

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA,
AMENDING CHAPTER 5.44, “MESSAGE
ESTABLISHMENTS,” OF THE MERCED
MUNICIPAL CODE**

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

SECTION 1. AMENDMENT TO CODE. Chapter 5.44, “Massage
Establishments,” of the Merced Municipal Code is hereby amended to read as
follows:

**“Chapter 5.44
MESSAGE ESTABLISHMENTS**

<u>Section:</u>	Title.
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5.44.015	Definitions.
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5.44.030	Massage/bodywork establishment.
5.44.040	On-site therapy.
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- 5.44.280** Persons employed without permits not allowed.
- 5.44.290** Exceptions.
- 5.44.300** Alcoholic beverages.
- 5.44.310** Violation—Penalty—Person with valid certificate or permit.
- 5.44.320** Violation—Penalty—Generally.

- 5.44.005** Title.

This chapter shall be known as the City of Merced ‘Massage Establishments Ordinance’ and may be cited as such.

5.44.010 Findings and Purpose.

The City Council finds and declares as follows:

- A. The City is authorized to regulate massage establishments pursuant to Government Code Section 51030 *et seq.*, Business and Professions Code Section 4600 *et seq.*, Article XI, Section 7 of the California Constitution and Section 200 of the City of Merced Charter.

B. The City wishes both to recognize the practice of massage as a valid professional field and to discourage unlawful activity that otherwise may become associated with some massage establishments.

C. The permit requirements and restrictions imposed by this chapter are reasonably necessary to protect the health, safety and welfare of the citizens of the City of Merced.

5.44.015 Definitions.

For the purpose of this chapter, the following words and phrases shall have the meanings respectively ascribed to them in Sections 5.44.020 to 5.44.090.

5.44.020 Massage or bodywork techniques.

‘Massage techniques’ and ‘bodywork techniques’ mean any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external parts of another human body with the use of the hands, arms, or other portions of the body, or with the aid of any mechanical or electrical apparatus or appliances with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments or other similar preparations commonly used in this practice.

5.44.030 Massage/bodywork establishment and massage establishment.

‘Massage/bodywork establishment’ and ‘massage establishment’ mean any establishment having a fixed place of business where any person, firm, association, partnership, corporation, or combination of individuals, engages in, conducts, carries on or permits to be engaged in, conducted or carried on, any of the massage

techniques and bodywork techniques described in Section 5.44.020 for compensation.

5.44.040 On-site therapy.

‘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.

5.44.050 Outcall massage.

‘Outcall massage’ means the engaging in or carrying on of massage techniques or bodywork techniques for a fee or consideration at a location other than at a duly licensed massage/bodywork establishment.

5.44.060 Masseur or masseuse-Massage/bodywork practitioner.

‘Masseur or masseuse-massage/bodywork practitioner’ and ‘massage/bodywork practitioner’ mean any natural person, other than a medical practitioner licensed by the State of California, who practices or administers any massage technique or bodywork technique in exchange for a fee, income, or anything of any value whatsoever within the City of Merced unless otherwise excepted.

5.44.070 Person.

‘Person’ means any individual, copartnership, partnership, firm, association, joint stock company,

corporation, or combination of individuals of whatever form or character.

5.44.080 Health officer.

‘Health officer’ means that person designated by the City of Merced as health officer or the authorized representative.

5.44.090 Bona fide nonprofit club.

‘Bona fide nonprofit club’ means any fraternal, charitable, religious, benevolent or any other nonprofit organization having a regular membership association primarily for mutual social, mental, political and civic welfare to which admission is limited to the members and guests and revenue accruing therefrom is to be used exclusively for the benevolent purposes of said organization and which organization or agency is exempt from taxation under the Internal Revenue Laws of the United States as a bona fide fraternal, charitable, religious, benevolent, or nonprofit organization and in which massage techniques are provided incidental to its primary operation.

5.44.100 Permit required.

A. Except as provided by Section 5.44.290 of this chapter, no person shall perform massage or bodywork techniques for a fee or any other consideration at a location outside a massage establishment as defined in this chapter.

