (2) Has committed any false, fraudulent, deceptive or dangerous act while conducting towing service business;
- (3) Has published, uttered or disseminated any false, deceptive or misleading statements or advertisement in connection with the operation of the towing service;
- (4) Has conducted the towing service in a manner contrary to the peace, health, safety and general welfare of the public;
- (5) Has violated or permitted other persons to violate, through an act of omission or commission by the permit holder, any felony or misdemeanor crime involving sexual offenses or moral turpitude, or a felony involving sales or use of a controlled substance, or any act of dishonesty, fraud, within the last ten (10) years;
- (6) Violation of Chapter 5.52;
- (7) Had an inspection or investigation by the City Building Division, Police Department, or Fire Department which revealed a deficiency, violation, or conduct that endangers the peace, health, safety and general welfare of the public;
- (8) Employs tow truck drivers under eighteen (18) years of age;
- (9) Fails to notify the Police Department Traffic Division in writing of any names, addresses, driver's license number of any newly employed tow truck driver within ten (10) business days of their hire date, or failed to

notify the Traffic Division within ten (10) business days of any tow truck driver who is no longer employed by such permit holder;

- (10) Fails to obtain and maintain a current business tax certificate to operate and/or conduct business within the city;
  - (11) Has charged fees in excess of the schedule rates adopted by the Police Department for rotational tow services or in excess of any federal, state, county or city laws or regulations for towing and/or storage of vehicles or any service incidental to towing;
  - (12) Has allowed the services of a driver with a record of excessive violations of the vehicle code which has resulted in the suspension or revocation of their driver's license or a second driving under the influence or reckless driving conviction within the last three (3) years, to remain in their employment as a driver;
  - (13) Fails to comply with any California Vehicle Code, federal, state, or county regulations and laws relating to towing and/or storing of vehicles, including the impounding and storing of vehicles from private property;
  - (14) Fails to maintain control of any personal property, vehicle accessories and vehicles which have been towed;
  - (15) Fails to reimburse the vehicle or property owner for the damage or loss that have been determined to have occurred while the vehicle was in the custody of the tow service.
- (B) It shall be grounds for suspension or revocation of a tow truck driver's permit, if any permittee has committed any one of the following acts:
- (1) Has a conviction or a plea of nolo contendere or guilty of a misdemeanor or felony crime involving sexual offenses, theft, embezzlement, stolen property, fraud, crimes of violence or moral turpitude, or a felony involving sales or use of a controlled substance within the last ten (10) years;
  - (2) Has a California driver's license which has been suspended or revoked;
  - (3) Has been arrested for driving under the influence while driving a tow truck;
  - (4) There is evidence the tow truck driver has been drinking an alcoholic beverage or using a controlled substance during the time the driver was operating a tow truck;
  - (5) The applicant has a record of excessive violations of the vehicle code which has resulted in the suspension or revocation of the drivers license

or a second driving under the influence or reckless driving conviction within the last three (3) years;

- (6) Has violated or was present when others violated, through an act of omission or commission any felony or misdemeanor crime involving sexual offenses or moral turpitude or a felony involving sales or use of a controlled substance, within the last ten (10) years;
- (7) Fails to notify the Police Department within ten (10) business days of any change in their application;
- (8) Fails to carry their tow truck driver permit on their person, when operating a tow truck in the city;
- (9) Has committed any act constituting dishonesty or fraud;
- (10) Has operated his tow truck in a manner contrary to the peace, health, safety and general welfare of the public.

(Ordinance 2830 § 6, 2013; Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

#### **SECTION 5.52.410: Additional Grounds for Suspension or Revocation of All Permits**

The following acts committed by a tow service permittee, his agent, employee or any person connected or associated with the permittee as a director, officer, stockholder, general manager, person who is exercising managerial or a tow truck driver shall be additional grounds for the suspension or revocation of any permit issued pursuant to this Chapter:

- (A) Has knowingly made false, misleading or fraudulent statements of a material fact in a report or record required to be filed with the Police Department;
- (B) The permittee, his agent or employee, obtained a tow contract by use of fraud, trick, dishonesty or forgery;
- (C) The permittee, his agent or employees, stopped and solicited on any street, highway or other public thoroughfare the rendering of assistance to a person or disabled vehicle without first being requested to do so, except to render emergency aid when there exists an imminent peril to life or property;
- (D) The permittee, his agent or employee, towed a vehicle to a location other than listed as the business address of such permittee without first receiving authorization to do so by the person authorizing the tow;
- (E) The permittee, his agent or employee, has conspired with any person to defraud any owner of any vehicle, or any insurance company, or any other person financially interested in the cost of the towing or storage of any vehicle,

by making false or deceptive statements relating to the towing or storage of any vehicle;

- (F) The permittee, his agent, or employee, removed a vehicle involved in a collision prior to arrival of police, and a person, as a result of such collision, suffered death or injury; or the driver of an involved vehicle, or a party to such collision, was under the influence of a drug or intoxication of any nature; or there is evidence that such vehicle was involved in a hit and run collision;
- (G) The permittee, his agent or employee, has charged for services not performed, equipment not employed or used, service or equipment not needed, or has otherwise materially misstated the nature of any service performed or equipment used.

(Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

**SECTION 5.52.420: Hearing**

- (A) An appeal may be filed by requesting in writing a hearing with the right to present evidence within fifteen (15) business days of such action, with the Chief of Police or his designee.
- (B) Upon receipt of a request for a hearing by the permittee, as provided in this Code, the permittee shall be notified by United States mail, or by delivering the same to such person, or by leaving such notice at the place of business or residence of the permittee, of the time and place of the hearing. The hearing shall be held within thirty (30) days after receipt of a request for hearing, unless the permittee waives this time period, in which case the hearing may be held on a later date. Any hearing, once commenced, may be continued by the Chief of Police or his designee or on request of the permittee, upon a showing of good cause and approval by the Chief of Police or his designee.
- (C) At the conclusion of the hearing, the Chief of Police or his designee, shall render a written decision which shall be sent to the permittee by United States mail within five (5) business days, following the conclusion of the hearing. Such written decision shall become effective the date of mailing of the notice.
- (D) The decision of the Chief of Police or his designee, may be appealed in accordance with Section 5.52.430 of this Code.  
(Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

**SECTION 5.52.430: Appeal Procedure**

- (A) An appeal may be taken to the Chief of Police's decision by filing a notice of appeal with the City Clerk within fifteen (15) business days from date of the decision.
- (B) The City Clerk shall schedule a hearing to be held by the City Council within forty-five (45) days after the filing of the appeal. The appeal hearing shall be conducted pursuant to Chapter 2.60 of this Code.
- (C) Notice of the date, time and place of the hearing shall be mailed, postage prepaid, at least ten (10) business days prior to the hearing, to the permittee, at the address given in the notice of the appeal, or if none is provided, to the address in the permit application.  
(Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

**SECTION 5.52.440: New Application After Denial or Revocation**

When the tow service operation permit of any person, company or corporation or the tow driver's permit of any person is suspended, revoked or denied for cause, no new or other application for a permit shall be accepted within one (1) year after such revocation or denial.  
(Ordinance 2808 § 1, 2012; Ordinance 2316 § 1 (part), 1995).

## **CHAPTER 55: ESCORT BUREAU AND INTRODUCTORY SERVICES**

### **SECTION 5.55.010: Definitions**

As used in this Chapter:

- (1) "Business" means that term as defined in Chapter 5.04 of this Code.
  - (2) "Escort" means any person who, for pecuniary compensation:
    - (a) Escorts, accompanies, or consorts with other persons to, from, or about social affairs, entertainments, places of public assembly, or places of amusement located or situated within the city;
    - (b) Escorts, accompanies, or consorts with other persons in or about any place of public or private resort, or within any private quarters located or situated within the city; or
    - (c) Escorts, accompanies, or consorts with other persons in or about any business or commercial establishment, or part or portion thereof, located or situated within the city.
  - (3) "Escort Bureau" means any business, agency, or self-employed or independent escort who, for pecuniary compensation, furnishes or offers to furnish escorts.
  - (4) "Introductory Service" means a service offered or performed by any person for pecuniary compensation, the principal purpose of which is to aid persons to become socially acquainted or to otherwise assist persons to meet for social purposes, or which service is generally known or should be known by offering or performing party to be used by the recipients thereof for the purpose of obtaining information about other persons to be used for social purposes.
  - (5) "Pecuniary compensation" means any commission, fee, gratuity, hire, profit, reward, or any other form of consideration.
  - (6) "Person" means any natural person, firm, partnership, corporation, or association.
  - (7) "Profit Interest" means any interest or share in the present or prospective profit of an escort bureau or introductory service.
- (Ordinance 2808 § 1, 2012; Ordinance 1788 § 1 (part), 1982).

### **SECTION 5.55.020: Exception**

The requirements of this Chapter shall have no application and no effect upon, and shall not be construed as applying to a person in the lawful business of an employment agency licensed under the laws of the state.

(Ordinance 2808 § 1, 2012; Ordinance 1788 § 1 (part), 1982).

**SECTION 5.55.030: Escort Bureau and Introductory Service -- Permit Required**

It is unlawful for any person to engage in, conduct, or carry on, in or upon any premises or real property located or situated within the city, the activities of an escort bureau or introductory service, unless there has been granted to such person a valid permit pursuant to the provisions of this Chapter. Activities of an escort bureau or introductory service regulated hereunder include the receipt (or dissemination) of information via telephone, mail, or other communications system or device solely or in conjunction with other activities in the furtherance of the conduct or carrying on of an escort bureau, introductory service, or activities of an escort. A separate permit shall be required for each location within the city at which the activities of an escort bureau or introductory service are to be conducted or carried on. Such permit shall be prominently displayed in the reception area, lobby, foyer, or entryway of each such business location within the city.

(Ordinance 2808 § 1, 2012; Ordinance 1788 § 1 (part), 1982).

**SECTION 5.55.040: Permit Term -- Escort Bureau or Introductory Service**

The term of an escort bureau or introductory service permit, unless sooner suspended or revoked, shall be for a period of one (1) year.

(Ordinance 2808 § 1, 2012; Ordinance 1788 § 1 (part), 1982).

**SECTION 5.55.050: Permit Renewable**

An escort bureau or introductory service permit, issued pursuant to the provision of this Code , which has not been suspended or revoked, may be renewed for a period of not to exceed one (1) year on written application to the Police Chief made at least ninety (90) days prior to the expiration date of the current valid permit. The application for renewal of a permit shall contain all of the information required by Section 5.55.060 of this Chapter, and shall be processed in accordance with the provisions of this Chapter.

(Ordinance 2808 § 1, 2012; Ordinance 1788 § 1 (part), 1982).

**SECTION 5.55.060: Escort Bureau or Introductory Service Permit Application**

- (A) Any person desiring to obtain a permit, or renew an existing permit, to operate an escort bureau or an introductory service shall make application to the Police Chief or his designated representative. Prior to submitting such application for a permit or renewal of a permit, a nonrefundable fee, as established by City Council Resolution, shall be paid to the City to defray, in part, the cost of the investigation and report required by this Chapter. The City shall issue a receipt showing that such application or renewal fee has been paid. The receipt, or a copy thereof, shall be supplied to the Police Chief at the time such application is filed. Permit issuance or renewal fees required under this Chapter shall be in addition to any license, permit, or fee required under any other provision of this Code.

