

CITY OF YUBA CITY
STAFF REPORT

Date: November 15, 2022
To: Honorable Mayor & Members of the City Council;
From: Police Department
Presentation By: Michelle Brazil, Police Lieutenant

Summary

Subject: Repeal and Replace the Massage Establishment and Therapist Ordinance by title only

Recommendation: Introduce an Ordinance to repeal and replace Yuba City Municipal Code Title 5, Chapter 3 to include administrative penalties, revocation of permits, and clarity of ordinance for massage establishments/therapists by title only and waive the first reading

Fiscal Impact: No negative fiscal impact. Potential revenue from administrative penalties

Purpose:

Repeal and replace the massage establishment and therapist Ordinance to allow effective enforcement.

Council's Strategic Goal:

This meets the Council's goal of Public Safety and Quality of Life as the purpose of the Ordinance is to provide enforcement for outlined violations.

Background:

In March of 2017 the massage establishment and therapists ordinance was updated to include regulations outlined in SB 1147 (Massage Therapy Act) and Business and Professions Codes 4600-4621 which provided local governments the ability to manage massage establishments in a manner that best served the interest of the individual community. The Ordinance outlined operating requirements, but no administrative penalties if the owner did not comply with the requirements. The Yuba City Police Department has attempted to work with massage establishments to ensure all requirements are fulfilled, but have been met with challenges in gaining full compliance. The proposed additions to the existing Ordinance will provide greater clarity of the requirements and administrative penalties for compliance.

Analysis:

The current Ordinance follows the guidelines intended in the State laws brought on by the Massage Therapy Act, but the current Ordinance lacks administrative penalties for establishments which do not

comply. The overall purpose of this Ordinance is to enhance and preserve the quality of life of the residents of Yuba City.

Fiscal Impact:

No negative fiscal impact. Potential revenue from administrative penalties.

Alternatives:

1. Provide direction to staff as to the changes which should be incorporated into the Ordinance.
2. Take no action on the Ordinance.

Recommendation:

Introduce an Ordinance of the City Council of the City of Yuba City, California, Repealing and Replacing Title 5, Chapter 3, Massage Establishments and Massage Therapists by title only by title only and waive the first reading.

Attachments:

1. Massage Establishments Ordinance

Prepared By:
Michelle Brazil
Police Lieutenant

Submitted By:
Diana Langley
City Manager

ORDINANCE _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF YUBA CITY, CALIFORNIA, REPEALING AND
REPLACING TITLE 5, CHAPTER 3, MASSAGE
ESTABLISHMENTS AND MASSAGE THERAPISTS**

WHEREAS, the City of Yuba City has the authority, under its police power, to enact regulations for the public peace, morals, and welfare of the city, Cal. Const. Art. XI, section 7; and

WHEREAS, the City Council of the City of Yuba City finds that certain conditions constitute a public nuisance and are a threat to the public peace, safety and welfare of the City; and

WHEREAS, by declaring that violations of the Yuba City Municipal Code constitute a public nuisance, the City Council has determined that by violating the City's laws contained in the Yuba City Municipal Code, a person or entity creates a threat or danger to the public health, safety or welfare as a public nuisance; and

WHEREAS, the City Council finds that ensuring compliance with the Yuba City Municipal Code and other regulations vital to the protection of the public's health, safety and quality of life throughout the City is an important public service; and

WHEREAS, the City Council desires to enhance and promote the maintenance of businesses, properties and employment opportunities in a manner which enhances the health, safety, livability, community, and the social and economic conditions of the community; and

WHEREAS, the City Council finds that an effective code compliance program eliminates and prevents the spread of blight, deterioration and crime, makes the City safer and more livable, and promotes economic development and pride in the community; and

WHEREAS, the City Council recognizes that an effective code compliance program requires the drafting and adoption of regulations that can be effectively applied by City personnel in a fair and expedient manner; and

WHEREAS, the City Council has previously determined that it is in the public interest to adopt an ordinance which expressly declares that any and all violations of the Yuba City Municipal Code constitute public nuisances, in order to facilitate the City's ability to protect the health, safety, and general welfare of the public through the use of the nuisance abatement procedures set forth in the Yuba City Municipal Code and in other applicable laws, rules and regulations; and

WHEREAS, the City Council finds that the Yuba City Municipal Code does not provide an adequate administrative remedy to address massage establishments and/or massage practitioners which constitute a danger to the public health and safety of the City and its residents; and

WHEREAS, the City Council has determined that the adoption of this ordinance is necessary to achieve a more comprehensive code compliance program that will permit City personnel to immediately proceed with code compliance efforts in an expedient, efficient and fair manner for purposes of effectively protecting public health and safety.

WHEREAS, the City Council desires to adopt this Ordinance for the forgoing reasons.