B. It is unlawful and a misdemeanor subject to punishment in accordance with Chapter 1.12 of this code for any person to engage in, conduct, or carry on, or to permit to be engaged in, conducted, or carried on, in or upon any premises in the city the operation of a massage establishment as defined in this chapter without first

having obtained a permit from the city after approval by the requisite city officers.

C. It is unlawful and a misdemeanor subject to punishment in accordance with Chapter 1.12 of this code for any person to act as a masseur, masseuse, massage/bodywork practitioner or to take any other position of employment involving the performance of massages with a massage establishment, without having a valid and active certificate from the State of California as a massage practitioner or massage therapist. If, however, a person has a valid, unexpired massage technician permit from the City of Merced, that person may continue to perform such services at a massage establishment until such permit expires. Upon the expiration of said permit, the person shall cease all activities within the City of Merced as a massage/bodywork practitioner unless that person obtains and maintains a valid and active certificate from the State of California as a massage practitioner or massage therapist.

5.44.110 Application fee—Operator.

Every applicant for a permit to maintain, operate or conduct a massage establishment shall file an application with the finance officer upon a form provided and shall pay a filing fee of three hundred dollars (\$300.00) which shall not be refundable. ‘Applicant’ includes an individual owner, managing partner or corporate manager.

5.44.120 Application—Massage establishment.

A. An application for a permit to operate a massage establishment shall set forth the exact nature of the massage to be administered and the proposed place of business and facilities therefor.

B. If the applicant is a natural person who does not have a valid certificate from the State of California as a massage practitioner or massage therapist, then the application shall include the following information regarding that person:

1. The name and residence address including any other names by which the applicant has been known;
2. The two previous residence addresses immediately prior to the present residence address of the applicant;
3. Written proof that the applicant is at least eighteen years of age;
4. Business, occupation or employment of the applicant for the three years immediately preceding the date of application;
5. The applicant's height, weight, color of eyes and hair;
6. Two recent portrait photographs of the applicant, which photographs shall not exceed two inches square in size and shall be full front views of the face and head only;
7. The applicant's social security number and driver's license number, if any;
8. The massage or similar business license or permit history of the applicant; whether such person has previously operated in this or another city or state under license or permit; whether such person has had such license or permit revoked or suspended and the reason therefor; and the

business activity or occupation subsequent to such action of suspension or revocation;

9. Whether the applicant has ever been arrested for or convicted of:

i. An offense involving conduct which required registration as a sex offender pursuant to Penal Code Section 290,

ii. An offense involving the use of force and violence upon the person of another that amounts to a felony,

iii. An offense involving sexual misconduct with children,

iv. An offense as defined in California Penal Code Sections 220, 261, 266, 266a, 266b, 266c, 266d, 266e, 266f, 266g, 266h, 266i, 266j, 311, 314, 315, 316, 318, 647 subdivision (a), 647 subdivision (b) or 647 subdivision (d);

v. Conspiracy to violate any of the aforesaid sections of the California Penal Code, or

vi. The commission of the equivalent of any of the aforesaid crimes in a jurisdiction outside the state of California;

10. Whether such person is or has ever been licensed or registered as a prostitute, or otherwise authorized by the laws of any other jurisdiction to engage in prostitution in such other jurisdiction. If any person mentioned in this subsection has been licensed or registered as a prostitute, or otherwise authorized by the laws of any other state to engage

in prostitution, a statement must be made giving the place of such registration, licensing or legal authorization, and the inclusive dates during which such person was so licensed, registered, or authorized to engage in prostitution;

11. Such other identification and information necessary to discover the truth of matters specified in this section as required to be set forth in the application;

12. The application shall be referred to the chief of police or his or her designee who shall have the right to confirm the identity of the applicant by taking fingerprints and additional photographs and shall have the right to confirm the criminal record of the applicant.

C. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown on its articles of incorporation together with the names and addresses of each of the officers, directors, and each stockholder holding more than ten percent of the stock of the corporation. If the applicant is a partnership, the application shall set forth the names and residence address of each of the partners, including limited partners. If one or more of the partners is a corporation, the provisions of this section pertaining to a corporate applicant apply. The information specified in subsection (B) shall be provided for each officer, director, stockholder owning ten percent or more of the stock and/or partner who does not currently have a valid certificate from the State of California as a massage practitioner or massage therapist.

D. If the massage establishment is proposed to be located at a location that is not owned or leased by the applicant, then the application shall state the name of the person that owns property and, if not the same as the

property owner, the name of the person that is leasing or will be leasing the property to the applicant.

5.44.130 Verification.

Every application for a permit under this article shall be verified by affidavit or by declaration, or certification under penalty of perjury.

5.44.140 Referral to other departments.

Copies of an application for a massage establishment permit shall be referred to the building official, the fire chief, the health officer, the planning manager and the chief of police. These persons or their designated representative shall inspect the premises proposed to be operated as a massage establishment and shall make written recommendations to the finance officer concerning compliance with the codes that they administer.

5.44.150 Issuance, refusal, revocation or suspension of permit.

The finance officer or his or her designee shall issue or renew the massage establishment permit after the application has been reviewed and approved, except that for good cause the finance officer may refuse, revoke or suspend a permit for a massage establishment, with the grounds for action to be set forth in writing and delivered to the applicant or permittee:

A. That the operation as proposed by the applicant if permitted will not or does not comply with all applicable laws including, but not limited to, ordinances relating to building, health, planning, housing, zoning and fire protection, and other applicable codes which the city has a responsibility to administer including the regulations adopted by the health officer;

B. That the applicant or any other person who will be directly engaged in the management and operation of a massage establishment has been arrested or convicted of any of the offenses enumerated in subsection 5.44.120(B)(9) or convicted of an offense in another jurisdiction that is equivalent to the statutorily defined elements of the offenses listed in Section 5.44.120(b)(9);

C. A permit may be issued to any person arrested or convicted of any of the crimes described if such arrest or conviction occurred more than seven years prior to the date of the application and the applicant has had no subsequent felony arrests or convictions of any nature and no subsequent misdemeanor arrests or convictions for crimes mentioned in subsection 5.44.120(B)(9);

D. That the applicant has been licensed or registered in any state as a prostitute;

E. In any case where any of the provisions of this chapter are violated or where the permittee or any employee including a masseur or a masseuse is engaged in any conduct at a massage establishment which violates any federal, state or local law or ordinances;

F. In any case where the permittee of a massage establishment has actual or constructive knowledge of any violation of any state or local law or ordinances at the massage establishment;

G. In any case where such permittee or any other person acting on the permittee's behalf refuses to allow any duly authorized building inspector, police officer, fire inspector, health officer, or their designated representative to inspect the premises or the operations therein to ensure compliance with the provisions of this chapter and the Merced Municipal Code; or

H. Upon the recommendation of the health officer that such business is being managed, conducted, or maintained without regard for the public health, or for the health of patrons or customers, or without due regard to proper sanitation or hygiene.

Any refusal to issue a permit, renew a permit, suspend a permit or revoke a permit under the provisions of this section is appealable to the City Council. Any person aggrieved by said action shall file written notice of such appeal with the city clerk and pay designated fee no later than ten days after the action by the finance officer or his or her designee. Such matters shall be heard at the next regular meeting of the city council that is at least ten days after the filing of the appeal, at which time the city council shall hear and receive written and oral evidence upon all matters involved. The decision of the city council shall be final upon all parties concerned.

5.44.160 Term of permit.

Permits issued under the provisions of Section 5.44.120 shall be valid for a period of one year from the date of issuance and shall be renewable annually. The fee for the issuance and renewal of the permit shall be set by resolution.

5.44.170 Sale, transfer, or change of location.

Upon sale, transfer or relocation of a massage establishment, the massage establishment permit therefor shall be null and void; provided, however, that upon the death or incapacity of the permittee the massage establishment may continue in business for a reasonable period of time, not to exceed three months, to allow for an orderly transfer of the permit. No such permittee shall operate under any name or conduct the business under any designation or at any location not specified in the permit.