- (B) Neither the filing of an application for a permit or renewal thereof, nor payment of an application or renewal fee, shall authorize the conducting of an escort bureau or introductory service until such permit has been granted or renewed.
- (C) Each applicant for an escort bureau or introductory service permit, or renewal thereof, shall be made under penalty of perjury and shall furnish the following information:
- (1) The present or proposed address where the business is to be conducted;
  - (2) The full true name under which the business will be conducted;
  - (3) The full true name and any other names used by the applicant;
  - (4) The present residence and business addresses and telephone numbers of the applicant;
  - (5) Each residence and business address of the applicant for the five (5) year period immediately preceding the date of filing of the application and the inclusive dates of each such address;
  - (6) California Driver's License or identification number and Social Security Number of the applicant;
  - (7) Acceptable written proof that the applicant is at least eighteen (18) years of age;
  - (8) The applicant's height, weight, color of eyes, color of hair, and date of birth;
  - (9) Two photographs of the applicant, at least two (2) inches by two (2) inches in size, taken within the six (6) month period immediately preceding the date of filing of the application;
  - (10) The business, occupation, or employment history of the applicant for the three (3) year period immediately preceding the date of the filing of the application;
  - (11) The permit history of the applicant, for the five (5) year period immediately preceding the date of the filing of the application, including whether such applicant in previously operating in this or any other city, county, state, or territory has ever had any similar license or permit issued by such agency revoked or suspended, or has had any professional or vocational license or permit revoked or suspended, and the reason or reasons therefore;

- (12) All criminal convictions suffered by the applicant, including Ordinance violations excepting minor traffic offenses (any traffic offense designated as a felony shall not be construed as a minor traffic offense), stating the date, place, nature, and sentence of each such conviction;
- (13) If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation or charter, together with the state and date of incorporation, and the names, residence addresses, and dates of birth of each of its current officers and directors, and each stockholder holding more than five percent (5%) of the stock in the corporation. If the applicant is a partnership, the applicant shall set forth the name, residence address, and date of birth of each of the partners, including limited partners and profit interest holders. If the applicant is a limited partnership, the applicant shall furnish a copy of the certificate of limited partnership as filed with the County Clerk. If one or more of the partners is a corporation, the provisions of this Subsection pertaining to corporations shall apply. The corporation or partnership applicant shall designate one of its officers or general partners to act as its responsible managing officer. Such designated person shall complete and sign all application forms as required of an individual applicant under this Code, but only one (1) application fee shall be charged;
- (14) In the event the applicant is not the owner of record of the real property upon which the escort bureau or introductory service is or is to be located, the application must be accompanied by a notarized statement from the owner of record of the property acknowledging that an escort bureau or introductory service is or will be located on the property. In addition to furnishing such notarized statement, the applicant shall furnish the name and address of the owner of record of the property, as well as a copy of the lease or rental agreement pertaining to the premises in which the escort bureau or introductory service is or will be located;
- (15) A definition of the service to be provided;
- (16) The true names and residential addresses of all persons employed or intended to be employed or contracted with as escorts;
- (17) Such other identification and/or information as the Police Chief may require in order to discover the truth of the matters required to be set forth in the application.
- (D) The applicant, if a natural person or a designated responsible managing officer if the applicant is a partnership or corporation, shall personally appear at the Police Department of the City and produce proof that the required application or renewal fee has been paid and shall present the application containing the information and supporting documentation required by Subsection (C) of this Section.

- (E) The Police Chief may require the applicant, if a natural person or the designated responsible managing officer if the applicant is a partnership or corporation, to appear in person at the Police Department in order to be photographed and fingerprinted.
- (F) When any change occurs regarding the written information required by Subsection (C) of this Section to be included in the application, the applicant or permit holder, as the case may be, shall give written notification of such change to the Police Chief within twenty- four (24) hours after such change.
- (G) The Police Chief, within sixty (60) days after receiving the application, shall grant the permit, or renewal thereof, only if he finds that all of the following requirements have been met:
  - (1) The required fees have been paid;
  - (2) The application conforms in all respects to the provisions of this Chapter;
  - (3) The applicant has not knowingly made a material misrepresentation of fact in the application;
  - (4) The applicant has fully cooperated in the investigation of the application;
  - (5) The applicant, if an individual; or any of the directors, officers, or stockholders holding more than five percent (5%) of the stock of the corporation; or any of the partners, the holder of any lien of any nature or profit interest holder, manager or other person principally in charge of the operation of the existing or proposed escort bureau or introductory service, or a natural person employed or contracted with to be an escort or to provide escort services; has not been convicted or pleaded nolo contendere or guilty to a misdemeanor or felony crime of moral turpitude or a misdemeanor or felony crime involving sexual misconduct including, but not limited to, all offenses listed in Penal Code Section 290, Penal Code Sections 311.2 through 311.7, Penal Code Sections 314 through 318, and Subsections (a), (b), (c), (d), or (h) of Section 647 of the Penal Code, or any offenses involving pimping, pandering, prostitution, or lewd conduct; or has permitted, through an act of omission or commission, his employee or agent to engage in any type of moral turpitude or sexual misconduct offense, whether misdemeanor or felony (under such circumstances, the conduct of the employee or agent, if such resulted in a conviction or a plea of nolo contendere or guilty, will be considered imputed to the principal and shall be grounds for permit denial);
  - (6) The applicant has not had an escort bureau, introductory service, or escort permit, or other similar license or permit denied or suspended or revoked for cause by the City or any other city or county located in or out of this state within the five (5) year period immediately preceding the date of the filing of the application;

- (7) The escort bureau or introductory service, as proposed by the applicant, would comply with all applicable City, county and state laws, including but not limited to health, zoning, fire, and safety requirements and standards; and
  - (8) The applicant, manager, or other person principally in charge of the operation of the business is at least eighteen (18) years of age.
- (H) If the Police Chief does not find that all of the requirements set forth in Subsections (G)(1) through (8) of this Section have been met, he shall deny application for the permit or renewal thereof. In the event the application for the permit or renewal thereof is denied, written notice of such denial shall be given to the applicant, specifying the ground or grounds of such denial. Notice of denial of the application for the permit or renewal thereof shall be deemed to have been served if it in fact is personally served on the applicant or when deposited in the United States mail with postage prepaid and addressed to the applicant at the residence address set forth in the application for the permit or renewal thereof. Any applicant whose application for an escort bureau or introductory service permit or renewal thereof has been denied by the Police Chief, may appeal such denial to the City Council.
- (Ordinance 2808 § 1, 2012; Ordinance 1788 § 1 (part), 1982).

**SECTION 5.55.070: Employment and Activities of Escorts**

- (A) No holder of an escort bureau or introductory service permit shall employ as an escort any person under eighteen (18) years of age.
  - (B) No holder of an escort bureau or introductory service permit shall furnish any escort or introductory service to, or accept employment from, any patron, customer, or person to be escorted who is under eighteen (18) years of age, except at the special instance and request of a parent, guardian, or other person in lawful custody of the person upon whose behalf the escort or introductory service is engaged.
- (Ordinance 2808 § 1, 2012; Ordinance 1788 § i (part), 1982).

**SECTION 5.55.080: Escorts -- Permit Required**

- (A) It is unlawful for any person to act as an escort unless there has been granted to such person a valid escort permit pursuant to the provisions of this Chapter. Such permit shall be issued in the name of the escort to the address of the escort bureau or introductory service acting as employer of the escort or with whom the escort has contracted to provide the services of an escort, who must in turn also hold a valid escort bureau or introductory service permit issued by the City pursuant to the provisions of this Chapter. The escort permit shall set forth the name and address of such escort bureau or introductory service.
- (B) Any escort not employed by or acting under contract to an escort bureau or introductory service holding a valid permit issued pursuant to this Chapter shall also be subject to the requirements of Section 5.55.030 of this Chapter.

(Ordinance 2808 § 1, 2012; Ordinance 1788 § 1 (part), 1982).

**SECTION 5.55.090: Term of Permit**

The term of an escort permit, unless sooner suspended or revoked, shall be for a period of one (1) year.

(Ordinance 2808 § 1, 2012; Ordinance 1788 § 1 (part), 1982).

**SECTION 5.55.100: Escorts -- Permit Renewal**

An escort permit issued pursuant to the provisions of this Chapter that has not been suspended or revoked may be renewed for a period of one (1) year on written application to the Police Chief made at least ninety (90) days prior to the expiration date of the current valid permit. The application for renewal of a permit shall contain all of the information required for an original application under this Chapter, and shall be processed in accordance with the provisions of this Chapter.

(Ordinance 2808 § 1, 2012; Ordinance 1788 § 1 (part), 1982).

**SECTION 5.55.110: Permit Identification Card**

Each escort permit holder shall be issued an identification card that will also serve as an escort permit. The permit holder shall carry such card upon his person when acting as an escort and produce the same for inspection upon request. Each permit holder shall immediately surrender, to the Police Chief, any escort permit issued by the City upon the suspension, revocation, or expiration of such permit, or upon leaving employment as an escort.

(Ordinance 2808 § 1, 2012; Ordinance 1788 § 1 (part), 1982).

**SECTION 5.55.120: Escort Permit -- Application and Renewal**

- (A) Any person desiring to obtain a permit or renewal of an existing permit to act as an escort shall make application to the Police Chief or his designated representative. Prior to submitting such application for a permit or renewal of a permit, a nonrefundable fee as established by City Council Resolution, shall be paid to the City to defray, in part, the cost of the investigation and report required by this Chapter. The City shall issue a receipt showing that such permit application or renewal fee has been paid. The receipt, or a copy thereof, shall be supplied to the Police Chief at the time such application is filed. Permit fees required under this Chapter shall be in addition to any license, permit, or fee required under any other provision of this Code.
- (B) Neither the filing of an application for a permit or renewal thereof, nor the payment of an application or renewal fee, shall authorize a person to act as an escort until such permit has been granted or renewed.
- (C) Each applicant for an escort permit or renewal thereof shall furnish under penalty of perjury the information required by Subsections (C)(1) through (12) of Section 5.55.060 of this Chapter, and shall, in addition, furnish the following information:
  - (1) A certificate from a medical doctor licensed to practice in the state, stating that the applicant has within thirty (30) days immediately

preceding the date of the application been examined and found to be free of any contagious or communicable disease;

- (2) Satisfactory evidence that the applicant is employed, or has been offered employment, by an escort bureau or introductory service holding a valid permit issued by the City, including the name and address of the employer or prospective employer and the fact that such employment or continued employment is contingent upon the issuance of said permit; and
  - (3) Such other identification and information as the Police Chief may require in order to discover the truth of the matters required to be set forth in the application.
- (D) The Police Chief may require the applicant to appear in person at the Police Department in order to be photographed and fingerprinted.
- (E) The Police Chief, within sixty (60) days after receiving the application, shall grant the permit, or renewal thereof, only if he finds that all of the requirements of Subsections (G)(1) through (4) of Section 5.55.060 of this Chapter have been met, and, in addition, if he finds that the following additional requirements have been met:
- (1) The applicant has furnished an acceptable medical certificate in compliance with Subsection (C)(1) of this Section;
  - (2) The applicant has not had an escort bureau, introductory service, or escort permits or other similar license or permit denied or suspended or revoked for cause by the City or any other city or county located in or out of this state within the five (5) years immediately preceding the date of the filing of the application;
  - (3) The applicant is at least eighteen (18) years of age;
  - (4) The applicant has not been convicted or pleaded nolo contendere or guilty to a misdemeanor or felony crime of moral turpitude or misdemeanor or felony crime involving sexual misconduct including, but not limited to, all offenses listed in Penal Code Section 290, Penal Code Sections 311.2 through 311.7, Penal Code Sections 314 through 318, and Subsections (a), (b), (c), (d), or (h) of Section 647 of the Penal Code, or any offenses involving pimping, pandering, prostitution, or lewd conduct.
- (F) If the Police Chief does not find that all of the requirements set forth in Subsection (E) of this Section have been met, he shall deny the application for the permit or renewal thereof. In the event the application for the permit, or renewal thereof is denied by the Police Chief, written notice of such denial shall be given to the applicant specifying the ground or grounds of such denial. Notice of denial of the application for the permit, or renewal thereof, shall be

deemed to have been served if it in fact is personally served on the applicant, or when deposited in the United States mail with postage prepaid and addressed to the applicant at his residence address as set forth in the application for the permit or renewal thereof. Any applicant whose application for an escort permit, or renewal thereof, has been denied by the Police Chief, may appeal such denial to the City Manager.

