

Chapter 5.18
MESSAGE ESTABLISHMENTS

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5.18.010 Findings and purpose.

The City Council finds and declares as follows:

- A. The requirements and restrictions imposed by this chapter are reasonably necessary to protect the health, safety and welfare of the citizens of the City of Murrieta.
- B. The City of Murrieta is authorized, by virtue of the State Constitution and California Government Code section 51031, et seq., and California Business and Professions Code sections 4600, et seq., to regulate massage establishments and to impose reasonable conditions on the operation of massage establishments.
- C. There is a significant risk of injury to massage clients by improperly operated massage establishments, and this chapter provides reasonable safeguards against injury and economic loss.
- D. There is opportunity for acts of prostitution and other unlawful sexual activity to occur in massage establishments. Courts have long recognized massage as a pervasively regulated activity and that massage establishments are often brothels in disguise. The establishment of reasonable standards for issuance of permits and restrictions on operations would serve to reduce the risk of illegal activity.
- E. The restrictions and requirements contained in this chapter reduce the burdens on the police department and permit the deployment of police personnel such that more serious crimes may be prevented and more important laws enforced.
- F. The regulations and restrictions contained in this chapter tend to discourage massage establishments from degenerating into houses of prostitution and the means utilized in this chapter bear a reasonable and rational relationship to the goals sought to be achieved.
- G. The permitting regulations contained in this chapter are designed to ensure the reasonable health safety and/or welfare of licensed massage practitioners and clients of massage practitioners and of massage establishments operating in the City by ensuring safe, secure, and sanitary conditions of operation.

(Ord. 498-15 § 1, 2015)

5.18.020 Definitions.

Unless the particular provision of the context otherwise requires, the definitions and provisions contained in this section shall govern

the construction, meaning and application of words and phrases used in this chapter.

"Certificated Massage Therapist." A person certified as a massage therapist or massage practitioner pursuant to the requirements of California Business and Professions Code section 4600, et seq.

"Chief of Police." The Chief of Police of the City of Murrieta or his or her designated representative.

"City." The City of Murrieta.

"City Council." The City Council of the City of Murrieta.

"City Manager." The City Manager of the City of Murrieta or his or her designated representative.

"City Massage Technician License." A massage therapist permit issued by the City of Murrieta for the period of time authorized by Section 5.18.090 of this chapter. City Massage Technician Licenses will be phased out over time; however, for the period of time authorized by Section 5.18.090, a massage therapist holding a valid City Massage Technician License shall have the same rights and obligations as a Certificated Massage Therapist according to this chapter.

"Conviction" or "convicted." A plea or verdict of guilty or a conviction following a plea of nolo contendere.

"Couples Massage." Massage provided by two Certificated Massage Therapists to two individuals in the same room at the same time within a massage establishment that possesses a valid City-issued Couples Massage Permit.

"Day." The term "day" or "days" shall mean calendar days unless specifically otherwise indicated. A "business day" shall be every calendar day except weekends and official holidays of the United States Government or the State of California.

"Employ." The term "employ" includes contracting or use of independent contractors.

"Employee." The term "employee" includes independent contractors.

"Freelance massage." The provision of massage in the City by a person independent of a City-permitted massage establishment.

"Health Department." The Health Services Agency of the County of Riverside.

"Manager." 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. The manager shall have the same liabilities and responsibilities as the operator of a massage establishment. 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.

"Massage." The scientific manipulation of the soft tissues and any method of treating the external parts of the body for remedial, hygienic, relaxation or any other reason or purpose, whether by means of pressure on, friction against or stroking, kneading, tapping, pounding, vibrating, rubbing or other manner of touching external parts of the body with the hands or with the aid of any mechanical or electrical apparatus or appliance with or without supplementary aids such as rubbing alcohol, liniment, antiseptic, oil, powders, creams, ointment or other similar preparations commonly used in this practice.

"Massage establishment." Any business or establishment within the City where any person, firm, association, partnership, corporation or combination of individuals engages in, conducts, schedules, arranges, carries on or permits to be conducted or carried on, for money or any other consideration, administration to another person of a massage. Massage establishment includes outcall/mobile massage services.

"Massage Establishment Permit." The permit required pursuant to the provisions of this chapter to operate or manage a massage establishment.

"Massage therapist." Any person who administers to another person a massage in exchange for anything of value whatsoever. The terms "massage technician," "massage practitioner," "bodyworker," and "bodywork practitioner" are included within this definition.

"Operator." All persons who have an ownership interest in the massage establishment and whose name appears on the Massage Establishment Permit.

"Owner." Any person who has an ownership interest in the massage establishment.

"Outcall/mobile massage service." The provision of massage services (1) at a location other than the operational address of a massage establishment identified on a Massage Establishment Permit; (2) by a Certificated Massage Therapist employed by a massage establishment that arranges the massage; and (3) in compliance with all requirements of Section 5.18.050.G.

"Permit Action." A decision to suspend, revoke and/or refuse to renew any permit authorized by this chapter. Permit Action does not include the denial of an initial application for any permit

"Person." Any individual, or corporation, partnership, association or other group or combination of individuals acting as an entity.

"Police Department." The Police Department and Code Enforcement division of the City of Murrieta.

"Residential Massage Establishment." A massage establishment operating in a residence. The Residential Massage Establishment must possess a valid home occupation permit pursuant to Chapter 16.60 of this code.

"Sole-proprietor." A Certificated Massage Therapist who also possesses a Massage Establishment Permit and owns 100 percent of the massage establishment and who employs no other person in connection with his or her massage business.

"State." The State of California.

"State Massage Therapist Certificate." A certificate issued to a massage therapist or massage practitioner pursuant to the requirements of California Business and Professions Code section 4600 et seq.

(Ord. 498-15 § 1, 2015)

5.18.030 Commercial massage general requirements.

A. Commercial massage i.e. any massage done as part of business or otherwise performed for compensation of any kind, may be conducted in the City solely by a Certificated Massage Therapist in affiliation with a massage establishment that holds a valid Massage Establishment Permit.

B. No person may provide commercial massage in a hotel or motel guest room or in a vehicle regardless of the location in the City.

C. No person may engage in freelance massage in the City.

D. In addition to a Massage Establishment Permit, all massage establishments must obtain a general City business license pursuant to this code.

