

AN ORDINANCE OF THE CITY COUNCIL OF  
THE CITY OF MERCED, CALIFORNIA,  
AMENDING CHAPTER 5.44, "MASSAGE  
ESTABLISHMENTS," OF THE MERCED  
MUNICIPAL CODE

~~Article I.—Definitions~~

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  
MASSAGE ESTABLISHMENTS

<u>Section:</u>	
<u>5.44.005</u>	<u>Title.</u>
<u>5.44.010</u>	<u>Findings and Purpose.</u>
<u>5.44.015</u>	<u>Definitions.</u>
<u>5.44.020</u>	<u>Massage or bodywork techniques.</u>
<u>5.44.030</u>	<u>Massage/bodywork establishment.</u>
<u>5.44.040</u>	<u>On-site therapy.</u>
<u>5.44.050</u>	<u>Outcall massage.</u>
<u>5.44.060</u>	<u>Masseur or masseuse—Massage/bodywork practitioner.</u>
<u>5.44.070</u>	<u>Person.</u>
<u>5.44.080</u>	<u>Health officer.</u>
<u>5.44.090</u>	<u>Bona fide nonprofit club.</u>
<u>5.44.100</u>	<u>Permit required.</u>
<u>5.44.110</u>	<u>Application fee—Operator.</u>
<u>5.44.120</u>	<u>Application fee—Massage establishment.</u>

- 5.44.130     Verification.
- 5.44.140     Referral to other departments.
- 5.44.150     Issuance, refusal, revocation or suspension of permit.
- 5.44.160     Term of permit.
- 5.44.170     Sale, transfer, or change of location.
- 5.44.180     Massage establishment—Generally.
- 5.44.190     Massage establishment—Hours.
- 5.44.200     Outcall prohibition.
- 5.44.210     Locations—Prohibited.
- 5.44.220     Operating requirements.
- 5.44.230     Off-premises massage/bodywork.
- 5.44.240     Register and certificate numbers.
- 5.44.250     Persons employed under age eighteen not permitted.
- 5.44.260     Notices.
- 5.44.270     Inspection.
- 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.**

##### ~~5.44.010 – Definitions.~~

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

#### **5.44.020 Massage or bodywork techniques.**

~~“‘Massage or techniques’ and ‘bodywork techniques’ means’ 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. ~~Massage or bodywork techniques should also include the giving of any baths as listed under this section.~~

#### **5.44.030 – Massage/bodywork establishment and massage establishment.**

~~"'Massage/bodywork establishment' means' 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/bodywork services or~~ techniques ~~mentioned~~ and bodywork techniques described in Section 5.44.020 ~~or 5.44.060~~ for compensation. ~~Any establishment engaged in or carrying on, or permitting any combination of massage and bath house is a massage/bodywork establishment.~~

#### **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.

#### ~~5.44.045~~ **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.

~~5.44.050~~ **5.44.060 Masseur or masseuse** ~~—~~ **Massage/bodywork practitioner.**

~~"Masseur or masseuse~~ ~~—~~ ~~massage/bodywork practitioner"~~ ~~means~~ ~~'~~ and 'massage/bodywork practitioner' mean any natural person, other than a medical practitioner licensed by the ~~state~~ State of California, who practices or administers any massage/ technique or bodywork technique ~~as defined in this article~~ in exchange for a fee, income, or anything of any value whatsoever within the ~~city~~ City of Merced unless otherwise excepted.

~~5.44.060 — Public bath house.~~

~~"Public bath house" means any place, including a private club or organization, except as otherwise provided, wherein any person, firm, association, corporation, or partnership engages in, conducts, or carries on, or permits to be engaged in, conducted, or carried on, or the giving or furnishing of Russian, Finnish, Swedish, hot air, vapor, electric cabinet, steam, mineral, sweat, salt, Japanese, sauna, fomentation or electric baths or baths of any kind whatever excluding ordinary tub baths or showers where an attendant is not required.~~

**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~~ City of Merced as health officer or ~~his~~ the authorized representative.

**5.44.090** ~~—Recognized school of massage.~~ **Bona fide nonprofit club.**

~~"Recognized school of massage" means any school or institution which has for its purpose the teaching of the theory, method, profession, or work of massage, which school requires a resident course of study not less than one hundred eighty class hours to be given in not less than three calendar months, before the student is furnished with a diploma or certificate of graduation from such school or institution of learning following the successful completion of such course of study or learning, and which school has been approved pursuant to Section 29025 of the Education Code of the state.~~

~~5.44.100 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 ~~or bath services~~ techniques are provided incidental to its primary operation.

