



City of Woodland

REPORT TO MAYOR AND CITY COUNCIL

AGENDA ITEM

TO: THE HONORABLE MAYOR
AND CITY COUNCIL

DATE: July 21, 2009

SUBJECT: Revised Massage Ordinance to Eliminate Conflicts with State Law

Report in Brief

In September 2008 Governor Arnold Schwarzenegger signed into law Senate Bill 731. This bill is an act to add and repeal Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code, relating to massage therapy. These changes take effect September 1, 2009. Woodland's current Massage Ordinance as written is in conflict with the new State regulations and would be unenforceable in its current form, at least with respect to massage technicians who obtain State certification.

Staff recommends that Council adopt Ordinance _____ to amend massage establishment regulations in order to eliminate conflicts with State law.

Background

Council received a full report regarding the rationale for submission of this request to revise the current Code language to incorporate the new State requirements into the Code. Staff has received mostly positive feedback from the local professional Certified Massage Therapists and Certified Massage Practitioners in the City who support this Ordinance.

Discussion

The Police Department has reviewed the proposed Ordinance and does not find any of the revised provisions would limit the ability of law enforcement to identify and control illegal practices by individual masseuses or massage establishments.

Fiscal Impact

Adoption of the revised Ordinance may result in a very limited reduction in revenue as fees associated with the inspection of massage establishments is collected through the permitting process. Establishments operating under the authority of the California Massage Therapy Council are by law exempt from local permitting and therefore inspection related costs would go unfunded.

Public Contact

Posting of the City Council agenda and staff discussions with various massage practitioners.

Recommendation for Action

Staff recommends that City Council adopt Ordinance No. _____ to amend massage establishment regulations in order to eliminate conflicts with State law as described herein.

Prepared by: Sue Vannucci, Director
of Administrative Services

Mark G. Deven
City Manager

Attachments

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF WOODLAND, CALIFORNIA, AMENDING ARTICLE VI
OF CHAPTER 13 THE WOODLAND MUNICIPAL CODE
RELATING TO THE REGULATION
OF MASSAGE TECHNICIANS, MASSAGE ESTABLISHMENTS
AND OTHER SPECIFIED BUSINESSES

WHEREAS, the City of Woodland (“City”) is authorized by the California Constitution and Government Code Section 51030 *et. seq.*, to regulate massage establishments by imposing reasonable standards relative to the skill and experience of massage operators and massage technicians and reasonable conditions on the operation of massage establishments to allow residents to benefit from competent massage and bodywork professionals with reasonable assurances of compliance with public health and safety standards; and

WHEREAS, Article VI of Chapter 13 of the Woodland Municipal Code currently regulates massage establishments and massage technicians to reduce the risk of illicit activity; and

WHEREAS, the California Legislature has adopted Senate Bill 731 (“SB 731”) that creates a state-organized non-profit organization, the California Massage Therapy Council (“CAMTC”), that may begin issuing massage certifications to massage technicians on September 1, 2009; and

WHEREAS, SB 731 limits the ability of cities to regulate the operations of massage establishments employing only CAMTC-certified massage technicians, including preempting most local licensure requirements and some land use regulations; and

WHEREAS, the City wishes to amend the Woodland Municipal Code to ensure the City regulates massage technicians, massage establishments and other specified personal or professional services businesses in compliance with the provisions of SB 731.

NOW, THEREFORE, the City Council of the City of Woodland, California, does hereby ordain as follows:

Section 1. Purpose. The purpose of this ordinance is to amend Article VI of Chapter 13 of the Woodland Municipal Code.

Section 2. Authority. The City Council enacts this ordinance under the authority granted to cities by Article XI, Section 7 of the California Constitution.

Section 3. Amendment. Article VI of Chapter 13 is hereby amended to read in full as shown in Exhibit “A”.

Section 4. Severability. If any provision or clause of this Ordinance or any application of it to any person, firm, organization, partnership or corporation is held invalid, such invalidity shall

not affect other provisions of this Ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this Ordinance are declared to be severable.

Section 5. Effective Date and Notice. This ordinance shall take effect thirty (30) days after its adoption and, within fifteen (15) days after its passage, shall be published at least once in a newspaper of general circulation published and circulated within the City of Woodland.

PASSED AND ADOPTED by the City Council of the City of Woodland this ____ day of July, 2009, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Marlin H. Davies, Mayor

ATTEST:

Susan L. Vannucci, City Clerk

APPROVED AS TO FORM:

Andrew J. Morris, City Attorney

EXHIBIT “A”

AMENDED ARTICLE VI OF CHAPTER 13

**ARTICLE VI
MESSAGE ESTABLISHMENTS**

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Sec. 13-6-1. Title.

This article shall be known as the “massage establishment permit law of the city of Woodland.”

Sec. 13-6-2. Authority.

This article is enacted pursuant to Chapter 6 of Part 1 of Division 1 of Title 5 of the Government Code of the state (commencing with Section 51030) with recognition of the limitations imposed by Chapter 10.5 of Division 2 of the Business and Professions Code of the

state (commencing with Section 4600).

