

ORDINANCE NO. 1085-C-S

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANTIOCH
ADDING CHAPTER 19 OF TITLE 5 TO THE ANTIOCH MUNICIPAL CODE
REGARDING MASSAGE ESTABLISHMENTS, OUT-CALL MASSAGE
THERAPY AND MASSAGE THERAPY TECHNICIANS**

The City Council of the City of Antioch does ordain as follows:

Section 1. *Code Addition.* Chapter 19 of Title 5 of Antioch Municipal Code is hereby added to read as follows:

Section 5-19.01. **FINDINGS AND PURPOSE.**

The City Council finds and declares as follows:

(a) The City is authorized by virtue of the Constitution of the State of California, and section 51031 of the California Government Code to regulate massage establishments by imposing reasonable standards relative to the skills and experience of massage operators and massage therapists and imposing reasonable conditions on the operation of massage establishments.

(b) In adopting these regulations, the City Council of the City of Antioch acknowledges that massage therapy is a legitimate, viable professional field that provides valuable health benefits. The Council also finds that there are significant risks of injury to massage clients by improperly trained and/or uneducated massage therapists and this Chapter provides reasonable safeguards against injury and economic costs. The City Council further finds that it is reasonable to conclude that the presence of untrained, inexperienced trainees in massage establishments would encourage and foster prostitution.

(c) The permit requirements and restrictions imposed by this Chapter are reasonably necessary to protect the health, safety and welfare of the citizens of the City.

Section 5-19.02. **DEFINITIONS.**

For the purpose of this Chapter, the following words and phrases shall have the meaning set forth herein:

Acupuncture. The stimulation of a certain point or points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, for the treatment of certain diseases or dysfunctions of the body and includes the techniques of electro acupuncture, cupping, and moxibustion.

Acupressure. Based on a theory similar to acupuncture except that it stimulates acupuncture points by the application of pressure rather than by the application of needles.

Adult-oriented merchandise. Any sexually oriented implements, paraphernalia, or novelty items, such as, but not limited to, condoms and sexually oriented items that are designed or marketed primarily for the stimulation of human genital organs.

Applicant. In the case of a massage establishment permit, means an individual, or if not an individual, the general partner, chief executive officer, chief advisor, or other person responsible for the ownership and operation of the massage establishment, who applies to obtain a permit under this Chapter. In the case of a massage therapy technician permit, "applicant" means an individual who applies for a permit under this Chapter.

Chief of Police. The Chief of Police of the City of Antioch or his or her designee.

Employee. Includes any owner, partner, operator, manager, supervisor or worker, whether paid or not, who renders personal services of any nature in the operation of a massage establishment.

Massage therapy. The treatment of the human body by soft tissue manipulation using a variety of manipulative techniques, which may include any method of pressure on, friction against, stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating the external parts of the human body with the hands or with the aid of any mechanical or electrical apparatus, or other appliances or devices, with or without such supplementary aids as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment, or other similar preparations. This may include body/mind/spirit integration, personal growth, physical or emotional relaxation and the relief of somatic pain or dysfunction. As used in this Chapter, massage therapy includes bodywork and somatic therapies.

Massage establishment. Any establishment having a fixed place of business where any person provides, receives, or permits others to provide or receive massage therapy services. Massage establishment includes, but is not limited to, a massage parlor as defined in Section 9-5.203 of this Code, any beauty salon, hot tub or sauna facility, health and fitness center, skin care salon, spa or tanning salon in which massage therapy services are provided to customers.

Massage therapy technician. Any person who provides massage therapy services to another person.

Managing employee. Any employee of a massage establishment who has been designated by the massage establishment permittee to manage the business.

Out-call massage therapy. Massage therapy performed or administered for money or other consideration by a massage therapy technician at a location other than a massage establishment.

Permit. The permit to engage in the practice or business of massage therapy as required by this Chapter.

Permittee. Any person possessing a permit required and issued under this Chapter.

Person. Any individual, co-partnership, firm, association, joint stock company, corporation, joint venture, or combination of individuals of whatever form or character.

Police Department. The unit or person(s) designated by the Police Chief to administer this ordinance.

Recognized school of massage therapy. Any school or institution of learning which has been approved or accredited pursuant to applicable State or Federal law or regulation, or any school which requires a resident course on the theory, ethics, history, practice, methods, profession or work of massage therapy, including the study of anatomy and physiology and hygiene, and demonstration and practice of massage therapy techniques, and which provides a diploma or certificate of graduation upon successful completion of such course of study or course work recognized by national professional massage or body therapy organizations. Any school or institution of learning offering or allowing correspondence course credit not requiring actual attendance at class, or a course of massage therapy not approved by the California Department of Education shall not be deemed a "recognized school of massage therapy."

