

MODESTO POLICE DEPARTMENT
Massage Therapist/Establishment/School
Out-Call/On-Site
Applicant Checklist

FOR ALL LICENSE APPLICANTS

- Application filled out completely.
- Driver's license or California ID for each principal (MPD will make copy).
- Social Security Card for each principal (MPD will make a copy. N/A if renewing permit).
- License Fee—See Schedule—Cash, check or money order made out to “City of Modesto”.
- A “Release and Waiver” letter **must** be signed and notarized by all principals. One letter is needed for each principal.
- The “Municipal Code Acknowledgement” **must** be signed by all principals in the presence of police personnel.
- TB test results - Form provided to applicant must be completed by medical personnel.
- Color photo – one for each principal (Police personnel will take photo when application is submitted). N/A if renewing permit.
- Certificates or other evidence of education showing completed courses are required by Modesto Municipal Code. Original diploma, certificate of graduation, other written proof/certified transcripts; proof of matriculation from recognized school of massage (Must have original Diploma, Certificate of Graduation and certified transcripts). **Must** state number of hours of training.
- Current C.P.R. card (MPD will make a copy).
- Current certificate or proof of liability insurance (MPD will make a copy).
- Proof of membership in qualified massage association if applicable.
- Diagram – drawn to scale of establishment, the square footage room/rooms in which massage/bodywork occurs. For Establishment and Schools only.
- Copy of Re-Sellers permit (issued by State Franchise Tax Board) if you intend to sell any retail items (lotions, oils, ect.).

Date of Application: _____

| TYPE OF LICENSE APPLIED FOR: | FEES: |
|--|--------------|
| Massage Establishment | \$175.00 |
| School of Massage | \$100.00 |
| Massage Therapist | \$75.00 |
| Out-Call Massage Therapist | \$75.00 |
| Massage Therapist or Out-Call Renewal | \$10.00 |
| DOJ/FBI Fingerprint Fees (Required for all renewal and new applications) | \$62.00 |



DOCUMENTS RECEIVED:

- Permit Fee
- Driver's License Copy
- Social Security Card Copy
- Insurance
- TB Results
- Certificates
- Authorization Letter
- Municipal Code Acknowledgement

Received By: _____ Date: _____



**MODESTO POLICE DEPARTMENT
 LICENSE APPLICATION
 MASSAGE PRACTITIONER, MASSAGE ESTABLISHMENT,
 SCHOOL OF MASSAGE, OUT-CALL MASSAGE**

Date Submitted: _____

I HEREBY SUBMIT MY APPLICATION, attached hereto and made a part hereof by reference, for a LICENSE under the MASSAGE/BODYWORK BUSINESSES Ordinance of Chapter 2, Section 5 of the Modesto Municipal Code.

Type of License: _____

Applicant Name: _____
Last First Middle

Residence Address: _____
Number Street Name

City Zip Code

Home Phone: _____ Work Phone: _____

Age: _____ Date of Birth: _____ Male: Female: (check one)

Height: _____ Weight: _____ Eye Color: _____ Hair Color: _____

Drivers License No. _____ State: _____

Social Security Number: _____ - _____ - _____

LOCATION OF MASSAGE ESTABLISHMENT, SCHOOL OF MASSAGE, OR BUSINESS EMPLOYING MASSAGE PRACTITIONER:

Business Name: _____

Address: _____

Name of Owner: _____ Phone: _____

I have obtained and have read the requirements of the City of Modesto contained in Chapter 2, Section 5 of the Modesto Municipal Code (Bodywork/Massage Business Ordinance) and the information sheet is attached thereto. A copy has been provided to me with this application.

I certify under penalty of perjury that the foregoing, including statements contained in the attached application, are true and correct.

Executed on _____, 20____, at _____, California

Signature: _____

Aliases, or other names used by the applicant:

Name

Dates:

From

To

Prior Residence Addresses and Dates for the past three years:

The business, occupation or employment of the applicant for the past 3 years with dates and addresses:

Business/Occupation

Address

Phone

From

Dates:

To

MESSAGE OR SIMILAR BUSINESS OR EMPLOYMENT HISTORY:

Have you previously been employed in a massage establishment or school of massage in this or any other city or state? Yes No

If yes, complete the following:

Business/Occupation

Address

Phone

From

Dates:

To

Have you ever had a license or permit suspended or revoked for such business or employment?

Yes No If yes, When _____

If yes checked above, specify which business or employment and give the reason for said revocation or suspension: _____

The business activity or occupation of such person subsequent to such action or suspension or revocation:

HAVE YOU EVER BEEN CONVICTED OF:

1. An offense involving conduct which requires registration pursuant to Section 290 of the California Penal Code. Yes No

2. An offense involving the use of force and violence upon the person of another that amounts to a felony. Yes No

3. An offense involving sexual misconduct with children. Yes No

4. An offense involving theft of property. Yes No

5. An offense as defined in the California Penal Code Sections 311, 315, 316, 318 266, 266a, 266b, 266d, 266e, 266f, 266g, 26h, 647(a), 647(b), 647(d). Yes No and/or Conspiracy to commit or an attempt to commit any of the aforementioned said offenses. Yes No
6. The equivalent of any of the aforesaid offenses in a jurisdiction outside the State of California Yes No

If you answered yes to any of the above questions, give a complete explanation of each, including type of offense with dates and locations.

Are you now, or have you ever been licensed or registered or employed as a prostitute or otherwise authorized by the laws of any other jurisdictions to engage in prostitution in such other jurisdiction? Yes No

If yes, give the place of such registration: _____

Licensing and legal authority: _____

Inclusive dates so licensed, registered, or authorized to engage in prostitution: _____

Has the applicant, including a corporation or partnership, or a former employer of the applicant while so employed, or a building in which the applicant was so employed or a business conducted, ever been subject to an abatement preceding under California Penal Code Section 11225 through 11235, or any similar provision of law in a jurisdiction outside the State of California?

Yes No

If Yes, give complete explanation, including dates and locations.

Every applicant to be a **Massage Practitioner** or **Instructor** shall also furnish a copy of a diploma or certificate of graduation from a school of massage, wherein, the method, profession, and work of massage is taught and shall show satisfactory completion of courses in anatomy and hygiene, including the total number of hours of certified training. *Attach to this application.*

Every applicant for an **Establishment/School of Massage** must provide a detailed diagram of the business and attach the diagram to this application.

Please provide the name of the Massage Association to which you belong (if any)?

Every application for a license to operate a **Massage Establishment** shall also set forth the exact nature of the massage to be administered and facilities thereof.

Every application for a license to operate a **Massage Establishment** shall give the name and address of the owner and lessor of the real property upon which the business is to be conducted.

Property Owner:

Lessor:

If the applicant is a **corporation**, the application shall also set forth the name of the corporation exactly as shown in its articles of incorporation together with the names and residence addresses of each of the officers, directors, and each stockholder holding five percent (5%) or more of the stock of the corporation. *Attach to this application*

The corporation shall designate one of its officers to act as the responsible managing officer of the massage establishment or school of massage. Such officer also shall complete the application form as an individual applicant under this chapter. The responsible managing officer is:

Name:

Address:

Title:

Phone Number:

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

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

If the applicant is a **partnership**, the application shall also set forth the name and residence address of each of the partners, including limited partners. **Attach information at the end of this application.**

The partnership shall designate one of its officers to act as the responsible managing officer of the massage establishment. Such partner also shall complete the application form as an individual applicant under this chapter. The responsible managing officer is.

