

ORDINANCE NO. 2009-

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLOVIS
AMENDING SECTIONS 5.10.02, 5.10.06, 5.10.07.1, 5.10.08 AND 5.10.21 OF CHAPTER
5.10 OF TITLE 5 OF THE CLOVIS MUNICIPAL CODE RELATING TO MASSAGE
ESTABLISHMENTS**

THE CITY COUNCIL OF THE CITY OF CLOVIS DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 5.10.02 of Chapter 5.10 of Title 5 of the Clovis Municipal Code is hereby amended to include the following definition of “Certified Massage Therapist” and existing definitions shall be re-alphabetized accordingly.

(a) “Certified Massage Therapist”: A person who is certified by the Massage Therapist Organization (also known as the California Massage Therapy Council) pursuant to Chapter 10.5 (commencing with Section 4600) of Division 2 of the California Business and Professions Code.

SECTION 2. Section 5.10.06 of Chapter 5.10 of Title 5 of the Clovis Municipal Code is hereby amended to read as follows:

5.10.06 Exemptions from permit requirements.

(a) Exemption from establishment, therapist and trainee permit: Other professionals practicing within scope of profession. No establishment permit, therapist permit or trainee permit shall be required for the following persons when practicing massage within the scope of their profession:

(1) Any cosmetologist, barber, esthetician, manicurist, electrologist, apprentice barber, or cosmetology instructor licensed under the California Barbering and Cosmetology Act (Business and Professions Code Section 7301 et seq.).

(2) Any person licensed to practice any healing art under the provisions of Division 2 (commencing with Section 500) of the California Business and Professions Code or the Chiropractic Act.

(3) Acupuncturists who are licensed to practice their profession in the State of California.

(4) Nurses, physical therapists, or occupational therapists who are licensed to practice their professions in the State of California.

(5) Except as provided in subsection (c) of this section, the establishment permit exemption in this subsection (a) does not apply if the place of business allows professionals other than those identified in this subsection (a) to perform massage either as employees or independent

contractors. Under those circumstances, the place of business shall have a valid establishment permit and the nonexempt massage therapist shall have a valid therapist permit.

(b) Exemption from massage therapist permit: Certified Massage Therapist. No massage therapist permit shall be required for a person who holds a current valid certificate from the Massage Therapy Organization as a massage practitioner or massage therapist pursuant to Chapter 10.5 commencing with Section 46001 of Division 2 of the California Business and Professions Code. However, such certificate holder shall register with the Clovis Police Department pursuant to Section 5.10.07.1 of this Chapter.

(c) Exemption from establishment permit: Medical offices. No establishment permit shall be required for the offices of a licensed physician, surgeon, or osteopath; provided that the person performing the massage has a valid massage permit and is performing massage under the direct supervision and recommendation of such licensed medical professional.

(d) Exemption from establishment permit: Occasional recreational events. No establishment permit shall be required where massage services are provided at an occasional recreational or community event, provided the following conditions are met: (1) the person providing the massage is in possession of a valid massage therapist permit; (2) massage services are made equally available to all participants of the event; (3) the event is open to participation by a significant segment of the public such as employees of a sponsoring or participating corporation; (4) massage services are provided at the event site and during the hours the event is scheduled; (5) the event sponsors have approved of the provision of massage services; and (6) those providing massage services are not the primary sponsors of the event. "Occasional" shall mean not more than once per month.

SECTION 3. Section 5.10.07.1 of Chapter 5.10 of Title 4 of the Clovis Municipal Code is hereby added to read as follows:

5.10.07.1 Certified Massage Therapist Registration Requirements.

Certified Massage Therapists must register with the Clovis Police Department prior to providing massage services. The registration application shall include at a minimum, the following information: name, address, telephone number(s), place(s) of employment, whether the applicant intends to engage in "out call massage" as defined in Section 5.10.02 subsection (h) of this Chapter, and evidence of certification from the Massage Therapist Organization. There is no charge for the registration.

SECTION 4. Section 5.10.08 of Chapter 5.10 of Title 5 of the Clovis Municipal Code is hereby amended to read as follows:

Permits issued under this chapter need not be renewed annually. Permittees and Certified Massage Therapist registrants shall, however, at all time maintain an active business license with the City of Clovis. In addition, the permittee shall notify the Chief of Police of the following within ten (10) calendar days after they occur: (1) any change of home address, change in home

or work telephone number, or change in location of business; and (2) any arrest for an offense listed under Section 5.10.11(b).