Section 5-19.03. **PERMIT REQUIREMENT.**

(a) **Massage Establishment Permit.** Except as otherwise provided in section 5-19.04, it shall be unlawful for any person to engage in, conduct or carry on, or permit to be engaged in, conducted or carried on, in or upon any premises within the city, the operation of a massage establishment without first having obtained a Massage Establishment permit issued by the Police Department pursuant to this Chapter. A separate permit shall be obtained for each separate massage establishment.

(b) **Massage Therapy Technician Permit.** Except as otherwise provided in section 5-19.04, it shall be unlawful for any person to engage in, conduct or carry on the function of a massage therapy technician without first having obtained a Massage Therapy Technician permit issued by the Police Department pursuant to this Chapter.

(c) **Temporary Training Permit.** The Police Department may issue a temporary training permit to any applicant, for a period not to exceed six (6) months, if the applicant requires experience in the massage therapy profession for the purpose of eligibility as provided in subsection 5-19.05(a) of this Chapter or educational requirements for a recognized school of massage therapy, and the applicant shows proof of satisfactory completion of at least one hundred (100) hours of a non-repetitive curriculum in anatomy, physiology, hygiene, sanitation, and massage therapy theory, history, ethics, and practice from a recognized school of massage therapy.

(d) A permit issued under this Chapter does not authorize the permittee to practice massage therapy until the permittee has complied with all business license requirements, zoning/planning requirements, and all other applicable federal, state, and city laws or regulations.

(e) Persons practicing acupressure under the direction of a licensed State of California acupuncturist shall obtain a Massage Therapy Technician permit as required in this Chapter.

Sec. 5-19.04. PERMIT EXCEPTIONS.

(a) The permit requirements of this Chapter shall not apply to the following persons while engaged in the performance of their duties:

(1) Physicians, surgeons, chiropractors, osteopaths, nurses, physical therapists, or acupuncturists who are duly licensed to practice their respective professions in the State;

(2) Barbers, beauticians, cosmetologists, and estheticians who are duly licensed under the laws of the State while engaging in practices within the scope of their licenses;

(3) Hospitals, nursing homes, sanitariums, or any other health facility duly licensed by the State;

(4) Accredited high schools, junior colleges, colleges, or universities whose coaches and trainers are acting within the scope of their employment;

(5) Trainers of amateur, semiprofessional or professional athletes or athletic teams while engaging in their training responsibilities for and with athletes; and trainers working in conjunction with a specific athletic event such as road races, track meets, triathlons, biathlons, or similar single occurrence athletic or recreational events.

Sec. 5-19.05. EDUCATIONAL, CERTIFICATION, AND ASSOCIATION REQUIRMENTS.

(a) Each permittee shall either:

(1) Possess an original diploma, original certificate of graduation, or other written proof, including certified transcripts, acceptable to the Police Department, from a recognized school of massage therapy, college, junior college, or university, which shows satisfactory completion of at least Two hundred and Fifty (250) hours of a nonrepetitive curriculum which shall include formal education and training in massage therapy and/or bodywork, ethics, anatomy, and physiology; and related education and/or professional experience; or

(2) Certification pursuant to the National Certification Board for Therapeutic Massage and Bodywork.

(b) The permittee shall present original documents showing such certification at the time of application.

(c) Each permittee shall be a member, in good standing, of a state or national professional association devoted to the massage therapy specialty and therapeutic enhancement approach. The organization shall meet the following requirements:

(1) The organization or association promotes participation in continuing education programs as a condition of continuing membership;

(2) The organization or association has an established code of ethics and has enforcement procedures for the suspension and revocation of membership of persons violating the code of ethics;

(3) The organization or association is open to members of the general public, meeting the requirements for membership on a regional, statewide, or national basis, and is devoted to serving the interests of its members, the public, and the profession.

(d) Each applicant for a Massage Establishment permit who signs a declaration under penalty of perjury that such applicant will not personally engage in the practice of massage therapy is exempt from the educational, certification, association, and testing requirements set forth in this sub-section.

(e) Each applicant for a Massage Establishment permit and Massage Therapy Technician permit shall successfully complete and pass a written examination as described in section 5-19.06, unless the applicant is exempt from the requirements as provided in section 5-19.05(d).

Sec. 5-19.06. MASSAGE THERAPY TECHNICIAN EXAMINATION.

(a) Each applicant must demonstrate a basic knowledge of anatomy, physiology, hygiene and massage therapy by successfully completing a written examination. The applicant must pass the test with a score of no less than seventy percent (70%) on the written test.

(b) The tests will be formed by using a series of questions submitted from various Bay Area massage schools and have questions that can effectively assess the basic knowledge addressed in sub-section (a) of this section.