Name:

Address:

Title:

Phone Number:

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

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

**MASSAGE ESTABLISHMENT/PRACTITIONER
CITY OF MODESTO PERMIT AUTHORIZATION TO RELEASE
INFORMATION/HOLD HARMLESS**

TO WHOM IT MAY CONCERN:

I, _____, am an applicant for a

_____ permit which is issued by the Modesto Police Department. As part of the permit application process the Modesto Police Department is required to conduct a background investigation. I fully understand that personnel of the Modesto Police Department will conduct a reasonable investigation into my educational, limited medical (TB testing), business insurance, personal, driving, arrest and criminal investigation records.

I hereby direct you, your organization, its Custodian of Records, and/or persons in your employ to release any and all information which you may have concerning me, including information which may be of a confidential, privilege, and/or derogatory nature, including, but not limited to: driving, arrest, or criminal investigation records, administrative and/or local criminal history information (pursuant to Penal Code Section 13300[b][10]), and/or any other information that you possess.

I hereby exonerate, release and discharge you, your organization, the City of Modesto, the Modesto Police Department, its officers, agents, and assigns, from any and all liability, claims or damages, of every nature or kind, whether in law or in equity, now or in the future arising out of or for the furnishing of any information or documents and/or records, whatsoever, requested by the bearer of this authorization form. This release shall be binding on my legal representatives, heirs and assigns.

I hereby waive my right, now and in the future, to examine, review, or otherwise discover the contents of this investigation and all documents and responses related thereto. I further exonerate, release, and discharge the City of Modesto, the Modesto Police Department and their officers, agents, or assigns for their refusal to make available any and all information and/or documentation contained in this background investigation, including but not limited to, the identity of any person or organization who may have supplied information in the course of this investigation, as well as the substance of such information supplied, even where such information has been the basis for my disqualification for a tow driver permit.

I have specifically and permanently waived any rights I may have to review and inspect any and all information developed in this investigation so your response will be completely confidential. You may retain this form for your files.

I further hereby knowingly, voluntarily, specifically and permanently waive all my legal rights and causes of action to the extent that this background investigation violates or infringes upon my legal rights and causes of action. I agree to hold harmless and release from any and all liability under any and all possible causes of legal action the City of Modesto, the Modesto Police Department, and their officers, agents, employees and assigns for any statement, question, interview, act, or omission in the course of the investigation into my background, personal habits and reputation.

CERTIFICATION:

I CERTIFY THAT I HAVE HAD ADEQUATE TIME TO REVIEW THIS FORM, I UNDERSTAND IT'S MEANING AND PURPOSE AND HAVE BEEN FURNISHED A COPY OF IT. I MAY REVOKE THIS AUTHORIZATION AT ANY TIME BY DELIVERING, IN WRITING, SUCH REVOCATION TO YOU/YOUR ORGANIZATION.

A photocopy of this release is to be considered as valid as an original.

Only the Authorization to Release Information portion is valid for 180 days from the date of signature, the remainder of this document does not expire.

ACKNOWLEDGMENT

State of California
County of Stanislaus

On _____ before me _____
(Notary Public)

Personally appeared _____,
(Signer)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary _____

**MASSAGE THERAPIST/ESTABLISHMENT/SCHOOL
OUT-CALL/ON-SITE**

MUNICIPAL CODE ACKNOWLEDGEMENT

I/WE, THE UNDERSIGNED, MAKE THE FOLLOWING DECLARATIONS:

1. I/WE have been provided a copy of the Modesto Municipal Code Section concerning Massage Therapists/Bodywork Ordinance.
2. I/WE have read and understand the aforementioned Municipal Code Sections.
3. I/WE agree that, should a massage related license be issued, that I/WE will abide by the conditions and provisions of said Code Sections.

NAME: _____
(Print Name)

Signature: _____

NAME: _____
(Print Name)

Signature: _____

NAME: _____
(Print Name)

Signature: _____

NAME: _____
(Print Name)

Signature: _____

Witness: _____

Date: _____



**MODESTO POLICE DEPARTMENT
MESSAGE PRACTITIONER
FREEDOM FROM TUBERCULOSIS FORM,
MMC 5-2.401(b)**

APPLICANTS NAME _____

DATE OF BIRTH _____

THE FOLLOWING TO BE COMPLETED BY MEDICAL PERSONNEL ONLY:

I certify the above-named patient is free from active tuberculosis as determined by:

Check one:

Negative tuberculosis skin test.

Date: _____

Negative chest x-ray.

Date: _____

Print Name _____ Title _____

Signature of Medical Personnel _____

To confirm the validity of this document I can be contacted at:

Address _____

Phone Number _____

**RETURN THE COMPLETED FORM TO THE MODESTO POLICE DEPARTMENT
WITH YOUR COMPLETED APPLICATION PACKET.**

Ordinances

Chapter 2 MASSAGE/BODYWORK BUSINESSES

Article 1. General Provisions

5-2.101 Purpose and Intent.

It is the purpose and intent of this chapter to provide for the orderly regulation of the massage/bodywork business and massage practitioners in the City of Modesto. The City Council recognizes massage is a viable professional field offering the public valuable health and therapeutic services including, but not limited to, massage, bodywork and somatic therapies.

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 and to enhance the reputation of the profession and integrity of the services provided.

It is the purpose and intent of the City Council that massage/bodywork establishments and persons offering such services be regulated so as to ensure that persons offering massage/bodywork services 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. (Added by Ord. 3219-C.S., § 1, effective 5-30-01)

5-2.102 Definitions.

Unless the particular provision or the context otherwise requires, the definitions and provisions contained in this section shall govern the construction, meaning, and application of words and phrases used in this chapter.

- (a) Employee: For the purposes of this chapter, shall include independent contractors.
- (b) Massage or bodywork techniques: Means any nonincidental touching, rubbing, stroking, kneading, tapping, pounding, vibrating, or stimulating of the external parts of the human body including, but not limited to, the following methods of treatment:
 - (1) Biomechanical manipulation of soft-tissue through touch for the purposes of prevention, rehabilitation and healing. This includes, but is not limited to, deep-tissue and pre and post sports massage and manual lymph drainage therapeutic technique, myofascial release and neuromuscular reeducation;
 - (2) Hydrotherapy;
 - (3) Heliotherapy;
 - (4) Electro-mechanical or vibratory devices;
 - (5) Herbal applications or chemical preparations such as oil or alcohol rubs, aromatic lubricants, powders, creams, ointments, or similar preparations commonly used in this practice;
 - (6) Salt baths;
 - (7) Petrissage;
 - (8) Effleurage;
 - (9) Tapotement; and
 - (10) Application of pressure, using specific thumb and finger techniques working on precise reflex points on feet, hands and ears.

