

CHAPTER 3. BATH AND MASSAGE BUSINESSES

Sec. 5-3.01. Findings and intent.

(a) In adopting these regulations, the City Council of the City of Yuba City finds that therapeutic massage is a viable professional field offering the public valuable health benefits. The operation of massage establishments in accordance with the provisions of these regulations will reduce the negative impacts to the public health, safety and welfare that may result from unregulated individuals engaging in the business of providing massage services.

(b) California Government Code Section 51030 allows cities to license massage establishments and those persons who provide massage services.

(c) Given the absence of comprehensive State regulations, local regulation of massage establishments and those who provide massage services is necessary to protect the public health, safety and welfare by:

(1) Requiring a clean and safe environment for massage services by providing minimum building, sanitation and health standards for massage establishments.

(2) Providing minimum standards for the education, training and conduct of those who provide massage services to ensure that those individuals are qualified and properly trained and will conduct their work in a lawful and professional manner; and

(3) Enhancing public confidence in those who provide massage services within the City of Yuba City.

(§ 1, Ord. 015-04, eff. November 18, 2004)

Sec. 5-3.02. Definitions.

For the purpose of the provisions regulating massage therapists, massage establishments and similar businesses set forth in this chapter, the following words and phrases shall be construed to have the meanings set forth in this section, unless it is apparent from the context that a different meaning is intended:

(a) "Applicant" shall mean any person or entity desiring to obtain a permit to perform the services of a massage therapist, or operate a massage establishment, and includes each and every owner of the proposed establishment.

(b) "City" shall mean the City of Yuba City.

(c) "Chief of Police" or "Chief" shall mean the Chief of Police of the City of Yuba City and/or those officers, employees, and agents of the City, directed to carry out all or portions of this chapter.

(d) "City Manager" shall mean the City Manager of the City of Yuba City and/or those officers, employees, and agents of the City, directed by the City Manager to carry out all or portions of this chapter.

(e) "Employee" shall mean any and all persons, other than a massage therapist, who may render any service to the permittee, and who receives compensation from the permittee or an agent, and who has no physical contact with the customers or clients.

(f) "Massage" shall mean any method of treating any of the external parts of the body for remedial, health or hygienic purposes by means, including but not limited to, rubbing, stroking, pressuring, acupressuring, kneading, tapping, pounding, vibrating or stimulating with the hands, feet, elbows or any other parts of the body, with or without the aid of any instrument or device and/or without such supplementary aids as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment, or other similar preparations commonly used in this practice, under such circumstances that it is reasonably expected that the person to whom the treatment is provided or some third person on his or her behalf will pay money or give any other consideration or any gratuity therefor.

(g) "Massage establishment" shall mean any place, including a private club or organization, where any massage, as defined in this section, is given or offered.

(h) "Massage therapist" shall mean any individual who administers to another person, for any form of consideration, a massage, as defined in this section, whether or not that person has a valid permit from the City.

(i) "Operator" shall mean an individual who manages or who is otherwise primarily responsible for the operation of the massage establishment, and shall include each and every person responsible for establishing personnel policy, hiring personnel, ensuring that the establishment complies with the requirements of this code and other laws, and of establishing and administering any and all policies established by the owner for the operation of the establishment.

(j) "Outcall massage service" shall mean providing massage services for compensation at any location other than a permitted massage establishment.

(k) "Person" shall mean any individual, firm, partnership, corporation, association or any combination of individuals of whatever form or character.

(l) "Specified anatomical areas" shall mean pubic region, human genitals, perineum, anal region and the area of the female breast that includes the areola and the nipple.

(§ 1, Ord. 015-04, eff. November 18, 2004)

Sec. 5-3.03. Applicability and exceptions.

