

CITY OF RIVERBANK

ORDINANCE 2024-004

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVERBANK,
CALIFORNIA, AMENDING THE RIVERBANK MUNICIPAL CODE BY AMENDING
SECTION §119.01 THROUGH §119.23 RELATED TO MASSAGE/BODYWORK
ESTABLISHMENTS**

WHEREAS, the proposed amendments to the Riverbank Municipal Code would amend Sections of Title XI: Business Regulation, Chapter 119: Massage/Bodywork Establishments; and

WHEREAS, the amendment is exempt according to the California Environmental Quality Act (CEQA) Article 5 §15061(b)(3) by the “Common Sense Exemption” that CEQA applies only to projects that have a potential for causing a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment;

**NOW, THEREFORE THE CITY OF RIVERBANK CITY COUNCIL DOES ORDAIN
AS FOLLOWS:**

SECTION 1: Title XI: Business Regulation, Chapter 119: Massage/Bodywork Establishments shall be amended as follows (removed language is represented in strikethrough and added language is represented in underline text):

GENERAL PROVISIONS

§ 119.01 LEGISLATIVE PURPOSE.

(A) It is the purpose and intent of this chapter to provide for the orderly regulation of the massage/bodywork businesses and massage practitioners in the city and to comply with state regulations.

(1) The city recognizes massage is a viable professional field offering the public health and therapeutic services, including but not limited to, massage and bodywork therapies. The permit requirements and restrictions imposed by this chapter are reasonably necessary to protect the health, safety and welfare of the citizens of the city.

(2) This chapter establishes minimum standards for massage and bodywork practitioners and their business establishments so as to protect and safeguard the public health, safety and welfare.

(3) The city is authorized, by virtue of the California Constitution and Cal. Gov't Code §§ 51030 *et seq.*, to regulate massage establishments by imposing reasonable standards relative to the skill and experience of massage operators and massage practitioners and reasonable conditions on the operation of massage establishments.

(B) It is the purpose and intent of the city that massage/bodywork establishments and persons offering such services be regulated so as to ensure that such persons possess the minimum qualifications necessary to operate such businesses and to perform the services offered, and to ensure that those offering these services conduct their work in a lawful and professional manner, and comply with required building, sanitation, and health standards.

(C) There is significant risk of injury to massage clients by improperly trained and/or educated massage practitioners 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 that massage is a pervasively regulated activity and brothels might attempt to operate as massage establishments. The establishment of reasonable standards for issuance of permits and restrictions on operations would serve to reduce the risk of illegal activity without significantly burdening legitimate businesses.

(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.

(Ord. 2006-003, passed 3-13-06; Am. Ord. 2008-004, passed 3-10-08)

§ 119.02 DEFINITIONS.

For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

~~**BONA FIDE NONPROFIT CLUB.** Any fraternal, charitable, religious, benevolent, or other nonprofit organization having a regular membership association primarily for mutual social, mental, political, and civic welfare, to which admission is limited to the members and guests, and the revenue accruing therefrom is to be used exclusively for the benevolent purposes of such organization, and which organization or agency is exempt from taxation under the internal revenue laws of the United States as a bona~~

~~file fraternal, charitable, religious, benevolent, or nonprofit organization, and in which massage or bath services are provided incidental to its primary operation.~~

CALIFORNIA MASSAGE THERAPY COUNCIL (CAMTC). The non-profit organization created to regulate the massage industry set forth in Chapter 10.5 of Division 2 of the Business and Professions Code of the state (commencing with Section 4600).

CAMTC CERTIFICATE. A current and valid certificate issued by the CAMTC to a certified massage therapist or certified massage practitioner pursuant to Section 4600 et seq. of the California Business and Professions Code.

CERTIFIED MASSAGE PRACTITIONER. Any individual certified by the CAMTC as a massage therapist or massage practitioner pursuant to Section 4600 et seq. of the California Business and Professions Code.

CERTIFIED TRANSCRIPTS. Course transcripts that are received sealed by the Police Department from a recognized school of massage or qualified massage educational program.

CITY COUNCIL. The City Council of the City of Riverbank.

CITY MANAGER. The City Manager of the City of Riverbank or his or her designated representative.

COMPENSATION. A payment, loan, advance, donation, contribution, deposit, or gift of money, or anything of value.

CONVICTION and **CONVICTED.** A plea or verdict of guilty or a conviction following a plea of *nolo contendere*.

EMPLOY. Includes contracting with independent contractors.

EMPLOYEE. Includes independent contractors.

HEALTH DEPARTMENT. The Stanislaus County Health Department.

HEALTH OFFICER. The person designated by the city as Health Officer, or his or her authorized representative.

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 with the same liabilities and responsibilities. Evidence of management includes, but is not limited to, evidence that the individual has power to direct or hire and dismiss employees, control hours of operation, create policy or rules or purchase supplies. A manager may also be an operator. A massage practitioner permit is not required to qualify as a manager. A manager may not perform any massage services without first meeting the standards and qualifications of massage practitioner.

MASSAGE. The scientific manipulation of the soft tissues. For purposes of this chapter, the terms "massage" and "bodywork" shall have the same meaning.

MASSAGE/BODYWORK ESTABLISHMENT. Any establishment having a fixed place of business where any person, firm, partnership, association, corporation or combination thereof engages in, carries on, or permits to be engaged in or carried on, any massage/bodywork activity for compensation or any other consideration. Any establishment engaged in, carrying on, or permitting any combination of massage/bodywork and bathhouse is a **MASSAGE ESTABLISHMENT**.

MASSAGE/BODYWORK PRACTITIONER. Any person who for any consideration whatsoever engages in the practice of massage/bodywork techniques as defined in this section, unless otherwise exempted.

MASSAGE/BODYWORK TECHNIQUES. Any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating of the external parts of another human body with the use of the hands, arms, or other portions of the body, or with the aid of any mechanical or electrical apparatus or appliances, with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments, or other similar preparations commonly used in this practice. **MASSAGE** should also include the giving of any baths as listed below under **PUBLIC BATHHOUSE**.

MASSAGE THERAPY ACT. Provisions in Chapter 10.5 of Division 2 of the California Business and Professions Code commencing with Section 4600.

OPERATOR. All persons who have an ownership interest in the massage establishment and are responsible for its day-to-day operations.

OUT-CALL MASSAGE SERVICE. To engage in or perform massage/bodywork for a fee or other consideration at a location other than a duly licensed massage/bodywork establishment or school of massage.

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

POLICE CHIEF. The Police Chief of the City of Riverbank Police Services or his or her designated representative.

POLICE DEPARTMENT. The police services of the City of Riverbank.