(c) **Massage/bodywork business:** Means any establishment having a fixed place of business where any individual, firm, association, partnership, corporation, or combination of individuals, engages in, conducts, carries on or permits to be engaged in, conducted or carried on, massage/bodywork services or techniques, acupuncture, reflexology, alcohol rubs, Russian, Swedish, or Turkish Baths, facial massage/bodywork, electric or magnetic treatments, or health treatments involving massage/bodywork or baths.

(d) **Massage/bodywork practitioner:** Means any natural person, other than a medical practitioner licensed by the State of California, who practices or administers any massage/bodywork technique as defined above in exchange for a fee, income, or anything of any value whatsoever within the City of Modesto.

(e) **Manager:** Means the person(s) designated by the operator of the massage/bodywork business 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 owner. A manager must meet the standards and qualifications of Section 5-2.104 to qualify as a manager and must obtain a practitioner license.

(f) **On-site therapy:** Means any method of pressure on, or friction against, or stroking, kneading, tapping, pounding, vibrating, or stimulating the external parts of the human body with the hands without such supplementary aids as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment, or other similar preparations, when the client remains fully clothed and at a location other than a massage/bodywork establishment, and is limited to business offices, sports complexes, convention centers and public events.

(g) **Out-call massage:** Means the engaging in or carrying on of massage/bodywork for a fee or any consideration at a location other than a duly licensed massage/bodywork establishment.

(h) **Operator/owner:** Means all persons who have an ownership interest in the massage/bodywork business and are responsible for its day-to-day operations. The operator/owner also is an individual(s) whose name(s) appears on the City of Modesto business license.

(i) **Person:** Means any individual, or corporation, partnership, association or other group or combinations of individuals acting as an entity.

(j) **Recognized school of massage:** Means any school or institution of learning which has for its purpose the teaching of the theory, practice, method and performance, ethics, anatomical and physiological knowledge, and work of massage, which school or institution complies with California Education Code Sections 94310--94311, 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. Any out-of-state school must meet the requirements of California Education Code Sections 94310 and 94311 and must be licensed by the state or subdivision thereof within which it functions if such licensing is required.

(k) **Qualified massage association:** Means any association which meets the following criteria:

(1) Has established as a minimum educational requirement for membership, the completion of at least five hundred (500) hours of training from a recognized school of massage or has a written and practical testing of equivalency administered and overseen by its admission committee or by national certification program endorsed by the National Commission for Certifying Agencies (NCCA), which will be considered in lieu of the minimum education requirement of five hundred (500) hours.

(2) Offers and requires participation and completion by members of a minimum number of hours of specified continuing education as a condition of continuing membership.

(3) Is opened to members of the general public meeting the requirements for membership on a national basis.

(4) Has minimum educational requirements or equivalence, including at least five hundred (500) classroom hours or its equivalent in anatomy, physiology, hygiene, sanitation,

massage therapy and practice, ethics of massage practice, first-aid and CPR. Equivalency must be verified by written and practical testing by the association.

(5) Has established rules of ethics and has enforcement procedures for the suspension or revocation of membership for violation of such rules.

(l) Qualifying exam: Means a national certification examination which has been recognized by objective standards to fairly evaluate professional level, skill, safety and competence as determined by a qualified massage association.

(m) Reflexology: Is the application of specific pressures to reflex points in the hands and feet. It is a clothed session with only the removal of shoes and socks allowed. (Added by Ord. 3219-C.S., § 1, effective 5-30-01)

5-2.103 Massage/Bodywork Business: License Required.

Every person conducting, managing, owning, or operating a massage/bodywork business in the City, except as exempted under Article 5 herein, shall first obtain a license under this chapter. Said license shall be numbered and must be displayed by the licensee in a prominent place on the premises in which the business is conducted. Any individual who is both a massage/bodywork practitioner and the owner/operator of a massage/bodywork business may obtain a single license as owner/practitioner if he or she satisfies the license requirements for both business and practitioner. (Added by Ord. 3219-C.S., § 1, effective 5-30-01)

5-2.104 Massage/Bodywork Practitioner: License Required.

Every person employed as a massage/bodywork practitioner or self-employed providing massage/bodywork services for compensation at a licensed massage/bodywork establishment and/or providing on-site therapy and/or out-call massage for compensation in the City shall obtain a license under this chapter. In order to qualify for a massage/bodywork practitioner license provided for hereunder, each massage/bodywork practitioner must satisfy one of the following criteria:

(a) Have received a diploma or certificate of completion in a course of study in massage/bodywork at a recognized school of massage or institution approved pursuant to the California Education Code and shows proof of satisfying completion of at least five hundred (500) classroom hours of a non-repetitive curriculum in anatomy, physiology, hygiene, sanitation, massage therapy, theory, practice and ethics of massage practice; however, said five hundred (500) hours shall not include internship hours obtained by a student from a school when the school collects a fee from the public for a massage given by the student, and the school then credits the student with "internship hours;" or

(b) Have received a certificate of completion in a course of study at an institution outside California which, in the opinion of the Police Chief, meets or exceeds the criteria for approval for such programs in California; or

(c) Have successfully passed an independently prepared and administered national certification examination which is recognized by objective standards to fairly evaluate professional levels of skill, safety and competence, as determined by the National Commission for Certifying Agencies. (Added by Ord. 3219-C.S., § 1, effective 5-30-01)

5-2.105 Requirements as to Establishments and Practitioners Licensed by the Effective Date of the Ordinance Codified in this Chapter.

(a) All persons currently holding a valid massage establishment or a massage technician license issued pursuant to the provisions of City of Modesto's former massage ordinance,

shall meet and satisfy the educational requirement of five hundred (500) hours of a non-repetitive curriculum in anatomy, physiology, hygiene, sanitation, massage therapy, theory, practice and ethics of massage practice. Every currently licensed practitioner has a minimum of one hundred eighty (180) hours and in order to retain said license, shall meet and satisfy the following requirements on or before the dates set forth below:

(1) Have a total of three hundred (300) hours of education completed by May 1, 2003; and
(2) Have a total of five hundred (500) hours of education completed by January 1, 2006.

(b) The five hundred (500) hour educational requirement shall not include internship hours obtained by a student from a school when the school collects a fee from the public for a massage given by the student, and the school then credits the student with "internship hours."

(c) In the alternative, a current licensee may satisfy the five hundred (500) hour educational requirement by successfully passing an independently prepared and administered national certification examination as set forth in Section 5-2.104 of this chapter.

(d) All persons currently holding a valid massage establishment or a massage technician license shall have three (3) months from the effective date of the ordinance codified in this chapter to provide proof of current certification of adult cardiopulmonary resuscitation and proof of malpractice insurance coverage as required by this chapter.

(e) Existing establishment and technician licenses shall continue in effect until expiration. Upon expiration, a new application shall be submitted pursuant to the provisions of this chapter with the exception of the mandatory five hundred (500) hour educational requirement.

(f) Upon expiration, the Police Chief shall issue a provisional license to any massage/bodywork practitioner who does not satisfy the five hundred (500) hour educational requirement. The provisional licenses shall be issued as follows:

(1) All provisional licenses issued in the years 2001 and 2002 shall expire on May 1, 2003.