The provisions of this chapter shall have no application and no effect upon and shall not be construed as applying to the following classes of individuals while engaged in the performance of the duties of their respective professions:

(a) Treatment administered in good faith in the course of practice of any healing art or profession by any person licensed to practice any such art or profession under the Business and Professions Code of the State of California, or any other law of this State, including physicians, surgeons, chiropractors, osteopaths, and physical therapists;

(b) Massage therapists while performing massage in the offices of a licensed physician, surgeon, chiropractor, osteopath, or acupuncturist, and while under the direct supervision and medical recommendation of such licensed medical professional;

(c) Nurses registered under the laws of the State of California;

(d) Barbers and beauticians who are duly licensed under the laws of the State while engaging in practices within the scope of their licenses, except that this exception shall apply solely to the massaging of the neck, face, scalp and hair of the customer or client;

(e) Hospitals, nursing homes, sanitariums, or other health facilities duly licensed by the State;

(f) Coaches and trainers in accredited high schools, junior colleges and colleges or universities acting within the scope of their employment; trainers of amateur, semiprofessional or professional athletes or athletic teams;

(g) Any business, calling or profession over which the state has assumed exclusive jurisdiction as a matter of statewide concern and which gives the services or treatment included in the term "massage" as herein defined, as incidents to such business, calling or profession.

(§ 1, Ord. 015-04, eff. November 18, 2004)

Sec. 5-3.04. Permit required.

(a) It is unlawful for any person to engage in, operate, conduct, or carry on, in or upon any premises within the City of Yuba City the business of a massage establishment or to provide massage in exchange for anything of value, without having obtained a permit for each and every massage establishment and each and every person providing massage services as required by this chapter.

(b) A massage establishment or massage therapist permit issued pursuant to the terms of this chapter shall be valid for a term of one (1) year from the date of issuance. A permit that has not been suspended or revoked may be renewed for another one-year period, on submittal of a written application and payment of a renewal fee to be established by resolution of the City Council. An application for renewal shall be filed at least thirty (30) days but not more than sixty (60) days prior to the expiration date of the current valid permit. Except as specifically provided otherwise in this chapter, an application for renewal shall be in the same form, and shall be subject to the same requirements, as an initial permit application.

(c) No massage establishment or massage therapist permit may be sold, transferred or assigned by permittee, or by operation of law, to any other person or persons.

(§ 1, Ord. 015-04, eff. November 18, 2004)

Sec. 5-3.05. Permit application - Fees.

(a) Any applicant for a permit to operate a massage establishment or to act as a massage therapist shall make application to the Chief of Police upon a form provided by the City. The applicant, if an individual, or if a partnership or corporation, the designated responsible managing officer, shall personally appear. Prior to submitting such application, a nonrefundable fee as set by resolution of the City Council shall be paid to the City. A copy of the receipt shall accompany the application;

(b) Permits and fees required by this section shall be in addition to any license, permit or fee required under any other section or chapter of this Code;

(c) The application for permit does not authorize conducting a massage establishment or acting as a massage therapist until such time as the permit has been granted.

(§ 1, Ord. 015-04, eff. November 18, 2004)

Sec. 5-3.06. Permit application - Contents.

Any applicant for a permit pursuant to this chapter shall submit the following information:

(a) The full name, date of birth, current residence address, business address, and telephone numbers; California driver's license number or California identification number and social security number, if any; any other names or aliases, including nicknames, used within five (5) years immediately prior to the date of filing the application; each residence and business address for the five (5) years immediately prior to the date of filing the application;

(b) The massage or similar business license or permit history of the applicant, whether such person, in previously operating in this or any other city or state under license or permit, has had such license or permit revoked or suspended and the reason therefor; and the business activity or occupation subsequent to such action of suspension or revocation; the name and address of any massage business or other establishment currently owned or operated by the applicant wherein the business of massage is conducted;

(c) Any conviction, forfeiture of bond, or plea of nolo contendere upon any criminal violation or City ordinance violation (except minor traffic violations), within a five-year period, and, if any, the place and court in which such conviction, pleas or forfeiture was heard, the specific charge, and the sentence imposed as a result thereof;

(d) Whether the applicant has ever been convicted of a crime specified in Section 51032 of the Government Code and if so, the circumstances thereof and the sentence therefor;

(e) The applicant shall be required to furnish fingerprints for the purpose of establishing identification. Any required fingerprinting fee will be the responsibility of the applicant;

(f) Authorization for the city, its agents and employees, to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the permit; and

(g) Such other identification and information as may be necessary to verify the truth of the matters herein specified as required to be set forth in the application. Falsification of any of the required information shall be deemed sufficient reason for denial of the application.