- (G) When any change occurs regarding the written information required by Subsection (C) of this Section, the applicant or permit holder, as the case may be, shall give written notification of such change to the Police Chief within twenty-four (24) hours after such change.

(Ordinance 2808 § 1, 2012; Ordinance 1788 § 1 (part), 1982).

#### **SECTION 5.55.130: Prohibited Activities**

No holder of an escort permit shall escort, offer to escort, or perform any activity described in this Chapter to any person under eighteen (18) years of age, except at the special instance and request of the parent, guardian, or other person in lawful custody of the person on whose behalf the escort or introductory service is engaged.

(Ordinance 2808 § 1, 2012; Ordinance 1788 § 1 (part), 1982).

#### **SECTION 5.55.140: Sale or Transfer**

Upon the sale or transfer of any interest in an escort bureau or introductory service, the permit shall immediately become null and void. A new application shall be made by any person, firm, or entity desiring to own or operate the escort bureau or introductory service. A fee as established by City Council Resolution shall be payable for each such application. Any application involving the sale or other transfer of any interest in an existing escort bureau or introductory service, as well as any permit that may thereafter be granted, shall be subject to the provisions of this Chapter.

(Ordinance 2808 § 1, 2012; Ordinance 1788 § 1 (part), 1982).

#### **SECTION 5.55.150: Change of Location or Name**

- (A) A change of location of any premises or real property where a permitted escort bureau or introductory service is conducted may be approved by the Police Chief provided all requirements of the Chapter and all Ordinances and regulations of the City are complied with and a change-of-location fee as established by City Council Resolution is deposited with the City. Application for such change shall be made within three (3) days of such change.

- (B) No permit holder shall operate an escort bureau or introductory service under any name or designation not specified in the permit.

(Ordinance 2808 § 1, 2012; Ordinance 1788 § 1 (part), 1982).

#### **SECTION 5.55.160: Suspension or Revocation of a Permit**

- (A) A permit issued hereunder may be revoked or suspended. An escort bureau or introductory service permit issued under the provisions of this Chapter may be revoked or suspended if the person holding such permit has:

- (1) Violated any of the provisions of this Chapter; or
  - (2) Conducts such business in such a manner as would have been grounds for denial of a permit as set forth in Subsection (H) of Section 5.55.060 of this Chapter.
- (B) An escort permit issued under the provisions of this Chapter may be revoked or suspended if the person holding such permit is found to be engaging in behavior or actions that:
- (1) Violate any of the provisions of this Chapter; or
  - (2) Would have been grounds for denial of a permit as set forth in Subsection (F) of Section 5.55.120 of this Chapter.
- (C) Whenever a permit has been revoked under the provisions of this Chapter, no other application for a permit to carry on a similar business by such person shall be considered for a period of one (1) year from the date of such revocation. No such suspension or revocation shall become effective until the permit holder has been notified in writing of the right of such permit holder to appeal the suspension or revocation pursuant to the provisions of Section 5.55.170. Notification of the permit holder shall be made either by personal delivery or by certified or registered mail, return receipt requested, addressed to the permit holder at such permit holder's residence address as set forth on the application for a permit or renewal thereof. If a timely appeal is filed, the suspension or revocation shall be stayed and shall become effective only upon decision of the City Council. Otherwise the suspension or revocation shall become effective after the timely appeal period has expired.  
(Ordinance 2808 § 1, 2012; Ordinance 1788 § 1 (part), 1982).

**SECTION 5.55.170: Hearing on Permit Revocation, Suspension, or Denial**

- (A) No permit issued under the provisions of this Chapter shall be revoked or suspended until a hearing thereon shall have been had by the City Council as provided in Subsection (C) of this Section.
- (B) Denial of an application for any permit required under the provisions of this Chapter is effective immediately, subject to a hearing on appeal had before the City Council as provided in Subsection (C) of this Section. An appeal from a denial shall be filed with the City not later than five (5) days from the date of receipt by applicant of the written denial.
- (C) Notice of hearing shall be given in writing to the permit holder or applicant not less than five (5) days prior to the date of such hearing. Such notice shall be served upon the applicant, or upon the holder of the permit, the manager, or agent thereof as provided in this Chapter. The notice shall state the grounds of the denial, or complaint against the holder of the permit, and the time, date, and place where the hearing will be held. The notice shall be served on the

applicant or holder of the permit by delivering the notice to the applicant or holder of the permit, the manager or agent thereof; or by leaving the notice with some adult person at the place of business or residence of the applicant or permit holder. If the applicant or permit holder cannot be found, and service of the notice cannot be made thereupon in the manner provided in this Section, then a copy of the notice shall be addressed to such person at such place of business or residence and deposited in the United States mail with the postage thereon fully prepaid, at least ten (10) days prior to the date of hearing. The time of notice may be shortened by the City Council with the written consent of the applicant or permit holder.

(Ordinance 2808 § 1, 2012; Ordinance 1788 § 1 (part), 1982).

**SECTION 5.55.180: Conducting Business as a Nuisance**

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

(Ordinance 2808 § 1, 2012; Ordinance 1788 § 1 (part), 1982).

**SECTION 5.55.190: Applicability of Regulations to Existing Business**

The provisions of this Chapter shall be applicable to all persons and businesses described herein, whether the herein described activities were established before or after the effective date of the Ordinance enacting this Chapter into law. All such persons and businesses shall have sixty (60) days from said effective date to comply with the provisions of this Chapter.

(Ordinance 2808 § 1, 2012; Ordinance 1788 § 1 (part), 1982).

**SECTION 5.55.200: Inspection**

Each business subject to a permit under the provisions of this Chapter shall be open at all times during business hours to inspection by members of the Garden Grove Police Department. In addition, there shall be prominently displayed in the lobby, foyer, or entryway of each such business, a printed sign with lettering no less than three-fourths (3/4) of an inch in height, stating "The Garden Grove Police Department has a right to inspect these premises at any time during hours of operation."

(Ordinance 2808 § 1, 2012; Ordinance 1788 § 1 (part), 1982).

**CHAPTER 60: PEEP SHOW ESTABLISHMENTS**

**SECTION 5.60.010: Purpose and Intent**

It is the purpose and intent of the City Council that the operation of peep show establishments as defined in this Code should be regulated for the protection of the

public from the perils of fire, hazard to health, and for the preservation of the peace of the community.

(Ordinance 2808 § 1, 2012; Ordinance 1812 § 1 (part), 1983).

**SECTION 05.60.020: Definitions**

(A) "Peep show establishment" means any place to which the public is permitted or invited wherein still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one time for any consideration.

(B) "Peep show device" means any still or motion picture machine, projector, or other image-producing device that shows images to five (5) or fewer persons at any one time for any consideration.

(C) "Viewing area" means the area where a patron or customer would ordinarily be positioned while watching a film or peep show device.

(Ordinance 2808 § 1, 2012; Ordinance 2062 § 1, 1988; Ordinance 1812 § 1 (part), 1983).

**SECTION 5.60.030: Permit -- Required**

No person shall operate a peep show device unless a permit for the operation of said device has been issued by the City and remains in effect in conformity with the provisions of this Code.

(Ordinance 2808 § 1, 2012; Ordinance 1812 § 1 (part), 1983).

**SECTION 5.60.040: Permit -- Term**

Permits under this Chapter may be terminated only after a hearing hereunder and are renewable semiannually at the time of payment for the business license and payment of the fees by filing the form available from the City to provide current information on ownership and management of the business.

(Ordinance 2808 § 1, 2012; Ordinance 2142 § 2 (part), 1990; Ordinance 1812 § 1 (Part), 1983).

**SECTION 5.60.050: Permit -- Fee**

Every person owning or operating a peep show device shall pay a fee for each such device as established by City Council Resolution. Any person applying for a permit for a period of less than six (6) months shall pay a prorated fee.

(Ordinance 2808 § 1, 2012; Ordinance 1812 § 1 (part), 1983).

**SECTION 5.60.060: Applications for Permit Investigation Fee**

All applications for a permit or for the renewal of a permit shall be accompanied by an investigation fee as established by City Council Resolution. In the event the permit is granted or renewed the sum shall be applied to the permit fee. In the event such permit is denied, the application fee shall be and become the property of the City. The application shall be accepted as complete when the fee and the information requested is completed and submitted to the City.

(Ordinance 2808 § 1, 2012; Ordinance 2142 § 3, 1990; Ordinance 1812 § 1 (part), 1983).

**SECTION 5.60.070: Permit -- Investigation**

Every applicant shall file an application for a permit, or for the renewal of a permit, with the City upon the form to be provided. Immediately upon the receipt of an application, the application shall be delivered to the City Manager or his designee. The City Manager or his designee shall cause to be made an investigation of the application to determine whether:

- (1) The applicant has knowingly made a false or misleading statement of a material fact or omission of a material fact in the application; or
- (2) The operation of the business as proposed pursuant to the issuance or renewal of a license or permit will not be in compliance with the building, fire, electrical, zoning, plumbing, and health requirements as set forth in the code; or
- (3) The applicant is under eighteen (18) years of age; or
- (4) The applicant has had a similar type of license or permit previously revoked for good cause within one (1) year immediately preceding the date of the filing of the application, and can show no material changes in circumstances since such revocation; or
- (5) Customers or patrons of the peep show establishment have been convicted or pleaded nolo contendere or guilty to a misdemeanor or felony crime involving sexual misconduct including, but not limited to, all offenses listed in Subsection (a) of Penal Code Section 290, Penal Code Sections 311.2 through 311.7, Penal Code Sections 314 through 318, and Subsections (a), (b), (c), (d) or (h) of Section 647 of the Penal Code, or any offenses involving pimping, pandering, prostitution, or lewd conduct arising out of acts on the premises or areas under control of the peep show establishment; and the applicant, having been previously advised or notified by the City of the occurrence of such criminal acts, has failed or refused to take or institute reasonable precautions or safeguards to ensure that such criminal acts do not further occur.