Sec. 13-6-3. Definitions.

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

“Applicant” means any person who applies for a permit as required by this article.

“California Massage Therapy Council” means the state-organized non-profit organization created to regulate the massage industry as set forth in Chapter 10.5 of Division 2 of the Business and Professions Code of the state (commencing with Section 4600).

“Chief of Police” means the city chief of police or his/her designee.

“Clerk” means the city clerk.

“Conviction,” “convicted” shall mean a plea or verdict of guilty or a conviction following a plea of nolo contendere.

“Council” means the City Council.

“Manager” shall mean the person(s) designated by the operator of the massage establishment to act as the representative and agent of the operator in managing day-to-day operations with the same liabilities and responsibilities as the operator. Evidence of management includes, but is not limited to, evidence that the individual has power to direct or hire and dismiss employees, control hours of operation, create policy or rules or purchase supplies. A manager may also be an operator. A massage technician permit is not required to be a manager. A manager may not perform any massage services without first meeting the standards and qualifications of Sec. 13-6-7 and obtaining a technician permit or being exempt from the permitting requirement pursuant to Sec. 13-6-18.

“Massage” means any method of pressure on, or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external parts of the body with the hands or with the aid of any mechanical or electrical apparatus or appliance with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments or other similar preparations commonly used in the practice of massage.

“Massage establishment” means any establishment having a fixed place of business where any person engages in or carries on, or permits to be engaged in or carried on, any activity set forth in the definition of “massage” in this section. Any establishment engaged in, carrying on, or permitting any combination of massage and bathhouse shall be deemed a massage establishment. “Massage establishment” shall not include cosmetology establishments.

“Massage technician” means any person who gives or administers to another person for any form of consideration whatsoever a massage as defined in this article. The terms “massage therapist,” “massage practitioner,” or any other terms used within the massage industry are included within this definition for the purposes of this ordinance. This definition shall also

include anyone operating pursuant to a valid “certified massage therapist” or “certified massage practitioner” certification issued by the California Massage Therapy Council.

“Operator” shall mean all persons who have an ownership interest in the massage establishment and are responsible for its day-to-day operations.

“Permittee” means any person operating or maintaining a massage establishment under a permit issued pursuant to this article.

“Person” means any individual, partnership, firm, association, joint stock company, corporation or combination of individuals of whatever form or character.

“Recognized school” means any school or institution of learning which has for its purpose the teaching of the theory, method, profession, or work of massage, which school requires a resident course of study of not less than one hundred thirty hours to be given in not more than six calendar months before the student shall be furnished with a diploma or certificate of graduation from such school or institution of learning following the successful completion of such course of study or learning, and which school has been approved pursuant to Chapter 3 (commencing with Section 94300 of Part 59) of the Education Code of the state.”

Sec. 13-6-4. Massage establishment permit--Required.

(A) Except as provided for in Sec. 13-6-18, it is unlawful for any person to own or operate, in or upon any premises within the City, a massage establishment in the absence of a valid business license pursuant to Section 13-1-14 of this code and a permit issued pursuant to the provisions hereinafter set forth in this article.

(B) Each applicant for a permit shall pay a nonrefundable fee, in an amount determined by resolution of the City Council, at the time he or she submits a permit application or renewal application under this section. The application fee is for the purpose of defraying the expense of investigation, administration and issuance of the permit.

Sec. 13-6-5. Massage establishment permit--Application.

The application for a permit to operate a massage establishment shall set forth the exact nature of the business to be administered, the proposed place of business, and the facilities therefore. A form for the application required by this section shall be obtained from the chief of police. The completed application form shall be submitted to the chief of police and shall also contain the following information so that an adequate investigation of the applicant’s background can be made:

- (1) The full true name and any other names used by the applicant;
- (2) The two previous residential addresses and business addresses, if any, immediately prior to the present address of the applicant;
- (3) The applicant’s height, weight, color of eyes, and hair;

(4) The business, occupation or employment of the applicant for the ten years immediately preceding the date of the application;

(5) The massage or similar business license history of the applicant; whether such person, in previously operating in this city or another city, county or state under a license or permit, has had such license revoked or suspended, or has voluntarily relinquished the license; the reasons therefore and the business activity or occupation subsequent to such action of suspension, revocation, or relinquishment. This expressly includes any license denial, suspension, revocation or any other disciplinary action taken by any agency or non-profit operated or organized by the state to license or otherwise regulate massage technicians, including the California Massage Therapy Council;

(6) All criminal convictions within the eight years preceding the date of this application except minor traffic violations;

(7) The applicant shall be fingerprinted and have his or her photograph taken by the City chief of police and shall pay such fees therefore as are charged by the police chief for such services generally;

(8) Such other identification and information as determined by the police chief, the fire department, or any other city department of jurisdiction, to be necessary to verify the truth of the matters required by this section;

(9) If the applicant is a corporation or partnership, the name of the corporation or partnership shall be set forth exactly as shown in its articles of incorporation or partnership agreement, and the information required by this section shall be furnished for the managing director or managing employee, any general partner, and any stockholder owning twenty percent or more of the stock of an applicant corporation;

(10) A statement as to whether the applicant intends at any time to employ more than two massage technicians on site performing massages simultaneously;

(11) A statement as to whether the applicant intends to provide massage services off site.