(h) Any applicant for a massage therapist permit pursuant to this chapter shall submit the following additional information:

(1) The name, address and phone number at which the applicant will be employed or in the case of persons providing massage at various locations throughout the City, a permanent address other than a post office box, associated with the business, usually the location for which a City business license has been issued. A massage therapist operating in more than one (1) location need not obtain a separate permit for each location within the City, provided the application discloses each location at which the therapist may operate.

(2) Massage therapist applicants must produce a transcript evidencing successful completion a minimum of two hundred (200) hours of instruction in massage or physical therapy at a recognized school of massage or physical therapy. Applicants with less than the required minimum of two hundred (200) hours may apply for a one-time exemption provided that the applicant has at least one hundred twenty-five (125) hours of approved instruction and the applicant submits a plan to achieve the required minimum hours within the next twelve (12) months.

(i) Any applicant for a massage establishment permit pursuant to this chapter shall submit the following additional information:

(1) The type of ownership of the business, i.e., whether individual, partnership, corporation or otherwise. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the names and residence addresses of each of the officers, directors, and each and every majority stockholder. If the applicant is a partnership, the application shall set forth the name and residence address of each of the partners, including limited

partners. If one (1) or more of the partners is a corporation, the provisions of this section pertaining to a corporate applicant shall apply.

(2) The exact name, including any fictitious name, if applicable, under which the business is to be operated; a description of the service(s) to be provided; the present or proposed address where the business is to be conducted; a description of any other business to be operated on the same premises or on adjoining premises owned or controlled by the applicant;

(3) A complete list of the names and residence addresses of all massage therapists, employees and attendants in the business, including the operator, and all principals;

(4) The name and address of the record owner and lessor of the real property upon or in which the massage establishment is to be conducted, and a copy of the lease or rental agreement. If the applicant is not the legal owner of the property, the application must be accompanied by a notarized acknowledgment from the record owner of the property that a massage establishment will be located on said property.

(j) Any application for renewal of a permit shall contain all the information set forth in this section; however, such information shall only be required as to the period of time between the date of the prior application and the date of the renewal application.

(§ 1, Ord. 015-04, eff. November 18, 2004)

Sec. 5-3.07. Permit investigation and issuance procedures.

(a) Upon receipt of a written application for a permit, the Chief of Police shall conduct an investigation in order to ascertain whether such permit should be issued as requested. Upon the completion of the investigation, the Chief of Police shall issue the permit if he finds:

(1) The required fee has been paid; the application conforms in all respects to the provisions of this chapter; and the applicant has not made a material misrepresentation in the application;

(2) The applicant has not been convicted in a court of competent jurisdiction of an offense specified in Section 51032 of the Government Code;

(3) The applicant has not had a massage establishment, massage therapist, or other similar permit or license denied, revoked, or suspended by the City, or any other state or local agency prior to the date of approval;

(4) The applicant is at least eighteen (18) years of age;

(5) The massage establishment as proposed by the applicant would comply with all applicable laws, including, but not limited to health, zoning, fire and safety requirements and standards.

(6) The massage therapist applicant has successfully completed a minimum of two hundred (200) hours of instruction in massage or physical therapy at a recognized school of massage or physical therapy prior to issuance of the permit or the applicant has applied for an exemption from this requirement and has completed one hundred twenty-five (125) hours, has submitted a plan to complete the remaining hours and has not previously utilized this exemption.

(b) The Chief of Police shall render a decision to approve, conditionally approve, or deny the application within thirty (30) days of the filing of the completed application.

(1) The Chief of Police's decision shall be hand delivered or sent to the applicant via certified mail to the address shown on the application. The foregoing thirty-day deadline is directory only; failure to meet such deadline shall not affect the power of the Chief of Police to deny, or otherwise act on such application.

(2) If relevant Department of Justice state summary criminal history information has not been received within the investigation period, the Chief of Police is authorized to issue a temporary permit. A final decision granting or denying a permit shall be made after receipt of such summary criminal history information. If the permit is granted, its effective date shall be the date of issuance of the temporary permit. If the permit is denied, the temporary permit shall expire upon notice of denial.