(Ordinance 2808 § 1, 2012; Ordinance 1812 § 1 (part), 1983).

**SECTION 5.60.080: Issuance or Denial of Permit**

- (A) If the City Manager or his designee finds that the applicant will be in compliance with the requirements described in Section 5.60.070, the permit shall be granted or renewed. Any application for permit or for the renewal of a permit may be denied if the City Manager or his designee finds that the applicant will not be in compliance with the requirements described in Section 5.60.070. The City Manager or his designee shall file a report of the approval or denial of the application with the Finance Director's Office within thirty (30) days from and after the receipt of said application. If the application for permit or for the renewal of a permit is denied, the reasons for denial shall be set

forth in writing and be personally delivered or sent to the applicant by means of registered mail.

(B) In the event the permit has not been issued or denied within thirty (30) days after the date it has been accepted as complete, the application shall be deemed approved, and a permit shall be issued subject to revocation or suspension proceedings below. In the event of a denial, the City Manager or his designee shall include a statement of the reasons for the decision. That decision shall be final and subject only to court review.

(C) The applicant in the event of a denial may seek judicial relief or reapply immediately and request a hearing on the application, at which hearing the applicant may present evidence in support of the application to the City Manager or his designee.

(Ordinance 2808 § 1, 2012; Ordinance 2142 § 4, 1990; Ordinance 1812 § 1 (part), 1983).

#### **SECTION 5.60.090: Suspension or Revocation of Permit**

In the event that any person holding a permit shall violate or cause or permit to be violated any of the provisions of this Code, including Subsections (2) and (5) of Section 5.60.070, or any provision of any other Code, Ordinance or law relating to or regulating said business, or shall conduct or carry on the business in a manner that manifest a disability to perform properly the duties of the business as evidenced by the commission of an act or a series of acts described in Section 5.60.070(5), the City Manager may, in addition to other penalties provided by this Code, take action to suspend or revoke the permit issued for conducting or carrying on the business. The City Manager may take immediate action with respect to a permit, if a subsequent hearing is provided, where a permit has been issued based on material misrepresentation in the application and, but for the material misrepresentation, the permit would not have been issued.

(Ordinance 2808 § 1, 2012; Ordinance 2062 § 2, 1988; Ordinance 1812 § 1 (part), 1983).

#### **SECTION 5.60.100: Hearing Upon Suspension, Revocation or Denial of Permit**

(A) No permit issued under the provisions of this Chapter shall be revoked or suspended until a hearing thereon shall have been had by the City Council as provided in Subsection (C) of this Section.

(B) Denial of an application for any permit required under the provisions of this Chapter is effective immediately, subject to a hearing on appeal had before the City Council as provided in Subsection (C) of this Section. An appeal from a denial shall be filed with the City not later than five (5) days from the date of receipt by applicant of the written denial.

(C) Notice of hearing shall be given in writing to the permit holder or applicant not less than five (5) days prior to the date of such hearing. Such notice shall be served upon the applicant, or upon the holder of the permit, the manager, or

agent thereof as provided in this Chapter. The notice shall state the grounds of the denial or complaint against the holder of the permit, and the time, date, and place where the hearing will be held. The notice shall be served on the applicant or holder of the permit by delivering the notice to the applicant or holder of the permit, the manager or agent thereof, or by leaving the notice with some adult person at the place of business or residence of the applicant or permit holder. If the applicant or permit holder cannot be found and service of the notice cannot be made thereupon in the manner provided in this Section, then a copy of the notice shall be addressed to such person at such place of business or residence and deposited in the United States mail with the postage thereon fully prepaid, at least ten (10) days prior to the date of hearing. The time of notice may be shortened by the City Council within the written consent of the applicant or permit holder.

(Ordinance 2808 § 1, 2012; Ordinance 1812 § 1 (part), 1983).

**SECTION 5.60.110: No Permit Within One Year After Revocation**

No person who has a permit for a peep show device revoked may obtain a peep show device permit within a period of twelve (12) months from the date of revocation.

(Ordinance 2808 § 1, 2012; Ordinance 1812 § 1 (part), 1983).

**SECTION 5.60.120: Permit Affixed to Device -- Permits Not Transferable**

No person shall operate a peep show device unless each such device is plainly marked with a serial number and shall have attached thereto a distinguishing tag, sign, permit, or other marker issued by the City upon the granting or renewal of a permit, which shall bear a permit number identifying the peep show device as a particular device permitted pursuant to the terms of this Code. Such permit shall be affixed in a conspicuous location on each device and shall remain thereto until a new or different permit has been issued therefore. No permit shall be transferable from one person to another or from one device to another.

(Ordinance 2808 § 1, 2012; Ordinance 1812 § 1 (part), 1983).

**SECTION 5.60.130: Wall, Partition Construction**

No person shall operate a peep show establishment unless any wall or partition that is situated so as to create a room, enclosure, or booth in which any peep show device is located is constructed in compliance with all state and city building and fire codes.

(Ordinance 2808 § 1, 2012; Ordinance 2142 § 2 (part), 1990; Ordinance 1812 § 1 (part), 1983).

**SECTION 5.60.140: Operating Requirements**

No person, association, partnership, or corporation shall engage in, conduct, or carry on, or permit to be engaged in, conducted, or carried on the operation of a peep show establishment unless each and all of the following requirements are met:

- (1) A minimum of one (1) toilet and wash basin shall be provided for the patrons in every peep show establishment. Each wash basin shall be

provided with soap or detergent and sanitary towels placed in permanently installed dispensers. A trash receptacle shall be provided in each toilet room.

- (2) In toilet rooms a waterproof floor covering shall be provided that extends up the walls at least six (6) inches and shall be cored at the floor-wall juncture with at least a three-eighths (3/8) inch radius. Walls of toilet rooms shall be smooth, waterproof, and kept in good repair.
- (3) All walls, ceilings, floors, booths, and all other physical facilities shall be in good repair and maintained in a clean and sanitary condition. Toilet rooms shall be thoroughly cleaned at least once each day the business is in operation.
- (4) All establishments shall be so equipped, maintained, and operated as to effectively control the entrance, harborage, and breeding of vermin, including flies. When flies or other vermin are present, effective control measures shall be instituted for their control or elimination.
- (5) There shall be no doors, curtains, or obstructions on the entrance to any toilet stall. No door to the room in which the toilets are located shall have a locking or bolting device that can be activated by customers and shall not be locked except when in use by employees.
- (6) All films or peep show device viewing areas must be visible from the entrance to a continuous main aisle. No obstructions in the doorway, entryway, or passageway to the viewing booths shall be maintained.
- (7) The provisions of this Section shall not be applicable to any peep show establishment that, at the time the Ordinance adding this Section to this Code becomes effective, has pending before the City an application for a permit; provided, however, that once said permit, if granted, has expired, the provisions of this Section shall be applicable to any subsequent application for a renewal of said permit, if granted, has expired, the provisions of this Section shall be applicable to any subsequent application for a renewal of said permit.

(Ordinance 2808 § 1, 2012; Ordinance 2142 § 1, 1990; Ordinance 1812 § 1 (part), 1983).

#### **SECTION 5.60.150: Minimum Aisle Width**

No person shall operate a peep show establishment in which the width of the aisles in any room where a peep show device is located is less than forty-two (42) inches. (Ordinance 2808 § 1, 2012; Ordinance 1812 § 1 (part), 1983).

#### **SECTION 5.60.160: Minimum Doorways**

No person shall operate a peep show establishment unless there are no fewer than two (2) doorways of a width no less than thirty-six (36) inches that provide ingress or egress from any room in which a peep show device is located; provided,

however, that one (1) doorway shall be sufficient in the event the Fire Chief should so determine. Doorway or doorways shall be unlocked during business hours. (Ordinance 2808 § 1, 2012; Ordinance 1812 § 1 (part), 1983).

**SECTION 5.60.170: Lighted Exit Signs**

No person shall operate a peep show establishment unless there is maintained over every doorway that provides egress from any room in which a peep show device is located an internally illuminated "exit" sign with letters at least five (5) inches in height.

(Ordinance 2808 § 1, 2012; Ordinance 1812 § 1 (part), 1983).

**SECTION 5.60.180: Patron View of Doorway**

No person shall operate a peep show establishment unless each peep show device located in such establishment is situated so as to permit the person using the peep show device to have a constantly unobstructed view of the doorway or doorways that provide ingress to or egress from the establishment.

(Ordinance 2808 § 1, 2012; Ordinance 1812 § 1 (part), 1983).

**SECTION 5.60.190: Minimum Lighting**

No person shall operate a peep show establishment unless a light level of no less than ten (10) footcandles at floor level is maintained in every portion of said establishment to which the public is admitted.

(Ordinance 2808 § 1, 2012; Ordinance 1812 § 1 (part), 1983).

**SECTION 5.60.200: Maximum Occupancy Load**

No person shall operate a peep show establishment in which the number of persons in any room or partitioned portion of a room where a peep show device is located exceeds one (1) person per thirty (30) square feet. The maximum occupancy load permitted in any room or partitioned portion of a room in which a peep show device is located shall be conspicuously posted by the operator, and shall remain posted at the entrance to said room.

(Ordinance 2808 § 1, 2012; Ordinance 1812 § 1 (part), 1983).

**SECTION 5.60.210: Maximum Number of Devices**

No person shall operate a peep show establishment in which the number of peep show devices exceeds the maximum occupancy load permitted in any room or partitioned portion of a room in which a peep show device is located. The maximum number of peep show devices permitted in any room or partitioned portion of a room in a peep show establishment shall be conspicuously posted by the operator, and shall remain posted at the entrance to the room.

(Ordinance 2808 § 1, 2012; Ordinance 1812 § 1 (part), 1983).

**SECTION 5.60.220: Free Access to City Manager or Delegate**

(A) Each business subject to a permit under the provisions of this Chapter shall be open at all times during business hours to inspection by the City Manager or his delegate, or members of the Garden Grove Police Department, for purposes of a reasonable inspection to enforce compliance with building, fire, electrical or plumbing regulations.

(B) In addition, there shall be prominently displayed in the lobby, foyer, or entryway of each such business, a printed sign with lettering no less than three-fourths (3/4) of an inch in height, stating "The Garden Grove Police Department has the right to inspect these premises at any time during hours of operation."

(Ordinance 2808 § 1, 2012; Ordinance 1812 § 1 (part), 1983).

**SECTION 5.60.230: Injunctive Relief**

In addition to the legal remedies provided for in this Code, the operation of any peep show establishment in violation of the terms of this Code shall be deemed a public nuisance and may be enjoined by the City.

(Ordinance 2808 § 1, 2012; Ordinance 1812 § 1 (part), 1983).

**SECTION 5.60.240: Health Services Fees**

The County Health Officer shall periodically make inspections of peep show establishments located in the city to determine if the proprietors or operators of such establishments are complying with the provisions of this Chapter. The City Council, by Resolution, shall prescribe fees to be paid annually by the proprietors or operators of such establishments, such fees to be paid directly to the County Health Officer and retained by the County as reimbursement for the services related to this Section.