Sec. 13-6-6. Massage establishment permit--Procedure.

(A) Within sixty days after the submission of a complete application with the chief of police for a massage establishment permit, the chief of police shall, based on input from other departments/officials, approve or deny the permit. No permit shall be transferable to any other person.

(1) Prior to the expiration of such sixty-day period, information received as part of the business license application review shall be forwarded to the chief of police.

(2) The chief of police may extend the sixty-day period for up to thirty additional days if information necessary to complete the investigation has not yet been made available to him/her.

(B) The chief of police shall issue a nontransferable massage establishment permit if the applicant has proven that all the requirements for a massage establishment described in this article are met, unless the chief of police finds:

(1) That the applicant has made a false, misleading, or fraudulent statement or omission of fact to the City in the permit application process;

(2) The application does not contain all of the information required by Sec. 13-6-5;

(3) That the operation as proposed by the applicant will not comply with all the applicable laws, including, but not limited to, the building, health, planning, housing and fire laws of, or applicable to, the City;

(4) That the applicant, or any officers, directors, or partners, or any person directly engaged or employed in the massage establishment, within the eight years preceding the date of the application, has been subjected to a permanent injunction against the conducting or maintaining of a nuisance pursuant to Penal Code section 11225 et seq. or any similar provisions of law in a jurisdiction outside the State of California;

(5) That the applicant, or any officers, directors, or partners, or any person directly engaged or employed in the massage establishment, within the eight years preceding the date of the application, has had a massage establishment or massage technician permit or other similar license or permit denied, suspended or revoked for cause by a licensing authority, including the California Massage Therapy Council, or by any city, county or state;

(6) That the applicant, or any officers, directors, or partners has entered into a settlement agreement with any licensing authority, including the California Massage Therapy Council, or any municipality, county, or state, requiring the applicant, or any officers, directors or partners to cease operations of a massage establishment in any jurisdiction based on allegations of illegal activity; or

(7) That the applicant, or any officers, directors, or partners, or any person directly engaged or employed in the massage establishment, have engaged in unlawful activity, or have been convicted of any of the following offenses or convicted of an offense outside the state that would have constituted any of the following offenses if committed within the state, within the eight years preceding the date of the application:

(a) Sections 266i, 314, 315, 316, 318 or 647(b) of the Penal Code of the state or that the massage personnel or the owners of a massage establishment are required to register under Section 290 of the Penal Code;

(b) Any felony offense involving the sale of a controlled substance specified in Sections 11054, 11055, 11056, 11057 or 11058 of the Health and Safety Code of the state;

(c) An act involving dishonesty, fraud, deceit, or moral turpitude or an act of violence, which act or acts are related to the qualifications, functions, or duties of an operator;

(C) Any person denied a permit pursuant to these provisions may appeal to the City Council in writing stating the reason(s) why the permit should be granted. The City Council, on appeal, may grant or deny the permit on the grounds set forth in this section.

(D) All operators and managers shall comply with the following conditions to the massage establishment permit:

(1) Prohibited massage areas. Except to the extent required, in writing, by a state-licensed medical practitioner, no massage technician shall massage the genitals or anal area of any patron or the breast(s) of any female patron, nor shall any operator or manager of a massage establishment allow or permit such massage. No operator or manager, while performing any task or service associated with the massage establishment, shall be present in any room with another person unless the person's genitals, anus or, in the case of a female patron, breast(s), are fully covered.

(2) Names. No operator granted a permit pursuant to this section shall use any name or conduct business under any designation not specified in his or her permit.

(3) Filing operator's statement. The operator(s) shall file a statement with the chief of police designating the person with power to act as a manager, if there is such a person. The operator shall be responsible for all actions and activities of massage technicians working in the operator's premises, regardless of whether the operator and/or any manager is present. The operator shall also file with the chief of police a statement, signed and dated by the operator, and by each manager designated after permit issuance, certifying under penalty of perjury that they:

(a) Have received a copy of this article;

(b) Understand its contents; and

(c) Understand the duties of an operator and/or manager as provided in this article.

(4) Licensed massage technician on premises. During the hours of operation, the massage establishment shall have at least one massage technician holding a current valid massage technician permit for the specific establishment on the premises and on duty at all times.

(5) Operator/manager responsibility. The operator and on-duty manager shall be responsible for the conduct of all employees while the employees are on the licensed premises. An act or omission of any employee constituting a violation of the provisions of this article shall be deemed the act or omission of the operator for purposes of determining whether the operator permit shall be revoked, suspended, denied or renewed.

(6) Compliance with Code. The operator shall comply with all provisions of this article and any applicable provisions of the Woodland Municipal Code.