PUBLIC BATHHOUSE. Any place, including a private club or organization, except as otherwise provided, wherein any person, firm, association, corporation, or partnership engages in, conducts or carries on, or permits to be engaged in, conducted or carried on, or the giving or furnishing of Russian, Finnish, Swedish, hot air, vapor, electric cabinet, steam, mineral, sweat, salt, Japanese, sauna, fomentation, or electric baths, or baths of any kind whatever, including any form of body shampoo. Ordinary tub baths or showers where an attendant is not required, is excluded.

~~**QUALIFIED MASSAGE EDUCATIONAL PROGRAM.** An educational program, class, or course primarily focused on the theory, ethics, practice, profession or work of massage and meeting one of the following criteria:~~

~~(1) Provided by a recognized school of massage;~~

- ~~_____ (2) Approved by the California Board of Registered Nursing;~~
- ~~_____ (3) Certified by a state or national professional association devoted to the profession of massage; or~~
- ~~_____ (4) Offered by an accredited college or university.~~

~~Correspondence courses not requiring actual attendance shall not be deemed a qualified massage educational program.~~

~~**RECOGNIZED SCHOOL OF MASSAGE.** Any school or institution of learning, registered and/or credentialed with the California State Bureau of Private Post Secondary and Vocational Education, which teaches, through state-certified instructors, the theory, ethics, practice, profession, or work of massage, which school or institution complies with Cal. Education Code §§ 94900 or 94901, and which requires a resident course of study before the student shall be furnished with a diploma or certificate of graduation. Schools offering a correspondence course not requiring actual attendance shall not be deemed a recognized school.~~

REFLEXOLOGY. An integrative health practice that maps a reflection of the body predominantly on the feet, hands and outer ears. It uses unique manual techniques to deliver pressure to neural pathways assisting the body to function optimally.

(Ord. 2006-003, passed 3-13-06; Am. Ord. 2008-004, passed 3-10-08)

APPLICATIONS AND PERMITS

§ 119.03 PERMIT REQUIRED.

(A) It is unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the city, the operation of a massage establishment, as defined in this chapter, without first having obtained a permit from the city after approval by the Police Chief and requisite city officers.

(B) It is unlawful for any person to act as a massage/bodywork practitioner, instructor or trainee, or to take any other position of employment with a massage establishment or school of massage, without possessing a City business license, a valid CAMTC certificate obtained, and maintained in compliance with the Massage Therapy Act, and a permit issued by the Police Chief in accordance with this section.

(Ord. 2006-003, passed 3-13-06; Am. Ord. 2008-004, passed 3-10-08)

§ 119.04 CERTIFICATION REQUIRED

It is unlawful for any person to perform or engage in the practice of massage for compensation within the city without possessing a valid CAMTC certificate obtained and maintained in compliance with the Massage Therapy Act, and a permit issued by the Police Chief in accordance with this section. All persons certified by the CAMTC shall have the right to perform or engage in the practice of massage consistent with the

Massage Therapy Act, the qualifications established by his or her certification, and the provisions of this chapter.

Persons that are granted an exemption from the CAMTC certification requirement by the city will still be required to meet all other terms of this chapter including but not limited to the background check required of massage establishment owners that are not certified by the CAMTC. All persons under this exemption will be required to display, in the same manner this chapter requires the display of CAMTC certification, a separate statement from the city to show that the person has met the requirements of this exemption. This exemption must be renewed annually and the city may establish a non-refundable fee to recover costs associated with such annual renewals.

§ 119.05 BUSINESS LICENSE REQUIRED

(A) It shall be unlawful for any massage establishment to operate, or any independently employed certified massage practitioner or therapist to perform or engage in the practice of massage for compensation within the city, without first obtaining a city business license;

(B) In applying for a city business license, a massage establishment owner shall fill out an application and shall file along with the completed application a copy of the current and valid CAMTC certificate and a CAMTC photo identification card possessed by every person who will be performing or engaging in the practice of massage at the massage establishment;

(C) In applying for a city business license, a certified massage practitioner or therapist who will be independently employed shall fill out an application and shall file along with the completed application a copy of his or her current and valid CAMTC certificate and a CAMTC photo identification card;

(D) Prior to the issuance of a city business license to any massage establishment or any independently employed certified massage practitioner or certified massage therapist, the police department shall make a reasonable investigation into the information provided in the application, and shall contact the CAMTC to verify the status of the CAMTC certificate(s) filed by the business license applicant;

(E) No city business license shall be issued to a massage establishment that will employ or contract with one or more persons to perform or engage in the practice of massage without that person or persons possessing a current and valid CAMTC certificate;

(F) No city business license shall be issued to a person who wishes to perform or engage in the practice of massage for compensation within the city and who does not possess a current and valid CAMTC certificate

(G) The city may deny a business license to any applicant who has provided materially false information in applying for a business license; and

(H) The chief of police may order that a business license required by this chapter be revoked pursuant to the procedures set forth in §110.26.

§ 119.06 FEES.

The City Council shall establish by resolution, and from time to time may amend the fees for the administration of this chapter. The city may include in this resolution a health services fee schedule prescribing annual fees to be paid by the operator of each massage establishment, such fees to be paid directly to the Health Department and retained by the county as reimbursement for the services related to this chapter. Fees required by this chapter shall be in addition to any required by this code.

(Ord. 2008-004, passed 3-10-08)

§ 119.07 APPLICATION FOR OPERATOR PERMIT.

(A) Any person seeking an operator permit for a massage establishment shall file a written application on the required form with the Police Chief and submit all required documentation. The application shall be accompanied by the appropriate nonrefundable filing fee established by resolution of the City Council. The application shall be completed and signed by the operator, or authorized representative thereof, of the proposed massage establishment. The permit application does not authorize the operation of a massage establishment unless and until such permit has been properly granted. The application shall contain or be accompanied by the following information:

(1) The type of ownership of the business. 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 and residential addresses of each of its current officers and directors, and of each stockholder holding more than 5% of the stock of that corporation. If the applicant is a partnership, the application shall set forth the name and residence of each of the partners, including limited partners. If it is a limited partnership, it shall furnish a copy of its certificate of limited partnership filed with the Secretary of State. If one or more of the partners is a corporation, the provisions of this division (1) pertaining to corporations shall apply. A corporate or partnership applicant shall designate one of its officers or general partners to act as its responsible managing officer. Such designated persons shall complete and sign all application forms required for an individual applicant under this chapter, but only one application fee shall be charged.

(2) The precise name under which the massage establishment is to be conducted.

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

(4) A complete and current list of the names and residential addresses of all proposed massage practitioners and employees in the massage establishment and the name and residential addresses of the manager(s) proposed to be principally in charge of the operation of the massage establishment.

(5) The proposed hours of operation of the massage establishment.

(6) A description of any other business operated on the same premises or within the city or the state which is owned or operated by the applicant.

(7) For each person who will be providing massage therapy, a copy of his or her current certification from CAMTC and a copy of his or her current CAMTC issued identification card. For each owner who is a CAMTC certified massage professional, a copy of his or her current certification from CAMTC and a copy of his or her current CAMTC issued identification card.