(2) All provisional licenses issued after May 1, 2003, shall expire January 1, 2006. (Added by Ord. 3219-C.S., § 1, effective 5-30-01)

Article 2. Application for License.

5-2.201 Fees.

A fee shall be required for every license application filed under this chapter. The fee must be received by the Modesto Police Department before any application is processed. The City Council shall set the amounts of said fees by resolution and may from time to time by resolution adjust the amounts of said fees. Any fee pursuant to this section shall be in addition to and not in lieu of any business license tax imposed pursuant to the provisions of the Modesto Municipal Code. (Added by Ord. 3219-C.S., § 1, effective 5-30-01)

5-2.202 Application Duration.

A license issued under this chapter shall be valid for two (2) years from the date of issuance. Renewal application shall be submitted on a short form to be developed by the Modesto Police Department which provides information regarding any items which may have been changed from the initial application otherwise the renewal procedure shall be the same as for the issuance of a new license. (Added by Ord. 3219-C.S., § 1, effective 5-30-01)

5-2.203 Application for License: Establishment License and Practitioner's License.

Every person desiring a business license or practitioner's license under this chapter shall complete and submit to the Modesto Police Department a written application in a form approved by the Police Chief. The application shall be completed under penalty of perjury under the laws of this State and shall require the following information as relevant to the specific type of license:

- (a) The name of the applicant and a complete statement regarding any and all true and fictitious names used by the applicant within the five (5) years immediately preceding the application. All applications for licenses for massage/bodywork establishments or schools of massage shall be referred to the Chief Building Official, the Fire Chief, the Health Officer, the Community Development Director, and the Police Chief who shall make written recommendations to the City Manager concerning compliance with the laws and ordinances that they administer and enforce;
- (b) The residence address, business address, and residence and business telephone numbers of the applicant;
- (c) The previous addresses of applicant, if any, for a period of five (5) years immediately prior to the date of the application and the dates of residence at each address;
- (d) Acceptable written proof that the applicant is at least eighteen (18) years of age;
- (e) The names, residence and business address and telephone numbers of any co-partners, excluding limited partners of the applicant;
- (f) If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in the articles of incorporation along with the names and residence addresses of each of the officers, directors and each shareholder owning ten (10) percent or more of the corporation. If one or more of the owners is a corporation, the provisions of this section pertaining to a corporate applicant apply;
- (g) The names, residence and business address and telephone numbers of the managers and persons to be in charge;
- (h) The name, residence and business addresses and telephone numbers of the owner of the premises, if any, in which the business is to be located and the written consent of said owner to operation of the business or a copy of the lease for the premises executed by the owner evidencing such consent;
- (i) The applicant's height, weight, color of eyes and hair and date and place of birth, unless applicant is a partnership or corporation, in which case this information shall be supplied for the person or persons authorized to execute the application;
- (j) The nature, name and place of applicant's business or employment during the five (5) years immediately preceding the date of filing of the application;
- (k) A description of the exact nature of the business to be operated and the name under which it will operate;
- (l) The address and particular room or rooms and square footage of the premises in which the massage/bodywork activities are to occur;
- (m) A diagram drawn to scale and dimensions showing the number of rooms for said business, including a sketch of the interior arrangement thereof and a list of the equipment used thereon;
- (n) Whether or not the applicant or any partner, co-partner, manager, or operator of the business being applied for has had a license for the same or any similar business suspended or revoked anywhere, and if so, the circumstances of such suspension or revocation;
- (o) A statement that the applicant or any partner, co-partner, manager, employee or operator of the business has never been convicted of violations of Penal Code Sections 220, 261, 264.1, 266e, 266h, 266i, 314, 315, 316, 318, 647(a) or (b), or any offense involving possession of the substances identified in Health and Safety Codes Sections 11054, 11055, 11056, 11057, or 11058 or of any felony, or, if such crime has been

committed by such person, a complete statement of the nature of such crime and the place and date of conviction;

(p) A statement that the applicant or any partner, co-partner, manager, employee or operator of the business is not required to register under Penal Code Section 290, or if any such person is so required, the circumstances leading to this requirement;

(q) Sets of fingerprints of the applicant, the person or persons in charge of the business and all massage/bodywork practitioners for the business taken by the City of Modesto Police Department;

(r) Proof of massage malpractice insurance coverage in the sum of not less than five hundred thousand dollars (\$500,000.00) per each massage/bodywork practitioner employed by the business up to a maximum of one million dollars (\$1,000,000.00);

(s) Proof of membership in a qualified massage association, if applicable;

(t) Proof of matriculation from a recognized school of massage, as defined herein. If the applicant is a corporation or partnership, then this proof must be supplied for a member of the corporation or partnership who will actively participate in the management of the establishment. The practitioner must submit an original diploma, certificate of graduation, or other written proof, including certified transcripts, acceptable to the Police Chief, that establish compliance with Modesto Municipal Code Section 5-2.104;

(u) Proof of current certification of adult cardiopulmonary resuscitation (C.P.R.). If the applicant is a corporation or partnership, then this proof must be supplied for a member of the corporation or partnership who will actively participate in the management of the establishment; and

(v) Such other information as the Police Chief shall deem necessary. (Added by Ord. 3219-C.S., § 1, effective 5-30-01)

5-2.204 Notice of Change.

(a) Whenever any change occurs relating to the written information specified in Section 5-2.203, including changes in the physical layout of the business, changes in employees or operations, the applicant shall report said change and provide all information which would have been required under Section 5-2.203 prior to its taking effect.

(b) No massage/bodywork business license may be sold, transferred or assigned by a licensee, 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 license and such license shall thereafter be null and void. However, if the licensee 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 the license. In such case, the license, upon notification to the Police Chief, shall be placed in the name of the surviving partners. A massage/bodywork license issued to a corporation shall be deemed terminated and void when either any outstanding stock of the corporation is sold, transferred or assigned after the issuance of a license, or any stock authorized but not issued at the time of the granting of the license is thereafter issued or sold, transferred or assigned. No massage/bodywork practitioner's license may be sold, transferred or assigned by a licensee, or any operation of law, to any other person or persons.

(c) Renewal applications shall require such information as may be required by the Police Chief to update the information contained in the original license application. The applicant shall accompany the application for renewal with the appropriate filing fee established by resolution of the City Council.

(d) All existing license holders shall have an additional three (3) months from the effective date of the ordinance codified in this chapter to provide proof of current certification of adult cardiopulmonary resuscitation and proof of malpractice insurance coverage. (Added by Ord. 3219-C.S., § 1, effective 5-30-01)

Article 3. Massage/Bodywork Establishment License

5-2.301 Investigation.

(a) The Police Chief upon receipt of a complete application for a massage/bodywork business or a renewal of such license will conduct an appropriate investigation to determine whether the license shall be issued in accordance with the procedures of this chapter.

(b) The Police Chief shall have sixty (60) days to investigate the application and the background of the applicant, including, but not limited to, any past criminal convictions as provided by the Justice Department or other legally authorized agency. (Added by Ord. 3219-C.S., § 1, effective 5-30-01)

5-2.302 Approval or Denial of License.