(c) The tests will be administered through the Antioch Police Department at the time of application. If the applicant fails the written examination the person may submit a request at any time to retake the failed test. If the person fails the written test the second time, the person must wait six (6) months before submitting a request to retake the failed test.

(d) If the applicant requires the services of a translator during the examination, the applicant must arrange for a court certified translator to be present at the examination. The applicant is solely responsible to pay for the translator's services. No persons other

than court certified translators, City of Antioch representatives, and examinees are allowed in the testing room during the written test.

(e) The examination is a one-time requirement for all massage establishment permittees and massage therapy technician permittees and will not be required again unless the applicant fails to renew their permit as required by this Chapter or as may be required by state law.

Sec. 5-19.07. MASSAGE ESTABLISHMENT PERMIT APPLICATION AND FEE.

(a) Each applicant for a Massage Establishment permit shall file a written application with the Police Department on a form provided by the Police Department.

(b) Each application shall be accompanied by a nonrefundable fee, in an amount established in the Resolution Approving the Master Fee Schedule. The application fee shall be used to defray the costs of processing, the investigation and report, and is not made in lieu of any other fees or taxes required under this Code. In addition, applicants are required to make payment to the Department of Justice for fingerprinting services as required by this Chapter. A copy of the receipt for the nonrefundable fee shall accompany the application.

(c) Each applicant shall submit the following information in the application under penalty of perjury:

(1) The full, true name under which the business will be conducted;

(2) The present or proposed address where the business is to be conducted;

(3) The applicant's full, true name, including all other names used presently or in the past, date of birth, valid California driver's license number or identification number, Social Security number, present residence address and telephone number, gender, height, weight, color of hair, and color of eyes;

(4) The names and addresses of all persons financially interested in the business;

(5) The applicant's two (2) most recent street addresses and the dates of residence at each address;

(6) The name, street address, and telephone number of other businesses in which the applicant has owned or been employed with within the past seven (7) years. This shall include the dates of employment, positions held by the applicant, and a contact person at each location. Applicant shall disclose or declare that within the seven (7) years preceding submission of the application, the owner, operator, manager, and responsible managing officer/employee have not:

a. Had a Massage Establishment permit, Massage Therapy Technician permit, or other similar permit or license denied, suspended, or revoked by the City, or any other federal, state or local agency;

b. Engaged in conduct or operated a massage therapy or similar establishment in a manner that would be grounds for denial, suspension, or revocation of a permit under this Chapter; or

c. Owned or managed a massage establishment or similar establishment where persons required to be licensed were allowed to work without the required license or permit.

(7) A statement of the permit history of the applicant which identifies whether or not such person has ever held a professional or vocational license or permit, other than as required under this Chapter, issued by any agency, board, city, county, territory, or state; the date of issuance of such permit or license; whether or not the permit or license is still in effect; if the permit or license is no longer in effect, whether or not it was revoked or suspended, and if so, the reason(s) therefore. The name and location of the jurisdiction or agency that suspended or revoked such license, certificate, permit, or other authorization shall also be included.

(8) The name and street address of any other massage business operated or managed by the applicant during the last seven (7) years;

(9) A statement whether the applicant intends to personally provide massage therapy services at the business;

(10) Except as provided in section 5-19.05(d), an original diploma, certificate of graduation, or other written proof, including certified sealed transcripts, acceptable to the Police Department or written proof of the applicant's successful completion of the National Certification Board for Therapeutic Massage and Bodywork examination showing that the applicant has met the requirements of section 5-19.05;

(11) Except as provided in section 5-19.05(d), written proof that the applicant is a member, in good standing, of a state or national professional association devoted to the massage therapy specialty and therapeutic enhancement approach as required by subsection 5-19.05(c);

(12) A statement that within the seven (7) years preceding submission of the application, whether the applicant has been convicted or entered a plea of nolo contendere in a court of competent jurisdiction of any of the offenses listed below. For the purposes of this subsection, "applicant" means the following: an individual if the applicant is an individual; any officers, directors, stockholders holding more than five percent (5%) of the stock of the corporation, or the managing responsible officer, if the applicant is a corporation; and a partner or the managing responsible officer, if the applicant is a partnership.