SECTION 5. Section 5.10.21 of Chapter 5.10 of Title 4 of the Clovis Municipal Code is hereby amended to include the following:

(i) Compliance with SB 731. A person who is certified by the Massage Therapist Organization (also known as the California Massage Therapy Council) shall comply with the requirements of Chapter 10.5 (commencing with Section 4600) of Division 2 of the California Business and Professions Code pertaining to certification of massage therapists and massage practitioners.

SECTION 6. Effective Date.

This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

APPROVED: _____, 2009

Mayor

City Clerk

The foregoing Ordinance was introduced at a regular meeting of the City Council held on _____, 2009, and was adopted at a regular meeting of said Council held on _____, 2009 by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

Dated: _____, 2009

City Clerk

Chapter 5.10

**MASSAGE ESTABLISHMENTS
AND THERAPISTS**

Sections:

- 5.10.01 Purpose and intent.
- 5.10.02 Definitions.
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- 5.10.08 Updating information and renewal.
- 5.10.09 Permit fee.
- 5.10.10 Permit referral.
- 5.10.11 Action by the Chief of Police on permit application.
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- 5.10.17 Permits nontransferable: Change in location.
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- 5.10.20 Prohibited acts.
- 5.10.21 Operating requirements.
- 5.10.22 Inspection by officials.
- 5.10.23 Hot tub, sauna, and tanning establishments.
- 5.10.24 Out call massage services.
- 5.10.25 Penalties for violation.

5.10.01 Purpose and intent.

Government Code Sections 51030 through 51034 provide authority for the legislative bodies of California cities to license and regulate the business of massage. In enacting this chapter, the City Council recognizes that massage is a viable professional field offering the public valuable health and therapeutic services. However, there are known instances, both within and outside the City, where the practice of massage and the operation of massage establishments have been associated with unlawful activity and pose a threat to the quality of life in the community. It is the purpose and intent of this chapter to protect the public health, safety, and welfare by adopting regulations to prevent blighting conditions and deter criminal activity that could occur from the practice of massage and the operation of massage establishments. It is not the intent of this chapter to punish legitimate massage practitioners and establishments. (§ 2, Ord. 07-04, eff. February 15, 2007)

5.10.02 Definitions.

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

(a) "Chief of Police" means the Chief of the Clovis Police Department or his/her designee.

(b) "For compensation" means the exchange of massage services for money, goods, or other services. An establishment or person cannot avoid the requirements of this chapter by offering free massage in conjunction with other services or goods provided to a client or customer for compensation.

(c) "Managing employee" means any employee of a massage establishment who has responsibility for supervising, directing, or assigning work to massage therapists.

(d) "Massage" means any method of pressure on, or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating the external parts of the human body with the hands or any other parts of the body or with the aid of any mechanical or electrical apparatus or other appliances or devices, with or without the use of oils,

creams, tonics, lotions, antiseptics, tanning products, or other similar preparations. Massage shall further include baths, including aromatherapy, vapor, shower, electric tub, sponge, hot towels, sauna, steam, or any other type of bath where the essential nature of the service involves any method of pressure or friction against, or stimulating the external parts of, the human body, with the hands or any other parts of the body.

(e) "Massage establishment" means an establishment having a fixed place of business where any person, firm, association, or corporation practices or otherwise permits massage for compensation. The term "massage establishment" includes establishments that offer services such as relaxation, hot tub, towel wraps, baths, health treatments, tanning, or any service where the essential nature of the interaction between the employee and the customer involves a massage.

(f) "Massage therapist" or "massage therapist trainee" means any person who, for any type of compensation, practices massage.

(g) "Out call massage" means providing massage services for compensation at a location other than at a permitted massage establishment.

(h) "Operator" means any individual who has any ownership interest in the massage establishment.

(i) "Permit" means a written document authorizing the holder to engage in the business specified in the document. Three types of permits are issued pursuant to this chapter: establishment permits, therapist permits, and trainee permits.

(j) "Recognized school of massage" means any school or institution of learning which is approved under the California Education Code, Section 94780, as a vocational or postsecondary institution or, if the school is not located in California, has complied with standards commensurate with those required in Section 94780. Any school or institution of learning allowing correspondence course credit not requiring actual attendance at class shall not be deemed a "recognized school of massage."