(Ordinance 2808 § 1, 2012; Ordinance 1812 § 1 (part), 1983).

**SECTION 5.60.260: Conduct of Customers in Booths**

Every person who commits any of the following acts in a peep show establishment or the parking area thereof is guilty of a misdemeanor:

(1) Exposes genitalia;

(2) Solicits or engages in a lewd, lascivious, or unlawful act, including, but not limited to, masturbation, fellatio, or sodomy.

(Ordinance 2808 § 1, 2012; Ordinance 2142 § 5 (part), 1990).

**SECTION 5.60.270: Management of Premises**

No person in control of a peep show establishment shall aid, abet, or allow the conduct proscribed by Section 5.60.260.

(Ordinance 2808 § 1, 2012; Ordinance 2142 § 5 (part), 1990).

**SECTION 5.60.280: Evening Closing Hours for Residentially Adjacent Arcades**

(A) No peep show establishment that is adjacent to residential uses shall operate between the hours of ten (10:00) p.m. and eight-thirty (8:30) a.m. except as herein provided:

(1) ADJACENCY DEFINED. As used in this Section, a "peep show establishment" (hereinafter "arcade") is not "adjacent to residential" if the nearest residentially-zoned residential use is:

- (a) Four hundred eighty (480) feet or more from the arcade; or
  - (b) Separated from the arcade by an arterial highway; or
  - (c) Separated from the arcade by a street, and the nearest residentially zoned residential building is one hundred sixty-five (165) feet further than that street.
- (2) LATE NIGHT APPROVALS. Any arcade adjacent to residential may apply for late operating hours upon submission of a plan for management of the premises (including the parking area) during the hours of ten (10:00) p.m. and eight-thirty (8:30) a.m. Such plan should contain a written layout of the interior of the premises, showing, for example, arrangement of the booth and of the parking areas.
- (3) The applications for late night approvals shall be approved or denied in the same manner as permit application, and must meet the following criteria and shall be granted as provided above in thirty (30) days, if such criteria are met:
- (a) Adequate parking is provided for, considering the number of arcade booths and "occupant load" for customers in that bookstore;
  - (b) The plan provides for adequate staff during evening hours of operation of an adequate number to supervise the business operations and to disperse the customers loitering in the parking lots. The size of the staff shall be based on such factors as the number of booths; the size of the parking area; the isolation of the parking area by walls from neighboring residential uses; and, if applicable, complaints of public nuisance caused by the arcade, and/or lack of staff sufficient to supervise it.
- (4) MEASUREMENT OF DISTANCES. Distances shall be measured between the nearest points from the arcade building or its designated parking lot to the residential building or its designated parking area.
- (5) EFFECTIVE DATES. Arcade permits in effect March 31, 1990, shall not be restricted as to hours of operation, except upon factual showing under Subsection (6) of this Section.
- (6) CONDITIONS AND REVOCATION OF LATE NIGHT APPROVAL. The approval of evening operations shall be denied, conditioned, restricted, or revoked, if:
- (a) The arcade operator fails to patrol the arcade adequately to discourage lewd conduct in the arcade and in the parking area; or

- (b) The arcade operator fails to exert reasonable control to disperse customers and to control traffic circulation of customers to reduce congestion and disturbances in the neighborhood.

(B) Procedures for revocation of late night approval shall be the same as permit revocation under Section 5.60.090.

(Ordinance 2808 § 1, 2012; Ordinance 2142 § 5 (part), 1990).

## **CHAPTER 70: REGULATION OF COFFEEHOUSES**

### **SECTION 5.70.010: Findings and Intent**

(A) The City Council has received a report, dated September 18, 1995, that is incorporated in this Chapter by reference and on file with the City Clerk's Office from the Police Department that contains findings establishing that there has been a significant increase in crime activity in and about coffeehouses as defined in this Chapter, within the city.

(B) The crime activity is predominantly gang related. Crime statistics establish that gang activity has resulted in crime activity in and about coffeehouses in the following nature and type:

- (1) Coffeehouse owners have been victimized by extortion through demands for protection money;
- (2) Guns have been fired in and about coffeehouses, resulting in death and serious injury to persons;
- (3) Gang warfare has been waged between gangs at coffeehouses, resulting in a variety of crimes to persons;
- (4) Gangs have claimed territorial rights to designated coffeehouses, which has resulted in gang related crimes to persons and property;
- (5) A variety of nuisances arise from gang activity at coffeehouses that adversely impact surrounding commercial and residential properties;
- (6) Coffeehouses have become a de facto attractive nuisance to minors whose safety is jeopardized by gang activity at coffeehouses;
- (7) Entertainment, such as "karaoke," is an integral part of the attractiveness of the coffeehouse, which acts to attract gangs to coffeehouses;
- (8) The presence of gangs at coffeehouses acts to deter lawful patronage at coffeehouses;
- (9) Gang graffiti appears on restrooms and exterior walls of some businesses, causing a blighting condition for the community; and

- (10) Gang activity has resulted in a higher demand for Police services, which reduces the amount of Police resources available to address crime in other parts of the city.

(Ordinance 2808 § 1, 2012; Ordinance 2386 § 1 (part), 1997; Ordinance 2341 § 1 (part), 1995).

### **SECTION 5.70.020: Definitions**

For purposes of this Chapter, certain words and phrases shall be defined as set forth in this Section.

- (1) "Amusement devices" means any arcade game, pinball machine, electronic table top game, billiard or pool table, or other device or machine that can be used by a person or operator as a game or contest of skill, chance, or amusement, which is offered to guests or patrons by or with the permission of the coffeehouse owner or operator for the purpose of holding the attention of, gaining the attention or interest of, or amusing guests or patrons.
- (2) "Coffeehouse" means an establishment where the main stock-in-trade is brewed coffees, teas, and other nonalcoholic beverages for on-site consumption, which may be accompanied by snack foods, either packaged or fresh.
- (3) "Entertainment" means every form of live entertainment, music, solo band or orchestra, act, play, burlesque show, fashion show, review, pantomime, scene, song or dance act, or song dance act, or any other act or performance participated in by one or more persons for the purpose of holding the attention of, gaining the attention or interest of, or amusing guests or patrons.
- (4) "Karaoke" means a form of entertainment wherein patrons sing in accompaniment with live or electronically prepared music with the intent of holding the attention of, or amusing guests or patrons, of the business.
- (5) "Minor" means any person under the age of eighteen (18) years shall be deemed to be a minor.

(Ordinance 2808 § 1, 2012; Ordinance 2792 § 1, 2011; Ordinance 2341 § 1 (part), 1995).

### **SECTION 5.70.030: Restrictions on the operation of coffeehouses**

- (A) It is unlawful and a public nuisance for any person owning, managing or controlling a coffeehouse to operate, maintain, carry on or assist in the operation, maintaining or carrying on of a coffeehouse so as to:
- (1) Permit any minor to enter or remain in a coffeehouse: (i) between normal school hours (that is, nine a.m. to three p.m.) or after eight p.m. of any

day of the week, except that minors may be permitted in the following instances:

- (a) Where the minor is accompanied by a parent or guardian (if the guardian can authenticate guardianship);
- (b) Where the minor is present on the premises by reason of performing duties in the course and scope of employment.

Notice of the above-stated prohibition shall be posted by the business manager or owner at the entrance in lettering of at least two inches in size.

- (2) Permit any person to indulge in boisterous conduct or use of profanity, or otherwise conduct himself/herself in a vulgar or indecent manner while such person is present in a coffeehouse;
- (3) Permit an intoxicated person to enter, be or remain in any coffeehouse;
- (4) Shut or turn off, or reduce, the intensity of the lighting of the coffeehouse to such a degree to make it difficult or impossible to clearly see or identify individuals inside the business;
- (5) Permit entertainment, including, but not limited to, Karaoke, to occur at any time on the business premises, except that live music, other than Karaoke, consisting of no more than one vocalist and/or one unamplified instrumentalist may be permitted; however, this restriction shall not apply to any business owner who desires to provide entertainment in conjunction with a coffeehouse located within the Main Street Retail Overlay (H-R) zone;
- (6) Permit any transmission, whether video or audiovisual, on a television or monitor which promotes or provides karaoke or illegal gambling;
- (7) Permit any amusement devices to be in the business at any time;
- (8) Operate a coffeehouse between the hours of two a.m. and five a.m. during any day of the week;
- (9) Operate a coffeehouse without "No loitering signs" posted at the front and rear of the business;
- (10) Operate a coffeehouse with alcoholic beverages made available to the business patrons, or otherwise stored on the premises at any time;
- (11) Maintain or permit any platform or stage on the premises at any time;

- (12) Permit smoking on the premises in violation of Section 6404.5 of the California Labor Code or any other applicable law;
  - (13) Permit, cause, allow or assist any employee or other person to expose specified anatomical areas to another person. For purposes of this Section, the term "specified anatomical areas" shall have the same meaning as defined in Municipal Code Section 9.16.020.070.B.2.
  - (14) Permit the tinting or placement of any covering or material on or in any windows or glass doors of a coffeehouse, other than lawful window displays authorized pursuant to Title 9, Chapter 20 of this Code, such that the windows or glass portions of the entrances are not left open, clear and unobstructed, so as to allow an unimpaired line of sight by a peace officer into the interior of the business premises during business hours.
- (B) It is unlawful for any minor to enter or remain in a coffeehouse after eight p.m. of any day of the week, except that a minor may enter or remain in a coffeehouse after eight p.m. where:
- (1) The minor is accompanied by a parent or guardian (if the guardian can authenticate guardianship);
  - (2) The minor is present on the premises by reason of performing duties in the course and scope of employment."
- (Ordinance 2808 § 1, 2012; Ordinance 2792 § 2, 2011; Ordinance 2451 § 2, 1998; Ordinance 2386 § 1 (part), 1997; Ordinance 2341 § 1 (part), 1995).

#### **SECTION 5.70.040: Application to Existing Coffeehouses**

Any existing coffeehouse in the city shall comply with all requirements of this Chapter, not later than sixty (60) days from the effective date of the Ordinance codified in this Chapter.

(Ordinance 2808 § 1, 2012; Ordinance 2341 § 1 (part), 1995).

#### **SECTION 5.70.050: Severability**

If any Section, Subsection, sentence, clause, phrase, part or portion of this chapter or any Ordinance enacting provisions of this Chapter is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of such Chapter or Ordinance.

(Ordinance 2808 § 1, 2012; Ordinance 2386 § 2, 1997).

### **CHAPTER 75: REGULATION OF SMOKING LOUNGES**

#### **SECTION 5.75.010: Definitions**

For purposes of this Chapter, certain words and phrases shall be defined as set forth in this Section.

- (1) "Amusement devices" means any arcade game, pinball machine, electronic table top game, billiard or pool table, juke box, air hockey, and

any other such device or machine that is offered for the purpose of holding the attention of, gaining the attention or interest of, or amusing guests or patrons.

- (2) "Smoking Lounge" means a business establishment that is dedicated, in whole or part, to the smoking of tobacco or other legal substances, including, but not limited to, establishments known variously as Cigar Lounges, Hookah Cafes, Hookah Parlors, Tobacco Clubs, or Tobacco Bars. (Ordinance 2808 § 1, 2012; Ordinance 2680 § 2 (part), 2006).