a. Conduct that requires registration under California Penal Code section 290;

b. Conduct which is in violation of California Penal Code sections 220, 245.3, 245.5, 261, 264.1, 266(e), 266(h), 266(i), 314, 315, 316, 318, 647(a), 647(b), or 647(d);

c. Crimes that are designated in California Government Code section 51032(b);

d. Any other crime involving dishonesty, fraud, deceit, violence, or moral turpitude;

e. Conspiracy or attempt to commit any of the aforementioned designated offenses;

f. Convictions to a charge of a violation of California Penal Code sections 415 and 602, or any lesser included or related offense, in satisfaction of, or as a substitute for, any of the previously listed crimes, or any crime committed while engaged in the ownership of a massage establishment or the practice of massage therapy;

g. Convictions that have been expunged and convictions under the laws of other jurisdictions that proscribe the same or similar conduct as the aforespecified crimes shall be reported;

h. Conviction of Health and Safety Code section 11550 or any offense involving the illegal sale, distribution or possession of a controlled substance specified in Health and Safety Code sections 11054, 11055, 11056, 11057 or 11058;

i. Whether the applicant has been subjected to a permanent injunction against the conducting or maintaining of a nuisance pursuant to California Penal Code sections 11225 et seq. or any similar provisions of law in a jurisdiction outside the state;

j. Been convicted of any offense in any other state that is the equivalent of any of the above-mentioned offenses;

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

(13) The name, street address, telephone number, and date of birth of each massage therapy technician or employee who is or will be employed at the massage establishment, regardless of the nature of the employment;

(14) The name, street address, and telephone number of any massage establishment or other like establishment owned or operated by any person whose name is required to be given pursuant to this section;

(15) Documentation to prove that the applicant has a lawful right to work in the United States, to include but not limited to Department of Justice Immigration and Naturalization Service Employment Authorization Document;

(16) If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its Chapters of Incorporation or Charter, together with the state and date of incorporation and the name, residence address, and telephone number of each of its current officers, directors, along with the amount of stock held;

(17) If the applicant is a partnership, the application shall set forth the name, residence street address, and telephone number of each of the partners. If the applicant is a limited partnership, it shall furnish a copy of its 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 corporate applicants shall apply to the corporate partner. The applicant, if a corporation or partnership, shall designate one of its officers or general partners to act as its responsible managing officer/employee. Such person shall complete and sign all application forms required of an individual applicant under this Chapter and shall, at all times, meet all of the requirements set for permittees by this Chapter or the permit shall be suspended until a responsible managing officer who meets such requirements is designated. If no such person is found within ninety (90) days after the permit's suspension, the corporation or partnership's permit is deemed canceled. If the corporation or partnership wishes to reapply for a permit, a new application shall be filed;

(18) Two (2) recent, identical, passport-size, color photographs of the applicant;

(19) Fingerprints taken by a representative of the Antioch Police Department and submitted to the Department of Justice for processing pursuant to this Chapter;

(20) Certificate from a physician licensed to practice in the State of California stating that the applicant is free from any contagious and communicable diseases and has, within thirty (30) days immediately before the filing of the application, tested negative for tuberculosis. If the applicant has tested positive, the applicant must submit documentation from a physician licensed to practice in the State of California that the tuberculosis is not in an active state and the applicant is asymptomatic. The certification is not required if the massage establishment applicant does not intend to provide massage therapy services and has so certified as provided in above in subsection (c)(9);

(21) Proof of massage malpractice insurance in the sum of not less than five hundred thousand dollars (\$500,000.00) per massage therapy technician licensed, or to be licensed, at the massage establishment, up to a maximum of one million dollars

(\$1,000,000.00); this requirement can be satisfied by malpractice insurance being provided in the name of individual massage therapy technicians;

(22) Written authorization for the City, its agents, and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and into the background of the applicant and the responsible managing officer/employee of the massage establishment;

(23) Such other identification and information shall be provided as required by the Chief of Police, necessary to discover the truth of the matters specified and required in the application;

(d) A Massage Establishment permit does not authorize the permittee to provide massage therapy services, and it is unlawful to do so without a valid Massage Therapy Technician permit issued by the licensing authority.

Sec. 5-19.08. MESSAGE THERAPY TECHNICIAN PERMIT APPLICATION AND FEE.

(a) Each applicant for a Massage Therapy Technician permit shall file a written application with the Police Department on a form provided by the Police Department.

(b) Each application shall be accompanied by a nonrefundable fee, in an amount established in the Resolution Approving the Master Fee Schedule. The application fee shall be used to defray the costs processing the application, the investigation and report, and is not made in lieu of any other fees or taxes required under this Code. In addition, applicants are required to make payment to the Department of Justice, for fingerprinting services, as required by section 15-19.07(c)(19). A copy of the receipt for the nonrefundable fee shall accompany the application.

(c) Each applicant shall submit the following information and/or document(s) under penalty of perjury:

(1) All information required by section 5-19.07(c), except subsections: 5-19.07(c)(1), 5-19.07(c)(2), 5-19.07(c)(13), 5-19.07(c)(14), 5-19.07(c)(16), and 5-19.07(c)(17);

(2) As required by section 5-19.06, successful completion of the massage therapy technician's examination;

(3) Each applicant shall provide written authorization for the City, its agents, and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and into the background of the applicant to comply with section 5-19.07(c) (23);

(4) The full name, street address, and telephone number of each business premises in which the massage therapy technician administers massage therapy.