E. The requirements of this chapter shall not apply to any state-licensed physicians, surgeons, chiropractors, physical therapists, osteopaths or any registered or licensed vocational nurse working on the premises of, and under the direct supervision of, a state-licensed physician, surgeon, chiropractor or osteopath. Practical nurses or other persons who do not possess a State Massage Therapist Certificate, whether employed by physicians, surgeons, chiropractors or osteopaths or not, may not provide massage or massage procedures.

(Ord. 498-15 § 1, 2015)

5.18.040 Fees.

The City Council shall establish by resolution, and from time to time may amend, the fees for the administration of this chapter, including fees for permit applications and changes and/or renewals. Fees required by this chapter shall be in addition to any required under any other chapter of this code.

(Ord. 498-15 § 1, 2015)

5.18.050 Massage regulations.

A. Massage services regulations.

1. Compliance with state law. Massage provided in violation of any provision of California Business and Professions Code section 4609, as that section may be amended from time to time, is prohibited.

2. Clothing requirements. All persons working at a massage establishment or performing outcall/mobile massage or massage at a Residential Massage Establishment shall comply with the dress restrictions of California Business and Professions Code section 4609(a)(10), as that section may be amended from time to time.

3. Covering of patrons. No massage therapist shall massage any patron unless the genitalia and female breasts are fully covered

at all times. No massage therapist or other person providing any task or service associated with the massage business shall be present in a room with a patron unless a patron's genitalia and the breasts of female patrons are fully covered.

4. Coverings types. Each massage establishment and/or every massage therapist, wherever a massage occurs, shall provide the patron clean, sanitary and non-transparent coverings that cover a patron's genitals and the breast(s) of female patrons. Coverings may not be used on more than one patron unless adequately cleaned and sterilized between uses.

5. Location of massages. All commercial massage must be performed at the business address identified in a massage establishment permit or at an outcall/mobile location booked by a city-permitted massage establishment.

6. Simultaneous treatment of patrons. If more than one patron is to be treated simultaneously at the same massage establishment, separate massage rooms shall be provided for each patron except as allowed for couples massage pursuant to a city-issued couples massage permit.

7. Couples massage requirements and permit. Massage may be provided to no more than two persons at the same time in the same room pursuant to all of the following requirements:

(a) The massage establishment providing a couples massage must obtain a couples massage permit from the Police Department before providing any Couples Massage. The Police Department shall develop a couples massage permit application to obtain the information required by this subsection and shall be entitled to charge a permit application fee to cover the reasonable costs of the permit application and issuance process.

(b) The Chief of Police shall issue a couples massage permit if the applicant demonstrates the requirements of this subsection are met. The Chief of Police shall deny a couples massage permit if the requirements of this subsection are not met or if the application is incomplete. The Chief of Police shall issue a written explanation of the reasons for a denial of an initial application for a couples massage permit.

(c) A couples massage permit shall be valid for one year from the date of issuance and may be renewed by the Chief of Police upon application of the permit-holder on a year-to-year basis, provided that the conditions of this chapter are met.

(d) The Police Department or city code enforcement shall inspect the location where a couples massage permit applicant proposes to conduct couples massage to determine the location meets the requirements of this subsection and all other requirements imposed by this chapter prior to issuing a permit.

(e) A couples massage may only be performed in a room of at least 100-square feet in size.

(f) Two certificated massage therapists must be present in the room at all times when a couples massage is provided.

(g) Two massage tables must be present in the room and only one patron is allowed to be massaged on a single massage table at one time while a couples massage is provided.

(h) A copy of a valid couples massage permit authorizing couples massage at the location where a couples massage is provided must be displayed on the wall of that room at all times while the couples massage permit is in effect.

(i) If any of the conditions required to obtain a couples massage permit cease to exist after the permit issues, the permit shall immediately cease to be effective and the permit-holder shall notify the Police Department of the changed circumstances within five (5) business days and, at that time, surrender the permit to the Police Department.

(j) The Chief of Police may suspend, revoke or non-renew a couples massage permit if any of the provisions of this subsection or chapter are violated pursuant to Section 5.18.070.

(k) Appeal of a decision to deny, suspend, revoke or non-renew a couples massage permit shall proceed pursuant to the provisions of Section 5.18.070.

B. Prohibited activities.

1. Alcohol and controlled or intoxicating substances, including marijuana. Service of alcoholic beverages is not allowed at any massage establishment or during any outcall/mobile massage unless legally permitted pursuant to the provisions of this municipal code applicable to commercial service of alcohol, including Section 16.44.030, and unless legally authorized pursuant to State law and regulations. No person shall otherwise enter, be in or remain in any part of a massage establishment while in possession of, consuming, using or under the influence of any alcoholic beverage or controlled or intoxicating substance, including marijuana.

2. Communicable diseases. Massage may not be performed on any patron while that patron has a communicable disease that may be transmitted by the performance of massage. Massage may not be performed by a massage therapist while the therapist has a

communicable disease that may be transmitted by the performance of massage.

3. Contraceptive devices prohibited. No contraception devices, i.e. condoms or other prophylactics, shall be possessed by any massage establishment worker while at the massage establishment nor allowed at a massage establishment or at any location where an outcall/mobile massage or massage at a residential massage establishment is provided.

4. Sex devices prohibited. No device, the primary purpose of which is for sexual stimulation, shall be sold, utilized or be present at any time at a massage establishment or at any location where an outcall/mobile massage or massage at a residential massage establishment is provided.

5. Food. No food shall be prepared for sale or sold at a massage establishment unless an appropriate food vending permit is granted by the County of Riverside.

6. Prohibited massage areas. No massage therapist, massage therapist aide or other person shall massage the genitalia of any patron or the breast(s) of any female patron, except as allowed by Business and Professions Code section 4609(a)(1)(F), nor shall any operator or manager of a residential massage establishment allow or permit such massage under any circumstance.

7. Massage to one person at a time. Except as allowed for a couples massage pursuant to Section 5.18.050, subsection A(6), no person other than the person receiving a massage and a sole certificated massage therapist providing the massage shall be within a room in which a massage is being given.