NOW, THEREFORE, the City Council of the City of Yuba City does ordain as follows:

SECTION 1. Recitals. The recitals set forth above are incorporated herein by this reference.

SECTION 2. Massage Establishments and Massage Therapists. Chapter 3, of Title 5 of the Yuba City Municipal Code, entitled Massage Establishments and Massage Therapists is hereby repealed and replaced as follows:

Section 5-3 Massage Establishments and Massage Therapists

Sec. 5-3.01 Purpose and intent.

Government Code Sections 51030 through 51034 provide authority for the legislative bodies of California cities to license and regulate the business of massage. In enacting this chapter, the City Council recognizes that massage is a viable professional field offering the public valuable health and therapeutic services. However, there are known instances, both within and outside the City, where the practice of massage and the operation of massage establishments have been associated with unlawful activity and pose a threat to the quality of life in the community. It is the purpose and intent of this chapter to protect the public health, safety, and welfare by adopting regulations to prevent blighting conditions and deter criminal activity that could occur from the practice of massage and the operation of massage establishments. It is not the intent of this chapter to punish legitimate massage practitioners and establishments.

Sec. 5-3.02 Definitions.

For the purposes of this chapter, unless the context clearly requires a different meaning, the words, terms, and phrases set forth in this chapter shall have the meanings given to them in this section.

- (a) "Certified massage therapist" means a person who is certified by the California Massage Therapy Council ("CAMTC") pursuant to Chapter 10.5 (commencing with Section 4600) of Division 2 of the California Business and Professions Code.
- (b) "Chief of Police" means the Chief of the Yuba City Police Department or his/her designee.

- (c) “For compensation” means the exchange of massage services for money, goods, or other services. An establishment or person cannot avoid the requirements of this chapter by offering free massage in conjunction with other services or goods provided to a client or customer for compensation.
- (d) “Managing employee” means any employee of a massage establishment who has responsibility for supervising, directing, or assigning work to massage therapists.
- (e) “Massage” means any method of pressure on, or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating the external parts of the human body with the hands or any other parts of the body or with the aid of any mechanical or electrical apparatus or other appliances or devices, with or without the use of oils, creams, tonics, lotions, antiseptics, tanning products, or other similar preparations. Massage shall further include baths, including aromatherapy, vapor, shower, electric tub, sponge, hot towels, sauna, steam, or any other type of bath where the essential nature of the service involves any method of pressure or friction against, or stimulating the external parts of, the human body, with the hands or any other parts of the body.
- (f) “Massage establishment” means an establishment having a fixed place of business where any person, firm, association, or corporation practices or otherwise permits massage for compensation. The term “massage establishment” includes establishments that offer services such as relaxation, hot tub, towel wraps, baths, health treatments, tanning, or any service where the essential nature of the interaction between the employee and the customer involves a massage.
- (g) “Massage therapist” means any person who, for any type of compensation, practices massage.
- (h) “Out call massage” means providing massage services for compensation at a location other than at a permitted massage establishment.
- (i) “Operator” means any individual who has any ownership interest in the massage establishment.
- (j) “Permit” means a written document authorizing the holder to engage in the business specified in the document. Two types of permits are issued pursuant to this chapter: establishment permits and out call massage business permits.
- (k) “Exempt Therapist” means a person who meets the following criteria: A person who has completed at least 200 hours of approved training and

shows to the satisfaction of the City police department that he or she would have qualified for a massage therapist permit under the requirements of the previous massage ordinance.

Sec. 5-3.03 Permit and Certification Required.

- (a) Establishment permit. It is unlawful for any owner, operator, officer, director, or managing employee of a massage establishment to operate or permit the operation of such business without a valid massage establishment permit as required by this chapter.
- (b) Employee permit. It is unlawful for any massage therapist employee, independent contractor or individual to perform massage therapy at a massage establishment without having a valid employee permit issued pursuant to this chapter. All massage therapists shall provide proof of a valid employee permit upon request from a law enforcement officer, code enforcement officer or employee of the City of Yuba City.
- (c) Out call massage business permit. It is unlawful for any person to provide out call massage services without a valid out call massage business permit.
- (d) Certification. It is unlawful for any person other than a certified massage therapist to provide massage services within the City unless exempted as provided in this chapter.
- (e) A person who is an "Exempt Therapist" shall comply with all the requirements of this chapter, except for the state certification requirements. Exempt Therapists must apply for and receive a permit from the Yuba City Police Department to practice as a massage therapist. Exempt Therapists shall be subject to a suspension and/or revocation of their permit as established in this chapter. The permit issued to an Exempt Therapist shall be voided for no more than twelve (12) months. Exempt Therapists shall renew their permit with the Yuba City Police Department at least fifteen (15) days prior to the permits expiration. Any Exempt Therapist who allows their permit to expire shall not be eligible to renew their permit.

