



# Supplemental Materials

## **Item 4.B**

## **Revised Exhibit 1**

Please contact the City Clerk's Office at (209) 831-6105 with any questions.

### ***Article 4. Palmistry***

#### **4.12.070 . Purpose.**

The purpose of this legislation is to regulate fortunetellers, psychics, palm readers, palmists and other similar businesses so that the City of Tracy can efficiently and thoroughly investigate fraud and deception, protect the public by preventing people who have been charged with deceptive practices from having easy access to persons who may be vulnerable to fraud or confidence games, to ensure that consumers are provided with information regarding services, rates, and complaint procedures, and to foster a positive business environment for legitimate practitioners within this industry.

#### **4.12.080. Definitions.**

- (a) Fortunetelling shall mean the telling of fortunes, forecasting of futures, or reading the past, by means of any occult, psychic power, faculty, force, clairvoyance, cartomancy, palm reading, psychometry, phrenology, spirits, tea leaves, tarot cards, scrying, coins, sticks, dice, sand, coffee grounds, crystal gazing or other such reading, or through mediumship, seership, prophecy, augury, astrology, palmistry, necromancy, mindreading, telepathy or other craft, art, science, talisman, charm, potion, magnetism, magnetized article or substance, or by any such similar thing or act. It shall also include effecting spells, charms, or incantations, or placing, or removing curses or advising the taking or administering of what are commonly called love powders or potions in order, for example, to get or recover property, stop bad luck, give good luck, put bad luck on a person or animal, stop or injure the business or health of a person or shorten a person's life, obtain success in business, enterprise, speculation and games of chance, win the affection of a person, make one person marry or divorce another, induce a person to make or alter a will, tell where money or other property is hidden, make a person to dispose of property in favor of another, or other such similar activity.
- (b) Fortunetelling shall also include pretending to perform these actions.
- (c) Persons shall mean individuals. Corporations and other legal entities shall not be entitled to a fortunetelling permit.
- (d) Chief shall mean the Chief of Police of the Tracy Police Department, or his/her designee(s), including but not limited to Code Enforcement Officers.
- (e) Gain shall mean the benefit or advantage including but not limited to economic remuneration of any kind, including authorization to use credit issued to another, use of another's property or assets, loans, or the provision of tangible items.

#### **4.12.090. Exceptions.**

This Chapter shall not apply to:

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- (a) Persons engaged in the business of entertaining the public by demonstrations of palm reading, mindreading, mental telepathy, thought conveyance, magic, giving of horoscopic readings, fortunetelling or other similar practices at public places and in the presence of other persons, and where any questions answered as part of such entertainment may be heard by all persons present at such public places.
- (b) Persons conducting or participating in any religious ceremony as a minister, missionary, medium, healer, or clairvoyant, hereinafter collectively referred to as minister, from any bona fide church or religious association that conducts regular services and has a creed or set of religious principles that is recognized by all groups of like faith, provided that the benefit, gain or advantage shall be regularly accounted for and paid solely to or for the benefit of the bona fide church or religious association except that the bona fide church or religious association may pay to its ministers a salary or compensation based upon a percentage only, pursuant to an agreement between the church and the ministers that is embodied in a resolution and transcribed in the minutes of such church or religious association.

#### 4.12.100. Permit and Business License required.

It shall be unlawful, in the City, for any person to offer or engage in the activity, enterprise, profession, trade, business of fortune telling, or as a seer, astrologer, clairvoyant, phrenologist, palmist or undertaking of fortunetelling with the object of gain, benefit or advantage, whether directpalmistry for compensation or otherwise, or indirect to act as a fortune teller, seer, astrologer, clairvoyant, phrenologist in the business of palmist or palmistry, without first obtaining a valid business license therefor from the Council and a permit issuedpaying the license fee required by the Tracy this Article.

(Prior code § 4.3.501)

#### 4.12.080 Applications.

Applications for a license shall be in writing, filed with the City Clerk and shall contain the names and residences of the applicants, if an individual, firm or partnership; the names of the principal officers and their residences, if the applicant is a corporation, and in the latter case, shall also specify the names of one or more persons whom the applicant shall designate as Manager or person in charge, with the address of the same. Said application shall also state the following:

- (a) The length of time such applicant has resided in the City, his places of previous employment, whether married or single, and whether he has ever been convicted of a felony or misdemeanor, and if so, what offense, when, and in what Court.

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- (b) The premises where such business is to be carried on and maintained, giving the street and number.
- (c) Whether such business is to be carried on in connection with some other kind of business.
- (d) Whether the applicant or Manager is either alone, or with someone else previously engaged as owner or employee in conducting a similar business; when and where and for how long.
- (e) Such other information as the Council may, from time to time, require.
- (f) The application shall be signed and verified before a Notary Public or other officer authorized to administer oaths in the City.