(c) To aid in the determination of whether to issue a permit pursuant to this chapter, the City Manager may direct the Planning Department, Building Division, the Fire Department, and the County Department of Health Services to inspect the premises proposed to be devoted to the massage establishment and may make recommendations to the Chief of Police concerning compliance with the foregoing provisions. If the establishment is not in compliance with the provisions of this chapter, the City Manager shall direct the appropriate department to issue a letter to such effect to the applicant with a copy to the City setting forth the deficiencies and if a letter of full compliance is not issued within ninety (90) days of the application, it shall be deemed withdrawn and a new application must be filed.

(d) If the Chief of Police, following an investigation of the applicant, deems that the applicant does not fulfill applicable requirements of this chapter, he shall deny said application.

(e) The Chief of Police may issue a conditional permit to a massage therapist that has operated a massage establishment, home visit or outcall service within the City for the past twelve (12) month period immediately prior to the adoption of this chapter and does not currently possess the minimum educational requirements set forth in section 5-3.06(h)(2) of this chapter. The Chief of Police may issue the conditional permit if the massage therapist can document the operation of the massage business with proof of having obtained and/or maintained a valid City of Yuba City business license and/or documented proof of business operation on State and/or Federal income tax returns. The conditional permit may be issued for no longer than one (1) year and be renewed one (1) time. During the term of the conditional permit, the permittee shall obtain the requirements set forth in section 5-3.06(h)(2) of this chapter.

(f) Any interested party shall have the right of appeal as set forth in this chapter.

(§ 1, Ord. 015-04, eff. November 18, 2004)

Sec. 5-3.08. Facilities and operating requirements.

(a) No permit to conduct a massage establishment shall be issued unless an inspection is made under the provisions of this chapter and it is determined that the establishment complies with each of

the following minimum requirements; and a permit previously issued shall be revoked if the following facilities and operating requirements are not met:

(1) A recognizable and readable sign shall be posted at the main entrance identifying the establishment as a massage establishment; provided, that all such signs shall comply with the sign requirements of the City, and such sign shall not reasonably suggest that the services other than those identified in this chapter are available.

(2) Minimum lighting shall be provided in accordance with the Uniform Building Code, and adequate lighting shall be provided in each enclosed room or booth where massage services are being performed on a patron.

(3) Adequate equipment for disinfecting and sterilizing instruments used in performing the acts of massage shall be provided.

(4) Adequate bathing, dressing, and locker facilities will be required if the type of massage service offered reasonably requires such facilities. Toilet facilities and hot and cold running water shall be provided for all patrons.

(5) No massage therapist or operator shall require patrons to leave personal belongings in a location separate from where the massage services are being offered to that patron.

(b) Each holder of a massage establishment or massage therapist permit shall display that permit in an open and conspicuous place on the premises of the massage establishment or where the massage services are being provided. The home address of any permittee need not be displayed.

(c) All employees, massage therapists, and attendants shall wear clean outer garments. The garments shall provide a complete covering by fully opaque material of the genitals, genital area, buttocks and female breasts of such employees, massage therapists, and attendants. No massage establishment employing a massage therapist shall be equipped with "one-way" glass in any room or office where massage services are being offered.

(d) The operator of a massage establishment must be registered with the Chief of Police by the owner to receive all complaints and be responsible for all violations taking place on the premises. The violation upon the premises of any massage establishment of any provision of this chapter by any agent, employee or independent contractor of the holder of a massage business permit shall constitute a violation by the permittee.

(e) All activity associated with administration of massages and/or conducting a massage establishment shall cease at 10:00 p.m. and not begin again until 6:00 a.m. Each massage establishment shall have at least one (1) person who has a valid massage therapist's permit on the premises at all times while the establishment is open for business. The entrance door to the massage establishment is to remain unlocked during business hours and may not be secured by the use of electronic, mechanical or video surveillance or any other means which restrict the access of persons attempting to enter the premises.

(f) The operator of a massage establishment shall maintain a register of all persons employed as massage therapists and their permit numbers. Such register shall be available for inspection by representatives of the City at any time during the establishment's business hours.