Sec. 5-3.04 Land Use and Zoning Requirements.

The premises and property on which the premises occupied by a massage establishment are located must conform to all applicable land use and zoning requirements.

Sec. 5-3.05 Exemptions from Permit Requirements.

- (a) Exemption from establishment permit: Other professionals practicing within scope of profession. No establishment permit shall be required for the

following persons when practicing massage within the scope of their profession:

- (1) Any cosmetologist, barber, esthetician, manicurist, electrologist, apprentice barber, or cosmetology instructor licensed under the California Barbering and Cosmetology Act (Business and Professions Code Section 7301 et seq.).
 - (2) Any person licensed to practice any healing art under the provisions of Division 2 (commencing with Section 500) of the California Business and Professions Code or the Chiropractic Act.
 - (3) Acupuncturists who are licensed to practice their profession in the State of California.
 - (4) Nurses, physical therapists, or occupational therapists who are licensed to practice their professions in the State of California.
 - (5) Except as provided in subsection (c) of this section, the establishment permit exemption in this subsection (a) does not apply if the place of business allows professionals other than those identified in this subsection (a) to perform massage either as employees or independent contractors.
- (b) Exemption from establishment permit: Medical offices. No establishment permit shall be required for the offices of a licensed physician, surgeon, or osteopath; provided, that the person performing the massage is a certified massage therapist performing massage under the direct supervision and recommendation of such licensed medical professional.
- (c) Exemption from establishment permit: Occasional recreational events. No establishment permit shall be required where massage services are provided at an occasional recreational or community event, provided the following conditions are met: (1) the person providing the massage is a certified massage therapist; (2) massage services are made equally available to all participants of the event; (3) the event is open to participation by a significant segment of the public such as employees of a sponsoring or participating corporation; (4) massage services are provided at the event site and during the hours the event is scheduled; (5) the event sponsors have approved of the provision of massage services; and (6) those providing massage services are not the primary sponsors of the event. "Occasional" shall mean not more than once per month.

Sec. 5-3.06 Application for an Establishment Permit or Out Call Massage Business Permit.

Written application for an establishment permit or out call massage business permit required by this chapter shall be filed with the Chief of Police. Such application shall be accompanied by a fee as approved by the City Council. Upon approval of the permit by the Chief of Police, the applicant must also apply for a business license through the City Clerk's office and pay applicable license fees.

The following information shall be provided in the application concerning the applicant, if an individual; concerning each stockholder, each officer and each director, if the applicant is a closely held corporation; concerning each partner, including limited partners, if the applicant is a partnership; concerning the operator of the establishment; and concerning principals of the business that exercise control over operation of the business not identified above.

- (a) Identifying information. Applicant name, present residential and business addresses, telephone numbers, birth date and California driver's license, identification card number or other valid documentation authorizing the individual to work within the State of California.
- (b) Prior residential addresses. All residential addresses and dates of residence for five (5) years preceding the date of the application.
- (c) Prior business and employment history. Business, occupation or employment history of the applicant for the five (5) years immediately preceding the date of the application.
- (d) Evidence that applicant is over eighteen (18). Satisfactory proof that the applicant is over the age of eighteen (18) years. Satisfactory proof may consist of a California driver's license, California identification card, or a United States passport.
- (e) Arrests and convictions. A listing and explanation of any arrests or convictions for any felonies or non-traffic-related misdemeanors.
- (f) Fingerprints. Fingerprints of the applicant.
- (g) Photograph. Submit to a photograph taken by the Yuba City Police Department.
- (h) Prior abatement of a business. Statement indicating whether the applicant has ever had an ownership interest in, operated or been employed by any business which has been the subject of an abatement proceeding under the California Red Light Abatement Act (California Penal Code Sections 11225

through 11235) or any similar abatement laws, whether in California or other jurisdictions.

- (i) Other information. Any other information as required by the Chief of Police. In addition to the information required above, an applicant for an establishment permit must also provide:
- (j) Premises ownership and lease information. A statement on whether the applicant owns, leases, or rents the premises where the massage establishment will be located. If the applicant leases or rents the premises, the applicant shall provide the name, address, and telephone number of the owner of the premises and the term of any lease.
- (k) Address and name of business. The address where the applicant proposes to operate a massage establishment and the name under which the business will be operated.
- (l) Prior massage businesses. The business name, street address, and city of any and all businesses where the applicant conducted any business providing massage, relaxation, hot tub, towel wraps, baths, health treatments, or tanning services within twenty-four (24) months preceding the date of the application.
- (m) Evidence of other permits. Evidence of applicable land use and/or building permits as required by the City of Yuba City.

Sec. 5-3.07 Certified Massage Therapist Registration Requirements.