8. Residence at massage establishment prohibited. No person or persons shall be allowed to live inside a non-residential massage establishment at any time. All living quarters at a residential massage establishment shall be separate from the massage establishment and from where massage is provided.

9. Schools of massage. No massage establishment shall operate as a school of massage, or use the same facilities as that of a school of massage.

C. Operational requirements.

1. Access to massage establishments. No person other than employees of the massage establishment properly disclosed to the city as required by this chapter and customers are allowed in the massage establishment other than the lobby/reception area during hours of operation. Entry doors to any room shall not be obstructed in order to prevent access by personnel conducting inspections and must comply with fire safety and related regulations.

2. Bath facilities. A minimum of one toilet and one separate wash basin shall be provided for patrons in each massage establishment, which basin shall provide soap or detergent and hot running water at all times and shall be located within close proximity to the area devoted to performing of massage services. A permanently installed soap dispenser, filled with soap, and a single service towel dispenser shall be provided at the restroom handwash sink. No bar soap can be used. A trash receptacle shall be provided in each toilet room. Showers may be provided at the operator's option.

3. Display of permits and certificates. The massage establishment permit for the establishment must be conspicuously displayed in a public place in the establishment available to inspection by law enforcement, the city and the public. In addition, each massage therapist shall comply with the certificate display requirements of Business and Professions Code section 4608(a).

4. Discrimination. No massage establishment or massage therapist may discriminate or exclude patrons on the basis of any classification protected under local, state or federal laws, rules or regulations.

5. Doors.

(a) Unless the massage establishment is a business entity owned by a sole-proprietor, all front, reception, hallway or front exterior doors ("front doors") shall be unlocked during business hours. Back or exterior doors other than front doors used solely for employee ingress and egress may be secured as permitted by applicable law (such as the Uniform Fire Code) which allow for safety doors which may be opened from the inside when locked, but shall otherwise remain unlocked during business hours.

(b) No massage may be given within any cubicle, room, booth or any area within a massage establishment ("massage room") which is fitted with a permanently-affixed 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 and the massage establishment is a business entity owned by a sole-proprietor.

(c) A temporary lock may be used to secure a massage room if no staff is present outside of the massage room to secure the safety of the massage therapist and massage client, provided that no lock may be permanently affixed and the locking device must be entirely removed after each massage session and every person in the massage room shall freely be able to exit at all times.

6. Access for people with disabilities. All massage establishments must comply with all state and federal laws and regulations for customers with disabilities.

7. Hours of massage establishment operation. No massage establishment shall operate between the hours of 9:00 p.m. and 7:00 a.m. Every massage performed by a massage establishment shall terminate no later than 9:00 p.m. Hours of operation must be displayed in a conspicuous public place in the massage establishment and in a location clearly visible from the outside.

8. Display of prices. Every massage establishment must display, in a location visible to the public, a legible list of the price of all on-site and outcall/mobile massage services offered by the massage establishment.

9. Insurance.

(a) No massage establishment may operate and no person shall provide massage services unless there is on file with the Police Department, in full force and effect at all times, proof of insurance provided by an insurance company authorized to do business in the State of California evidencing that the massage establishment and all affiliated massage therapists are insured under a liability insurance policy providing minimum coverage of two million dollars (\$2,000,000) for personal injury or death to one person arising out of the operation of any massage establishment and the administration of massage, at any location where the massage service is provided.

(b) All massage establishments must comply with the requirements of Labor Code section 3700, et seq.

10. Lighting. Each room in a massage establishment where massage is provided or anywhere outcall/mobile massage services are provided shall have sufficient lighting and ventilation that complies with the Uniform Building Code. Lighting shall be active in the room at all times while a patron is present,

11. Linen. Common use of towels or linen is not permitted. Towels and linen shall be laundered or changed promptly after each use. Separate cabinets or containers shall be provided for the storage of clean and soiled linen plainly marked: "clean linen" and "soiled linen."

12. Location must be fixed. Each massage establishment must exist at a unique fixed physical location.

13. Maintenance. All massage establishment facilities 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.

14. Massage table. A massage table shall be provided in each massage room at a massage establishment and the massage shall be performed on this massage table. The tables should have a minimum height of eighteen (18) inches. Two-inch (2") thick foam pads with maximum width of four (4) feet may be used on a massage table and must be covered with durable, washable plastic or other waterproof material. Massages may only be performed on such massage tables and may not be performed in a bath or shower or on a bed, floor mattress, or waterbed. Beds, floor mattresses and waterbeds are not permitted at any non-residential massage establishment.

15. Sterilization of equipment. Adequate equipment for disinfecting and sterilizing instruments used in massage shall be maintained at each massage establishment. For outcall/mobile massage services, each massage therapist shall provide and maintain adequate equipment for disinfecting and sterilizing instruments used in massage at the location where the massage is performed.

D. Management of massage establishments and massage therapists.

1. State massage therapist certificate required for employment to provide massage. No massage establishment shall employ, contract for services with or otherwise provide massage services by any person unless that person is a certificated massage therapist.

2. Massage establishment employment requirements, persons not possessing a state massage therapist certificate. No massage establishment shall employ in any capacity or utilize the services for any purpose of a massage therapist who does not possess a state massage therapist certificate and has, within the ten (10) years preceding:

(a) Been convicted of a violation of California Penal Code sections 266h, 266i, 314, 315, 316, 318, 415, 647(a) or (b) or any other provision of law pursuant to which a person is required to register under the provisions of Penal Code section 290 or any lesser included or lesser related offense in satisfaction of, or as a substitute of, any of the previously listed crimes;

(b) Been convicted of a violation of Health and Safety Code section 11550 or any offense involving the illegal sale, distribution, transportation or possession of a controlled substance specified in Health and Safety Code sections 11054, 11055, 11056, 11057 or 11058;

(c) Been convicted of any offense in any other state which is the equivalent of any of the offenses listed in subparts (a) or (b) above;

(d) Been subject to a permanent injunction against conducting or maintaining a nuisance pursuant to California Penal Code sections 11225 through 11235 or any similar provisions of law in a jurisdiction outside the state;

(e) Been convicted of an act involving theft, dishonesty, fraud, deceit or moral turpitude or an act of violence; or

(f) Has been found to have violated this chapter pursuant to the procedures set forth at Section 5.18.070 or by any competent court of law, or any other violation of similar massage-related laws in another jurisdiction.