**SECTION 5.75.020: Operating Requirements for Smoking Lounges**

It is unlawful and a public nuisance for any person to engage in, conduct, or carry on, in or upon any premises within the city the business of a Smoking Lounge, except in compliance with all of the following requirements:

- (1) The business shall be owner-operated or otherwise exempt from the prohibition of smoking in the workplace set forth in California Labor Code Section 6404.5.
- (2) No alcoholic beverages shall be sold or consumed at the business except as permitted pursuant to a Conditional Use Permit issued under Title 9 of this Code.
- (3) No person under eighteen (18) years of age shall be permitted within the business.
- (4) No live entertainment including, but not limited to karaoke, singers, DJs, dancers, or comedians shall be permitted within the business except as permitted pursuant to a Conditional Use Permit issued under Title 9 of this Code.
- (5) All business -related activities shall be conducted wholly indoors within the premises of the business except as permitted pursuant to a Conditional Use Permit issued under Title 9 of this Code.
- (6) No admittance fee, cover charge, or requirement of any charge or minimum payment as a condition of entry shall be permitted.
- (7) Uniformed security guard(s) shall be provided as deemed necessary by the Police Chief or his designee.
- (8) Window coverings shall not prevent visibility of the interior of the business from its outside during operating hours. Any proposed window tint shall be approved in advance by the Police Chief or his designee.
- (9) The interior of the business shall be maintained with adequate illumination to make the conduct of patrons within the premises readily discernable to persons of normal visual acuity.

(10) Notwithstanding Section 9.16.020.050 of this Code, Amusement Devices shall not be permitted anywhere within the premises of the business, except as permitted pursuant to a Conditional Use Permit issued under Title 9 of this Code.

(11) Adequate ventilation shall be provided for the heating of coals and smoking areas in accordance with all requirements imposed by the Garden Grove Fire Department, or as otherwise required by state or federal laws.

(12) The occupancy load shall not exceed the lesser of:

(a) The occupancy load limit for the premises established by the applicable provisions of the California Building Standards Codes;

(b) An occupancy load limit established as a condition of the land use approvals under Title 9 of this Code.

(13) The business shall not operate between the hours of 2:00 a.m. and 6:00 a.m.

(14) The business shall also be in conformity with all other City, state and federal laws.

(Ordinance 2808 § 1, 2012; Ordinance 2680 § 2 (part), 2006).

### **SECTION 5.75.030: Application to Existing Businesses**

Any Smoking Lounge lawfully existing on the effective date of this Chapter that becomes a nonconforming use by reason of the adoption of this Chapter shall cease operation, or otherwise be brought into full compliance with the provisions of this Chapter, not later than one (1) year following the effective date of the Ordinance adopting this Chapter.

(Ordinance 2808 § 1, 2012; Ordinance 2680 § 2 (part), 2006).

## **CHAPTER 80: REGISTRATION PROCESS FOR MEDICAL MARIJUANA DISPENSARIES**

### **SECTION 5.80.010: Findings**

(A) In 1996, California voters approved Proposition 215, entitled "The Compassionate Use Act," later codified as Health and Safety Code sections 11362.5. The Compassionate Use Act ensures that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction. In 2003, the State Legislature enacted Senate Bill 420, known as the Medical Marijuana Program Act and codified at Health and Safety Code sections 11362.7 et seq. The Medical Marijuana Program was intended to supplement, clarify, and give effect to the intent of the Compassionate Use Act and to allow, but not require, cities to adopt and enforce rules and

regulations consistent with the Medical Marijuana Program.

- (B) Several California cities and counties that have permitted the establishment of medical marijuana dispensaries have experienced serious adverse impacts and negative secondary effects on the public health, safety, and welfare associated with and resulting from such dispensaries. According to these communities, news stories widely reported, and medical marijuana advocates, medical marijuana dispensaries have resulted in and/or caused an increase in crime, including burglaries, robberies, violence, illegal sales of marijuana to, and use of marijuana by, minors and other persons without medical need in the areas immediately surrounding such medical marijuana dispensaries.
- (C) There appears to be a proliferation throughout the state of medical marijuana dispensaries that do not comply with The Compassionate Use Act, the Medical Marijuana Program or the Attorney Generals Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use (2008).
- (D) The adverse secondary effects arising from the operation of these dispensaries throughout California have been chronicled in detail by a 56 page report prepared by the California Police Chiefs' Association, dated April 22, 2009. In this report, various crimes consisting of armed robberies and murders, and burglary, arising from, or connected with, the operation of these establishments have been recorded by law enforcement agencies in, among numerous other communities, the California communities of Santa Barbara, Mendocino, San Leandro, Hayward, Laytonville, Bellflower, Claremont, and Willits.
- (E) The City Council of the City of Los Angeles specifically found that reports from its police department and the media showed an increase in, and escalation of, violent crime at the location of medical marijuana dispensaries, and further that, medical marijuana that has not been collectively or personally grown constitutes a unique health hazard to the public because it is not regulated, inspected, or analyzed for contamination by the state or federal government.
- (F) The California Police Chiefs' Association report further found: (a) that there have been reported poisonings from distribution of marijuana products due to contamination issues, which are more likely, because such products are not inspected by health agencies; (b) that adverse traffic, noise, and drug dealing impacts occur commonly outside marijuana dispensaries; (c) that gang involvement in the ownership and operation of these dispensaries has been reported in some communities.
- (G) Numerous other media and agency reports have documented criminal and nuisance activities associated with medical marijuana dispensaries.
- (H) The City Council further takes legislative notice that concerns about non-

medical marijuana use arising in connection with the Act and the Program also have been recognized by state and federal courts. See, e.g., *People ex rel. Lungren v. Peron*, 59 Cal. App. 4th 1383, 1386-1387 (1997); *Gonzales v. Raich*, 125 S.Ct. 2195, 2214 n. 43 (2005).

- (I) In 2008, the City Council adopted Ordinance No. 2734 prohibiting medical marijuana dispensaries throughout the city for the purpose of eliminating the adverse secondary impacts to the public health, safety, and welfare associated with medical marijuana dispensaries.
- (J) Notwithstanding Finding I, above, medical marijuana dispensaries have been known to operate and advertise in the city of Garden Grove, often disguised as permitted retail or commercial establishments. These establishments are operating without having obtained any City discretionary or regulatory review, approvals, or permits and the City has not adopted conditions or regulations governing or allowing such operations.
- (K) City staff has initiated the preparation of ordinances for the City Council's future consideration that would amend the existing Land Use Code provisions to permit legitimate medical marijuana dispensaries in certain zones, and that would establish Municipal Code provisions for the permitting and regulation of medical marijuana dispensaries.
- (L) It would defeat in whole or in part, the objectives of any proposed conditions and regulations if, during the period the proposed conditions and regulations are being studied and considered for adoption, further proliferation, establishment, expansion, or modifications of medical marijuana dispensaries occurs.
- (M) In addition, due to the numerous adverse secondary impacts to the public health, safety, and welfare associated with medical marijuana dispensaries, the City Council does not wish to encourage the proliferation of additional medical marijuana dispensaries in the city.
- (N) The following is a sampling of cities that have permitted medical marijuana dispensaries, their respective populations, and maximum number of dispensaries permitted in each:

City	Approximate Population	No. of Dispensaries Permitted	Dispensaries per Capita
Los Angeles	3,900,000	100	1 per 39,000
Oakland	447,000	4	1 per 55,875
Santa Rosa	162,000	3	1 per 54,333

Berkeley	113,000	3	1 per 37,667
Martinez	36,000	1	1 per 36,000

The city of Garden Grove has approximately 175,000 residents. It is believed that there are approximately thirty (30) establishments currently cultivating and/or distributing medical marijuana in the city. Based on the number of dispensaries permitted in other cities, the number of medical marijuana dispensaries currently believed to be operating in the city is more than adequate to service the legitimate medical marijuana needs of city residents.

- (O) Accordingly, it is the City Council's desire that, in the event it subsequently adopts an ordinance which permits medical marijuana dispensaries to operate in the city, initial eligibility for medical marijuana dispensary permits will be limited to those medical marijuana dispensaries that register with the City and can establish they were operating in the city on or before June 30, 2011.
- (P) This Ordinance is found to be categorically exempt from environmental review pursuant to CEQA Guidelines Section 15061(b)(3) in that the City Council finds and determines that there is nothing in this Ordinance or its implementation that could reasonably have any significant effect on the environment.

(Ordinance 2808 § 1, 2012; Ordinance 2797-A § 1 (part), 2011; Ordinance 2797 § 1 (part), 2011).

**SECTION 5.80.020: Purpose**

The purpose of this Ordinance is to establish a date certain by which a medical marijuana dispensary must have been established and operating in the city in order to be potentially eligible for a future permit to legally operate in the city and to provide for a registration process to allow the City to identify such medical marijuana dispensaries. The establishment of such a date certain is necessary in order to discourage the further proliferation of unauthorized and unregulated medical marijuana dispensaries while new regulatory and zoning provisions are developed and considered. This Ordinance is not intended to, and shall not be interpreted to, authorize, sanction, or permit the operation of any medical marijuana dispensary in the city contrary to state or local law, including the Garden Grove Municipal Code, or to amend or modify any provision of the Garden Grove Municipal Code.

(Ordinance 2808 § 1, 2012; Ordinance 2797-A § 1 (part), 2011; Ordinance 2797 § 1 (part), 2011).

**SECTION 5.80.030: Definitions**

For purposes of this Ordinance, the following terms shall have the following meanings:

- (A) "Medical marijuana dispensary" or "dispensary" means five or more qualified

patients and caregivers who collectively or cooperatively cultivate and share physician-recommended medical marijuana or medical marijuana in a manner strictly consistent with the Compassionate Use Act, the Medical Marijuana Program Act, and the Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use issued August 2008, by the Office of the Attorney General for the State of California, as each may be amended from time to time. The term "medical marijuana dispensary" shall not include dispensing by primary caregivers to qualified patients in the following locations and uses: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code; a health care facility licensed pursuant to Chapter 2 of the Division 2 of the Health and Safety Code; a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; a residential hospice; or a home health agency licensed pursuant to Chapter 8 of Division 2 of Health and Safety Code, as long as such use complies strictly with applicable law including, but not limited to, Health and Safety Code sections 11362.5 and 11362.7 et. seq.

- (B) "City Manager" shall mean the City Manager of the City of Garden Grove or his or her designee.
  - (C) "Established operation" shall mean and refer to a medical marijuana dispensary that has been open, operating, and providing medical marijuana at a fixed location in the city of Garden Grove since at least June 30, 2011.
  - (D) "Person" means any cooperative or collective (within the meaning of the Medical Marijuana Program Act), individual, partnership, co-partnership, firm, association, joint stock company, corporation, limited liability company, or combination of the above in whatever form or character.
- (Ordinance 2808 § 1, 2012; Ordinance 2797-A § 1 (part), 2011; Ordinance 2797 § 1 (part), 2011).