(k) "Trainee permit" means a permit issued by the Chief of Police authorizing an individual, who is in the process of completing the educational require-

ments leading to the practice of massage therapy, to practice massage for a limited period of time not to exceed twelve (12) months. A trainee permit is non-renewable. Trainee permits are not issued for out call massage services. (§ 2, Ord. 07-04, eff. February 15, 2007)

5.10.03 Permit required.

(a) Establishment permit. It is unlawful for any owner, operator, officer, director, or managing employee of a massage establishment to operate or permit the operation of such business without a valid massage establishment permit as required by this chapter.

(b) Massage therapist or trainee permit: Operator responsibilities. It is unlawful for the owner, operator, officer, director, or managing employee of a massage establishment to provide or permit the provision of massage services by any person who does not hold a valid massage therapist or trainee permit as required by this chapter.

(c) Massage therapist or trainee permit: Individual responsibilities. It is unlawful for any person to provide massage services without a valid massage therapist or trainee permit as required by this chapter.

(d) Out call designation. It is unlawful for any person to provide out call massage services without a valid massage therapist permit endorsed for out call massage services. (§ 2, Ord. 07-04, eff. February 15, 2007)

5.10.04 Land use and zoning requirements.

The premises and property on which the premises occupied by a massage establishment are located must conform to all applicable land use and zoning requirements. (§ 2, Ord. 07-04, eff. February 15, 2007)

5.10.05 Educational and examination requirements.

(a) Education requirements. Applicants for a massage therapist permit must meet one of the following educational standards:

(1) Possession of a diploma or certificate of graduation from a recognized school of massage, college, junior college, or university, which shows satisfactory completion of at least two hundred (200) hours of nonrepetitive curriculum in anatomy, physiology, hygiene, sanitation, and the theory, history, ethics and practice of massage; or

(2) Possession of a diploma or certificate of graduation from a recognized school of massage, college, junior college, or university, which shows satisfactory completion of at least one hundred fifty (150) hours of nonrepetitive curriculum in anatomy, physiology, hygiene, sanitation, and the theory, history, ethics and practice, plus at least five (5) years' experience as a massage therapist following receipt of the diploma or certificate. The applicant shall provide satisfactory evidence of the five (5) years' experience through W-2, 1099, or equivalent tax forms; or

(3) Certification by the National Certification Board for Therapeutic Massage and Bodywork.

(b) Written examination requirements.

(1) Except where exempt under subsection (c) of this section, all applicants for an establishment permit or therapist permit must take a written examination to demonstrate a basic knowledge of anatomy, physiology, hygiene, and the practice of massage. The written examination will be available in English. The applicant may, at his/her own expense, make arrangements with a certified or registered interpreter to interpret the examination. Proof of certification or registration from the California Cooperative Personnel Services, from the California State Judicial Council, or from an accredited college offering a certification program in interpretation/translation must be provided to the Chief of Police prior to the administration of the written examination. The applicant may use a translation dictionary during the written examination. Electronic dictionaries, definition dictionaries, or dictionaries containing written notes or additional text will not be allowed.

(2) If the applicant fails the examination, the applicant shall be permitted to retake the examination once after at least thirty (30) days, but no more than sixty (60) days have elapsed from the date of the

first examination, subject to applicable fees and requirements. If the applicant fails the examination a second time, the application for an establishment permit or a therapist permit shall be denied, and the applicant shall be ineligible to apply for an establishment permit or a therapist permit for a period of one year from the date of the second examination.

(c) Exemption from educational and examination requirements.

(1) An applicant for an establishment permit may be exempt from the educational and written examination requirement if the applicant signs a declaration under penalty of perjury that he/she will not personally engage in the practice of massage services.

(2) An applicant for an establishment permit or therapist permit may be exempt from the written examination requirement if the applicant provides proof of certification by the National Certification Board for Therapeutic Massage and Bodywork. (§ 2, Ord. 07-04, eff. February 15, 2007)

5.10.06 Exemptions from permit requirements.

(a) Exemption from establishment, therapist and trainee permit: Other professionals practicing within scope of profession. No establishment permit, therapist permit or trainee permit shall be required for the following persons when practicing massage within the scope of their profession:

(1) Any cosmetologist, barber, esthetician, manicurist, electrologist, apprentice barber, or cosmetology instructor licensed under the California Barbering and Cosmetology Act (Business and Professions Code Section 7301 et seq.).

(2) Any person licensed to practice any healing art under the provisions of Division 2 (commencing with Section 500) of the California Business and Professions Code or the Chiropractic Act.

(3) Acupuncturists who are licensed to practice their profession in the State of California.

(4) Nurses, physical therapists, or occupational therapists who are licensed to practice their professions in the State of California.