(g) A list of services and the cost of such services shall be posted, in English and such other languages as may be convenient to communicate such services, in an open public place within the premises and shall be described in readily understandable terms. No owner, manager, operator, responsible managing employee or permittee shall permit, and no massage therapist shall offer to perform, any service other than those posted.

(h) No person or persons shall be allowed to live inside the massage establishment at any time. All living quarters shall be separate from the massage establishment. No food of any kind shall be prepared for sale or sold in the establishment with the exception of a bona fide food vending machine.

(i) No person shall enter, be or remain in, any part of a massage establishment, while massage services are being offered, while in possession of, consuming, or using any alcoholic beverage or drugs except pursuant to a prescription for such drugs. The owner, operator, responsible managing employee, manager, or permittee shall not permit any such person to enter or remain upon such premises.

(j) No massage establishment shall operate as a school of massage, or use the facilities as that of a school of massage.

(k) No massage establishment or massage therapist licensed under the provisions of this chapter shall place, publish, distribute, disseminate or broadcast, or cause to be placed, published, distributed, disseminated or broadcasted, any advertising matter that would reasonably suggest to prospective patrons that any service is available other than those services described in this chapter, nor shall any massage establishment or massage therapist indicate in the text of any advertising that any service is available other than those services described in this chapter.

(§ 1, Ord. 015-04, eff. November 18, 2004)

Sec. 5-3.09. Permit suspension and revocation.

(a) Any permit may be revoked or suspended by the Chief of Police where it is found that the permittee has violated any provisions of this chapter; or is a person who has been convicted of a crime specified in Government Code §51032; or has failed to comply with one (1) or more of the facilities and operations requirements; or has engaged in fraud, misrepresentation or false statement in conducting the massage establishment or in the application for a massage establishment or massage therapist permit; or has continued to operate the massage establishment after the permittee has been suspended; or has allowed a person to work as a massage therapist or trainee who does not have a valid permit.

(b) The Chief of Police shall give prior written notice of a hearing for the revocation or suspension of any permit granted pursuant to this chapter to the holder of the permit. The notice shall set forth the time and place of the hearing, the ground or grounds upon which the hearing is based, the pertinent Code sections, and a brief statement of the factual issues in support thereof. The notice shall be mailed, postage prepaid, addressed to the permittee at the last known address of the permittee, or it shall be delivered to the permittee personally, at least ten (10) days prior to the hearing date.

(c) Within ten (10) days of the hearing, the Chief of Police shall render his or her opinion in writing, stating his or her findings and the action taken, if any. The decision shall be mailed, postage prepaid, to the last known address of the permittee, or delivered to the permittee personally. Within

ten (10) days from the deposit of the decision in the mail or its receipt by the permittee, whichever occurs first, the permittee may appeal the decision as provided in this chapter.

(§ 1, Ord. 015-04, eff. November 18, 2004)

Sec. 5-3.10. Appeal procedure.

Upon any permit required by this chapter being denied, suspended or revoked, as specified in this chapter, any interested person, within fifteen (15) days after notice thereof has been transmitted by hand delivery or certified mail, may file a written request with the City Clerk for a hearing by the City Council to review such denial, suspension or revocation. Upon the filing of such a request, the City Clerk shall set such hearing within forty-five (45) days and, unless waived in writing by such person, shall serve a notice of the time and place thereof by registered or certified mail to the person making such request at the address shown therein at least fifteen (15) days in advance of such hearing. The Council may affirm the denial, revocation or suspension, or order the issuance or reinstatement of any permit upon issuance of findings in support of its decision.

(§ 1, Ord. 015-04, eff. November 18, 2004)

Sec. 5-3.11. Prohibited conduct.

It is unlawful for any massage therapist, attendant, employee, patron or other person to massage, or touch in any manner, the specified anatomical areas of any other person, upon the premises of a massage establishment or while administering a massage.

(§ 1, Ord. 015-04, eff. November 18, 2004)

Sec. 5-3.12. Violation - Penalty.

(a) Every person, except those persons who are specifically exempted by particular provisions in this chapter, whether acting as an individual, owner, employee of the owner, operator, or employee of the operator, or whether acting as a participant or worker in any way, who does or practices any of the other things or acts mentioned in this chapter for which a permit is required, without first obtaining a valid permit from the City, is guilty of a misdemeanor.