Sec. 5-19.09. APPLICATION REVIEW.

Upon receipt of an application, the Police Department shall review the application and supplementary material. If it is clear from the face of the application and supplementary material that the applicant is not qualified for the permit sought pursuant to the requirements and standards of this Chapter, or if the required fee has not been paid, the application may be denied without further investigation. If it appears from the face of the application and supplementary material that the applicant may be eligible for the permit sought, the Police Department shall verify the information submitted by the applicant and shall further investigate the qualifications of the applicant as follows:

(a) The Police Department shall photograph the applicant, take a full set of the applicant's fingerprints, and submit the fingerprints to the Department of Justice for evaluation. Upon receipt of the report from the Department of Justice, the Police Department shall review the criminal history (if any) of the applicant;

(b) The Police Department may conduct additional investigations in a manner authorized by law when necessary to determine if the applicant meets the qualifications for a permit pursuant to this Chapter; and

(c) Upon receipt of an application for a massage establishment permit, the Police Department shall refer the application to the City's Building Department, who shall review the application and inspect the premises to ensure that it will comply with applicable ordinances, including, but not limited to, building, health, and fire safety ordinances. Any modifications in the proposed site that are required to meet City standards shall be completed and all fees shall be paid before the application will be considered for approval by the Police Department.

Sec. 5-19.10. PERMIT ISSUANCE OR DENIAL.

(a) The Police Department shall issue or deny the application for a massage establishment or massage therapy technician permit within sixty (60) days of a completed application. When necessary, the Police Department may extend the time in order to issue or deny the application.

(b) In addition to any other section of this section, the Police Department shall deny a permit if any requirement any of the following circumstances exist:

(1) The application is incomplete and/or required supplementary material is not submitted within thirty (30) days of the date the material is requested;

(2) The applicant does not have sufficient proof of the required educational or certification requirements and association qualifications pursuant to section 5-19.05 of

this Chapter, unless the applicant is exempt from these requirements as provided in section 5-19.04;

(3) The operation as proposed by the applicant would not comply with all applicable ordinances and laws, including, but not limited to, the City's building, zoning, health, and fire safety ordinances;

(4) The applicant has previously had a Massage Establishment permit, Massage Therapy Technician permit, or any similar license, certificate, or permit revoked by the City or any public agency during the seven (7) years preceding the date of the application;

(5) The applicant has made a material misrepresentation in the application or supplementary material submitted with the application;

(6) The applicant has been successfully prosecuted under the Red Light Abatement Act (California Penal Code section 11225 et seq.) or any similar law in another jurisdiction during seven (7) years preceding the date of the application; or

(7) The applicant has been convicted of any of the offenses provided in section 15-19.07(c)(12) during the seven (7) years preceding the date of the application.

(c) If prosecution is pending against the applicant for either conduct listed in section 5-19.11 or for conduct violating this Chapter's provisions, the Police Department may postpone the decision on the application until the final resolution of the prosecution. As used in this subsection, prosecution means charges filed by the district attorney, administrative proceedings brought by a local government or agency, or a civil action maintained by the City of Antioch City Attorney.

(8) The applicant does not pass the examination described in section 5-19.06.

(c) The Police Department may postpone the decision on a license or permit application until the City of Antioch receives the applicant's fingerprint review results from the California Department of Justice.

(d) The Police Department shall give written notice of the grounds for denial to the applicant personally or by first class mail, postage prepaid, at the address provided in the application. The notice shall advise the applicant of the right to request a hearing as provided in section 5-19.12.

Sec. 5-19.11. DISQUALIFYING CONDUCT.

(a) The person has been convicted of, or pled guilty or no contest to an offense that requires registration under California Penal Code section 290, or which is a violation of sections 266(i), 314, 315, 316, 318 or 647(b) or the sections in Part 1, Title 9, Chapters 7.5 or 7.6 of the Penal Code or equivalent offenses under the laws of another jurisdiction,

or any offense involving sexual misconduct with children or adults, even if expunged pursuant to Penal Code section 1203.4;

(b) The person has been convicted of, or pled guilty or no contest to an offense involving the sale of a controlled substance specified in sections 11054, 11055, 11056, 11057, 11058, 11351, 11352, 11358 through 11363 or 11378 through 11380 of the California Health and Safety Code, or equivalent offenses under the laws of another jurisdiction, even if expunged pursuant to Penal Code section 1203.4;

(c) The person was convicted of, or pled guilty or no contest to a violation of Penal Code section 415 as a result of an arrest for violation of Penal Code section 647(b).

Sec. 5-19.12. HEARING ON DENIAL OF PERMIT.