(a) After investigation, the Police Chief shall approve or conditionally approve issuance or renewal of the license if he/she finds:

(1) A completed written application form has been filed;

(2) The required application fee has been paid;

(3) The applicant has fully cooperated in the investigation of his or her application;

(4) The applicant has not knowingly made any false, misleading or fraudulent statements in the application;

(5) The applicant is conducting the business in a building that complies with all of the health, zoning, fire, building and safety requirements and standards of the laws of the State of California and the City of Modesto;

(6) The applicant, his/her or its employees, agents, partners, or officers, directors, or shareholders of the corporation holding more than five (5) percent of the stock, if the applicant is a corporation, or any of the partners, including limited partners, if the applicant is a partnership, has not been convicted in a court of competent jurisdiction of an offense involving conduct which requires registration under California Penal Code Section 290, or of conduct violating Penal Code Sections 220, 261, 264.1, 266e, 266h, 266i, 314, 315, 316, 318, 647(a), and 647(b) or convicted of an attempt to commit any of the above-mentioned offenses or convicted in any state of any offense which if committed or attempted in this state, or conspiracy to commit any of the above offenses, would have been punishable as one or more of the above-mentioned offenses, or any crime involving dishonesty, fraud, deceit, or moral turpitude;

(7) The applicant, his/her or its employees, agents, partners, or officers, directors, or shareholders of the corporation holding more than five (5) percent of the stock, if the applicant is a corporation, or any of the partners, including limited partners, if the applicant is a partnership, has not been convicted, within the past five years, in a court of competent jurisdiction of any offense involving the controlled substances designated in Sections 11054, 11055, 11056, 11057, or 11058 of the Health and Safety Code or violation in any other state of an offense which, if committed in this state, would have been punishable as one or more of the above-mentioned offenses;

(8) The applicant, his/her or its employees, agents, partners, or officers, directors, or shareholders of the corporation holding more than five (5) percent of the stock, if the applicant is a corporation, or any of the partners, including limited partners, if the applicant is a partnership, has not been convicted in a court of competent jurisdiction of an offense involving the maintenance of a nuisance in connection with the same or similar business operation;

(9) The applicant has not had a license or license for a similar type business revoked by the City or any other jurisdiction within the past three (3) years;

(10) The applicant has shown proof of malpractice insurance as required by this chapter;

(11) Proof of current certification of adult cardiopulmonary resuscitation by the manager of the business and all practitioners;

(12) The applicant is not delinquent in payment to the City of Modesto of taxes, fees, fines, or penalties assessed against or imposed upon the applicant arising out of any other business activity owned or operated by the applicant and licensed by the City.

(b) The Police Chief shall provide written notice to the applicant of the decision and the grounds therefore as soon as possible after arriving at the decision. If denied, an applicant may reapply if he or she can provide evidence that the ground or grounds for denial of the applicant no longer exist, provided however, that no such reapplication may be made no sooner than ninety (90) days after the original application. All licenses issued pursuant to the provisions of this chapter shall be personal to the applicant and nontransferable.

(c) The Police Chief is authorized to issue a temporary license if relevant Department of Justice state summary criminal history information is not received within the sixty (60) day investigation. A final decision granting or denying a license shall be made after receipt of such summary criminal history information. If the license is granted, its effective date shall be the date of issuance of the temporary license.

Temporary licenses shall be issued for a ninety (90) day period. The Police Chief may extend such temporary license should the relevant Department of Justice information not yet be available. (Added by Ord. 3219-C.S., § 1, effective 5-30-01)

Article 4. Massage/Bodywork Practitioner License

5-2.401 Contents.

(a) In addition to the information required by Section 5-2.203 of this chapter, each application for massage/bodywork practitioner shall contain the name, address and telephone number of the business at which the applicant will be employed.

(b) The applicant must furnish a certificate from a physician, licensed to practice medicine in the State of California, showing that the applicant has been tested within the previous thirty (30) days in a manner of proof by the health officer and has been found to be free of tuberculosis. (Added by Ord. 3219-C.S., § 1, effective 5-30-01)

5-2.402 Investigation.

The Police Chief shall have sixty (60) days to investigate the application and the background of the applicant, including but not limited to, any past criminal convictions as provided by the Justice Department or other legally authorized agency. Upon completion of the investigation, the Police Chief shall grant the license if, in addition to the finding that the applicant will work in an establishment which complies with this chapter, the requirements of Section 5-2.403 have been met. (Added by Ord. 3219-C.S., § 1, effective 5-30-01)

5-2.403 Approval or Denial of License.

(a) After investigation, the Police Chief shall approve or conditionally approve issuance or renewal of the license if he/she finds:

- (1) A completed written application form has been completed;
- (2) The required application fee has been paid;
- (3) The applicant has fully cooperated in the investigation of his or her application;
- (4) The applicant has not knowingly made any false, misleading or fraudulent statements in the application;

- (5) The applicant has not had a license or license for a similar type business revoked by the City or any other jurisdiction within the past three (3) years;
- (6) The applicant has shown proof of malpractice insurance;
- (7) The applicant has shown proof of current certification of adult cardiopulmonary resuscitation;
- (8) The applicant has not been convicted in a court of competent jurisdiction of an offense involving conduct which requires registration under Penal Code Section 290, or of conduct violating Penal Code Sections 226i, 266, 314, 315, 316, 318, 647(a), 647(b) and 647(h), or convicted of an attempt to commit any of the above-mentioned offenses or convicted in any state of any offense which if committed or attempted in this state, or conspiracy to commit any of the above offenses, would have been punishable as one or more of the above-mentioned offenses, or any crime involving dishonesty, fraud, deceit, or moral turpitude;
- (9) The applicant has not been convicted within the past five (5) years, in a court of competent jurisdiction of any offense involving the controlled substances designated in Sections 11054, 11055, 11056, 11057, or 11058 of the Health and Safety Code or violation in any other state of an offense which, if committed in this state, would have been punishable as one or more of the above-mentioned offenses;
- (10) The applicant has not been convicted in a court of competent jurisdiction of an offense involving the maintenance of a nuisance in connection with the same or similar business operation;
- (11) The applicant has received a degree or certificate of completion in a course of study in massage/bodywork at a school or institution approved pursuant to the California Education Code with a state approved massage/bodywork curriculum of not less than five hundred (500) hours; or has received a certificate of completion in a course of study at an institution outside California which, in the opinion of the Police Chief, meets or exceeds the criteria for approval for such programs in California; or has successfully passed an independently prepared and administered national certification examination which is recognized by objective standards to fairly evaluate professional levels of skill, safety and competence, as determined by the national commission for certifying agencies and has produced an acceptable diploma or certificate of graduation or document establishing the passing of a national certification examination.
- (b) The Police Chief shall provide written notice to the applicant of the decision and the grounds therefore as soon as possible after arriving at the decision. The decision of the Police Chief shall be final. If denied, an applicant may reapply if he or she can provide evidence of the ground or grounds of denial of the applicant no longer exist, provided however, that no such reapplication may be made sooner than ninety (90) days after the original application. All licenses issued pursuant to the provisions of this chapter shall be personal to the applicant and nontransferable.
- (c) The Police Chief is authorized to issue a temporary license if relevant Department of Justice state summary criminal history information is not received within the thirty (30) day investigation. A final decision granting or denying a license shall be made after receipt of such summary criminal history information. If the license is granted, its effective date shall be the date of issuance of the temporary license.
- Temporary licenses shall issued for a ninety (90) day period. The Police Chief may extend such temporary license, should the relevant Department of Justice information not yet be available. (Added by Ord. 3219-C.S., § 1, effective 5-30-01)

Article 5. Exemptions.