~~Article II. Permits~~

~~5.44.110~~ 5.44.100 **Permit required.**

A. Except as provided by ~~Sections 5.44.040 and 5.44.390~~ Section 5.44.290 of this chapter, no person shall perform massage ~~or~~ or bodywork techniques for a fee or any other consideration at a location outside a massage establishment ~~or a school of massage~~ 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 ~~article~~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, ~~instructor, trainee,~~ or to take any other position of employment involving the performance of massages, with a massage establishment-~~or school of massage,~~ without ~~first having obtained a permit from the city after approval by the requisite city officers.~~ 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.

~~5.44.120~~ **5.44.110 Application fee—Operator.**

Every applicant for a permit to maintain, operate, or conduct a massage establishment ~~or a school of massage~~ shall file an application with the finance officer upon a form

provided and shall pay a filing fee of ~~one~~three hundred dollars (\$300.00) which shall not be refundable.

"Applicant" includes an individual owner, managing partner or corporate manager.

~~5.44.130 Application fee Employee.~~

~~Every person employed by a massage establishment, including any person who engages in the practice of massage as defined in this article, and every instructor and trainee in a school of massage shall file an application with the finance officer upon a form provided and shall pay a filing fee of twenty-five dollars which shall not be refundable.~~

~~5.44.140 Application General information.~~

**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.

~~Applications for permits shall be submitted to the finance officer. Every~~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 furnish~~include~~the following information regarding that person:

~~A. The type of permit applied for;~~

~~B. 1.~~ The name and residence address including all~~aliases~~any other names by which the applicant has been known;

~~2. C.~~ The two previous residence addresses immediately prior to the present residence address of the applicant;

~~3. D.~~ 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;~~

~~E.~~ 5. The applicant's height, weight, color of eyes and hair;

~~F.~~ 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;

~~G.~~ ~~Business, occupation or employment of the applicant for the three years immediately preceding the date of application;~~

~~H.~~ 7. The applicant's social security number and driver's license number, if any;

~~I.~~ 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. J. Whether the applicant has ever been arrested for or convicted of:

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

~~2.~~ ii. An offense involving the use of force and violence upon the person of another that amounts to a felony,

iii. ~~3.~~ An offense involving sexual misconduct with children,

~~4.~~ iv. An offense as defined in California Penal Code Sections ~~311, 315, 316, 318,~~ 220, 261, 266, 266a, 266b, 266c, 266d, 266e, 266f, 266g, 266h, 266j, 266j, 311, 314, 315, 316, 318, 647 subdivision (a), 647 subdivision (b), or 647 subdivision (d), ~~647a, or any violation of Penal Code Section 182,~~

~~5.~~ v. Conspiracy to violate any of the aforesaid sections of the California Penal Code, or

vi. ~~6.~~ The commission of the equivalent of any of the aforesaid crimes in a jurisdiction outside the state of California;

10. ~~k.~~ 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;

~~l.~~ ~~The location at which the permittee is to be employed;~~

~~m.~~ 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:

~~5.44.150 Application — Masseuse, masseur or instructor.~~

- ~~A. An applicant for a permit as a masseur, masseuse, or instructor must furnish a diploma or certificate of graduation from a recognized school of massage where in the method, profession, and work of massage is taught.~~
- ~~B. The finance officer shall accept as meeting the training requirements of this article satisfactory evidence that the applicant has attended not less than one hundred eighty hours of instruction in not less than three months at a recognized school within or without this state or in any foreign country that provides education substantially equal to or in excess of the educational requirements of this chapter.~~
- ~~C. Two years' bona fide experience as a masseur or masseuse in a massage establishment attested to in writing by a person other than the applicant may be substituted for the requirement of a diploma or certificate of graduation from a recognized school or other institution of learning wherein the method and work of massage is taught.~~

~~5.44.160 Application — Massage establishment.~~

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

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.

~~BC.~~ 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.

~~5.44.170—Application—Health certificate.~~

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

~~5.44.180—School of massage.~~

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

- ~~A. Proof of approval pursuant to Section 29025 of the education code of the state;~~
- ~~B. A statement of the educational and experience qualifications and the names and residence addresses of all directors, administrators and instructors;~~
- ~~C. A copy of the course outline, schedule of tuition fee and other charges, regulations pertaining to tardiness and absence, grading policy, and rules of operation and conduct.~~

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.