Sec. 13-6-7. Massage technician permit--Required.

(A) Except as provided in Sec. 13-6-18, it is unlawful for any person to be employed or to act as a massage technician at a massage establishment or any location removed from a massage establishment within the City in the absence of a city business license pursuant to Sec. 13-1-14 of this code and a permit as provided in this article, and it is unlawful for any owner, operator, responsible managing employee, manager or permittee in charge of or in control of a massage establishment to employ or permit any person to act as a massage technician who is not in possession of a valid, unrevoked massage technician permit.

(B) Each applicant shall pay a nonrefundable fee, in an amount determined by resolution of the City Council, at the time he or she submits a permit application under this section or renewal application under Sec. 13-6-12. The application fee is for the purpose of defraying the expense of investigation, administration and issuance of said permit.

Sec. 13-6-8. Massage technician permit--Application.

The form for a massage technician application shall be obtained from the chief of police. The completed form shall be submitted to the chief of police and shall set forth the place of business and facilities where the massage services shall be rendered.

The application shall also contain the information required by Sec. 13-6-5 of this article, including: the name and address of the recognized school attended, the date attended, and a copy of the diploma or certificate of graduation awarded to the applicant showing that the applicant has completed not less than one hundred thirty hours of instruction within six months.

Sec. 13-6-9. Massage technician permit--Procedure.

(A) Within sixty days after the submission of a complete application for a massage technician permit, the chief of police shall act to approve or deny the permit. The chief of police may extend the sixty-day period for thirty additional days if information necessary to complete the investigation has not yet been made available to him/her.

(B) The chief of police shall issue a nontransferable massage technician permit if the applicant has proven that all the requirements for a massage technician permit described in this article have been met, specifically those set forth in Sec. 13-6-5 and Sec. 13-6-6, unless the chief of police finds that the applicant has been convicted of any offenses as set forth in Sec. 13-6-6(B)(7)(b).

(C) Any person denied a permit pursuant to these provisions may appeal to the City Council in writing, stating the reason(s) why the permit should be granted. The City Council, on appeal, may grant or deny the permit on the same grounds as those set forth in Sec. 13-6-6.

(D) All massage technicians shall comply with the following conditions on issuance of the massage technician permit.

(1) Prohibited massage areas. Except to the extent required, in writing, by a state-licensed medical practitioner, no massage technician shall massage the genitals or anal area of any patron or the breast(s) of any female patron.

(2) Covering. No massage technician shall massage any patron unless the person's genitals, anus and, in the case of a female patron, breast(s), are fully covered at all times while the technician is present in the same room as the patron.

(3) Clothing. The massage technician shall be fully clothed at all times. Clothing shall be of a fully opaque, non-transparent material and provide complete covering of the genitals, pubic area, buttocks, anal area and chest.

Sec. 13-6-10. Massage technician permit--Education requirement.

Applicant must furnish a diploma or certificate of graduation from a recognized school or other institution if learning wherein the method, profession, or work of massage technician or therapist is taught. The term "recognized school" means and includes any school or institution of learning approved by the California State Board of Education, which has for its purpose the teaching of the theory, method, profession, or work of massage technician, which school requires a resident course of study of not less than 130 hours to be given in not less than six calendar months before the student shall be furnished with a diploma or certificate of graduation from such school or institution of learning showing the successful completion of such study or learning. Schools offering correspondence courses and not requiring actual class attendance shall not be deemed "recognized schools." The chief of police shall confirm an applicant has actually attended classes and matriculated in a "recognized school."

Sec. 13-6-11. Establishment permit and technician permit--Deadline.

The provisions of this article shall be applicable to persons engaged in the businesses regulated by this article prior to the effective date of the ordinance codified in this article, and to persons employed as massage technicians prior to the effective date of this ordinance. Except as otherwise provided in Section 13-6-19, such persons shall file for the permits required by this article within one hundred eighty days from the effective date of said ordinance. Failure to do so shall make the continued operation of such businesses or the continued employment as a massage technician a violation of Sec. 13-6-4 and Sec. 13-6-7.

Sec. 13-6-12. Permit renewal and expiration--Application.

(A) If a permittee wishes to renew his or her permit, the permittee shall complete an application form, as required by this article, and submit it to the City no earlier than June 1st, nor later than June 15th, prior to the expiration of the existing permit. Applications for renewal of establishment permits shall include a list of massage technicians employed by such establishment as of the renewal date. Failure to submit the renewal application during the time specified shall cause the permit to automatically expire on the next succeeding June 30th.

(B) A person whose permit has expired shall be deemed a new applicant and shall have to re-qualify under the provisions herein.

Sec. 13-6-13. Change in information--Notification required.

If during the term of this permit, a permit holder has any change in information submitted on the original or renewal application, the permit holder shall notify the chief of police of such change in writing within ten business days thereafter. Failure to notify the chief of police of such information renders the application incomplete and any permit issued on said basis shall be per se void. A holder of an invalid permit shall be deemed a new applicant and shall have to reapply under the provisions herein.