3. Massage therapists affiliating with massage establishments.

(a) Only certificated massage therapists affiliated with a city-permitted massage establishment may provide massage services. A massage establishment operator must notify the Police Department, via a form approved by the Chief of Police, within ten (10) business days of employment of or affiliation with any certificated massage therapist.

(b) Within ten (10) business days of the date a certificated massage therapist ceases to be affiliated with a massage establishment, the massage establishment operator shall notify the Chief of Police and report the name of that massage therapist to the Police Department in a form approved by the Chief of Police.

4. Massage therapists must wear or carry identification. A certificated massage therapist shall wear or have in his/her possession identification as required by Business and Professions Code section 4608(a) and shall provide any information required by Business and Professions Code section 4608(b).

5. Manager and operator responsibilities. Each massage establishment, including a massage establishment operated as a sole-proprietorship, shall designate either a managing operator or managing employee ("designated manager"). The following regulations shall govern designated managers:

(a) The designated manager shall be responsible for the conduct of all of the massage establishment's workers who offer and/or provide massage at the massage establishment and/or via outcall/mobile massage, and any act or omission of any employee or affiliated massage therapist in violation of this chapter shall be deemed the act or omission of the operator of the massage establishment for all purposes, including whether the massage establishment's permit shall be revoked, suspended, denied or renewed;

(b) As part of the massage establishment permit application, each massage establishment operator shall complete and file an application in a form approved by the Chief of Police. The application shall, at a minimum, require the applicant to identify the person or persons with power to act as a designated manager and to state whether or not the managers) are certificated massage therapists. The applicant shall ensure this information is current at all times after first submitted to the city;

(c) The massage establishment operator shall file with the Chief of Police a statement, signed and dated by each designated manager, certifying under penalty of perjury that the signing-party has received a copy of this chapter, understands its contents, and understands the duties of a designated manager as provided in this chapter;

(d) The operator and/or on-duty designated manager shall post, on a daily basis, the name of each on-duty designated manager in a conspicuous public place in the lobby of the massage establishment; and

(e) A designated manager or the massage establishment's operator must be present on the premises at all times when the massage establishment is open for business and is providing massage services.

6. Names. No person or operator granted a massage establishment permit pursuant to this chapter shall use any name or conduct business under any designation not specified in the permit. A certificated massage therapist shall conduct business solely under the name registered with the organization issuing certifications pursuant to California Business and Professions Code section 4600 et seq. and shall only advertise under said name, as provided by subsection (c) of Business and Professions Code section 4608.

7. Records of massage services, patron conditions.

(a) Record of services. Every massage establishment shall keep a record of the date and hours of each treatment or service, the name and address of the patron, the name of the massage therapist administering such service, and a description of the treatment or service rendered. For outcall/mobile services, the address where services are provided shall also be recorded.

(b) Medical history form. Prior to administering any massage or treatment, a short medical history form shall be completed by the operator 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.

(c) Records retention. All records required by this subsection shall be retained for twelve (12) months at the massage establishment.

(d) Records inspection. All records required by this subsection shall be available for inspection upon demand by officials charged with enforcement of this chapter and for no other purpose. The Police Department shall periodically inspect the records to ensure compliance with this chapter.

(e) Unauthorized use. Any unauthorized disclosure or use of information contained in records required to be maintained by this subsection by any officer or employee of the massage establishment shall constitute a misdemeanor.

8. Roster of employees and independent contractors. The operator of a massage establishment shall maintain a current register of all employees, including independent contractors, showing the following information for each: name, nicknames and aliases, social security number, home address, all phone numbers, age, birth date, gender, height, weight, hair and eye color, a copy of the employee's completed U.S. Citizenship and Immigration Services Form I-9, employment eligibility verification (or the most current equivalent), duties, date employment or services began, and date of separation or when services ended. This information shall be kept up to date and shall be maintained at the massage establishment for a period of one (1) year following separation of employment or the end of services. The register of employees and independent contractors shall be available for inspection by a representative of the Police Department at all reasonable times.

E. Inspections and searches.

The city's building and safety, fire, and police department, city code enforcement, and the County Health Department may, from time to time, make an inspection of any area located within a massage establishment or any location at which an outcall/mobile massage is performed for the purpose of determining compliance with all local, State and federal laws, subject to the following procedures and requirements:

1. By operating a city-permitted massage establishment, a massage establishment consents to the inspection of the massage establishment and all places where outcall/mobile massage services are provided for the purpose of determining compliance with this chapter;

2. It shall be a violation of this chapter for any person to refuse to permit a lawful inspection of a massage establishment or any location where a commercial massage has been, is being, or will be performed;

3. Massage establishments and massage therapists shall ensure all patrons are informed that, by engaging the services of a massage establishment or massage therapist, the patron consents to inspection of any area in which a massage is provided to determine compliance with this chapter; and

4. Routine inspections shall not occur more than twice a year, unless violations are found or complaints are received. Routine inspections of the massage establishment shall be conducted during business hours.

F. Advertising guidelines and signs.

1. Advertising. No city-permitted massage establishment or certificated massage therapist providing massage services in the City shall place, publish or distribute, or cause to be placed, published or distributed, any advertising in violation of Business and Professions Code section 4609(a)(1)(A).

2. Services list. A list of services available and the cost of such services shall be posted at each massage establishment in a conspicuous public place. When performing outcall/mobile massage services, the massage therapist shall provide to the potential patron a current list of services available and the cost of such services. No massage therapist shall offer or perform any service other than those posted at the massage establishment and/or shown on the outcall/mobile massage list.

3. Signs. Each massage establishment 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.

G. Outcall/mobile massage services. In addition to all other requirements of this chapter, outcall/mobile massage services are subject to the following requirements and conditions:

1. No commercial massage of any kind may be provided in a hotel or motel guest room, or in any vehicle.

2. Any act or omission in violation of the city municipal code or state or federal law or regulation by a certificated massage therapist performing outcall/mobile massage services can result in revocation, suspension, denial or lack of renewal of the massage establishment permit of the massage establishment with which the massage therapist is affiliated.

3. Outcall/mobile massage services may comprise no more than forty (40) percent of the annual proceeds generated by a city-permitted massage establishment. No massage establishment will be permitted by the city to operate solely as an outcall/mobile massage service.