~~5.44.190—~~**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 ~~as provided in the California Code of Civil Procedure.~~

~~5.44.200—Referral to chief of police.~~

~~The application shall be referred to the chief of police who shall take the fingerprints and confirm the height and weight of the applicant. Nothing contained in this article shall be construed to deny the right of the chief of police to require additional photographs, information or identification of the applicant.~~

~~5.44.210—~~**5.44.140 Referral to other departments.**

A. Copies of an application for a massage establishment ~~or school of massage~~ permit shall be referred to the building ~~inspection superintendent~~official, the fire chief, the health officer, the planning ~~director~~manager and the chief of police, ~~who~~. 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.

~~B. All other applications shall be referred to the health officer and the chief of police for their approval or written recommendations.~~

~~5.44.220 – Trainee permit.~~

~~A. The finance officer shall issue a massage trainee permit to any person who qualifies for such a permit who files an application under Section 5.44.140 and who is currently registered and attending a recognized school of massage in the city of Merced, except that the finance officer may refuse, revoke or suspend a permit for the reasons set forth in Section 5.44.230. No trainee shall perform any of the services enumerated in Sections 5.44.020, 5.44.040, or 5.44.060, except that such trainee may engage in massage services within the school premises under the direction of a qualified instructor and in his presence.~~

~~B. Such trainee permit shall be valid for a period of three months and shall not be renewed or extended except for a delay of requisite training due to accident, illness or other valid reason.~~

~~C. The applicant for a trainee permit must submit a letter signed by the owner, manager or director of the recognized school showing that the applicant is currently accepted for or enrolled in a course of study leading to a degree or certificate of graduation.~~

~~D. The trainee permit may be extended by the finance officer for a period of three months or until the trainee has completed at least one hundred eighty hours of instruction in a recognized school of massage upon a showing of good cause by the trainee contained in a written application to the finance officer.~~

~~5.44.230 –~~

**5.44.150 Issuance, refusal, revocation or suspension of permit.**

The finance officer or his or her designee shall issue ~~all other permits~~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, ~~a school of massage or for any other applicant or permittee for any of the following reasons~~ 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 ~~adapted~~ 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 ~~or school of massage~~ has been arrested or convicted of any of the offenses enumerated ~~in~~ subsection 5.44.140 (J) 5.44.120(B)(9) or convicted of an offense ~~outside the state that would have constituted any of the described~~ in another jurisdiction that is equivalent to the statutorily defined elements of the offenses ~~if committed within the state;~~ 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 ~~5.44.140(J);~~ 5.44.120(B)(9);

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

~~E. That the character of the neighborhood or district is not a proper or suitable place in which to conduct or maintain such business or calling;~~

~~F. 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, ~~instructor, or trainee~~ is engaged in any conduct at a massage establishment ~~or school of massage~~ which violates any federal, state or local law or ordinances, ~~or~~;~~

E. In any case where the permittee of a massage establishment ~~or school of massage~~ has actual or constructive knowledge of ~~such violations, or where any such permittee by the exercise of due diligence should have had actual or constructive knowledge of any such violation, or in~~ 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 ~~whatever~~ acting on ~~his~~ the permittee's behalf refuses to allow any duly authorized building inspector, police officer, ~~or fire inspector,~~ health officer of the city, 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~~

~~GH.~~ Upon the recommendation of the ~~Merced County~~ 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, ~~suspension or revocation~~ renew a permit, suspend a permit or revoke a permit under the provisions of this section is appealable to the ~~city council as provided by law.~~ 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.

~~5.44.240—Specific permit issued.~~

~~The permit when issued shall state whether it is for a massage establishment, for a school of massage, for a masseur or masseuse, for a massage establishment employee who is not authorized to perform a massage, or for an instructor or trainee in a school of massage.~~

~~5.44.250—~~ **5.44.160** **Term of permit.**

A. Permits issued under the provisions of Section ~~15.212~~ 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.

- ~~B. Application for the renewal of a masseur or masseuse permit shall be accompanied by a nonrefundable ten dollar filing fee, and shall contain the same information as in Section 5.44.140, excluding therefrom subsections (D), (G), (H), and (I).~~
- ~~C. The application shall be referred to the chief of police 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 height and weight and criminal record of the applicant.~~
- ~~D. The application of a natural person shall be accompanied by a certificate from a physician licensed to practice medicine in the state that the applicant has been tested within the previous thirty days in a manner to be approved by the health officer and has been found to be free of all contagious, infectious and communicable disease.~~

~~5.44.260~~ **5.44.170** Sale, transfer, or change of location.