**SECTION 5.80.040: Restriction on New Medical Marijuana Dispensaries**

- (A) Pending the adoption by the City of regulations governing the location and operation of medical marijuana dispensaries in the city, and consistent with Section 9.16.020.100 of the Garden Grove Municipal Code, no person shall open, commence operation, or expand or modify operations of a medical marijuana dispensary at any location in the city of Garden Grove, or permit or allow such opening, operation, expansion, or modification.
- (B) Pending the adoption by the City of regulations governing the location and operation of medical marijuana dispensaries in the city, and consistent with Section 9.16.020.100 of the Garden Grove Municipal Code, no application for a business operation tax certificate, building permit or other development-related permit or entitlement shall be reviewed or accepted, no hearing on an application (including appeals) for a discretionary entitlement shall be

conducted, and no building permit or other development-related permit shall be issued or approved for a medical marijuana dispensary. (Ordinance 2808 § 1, 2012; Ordinance 2797-A § 1 (part), 2011; Ordinance 2797 § 1 (part), 2011).

**SECTION 5.80.050: Registration of Established Medical Marijuana Dispensaries.**

(A) Any person that wishes to be eligible for a future permit to operate a medical marijuana dispensary in the City shall submit a registration application in accordance with this Section, which, based on credible evidence, establishes to the satisfaction of the City Manager that the person is an owner or operator of an "established operation." The registration application shall be signed by the medical marijuana dispensary owner or operator under penalty of perjury; shall be submitted to the City's Finance Director on a form provided by the City on or before the date set forth in the notice of the registration application process published by the City pursuant to Section 5.80.060, which date shall be no less than thirty (30) days from the date of publication of said notice; shall be accompanied by a registration application fee established by City Council Resolution; and should include originals or true and correct copies of the following documents:

- (1) State Board of Equalization seller's permit;
- (2) Commercial or business insurance policy evidencing liability insurance coverage of the owner's or operator's operations at its current location;
- (3) If renting or leasing property at its current location, the current rental contract or lease executed by both landlord and tenant; or, if the property is owned by the medical marijuana dispensary owner or operator, the current real property deed evidencing such ownership;
- (4) Utility bills for the premises for the period including June 30, 2011; and
- (5) Any additional evidence that the applicant is an owner or operator of an "established operation."

No "established operation" shall be subsequently eligible to operate in the City if the owner or operator of the medical marijuana dispensary has failed to timely file a complete registration application with the City's Finance Director.

(B) The City Manager shall evaluate each registration application, conduct a reasonable investigation, and determine whether the applicant is an "established operation." In order to make this determination, the City Manager may request such supplemental or additional information or documentation from the applicant as the City Manager deems necessary.

Such additional information or documentation shall be provided to the City by the applicant within the time period specified in writing by the City Manager. The City Manager shall mail the findings and conclusions to the applicant within thirty (30) days from the close of the registration application process.

- (C) Notwithstanding any other provision of the Garden Grove Municipal Code to the contrary, any decision pursuant to this Section 5.80.050 by the City Manager shall be final and conclusive, with no appeal to the City Council or any other appellate body.
- (D) The application and documents submitted to the City pursuant to this Section 5.80.050 shall not be used by the City in any criminal proceeding as evidence of an admission of guilt or violation of any provision of the Garden Grove Municipal Code by the applicant.
- (E) Nothing herein shall permit any medical marijuana dispensary to operate in any manner contrary to applicable state or local law, including the Garden Grove Municipal Code.
- (F) Notwithstanding this Section 5.80.050, no medical marijuana dispensary operating or purporting to operate prior to the date of adoption of this Ordinance shall be deemed to have been a legally established use under the provisions of the Garden Grove Municipal Code or any other local ordinance, rule or regulation, and such use shall not be entitled to claim legal nonconforming status.
- (G) Notwithstanding this Section 5.80.050, pending the adoption by the City of regulations governing the location and operation of medical marijuana dispensaries in the City, nothing in this Ordinance shall be construed to authorize the operation of a medical marijuana dispensary in violation of Section 9.16.020.100 of the Garden Grove Municipal Code.
- (H) Judicial review of a decision made under this Ordinance shall be in accordance with the requirements of administrative mandamus procedure, California Code of Civil Procedure 1094.5. Any such action shall be filed within 90 days after the day the decision becomes final as provided in Code of Civil Procedure 1094.6.

(Ordinance 2808 § 1, 2012; Ordinance 2797-A § 1 (part), 2011; Ordinance 2797 § 1 (part), 2011).

#### **SECTION 5.80.060: Notice of Registration Process**

The City Manager shall provide notice to the public of the registration application process set forth in Section 5.80.050 by each of the following methods:

- (1) publication of notice once in a newspaper of general circulation within the City;

- (2) posting of notice on the City's website; and
- (3) mailing of notice to any person who has submitted a request to the City Clerk for written notice.

(Ordinance 2808 § 1, 2012; Ordinance 2797-A § 1 (part), 2011; Ordinance 2797 § 1 (part), 2011).

**SECTION 5.80.070: Penalties**

- (A) Any person who violates Subsection 5.80.040(A) of this Ordinance shall be guilty of a misdemeanor. Such person shall be deemed guilty of a separate offense for each and every day during any portion of which any violation of Subsection 5.80.040(A) of this Ordinance occurs and shall be punishable as herein provided.
- (B) In addition to criminal sanctions, the City Attorney, in the name of and on behalf of the City and/or the people of the state, may bring a civil action in a court of competent jurisdiction to enforce any provision of this Ordinance, or to restrain or abate any violation of the provisions of this Ordinance as a public nuisance.
- (C) Unless otherwise expressly provided, the remedies, procedures and penalties provided in this Ordinance are cumulative to each other and to any other remedies, procedures and penalties available under state law or City Ordinance.

(Ordinance 2808 § 1, 2012; Ordinance 2797-A § 1 (part), 2011; Ordinance 2797 § 1 (part), 2011).

**SECTION 5.80.080: Urgency**

This Urgency Ordinance is necessary for the immediate protection of the public health, welfare, and general safety of the City for the following reasons:

- (A) The City of Garden Grove has not adopted conditions or regulations allowing or regulating the operation of medical marijuana dispensaries. Nonetheless, medical marijuana dispensaries have been known to operate and advertise in the city of Garden Grove, often disguised as permitted retail or commercial establishments. These medical marijuana dispensaries are operating without having obtained any City discretionary or regulatory review, approvals, or permits.
- (B) City staff has initiated the preparation of proposed regulations for the City Council's future consideration governing the location and operation of medical marijuana dispensaries in the City.
- (C) It would defeat in whole or in part the objectives of any proposed conditions and regulations if, during the period the proposed conditions and regulations are being studied and considered for adoption, further proliferation, establishment, expansion, or modifications of medical marijuana dispensaries in addition to those already established and operating in the

City occurs.

- (D) Several California cities and counties that have permitted the establishment of medical marijuana dispensaries have experienced serious adverse impacts and negative secondary effects on the public health, safety and welfare associated with and resulting from such dispensaries. According to these communities, news stories widely reported, and medical marijuana advocates, medical marijuana dispensaries have resulted in and/or caused an increase in crime, including burglaries, robberies, violence, illegal sales of marijuana to, and use of marijuana by, minors and other persons without medical need in the areas immediately surrounding such medical marijuana dispensaries. The City of Garden Grove reasonably could anticipate experiencing similar adverse impacts and effects. Due to the numerous adverse secondary impacts to the public health, safety and welfare associated with medical marijuana dispensaries, the proliferation of additional medical marijuana dispensaries in the City pending the adoption by the City of regulations governing the location and operation of medical marijuana dispensaries in the city would be harmful to the public health, welfare, and general safety of the city.
- (E) The number of medical marijuana dispensaries currently believed to be operating in the City is more than adequate to service the legitimate medical marijuana needs of city residents. Due to the numerous adverse secondary impacts to the public health, safety, and welfare associated with medical marijuana dispensaries, in order to adequately protect the public health, welfare, and general safety of the city from the numerous adverse secondary impacts and effects that would occur if additional medical marijuana dispensaries are established in the City, it is necessary to establish a date certain of June 30, 2011, by which medical marijuana dispensaries must have been already established and operating in the City in order to potentially be eligible for a future permit to operate in the City. Because the areas in which medical marijuana dispensaries are permitted to operate in Orange County are limited, it can be anticipated that, upon learning of the City's intent to establish this date, persons not already operating established medical marijuana dispensaries in the City may attempt to immediately establish additional medical marijuana dispensaries in the City in the hope of becoming potentially eligible for a future permit. It is necessary that this Ordinance take effect immediately in order to discourage this activity.

(Ordinance 2808 § 1, 2012; Ordinance 2797-A § 1 (part), 2011; Ordinance 2797 § 1 (part), 2011).

## **CHAPTER 85: REGISTRATION PROCESS FOR MEDICAL MARIJUANA DISPENSARIES**

### **SECTION 5.85.010: Findings**

- (A) In 1996, California voters approved Proposition 215, entitled "The Compassionate Use Act," later codified as Health and Safety Code sections

11362.5. The Compassionate Use Act ensures that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction. In 2003, the State Legislature enacted Senate Bill 420, known as the Medical Marijuana Program Act and codified at Health and Safety Code sections 11362.7 et seq. The Medical Marijuana Program was intended to supplement, clarify, and give effect to the intent of the Compassionate Use Act and to allow, but not require, cities to adopt and enforce rules and regulations consistent with the Medical Marijuana Program.

- (B) Several California cities and counties that have permitted the establishment of medical marijuana dispensaries have experienced serious adverse impacts and negative secondary effects on the public health, safety and welfare associated with and resulting from such dispensaries. According to these communities, news stories widely reported, and medical marijuana advocates, medical marijuana dispensaries have resulted in and/or caused an increase in crime, including burglaries, robberies, violence, illegal sales of marijuana to, and use of marijuana by, minors and other persons without medical need in the areas immediately surrounding such medical marijuana dispensaries.
- (C) There appears to be a proliferation throughout the state of medical marijuana dispensaries that do not comply with The Compassionate Use Act, the Medical Marijuana Program or the Attorney Generals Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use (2008).
- (D) The adverse secondary effects arising from the operation of these dispensaries throughout California have been chronicled in detail by a 56 page report prepared by the California Police Chiefs' Association, dated April 22, 2009. In this report, various crimes consisting of armed robberies and murders, and burglary, arising from, or connected with, the operation of these establishments have been recorded by law enforcement agencies in, among numerous other communities, the California communities of Santa Barbara, Mendocino, San Leandro, Hayward, Laytonville, Bellflower, Claremont, and Willits.
- (E) The City Council of the City of Los Angeles specifically found that reports from its police department and the media showed an increase in, and escalation of, violent crime at the location of medical marijuana dispensaries, and further that, medical marijuana that has not been collectively or personally grown constitutes a unique health hazard to the public because it is not regulated, inspected, or analyzed for contamination by the state or federal government.
- (F) The California Police Chiefs' Association report further found: (a) that there have been reported poisonings from distribution of marijuana products due to contamination issues, which are more likely, because such products are not inspected by health agencies; (b) that adverse traffic, noise, and drug

dealing impacts occur commonly outside marijuana dispensaries; (c) that gang involvement in the ownership and operation of these dispensaries has been reported in some communities.