Certified massage therapists must register with the Yuba City Police Department prior to providing massage services. The registration application shall include, at a minimum, the following information: name, address, telephone number(s), place(s) of employment, whether the applicant intends to engage in "out call massage" as defined in Section Sec. 5-3.02(h), and evidence of certification from the CAMTC. There is no charge for the registration.

Certified massage therapists shall update their registration within ten (10) days of any changes and shall maintain on file with the Department a current copy of their CAMTC certificate.

Sec. 5-3.08 Permit renewal, business license requirements, and updating information.

Permits issued under this chapter shall be renewed every year as set forth in Section 5-3.12.

Permittees and certified massage therapist registrants working as independent

contractors of a massage establishment shall at all times maintain an active business license with the City of Yuba City.

Permittees shall notify the Chief of Police of the following within ten (10) calendar days after they occur: (1) any change of home address, change in home or work telephone number, or change in location of business; and (2) any arrest for an offense listed under Section 5-3.11(b).

Sec. 5-3.09 Application and Permit fees.

Application and Permit fees for each establishment permit and out call massage business permit shall be paid to the Yuba City Police Department at the time the application is submitted. Permit fees are nonrefundable. Application and Permit fee amounts shall be approved by the City Council.

Upon approval by the Police Department of an establishment permit or out call massage business permit, the applicant shall also pay applicable business license fees through the City Clerk's office.

Sec. 5-3.10 Permit referral.

The Chief of Police shall investigate the background of an applicant of any permit. Additionally, the Chief of Police shall refer an application for an establishment permit to the City of Yuba City Planning Department with respect to applicable zoning and building requirements. The Chief of Police may also refer an application to other persons, entities, or agencies as appropriate.

Sec. 5-3.11 Action by the Chief of Police on permit application.

- (a) Time to act. The Chief of Police shall either issue or deny a permit within sixty (60) calendar days following receipt of a completed application for an establishment permit or out call massage business permit. The Chief of Police may extend the time period to act on a permit application by an additional thirty (30) days upon providing written notice of the extension to the applicant. In approving or denying a permit, the Chief of Police shall consider the recommendations of City officials investigating the application, along with any other relevant information.
- (b) Grounds for denial of a permit. The Chief of Police shall deny an establishment permit or out call massage business permit on any of the following grounds:
 - (1) The applicant, owner, operator, any officer or director of a massage establishment has been convicted of a violation of Section 266h, 266i, 311 through 312.7, 314, 315, 316, or 318, or subdivision (a),

- (b) or (d) of Section 647 of the California Penal Code, any serious and/or violent felony as defined in subdivision (c) of Section 1192.7 or 667.5 of the California Penal Code, or any other crime involving moral turpitude.
- (2) The applicant, owner, operator, any officer or director of a massage establishment has been convicted of offenses equivalent to those listed above under the laws of another jurisdiction, even if expunged.
 - (3) The applicant, owner, operator, any officer or director of a massage establishment is required to register under the provisions of Section 290 of the California Penal Code.
 - (4) The applicant, owner, operator, any officer or director of a massage establishment has been convicted of a violation of Health and Safety Code Section 11550 or any offense involving the possession or sale of a controlled substance specified in Section 11054, 11055, 11056, 11057, or 11058 of the Health and Safety Code or convicted of an equivalent offense in any other state.
 - (5) The applicant, owner, operator, any officer, or director of a massage establishment has been convicted of any offense involving sexual misconduct with children.
 - (6) The operation of a massage establishment at the proposed location would be injurious to the health, safety, or welfare of the community.
 - (7) The operation of the massage establishment, as proposed by the applicant, would not comply with all applicable laws including City ordinances and regulations.
 - (8) The applicant knowingly made a material omission or misstatement of fact in the application.
 - (9) The applicant, owner, operator, any officer or director of a massage establishment has violated any provision of this chapter or any similar law, rule or regulation of another public agency which regulates the operation of massage establishments.
- (c) Conditions of approval. If a permit is approved, the Chief of Police shall include such restrictions and conditions in the permit, as he/she deems reasonable and necessary under the circumstances, to ensure compliance with the purposes and intent of this chapter.
- (d) Notice and appeal. Upon approval or denial of a permit, the Chief of Police

shall prepare and forward to the applicant written notice that the permit has been granted, or denied, along with a statement of any conditions of approval attached thereto. The written notice shall be hand-delivered or sent by certified mail to the applicant. The decision of the Chief of Police upon application for a permit shall become final unless an appeal is filed with the City Clerk within fifteen (15) calendar days following delivery of the written notice.

Sec. 5-3.12 Issuance of permit.