(Prior code § 4-3.502)

#### **4.12.090 Investigation required.**

Upon receipt of any such application, the City Clerk shall refer it to the Chief of Police Department who shall cause an investigation to be made concerning the statements made in such application, the character and reputation of the applicant, the condition of the premises, equipment and methods to be used, with a view to the preservation of the public health, peace and safety. For the purpose of such investigation, he shall have the assistance and cooperation of every other department, bureau or officer of the City.

(Prior code § 4-3.503)

#### **4.12.100 Fingerprinting applicant.**

Before any application herein provided for shall be granted, the applicant therefor shall be fingerprinted in the usual and approved method for the identification of said applicant; said fingerprints shall be retained by the Police Department as part of its records; and a photograph of said applicant shall be taken and made by said Police Department, or under its direction, and said photograph shall be permanently affixed to the license issued to said applicant if the same is issued; and in the event said photograph is removed from said license or becomes defaced so that the original thereof cannot be identified then said license, at the option of the Council, may immediately be revoked.

(Prior code § 4-3.504)

#### **4.12.110 Palmistry permit Notice of hearing.**

(a) Every person applying for a Palmistry permit shall pay the When such application fee pursuant to the Citywide Master Fee Schedule is made by filing the same with the City Clerk, he shall set it down for hearing at the next regular meeting of the

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~~Council at which the same can be heard and submit shall cause notice thereof to be published in the official newspaper of the City at least twice at least five (5) days before the day of hearing.~~

~~(Prior code § 4.3.505)~~

#### **4.12.120 Council action on hearing.**

~~At the time set for the hearing, the Council shall act upon the application and either grant or reject the application; provided, however, the hearing, for good cause in the discretion of the Council, may be continued from time to time. The application may be rejected if any of the persons named in the application or connected or associated with the applicant in the conduct of the business have been convicted of a crime involving moral turpitude or have, within five (5) years prior to the date of the application, been convicted of a felony, or, within one year, of a misdemeanor; or if any of such persons has previously been connected with the fortune-telling business, as herein defined, the license for which has been revoked; or if the business sought to be licensed does not comply in every way with the regulations and laws applicable thereto.~~

~~No license shall be refused, except for a specific reason and for the protection of the public health, safety, good order, or morals.~~

~~If the application is rejected, the City Clerk shall notify the applicant in writing, giving the reasons for the rejection, and shall refund all of the deposit made with the application, except the costs incurred by the City in investigating the application and in giving notice of the hearing.~~

~~(Prior code § 4.3.506)~~

#### **4.12.130 Transfer of license prohibited.**

~~No transfer of a license as to location or ownership shall be granted except after an application on therefor made upon a form provided by the Tracy City Clerk, who may grant or reject such application after an investigation. If the application for a transfer is approved, such action shall be endorsed upon the license by the City Clerk.~~

~~(Prior code § 4.3.507)~~

#### **4.12.140 Posting license on premises.**

~~Every person licensed in accordance with the provisions of this Article shall immediately post such license and keep the license posted while in operation in a conspicuous place upon the premises where such business is authorized to be carried on. It shall be unlawful for any person to post such license or permit it to be posted upon any premises other than those named in the application or knowingly to deface or destroy any such license.~~

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~~Whenever a license shall be lost or destroyed without fault on the part of the owner, or his agents or employees, a duplicate license in lieu thereof may be issued by the City Clerk in his discretion.~~

~~(Prior code § 4.3.508)~~

#### **4.12.150 Hours permitted.**

~~It shall be unlawful to keep open to the public or to conduct the business herein defined on any day between the hours of 12:30 a.m. and 8:00 a.m.~~

~~(Prior code § 4.3.509)~~

#### **4.12.160 Inspection duty of chief of police.**

~~It shall be the duty of the Chief of Police Department, which shall include; and he is hereby authorized and empowered to inspect and examine, from time to time, or to cause to be inspected and examined, the premises where the business of fortune telling, clairvoyancy, or of a seer or an astrologer are carried on, for the purpose of ascertaining the general reputation and character of the place and of the persons who habitually frequent such place; the name and kind of such business conducted at such place by the licensee, or by any other persons; the nature and kind of entertainments, if any, at such place, and whether such place is conducted in a lawful, quiet or orderly manner; such inspection and examination shall be made when the premises are open to the public for business or otherwise occupied, as provided in section 4.12.150 of this Article.~~

- (1) The name under which the business will be conducted;
- (2) The applicant's full true name, and other names used, date of birth, address and telephone numbers;
- (3) A copy of the fictitious business name statement under which the applicant intends to operate;
- (4) The name or name under which the permittee will be identifying himself or herself to the public;
- (5) The address where the business will be conducted;
- (6) All addresses at which the applicant has resided for the five years prior to the application;
- (7) The applicant's business, occupation, and employment history for the five years preceding the date of the application;
- (8) The occupational permit history of the applicant, including whether such person has ever had a permit or license issued for a fortunetelling or related business. The name of the issuing agency, the date of issuance, and whether the permit was suspended or revoked and the reasons therefor;
- (9) All convictions relating to fraud, theft, burglary, use of violence, deceit or false impersonation for the seven years preceding the date of the application;
- (10) Any other information requested by the Chief

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necessary to ascertain the accuracy of the information provided in the application.