Sec. 13-6-14. Permit renewal--Requirements.

The chief of police shall renew permits applied for under Sec. 13-6-15 if the permittee has proven that he or she still meets all of the requirements for a massage establishment or a massage technician permit contained in this article, unless the chief of police finds that the permittee no longer complies with the provisions of Sec. 13-6-6 concerning a massage establishment or Sec. 13-6-9 concerning a massage technician.

Sec. 13-6-15. Permit renewal--Procedure.

The procedure for the renewal of a permit shall be the same as set forth in this article for original permit applications; however, no additional background investigation or fingerprinting shall be required.

Sec. 13-6-16. Permit suspension, revocation, and appeal.

(A) Grounds for Suspension or Revocation. Any permit issued by the City to a massage establishment or a massage technician may be suspended or revoked upon a finding that any of the following grounds exists:

- (1) The permit holder has failed to comply with the permit conditions or any of the provisions of this article; or
- (2) The permit holder has been convicted of any offense described in Sec. 13-6-6; or
- (3) The permit holder is guilty of fraud or deceit in being licensed to practice massage; or
- (4) The permit holder is practicing massage in a manner in which the person giving or administering such massage touches the person receiving the massage upon the genitals, breasts or anus with intent to arouse, appeal to, or gratify the lust or passions or sexual desires of such person receiving the massage; or
- (5) The permit holder is practicing medicine without a license or engaging in other similar unauthorized practices; or
- (6) The permit holder is impersonating another practitioner of a like or different name; or

(7) The permit holder has employed, allowed or permitted an unlicensed person to perform massage in his or her massage establishment; or

(8) The permit holder claims to be “Certified Massage Therapist” or “Certified Massage Practitioner” without a certificate issued by the California state agency or organization authorized to issue certificates to massage practitioners.

(B) Procedure.

(1) Jurisdiction. Any city department of jurisdiction, including, but not limited to, the community development department, the building inspection department, the planning department or the fire department, may notify the chief of police that grounds exist for the suspension or revocation of a massage establishment or a massage technician permit.

(2) Notice of Suspension or Revocation. If any person holding a permit to carry on the business of a massage technician or a massage establishment, as provided in this article, or any other ordinance or law relating to or regulating such business, shall conduct or carry on such business contrary to the provisions of this article or any other ordinance of law relating to or regulating such business, it shall be the duty of the chief of police to suspend or revoke said permit. The chief of police shall give the permit holder written notice of the grounds for suspension or revocation. The suspension or revocation shall be effective ten business days after written notice is given to the permittee.

(3) Right to Appeal. A person whose permit has been suspended or revoked has the right to appeal the matter to the City Council within ten business days after written notice of the decision has been given. An appeal automatically stays the permit suspension or revocation until a final determination has been made by the City Council. A permit holder may carry on the business of a massage technician or a massage establishment pending appeal until a hearing has been held and a final determination on the permit has been made.

(4) Notice of Appeal. Upon appeal to the City Council, the permit holder shall be given written notice of the time and place of the hearing, and said notice shall be given at least ten business days before the time of such hearing. Notice shall be served upon the holder of the permit by delivering the same to such person, his manager or agent, or to any person in charge of, or employed in the place of business of such licensee, or by leaving such notice at the place of business or residence of such person with some person of suitable age and discretion. In the event the holder of such license cannot be found, and a service of such notice cannot be made upon him or her in the manner herein provided, then a copy of such notice shall be sent by registered or certified mail, postage fully prepaid, addressed to such holder or such licensee at his place of business or residence at least ten days prior to the date of such hearing. If notice is by registered or certified mail, it shall be deemed delivered on the day following the deposit of the notice in the United States Postal Service.”

(5) Evidence. At such hearing, both the chief of police and the aggrieved party may present witnesses, documents, and exhibits. The City Council shall first receive evidence on the charges contained in the notice issued by the chief of police to the permit holder. Upon the conclusion of the presentation of the evidence on the charges, the permit holder may

then present evidence to refute the charges. The City Council will not be bound by formal rules of evidence and will control the evidence, reserving the power to exclude testimony or exhibits deemed irrelevant by the City Council.

(6) Final Decision. Upon the conclusion of the presentation of evidence and any closing statements, the City Council may take any of the following actions, which shall be final:

(a) If the council finds that there has been a violation of any of the provisions of this article or finds that the permit holder has been convicted of any offense described in Sec. 13-6-6, the council may:

- (i) Order the revocation of the permit;
- (ii) Order the suspension of the permit for such time as the council deems proper; or
- (iii) Order the suspension of the permit for such time as the council deems proper, with reinstatement of the permit subject to such conditions as may be ordered by the council.

(b) If the council finds that the evidence does not support any of the charges, the council shall order that the charges be dismissed.

Sec. 13-6-17. Facilities and operations requirements.

No permit to conduct a massage establishment shall be issued unless an inspection by the City reveals that the establishment complies with each of the following minimum requirements:

(A) Facilities.