(5) Except as provided in subsection (b) of this section, the establishment permit exemption in this subsection (a) does not apply if the place of business allows professionals other than those identified in this subsection (a) to perform massage either as employees or independent contractors. Under those circumstances, the place of business shall have a valid establishment permit and the nonexempt massage therapist shall have a valid therapist permit.

(b) Exemption from establishment permit: Medical offices. No establishment permit shall be required for the offices of a licensed physician, surgeon, or osteopath; provided, that the person performing the massage has a valid massage permit and is performing massage under the direct supervision and recommendation of such licensed medical professional.

(c) Exemption from establishment permit: Occasional recreational events. No establishment permit shall be required where massage services are provided at an occasional recreational or community event, provided the following conditions are met: (1) the person providing the massage is in possession of a valid massage therapist permit; (2) massage services are made equally available to all participants of the event; (3) the event is open to participation by a significant segment of the public such as employees of a sponsoring or participating corporation; (4) massage services are provided at the event site and during the hours the event is scheduled; (5) the event sponsors have approved of the provision of massage services; and (6) those providing massage services are not the primary sponsors of the event. "Occasional" shall mean not more than once per month. (§ 2, Ord. 07-04, eff. February 15, 2007)

5.10.07 Application for an establishment permit or therapist permit.

Written application for an establishment permit or therapist permit required by this chapter shall be filed with the Chief of Police. Such application shall be accompanied by a fee as approved by the City Council. Upon approval of the permit by the Chief of

Police, the applicant must also apply for a business license through the City Clerk's office and pay applicable license fees.

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

(a) Identifying information. Name, present residential and business addresses, telephone numbers, birth date and California driver's license or identification card number of the applicant.

(b) Prior residential addresses. All residential addresses and dates of residence for five (5) years preceding the date of the application.

(c) Prior business and employment history. Business, occupation or employment history of the applicant for the five (5) years immediately preceding the date of the application.

(d) Evidence that applicant is over eighteen (18). Satisfactory proof that the applicant is over the age of eighteen (18) years. Satisfactory proof may consist of a California driver's license, California identification card, or a United States passport.

(e) Arrests and convictions. A listing and explanation of any arrests or convictions for any felonies or non-traffic-related misdemeanors.

(f) Evidence of educational requirements. Documentation to substantiate that the applicant has met the educational requirements as set forth in Section 5.10.05(a).

(g) Fingerprints. Fingerprints of the applicant.

(h) Photograph. Submit to a photograph taken by the Police Department.

(i) Prior abatement of a business. Statement indicating whether the applicant has ever had an ownership interest in, operated or been employed by any business which has been the subject of an abatement proceeding under the California Red Light Abate-

ment Act (California Penal Code Sections 11225 through 11235) or any similar abatement laws, whether in California or other jurisdictions.

(j) Other information. Any other information as required by the Chief of Police.

In addition to the information required above, an applicant for an establishment permit must also provide:

(k) Premises ownership and lease information. A statement on whether the applicant owns, leases, or rents the premises where the massage establishment will be located. If the applicant leases or rents the premises, the applicant shall provide the name, address, and telephone number of the owner of the premises and the term of any lease.

(l) Address and name of business. The address where the applicant proposes to operate a massage establishment and the name under which the business will be operated.

(m) Prior massage businesses. The business name, street address, and city of any and all businesses where the applicant conducted any business providing massage, relaxation, hot tub, towel wraps, baths, health treatments, or tanning services within twenty-four (24) months preceding the date of the application.

(n) Evidence of other permits. Evidence of applicable land use and/or building permits as required by the City of Clovis. (§ 2, Ord. 07-04, eff. February 15, 2007)

5.10.08 Updating information and renewal.

Permits issued under this chapter need not be renewed annually. Permittees shall, however, at all times maintain an active business license with the City of Clovis. In addition, the permittee shall notify the Chief of Police of the following within ten (10) calendar days after they occur: (1) any change of home address, change in home or work telephone number, or change in location of business; and (2) any arrest for an offense listed under Section 5.10.11(b). (§ 2, Ord. 07-04, eff. February 15, 2007)

5.10.09 Permit fee.

Fees for each establishment permit, therapist permit, and trainee permit shall be paid to the Clovis Police Department at the time the application is submitted and are nonrefundable. Fee amounts shall be approved by the City Council.