(b) The Chief is hereby authorized to have access to and utilize summary criminal history information when it is needed to assist those persons in fulfilling their licensing duties set forth in this chapter. All permit applicants shall undergo a background investigation and pay a background investigation fee in accordance with the Citywide Master Fee Schedule.

#### 4.12.120. Permit Decision.

The Chief shall issue a written decision to the applicant within 30 days, or within a reasonable amount of time, of receipt of a complete permit application.

(a) The permit shall be granted if none of the conditions listed in subsection (b) are present and the applicant has complied with all requirements under this chapter and applicable laws.

(b) The Palmistry permit shall be denied after a determination that any of the following exist:

(1) The applicant has been convicted of a felony or two or more misdemeanors relating to fraud, theft, burglary, use of violence, deceit, or false impersonation within seven years prior to the date of application.

(2) The applicant has previously had an occupational permit revoked or suspended for violation of permitting conditions related to fraud, theft, burglary, use of violence, deceit or false impersonation, within the seven years prior to the date of application.

(3) The applicant has failed to provide information required by this chapter or has provided false or misleading information required by this chapter to the Police Department or other City agency.

(4) The applicant has failed to obtain a zoning clearance letter, business license, and any other requirement to obtain the permit.

(5) The applicant fails to pass the background investigation.

(c) The applicant shall be prohibited from applying for a fortunetelling permit for one year following denial or revocation of a fortunetelling permit.

(d) A permit may be revoked, suspended or a renewal denied based on the same criteria in subsection (b) of this section.

(e) The permit shall expire on June 30th of each year. A renewal application must be submitted each year.

#### 4.12.130 Compliance with other applicable laws.

Nothing contained in this chapter shall be construed to exempt any person from complying with the provisions of any other applicable law, ordinance, rule, or regulation or to exempt a Fortunetelling business from the requirements under any zoning, licensing

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or building ordinances, rules or regulations including but not limited to the obligation to apply for and maintain a current business license with the City.

4.12.140. Deceptive Acts.

Fortunetellers shall not engage in unfair or deceptive practices, within the meaning of Business and Professions Code § 17200, during the conduct of any fortunetelling activities and in the course of their business.

4.12.150. Receipts.

- (a) The fortuneteller shall issue a written receipt that shall include the name of the permittee who provide the services, the permittee's permit number, the services rendered, the amount charged for each service provided, and the amount paid or expected. If payment is made in a method other than cash, check, or credit card, the receipt shall so indicate.
- (b) The permittee must keep copies of receipts for five years from date of issuance.

4.12.160. Rate schedule and complaint procedure.

- (a) When a fortuneteller operates at a roving or unfixed location, the fortuneteller shall provide a written copy of rate information to the customer that shall be printed in plain, legible letters. The rate document shall include a statement that if the customer has complaints, the customer may phone the Tracy Police Department at (209) 831-6550.
- (b) The rates published shall be the only rates charged.

4.12.170. Transitional period.

A person operating as a fortuneteller within the City of Tracy, who does not possess both a business license and a Palmistry permit to conduct such business shall be required to comply with all provisions of this chapter within sixty days from the effective date of this chapter.

4.12.180. Violations and Penalties

- (a) Violations. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this chapter to fail to comply with any of this chapter's provisions.
- (b) Penalties. A violation of this chapter is a misdemeanor punishable by a fine of up to \$1,000 or by imprisonment in the County Jail for a period of not more than six months, or by both fine and imprisonment.
- (c) A violation of any of the provisions or failing to comply with any of the mandatory requirements of this chapter may result in the issuance of an administrative citation and the city may, at its discretion, seek an administrative fine of up to one thousand dollars.
- (d) Each violation of any provision of this chapter shall constitute a separate and distinct violation for each day during which any violation of any provision of this

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chapter is committed, continued or permitted by such person.