4. No outcall/mobile massage may be performed at a commercial establishment other than at the patron's own place of business.

5. A massage therapist may only perform an outcall/mobile massage during the hours that the massage establishment with which the therapist is affiliated is open for business. No person shall administer a massage on an outcall/mobile basis between the hours of 8:00 p.m. and 7:00 a.m. Every massage performed on an outcall/mobile basis must terminate no later than 8:00 p.m. All customers, patrons and visitors shall be advised of these hours.

6. Massage therapists shall not perform any massage at any location other than a location booked by the massage establishment with which the massage therapist is affiliated.

7. Fixed location. All outcall/mobile massage, and all types of massage, must be performed at a location permanently affixed to real property.

8. Massage tables or chairs.

(a) Proper massage tables or massage chairs shall be utilized, which have foam pads in a thickness of at least two (2) inches covered with durable, washable plastic or other waterproof material. Beds, floor mattresses, waterbeds, showers, and bathtubs are not permitted to be used for massage purposes.

(b) Any massage table or chair to be used for an outcall/mobile massage must be inspected and approved by the Police Department for compliance with this subsection before its use. The Police Department shall adopt a procedure for issuance of outcall/mobile massage tables and chairs approvals. Any denial or refusal to issue a requested outcall/mobile massage table or chair approval may be appealed pursuant to the procedures of Section 5.18.070.

H. Residential massage establishments. A massage establishment operating in a residential land use district of the city shall comply with the provisions of Chapter 16.60 of this code and according to any further requirements or restrictions provided by this subsection. In addition to all other requirements of this chapter, massage establishments operating in a residence shall comply with all of the following conditions:

1. The massage operations shall be purely incidental and secondary to the location's use as a residential place of dwelling.

2. The operator of the massage establishment must reside at the residence and may not employ any persons other than immediate family members.

3. All material or mechanical equipment utilized must be of a type normally associated with household or hobby use.

4. Sales of products not produced on the premises are prohibited.

5. Outcall/mobile massage services may not be provided by a residential massage establishment and/or a massage therapist providing services through a residential massage establishment. All massage services must be provided at the residential massage establishment.

6. Pedestrian and vehicular traffic generated by the massage establishment must be consistent with the location of the dwelling.

7. In addition to general sign regulations applicable in the land use district in which a residential massage establishment is located, sign requirements of this chapter apply at a residential massage establishment.

8. Massage services must be provided in a facility separate from any living quarters. Business access to a residential massage establishment shall be separate from residential access and comply with the requirements applicable to massage establishments generally.

(Ord. 498-15 § 1, 2015)

5.18.060 Massage establishment permits.

A. Application required. Any person desiring a permit to operate a massage establishment shall file with the Police Department an application providing all of the following on a form created at the direction of the Chief of Police:

1. The precise name under which the massage establishment is to be conducted and operate.

2. The type of ownership of the business i.e. whether by an individual, partnership, corporation, or the like.

(a) If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation or charter, together with the state and date of incorporation and the names, residence addresses, and contact telephone numbers of each of its current officers and directors, and of each stockholder holding more than five (5) percent of the stock of that corporation.

(b) If the applicant is a partnership, the application shall set forth the name, residence, and contact telephone numbers of each of the partners, including limited partners.

(c) If the applicant is a limited partnership, it shall furnish a copy of its certificate of limited partnership filed with the secretary of state.

(d) If one or more of the partners is a corporation, the provisions of this subsection pertaining to corporations shall apply.

(e) The applicant corporation or partnership shall designate one of its officers or general partners to act as its responsible managing officer who shall complete and sign all application forms required of an individual applicant under this chapter.

3. The complete address and all telephone numbers of the massage establishment.

4. Proof that all other necessary city, county, state and/or federal permits or licenses have been obtained, including a city business license and all necessary land use approvals.

5. A complete current list of names and home addresses of the proposed operator, manager, all proposed massage therapists and employees, and a copy of the current state massage therapist certificate or proof of a valid city massage technician license for each proposed massage therapist.

6. If the name of the applicant, proposed operator, proposed manager or proposed name of the massage establishment is a fictitious business name, a copy of the current fictitious business name registration demonstrating that it has been filed with the County of Riverside or other appropriate governmental entity.

7. The name and identification of any person or business guaranteeing the proposed massage establishment and/or holding any financial interest in the proposed massage establishment.

8. The exact proposed hours of operation of the business.

9. A list and description of any other business operated on the same premises and any other business located within the state owned or operated by the applicant.

10. Proof of insurance required by Section 5.18.050, subsection (C)(9) of this chapter.

11. A statement signed by the massage establishment operator under the penalty of perjury that he or she is aware and acknowledges that California law requires employers to possess worker's compensation insurance if the massage establishment has even one (1) employee.

12. The following personal information concerning the applicant, operator, and proposed manager, who are collectively referred to as "applicant":

(a) Full complete name and all aliases of each applicant.

(b) Home address and telephone number and an e-mail address of each applicant.

(c) All previous residential addresses for eight (8) years immediately preceding each applicant's current address.

(d) Written proof that each applicant is at least eighteen (18) years of age.

(e) Proof of each applicant's legal residency and/or the ability to legally work in the United States

(c) Gender, height, weight, color of hair and eyes of each applicant.

(d) The business, occupation, and employment history of each applicant for the eight (8) years immediately preceding the date of the permit application.

(e) If applicable, the complete massage permit and/or license history for each applicant of every jurisdiction in which each applicant has ever held a permit, license or certificate to perform massage services or operate a massage business, and the details

concerning every instance in which has been denied, revoked or suspended.

(i) For any person who is not a Certificated Massage Therapist, all criminal convictions within the last ten (10) years, including those dismissed or expunged pursuant to Penal Code section 1203.4, but excluding minor traffic violations, and the date and place of each such conviction and reason therefor.

(j) For any person who is not a certificated massage therapist, a complete set of fingerprints for each applicant taken by the Police Department.

(k) Such other information and identification as the Chief of Police may require in order to ascertain the truth of the matters herein specified, and as required to be set forth in the application.