Upon approval by the Police Department of an establishment, therapist, or trainee permit, the applicant shall also pay applicable business license fees through the City Clerk's office. (§ 2, Ord. 07-04, eff. February 15, 2007)

5.10.10 Permit referral.

The Chief of Police shall investigate the background of an applicant of any permit. Additionally, the Chief of Police shall refer an application for an establishment permit to the City of Clovis Planning and Development Services Department with respect to applicable zoning and building requirements. The Chief of Police may also refer an application to other persons, entities, or agencies as appropriate. (§ 2, Ord. 07-04, eff. February 15, 2007)

5.10.11 Action by the Chief of Police on permit application.

(a) Time to act. The Chief of Police shall either issue or deny a permit within sixty (60) calendar days following receipt of a completed application for an establishment, therapist, or trainee permit. In taking such action, the Chief of Police shall consider the recommendations of City officials investigating the application, along with any other relevant information.

(b) Grounds for denial of a permit. The Chief of Police shall deny an establishment permit, a therapist permit, or a trainee permit on any of the following grounds:

(1) The applicant, owner, operator, any officer or director of a massage establishment has been convicted of a violation of Section 266h, 266i, 311 through 312.7, 314, 315, 316, 318, or subdivision (a), (b) or (d) of Section 647 of the California Penal Code, any serious and/or violent felony as defined in subdivision (c) of Section 1192.7 or 667.5 of the Cal-

ifornia Penal Code, or any other crime involving moral turpitude.

(2) The applicant, owner, operator, any officer or director of a massage establishment has been convicted of offenses equivalent to those listed above under the laws of another jurisdiction, even if expunged.

(3) The applicant, owner, operator, any officer or director of a massage establishment is required to register under the provisions of Section 290 of the California Penal Code.

(4) The applicant, owner, operator, any officer or director of a massage establishment has been convicted of a violation of Health and Safety Code Section 11550 or any offense involving the possession or sale of a controlled substance specified in Section 11054, 11055, 11056, 11057, or 11058 of the Health and Safety Code or convicted of an equivalent offense in any other state.

(5) The applicant, owner, operator, any officer, or director of a massage establishment has been convicted of any offense involving sexual misconduct with children.

(6) The operation of a massage establishment at the proposed location would be injurious to the health, safety, or welfare of the community.

(7) The operation of the massage establishment, as proposed by the applicant, would not comply with all applicable laws including City ordinances and regulations.

(8) The applicant knowingly made a material omission or misstatement of fact in the license application.

(9) The applicant, owner, operator, any officer or director of a massage establishment has violated any provision of this chapter or any similar law, rule or regulation of another public agency which regulates the operation of massage establishments.

(c) Conditions of approval. If a permit is approved, the Chief of Police shall include such restrictions and conditions in the permit, as he/she deems reasonable and necessary under the circumstances, to ensure compliance with the purposes and intent of this chapter.

(d) Notice and appeal. Upon approval or denial of a permit, the Chief of Police shall prepare and forward to the applicant written notice that the permit has been granted, or denied, along with a statement of any conditions of approval attached thereto. The written notice shall be hand-delivered or sent by certified mail to the applicant. The decision of the Chief of Police upon application for a permit shall become final unless an appeal is filed with the City Clerk within fifteen (15) calendar days following delivery of the written notice. (§ 2, Ord. 07-04, eff. February 15, 2007)

5.10.12 Issuance of permit.

(a) Issuance after approval. Following the approval of a permit and the lapse of a fifteen (15) calendar day appeal period, the Chief of Police shall issue a permit.

(b) Term of permit. Each establishment permit and therapist permit shall be valid as long as the permittee holds a valid City of Clovis business license to conduct business as a massage establishment or massage therapist, unless sooner revoked pursuant to the provisions of this chapter. The requirement to have a business license does not apply to massage therapist employees who are not required to have a business license.

(c) Content of permit. The permit shall specify the full legal name of the permittee. An establishment permit shall specify the name and address of the business location. An establishment permit shall authorize massage services only at the location specified in the permit. (§ 2, Ord. 07-04, eff. February 15, 2007)

5.10.13 Appeal.

(a) Appeal period. An applicant dissatisfied with the denial or conditions of approval of an establishment permit or therapist permit may file an appeal with the City Clerk. The appeal must be filed within fifteen (15) calendar days following delivery of written notice from the Chief of Police that the establishment permit or therapist permit was approved or denied. Delivery shall be the date the notice is mailed

or hand-delivered. The appeal shall be accompanied by the payment of an appeal fee as approved by the City Council.