(8) The following personal information concerning the operator applicant:

(a) Current address and telephone number and all previous residential addresses for the eight-years preceding the date of the application;

(b) Acceptable proof that the applicant is at least 18 years of age;

(c) Copies of driver's license and Social Security card;

(d) Height, weight, color of hair and eyes, and gender;

(e) Two current "passport" photographs of the applicant, each not exceeding four square inches in size, and being only front views of the face and head;

(f) The applicant's complete business, occupation and employment history for the eight years preceding the date of the application, including, but not limited to, massage or similar business history and experience of the applicant;

(g) The complete massage permit history of the applicant; whether such person has ever held any certification, permit or license issued by any agency, board, city, county, territory or state; the date of issuance of such a certification, permit or license; and whether the certification, permit or license was denied, revoked, or suspended, and the reasons therefore;

(h) All criminal convictions, including pleas of *nolo contendere*, within the last eight years, including those dismissed or expunged pursuant to Cal. Penal Code § 1203.4, but excluding minor traffic violations, and the date and place of each such conviction and explanation thereof;

(i) A complete set of livescan as directed by the Police Department.

(9) The name and address of the owner and lessor of the real property upon which the business is to be conducted. In the event the applicant is not the legal owner of the property, the application must be accompanied by a copy of the lease and a notarized acknowledgment from the owner of the property that a massage establishment will be located on his or her property.

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

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

(12) A statement in writing and dated by the applicant that he or she certifies under penalty of perjury that all information contained in the application is true and correct.

(13) Statements in writing and dated by the applicant and the applicant's designated manager(s) certifying under penalty of perjury that they:

(a) Will only employ or retain CAMTC certified massage professionals, and failure to comply may result in the suspension or revocation of the massage establishment permit;

(b) Have received a copy of this chapter;

(c) Understand its contents; and

(d) Understand the duties of an operator or manager, respectively, as provided by this chapter.

(B) If operator is also going to be a massage practitioner, then all requirements and additional applicable fees, as adopted by city resolution, also must be met and paid prior to the issuance of a permit.

(C) If, during the term of a permit, the permit holder has any change in information submitted on the original or renewal application, the permit holder shall notify the Police Department of such change in writing within ten business days thereafter.

(Ord. 2008-004, passed 3-10-08)

§ 119.08 OPERATOR PERMIT ISSUANCE AND DENIAL.

(A) Upon receipt of a complete permit application, the Police Chief shall conduct an investigation to ascertain whether such permit should be issued as requested. The Police Chief shall, within 60 days of receipt of an application, approve, conditionally approve or deny the application. The 60-day period may be extended for up to 30 additional days, if necessary, to complete the investigation. The Police Chief shall issue such permit as requested, unless he or she makes any of the following findings:

(1) The applicant, or any officers, directors, or partners, or any person directly engaged or employed in the massage establishment, has within the eight-years preceding the date of the application:

(a) Been convicted of a violation of Cal. Penal Code §§ 266, 266a, 266b, 266d, 266e, 266f, 266g, 266h, 266i, 314, 315, 316, 318, 647(a), (b), or (d), or any other provision of law pursuant to which a person is required to register under the provisions of Cal. Penal Code § 290 or when the prosecution accepted a plea of guilty or *nolo contendere* to a charge of a violation of Cal. Penal Code § 415 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 Cal. Health and Safety Code § 11550 or any offense involving the illegal sale, distribution, or possession of a controlled substance specified in Cal. Health and Safety Code §§ 11054, 11055, 11056, 11057, or 11058;

(c) Been convicted of any offense in any other state which is the equivalent of any of the above-mentioned offenses;

(d) Been subjected to a permanent injunction against the conducting or maintaining of a nuisance pursuant to Cal. Penal Code § 11225 *et seq.*, or any similar provisions of law in a jurisdiction outside the State of California;

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

(f) Has had an operator or massage technician permit or other similar certification, permit or license denied, suspended or revoked for cause by a licensing authority or by any city, county or state.

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

(3) The application does not contain all of the information required by § 119.09.

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

(5) The applicant has not satisfied the requirements of this chapter in the time specified.

(6) Any individual offering or performing Massage at or on behalf of a Massage Business is not in possession of valid CAMTC certificate.

(7) If the application is denied for failure to comply with division (A)(2) or (3) of this section, the applicant may not reapply for a period of six months from the date the application was denied.

(B) All operators and managers shall comply with the following conditions to the operator permit and any other reasonable conditions imposed by the Police Chief:

(1) *Prohibited massage areas.* Except to the extent required, in writing, by a state-licensed medical practitioner, no massage practitioner shall massage the genitals or anal area of any patron or the breast(s) of any female patron, nor shall any operator or manager of a massage establishment allow or permit such massage pursuant to Cal. Business and Professions Code § 4609. No operator or manager, while performing any task or service associated with the massage establishment, shall be present in any room with another person unless the person's genitals, gluteal crease, anus or, in the case of a female patron, breast(s), are fully covered.

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

(3) *Manager on premises.* The massage establishment shall have a manager on the premises at all times during hours of operation. The operator(s) shall file a statement with the Police Chief designating the person with power to act as a manager. The operator shall also file with the Police Chief a statement, signed and dated by each manager designated after permit issuance, certifying under penalty of perjury that they:

- (a) Have received a copy of this chapter;
- (b) Understand its contents; and
- (c) Understand the duties of a manager as provided in this chapter.

(4) *Licensed massage practitioner on premises.* During the hours of operation, the massage establishment shall have at least one massage practitioner holding a current valid certificate issued by the CAMTC on the premises and on duty at all times.

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

(6) *Certified massage practitioners.* The operator or manager shall not employ any person as a massage practitioner who does not have a valid CAMTC certificate. The operator shall report to the Police Chief any change of employees, whether by new or renewed employment, discharge or termination, on the form and in the manner required by the Police Chief. The report shall contain the name of the employee and the date of hire or termination. The report shall be made within five days of the date of hire or termination. The operator shall deliver the permit and photo identification card of any massage practitioner no longer employed by the operator to the Police Chief within five days of employment termination.

(7) *Insurance.* No person shall engage in, conduct, or carry on the business of a massage establishment unless there is on file with the Police Chief, in full force and effect at all times, documents issued by an insurance company authorized to do business in the state evidencing that the operator is insured under a liability insurance policy providing minimum coverage of \$500,000 for injury or death arising out of the operation of the massage establishment and/or the administration of a massage. Each operator shall provide the Police Chief with evidence of insurance within 45 days prior to the date of issuance of the permit.

(8) *Compliance with code.* The operator shall comply with all provisions of this chapter and any applicable provisions of the Riverbank Municipal Code.