13. The name and address of the owner and lessor of the real property upon or in which the business is to be conducted. If the applicant is not the legal owner of the real property, the application must be accompanied by a copy of the lease and a signed, written acknowledgment from the owner of the property that a massage establishment will be located on the property and proof that the owner of the property has been informed that a property owner can be held legally responsible for any violations of this chapter on the property, pursuant to Section 1.32.020 of this code.

14. Authorization for the city, its agents and employees to seek verification of the information contained in the application.

15. The signature of the operator of the proposed massage establishment, if the applicant is a sole proprietorship; of one (1) general partner, if the applicant is a partnership; of one (1) officer or one director, if the applicant is a corporation; or one (1) participant, if the applicant is a joint venture.

16. Written and dated statements by the applicant and the applicant's designated manager(s) certifying under penalty of perjury that they have received a copy of this chapter and understand its contents and understand the duties of an operator and/or manager as provided in this chapter.

17. A written and dated statement by the applicant certifying under penalty of perjury that all information contained in the application is true and correct.

18. The appropriate filing fee established by resolution of the City Council to cover the cost of administering the massage establishment permitting program authorized by this chapter.

B. Standards for permit issuance. The Chief of Police shall deny an application for a massage establishment permit if he or she makes any of the following findings:

1. The application is incomplete.

2. The application does not fully comply with the requirements of this chapter.

3. The applicant made a false, misleading or fraudulent statement or omission of fact to the city in the permit application process.

4. Any proposed massage therapist does not possess a valid and current state massage therapist certificate.

5. The proposed massage establishment does not comply with all health, zoning, fire and safety requirements and standards of the city, county, state and/or federal government.

6. The applicant, if an individual; or any of the officers or directors of the corporation, if the applicant is a corporation; or a partner, if the applicant is a partnership; or any person directly affiliated with, engaged or employed in the massage establishment, other than a certificated massage therapist, has, within ten (10) years preceding the date of the application:

(a) Whether or not expunged, been convicted of a violation of California Penal Code sections 266h, 266i, 314, 315, 316, 318, 415, 647(a) or (b) or any other provision of law pursuant to which a person is required to register under the provisions of Penal Code section 290 or any lesser included or lesser related offense in satisfaction of, or as a substitute of, any of the previously listed crimes.

(b) Whether or not expunged, been convicted of a violation of Health and Safety Code section 11550 or any offense involving the illegal sale, distribution, transportation or possession of a controlled substance specified in Health and Safety Code sections 11054, 11055, 11056, 11057 or 11058.

(c) Whether or not expunged, been convicted of any offense in any other state which is the equivalent of any of the offenses listed in subparts (1) or (2) above.

(d) Had their massage establish permit or license denied, suspended, or revoked in another jurisdiction for engaging in conduct

which, if it had occurred within the city, would constitute grounds for denial, suspension or revocation of a massage establishment permit pursuant to this chapter.

(e) Been subject to a permanent injunction against conducting or maintaining a nuisance pursuant to California Penal Code sections 11225 through 11235, or any similar provisions of law in a jurisdiction outside the state.

(f) Whether or not expunged, been convicted of an act involving theft, dishonesty, fraud, deceit or moral turpitude or an act of violence.

(g) Had a massage operator or massage therapist license or other similar license or permit denied, suspended or revoked for cause by a licensing authority or by any city, county, state or agency of the federal government.

(h) Has been found to have violated this chapter pursuant to the procedures set forth at Section 5.18.070 or by any competent court of law.

(i) Has engaged in massage services or owned and/or operated a massage establishment in a manner not in compliance with the provisions of this chapter, as demonstrated by the adjudication or findings of any state, local, or federal entity or authority.

C. Review of permit applications.

1. Upon receipt of a written application for a massage establishment permit, the Chief of Police shall conduct an investigation to ascertain whether such permit should issue. The Chief of Police shall decide whether to approve, conditionally approve or deny the application within sixty (60) days of receipt of an application, which time period may be extended for up to thirty (30) additional days, at the discretion of the Chief of Police, if needed to complete the investigation.

2. The massage establishment permit applicant shall allow the Chief of Police or his or her designee to inspect the location designated as the massage establishment during the establishment's proposed hours of operation to ensure the location complies with all local, state and/or federal laws.

3. The application for a permit does not authorize operation of a massage establishment unless and until such permit has been properly granted.

4. If an application is denied pursuant to subsections B(2) (application does not comply with requirements) or B(3) (false, misleading, fraudulent statement or omission of fact) above, the applicant may not reapply for a period of one (1) year from the date the application is denied.

5. Notice. Notice of a denial of an initial massage establishment permit application shall be provided pursuant to Section 5.18.070 at subsection D and shall state the reasons for the denial.

6. Appeal. A massage establishment permit applicant shall have the right to appeal a denial of a massage establishment permit application pursuant to the provisions of Section 5.18.070, subsections D and E.

D. Duration. A massage establishment permit shall be valid for one (1) year from the date of issuance and may be renewed by the Chief of Police on a year-to-year basis, provided that the permit holder continues to meet the requirements of this chapter.

E. Changes in information after permit issuance. If, during the term of a massage establishment permit, any information supplied in the permit application or renewal application changes, the permit holder shall notify the Police Department of such change in writing within ten (10) business days of the change. Changes requiring notification include, but are not limited to, the following: change of manager or other person principally in charge; change of stockholders holding more than five (5) percent of the stock of a permitted corporate business; change in the officers, directors and/or partners of the permitted-business; change to the name or nature of the permitted business; the employment of new massage therapists or separation from employment of massage therapists; or changed telephone numbers of the business.

F. Permit renewal. The following rules govern applications for renewal of a massage establishment permit:

1. Timing and renewal fees.

(a) In order to be considered timely, applications for renewal of a massage establishment permit shall be filed with the Chief of Police no later than sixty (60) days before the expiration of an existing permit. The applicant shall accompany the application for renewal with the appropriate renewal filing fee as approved by resolution of the City Council.

(b) If an application for renewal of a massage establishment permit is filed between fifty-nine (59) and thirty (30) days before expiration of the existing permit, the application will be considered if the applicant pays the additional late application processing fee as approved by resolution of the City Council.

(c) An application for renewal of a massage establishment permit first filed within twenty-nine (29) days of the expiration of the existing permit will result in expiration of the existing permit.