(b) Public hearing. The City Clerk shall forward the appeal to the City Manager who shall schedule a public hearing for the appeal to be considered by a hearing officer or hearing panel appointed by the City Manager. The hearing officer or hearing panel may consist of existing hearing officers and hearing panels used by the City for the appeal of code enforcement, land use, and other matters. Notice of such hearing shall be mailed to the appellant at least ten (10) days prior to the hearing. Notice of such hearing on an appeal of an establishment permit shall also be mailed to the property owner.

(c) Time to hear appeal. The appeal shall be heard within sixty (60) calendar days after filing of the appeal; provided, that the hearing officer or hearing panel may continue from time to time any hearing held by it.

(d) Decision after hearing. The hearing officer or hearing panel shall conduct a de novo hearing and may approve, conditionally approve, or deny the permit application based upon grounds set forth in Section 5.10.11. (§ 2, Ord. 07-04, eff. February 15, 2007)

5.10.14 Revocation of permit.

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

(b) Appeal. Within fifteen (15) calendar days of service of the revocation notice, the permittee may file an appeal of the revocation and request a hearing be held in accordance with Section 5.10.13. If an appeal is filed, the hearing officer or hearing panel shall conduct a de novo hearing on the appeal of any

permit revocation and may approve, conditionally approve, modify, or deny the revocation based upon grounds as set forth in Section 5.10.14(e).

(c) Stay of revocation pending appeal. If an appeal is filed, the revocation decision of the Chief of Police shall be stayed pending a decision by the hearing officer or hearing panel.

(d) Effect of no appeal: Final decision. If after the passage of fifteen (15) calendar days from service of the revocation notice, the permittee has not requested an appeal, the revocation decision of the Chief of Police shall become final.

(e) Grounds for revocation. A permit may be revoked for good cause on the basis of any of the following:

- (1) The permit was obtained by fraud; or
- (2) Any person making use of such permit is violating or has violated any conditions of such permit; or
- (3) The detriment to the public health or safety, or the nuisance arising from the conduct of the massage establishment, or from changed circumstances, necessitates the revocation of the permit; or
- (4) The permittee has violated, or permitted any other person under his/her control or supervision to violate, any provision of this chapter or of other local, State, or Federal law in connection with the practice of massage or operation of a massage establishment; or
- (5) The permittee has committed any offense involving lewdness, indecent exposure, prostitution, or any other offense which would be grounds for denial of an application, or employees of the establishment have committed such offenses in the course of their employment and the permittee has failed to prevent them from doing so. The employer shall be responsible for those acts of its employees and massage therapists which are done in the course and scope of their employment, or which occur on the premises of the massage establishment. (§ 2, Ord. 07-04, eff. February 15, 2007)

5.10.15 Suspension of permit.

(a) Grounds for immediate suspension of permit. The Chief of Police may immediately suspend an establishment permit, therapist permit, or a trainee permit if there is reasonable cause to believe that:

(1) The permit holder is operating or managing the establishment, or providing services in a manner which poses an immediate danger to the health or safety of employees, clients, or the public; or

(2) The permit holder has been convicted of any offense involving lewdness, indecent exposure, prostitution, sexual battery, or any sex-related crime. The only permit, which shall be immediately suspended under this condition, shall be the permit belonging to the person convicted.

(b) Notice of suspension. If the Chief of Police immediately suspends a permit, the Chief of Police shall provide written notice to the permittee by personal notice or certified mail. The notice shall contain a statement that the permit is immediately suspended and such suspension shall remain in effect during the period of time that an appeal may be filed or an appeal is under consideration. The notice shall provide information on the appeal process and explain that the suspension may lead to a permanent revocation of the permit.

(c) Appeal. Within fifteen (15) calendar days of service of the immediate suspension (the date of mailing or personal service), the permittee may file an appeal of the suspension and request a hearing in accordance with Section 5.10.13. If an appeal is filed, the hearing officer or hearing panel shall conduct a de novo hearing on the appeal of any permit suspension and may permanently revoke the permit, reinstate the permit, conditionally reinstate the permit, or modify the suspension, based upon findings related to circumstances described in Section 5.10.14(e) and subsection (a) of this section.

(d) Effect of no appeal: Final decision. If after the passage of fifteen (15) calendar days from service of the suspension notice, the permittee has not filed an appeal, the decision of the Chief of Police to suspend the permit shall become final and the permit shall be permanently revoked. (§ 2, Ord. 07-04, eff. February 15, 2007)

5.10.16 Massage therapist trainee permit.

(a) Application. Written application for a trainee permit shall be made in accordance with Section 5.10.07, and the application will contain the same information specified in that section, except that in lieu of the requirement set forth in Section 5.10.07(f), the applicant shall present written proof that he/she is currently enrolled in a recognized school of massage, the date of initial enrollment in such school, the scheduled date of graduation, and that the applicant has completed at least one hundred (100) hours of instruction in massage therapy including instruction in human anatomy and professional ethics.