(9) *Inspections and searches.* By applying for a permit, the operator consents to the inspection of the massage establishment by the city's Building Department, Police Department, Fire Department, and Health Department for the purpose of determining that the provisions of this chapter or other applicable laws or regulations are met. The operator consents to the inspection of the occupied massage rooms by the Police Department for the purpose of determining that the provisions of this chapter are met upon occurrence of any of the conditions described in § 119.14(B)(17) which would require the posting of the notice to all patrons.

(Ord. 2008-004, passed 3-10-08)

§ 119.09 APPLICATION FOR MASSAGE PRACTITIONER/EMPLOYEE.

(A) Any person seeking a massage practitioner permit shall file a written application on the required form with the Chief of Police. The application shall be accompanied by the appropriate non-refundable filing fee established by resolution of the City Council. The application shall be accompanied by the required supporting documentation. The application shall contain the following information:

(1) A statement of the exact location at which the applicant will be working as a massage practitioner, including the full street address and all telephone numbers associated with the location.

(2) The following personal information of the practitioner applicant:

(a) Full complete name and all aliases used by the applicant;

(b) Current address and telephone number and all previous residential addresses for the eight years preceding the date of the application;

(c) Acceptable written proof that the applicant is at least 18 years of age;

(d) Driver's license and Social Security card;

(e) Height, weight, color of hair and eyes, and gender;

(f) Two current "passport" photographs of the applicant, each not exceeding four square inches in size, and being only front views of the face and head;

(g) The applicant's business, occupation and employment history of the applicant for the eight years immediately preceding the date of the application, including, but not limited to, massage or similar business history and experience of the applicant;

(h) The complete massage permit history of the applicant: whether such person has ever had any permit or license issued by any agency, board, city,

county, territory or state; the date of issuance of such a permit or license; and whether the permit or license was denied, revoked or suspended, and the reasons therefore.

(3) All criminal convictions, including pleas of *nolo contendere*, within the last eight years, including those dismissed or expunged pursuant to Cal. Penal Code § 1203.4, but excluding minor traffic violations, and the date and place of each such conviction and explanation thereof.

(4) A complete set of livescan as directed by the Police Department.

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

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

(7) A statement in writing and dated by the applicant that he or she certifies under penalty of perjury that all information contained in the application is true and correct.

(8) Statements in writing and dated by the applicant certifying under penalty of perjury that he or she:

(a) Has received a copy of this chapter;

(b) Understands its contents; and,

(c) Understands the duties of a massage practitioner as provided in this chapter.

(9) For each person who will be providing massage therapy, a copy of his or her current certification from CAMTC and a copy of his or her current CAMTC issued identification card. For each owner who is a CAMTC certified massage professional, a copy of his or her current certification from CAMTC and a copy of his or her current CAMTC issued identification card.

~~(a) The Police Chief may consider an applicant's study of massage completed outside of the state if proof of completion from a formalized course of study massage practice, anatomy, and/or physiology is provided with the application. Proof of completion shall include dates of study and the name, address, and phone number of the school attended, the original diploma or certificate, and certified transcripts of graduation.~~

~~(b) Any out-of-state course of study submitted for approval shall meet the State of California's Office of Post-Secondary Education's minimum requirements and be for completion of 500 hours of on-premises training.~~

(B) If, during the term of a permit, a permit holder has any change in information submitted on the original or renewal application, the permit holder shall notify the Police Department of such change in writing within ten business days thereafter.

(Ord. 2006-003, passed 3-13-06; Am. Ord. 2008-004, passed 3-10-08)

§ 119.10 MASSAGE PRACTITIONER PERMIT ISSUANCE AND DENIAL.

(A) Upon receipt of a complete permit application, the Police Chief shall conduct an investigation to ascertain whether such permit should be issued as requested. The Police Chief shall approve, conditionally approve, or deny the application within 60 days of the filing of an application. The 60-day period may be continued for up to 30 additional days, if necessary, to complete the inspection. The Police Chief shall issue such permit as requested, unless he or she makes any of the following findings:

(1) The applicant has, within eight years preceding the date of the application, been convicted of any of the following:

(a) A violation of Cal. Penal Code §§ 266, 266a, 266b, 266d, 266e, 266f, 266g, 266h, 266i, 314, 315, 316, 318, 647(a), (b), or (d) or that the applicant is required to register under the provisions of Cal. Penal Code § 290 or when the prosecution accepted a plea of guilty or *nolo contendere* to a charge of a violation of Cal. Penal Code § 415 or any lesser included or lesser related offense in satisfaction of, or as a substitute for, any of the previously listed crimes;

(b) A violation of Cal. Health and Safety Code § 11550 or any offense involving the illegal sale, distribution, or possession of a controlled substance specified in Cal. Health and Safety Code §§ 11054, 11055, 11056, 11057 or 11058;

(c) Any offense in any other state which is the equivalent of any of the above-mentioned offenses; or

(d) An act involving dishonesty, fraud, deceit, or moral turpitude, or an act of violence, which act or acts are substantially related to the qualifications, functions, or duties of a massage practitioner.

(2) The applicant has had an operator permit or massage practitioner permit or other similar license or permit denied, suspended, or revoked for cause by a licensing authority or by any city, county or state within eight years prior to the date of the application.

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

(4) The application does not contain the information required by § 119.07.

(5) The applicant has not satisfied the requirements of this chapter in the time specified.

(6) If the application is denied for failure to comply with divisions (A)(3) or (4) of this section, the applicant may not reapply for a period of six months from the date the application was denied.

(B) All massage practitioners shall comply with the following conditions and any other reasonable conditions specified by the Police Chief on issuance of the massage practitioner permit.

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

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

(3) *Identification cards.* The massage practitioner shall wear a photo identification card prepared and issued by the city at all times when present in the massage establishment. Such identification shall be provided to city regulatory officials upon demand. The identification card shall be placed on outer clothing with the photo side facing out. If a massage practitioner changes his or her business address, he or she shall, prior to such change, obtain from the Police Chief a new photo identification card and advise the Police Department, in writing, of the new business address.

(4) *Massage locations.* Massage practitioner shall not perform any massage at any location other than the massage establishment specified on the permit.

(5) *Names.* While on duty, the massage practitioner shall not use any name other than that specified on the photo identification card.

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

(7) *Inspections and searches.* The massage practitioner consents to the inspection of the massage establishment by the city's Building Department, Police Department, Fire Department, and Health Department for the purpose of determining that the provisions of this chapter or other applicable laws or regulations are met. The massage practitioner consents to the inspection of the occupied massage rooms by the Police Department for the purpose of determining that the provisions of this chapter are met upon occurrence of any of the conditions described in § 119.14(B)(17) which would require the posting of the notice to all patrons.

(8) *Continuing education.* On an annual basis, the massage practitioner shall complete no fewer than 12 hours of continuing education in the practice of massage from a qualified massage educational program.