5-2.501 Professions.

The provisions of this chapter shall not apply to the following classes of persons while engaged in the performance of the duties of their respective professions:

- (a) Physicians, surgeons, chiropractors, osteopaths, podiatrists, acupuncturists, or physical therapists duly licensed to practice in the State of California;
- (b) Registered nurses or state licensed vocational nurses;
- (c) Hospitals, nursing homes, sanitariums, or other health care facilities duly licensed by the State of California;
- (d) Barbers, beauticians and cosmetologists who are duly licensed under the laws of the State of California while engaging in practices within the scope of their licenses, limited solely to the massaging of the neck, face, scalp, feet up to the ankle, or hands up to the wrist of the client. This includes manicurists, nail technicians and estheticians licensed by the State of California as required by the Barbering and Cosmetology Act;
- (e) Accredited high schools, junior colleges, and colleges or universities where coaches and trainers are acting within the scope of their employment;
- (f) Trainers of any amateur, semiprofessional or professional athlete or athletic team while engaging in their training responsibilities for and with athletes. (Added by Ord. 3219-C.S., § 1, effective 5-30-01)

5-2.502 Schools of Massage.

Recognized schools of massage in the City of Modesto that were in existence on January 1, 1992, and massage therapists who are either employees or independent contractors of those schools. Students of recognized schools of massage in the City of Modesto that were in existence on January 1, 1992, are also exempt from the requirements of this chapter. However, this exemption does not apply if either independent contractors, employees or students of those schools provide massage or bodywork services in exchange for a fee, income, or anything of any value whatsoever within the City of Modesto. (Added by Ord. 3219-C.S., § 1, effective 5-30-01)

5-2.503 Holistic Practitioners.

Holistic health practitioners who are nonmedical health care therapists and use a massage specialty and therapeutic approach in caring for clients and who present to the Police Chief proof of satisfactory completion of one thousand (1,000) hours of instruction in such specialty or therapeutic approach at a school with a state approved curriculum and proof of membership in a state or nationally chartered organization devoted to the specialty or therapeutic approach are exempt. The practice of such health care therapists may include other services such as nutritional assistance or counseling as long as all activities are directed toward health care. (Added by Ord. 3219-C.S., § 1, effective 5-30-01)

5-2.504 Reflexologist.

Practitioners of reflexology who present to the Police Chief proof of satisfactory completion of two hundred (200) hours of reflexology classroom instruction in reflexology related subjects including anatomy, physiology, and subjects dealing with feet, hands or ears and reflexology practice from a reputable school of reflexology are exempt. The practitioner shall submit written proof of attendance, including certified transcripts, or other documents, acceptable to the Police Chief. (Added by Ord. 3219-C.S., § 1, effective 5-30-01)

5-2.505 Miscellaneous.

Practitioners of legitimate proprietary bodywork modalities such as Rolfing, Hellerwork, and Trager which are not "massage" as commonly understood but which may fall within the definition of massage/bodywork because of touching or other contact, may be exempt from the requirements of this section if these practitioners are certified to practice by that modality's training program, guild or other professional organization. (Added by Ord. 3219-C.S., § 1, effective 5-30-01)

5-2.506 Nonexempt Practitioners.

All individuals who use a massage specialty and/or therapeutic approach in caring for clients while under the "control and direction" of any of the exempted classes of individuals as listed above must have a valid massage/bodywork practitioner license and comply with all the requirements for the issuance of a practitioner license. (Added by Ord. 3219-C.S., § 1, effective 5-30-01)

Article 6. On-Site Therapy and Out-Call Massage

5-2.601 Off-Premises Massage/Bodywork.

No person shall perform or administer massage or bodywork techniques as either on-site therapy or out-call massage/bodywork, as those terms are defined herein, for money or other consideration, without obtaining a massage/bodywork practitioner license pursuant to the provisions of this chapter in conjunction with a valid City of Modesto business license. (Added by Ord. 3219-C.S., § 1, effective 5-30-01)

5-2.602 Out-Call Prohibition.

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 of California. Violation of this section shall constitute a misdemeanor. (Added by Ord. 3219-C.S., § 1, effective 5-30-01)

5-2.603 Time Constraints.

Out-call massage and on-site therapy shall only be conducted between the hours of 8:00 a.m. and 8:00 p.m. (Added by Ord. 3219-C.S., § 1, effective 5-30-01)

5-2.604 Locations--Prohibited.

Out-call massage or on-site therapy shall not be conducted in the following locations:
(a) A hotel/motel room or any other similar location used primarily for transitory habitation purposes.
(b) The residence of the out-call or on-site massage/bodywork practitioner. (Added by Ord. 3219-C.S., § 1, effective 5-30-01)

Article 7. Denial of License--Appeal

5-2.701 Procedure.

The decision of the Police Chief to deny a massage/bodywork business license or massage/bodywork practitioner's license may be appealed to the City Manager or his or her designee by the applicant through the following procedure:

(a) No later than fifteen (15) calendar days after mailing of the notice of denial, the applicant shall file with the City Clerk a written request for an appeal hearing, which states the specific grounds for appeal.

(b) As soon as practicable after receiving the appeal, the City Manager, or his or her designee, shall set a date to hear the appeal, which date shall be no less than seven (7) days nor more than sixty (60) days from the date the appeal was filed. The City Manager, or his or her designee, shall give each appellant written notice of the time and place of the hearing at least fifteen (15) days prior to the date of the hearing, either by causing a copy of the notice to be delivered to the appellant personally or by certified mail addressed to the appellant at the address shown on the appeal. Continuances of the hearing may be granted by the City Manager, or his or her designee, on request of the appellant for good cause shown, or on the City Manager's own motion. The hearing shall be informal. At the hearing, the City Manager or his or her designee shall hear the appellant and any witnesses and shall determine the issue. Upon conclusion of the hearing, the City Manager or his or her designee shall render a decision. The decision of the City Manager, or his or her designee, shall be final. (Added by Ord. 3219-C.S., § 1, effective 5-30-01)

5-2.702 Burden of Proof.

Unless otherwise specifically prohibited by law, the burden of proof is on the applicant or licensee in any hearing or other matter under this chapter. (Added by Ord. 3219-C.S., § 1, effective 5-30-01)

Article 8. Facilities and Operating Requirements

5-2.801 Requirements.

Every massage/bodywork establishment and every massage/bodywork practitioner shall comply with the following facilities and operations requirements.

The Police Department shall, from time to time, make an inspection of each massage/bodywork establishment for the purpose of determining compliance with this chapter.