If a permit for a massage establishment or massage therapy technician is denied, an applicant may, within fourteen (14) calendar days after such action is taken, request a hearing before the Board of Administrative Appeals pursuant to Chapter 4 of Title 1 of the Municipal Code, at which time evidence will be received for the purpose of determining whether the action of the Police Department in denying the issuance of an annual permit should be sustained or reversed.

Sec. 5-19.13. APPEAL OF DENIAL OF PERMIT.

Judicial review shall be available as established in California Government Code section 53069.4 and pursuant to section 1-4.04 of this Code.

Sec. 5-19.14. GROUNDS FOR SUSPENSION OR REVOCATION OF PERMIT.

(a) The Police Department may revoke or suspend any permit granted under this Chapter if any of the following are found:

(1) The permittee does not possess the qualifications for the permit as required by this Chapter;

(2) The permittee has been convicted of any violation of any provision of this Chapter;

(3) The permittee has engaged in conduct or operated a massage establishment where conduct has been engaged or has engaged in conduct as a massage therapist technician in a manner which violates this Chapter, any conditions of the permit, or any of the laws which would have been grounds for denial of the permit;

(4) There is fraud, material misrepresentation, false statement, or omission of a material fact in any application for a permit or in any supplementary material;

(5) An activity authorized in the permit has been conducted in an unlawful manner or in such a manner as to constitute a menace to the health, safety, or general welfare of the public;

(6) Upon a recommendation from the city and/or county officials which states that such business is being managed, conducted, or maintained without regard for public safety or public health; or

(7) For purposes of this section, permittee, in the case of a massage establishment, shall include the managing responsible officer or managing employee.

(b) Prior to the suspension or revocation of any permit issued pursuant to this Chapter, the Police Department shall give written notification of the of the suspension or revocation of the permit(s) to the permittee(s) personally or by first class mail, postage prepaid, at the address provided on the permit application. This notice shall advise the permittee of the right to request a hearing as provided in section 5-19.15.

Sec. 5-19.15. HEARING ON SUSPENSION OR REVOCATION OF PERMIT.

The permittee shall have fourteen (14) days from the date of the written notice of suspension or revocation of any permit issued pursuant to this Chapter to file a written appeal with the Board of Administrative Appeals, pursuant to Chapter 4 of Title 1 of the Municipal Code. Evidence will be received at the hearing for the purpose of determining whether or not such permit shall be suspended or revoked, or whether the permit may be retained.

Sec. 5-19.16. BURDEN OF PROOF.

Unless otherwise specifically prohibited by law, the burden of proof is on the applicant or permittee in any hearing or other matter under this Chapter.

Sec. 5-19.17. APPEAL OF SUSPENSION OR REVOCATION OF PERMIT.

If the Board of Administrative Appeals does not reverse the Police Department action in suspending or revoking the permit pursuant to section 5-19.14, judicial review shall be available as established in California Government Code section 53069.4 and pursuant to section 1-4.04 of this Code.

Sec. 5-19.18. MINIMUM AGE REQUIREMENT.

(a) No person shall be employed in a massage therapy business or perform massage therapy or manage or hold an ownership interest in a massage therapy business who is not at least eighteen (18) years of age.

(b) It is unlawful for the owner, proprietor, managing employee, or any other person in charge of any massage establishment to employ any person less than eighteen (18) years of age.

Sec. 5-19.19. PERMITS NON-ASSIGNABLE.

No permit shall be sold, transferred, or assigned by the permittee or by operation of law, to any other person. Any such sale, transfer, assignment, attempted sale, attempted transfer or attempted assignment shall constitute an immediate revocation of the permit and the permit shall thereafter be null and void.

Sec. 15-19.20. CHANGE OF NAME OR LOCATION, EXPANSION OF BUILDING.

(a) No permittee shall operate under any name or conduct any massage establishment under any designation or location not specified in the permit.

(b) In the case of any proposed change of name, notification thereof shall be made to the Police Department within thirty (30) days prior to the change. Any proposed change of name is subject to the approval of the Police Department.

(c) Any proposed change of location of a massage establishment is subject to the approval of the Police Department, in addition to compliance with all City ordinances and regulations.

(d) Any application for an expansion of a building of a massage establishment shall require compliance with this Chapter and all other applicable laws.

(e) In case of any change of location or expansion of the massage establishment, inspection thereof by the City's Building and/or Planning Department shall be made as required in this Chapter within thirty (30) days of receipt of the application.

Sec. 5-19.21. DISPLAY OF PERMIT.

(a) The Massage Establishment permit and a copy of the permit of each and every massage therapy technician employed in the establishment shall be displayed in an open and conspicuous place on the premises.