- (a) Issuance after approval. Following the approval of a permit and the lapse of a fifteen (15) calendar day appeal period, the Chief of Police shall issue a permit.
- (b) Term of permit. Each newly issued establishment permit and out call massage business permit shall be valid for one (1) year after issuance. Each establishment permit and out call massage business permit in effect as of the date of the ordinance codified in this chapter shall be valid for a term of one (1) year from the date the permit was issued or approved by the City. All permits automatically expire at the end of the term unless renewed prior to that time.
- (c) Renewal. Permits may be renewed prior to expiration by submitting an application for renewal to the Chief of Police sixty (60) days prior to its expiration, accompanied by a renewal application fee as approved by the City Council. The application for renewal shall contain the same information required by Section 5-3.06, updated to reflect changes in the preceding year. The denial or renewal of an establishment permit shall be evaluated in the same manner as the initial granting of a permit.
- (d) Content of permit. The permit shall specify the full legal name of the permittee. An establishment permit shall specify the name and address of the business location. An establishment permit shall authorize massage services only at the location specified in the permit. The permit shall also include the expiration date.

Sec. 5-3.13 Appeal.

Appeals shall be conducted as proscribed within Sections 4-8.601 and 4-8.602 of the Yuba City Municipal Code.

Sec. 5-3.14 Revocation of permit.

- (a) Revocation for cause: Notice of revocation. The Chief of Police may revoke an establishment permit or out call massage business permit for good

cause. Before the Chief of Police revokes a permit, the Chief of Police shall provide written notice of the revocation by personal delivery or certified mail. The notice shall provide for revocation of the permit fifteen (15) calendar days after service of the notice (the date of mailing or personal service) unless the permittee requests an appeal hearing. The notice shall instruct the permittee on how to file an appeal.

- (b) Appeal. Within fifteen (15) calendar days of service of the revocation notice, the permittee may file an appeal of the revocation and request a hearing be held in accordance with Sections 4-8.601 and 4-8.602. If an appeal is filed, the hearing officer may approve, conditionally approve, modify, or deny the revocation based upon grounds as set forth in subsection (e) of this section.
- (c) Stay of revocation pending appeal. If an appeal is filed, the revocation decision of the Chief of Police shall be stayed pending a decision by the hearing officer or hearing panel.
- (d) Effect of no appeal: Final decision. If after the passage of fifteen (15) calendar days from service of the revocation notice the permittee has not requested an appeal, the revocation decision of the Chief of Police shall become final.
- (e) Grounds for revocation. A permit may be revoked for good cause on the basis of any of the following:
 - (1) The permit was obtained by fraud; or
 - (2) Any person making use of such permit is violating or has violated any conditions of such permit; or
 - (3) The detriment to the public health or safety, or the nuisance arising from the conduct of the massage establishment, or from changed circumstances, necessitates the revocation of the permit; or
 - (4) The permittee has violated, or permitted any other person under his/her control or supervision to violate, any provision of this chapter or of other local, State, or Federal law in connection with the practice of massage or operation of a massage establishment; or
 - (5) The permittee has committed any offense involving lewdness, indecent exposure, prostitution, or any other offense which would be grounds for denial of an application, or employees of the establishment have committed such offenses in the course of their employment and the permittee has failed to prevent them from doing so. The employer shall be responsible for those acts of its employees

and massage therapists which are done in the course and scope of their employment, or which occur on the premises of the massage establishment.

Sec. 5-3.15 Suspension of permit.

- (a) Grounds for immediate suspension of permit. The Chief of Police may immediately suspend an establishment permit or out call massage business permit if there is reasonable cause to believe that:
 - (1) The permit holder is operating or managing the establishment or providing services in a manner which poses an immediate danger to the health or safety of employees, clients, or the public; or
 - (2) The permittee has violated, or permitted any other person under his/her control or supervision to violate, any provision of this chapter or of other local, State, or Federal law in connection with the practice of massage or operation of a massage establishment; or
 - (3) The permit holder has been convicted of any offense involving lewdness, indecent exposure, prostitution, sexual battery, or any sex-related crime. The only permit, which shall be immediately suspended under this condition, shall be the permit belonging to the person convicted.
- (b) Notice of suspension. If the Chief of Police immediately suspends a permit, the Chief of Police shall provide written notice to the permittee by personal notice or certified mail. The notice shall contain a statement that the permit is immediately suspended and such suspension shall remain in effect during the period of time that an appeal may be filed or an appeal is under consideration. The notice shall provide information on the appeal process and explain that the suspension may lead to a permanent revocation of the permit.
- (c) Appeal. Within fifteen (15) calendar days of service of the immediate suspension (the date of mailing or personal service), the permittee may file an appeal of the suspension and request a hearing in accordance with Sections 4-8.601 and 4-8.602. If an appeal is filed, the hearing officer may permanently revoke the permit, reinstate the permit, conditionally reinstate the permit, or modify the suspension, based upon findings related to circumstances described in Section 5-3.14(e) and subsection (a) of this section.
- (d) Effect of no appeal: Final decision. If after the passage of fifteen (15) calendar days from service of the suspension notice the permittee has not

filed an appeal, the decision of the Chief of Police to suspend the permit shall become final and the permit shall be immediately suspended.