(Ord. 2008-004, passed 3-10-08)

§ 119.11 APPLICATION/OPERATION SCHOOL OF MASSAGE.

Every application for a school of massage shall be accompanied by:

(A) Proof of approval from the CAMTC, pursuant to California Business and Professions Code Section 4600 et seq.;

(B) Proof of approval pursuant to Cal. Education Code §§ 94900 or 94901;

(C) A statement of the educational and experience qualifications, and the names and residence addresses of all directors, administrators, and instructors;

(D) A copy of the course outline, schedule of tuition, fees and other charges, regulations pertaining to tardiness and absence grading policy, and rules of operation and conduct;

(E) A school of massage permit shall not be issued for the same location as a massage/bodywork establishment.

(Ord. 2006-003, passed 3-13-06; Am. Ord. 2008-004, passed 3-10-08)

§ 119.10 APPLICATION, HEALTH CERTIFICATE.

~~—Every application filed by a person shall be accompanied by a certificate, from a physician licensed to practice medicine in the state that the applicant has been tested within the previous 30 days in a manner to be approved by the Health Officer, and has been found to be free of all contagious, infectious, and communicable disease.~~

(Ord. 2006-003, passed 3-13-06; Am. Ord. 2008-004, passed 3-10-08)

§ 119.12 VERIFICATION.

Every application for a permit under this chapter shall be verified by affidavit, declaration, or certification under penalty of perjury as provided in the California Code of Civil Procedure.

(Ord. 2006-003, passed 3-13-06; Am. Ord. 2008-004, passed 3-10-08)

§ 119.13 REFERRAL TO OTHER DEPARTMENTS.

(A) Copies of an application for a massage establishment or school of massage permit shall be referred to the Building Inspector, the Fire Marshal, the Health Officer and the Police Chief, who shall review facility plans and inspect the premises proposed to be operated as a massage establishment.

(B) All other applications shall be referred to the Health Officer and the Police Chief for their approval or written recommendations.

(Ord. 2006-003, passed 3-13-06; Am. Ord. 2008-004, passed 3-10-08)

REQUIREMENTS AND RESTRICTIONS

§ 119.14 MASSAGE ESTABLISHMENT, GENERALLY.

(A) *Facilities.*

(1) *Structure.* Massage establishments shall be located in a zoning district which permits such use. Prior to a proposed massage establishment being constructed or opened for business, seven sets of plans shall be submitted to the city and the Health Department for approval and shall be accompanied by the appropriate non-refundable facility review plan fee as adopted by city resolution.

(2) *Signs; display of permits.* Each operator shall post and maintain, in compliance with existing state and city laws, a readable sign identifying the premises as a massage establishment. The sign and the front of the business shall not be illuminated by strobe or flashing lights. Each operator and/or on-duty manager shall display the operator permit in a conspicuous public place in the lobby of the massage establishment. Each operator and/or on-duty manager shall ensure the CAMTC certificate for each massage practitioner employed at the establishment (whether on duty or not) is conspicuously displayed in a public place in the lobby, and that each massage practitioner is wearing the required identification at all times wherein the massage establishment. The operator and/or on-duty manager must also post, on a daily basis in a conspicuous public place in the lobby, the name of the operator and on-duty manager, as well as all on-duty massage practitioners. Finally, the hours of operation must be posted in the front window and clearly visible from the outside.

(3) *Services list.* Each operator shall post and maintain a list of available services, in bold letters not less than one inch in height, and the cost of such services in a conspicuous public place within the premises. No massage establishment may offer baths as a service. No operator or on-duty manager shall permit, and no massage practitioner shall offer or perform, any service or activity other than those posted. No sum shall be charged for such massage services greater than that shown on the services list.

(4) *Lighting.* Each operator shall provide in each room where massage is given sufficient lighting and ventilation that complies with the Uniform Building Code. The lighting in each massage room shall be activated at all times while the patron is in such room or enclosure.

(5) *Restroom 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 massage services. A permanently installed soap dispenser, filled with soap, and a single service towel dispenser shall be provided at the restroom hand wash sink. No bar soap may be used. A trash receptacle shall be provided in each toilet room. Showers may be provided at the operator's option.

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

(7) *Maintenance.* All facilities for the massage establishment must be in good repair and shall be thoroughly cleaned and sanitized each day the business is in operation. All walls, floors, and ceilings of each restroom and shower area shall be made smooth and easily cleanable. No carpeting shall be installed in any of these areas.

(8) *Massage table.* A massage table shall be provided in each massage room and the massage shall be performed on this massage table, with the exception of "Thai," "shiatsu," and similar forms of massage therapy, which may be provided on a padded mat on the floor, provided the patron is fully attired in loose clothing, pajamas, scrubs, or similar style of garment. The tables should have a minimum height of 18

inches. Two-inch thick foam pads with maximum width of four feet may be used on a massage table and shall be covered with durable, washable plastic or other waterproof material. Beds, floor mattresses, and waterbeds are not permitted on the premises.

(9) *Handicapped areas.* Massage establishments shall comply with all state and federal laws and regulations for handicapped customers.

(10) *Doors.* All front, reception, hallway, or front exterior doors (except back or exterior doors used solely for employee entrance to and exit from the massage establishment) shall be unlocked during business hours, except as may be permitted by applicable law (such as the Uniform Fire Code) which allow for safety doors which may be opened from the inside when locked. Massage establishment may lock its external doors if the massage establishment is a business entity owned by one individual with one or no employees or independent contractors pursuant to Gov. Code 51034 (c)(6). No massage may be given within any cubicle, room, enclosure, or any area within a massage establishment which is fitted with a lock of any kind (such as a locking door knob, padlock, dead bolt, sliding bar, or similar device), unless the only door is an exterior door. All interior doors leading into massage rooms shall have unobstructed windows.

(B) *Operations.*

(1) *Equipment.* Each operator and/or on-duty manager shall provide and maintain on the premises adequate equipment for disinfecting and sterilizing instruments used in massage.

(2) *Inspections.* The operator and/or on-duty manager consents to the inspection of the massage establishment by the city's Building Department, Police Department, and the Fire Department and Health Department for the purpose of determining that the provisions of this chapter or other applicable laws or regulations are met.

(a) The city's Building Department, Police Department, Fire Department, and Health Department may, from time to time, make an inspection of each massage establishment for the purpose of determining that the provisions of this chapter, state law or other applicable laws or regulations are met. Routine inspections shall not occur more than ~~twice~~ six times a year, unless violations are found or complaints are received. Criminal investigations may be conducted as directed by the Police Chief. The Police Department may inspect the occupied massage rooms for the purpose of determining that the provisions of this chapter are met upon occurrence of any of the conditions described in division (B)(17) of this section which would require the posting of the notice to all patrons. During an inspection, the Police Department may verify the identity of all on-duty employees.