5.44.180 **Massage establishment—Generally.**

A. No permit to conduct a massage establishment shall be issued until an inspection has been made by a building inspector, fire chief, health officer and chief of police of the city or their designated representative.

B. Construction of rooms used for toilets, tubs, steam baths, and showers shall be made in accordance with the state and city building codes. Plumbing fixtures shall be installed in accordance with said codes.

C. Toilet facilities shall be provided in convenient locations.

D. Lavatories or wash basins provided with both hot and cold running water shall be installed in either room or the vestibule. Lavatories or wash basins shall be provided with soap in a dispenser and with sanitary towels.

E. All portions of massage establishments shall be provided with adequate light and ventilation as approved by the health officer. When windows or skylights are used for ventilation, at least one-half of the total required window area shall be able to be opened.

F. All electrical equipment shall be installed in accordance with the requirements of the city electrical code.

5.44.190 **Massage establishment—Hours.**

No person shall conduct or operate a massage establishment or service between the hours of eleven p.m. and six a.m. of the next day.

5.44.200 Outcall prohibition.

Outcall 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 be unlawful and a misdemeanor, subject to punishment in accordance with Chapter 1.12 of this code.

5.44.210 Locations—Prohibited.

Outcall 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 outcall or on-site massage/bodywork practitioner.
- C. A private residence, apartment, or similar living facility.
- D. Any location not otherwise specifically authorized by this chapter or by Title 20 of this code.
- E. Violation of this section shall be unlawful and a misdemeanor subject to punishment in accordance with Chapter 1.12 of this code.

5.44.220 Operating requirements.

- A. Each person providing massage or bodywork techniques at a massage establishment shall display at that establishment his or her original certificate from the State of California as a massage practitioner or massage therapist. If that person has an unexpired valid massage technician permit from the City of Merced instead of a

certificate from the State of California, then that permit shall be displayed.

B. Upon the request from a member of law enforcement, each person providing massage or bodywork techniques at a massage establishment shall provide his or her full name and certificate number from the State of California or a copy of the unexpired massage technician permit from the City of Merced as a masseur or masseuse-massage/bodywork practitioner.

C. Every portion of a massage establishment shall be kept clean and operated in a sanitary condition.

D. Each massage establishment shall be provided with clean, laundered sheets and towels in sufficient quantity which shall be laundered after each use thereof and stored in an approved and sanitary manner. Each massage table shall be provided with clean sheets and towels prior to each use. Approved receptacles shall be provided for the storage of soiled linen and paper towels.

E. Wet and dry heat rooms, shower compartments, and toilet rooms located at a massage establishment shall be thoroughly cleaned each day the business is in operation. Bathtubs and shower compartments shall be thoroughly cleaned with a disinfectant after each use.

F. No massage establishment, whether located in any building originally constructed for residential or sleeping purposes or not, shall be used for residential or sleeping purposes.

G. Each massage establishment and its employees and independent contractors shall fully comply with the requirements of the Massage Therapy Act (California Business and Professions Code Section 4600 *et seq.*)

H. Any person operating a massage establishment shall be responsible for the activities that occur at the massage establishment, including those performed by any employee and/or independent contractor working at the massage establishment.

5.44.230 Off-premises massage/bodywork.

No person shall perform or administer massage or bodywork techniques as either on-site therapy or outcall massage/bodywork, as those terms are defined herein, for money or other consideration, without obtaining a valid certificate from the State of California as a massage practitioner or massage therapist in conjunction with a valid city of Merced business license.

5.44.240 Register and certificate numbers.

The operator of a massage establishment must maintain a register of all persons working on the premises and their state certificate numbers as either a massage practitioner or massage therapist. If an employee or individual providing massage or bodywork services on the premise has an unexpired valid massage technician permit from the City of Merced instead of a certificate from the State of California, then the permit number shall be provided upon request. Such register shall be available for inspection during regular business hours by any city police officer.