(b) Any owner, operator, manager or permittee in charge of or in control of a massage establishment who knowingly employs a person who performs or offers to perform a massage as defined in this chapter, who is not in possession of a permit under this chapter is guilty of a misdemeanor and such shall be grounds for revocation or suspension of the massage establishment permit issued under this chapter.

(c) Any massage establishment operated, conducted, or maintained contrary to the provisions of this chapter shall be, and the same is declared to be, unlawful and a public nuisance, and the City Attorney or the District Attorney may, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or proceeding for the abatement, removal and enjoyment thereof, in the manner provided by law; and he shall take such other steps and shall apply to such court as may have jurisdiction to grant such relief as will abate or remove such massage establishment and restrain and enjoin any person from operating, conducting, or maintaining a massage establishment contrary to the provisions of this chapter.

(d) Any failure or refusal of the owner, operator, manager, or permittee under this chapter to allow inspections of the premises or to make immediately available for inspection the records and documents specified by this chapter upon demand by the Chief of Police during the operating hours of an establishment shall be a violation of the provisions of this chapter and shall be grounds for revocation or suspension of the massage establishment permit pursuant to which the establishment is operated.

(§ 1, Ord. 015-04, eff. November 18, 2004)

Sec. 5-3.13. Change of location or name.

(a) No massage establishment shall move from the location specified on its permit until a change of location fee in the sum set by resolution of the City Council has been paid to the City of Yuba City, and

approval has been obtained from the Chief of Police. Such approval shall not be given unless all requirements and regulations, as contained in the City's codes, have been met.

(b) No permittee shall operate, conduct, manage, engage in, or carry on the business of massage establishment under any name other than his or her name and the name of the massage establishment as specified on his or her permit.

(c) Any application for an extension or expansion of a building or other place of business where a massage establishment is located shall require inspection and shall comply with the provisions and regulations of this chapter and all other City ordinances including zoning ordinances.

(§ 1, Ord. 015-04, eff. November 18, 2004)

Sec. 5-3.14. Applicability of regulations to existing massage establishments.

All persons who possess a business license issued by the City to operate a massage establishment must apply for a permit and shall be issued a permit within ninety (90) days of the effective date of the ordinance codified in this chapter if they qualify under the provisions of this chapter, and in any event any license issued under this chapter prior to the effective date of said ordinance shall be null and void upon the passage of ninety (90) days from the effective date of said ordinance unless a valid massage establishment permit has been obtained.

(§ 1, Ord. 015-04, eff. November 18, 2004)

Sec. 5-3.15. Outcall massage services.

(a) No person shall provide massage services as described in this chapter at any place other than at a massage establishment permitted pursuant to this chapter unless that person possesses a valid massage therapist permit endorsed for outcall services.

(b) Any person performing outcall massage services shall maintain written record, at the massage therapist's principal place of business, of all outcall massage services performed. Record shall be made of each appointment at which massage services were provided and shall include date and time; patron's full name and address; and address where services were provided. These records shall be retained for at least two (2) years beyond the date services were provided, shall be open to inspection upon request only by officials charged with enforcement of this chapter, shall only be used to ensure compliance with this chapter and shall remain confidential.

(c) Outcall 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. Outcall massage services may only be provided between the hours of 6:00 a.m. and 10:00 p.m. daily.

(§ 1, Ord. 015-04, eff. November 18, 2004)

Sec. 5-3.16. Home occupation exception.

An exception to the requirements of those parts of Section 5-3.08 which require exterior signs and prohibit living quarters and keeping or possessing alcoholic beverages on the premises of a massage establishment, shall be allowed where a massage establishment is in the applicant's residence, and the applicant has complied with the provisions of Title 8, Chapter 5.5002(b) of this Code pertaining to home occupations as defined in Title 8, Chapter 5.8027. When a home exception is granted under this section, the portions of the home or residence subject to the requirements of Section 5-3.08 shall be only those portions that are used at any time by the patron or customer.

(§ 1, Ord. 015-04, eff. November 18, 2004)

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