**4.12.190. Appeals**

- (a) A decision to deny revoke, suspend or deny the application for a permit under this chapter may be appealed in accordance with Chapter 1.12 of the Tracy Municipal Code.
- (b) Time limits for judicial review. Judicial review of any decision of the City, or of any commission, board, officer or agent of the City, may be had under California Code of Civil Procedure section 1094.5 only if the petition for writ of mandate is filed within ninety (90) days following the date on which the decision becomes final. However, if the person challenging the decision files a request for a copy of the record of proceedings with the City Clerk within ten (10) days after the date on which the decision becomes final, then the time within which the writ of mandate may be filed is extended to the 30th day after the record is either delivered or mailed to the person or to their legal counsel of record. The procedures set forth in Code of Civil Procedure sections 1094.5 and 1094.6 apply.

A "decision," as used here, means a decision subject to review under section 1094.5, which includes revoking or denying an application for a permit, license or other entitlement; imposing a civil or administrative penalty, fine, charge or cost; or other entitlement as provided in section 1094.5.

In making any final decision subject to review under Code of Civil Procedure section 1094.5, the City shall provide notice to the party that the time within which judicial review must be sought is governed by this section. The City may do so by including a copy of this section with the written notice of the final decision. Twenty-one (21) days: First Amendment issues. A final decision by the City to issue, revoke, suspend or deny a permit or other entitlement for expressive conduct protected by the First Amendment to the United States Constitution is governed by California Code of Civil Procedure section 1094.8. Such a decision is entitled to priority and subject to expedited hearing and review procedures. An action to challenge the city's decision must be filed and served within twenty-one (21) calendar days from the date of the decision.

Thirty (30) days: most other decisions. Except as otherwise provided below, any legally permitted court action or proceeding to attack, review, set aside, void, annul or seek damages or compensation for any City decision or action must be commenced, and service of summons effected, within thirty (30) days from the date of the decision. Thereafter, all persons are barred from commencing or prosecuting any such action or proceeding or asserting any defense of invalidity or unreasonableness of such decision or action. In this subsection, "decision" includes administrative, adjudicatory, legislative, discretionary, and executive decision, or other action taken or authorized by this Code. It shall be his duty in event he finds that the said business is not carried on in a lawful,

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~~quiet and orderly manner, or that the licensee violates this Article, or any other law of the City or of the State, to recommend to the Council that the license be revoked.~~

~~The Council may, upon such recommendation being filed, or upon its own motion, serve or cause to be served upon the licensee a notice specifying the grounds for said complaint and fixing a time and place at which the Council shall hear and determine such charges, which time shall not be less than three (3) days from the date of the service of the notice, at which time and place, the person against whom the complaint is filed shall have the opportunity to be heard and to make his defense against such complaint.~~

~~(Prior code § 4-3.510)~~

#### **4.12.170 Revocation or suspension of license.**

~~Any licensee who shall violate or shall permit a violation of the laws of the State or of the City, within such licensed establishment, shall be liable to have his license suspended for the first violation by the Council for a period of thirty (30) days, and for the second violation, for a period of sixty (60) days; provided, however, that upon the third violation, such license shall be revoked by the Council; and provided, further, the Council shall have the right to revoke such license upon the first or second violation.~~

~~The Council shall also have the right to suspend or revoke such license whenever it shall be shown to the satisfaction of the Council that the business so licensed is being conducted in a manner which is detrimental to the health, morals, peace, or safety of the community; provided, however, when such license is suspended or revoked, the Council shall notify the licensee in writing and give the reason for such suspension or revocation.~~

~~Upon the revocation of any license, the unearned portion of the license fee shall be returned to the licensee upon his application therefor; provided, however, no fraction of a month shall be included in the compilation. When a license has been revoked, no other license shall be issued to the same licensee within one year.~~

~~(Prior code § 4-3.511)~~

#### **4.12.180 Notices.**

~~Any notice provided for in this Article shall be served either by delivering a copy personally to the licensee or by leaving a copy with some person of suitable age and discretion at the place of business of the licensee and actually or apparently in charge thereof, or, if no such person is found at the place of business of the licensee, by posting such notice in a conspicuous place on the premises and mailing a copy of the notice to the licensee at his place of business as set forth in his application for a license.~~

~~(Prior code § 4-3.512)~~

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#### **4.12.190 Payment of license fees.**

~~The applicant shall, with his application for a new license or transfer of any existing license, deposit with the City Clerk a license fee of Five Hundred Fifty and no/100ths (\$550.00) Dollars for the first year, and in the event the license is granted, it shall be renewed for periods of one year at a time until revoked upon the payment of a license fee for each successive year of Three Hundred Fifty and no/100ths (\$350.00) Dollars per year, payable in advance. In the event the application is not granted, the applicant shall have refunded to him the license fee paid for the first year, except for the costs of the investigation hereinbefore referred to, including the costs of publishing the notice of application.~~

~~(Prior code § 4-3.513)~~