(b) Application fee and letter from permitted establishment. A fee as prescribed by the City Council shall accompany written application for a trainee permit. In addition, the applicant shall submit a letter signed by the owner or operator of a permitted massage establishment stating his/her intent to immediately employ the applicant to practice massage as a trainee working under the supervision of a licensed massage therapist.

(c) Grounds for issuance and denial: Appeal. The Chief of Police shall issue or deny the trainee permit in accordance with the provisions of Section 5.10.11. An appeal of the decision of the Chief of Police on a trainee application may be made pursuant to Section 5.10.13. Issuance of a trainee permit shall be made in the same manner as found in Section 5.10.12. A trainee permit shall be valid for a period of twelve (12) months and may not be renewed. (§ 2, Ord. 07-04, eff. February 15, 2007)

5.10.17 Permits nontransferable: Change in location.

Permits granted under this chapter shall not be transferable, either as to the permittee or the location. Any attempt to transfer shall render the permit invalid and no further massages may be conducted under such permits. With respect to a change in location only, the applicant may apply for and obtain an amendment to the permit. Only that information necessary to process the change in location shall be required. (§ 2, Ord. 07-04, eff. February 15, 2007)

5.10.18 Notice of employees' status.

Every person holding an establishment permit shall notify the Chief of Police, in writing, of the name and residence of each person employed as a massage therapist or massage therapist trainee within five (5) days of the start of employment. (§ 2, Ord. 07-04, eff. February 15, 2007)

5.10.19 Application of chapter to preexisting businesses.

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

(a) Existing massage therapists. Any person providing massage services in the City may apply for a therapist permit without meeting the requirements of this chapter if all of the following conditions are satisfied prior to April 30, 2007:

(1) The individual has an unexpired paid up Clovis business license to operate a massage business or the individual provides satisfactory evidence that he or she is an employee of a Clovis licensed massage establishment and not required to have a business license.

(2) The individual applies for and obtains a massage therapist permit pursuant to the requirements of the City's pre-existing ordinance. That ordinance requires that the applicant have completed a course of study in the practice of massage from a school recognized by the State of California Department of Post-Secondary Education. An application fee of thirty-two dollars (\$32.00) for a Live-Scan fingerprint check shall apply. The permit may be denied for the grounds set forth in Section 5.10.11 of this chapter.

(3) The individual is operating in compliance with all applicable laws and regulations.

An individual issued a permit pursuant to this subsection shall be deemed to have the therapist permit required by this chapter and such permit may be revoked pursuant to the provisions of this chapter.

(b) Existing massage establishments. The owner, operator, officer, director, or managing employee of a massage establishment shall have until April 30,

2007, within which to obtain a massage establishment permit as required by Section 5.10.07. The application fee until April 30, 2007, shall be thirty-two dollars (\$32.00). (§ 2, Ord. 07-04, eff. February 15, 2007)

5.10.20 Prohibited acts.

(a) No touching of sexual body parts. No permittee, or any other employee of a massage establishment, shall place either his/her hands upon, or touch with any part of his/her body, or touch with a mechanical device, a sexual or genital part of any other person in the course of a massage, or massage a sexual or genital part of any other person. Sexual or genital parts shall include the genitals, pubic area, anus or perineum of any person or the vulva or the nipples of a female.

(b) No exposure of sexual body parts. No permittee or any other employee of a massage establishment shall uncover or expose the sexual or genital parts, as defined above, of a client or themselves in the course of practicing a massage or other health treatment before or after a massage. This subsection does not prohibit a client from turning over in the course of a massage, so long as the therapist holds a drape over the client to protect his/her privacy. (§ 2, Ord. 07-04, eff. February 15, 2007)

5.10.21 Operating requirements.

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

(a) Maintenance of permits. A copy of the establishment permit and each therapist's permit shall be posted in a conspicuous place on the establishment premises in such a manner that can be easily seen by persons entering the establishment. A passport-size photograph of the permittee shall be affixed to each therapist's permit.

(b) Posting of services offered. A list of all services available, the price thereof, and the length of time of each service shall be posted or available in a conspicuous place in such a manner that it can be

easily viewed by persons entering the massage establishment. No services, other than those set forth on the list, shall be provided.