(1) Restroom facilities. Toilet rooms and toilet room vestibules shall be provided with a waterproof floor covering which shall be continued up all walls to a height of at least six inches. Floors shall be coved at the junction with the wall with at least three-fourths-inch radius continuous cove. The walls of all toilet rooms shall be finished to a height of six feet with a smooth nonabsorbent finish surface of Keene cement, tile or similar material. Steam rooms and shower compartments shall have waterproof floors with coving at the walls and the walls and ceilings approved by the City. Floors of wet and dry heat rooms shall be adequately pitched to one or more floor drains properly connected to the sewer.

(a) Exception: Dry heat rooms with wooden floors need not be provided with pitched floors and floor drains.

(b) A source of potable water shall be available within the immediate vicinity of dry and wet heat rooms to facilitate cleaning.

(2) Lighting and ventilation. All portions of massage establishments shall be provided with adequate light and ventilation by means of windows or skylights with an area of

not less than one-eighth of the total floor area, or shall be provided with artificial light and a mechanical operating ventilating system. When windows or skylights are used for ventilation, at least one-half of the total required window area shall be operable.

(3) Handicapped areas. All massage establishments shall comply with all federal and state laws, including the Americans with Disabilities Act.

(4) Structure. Massage establishments shall be located in a zoning district which permits such use. When a new massage establishment is constructed, three sets of plans shall be submitted to the City for approval and shall be accompanied by the appropriate plan check fee.

(5) Signs; display of permits. Each operator shall post and maintain, in compliance with existing state and City laws, a readable sign identifying the premises as a massage establishment. The sign and the front of the business shall not be illuminated by strobe or flashing lights. Each operator and/or on-duty manager shall display the operator permit in a conspicuous public place in the lobby of the massage establishment. Each operator and/or on-duty manager shall ensure the massage technician permit for each massage technician employed at the establishment (whether on-duty or not) is conspicuously displayed in a public place in the lobby. The operator and/or on-duty manager must also post, on a daily basis in a conspicuous public place in the lobby, the name of the operator and on-duty manager, as well as all on-duty massage technicians. Finally, the hours of operation must be posted in the front window and clearly visible from the outside, provided that if massage services are provided by appointment only during business hours, that fact may be noted on the hours of operation sign.

(6) Separate rooms. If male and female patrons are to be treated simultaneously, separate massage rooms shall be provided for male and female patrons.

(7) Maintenance. All facilities for the massage establishment must be in good repair and shall be thoroughly cleaned and sanitized each day the business is in operation. All walls, floors and ceilings of each restroom and shower area shall be made smooth and easily cleanable.

(8) Doors. All front, reception, hallway or front exterior doors (except back or exterior doors used solely for employee entrance to and exit from the massage establishment) shall be unlocked during business hours, except as may be permitted by applicable law (such as the Uniform Fire Code) which allow for safety doors which may be opened from the inside when locked. No massage may be given within any cubicle, room, enclosure or any area within a massage establishment which is fitted with a lock of any kind (such as a locking door knob, padlock, dead bolt, sliding bar or similar device), unless the only door is an exterior door.

(B) Operations. The massage establishment complies with all applicable operational requirements imposed by this article, this code and state law, including but not limited to Sec. 13-6-20 and Sec. 13-6-21.

(C) Continuing Effect. The facility and/or operational requirements imposed by this section shall be considered continuing conditions of any permit issued pursuant to this article. In

addition to any applicable criminal, civil or administrative sanctions, failure to comply with the requirements of this section shall be grounds for permit suspension or revocation.

Sec. 13-6-18. Effect of California Massage Therapy Council certification.

(A) Notwithstanding any provision of this article to the contrary, a massage technician who possesses and maintains a current, valid massage technician certification issued by the California Massage Therapy Council shall not be required to obtain a massage technician permit pursuant to this article. Massage technicians claiming an exemption under this subsection shall file a copy of their current, valid massage technician certification issued by the California Massage Therapy Council with the Chief of Police.

(B) Notwithstanding any provision of this article to the contrary, any person who owns or operates a massage establishment shall not be required to obtain a massage establishment permit pursuant to this article provided any of the following is true:

(1) The massage establishment is a sole proprietorship and the sole proprietor possesses and maintains a current, valid massage technician certification issued by the California Massage Therapy Council.

(2) The massage establishment only employs or uses massage technicians who possess and maintain current, valid massage technician certification issued by the California Massage Therapy Council.

(C) This section does not exempt or excuse any massage technician or massage establishment from complying with all other applicable requirements and provisions of this article or code, including obtaining a valid business license pursuant to Sec. 13-1-14. Massage establishments exempt from the permitting requirements of this article pursuant to subsection (B) shall file a copy of the massage technician certifications issued by the California Massage Therapy Council for all massage technicians who will be used or employed by the establishment with the establishment's application for a business license pursuant to Sec. 13-1-21 of this code.

Sec. 13-6-19. Special zoning exemption.