(b) Each massage therapy technician permittee shall be issued a photograph identification badge from the Police Department that shall also serve as a Massage Therapy Technician permit. When visiting a location other than a massage establishment in order to give a massage, each massage therapy technician permittee shall display the badge on such permittee's person, except when the permittee is giving a massage.

Sec. 5-19.22. FACILITIES AND OPERATING REQUIREMENTS.

(a) Every massage establishment and every massage therapy technician shall comply with standards established by the Contra Costa County Health Services for such businesses and practitioners and the following facilities and operations requirements:

(1) The massage establishment's premises and facilities shall meet and be maintained in a condition to comply with all applicable code requirements of the city, county, and state, including, but not limited to, those related to the safety of structures, adequacy of the plumbing, lighting, heating, ventilation, waterproofing of rooms in which showers, water or steam baths are used, and the health and cleanliness of the facility.

(2) Massage establishments and massage therapy technicians shall at all times have an adequate supply of clean sanitary towels, coverings, and linens. Towels, non-disposable coverings, and linens shall not be used on more than one client, unless they have first been laundered and disinfected. Disposable towels and disposable coverings shall not be used on more than one client. Soiled linens and paper towels shall be deposited in separate receptacles.

(3) In the massage establishment, wet and dry heat rooms, steam or vapor rooms or cabinets, toilet rooms, shower and bathrooms, tanning booths, whirlpool baths, and pools shall be thoroughly cleaned and disinfected as needed, and at least once each day when the premises are open, with a disinfectant. Bathtubs shall be thoroughly cleaned with a disinfectant after each use. All walls, ceilings, floors, and other physical facilities for the establishment shall be in good repair, and maintained in a clean and sanitary condition.

(4) All equipment used in the massage establishment and massage therapy operation shall be maintained in a clean and sanitary condition. Instruments utilized in performing massage therapy shall not be used on more than one client unless they have been sterilized, using standard sterilization methods.

(5) Clients of the massage establishment shall be furnished with a dressing room. Only clients of the same sex will use dressing rooms at the same time. Dressing rooms need not be separate from the room in which the massage therapy is being performed.

(6) Toilet facilities shall be provided in convenient locations within the massage establishment and shall consist of at least one unisex toilet with lavatories or wash basins provided with soap and both hot and cold running water either in the toilet room or vestibule.

(7) A minimum of one washbasin for employees shall be provided at all times. The basin shall be located within or as close as practicable to the area devoted to performing of massage therapy services. Soap and sanitary towels shall also be provided at each basin.

(b) Massage therapy shall be provided or given only between the hours of 6:00 a.m. and 10:00 p.m. No massage establishment shall be open and no client shall be in the establishment between 10:00 p.m. and 6:00 a.m.

(c) No alcoholic beverages shall be sold, served, furnished, kept, consumed, or possessed on the premises of any massage establishment.

(d) No owner, manager, operator, responsible managing employee, or massage therapy technician shall permit, offer or perform, any service other than those permitted under this Chapter.

(e) No permittee or employee of a massage establishment shall:

(1) Expose the sexual or genital part of the permittee/employee in the course of a massage therapy; or

(2) Touch or expose the sexual or genital part of any other person in the course of a massage therapy.

(3) It shall be unlawful for any massage therapy technician, operator, or employee of any massage establishment to perform massage therapy on a patron with the intent or purpose of arousing, appealing to, or gratifying the sexual desires of said patron. Sexual and genital parts shall include the genitals, pubic area, anus, perineum of any person and the breasts of any female.

(f) No permittee or employee of a massage establishment shall place, publish or distribute or cause to be placed, published or distributed any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective customers that any service is available that is prohibited under this Chapter nor shall any massage establishment employ language in any advertising text or business name that would reasonably suggest to a prospective client that any service is available that is prohibited under this Chapter.

(g) Adult-oriented merchandise is prohibited. The use or possession of adult-oriented merchandise in or on any part of a massage establishment is expressly prohibited.

(h) Recordings. No electrical, mechanical or artificial device shall be used by the operator and/or manager, massage therapy technician or any employee of the massage establishment for audio and/or video recording or for monitoring the performance of any massage therapy, or the conversation or other sounds in the massage rooms without the knowledge and written consent of the patron.

(i) Locks prohibited.

(1) No massage therapy shall be conducted within any cubicle, room, booth or treatment room on the premises of a massage therapy establishment that is fitted with a lock.

(2) All exterior doors on the premises of a massage therapy establishment shall remain unlocked from the interior side during business hours.

Sec. 5-19-23. RESPONSIBILITY OF EMPLOYER/ESTABLISHMENT PERMITEE.