Sec. 5-3.16 Permits nontransferable: Change in location.

Permits granted under this chapter shall not be transferable, either as to the permittee or the location. Any attempt to transfer shall render the permit invalid and no further massages may be conducted under such permits. With respect to a change in location only, the applicant may apply for and obtain an amendment to the permit. Only that information necessary to process the change in location shall be required.

Sec. 5-3.17 Notice of employees' status.

Every person holding an establishment permit shall notify the Chief of Police, in writing, of the name and residence of each person employed as a massage therapist within five (5) days of the start of employment.

Sec. 5-3.18 Application of chapter to preexisting massage therapists.

The provisions of this chapter shall be applicable to all persons and businesses described herein upon adoption of this chapter by the City Council except as provided herein.

- (a) Existing massage therapists permits. Any person providing massage services on the effective date of the ordinance codified in this chapter pursuant to a valid City issued massage therapist permit under the City's previously approved requirements shall be required to obtain certification from CAMTC within one (1) years from the effective date of the ordinance codified in this chapter, or earlier upon revocation of the permit. This grace period shall only apply if the individual:
 - (1) Has an unexpired paid up Yuba City business license to operate a massage business or the individual provides satisfactory evidence that he or she is an employee of a Yuba City licensed massage establishment and not required to have a business license.
 - (2) Operates in compliance with all applicable laws and regulations.

Sec. 5-3.19 Prohibited acts.

No permittee, or any employee of a massage establishment, shall engage in, or allow, any of the acts prohibited by California Business and Professions Code Section 4609. A violation of that section shall be considered a violation of this chapter.

Sec. 5-3.20 Operating requirements.

Massage establishments shall comply with all applicable Federal, State, and local regulations, and with the following requirements:

- (a) Maintenance of permits. A copy of the establishment permit and each massage therapists permit or CAMTC certificate shall be posted in a conspicuous place on the establishment premises in such a manner that can be easily seen by persons entering the establishment. A passport-size photograph of the permittee or certificate holder shall be affixed to each massage therapists permit or certificate.
- (b) Posting of services offered. A list of all services available, the price thereof, and the length of time of each service shall be posted or available in a conspicuous place in such a manner that it can be easily viewed by persons entering the massage establishment. No services, other than those set forth on the list, shall be provided.
- (c) Payment. All payments for massage services, including gratuities or tips, shall be made at a designated reception area exclusively. At least one sign, with lettering not less than one-half inch (1/2") in height, shall be posted in a conspicuous place in such a manner that it can be easily seen by persons entering the establishment stating, "All payments for massage services, including gratuities or tips, shall be made in the designated reception area exclusively." This provision shall not apply to one-room massage establishments that do not have a reception area.
- (d) Alcohol, cannabis or cannabis products prohibited. No alcoholic beverages, cannabis or cannabis products shall be sold, served, furnished, kept, or possessed in any part of a massage establishment. The owner, operator, and managing employee shall be responsible to ensure that no person possesses alcoholic beverages, cannabis or cannabis products inside the massage establishment.
- (e) Payroll and other written records. Every massage establishment shall maintain payroll and written records of all business transactions. The written records shall include at a minimum the type of service provided, the date and hour the service is provided, and the name of the massage therapist administering the service. These records shall be kept on the premises and shall be open to inspection by officials charged with enforcement of this chapter, including the Chief of Police and his/her designee and the City Attorney. These records shall be retained for a period of at least two (2) years.
- (f) Advertising. No services shall be offered in signs, posters, flyers, newspapers or other printed advertisements, or in verbal or recorded announcements or messages, other than those lawfully permitted and

posted as required in subsection (b) of this section. Photographs, drawings, written or verbal statements used in any advertising shall not explicitly or implicitly communicate that services offered are for the purpose of sexual stimulation or gratification. Further, no massage business shall place, publish or distribute, or cause to be placed, published or distributed any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective clients that any service is available other than those services listed as an available service pursuant to Section 5-3.06(c) of the Yuba City Municipal Code, nor shall any massage business employ language in the text of such advertising that would reasonably suggest to a prospective client that any service is available other than those services as described in compliance with the provisions of this chapter.