Massage technicians and massage establishments that are exempt from the permitting requirements of this article pursuant to Sec. 13-6-18 may operate in the same zones, with the same zoning restrictions and requirements, including obtaining a conditional use permit if applicable, as provided for in Chapter 25 of this code for the following personal or professional businesses:

- (1) barber/beauty shop
- (2) funeral homes and mortuaries
- (3) massage establishments
- (4) medical and dental clinics

- (5) medical laboratories
- (6) offices
- (7) opticians
- (8) prescription pharmacies
- (9) tattoo establishments
- (10) veterinary offices and clinics

Sec. 13-6-20. Operational requirements.

(A) Equipment. Each operator and/or on-duty manager shall provide and maintain on the premises adequate equipment for thoroughly cleaning instruments used in massage.

(B) Living prohibited. No person or persons shall be allowed to live inside the massage establishment at any time. All living quarters shall be separate from the massage establishment. No food of any kind shall be prepared for sale or sold in the establishment unless an appropriate food vending permit is granted by the County.

(C) Alcoholic beverages/drugs. No person shall enter, be in or remain in any part of a massage establishment licensed under this chapter and/or article while in possession of, consuming, using or under the influence of any alcoholic beverage or controlled substance. The operator and on-duty manager shall be responsible to ensure that no such person shall enter or remain upon the massage establishment. Service of alcoholic beverages, as defined in Section 23004 of the Business and Professions Code of the state, shall not be permitted.

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

(E) Coverings. Each massage establishment shall provide to all patrons clean, sanitary and opaque coverings capable of covering the patrons specified anatomical areas, including the genital area, anus and female breast(s). No common use of such coverings shall be permitted, and re-use is prohibited unless adequately cleaned.

(F) Records of treatment. The operator shall keep a record of the dates and hours of each treatment or service, the name and address of the patron, the name of technician administering such service and a description of the treatment or service rendered. A short medical history form shall be completed by the patron to determine if the patron has any communicable diseases, areas of pain, high blood pressure or any physical condition which may be adversely affected by massage. These records shall be prepared prior to administering any massage or treatment and shall be retained for a period of 24 months after such treatment or service. These records shall be open to inspection upon demand only by officials charged with enforcement of this article and for no other purpose. The Police Department may inspect the

records to ensure compliance with this Section. The information furnished or secured as a result of any such records should be used only to ensure and enforce compliance with this article or any other applicable state or federal laws and shall remain confidential. Any unauthorized disclosure or use of such information by any officer or employee of the City shall constitute a misdemeanor.

(G) Advertising. No 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 or employs text that would reasonably suggest to prospective patrons that any service is available other than those services authorized by this article.

(H) Sexual paraphernalia. Instruments, devices or paraphernalia that are designed for use in connection with sexual activities, including, but not limited to, condoms, shall not be permitted within a massage establishment.

(I) Hours of Operation. It is unlawful for massage operations to be carried on, and for the premises of a massage establishment to be open, between the hours of 9:00 P.M. and 6:59 A.M.

(J) Access. No person(s) other than valid permit holders under this article and customers will be allowed anywhere in the massage establishment other than the lobby/reception area during hours of operation, provided that a parent or attendant may be present while treatment is provided to minors or disabled persons. For purposes of this subsection, valid permit holder includes any operator, owner or massage technician exempt from the permitting requirements of this article pursuant to Sec. 13-6-18.

(K) Prohibited Areas. Except to the extent required, in writing, by a state-licensed medical practitioner, no massage technician shall massage the genitals or anal area of any patron or the breast(s) of any female patron.

(L) List of Services. A list of the services available and the cost of such services shall be posted in an open and conspicuous public place on the premises. The services shall be described in readily understandable language. No owner, operator, responsible managing employee, manager or permittee in charge of, or in control of, the massage establishment shall permit, and no massage technician shall offer to perform, any services other than those posted.

(M) Discrimination. No massage establishment may discriminate or exclude patrons on the basis of their race, sex, religion, age, handicap or any other classification protected under federal or state laws, rules or regulations.

(N) Preemption. In the event the terms and conditions of any current, valid massage technician certification or applicable regulation issued by the California Massage Therapy Council conflict with or supersede the requirements of this section, any massage establishment exempt from the permitting requirements of this article pursuant to Sec. 13-6-18 shall not be subject to the requirements of this section to the extent of any such conflict or inconsistency.

Sec. 13-6-21. Sanitation and decency.

(A) Every portion of a massage establishment, including appliances and apparatus, shall be kept clean and be operated in a sanitary condition.

(B) A massage table or massage chair shall be used for all massage therapy, with the exception of “Thai”, “Shiatsu” and similar forms of massage therapy, which may be provided on a padded mat on the floor provided the patron is fully attired in loose clothing, pajamas, scrubs or similar style of garment. The massage tables should have a minimum height of eighteen (18) inches. Two inch thick foam pads with maximum width of four feet may be used on a massage table and shall be covered with durable, washable plastic or other waterproof material. Beds, floor mattresses and waterbeds are not permitted on the premises of the business or establishment.