(d) A massage establishment permit-holder must file a new permit application if the permit-holder does not apply for renewal of the permit prior to its expiration.

2. Should the Chief of Police determine, in his or her sole discretion, that an application for renewal presents substantial new information compared to the expiring massage establishment permit, the Chief of Police may consider the existing Massage Establishment Permit to have expired and the permit-holder shall then be required to file a new massage establishment permit application.

3. New information. Renewal applications shall require such information as may be required by the Chief of Police to update the information contained in the original permit application, including an updated roster of employees.

4. Review standard. The massage establishment permit renewal application will be reviewed pursuant to the same standards that apply to a new application for a massage establishment permit, as set forth in this chapter.

5. An application to renew a massage establishment permit may be denied pursuant to the provisions of Section 5.18.070.

6. Notice of and appeal of a denial of an application to renew a massage establishment permit shall be governed by Section 5.18.070 of this chapter.

G. Permit not transferable. No permit issued pursuant to this chapter shall be transferable to any other person or entity.

H. Expansion and relocation of permitted massage establishment.

1. The holder of an existing massage establishment permit shall apply to the Chief of Police for approval of the following, which shall be reviewed pursuant to the standards of this Section, 5.18.060, applicable to a new massage establishment permit application:

(a) The addition of an additional location(s) where the permit-holder may operate a massage establishment; and

(b) Change of the location of the city-permitted massage establishment.

2. Application for relocation of a city-permitted massage establishment will require payment of a transfer fee set by resolution of the City Council. The application must provide information required by the Chief of Police demonstrating that the requested changes comply with this chapter.

3. The holder of an existing massage establishment permit seeking to expand or relocate need not submit a new massage establishment permit application unless required by the Chief of Police.

4. An application to expand and/or relocate a massage establishment permit may be denied pursuant to the provisions of section 5.18.070.

I. Consent to inspections and searches. Provision of massage services have proven to present a high risk of illegal conduct or of serious danger to the public, such that frequent, unannounced inspections are essential for the protection of the public and for the enforcement of the purposes of this chapter. By applying for a massage establishment permit, the applicant and permit holder consents to inspection of any place where the massage establishment performs massage by the city's building and safety, fire, and police departments, city code enforcement, and the City and/or County Health Department for the purpose of determining that the provisions of this chapter or other applicable laws or regulations are met.

J. Revocation, suspension or non-renewal. A massage establishment permit may be revoked or non-renewed pursuant to section 5.18.070.

(Ord. 498-15 § 1, 2015)

5.18.070 Denial, suspension, revocation and non-renewal of permits.

A. Grounds for permit suspension, revocation and non-renewal. The Chief of Police may suspend, revoke or refuse to renew an existing massage establishment permit issued pursuant to this chapter for failure to comply with any permit condition or any provision of this chapter, the city municipal code, or any county, state or federal law or regulation.

B. Notice requirements.

1. When the Chief of Police concludes that grounds exist to suspend, revoke or refuse to renew any permit issued pursuant to this chapter, notice of that determination shall be served upon the permit-holder personally or by certified mail at the address provided to the city in the massage establishment permit application. The notice shall state the reasons for the proposed action, the effective date of the decision, the permit-holder's right to appeal the determination, and that the decision will become final if a timely appeal is not filed.

2. Where the permit-holder is not the owner of the property where the massage establishment is permitted to operate, a copy of the notice of determination shall also be mailed to the property owner at the address provided on the massage establishment permit application.

C. Permit suspension and revocation.

1. Suspension of any permit issued pursuant to this chapter shall be for a period of thirty (30) days for each violation identified by the Chief of Police. Should a permit expire while suspended, a new permit application must be made at the end of the suspension period.

2. In the event any permit issued pursuant to this chapter is suspended and/or revoked, the Chief of Police may require a notice of suspension and/or revocation to be conspicuously posted at the establishment and/or on the exterior of the establishment. The notice shall be in a form prepared and issued by the Chief of Police. The notice shall be conspicuously posted in a location within the massage establishment easily visible to any person entering the premises and in each massage room. The notice shall remain posted while the suspension is in effect or for six (6) months after a revocation.

D. Appeal.

1. The applicant for or the holder of any permit issued pursuant to this chapter shall have the right to administratively appeal a determination to deny, suspend, revoke or refuse to renew that permit and/or permit application.

2. An administrative appeal must be received by the Police Department within fifteen (15) days of the date of the notice of the determination of any permit denial or other permit action. If no timely appeal is filed, the determination is final.

3. Permit denial/action effective date. The effective date of a permit denial or of any Permit Action shall be as follows:

(a) Notice of suspension, revocation and/or refusal to renew any permit issued pursuant to this chapter shall be effective immediately upon issuance if the Chief of Police makes a specific finding that the reason for which the notice is issued presents an imminent danger to the public health, safety or welfare.

(b) Where no finding of imminent danger is made, the effective date of a permit action or permit denial will be the date stated in the notice provided pursuant to subsection B of this section, provided, however, that a properly-filed administrative appeal of a permit action, except a permit denial, shall stay that permit action until the city finally adjudicates any properly-filed administrative appeal.

(c) Appeal of a denial of an application for an initial massage establishment permit shall not stay the denial.

(d) The filing of any action for judicial review of a permit denial or any other permit action shall not stay the denial or permit action.

4. The City Manager or a hearing officer appointed by the City Manager shall hear all appeals of any permit denial and/or permit action pursuant to this chapter.

5. Administrative appeal hearing setting and notice. The City Manager or City Manager's designee shall be responsible for setting a hearing date and for providing notice of an administrative appeal of a permit denial or other permit action as follows:

(a) Administrative appeal hearing deadlines. Hearing dates of administrative appeals of a permit denial and/or other permit action shall be set according to the following schedule:

(1) The appeal hearing of any permit action that is stayed pending an administrative appeal or of a permit application denial shall occur no sooner than five (5) days after the notice of appeal is filed and no later than forty-five (45) days after the notice of appeal is filed, unless the appellant agrees to an extension of time.

(2) Other than an appeal of a permit application denial, the appeal of a permit action effective pending resolution of the permit-holder's appeal shall occur no sooner than three (3) and no later than ten (10) business days after the notice of appeal is filed, unless the appellant requests a specific longer period.