(a) The massage/bodywork establishment premises and facilities shall meet and be maintained in a condition to comply with all applicable code requirements of the City of Modesto, including, but not limited to, those related to the safety of structures, adequacy of the plumbing, lighting, heating, ventilation, waterproofing of rooms in which showers, water or steam baths are used, and the health and cleanliness of the facility.

(b) Massage/bodywork establishments and massage/bodywork practitioners shall at all times have an adequate supply of clean sanitary towels, coverings and linens. Towels, nondisposable coverings, and linens shall not be used on more than one (1) client, unless they have first been laundered and disinfected. Disposable towels and disposable coverings shall not be used on more than one (1) client. Soiled linens and paper towels shall be deposited in separate receptacles.

(c) In the massage/bodywork establishment, wet and dry heat rooms, steam or vapor rooms or cabinets, toilet rooms, showers and bathrooms, tanning booths, whirlpool baths, and pools shall be thoroughly cleaned and disinfected as needed, and at least once each day when the premises are open, with a disinfectant. Bathtubs shall be thoroughly cleaned

with a disinfectant after each use. All walls, ceilings, floors and other physical facilities for the establishment shall be in good repair and maintained in a clean and sanitary condition. (d) All equipment used in the massage/bodywork operation shall be maintained in a clean and sanitary condition. Instruments utilized in performing massage or bodywork techniques shall not be used on more than one (1) client unless they have been sterilized, using standard sterilization methods.

(e) Clients of the massage/bodywork establishment shall be furnished with a dressing room. Dressing rooms will be used only by clients of the same sex at the same time. Dressing rooms need not be separate from the room in which the massage is being performed.

(f) Toilet facilities shall be provided in convenient locations within the massage/bodywork establishment and shall consist of at least one (1) unisex toilet with lavatories or wash basins provided with soap and both hot and cold running water either in the toilet room or vestibule.

(g) A minimum of one (1) wash basin for employees shall be provided at all times. The basin shall be located within or as close as practicable to the area devoted to performing of massage or bodywork services. Soap and sanitary towels shall also be provided at each basin.

(h) The massage/bodywork establishment license and a copy of the license of each and every massage/bodywork practitioner employed in the establishment shall be displayed in an open and conspicuous place on the premises. Massage/bodywork practitioners shall be fully clothed at all times. Clothing shall be of a fully opaque, non-transparent material and provide the complete covering from mid-thigh to three (3) inches below the collarbone.

(i) The owner, operator or manager of the massage/bodywork establishment shall keep a complete and current list of the names and residence addresses of all massage/bodywork practitioners and employees of the massage/bodywork establishment and the name and residence addresses of the manager or managing employee purported to be principally in charge of the operation of the massage/bodywork establishment. This roster shall be kept at the premises and be available for inspection by officials charged with enforcement of this chapter.

(j) Every massage/bodywork establishment shall keep a written record of the date and hour of each treatment administered, the name and address of each patron, the name of the massage/bodywork practitioner administering treatment, and the type of treatment administered. Such written record shall be open to inspection by officials charged with the enforcement of this chapter. Such record shall be kept on the premises of the massage/bodywork establishment for a period of two (2) years.

(k) No person shall enter, be, or remain in any part of a massage/bodywork establishment while in the possession of, consuming, or using any drug except a prescription drug. The responsible owner, operator, managing employee, manager or licensee shall not permit any such person to enter or remain upon such premises.

(l) Every massage/bodywork establishment shall be open at all times during business hours for inspection by any officer of the City of Modesto.

(m) All exterior doors shall remain unlocked from the inside during business hours. A person operating a massage/bodywork establishment shall be responsible for and provide that said premises shall, during business hours, be readily accessible and open for inspection by law enforcement officers for the purpose of locating evidence that would substantiate a violation of the provisions of this chapter.

(n) No massage/bodywork establishment shall simultaneously operate as a school of massage, or share facilities with a school of massage or bodywork technique. (Added by Ord. 3219-C.S., § 1, effective 5-30-01)

Article 9. Prohibited Conduct Applicable to Massage/Bodywork Business and Practitioners

5-2.901 Prohibitions.

(a) Massage/bodywork techniques shall be provided or given at a duly licensed massage/bodywork establishment only between the hours of 6:00 a.m. and 10:00 p.m. No massage/bodywork establishment shall be open to clients between 10:00 p.m. and 6:00 a.m.

(b) Alcoholic beverages may be served or furnished on the premises if the licensee receives a special event permit from the Chief of Police and satisfies any and all requirements of the Alcoholic Beverage Control Department applicable to such special event. The sale of alcohol on the premises is prohibited.

(c) No owner, manager, operator, responsible managing employee, or licensee shall permit, and no massage/bodywork practitioner shall offer or perform any service other than those permitted under this chapter.

(d) No licensee or employee of a massage/bodywork establishment shall:

(1) Expose the sexual or genital part of the licensee/employee in the course of a massage/bodywork technique; or

(2) Expose the sexual or genital part of any other person in the course of a massage/bodywork technique.

Sexual and genital parts shall include the genitals, anus, perineum of any person and the breasts of any female.

(e) No licensee or employee of a massage/bodywork 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 that would reasonably suggest to prospective customers that any services available that is prohibited under this chapter nor shall any massage/bodywork establishment employ language in any advertising text or business name that would reasonably suggest to a prospective client that any service is available that is prohibited under this chapter.

(f) A massage/bodywork practitioner shall not violate the provisions of Sections 647(a) and (b) of the California Penal Code, or any other state law involving a crime of moral turpitude, and such practices shall not be allowed or permitted by the massage/bodywork establishment licensee.

(g) A massage/bodywork practitioner shall not massage a client of one sex within the view of a client of the opposite sex, and such practices shall not be allowed or permitted by the massage/bodywork establishment licensee. Parents, guardians, translators or caregivers are excluded from this requirement.

(h) Proof of knowledge of any violation of this section shall not be required to be shown where a massage/bodywork establishment license is suspended or revoked.

(i) This chapter does not prohibit the sale of merchandise at retail. (Added by Ord. 3219-C.S., § 1, effective 5-30-01)

Article 10. Suspension and Revocation of License and Appeals Therefrom

5-2.1001 Grounds for Suspension and Revocation.

(a) The Police Chief may refuse to renew, revoke or suspend any license granted under this chapter on the grounds that the applicant or license holder has failed to comply with the license conditions or other requirements of this chapter. If a suspended license lapses during the suspension period, a new application must be made at the end of the suspension period.

(b) The Police Chief may revoke or refuse to renew a massage/bodywork business license if he or she makes any of the findings for denial of a license under Section 5-2.302 or upon any subsequent violation of any provision within one (1) year following a prior suspension under this chapter or upon demonstrated inability to operate or manage the

massage/bodywork establishment in a law abiding manner, thus necessitating action by law enforcement officers or in such manner as to constitute a menace to the health, safety, or general welfare of the public.

(c) The Police Chief may summarily suspend a massage/bodywork establishment license for a period of thirty (30) days for each violation of this chapter or may summarily suspend a massage/bodywork practitioner's license for a period of thirty (30) days for each violation of this chapter.

(d) The Police Chief may revoke or refuse to renew a massage/bodywork practitioner's license if he or she makes any of the findings for denial of a license under Section 5-2.403 or upon any subsequent violation of any provision of this chapter within one (1) year following a suspension authorized under this chapter.