(b) Inspections of the massage establishment shall be conducted during business hours.

(c) An operator or his or her agent, servant, or employee commits an offense if he or she refuses to permit, impedes, or interferes with a lawful inspection

of the premises by a representative of the Police Department at any time it is occupied or open for business.

(3) *Clothing.* All persons employed in the massage establishment shall be fully clothed at all times while present at the massage establishment. Clothing shall be of a fully opaque, non-transparent material and shall provide complete covering of the genitals, pubic area, buttocks, anal area, and chest.

(4) *Roster of employees.* The operator and/or on-duty manager shall maintain a register of all employees showing the full legal name, nicknames, and aliases used by the employee, residential address, age, birth date, gender, height, weight, color of hair and eyes, phone numbers, date of employment and termination, if any, and duties of each employee. The above information on each employee shall be maintained in the register on the premises for a period of two years following termination. Operators shall maintain a register of all therapists for review by local authorities that demonstrates all therapists providing massage services are CAMTC certified. The operator and/or on-duty manager shall make the register of employees available immediately for inspection upon demand of representatives of the Police Department, City Code Enforcement, or County Health Officer at all reasonable times.

(5) *Linen.* Common use of towels or linen shall not be 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 towels or linen.

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

(7) *Sleeping prohibited.* No massage establishment or school of massage, whether or not located in any building originally constructed for residential or sleeping purposes, shall be used for residential or sleeping purposes.

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

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

(10) *Coverings.* Each massage establishment shall provide to all patrons clean, sanitary and opaque coverings capable of covering the patrons specified

anatomical areas, including the genital area, anus and female breast(s). No common use of such coverings shall be permitted, and re-use is prohibited unless adequately cleaned.

(11) *Records or treatment.* The operator shall keep a record of the dates and hours of each treatment or service, the first and last name and address of the patron, the name of practitioner administering such service and a description of the treatment or service rendered. A short medical history form shall be completed by the patron to determine if the patron has any communicable diseases, areas of pain, high blood pressure or any physical condition which may be adversely affected by massage. These records shall be prepared prior to administering any massage or treatment and shall be retained for a period of 24 months after such treatment or service. These records shall be open to inspection upon demand only by officials charged with enforcement of this chapter and for no other purpose. The Police Department shall periodically inspect the records to ensure compliance with this section. The information furnished or secured as a result of any such records should be used only to ensure and enforce compliance with this chapter or any other applicable state or federal laws and shall remain confidential. Any unauthorized disclosure or use of such information by any officer or employee of the city shall constitute a misdemeanor.

(12) *Advertising.* No massage establishment shall place, publish or distribute, or cause to be placed, published or distributed, any advertising matter that depicts any portion of the human body or employs text that would reasonably suggest to prospective patrons that any service is available other than those services authorized by this chapter. No massage establishment shall place, publish or distribute, or cause to be placed, published or distributed, any obscene advertising matter. It shall be unlawful to falsely state or advertise, or put out any sign or card or other device, or falsely represent to the public through any print or electronic media, that any person who is employed or retained to perform massage therapy for compensation is a CAMTC certified massage professional by use of the title "licensed," "certified," certified massage practitioner (CMP) or certified massage therapist (CMT), or the use of any other term that implies or suggests that the person is currently a CAMTC certified massage professional. It shall be unlawful to fail to include the legal name under which any massage professional is certified and his or her CAMTC certificate number in any advertising of massage therapy for compensation. For the purposes of this section, pseudonyms are not sufficient. It shall be unlawful to publish or distribute any advertising matter or business identification card through any print or electronic media that are classified as for adults only or similar classification. It shall be unlawful to publish or distribute any advertising matter or business identification card that is sexually suggestive or that would reasonably suggest that any service is available other than a massage as defined in this chapter.

(13) *Access.* No person(s) other than CAMTC certificate holders, permitted operators under this chapter and customers will be allowed anywhere in the massage establishment other than the lobby/reception area during hours of operation. Entry doors to any room shall not be obstructed by any means.

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

(15) *Compliance.* Massage establishments shall comply with all applicable provisions of the Riverbank Municipal Code and Cal. Business and Professions Code § 4600 et sq.

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

(17) *Notices.* The Police Chief may require the notice below be posted in all massage rooms on premise to ensure patrons are aware of the possibility of an inspection. in the event that any employee of the massage establishment or any person who has been aided and abetted by an employee of the massage establishment has been found, after full hearing by administrative proceeding or state court, to have violated any of the offenses listed in §§ 119.08 and 119.10.

NOTICE TO ALL PATRONS

THIS MESSAGE ESTABLISHMENT AND THE MESSAGE ROOMS DO NOT PROVIDE COMPLETE PRIVACY AND ARE SUBJECT TO INSPECTION BY THE RIVERBANK POLICE SERVICES WITHOUT PRIOR NOTICE.

(a) The notice set forth above shall be prepared and issued by the Police Chief.

(b) The notices shall be conspicuously posted in a location within the massage establishment that are easily visible to any person entering the premises and in each massage room. The notice shall be so posted for 12 months following the violation of any of the offenses set forth above.

(c) The requirement for posting the notice described in this division (17) is cumulative and in addition to all other remedies, violations and penalties set forth in this chapter or in the ordinances, laws, rules or regulations of the city, County of Stanislaus, and the State of California.

(Ord. 2006-003, passed 3-13-06; Am. Ord. 2008-004, passed 3-10-08)

§ 119.15 MASSAGE ESTABLISHMENT HOURS.

No person shall conduct or operate a massage establishment or service between the hours of 8:00 p.m. and 8:00 a.m.

(Ord. 2006-003, passed 3-13-06; Am. Ord. 2008-004, passed 3-10-08)

§ 119.16 CHANGES OF BUSINESS.

(A) Every massage establishment operator shall report immediately to the Police Department any and all changes of ownership or management of the massage establishment or business, including, but not limited to, changes of manager or other person principally in charge, stockholders holding more than 5% of the stock of the corporation, officers, directors and partners, any and all changes of name, style or designation under which the business is to be conducted and all changes of address or telephone numbers of the massage business. A change of location of any of the premises may be approved by the Police Chief, provided there is compliance with all applicable regulations of the city.

(B) No massage practitioner permit or operator permit may be sold, transferred or assigned by a permittee, or by operation of law, to any other person or persons. Any such sale, transfer or assignment, or attempted sale, transfer or assignment shall be deemed to constitute a voluntary surrender of such permit and such permit shall thereafter be null and void.

(C) If the permittee is a partnership and one or more of the partners should die, one or more of the surviving partners may acquire, by purchase or otherwise, the interest of the deceased partner or partners without effecting a surrender or termination of such permit, and in such case, the permit, upon notification to the Police Chief, shall be placed in the name of the surviving partners.