(b) Notice contents. Notice of an administrative appeal hearing shall include notice of the date, time and place of the hearing;

name of the hearing officer; the basis for the permit action or permit denial; and a copy of the documents upon which the permit denial and/or permit action was based. The notice shall inform the appellant of the right to present evidence contrary to the information contained in the notice of the permit denial and/or permit action.

(c) Amount and manner of notice.

(1) Notice of the hearing of an appeal of a denial of an initial permit application and any permit action stayed pending resolution of appeal shall be mailed at least ten (10) calendar days prior to the date of the hearing, by U.S. mail, with proof of service attached, to the appellant at the address provided in the notice of appeal or, if no address was provided in the notice of appeal, to the address listed on the permit application at issue.

(2) Notice of the hearing appealing a permit action that is immediately effective and not stayed pending appeal, other than a denial of an initial permit application, shall be mailed the same day the city sets the hearing date. In addition, at least five (5) calendar days prior to the date of the hearing, notice shall be provided in the following manner: to the appellant's phone number, e-mail address and facsimile number, if provided in the notice of appeal; to the phone number, e-mail address and facsimile number of the permit holder listed on the permit application at issue; and by U.S. mail, with proof of service attached, to the appellant at the address provided in the notice of appeal or, if no address was provided in the notice of appeal, to the address listed on the permit application at issue.

6. The following rules shall apply at the hearing of an appeal of any permit action or any permit denial:

(a) Oral evidence shall be taken under oath or affirmation. The person conducting the hearing has the authority to administer oaths and to receive and rule on admissibility of evidence.

(b) The permit holder and the city shall have the right to call and examine witnesses, to cross-examine opposing witnesses who have testified under direct examination, and to introduce evidence. The person conducting the hearing may call and examine any witness.

(c) Technical or legal rules relating to evidence and witnesses shall not apply. Any relevant evidence may be admitted if it is material and of a type customarily relied upon by responsible persons in the conduct of their affairs. Hearsay testimony, while admissible, shall not be sufficient as the sole evidence to support a finding unless the testimony would be admissible pursuant to the California Evidence Code. All rules of privileges shall be applicable as provided pursuant to California case and statutory law. Irrelevant, collateral and repetitious testimony may be excluded.

7. The City Manager or the hearing officer appointed by the City Manager shall, within five (5) business days of the conclusion of the hearing, decide whether or not grounds exist to deny, suspend, revoke or refuse to renew the massage establishment permit and shall uphold, modify or overturn the permit action or permit denial and make written factual findings of the decision. Unless otherwise specifically provided by law, the burden of proof shall be on the city to establish by a preponderance of the evidence that the determination was appropriate. The decision of the City Manager or hearing officer appointed by the City Manager shall be final with no further right of appeal, review or reconsideration within the city.

E. Judicial review. Judicial review of any decision of the City Manager, or the hearing officer appointed by the City Manager, may be made pursuant to section 1094.6 of the Code of Civil Procedure only if the petition for writ of mandate is filed not later than the ninetieth (90th) day following the date on which the decision becomes final. If the date is not otherwise specified, the decision of the City Manager or designated hearing officer is final on the date it is made. In issuing a final decision, the City Manager shall provide notice to the appellant that the time within which judicial review must be sought is governed by section 1094.6 of the Code of Civil Procedure.

(Ord. 498-15 §1, 2015)

5.18.080 Violation and penalties.

A. Violation of this chapter may be enforced pursuant to the provisions of Chapter 1.32 of this code, including, but not limited to, enforcement of subsection 1.32.020 of this chapter pursuant to which the owner and/or lessor of property at which massage is provided may be found liable for allowing, permitting and/or suffering activities to occur on the property in violation of this chapter, whether or not the owner and/or lessor is involved in provision of massage.

B. Any massage establishment operated, conducted or maintained contrary to the provisions of this chapter are declared to be unlawful and a public nuisance, creating a danger to the public health, safety or welfare, and the city may, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings, for the abatement, removal and

enjoinment thereof and take such other steps to seek judicial abatement or removal of such massage establishment businesses and/or practices.

C. The revocation, suspension or non-renewal of a massage establishment permit shall automatically revoke or suspend all existing city business licenses for businesses operated in conjunction with the massage establishment permit.

D. After a massage establishment permit is revoked or non-renewed for a violation of Section 5.18.050.B.6 of this chapter, the city will not issue a permit to operate a massage establishment at the same location i.e. same address and, where, applicable, office suite or room number, for a period of one (1) year.

(Ord. 498-15 § 1, 2015)

5.18.090 Prior massage permits.

A. Existing city massage establishment permits. A city-issued massage establishment permit existing on the date this ordinance is effective shall remain valid until it expires or for one (1) year, whichever period is shorter. Once an existing city-issued massage establishment permit becomes invalid, it may not be renewed and the permit-holder must apply for a new massage establishment permit governed by the provisions of this chapter.

B. Existing city massage technician permits. The following regulations shall apply to an existing and valid city-issued massage therapist permit as of the date this ordinance becomes effective:

1. Persons holding both state and city permits. On the date this chapter becomes effective, if an individual possesses a valid city massage technician permit and is a certificated massage therapist, the city massage technician permit shall be immediately revoked and the individual shall within twenty (20) business days of the date this chapter becomes effective, comply with all of the requirements of this chapter.

2. Persons holding only a city-issued permit.

(a) No new city massage technician permits shall be issued after the effective date of this chapter. After December 31, 2015, existing city-issued massage therapist permits shall be invalid for all purposes.

(b) A city massage technician permit valid on the date this chapter becomes effective shall become immediately void if the permit-holder becomes a certificated massage therapist.

(c) A valid city massage technician permit held by any person who is not also a certificated massage therapist on the date this chapter becomes effective shall remain effective until the city permit expires or until December 31, 2015, whichever occurs sooner.

(d) Within thirty (30) days of the date this chapter becomes effective, the holder of any still-valid city massage technician permits shall file with the Chief of Police proof that he or she is a certificated massage therapist or proof that he or she has applied for a state massage therapist certificate. Failure to timely file such proof shall cause the city massage technician permit to be invalid.

(Ord. 498-15 § 1, 2015)