- (G) Numerous other media and agency reports have documented criminal and nuisance activities associated with medical marijuana dispensaries.
- (H) The City Council further takes legislative notice that concerns about non-medical marijuana use arising in connection with the Act and the Program also have been recognized by state and federal courts. See, e.g., *People ex rel. Lungren v. Peron*, 59 Cal. App. 4th 1383, 1386-1387 (1997); *Gonzales v. Raich*, 125 S.Ct. 2195, 2214 n. 43 (2005).
- (I) In 2008, the City Council adopted Ordinance No. 2734 prohibiting medical marijuana dispensaries throughout the city for the purpose of eliminating the adverse secondary impacts to the public health, safety and welfare associated with medical marijuana dispensaries.
- (J) Notwithstanding Finding I, above, medical marijuana dispensaries have been known to operate and advertise in the city of Garden Grove, often disguised as permitted retail or commercial establishments. These establishments are operating without having obtained any City discretionary or regulatory review, approvals, or permits, and the City has not adopted conditions or regulations governing or allowing such operations.
- (K) City staff has initiated the preparation of ordinances for the City Council's future consideration that would amend the existing Land Use Code provisions to permit legitimate medical marijuana dispensaries in certain zones, and that would establish Municipal Code provisions for the permitting and regulation of medical marijuana dispensaries.
- (L) It would defeat in whole or in part, the objectives of any proposed conditions and regulations if, during the period the proposed conditions and regulations are being studied and considered for adoption, further proliferation, establishment, expansion, or modifications of medical marijuana dispensaries occurs.
- (M) In addition, due to the numerous adverse secondary impacts to the public health, safety, and welfare associated with medical marijuana dispensaries, the City Council does not wish to encourage the proliferation of additional medical marijuana dispensaries in the city.
- (N) The following is a sampling of cities that have permitted medical marijuana dispensaries, their respective populations, and maximum number of dispensaries permitted in each:

City	Approximate Population	No. of Dispensaries Permitted	Dispensaries
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			per Capita
Los Angeles	3,900,000	100	1 per 39,000
Oakland	447,000	4	1 per 55,875
Santa Rosa	162,000	3	1 per 54,333
Berkeley	113,000	3	1 per 37,667
Martinez	36,000	1	1 per 36,000

The city of Garden Grove has approximately 175,000 residents. It is believed that there are approximately thirty (30) establishments currently cultivating and/or distributing medical marijuana in the city. Based on the number of dispensaries permitted in other cities, the number of medical marijuana dispensaries currently believed to be operating in the city is more than adequate to service the legitimate medical marijuana needs of city residents.

- (O) Accordingly, it is the City Council's desire that, in the event it subsequently adopts an ordinance which permits medical marijuana dispensaries to operate in the city, initial eligibility for medical marijuana dispensary permits will be limited to those medical marijuana dispensaries that register with the City and can establish they were operating in the city on or before June 30, 2011.
- (P) This Ordinance is found to be categorically exempt from environmental review pursuant to CEQA Guidelines Section 15061(b)(3) in that the City Council finds and determines that there is nothing in this Ordinance or its implementation that could reasonably have any significant effect on the environment.

(Ordinance 2808 § 1, 2012; Ordinance 2798-A § 1 (part), 2011).

**SECTION 5.85.020: Purpose**

The purpose of this Ordinance is to establish a date certain by which a medical marijuana dispensary must have been established and operating in the city in order to be potentially eligible for a future permit to legally operate in the city and to provide for a registration process to allow the City to identify such medical marijuana dispensaries. The establishment of such a date certain is necessary in order to discourage the further proliferation of unauthorized and unregulated medical marijuana dispensaries while new regulatory and zoning provisions are developed and considered. This Ordinance is not intended to, and shall not be interpreted to, authorize, sanction, or permit the operation of any medical marijuana dispensary in the city contrary to state or local law, including the Garden Grove Municipal Code, or to amend or modify any provision of the Garden Grove Municipal Code.

(Ordinance 2808 § 1, 2012; Ordinance 2798-A § 1 (part), 2011).

**SECTION 5.85.030: Definitions**

For purposes of this Ordinance, the following terms shall have the following meanings:

- (A) "Medical marijuana dispensary" or "dispensary" shall mean five or more qualified patients and caregivers who collectively or cooperatively cultivate and share physician- recommended medical marijuana or medical marijuana in a manner strictly consistent with the Compassionate Use Act, the Medical Marijuana Program Act, and the Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use issued August 2008, by the Office of the Attorney General for the State of California, as each may be amended from time to time. The term "medical marijuana dispensary" shall not include dispensing by primary caregivers to qualified patients in the following locations and uses: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code; a health care facility licensed pursuant to Chapter 2 of the Division 2 of the Health and Safety Code; a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; a residential hospice; or a home health agency licensed pursuant to Chapter 8 of Division 2 of Health and Safety Code, as long as such use complies strictly with applicable law including, but not limited to, Health and Safety Code sections 11362.5 and 11362.7 et. seq.
- (B) "City Manager" shall mean the City Manager of the City of Garden Grove or his or her designee.
- (C) "Established operation" shall mean and refer to a medical marijuana dispensary that has been open, operating, and providing medical marijuana at a fixed location in the city of Garden Grove since at least June 30, 2011.
- (D) "Person" shall mean any cooperative or collective (within the meaning of the Medical Marijuana Program Act), individual, partnership, co-partnership, firm, association, joint stock company, corporation, limited liability company, or combination of the above in whatever form or character.

(Ordinance 2808 § 1, 2012; Ordinance 2798-A § 1 (part), 2011).

**SECTION 5.85.040: Restrictions on New Medical Marijuana Dispensaries**

- (A) Pending the adoption by the City of regulations governing the location and operation of medical marijuana dispensaries in the city, and consistent with Section 9.16.020.100 of the Garden Grove Municipal Code, no person shall open, commence operation, or expand or modify operations of a medical marijuana dispensary at any location in the city of Garden Grove, or permit or allow such opening, operation, expansion, or modification.

- (B) Pending the adoption by the City of regulations governing the location and operation of medical marijuana dispensaries in the city, and consistent with Section 9.16.020.100 of the Garden Grove Municipal Code, no application for a business operation tax certificate, building permit or other development-related permit or entitlement shall be reviewed or accepted, no hearing on an application (including appeals) for a discretionary entitlement shall be conducted, and no building permit or other development-related permit shall be issued or approved for a medical marijuana dispensary.  
(Ordinance 2808 § 1, 2012; Ordinance 2798-A § 1 (part), 2011).

**SECTION 5.85.050: Registration of Existing Medical Marijuana Dispensaries**

- (A) Any person that wishes to be eligible for a future permit to operate a medical marijuana dispensary in the City shall submit a registration application in accordance with this Section, which, based on credible evidence, establishes to the satisfaction of the City Manager that the person is an owner or operator of an "established operation." The registration application shall be signed by the medical marijuana dispensary owner or operator under penalty of perjury; shall be submitted to the City's Finance Director on a form provided by the City on or before the date set forth in the notice of the registration application process published by the City pursuant to Section 5.85.060, which date shall be no less than thirty (30) days from the date of publication of said notice; shall be accompanied by a registration application fee established by City Council resolution; and should include originals or true and correct copies of the following documents:
- (1) State Board of Equalization seller's permit;
  - (2) Commercial or business insurance policy evidencing liability insurance coverage of the owner's or operator's operations at its current location;
  - (3) If renting or leasing property at its current location, the current rental contract or lease executed by both landlord and tenant; or, if the property is owned by the medical marijuana dispensary owner or operator, the current real property deed evidencing such ownership;
  - (4) Utility bills for the premises for the period including June 30, 2011; and
  - (5) Any additional evidence that the applicant is an owner or operator of an "established operation."

No "established operation" shall be subsequently eligible to operate in the City if the owner or operator of the medical marijuana dispensary has failed to timely file a complete registration application with the City's Finance Director.

- (B) The City Manager shall evaluate each registration application, conduct a reasonable investigation, and determine whether the applicant is an

"established operation." In order to make this determination, the City Manager may request such supplemental or additional information or documentation from the applicant as the City Manager deems necessary. Such additional information or documentation shall be provided to the City by the applicant within the time period specified in writing by the City Manager. The City Manager shall mail the findings and conclusions to the applicant within thirty (30) days from the close of the registration application process.

- (C) Notwithstanding any other provision of the Garden Grove Municipal Code to the contrary, any decision pursuant to this Section 5.85.050 by the City Manager shall be final and conclusive, with no appeal to the City Council or any other appellate body.
- (D) The application and documents submitted to the City pursuant to this Section 5.85.050 shall not be used by the City in any criminal proceeding as evidence of an admission of guilt or violation of any provision of the Garden Grove Municipal Code by the applicant.
- (E) Nothing herein shall permit any medical marijuana dispensary to operate in any manner contrary to applicable state or local law, including the Garden Grove Municipal Code.
- (F) Notwithstanding this Section 5.85.050, no medical marijuana dispensary operating or purporting to operate prior to the date of adoption of this Ordinance shall be deemed to have been a legally established use under the provisions of the Garden Grove Municipal Code or any other local ordinance, rule or regulation, and such use shall not be entitled to claim legal nonconforming status.
- (G) Notwithstanding this Section 5.85.050, pending the adoption by the City of regulations governing the location and operation of medical marijuana dispensaries in the city, nothing in this Ordinance shall be construed to authorize the operation of a medical marijuana dispensary in violation of Section 9.16.020.100 of the Garden Grove Municipal Code.
- (H) Judicial review of a decision made under this Ordinance shall be in accordance with the requirements of administrative mandamus procedure, California Code of Civil Procedure 1094.5. Any such action shall be filed within 90 days after the day the decision becomes final as provided in Code of Civil Procedure 1094.6.

(Ordinance 2808 § 1, 2012; Ordinance 2798-A § 1 (part), 2011).

#### **SECTION 5.85.060: Notice of Registration Process**

The City Manager shall provide notice to the public of the registration application process set forth in Section 5.85.050 by each of the following methods:

- (1) publication of notice once in a newspaper of general circulation within the city;

(2) posting of notice on the City's website; and

(3) mailing of notice to any person who has submitted a request to the City Clerk for written notice.

(Ordinance 2808 § 1, 2012; Ordinance 2798-A § 1 (part), 2011).

**SECTION 5.85.070: Penalties**

(A) Any person who violates Subsection 5.85.040(A) of this Ordinance shall be guilty of a misdemeanor. Such person shall be deemed guilty of a separate offense for each and every day during any portion of which any violation of Subsection 5.85.040(A) of this Ordinance occurs and shall be punishable as herein provided.

(B) In addition to criminal sanctions, the City Attorney, in the name of and on behalf of the City and/or the people of the state, may bring a civil action in a court of competent jurisdiction to enforce any provision of this Ordinance, or to restrain or abate any violation of the provisions of this Ordinance as a public nuisance.

(C) Unless otherwise expressly provided, the remedies, procedures, and penalties provided in this Ordinance are cumulative to each other and to any other remedies, procedures, and penalties available under state law or City Ordinance.

(Ordinance 2808 § 1, 2012; Ordinance 2798-A § 1 (part), 2011).