(e) The Police Chief may revoke, suspend or refuse to renew any license if any of the following are found:

(1) The licensee does not possess the qualifications for the license as required by this chapter;

(2) The licensee has been convicted of any violation of any provision of this chapter;

(3) The licensee has engaged in conduct or operated a massage/bodywork establishment or is engaged in conduct as a massage therapist or bodywork practitioner in a manner which violates this chapter, any conditions of the license, or any of the laws which would have been grounds for denial of the license;

(4) There is fraud, material misrepresentation, false statement, or omission of a material fact in any application for a license or in any supplemental material;

(5) An activity authorized under the license has been conducted in an unlawful manner or in such a manner as to constitute a menace to the health, safety, or general welfare of the public; or

(6) Upon a recommendation from the City officials which states that such business is being managed, conducted, or maintained without regard for public safety or public health.

(7) For purposes of this section, licensee, in the case of a massage/bodywork establishment, shall include the managing responsible officer or managing employee.

(f) When the Police Chief concludes grounds for denial, suspension, revocation or refusal to renew a license exists, the Police Chief shall serve the applicant or license holder, either personally or by certified mail addressed to the business or residence address of the applicant or license holder, with a notice of denial or notice of intent to suspend, revoke or refuse to renew license. This notice shall state the reasons for the proposed action, the effective date of the decision, the right of the applicant or license holder to appeal the decision to the City Manager, and that the decision will be final if no appeal is filed within the time permitted. (Added by Ord. 3219-C.S., § 1, effective 5-30-01)

5-2.1002 Appeal of Revocation or Suspension.

No later than ten (10) calendar days after mailing of notice of revocation, suspension, or denial of renewal, the licensee may appeal the Police Chief's decision to the City Manager by the procedure for appeal as set forth in Section 5-2.601 of this chapter. The hearing and notice of the decision shall be given in the same manner as provided in Section 5-2.601 of this chapter. The decision of the City Manager, or his or her designee, shall be final. (Added by Ord. 3219-C.S., § 1, effective 5-30-01)

5-2.1003 Burden of Proof.

Unless otherwise specifically prohibited by law, the burden of proof is on the applicant or licensee in any hearing or other matter under this chapter. (Added by Ord. 3219-C.S., § 1, effective 5-30-01)

Article 11. License Duration and Renewal; Continuing Education

5-2.1101 Duration.

Any license issued under this chapter shall be valid for two (2) years from the date of issuance unless revoked or suspended. (Added by Ord. 3219-C.S., § 1, effective 5-30-01)

5-2.1102 Renewal.

(a) A licensee may apply for a renewal of a license thirty (30) days prior to the expiration of the license. If, upon the thirty-first day after the expiration of a license, an application of renewal has not been received, the license shall be deemed expired. Any license issued under this chapter shall be returned to the Police Chief within forty-eight (48) hours of its expiration. No privilege to provide massage shall exist until an application for renewal has been granted. After a license expires, a new application may be filed.

(b) To renew a license under this chapter, the licensee shall pay the City a nonrefundable fee in an amount set forth by resolution established by the City Council. A copy of the receipt for the non-refundable fee shall accompany the application for renewal.

(c) After investigating the application for renewal, the Police Chief shall renew the license if the licensee continues to meet the requirements for the issuance of a license, and none of the grounds for denial of a license set forth in this chapter exist. The Police Chief shall renew the license within thirty (30) days of such request if the information upon which the original application was granted remains unchanged and no violations of this chapter have been committed. (Added by Ord. 3219-C.S., § 1, effective 5-30-01)

5-2.1103 Renewal Process.

Licenses may be renewed every two (2) years by filing an application for renewal under penalty of perjury updating information in the original application provided to the Police Chief. (Added by Ord. 3219-C.S., § 1, effective 5-30-01)

5-2.1104 Continuing Education.

At the time of renewal, an applicant shall provide verification of continued membership, in good standing, of a state or national professional association as required by specific sections of this chapter and/or verification that the licensee has participated successfully in continuing education programs consisting of a minimum of twenty-four (24) hours of related course work of which a minimum of twelve (12) hours shall be approved by a qualified massage association as defined in this chapter. Internship hours, as defined in Section 5-2.104(a), shall not satisfy the continuing education requirement. Any qualified training received by the licensee and presented as compliance with the continuing education requirement has a three year life only. (Added by Ord. 3219-C.S., § 1, effective 5-30-01)

5-2.1105 Violation and Penalty.

(a) It is unlawful for any person, association, firm or corporation to engage in, conduct or carry on, or to 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 license 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, in the exercise of 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 or failing to comply with any of the mandatory requirements of this chapter shall constitute a misdemeanor; except that notwithstanding any other provision of this Code, any such violation constituting a misdemeanor under this chapter may, in the discretion of the City Attorney, be charged and prosecuted as an infraction. Any violation of this chapter prosecuted as a misdemeanor shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the County Jail for a period of not more than six (6) months, or by both fine and imprisonment. Any infraction prosecuted under the provisions of this chapter shall be made punishable by a fine not to exceed five hundred dollars (\$500.00).

(d) 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.

(e) 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.

(f) It is the duty of the Police Chief to enforce rules and regulations in accordance with this chapter. (Added by Ord. 3219-C.S., § 1, effective 5-30-01)

5-2.1106 Severability.

If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The City Council hereby declares that it would have passed the ordinance codified in this chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this chapter would be subsequently declared invalid or unconstitutional. (Added by Ord. 3219-C.S., § 1, effective 5-30-01)

5-2.1107 Employment of Massage/Bodywork Technicians.

No licensee, manager, or owner/operator of a massage/bodywork establishment shall allow or permit a person to administer massage/bodywork for such establishment unless the practitioner possesses a valid massage/bodywork technician license under the provisions of this chapter. It shall be the responsibility of massage/bodywork establishment licensee to ensure that each person employed as a practitioner shall first have obtained a valid license under this chapter. (Added by Ord. 3219-C.S., § 1, effective 5-30-01)

5-2.1108 Restricted License.

A license issued under this chapter is restricted and does not confer any property rights or privileges to the holder, and the holder thereof does not have any right to renewal of such license. The Police Chief may, without hearing, issue an order suspending the licensee's right to further exercise any privileges granted under such a license pending final

determination made after formal hearing as provided for above. (Added by Ord. 3219-C.S., § 1, effective 5-30-01)

5-2.1109 Business Location Change.

Upon a request to change the location of a massage/bodywork establishment, an application to the Police Chief shall be made and such application shall be granted, provided all applicable provisions of this code have been complied with by the applicant. (Added by Ord. 3219-C.S., § 1, effective 5-30-01)

5-2.1110 Sale or Transfer of Massage/Bodywork Establishment Interest.

The sale or transfer of any interest in any massage/bodywork establishment shall be reported to the Police Chief at least ten (10) days prior to such sale or transfer. The person obtaining such interest shall file a new license application and an investigation conducted pursuant to the provisions of this chapter. (Added by Ord. 3219-C.S., § 1, effective 5-30-01)