(D) Upon the death or incapacity of a permittee, the massage establishment may continue in business for a reasonable period of time, not to exceed 30 days, to allow for an orderly application of a new permit.

(Ord. 2006-003, passed 3-13-06; Am. Ord. 2008-004, passed 3-10-08)

§ 119.17 TRANSFER AND RENEWAL OF PERMITS.

(A) No permit issued hereunder shall be transferable to any other person or establishment; provided, however, an additional location or change of location of a massage practitioner permit will be allowed upon prior written notice to the Police Chief and payment of the appropriate transfer fee.

(B) Renewal applications shall include such information as may be required by the Police Chief to update the information contained in the original permit application. ~~For renewal of massage practitioners permits, the permittee shall produce evidence of satisfaction of the continuing education requirement as provided by § 119.10(B)(8).~~ The applicant shall accompany the application for renewal with the appropriate filing fee.

(C) Permits for operators and employees shall be renewed on a year-to-year basis, provided, that the permittee continues to meet the requirements set out in this chapter.

(D) Applications for permit renewal shall be filed with the Police Chief before the expiration of the existing permit. Temporary permits will not be issued and renewal applications must be filed no later than 60 days prior to the expiration of the permit to prevent a lapse of the permit.

(Ord. 2008-004, passed 3-10-08)

§ 119.18 EXEMPTIONS.

(A) The requirements of this chapter shall have no application and no effect upon and shall not be construed as applying to any persons designated as follows: 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 without qualifications as massage practitioners whether employed by physicians, surgeons, chiropractors, or osteopaths or not, may not give massage or massage procedures.

(B) Students enrolled at a recognized school of massage; provided that such students perform massage therapy only under the direct personal supervision of an instructor who holds a valid CAMTC certificate as part of the curriculum.

(C) Commencing on the effective date of this chapter, all permits shall be issued in accordance with the provisions of this chapter.

(D) An applicant for a reflexology exemption from this chapter that does not hold themselves out to be a massage therapist, or do massage, massage therapy, or other bodywork practices where licensing is required, shall present evidence of the following minimum qualifications to the Chief of Police:

- (1) Each applicant must be an individual, individually licensed and insured;
- (2) Be 18 years of age or older;
- (3) Provide a copy of a certificate of attendance from a reflexology program that meets industry standards of 100 hours of education taught by an educator recognized by the National Council for Reflexology Educators (NCRE) as a national board-certified reflexology educator; or
- (4) Evidence of satisfactory passage of the American Reflexology Certification Board (ARCB) examination or another psychometrically valid reflexology exam; or
- (5) Evidence of membership in good standing in the California state professional association—The Reflexology Association of California or its successor—that requires its members adhere to a code of ethics;
- (6) Possession of practitioner liability insurance coverage in the minimum amount of one million dollars (\$1,000,000.00);
- (7) Provide a passport size photo I.D. with the application;
- (8) If an applicant is not a United States citizen, provide evidence of legal presence and employability in the United States.
- (9) Provides background check and Live Scan finger printing; and
- (10) Meets all appropriate zoning ordinances when conducting a home-based business.

(E) Existing operator and massage practitioner permits shall continue in effect until expiration. All existing permit holders shall have an additional 24-months from the effective date of this chapter to meet and comply with the 500-hour training requirement.

~~_____ (E) A bona fide nonprofit club or organization or its employees shall be required to obtain a permit, and must conform to all applicable city building, health, fire, and zoning laws and regulations.~~

(Ord. 2006-003, passed 3-13-06; Am. Ord. 2008-004, passed 3-10-08)

§ 119.19 SUSPENSION, REVOCATION, DENIAL AND APPEAL.

(A) *Violation and noncompliance.* The Police Chief may refuse to renew a permit or may revoke or suspend an existing permit on the grounds that the permit holder has failed to comply with the permit conditions or other requirements of this chapter. If a suspended permit lapses during the suspension period, a new application must be filed at the end of the suspension period. In any such case, the permit holder shall have the right to appeal in the time and manner set forth in this section.

(B) *Revocation and suspension of operator permit.*

(1) The Police Chief may revoke or refuse to renew a permit if he or she makes any of the findings for denial of a permit under § 119.08(A), finds violation(s) of § 119.08(B)(1) or (B)(6), upon any subsequent violation of any provision within one year following prior suspension under division (B)(2) of this section or upon demonstrated inability to operate or manage the massage establishment in a law-abiding manner, thus necessitating action by law enforcement officers.

(2) The Police Chief may suspend a permit for a period of 30 days for each violation of § 119.08(B) not listed above, or § 119.15.

(C) *Revocation and suspension of massage practitioner permit.*

(1) The Police Chief may revoke or refuse to renew a massage practitioner permit if he or she makes any of the findings for denial of a permit under § 119.10(A), finds violation(s) of § 119.10(B)(1), (B)(2), or (B)(6), or upon any subsequent violation of any provision of this chapter within one year following a suspension under division (C)(2) of this section;

(2) The Police Chief may suspend a massage practitioner permit for a period of 30 days for each violation of § 119.10(B) not listed above, or § 119.15.

(D) *Notice.* When the Police Chief concludes that grounds for denial, suspension, revocation or refusal to renew a permit exist, he or she shall serve the applicant or permit holder, either personally or by certified mail addressed to the business or residential address of applicant or permit holder, with a notice of denial or notice of intent to suspend, revoke or refuse to renew permit. This notice shall state the reasons for the proposed action, the effective date of the decision, and the right of the applicant or permit holder to appeal the decision to the City Council, and that the decision will be final if no appeal is filed within the time permitted.

(E) *Appeal.*

(1) The right to appeal shall terminate upon the expiration of 15 days from the date of mailing of the notice. The notice of appeal shall be filed with the Police Department, along with the payment of any hearing fee which may be established by City Council resolution. Any hearing fee shall not exceed the reasonable cost to the city of a hearing.

(2) In the event an appeal is timely filed, the suspension or revocation shall not be effective until a final decision has been rendered. If no appeal is filed, the suspension or revocation shall become effective upon expiration of the period for filing appeals.

(3) The City Manager shall appoint a neutral hearing officer in consultation with the appellant to conduct the hearing, receive relevant evidence and render a decision. The decision of the hearing officer shall be final. The appellant shall be entitled to notice of the basis for the proposed action, a copy of the documents upon which the decision was based and the opportunity to present contrary evidence at the hearing.

(4) Notice of the date, time and place of the hearing shall be mailed at least ten days prior to the date of the hearing, by U.S. mail, with proof of service attached, to the address listed on the application, or the address given in the notice of appeal, if different.