(c) Payment. All payments for massage services, including gratuities or tips, shall be made at a designated reception area exclusively. At least one sign, with lettering not less than one-half (1/2) inch in height, shall be posted in a conspicuous place in such a manner that it can be easily seen by persons entering the establishment stating, "All payments for massage services, including gratuities or tips, shall be made in the designated reception area exclusively." This provision shall not apply to one-room massage establishments that do not have a reception area.

(d) Alcohol prohibited. No alcoholic beverages shall be sold, served, furnished, kept, or possessed in any part of a massage establishment. The owner, operator, and managing employee shall be responsible to ensure that no person possesses alcoholic beverages inside the massage establishment.

(e) Payroll and other written records. Every massage establishment shall maintain payroll and written records of all business transactions. The written records shall include at a minimum the type of service provided, the date and hour the service is provided, and the name of the massage therapist administering the service. These records shall be kept on the premises and shall be open to inspection by officials charged with enforcement of this chapter, including the Chief of Police and his/her designee and the City Attorney. These records shall be retained for a period of at least two (2) years.

(f) Dress code for employees. The holder of the establishment permit, massage therapists and all other employees of the massage establishment shall remain fully clothed in clean outer garments while on the premises of the massage establishment. At a minimum, such clothing shall be made of nontransparent material and shall not permit exposure of the buttocks, genital area, or breasts of any employee.

(g) Advertising. No services shall be offered in signs, posters, flyers, newspapers or other printed advertisements, or in verbal or recorded announcements or messages, other than those lawfully permit-

ted and posted as required in subsection (b) of this section. Photographs, drawings, written or verbal statements used in any advertising shall not explicitly or implicitly communicate that services offered are for the purpose of sexual stimulation or gratification.

(h) Compliance with SB 577. Massage establishments, massage therapists, and massage therapist trainees shall comply with the requirements of Business and Professions Code Sections 2053.5 and 2053.6 pertaining to disclosure and acknowledgment that massage services are not being provided by a licensed physician, are not licensed services by the state, the qualifications of the person providing the massage services, and those other matters as set forth in the statutes. (§ 2, Ord. 07-04, eff. February 15, 2007)

5.10.22 Inspection by officials.

As a condition of the massage establishment permit, any and all investigating officials of the City of Clovis, the County of Fresno, and the State of California, shall have the right to enter massage establishments during regular business hours to conduct reasonable inspections to observe and enforce compliance with the provisions of this chapter, as well as any other applicable requirements, including, but not limited to, building, fire, planning and health requirements. (§ 2, Ord. 07-04, eff. February 15, 2007)

5.10.23 Hot tub, sauna, and tanning establishments.

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

ment who practice massage as defined in Section 5.10.02(d) must hold a valid massage therapist permit. (§ 2, Ord. 07-04, eff. February 15, 2007)

5.10.24 Out call massage services.

(a) Out call endorsement. 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 out call services.

(b) Record keeping. Any person performing out call massage services as authorized by this chapter shall maintain written records, at the massage therapist's principal place of business, of all out call massage services performed. These records shall be retained for at least two (2) years beyond the date services were provided. Record shall be made of each appointment at which massage services were provided and shall include:

- (1) Date and time;
- (2) Patron's full name and address;
- (3) Address where services were provided;
- (4) Name of the massage therapist providing services.

(c) Inspection of records. These records shall be open to inspection upon request only by officials charged with enforcement of this chapter or emergency medical personnel. Information within these records shall only be used to ensure compliance with this chapter, or any other applicable State or Federal laws, or as necessary in providing emergency medical treatment, and shall remain confidential.

(d) No out call services on premises owned by therapist. Out call massage services shall not be provided at any location owned, leased, rented or under the control of the massage therapist, including residential dwellings and business offices, unless that location is licensed as a massage establishment or is otherwise exempted as provided in this chapter. (§ 2, Ord. 07-04, eff. February 15, 2007)

5.10.25 Penalties for violation.

(a) Criminal proceedings. Any person who violates a provision of this chapter shall be guilty of a misdemeanor unless the City Attorney elects to prosecute the violation as an infraction.

(b) Injunction and abatement. Nothing in this chapter shall be deemed to prevent the City of Clovis from commencing a civil action to enjoin the continued violation of any provision of this chapter or to abate a nuisance, as an alternative, or in conjunction with any other civil or criminal proceeding. (§ 2, Ord. 07-04, eff. February 15, 2007)