- (g) Compliance with SB 577. Massage establishments and massage therapists shall comply with the requirements of Business and Professions Code Sections 2053.5 and 2053.6 pertaining to disclosure and acknowledgment that massage services are not being provided by a licensed physician, are not licensed services by the State, the qualifications of the person providing the massage services, and those other matters as set forth in the statutes.
- (h) Compliance with AB 1147. Massage establishments and massage therapists shall comply with the requirements of the Massage Therapy Act, Chapter 10.5 (commencing with Section 4600) of Division 2 of the California Business and Professions Code.
- (i) Hours of Operation. Massage shall be provided or given only between the hours of 6:00 a.m. and 10:00 p.m. No massage business shall be open and no massage shall be provided between 10:00 p.m. and 6:00 a.m. A massage commenced prior to 10:00 p.m. shall nevertheless terminate at 10:00 p.m., and, in the case of a massage business, all clients shall exit the premises at that time. It is the obligation of the massage business to inform clients of the requirement that services must cease at 10:00 p.m.
- (j) Records. For each massage service provided, every massage business shall keep a complete and legible written record of the following information: the date and hour that service was provided; the service received; the name or initials of the employee entering the information; and the name of the massage practitioner administering the service. Such records shall be open to inspection and copying by police officers, or used by any massage practitioner or operator for any purpose other than as records of service provided and may not be provided to other parties by the massage practitioner or operator unless otherwise required by law. Such records shall be retained on the premises of the massage business for a period of two years and be immediately available for inspection during business hours.

- (k) **Supplies.** Massage businesses shall at all times be equipped with an adequate supply of clean sanitary towels, coverings and linens. Clean towels, coverings, and linens shall be stored in enclosed cabinets. Towels and linens shall not be used on more than one client, unless they have first been laundered and disinfected. Disposable towels and coverings shall not be used on more than one client. Soiled linens and paper towels shall be deposited in separate, approved receptacles.
- (l) **Cleaning.** Wet and dry heat rooms, steam or vapor rooms or cabinets, toilet rooms, shower and bath rooms, tanning booths, whirlpool baths and pools shall be thoroughly cleaned and disinfected as needed, and at least once each day the premises are open, with a disinfectant approved by the Health Officer. Bathtubs shall be thoroughly cleaned after each use with a disinfectant approved by the Health Officer. All walls, ceilings, floors, and other physical facilities for the business must be in good repair, and maintained in a clean and sanitary condition.
- (m) **Massage Equipment.** Instruments or equipment utilized in performing massage shall not be used on more than one client unless they have been sterilized, using approved sterilization methods.
- (n) **Clothing.** All massage business operators and their employees, including massage practitioners, shall wear clean, non-transparent outer garments. Said garments shall not expose their genitals, pubic areas, buttocks, or chest, and shall not be worn in such manner as to expose the genitals, pubic areas, buttocks, or chest. For the purposes of this section, "outer garments" means a garment worn over other garments and does not include garments like underwear, bras, lingerie or swimsuits.
- (o) **Genital Covering.** No massage shall be given unless the client's genitals are, at all times, fully covered. A massage practitioner shall not, in the course of administering any massage, make physical contact with the genitals or private parts of any other person regardless whether the contact is over or under the person's clothing.
- (p) **Entry Door.** Where the business has staff available to assure security for clients and massage staff are behind closed doors, the entry to the reception area of the massage business shall remain unlocked during business hours when the business is open for business or when clients are present.
- (q) **Windows.** No massage business located in a building or structure with exterior windows fronting a public street, highway, walkway, or parking area shall, during business hours, block visibility into the interior reception and waiting area through the use of curtains, closed blinds, tints, or any other

material that obstructs, blurs, or unreasonably darkens the view into the premises. For the purpose of this subsection, there is an irrebuttable presumption that the visibility is impermissibly blocked if more than 10% of the interior reception and waiting area is not visible from the exterior window.

- (r) Signs. All signs shall be in conformance with the current ordinances of the City of Yuba City.
- (s) Lighting. Minimum lighting consisting of at least one artificial light of not less than 40 watts shall be provided and shall be operating in each room or enclosure where massage services are being performed on clients, and in all areas where clients are present.
- (t) Ventilation. Ventilation and ventilation systems shall be installed and operated in accordance with applicable building codes and regulations.
- (u) Water. Hot and cold running water shall be provided at all times.
- (v) Changing Facilities. Adequate dressing, locker and toilet facilities shall be provided for clients.
- (w) Sinks. A minimum of one wash basin/sink for employees shall be provided at all times. The basin/sink shall be located within or as close as practicable to the area devoted to performing of massage services. Sanitary towels shall also be provided at each basin/sink.
- (x) ADA and CDPA Compliance. All massage businesses shall comply with all State and federal laws and regulations for disabled clients.
- (y) Name of Practitioner. A massage practitioner shall operate only under the name specified in his or her CAMTC certificate. A massage business shall operate only under the name specified in its City registration certificate.
- (z) After Business Hours. No massage business shall allow any person to reside within the massage business or in attached structures owned, leased or controlled by the massage business. Other than custodial or maintenance staff, no persons shall be permitted within the premises of a massage business between the hours of 11:00 p.m. and 5:00 a.m.