5.44.250 Persons employed under age eighteen not permitted.

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

5.44.260 Notices.

Every permittee of a massage establishment shall post the following signs in a conspicuous place printed in bold letters not less than one (1) inch in height:

A. A statement of the rates to be charged for all massage services to be performed. No sum shall be charged for such massage services greater than that shown on the rate card;

B. A statement that the premises are subject to inspection without notice by authorized officials of the city.

5.44.270 Inspection.

The police department, building inspector and the health officer shall from time to time make an inspection of each massage establishment in the city for the purpose of determining that the provisions of this chapter are being complied with.

5.44.280 Persons without certificates not allowed.

It shall be the responsibility of the permittee for the massage establishment to ensure that each person employed has a valid certificate from the State of California as a massage practitioner or massage therapist or an unexpired massage technician permit from the City of Merced. Persons without such valid certificates or unexpired permits shall not provide massage or bodywork techniques at a massage establishment.

5.44.290 Exceptions.

A. This chapter shall not apply to hospitals, nursing homes, sanitariums, hospices, retirement or rest homes, community care facilities, and the like, or to any person

holding a valid certificate, that has not been revoked or suspended, to practice the healing arts, chiropractic, or physical therapy under the laws of the state when lawfully carrying out their particular profession, or persons working under the direction of any persons in any such establishments, nor shall this chapter apply to barbers or cosmetologists when lawfully carrying out their particular profession or business and holding a valid license or certificate of registration, that has not been revoked or suspended, issued by the State of California.

B. Trainers of amateur, semiprofessional or professional athletes or athletic teams while engaging in their training responsibilities for and with athletes; and trainers working in conjunction with a specific athletic events such as road races, track meets, triathlons, biatholons or similar single occurrence athletic or recreational events.

C. A bona fide nonprofit club or organization as defined in Section 5.44.100 or its employees shall be required to obtain a permit, and must conform to all applicable building, health, fire and zoning laws and regulations of the city. The fees for the permits may be waived by the finance officer or his or her designee.

D. On-site therapy is allowed if performed by an individual with a certificate from the State of California as a massage practitioner or massage therapist.

E. Students at an educational facility deemed by the California Massage Therapy Council to be an approved school shall be allowed to provide massage techniques and bodywork techniques at the campus or facilities at which they are receiving their education; provided, however, that such students shall not provide massage techniques or bodywork techniques at a massage establishment or as an outcall massage until they have

obtained a certificate from the State of California as a massage practitioner or massage therapist.

5.44.300 Alcoholic beverages.

No massage establishment or any employee thereof shall sell, serve, furnish, keep or possess any alcoholic beverage on the premises.

5.44.310 Violation—Penalty—Person with valid certificate or permit.

Any owner, operator, manager or permittee in charge of or in control of a massage establishment who knowingly employs any person who is not in possession of a valid, unrevoked certificate from the State of California as a massage practitioner or massage therapist or an unexpired massage technician permit from the City of Merced or who allows such a person to practice within such a place of business is guilty of a misdemeanor and upon conviction such person shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) or by imprisonment in the County Jail for a period not to exceed six (6) months, or by both such fine and imprisonment.

5.44.320 Violation—Penalty—Generally.

Every person who violates any provisions of this chapter is guilty of a misdemeanor, and upon conviction such person shall be punished in accordance with Chapter 1.12 of this code.”

SECTION 2. EFFECTIVE DATE. This Ordinance shall be in full force and effect thirty (30) days after its adoption.

SECTION 3. SEVERABILITY. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining

portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 4. PUBLICATION. The City Clerk is directed to cause a summary of this Ordinance to be published in the official newspaper at least once within fifteen (15) days after its adoption showing the vote thereon.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Merced on the ____ day of _____, 20__, and was passed and adopted at a regular meeting of said City Council held on the ____ day of _____, 20__, by the following called vote:

AYES: Council Members:

NOES: Council Members:

ABSTAIN: Council Members:

ABSENT: Council Members:

APPROVED:

Mayor

ATTEST:
JOHN M. BRAMBLE, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

(SEAL)

**APPROVED AS TO FORM:
RANDOLPH S. HOM, CITY ATTORNEY**

Ken Ayed *10/26/15*
City Attorney Date