It shall be the responsibility of the massage establishment permittee who has employed any person acting or purporting to act as a massage therapy technician or the employer of any person acting or purporting to act as a massage therapy technician to ensure that such person complies with the requirements of this Chapter and all laws. The massage establishment permittee shall be held responsible for the conduct of all persons on the premises that engage in providing the service of massage therapy. Any act or omission of any person giving massage therapy, or any service of massage therapy shall be deemed the act or omission of the holder of the massage establishment permit for the purposes of determining whether the massage establishment permit may be revoked, suspended, or denied. Proof of knowledge of any violation of this section shall not be required for purposes of suspension, revocation, or denial of a massage establishment permit.

Sec. 5-19-24. OUT-CALL MASSAGE THERAPY PERMIT.

It shall be unlawful for any massage establishment or massage therapy technician to provide, or to offer to provide, massage therapy at any location except at the place of business approved in the permit for a massage establishment or massage therapy technician; provided, however that a massage establishment or massage therapists may obtain approval from the Police Department, specifically authorizing out-call massage therapy services.

Sec. 5-19-25. PERMIT DURATION AND RENEWAL.

(a) A permit shall be valid for one (1) year from the date of issuance unless revoked or suspended.

(b) A permittee may apply for a renewal of a permit thirty (30) days prior to the expiration of the permit. If, upon the thirty-first (31) day after the expiration of a permit, an application of renewal has not been received, the permit shall be deemed expired. Any permit issued under this Chapter shall be returned to the Police Department within forty-eight (48) hours of its expiration. No privilege to provide massage therapy shall exist until an application for renewal has been granted. After a permit expires, a new application may be filed.

(c) Permits may be renewed every year by filing an application for renewal under penalty of perjury updating information in the original application provided to the Police Department.

(d) Verification of continued membership, in good standing, of a state or national professional association described in section 5-19.05(c) of this Chapter.

(e) To renew a permit under this Chapter, the permittee shall pay the city a nonrefundable fee in an amount set forth in the Resolution Approving the Master Fee Schedule. A copy of the receipt for the nonrefundable fee shall accompany the application for renewal.

(f) After investigating the application for renewal, the Police Department shall renew the permit if the permittee continues to meet the requirements for the issuance of a permit, and none of the grounds for denial of a permit set forth in this Chapter exist. The Police Department shall renew the permit within thirty (30) days of such request if the information upon which the original application was granted remains unchanged and no violations of this Chapter have been committed.

Sec. 5-19.26. APPLICABILITY TO EXISTING BUSINESSES.

(a) All persons currently operating a Massage Establishment or working as a Massage Therapy Technician shall have six (6) months following the enactment of this Ordinance in which to comply with the requirements of this Chapter. Except as provided in section 5-19.26 (b), any currently legally operating Massage Establishment or Massage Therapy Technician that does not attain compliance with this Chapter within the prescribed time limits, is in violation of this Code and subject to administrative and/or legal action.

(b) The Police Department may issue a provisional permit to any massage establishment or massage therapy technician, for a period not to exceed six (6) months, if the applicant:

(1) Is able to show that substantial compliance with the requirements of this Chapter has been met, including association membership (section 5-19.07(c)(11)), negative tuberculosis test (section 5-19.07(c)(20)), insurance (section 5-19.07(c)(21)) and at least 250 hours of education and training (section 5-19.07(c)(10)); and

(2) Successful completion of the Massage Therapy Technician examinations can be achieved within ninety (90) days; and

(3) That the remaining compliance can be achieved within the period of the provisional permit. This six (6) month provisional permit shall not be renewed.

Sec. 5-19.27. CESSATION OF BUSINESS.

If at any time during the duration of a permit issued under this Chapter a permittee ceases to do business as a massage establishment and/or a massage therapy technician, the permittee shall:

(a) Return any permit issued under this Chapter to the Police Department within five (5) business days; and

(b) Notify the Business License Department.

Sec. 5-19.28. INSPECTION.

The Police Department shall, from time to time, make an inspection of each massage establishment for the purpose of determining compliance with this Chapter.

Sec. 5-19.29. ENFORCEMENT.

(a) It is the duty of the Chief of Police to enforce rules and regulations in accordance with this Chapter.

(b) Pursuant to the City's prosecutorial discretion, the City may enforce violations of the provisions of this Chapter by criminal, civil and/or administrative actions.

(c) Any massage establishment operated, conducted, or maintained contrary to the provisions of this Chapter shall be unlawful and a public nuisance, and the City Attorney may, in the exercise of discretion, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings, for the abatement, removal and enjoinder thereof, in any manner provided by law.

Section 2. *Severability.* Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

Section 3. *Effective Date; Transitional Clause.* This Ordinance shall take effect thirty (30) days after adoption as provided by Government Code Section 36937.

Section 4. *Certification.* The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published according to law.

* * * * *