Sec. 5-3.21 Inspection by officials.

As a condition of the massage establishment permit, any and all investigating officials of the City of Yuba City, the County of Sutter, and the State of California shall have the right to enter massage establishments during regular business hours to conduct reasonable

inspections to observe and enforce compliance with the provisions of this chapter, as well as any other applicable requirements, including, but not limited to, building, fire, planning and health requirements.

Sec. 5-3.22 Hot tub, sauna, and tanning establishments.

Massage services shall not be made available to clients at hot tub, sauna, or tanning establishments unless the establishment holds a valid massage establishment permit. Hot tub, sauna, or tanning establishments, which offer massage services, must comply with all provisions of this chapter. Massage services shall not be given in any room or areas in which a hot tub, sauna, shower or jacuzzi is located, or in wet and dry heating rooms, tanning rooms, steam or vapor rooms, cabinets or bathrooms.

Sec. 5-3.23 Out call massage businesses.

- (a) Permit. No person shall perform out call massage in the City without an out call massage business permit as required by this chapter.
- (b) Recordkeeping. Any person performing out call massage services shall maintain written records, at the massage therapist's principal place of business, of all out call massage services performed. These records shall be retained for at least two (2) years beyond the date services were provided. Record shall be made of each appointment at which massage services were provided and shall include:
 - (1) Date and time;
 - (2) Patron's full name and address;
 - (3) Address where services were provided; and
 - (4) Name of the massage therapist providing services.
- (c) Inspection of records. These records shall be open to inspection upon request only by officials charged with enforcement of this chapter or emergency medical personnel. Information within these records shall only be used to ensure compliance with this chapter, or any other applicable State or Federal laws, or as necessary in providing emergency medical treatment, and shall remain confidential.
- (d) No out call services on premises owned by therapist. Out call massage services shall not be provided at any location owned, leased, rented or under the control of the massage therapist, including residential dwellings and business offices, unless that location is licensed as a massage establishment or is otherwise exempted as provided in this chapter.

Sec. 5-3.24 Penalties for violation.

- (a) Criminal Proceedings. Violations of the provisions of this chapter, Chapter 3, of Title 5, for conduct that is not otherwise considered lawful under State law, may be considered misdemeanors and are punishable by a fine of \$1,000.00 and/or six months incarceration within the Sutter County Jail. Each and every day, or portion thereof, a violation exists is a new and separate offense. The City may also pursue all applicable civil and administrative remedies, including but not limited to injunctive relief and administrative citations.

Should a court of competent jurisdiction subsequently determine that the criminal penalty provision renders the provisions of this chapter, or the provisions of any chapter adopted by reference within the Yuba City Municipal Code unlawful, the City intends that the misdemeanor provision be severable from the remaining penalty provisions and the City will only pursue non-criminal remedies for violations of this chapter.

- (b) Injunction and Abatement. Nothing in this chapter shall be deemed to prevent the City of Yuba City from commencing a civil action to enjoin the continued violation of any provision of this chapter or to abate a nuisance, as an alternative, or in conjunction with any other civil or criminal proceeding.
- (c) Administrative Penalties.

Each and every day, or portion thereof, a violation exists is a new and separate offense.

- (1) The administrative citation penalty for all violations of this chapter, within a rolling 12-month period, deemed misdemeanors shall be as follows:
 - (i) First administrative citation: \$250.00 per violation;
 - (ii) Second administrative citation: \$500.00 per violation;
 - (iii) Third administrative citation: \$1,000.00 per violation; and
 - (iv) One thousand dollars per violation for each subsequent administrative citation.
- (2) The administrative citation penalty for all violations of this chapter, within a rolling 12-month period, deemed infractions shall be as

follows:

- (i) First administrative citation: \$100.00 per violation;
- (ii) Second administrative citation: \$200.00 per violation;
- (iii) Third administrative citation: \$500.00 per violation; and
- (iv) Five hundred dollars per violation for each subsequent administrative citation.

SECTION 3. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more section, subsection, subdivision, sentence, clause, phrase, or portion thereof be declared invalid or unconstitutional.

SECTION 4. Effective Date and Publication. This ordinance shall take effect 30 days after its adoption. The City Clerk, or duly appointed deputy, shall attest to the adoption of this Ordinance and shall cause this Ordinance to be posted in the manner required by law.

Introduced and read at a regular meeting of the City Council of the City of Yuba City on the ___ day of _____, 2022, and passed and adopted at a regular meeting held on the ___ day of _____, 2022.

AYES:
NOES:
ABSENT:
ABSTAIN:

Dave Shaw, Mayor
City of Yuba City

ATTEST:

APPROVED AS TO FORM:

Ciara Wakefield, Deputy City Clerk

Shannon Chaffin, City Attorney
Aleshire & Wynder, LLP