(C) All massage establishments shall be provided with clean laundered sheets and towels in sufficient quantity which shall be laundered after each use thereof and stored in a sanitary manner. Receptacles shall be provided for the storage of soiled linens and paper towels.

(D) Wet and dry heat rooms, shower compartments, and toilet rooms shall be thoroughly cleaned each business day.

(E) No service enumerated in the definition of “massage” in Sec. 13-6-3 may be carried on within any separate cubicle, room, booth or area within a massage establishment, which is fitted with a door capable of being locked, unless there is no staff available to assure adequate security for patrons and massage staff who are behind closed doors.

(F) All massage technicians shall wear garments which cover the entire body, exclusive of the head, neck, arms, legs, hands and feet, while giving a massage. The massage technician must be fully covered from a point not more than four inches above the center of the kneecap to the base of the neck, excluding the arms. Such garments shall not be transparent.

Sec. 13-6-22. Register of massage technicians.

(A) The operator of a massage establishment subject to the permitting requirements of this article shall maintain a register of all persons employed as massage technicians and their permit numbers.

(B) The operator of a massage establishment exempt from the permitting requirements of this article pursuant to Sec. 13-6-18 shall maintain a register of all persons employed as massage technicians and a copy of their current, valid California Massage Therapy Council certification.

All registers shall be available for inspection at all times during regular business hours pursuant to Sec. 13-6-23.

Sec. 13-6-23. Inspections.

The various city departments of jurisdiction, including but not limited to the city police

chief, the building inspection department, and the planning department, and the fire department, may, at any time, inspect the subject premises and investigate the manner of the operation of the massage establishment to insure that it is operating in compliance with this article or Chapter 10.5 of Division 2 of the Business and Professions Code of the state as applicable. Inspections may be conducted at any time during the establishment's regular business hours.

Sec. 13-6-24. Change of business name, location or management.

(A) No person granted a permit pursuant to this article shall operate under any name or conduct his or her business at any location not specified in his or her permit. If the business facilities and/or location is changed, a new permit shall be obtained.

(B) The owner or operator of any massage establishment exempt from the permitting requirements of this article pursuant to Sec. 13-6-18 shall notify the Chief of Police of his or her intention to rename, change management or convey the business to another person.

Sec. 13-6-25. Compliance with article.

It is unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the city, the application of massage or the operation of a massage establishment in violation of the terms and conditions of this article. If a massage technician or massage establishment exempt from the permitting requirements of this article pursuant to Sec. 13-6-18 violates any applicable provisions of this article or state law, the Chief of Police shall notify the California Massage Therapy Council.

Sec. 13-6-26. Operation with revoked permit.

It is unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the city, the application of massage or the operation of a massage establishment if such person's permit or California Massage Therapy Council certification has been revoked.

Sec. 13-6-27. Technician compliance with article.

It is unlawful for any person to act as a massage technician in violation of the terms and conditions of this article or applicable state law.

Sec. 13-6-28. Exemptions from article.

This article shall not apply to the following classes of individuals, and, except as provided in subsection Sec. 13-6-28(5) of this section, neither an establishment nor a technician permit shall be required of such persons while engaged in the performance of the duties of their respective professions, and with respect to categories (1), (2), (3) and (4) below, acting within the scope of their respective state-issued licenses or certificates:

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

and massage technicians working under the supervision of such duly licensed physicians, surgeons, chiropractors, osteopaths, and physical therapists;

(2) Trainers of any amateur, semiprofessional or professional athlete or athletic team;

(3) Hospitals, nursing homes, or persons working in any such establishments;

(4) Barbers or cosmetologists lawfully carrying out their particular occupation or business, and holding a valid, unrevoked license or certificate of registration issued by the state, provided that nothing in this subsection shall authorize a barber or cosmetologist to provide massage services beyond the scope of that person's license or certificate, and nothing in this subsection shall exempt any establishment from having to obtain a massage operator's permit in compliance with this chapter if massage services are provided by anyone other than a barber or cosmetologist;

(5) Athletic clubs whose primary use is recreation and training and where massage comprises not more than ten percent of the square footage of the establishment shall not be required to obtain an establishment permit; however, any massage technician engaged in massage at such establishment shall be required to obtain a technician permit.

Sec. 13-6-29. Violation--Penalty.

In addition to any other specific penalties set forth in this article, the following shall apply to violations of this article:

(A) Any violation of any of the provisions of this article is an infraction, and upon conviction thereof, shall be punished by a fine not to exceed one hundred dollars for a first violation, two hundred dollars for a second violation within one year, and five hundred dollars for each additional violation within one year.

(B) Any condition(s) in violation of the provisions of this article constitute unlawful activities such conditions shall be deemed a public nuisance. The city may, in addition to or in lieu of the remedies under this article, commence one or more actions to restrain the unlawful activities of the permit holder.

(C) Every day that any such violation continues shall constitute a separate offense.