(5) The following rules and evidence shall apply:

(a) Oral evidence shall be taken only under oath or affirmation. The hearing officer shall have authority to administer oaths and to receive and rule on admissibility of evidence;

(b) Each party shall have the right to call and examine witnesses, introduce exhibits and cross-examine opposing witnesses who have testified under direct examination. The hearing officer may call and examine any witness;

(c) Technical rules relating to evidence and witnesses shall not apply to hearings provided for in this chapter. Any relevant evidence may be admitted if it is material and is evidence customarily relied upon by responsible persons in the conduct of their affairs regardless of the existence of any common law or statutory rule which might make admission of such evidence improper over objection in civil actions. Hearsay testimony may be admissible and used for the purpose of supplementing or explaining any evidence given in direct examination, but shall not be sufficient in itself to support a finding unless the testimony would be admissible over objection in civil actions. The rules of privilege shall be applicable to the extent they are now or are hereafter permitted in civil actions. Irrelevant collateral and undue and repetitious testimony shall be excluded.

(F) No permit granted herein shall confer any vested right to any person or business for more than the permit period. All operators, managers and massage practitioner subject to this chapter shall comply with the provisions of this chapter as they may be amended hereafter.

(Ord. 2008-004, passed 3-10-08)

§ 119.20 ATTORNEY'S FEES AND COSTS.

(A) In any action, administrative proceeding or special proceeding commenced by the city to abate a public nuisance or to enjoin violation of any provision of this chapter, if the city elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees, the prevailing party shall be entitled to recover all costs incurred therein, including reasonable attorneys' fees and costs of suit. In no action, administrative proceeding or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the city in the action or proceeding.

(B) The city shall be considered a prevailing party entitled to attorneys' fees under division (A) of this section when it can demonstrate that:

(1) Its lawsuit was the catalyst motivating the defendant to provide the primary relief sought;

(2) The lawsuit was meritorious and achieved its result by "threat of victory"; and

(3) The city reasonably attempted to settle the litigation before filing the lawsuit.

(Ord. 2008-004, passed 3-10-08)

§ 119.21 PERSONS EMPLOYED UNDER AGE 18 NOT PERMITTED.

It shall be unlawful for any owner, proprietor, manager or other person in charge of any massage establishment or school of massage to employ any person who is not at least 18 years of age.

(Ord. 2006-003, passed 3-13-06; Am. Ord. 2008-004, passed 3-10-08)

§ 119.22 PERSONS EMPLOYED WITHOUT PERMITS NOT ALLOWED.

(A) It shall be the responsibility of the owner, operator, manager or permittee in charge of a massage establishment or school of massage, to ensure that each person employed shall first have obtained a valid CAMTC certificate.

(B) If knowingly employing any person who is not in possession of a valid, unrevoked permit, or allowing such a person to work or practice within such a place of business, the owner, operator, manager or permittee shall be in violation of this section.

(Ord. 2006-003, passed 3-13-06; Am. Ord. 2008-004, passed 3-10-08)

§ 119.23 ON-SITE THERAPY AND OUT-CALL MASSAGE.

(A) No person shall perform or administer massage or bodywork techniques as either on-site or out-call massage/bodywork, as those terms are defined herein, ~~for money or other consideration, for compensation without possessing a CAMTC certificate, a permit issued by the Police Chief in accordance with this section and a~~

~~valid City Business License, without obtaining a massage/bodywork practitioner permit pursuant to the provisions of this chapter, and in conjunction with a valid city business license.~~

~~(B) Out-call massage/bodywork shall not be performed unless authorized in writing by a physician, surgeon, chiropractor, or osteopath duly licensed to practice in the state.~~

~~(C) Out-call massage and on-site therapy shall be conducted between the hours of 8:00 a.m. and 8:00 p.m.~~

~~(D) Out-call massage or on-site therapy shall not be conducted in the following locations:~~

~~(1) A hotel/motel room or any other similar location used primarily for transitory habitation purposes.~~

~~(2) The residence of the out-call or on-site massage/bodywork practitioner.~~

~~(Ord. 2006-003, passed 3-13-06; Am. Ord. 2008-004, passed 3-10-08)~~

§ 119.24 VIOLATION AND PENALTY.

(A) It is unlawful for any person, association, firm or corporation to engage in, conduct or carry on, or permit to be engaged in, conducted or carried on, in or upon any premises, the business of massage/bodywork, or to render or permit to be rendered massage or bodywork services at a location removed from a massage/bodywork business, in the absence of a permit issued pursuant to the provisions set forth in this chapter.

(B) Any massage/bodywork business operated, conducted or maintained contrary to the provisions of this chapter shall be unlawful and a public nuisance; and the City Attorney may, at his or her discretion, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings, for the abatement, removal and enjoinder thereof, in any manner provided by law.

(C) A violation of any of the provisions of this chapter, or failure to comply with any of its mandatory requirements, shall constitute a misdemeanor; except that, notwithstanding any other provision of this code, any such violation constituting a misdemeanor under this chapter may, at the discretion of the City Attorney, be charged and prosecuted as an infraction.

(D) (1) Any violation of this chapter prosecuted as a misdemeanor shall be punishable by a fine of not more than \$1,000, or by imprisonment in the county jail for a period of not more than six months, or by both fine and imprisonment.

(2) Any infraction prosecuted under the provisions of this chapter shall be made punishable by a fine not to exceed \$500.

(E) Each person shall be charged with a separate offense for each and every day during which any violation of any provision of this chapter is committed, continued or permitted by such person, and shall, upon conviction, be punished accordingly.

(F) Pursuant to the City Attorney's prosecutorial discretion, the city may enforce violations of this chapter as criminal, civil and/or administrative violations utilizing administrative remedies.

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

SECTION 2. Severability. If any section, subsection, subdivision, paragraph, sentence, clause, phrase or portion of this chapter, or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this chapter or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase be declared unconstitutional.

SECTION 3. If any section, subsection, subdivision, paragraph, sentence, clause, phrase or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

SECTION 4: This Ordinance shall become effective thirty (30) days from and after its final passage (10/10/2024), provided it is published pursuant to GC § 36933 in a newspaper of general circulation within fifteen (15) days after its adoption.

The foregoing ordinance was given its first reading and introduced by title only at a regular meeting of the City Council of the City of Riverbank on August 27, 2024.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Riverbank at a regular meeting on the 27 day of August, 2024; motioned by Councilmember Luis Uribe, seconded by Vice Mayor Leanne Jones Cruz; moved said ordinance by a City Council vote of 5/0:

AYES: Councilmember, District 1 Luis Uribe
Councilmember, District 2 Rachel Hernandez
Councilmember, District 4 Darlene Barber-Martinez
Vice Mayor (CM – D3) Leanne Jones Cruz
Mayor, Richard D. O'Brien

NAYS: None

ABSENT: None

ABSTAINED: None

ATTEST:



Gabriela Hernandez, CMC
City Clerk

APPROVED:



Richard D. O'Brien
Mayor

APPROVED AS TO FORM:



Tom P. Hallinan
City Attorney