Upon sale, transfer or relocation of a massage establishment ~~or school of~~ the massage ~~the~~ 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 ~~his~~ the business under any designation or at any location not specified in the permit. ~~Any masseur, masseuse, instructor, trainee, or other employee may continue to use a valid and unexpired permit at any other massage establishment or school of massage as authorized upon written notice to the city.~~

~~Article III. Requirements and Restrictions~~

~~5.44.270~~ **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. ~~Separate toilet facilities shall be provided for male and female and shall be designated as to the sex accommodated therein.~~

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 ~~and baths~~ shall be provided with adequate light and ventilation as approved by the ~~public~~ health officer. When windows or

skylights are used for ventilation, at least one ~~half~~ of the

total required window area shall be ~~openable~~ able to be opened.

- ~~F. To allow for adequate ventilation, cubicles, rooms and areas provided for patrons' use not served directly by a required window, skylight, or mechanical system of ventilation shall be constructed so that the height of partitions does not exceed seventy-five percent of the floor-to-ceiling height of the area in which they are located.~~
- ~~G. No cubicle, room, booth or any area within a massage establishment which is used for giving massages shall be fitted with a door capable of being locked.~~

~~H~~E. All electrical equipment shall be installed in accordance with the requirements of the city electrical code.

~~5.44.280~~ 5.44.190 **Massage establishment—Hours.**

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

~~5.44.285~~ **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~~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.

~~5.44.290—School of massage—~~

- ~~A. A school of massage shall have the same facilities as required of a massage establishment.~~
- ~~B. A school of massage permit shall not be issued for the same location as a massage establishment.~~

~~5.44.295~~ **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.

~~5.44.300~~ **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 ~~or school of massage including appliances, apparatus, and personnel~~ shall be kept clean and operated in a sanitary condition.

~~B. All masseurs, masseuses, instructors and trainees shall be clean and wear clean outer garments, the use of which is restricted to the massage establishment. A separate dressing room for each sex must be maintained on the premises with individual lockers for each employee or trainee. Doors to such dressing rooms shall be open inward and shall be self-closing.~~

C.D. Each massage establishment ~~and school of massage~~ 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. ~~No towels or sheets shall be laundered or dried in any massage establishment.~~ Approved receptacles shall be provided for the storage of soiled linen and paper towels.

D.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.

E.F. No massage establishment ~~or school of massage~~, 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.

~~5.44.305~~ **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/bodywork practitioner ~~license pursuant to the provisions of this chapter~~ or massage therapist in conjunction with a valid city of Merced business license.

~~5.44.310~~ **5.44.240 Register and ~~permit number of employees.~~ certificate numbers.**

A. The operator of a massage establishment must maintain a register of all persons ~~employed~~ working on the premises and their ~~permit numbers~~ 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 ~~or county health officer.~~

- ~~B. The operator of a school of massage must maintain a register of all persons employed on the premises and of all trainees or students. Such register shall be available for inspection during regular business hours by any city police officer or county health officer.~~

~~5.44.320 Identification cards.~~

- ~~A. The finance officer shall provide each masseur, masseuse, instructor or trainee, or other employee granted a permit with an identification name plate which shall contain a photograph of and the first name and permit number of said masseur, masseuse, instructor or trainee which must be worn on the front of the outermost garment at all times during the hours of employment or training.~~
- ~~B. Every permit which shall have been granted pursuant to the provisions of this chapter to a massage establishment or school of massage shall be displayed in a conspicuous place so that the name may be readily seen by persons entering the premises.~~

~~5.44.330~~ **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 ~~or school of massage~~ to employ any person who is not at least eighteen (18) years of age.

~~5.44.340 Daily register.~~

~~Every permittee of a massage establishment or school of massage shall keep a daily register, approved as to form by the police department, of all patrons or customers with names, addresses and hours of arrival and the rooms or cubicles assigned, if any, or of location of any massage given under the direction of a practitioner of the healing arts, chiropractic or physical therapy and with the name of the employee providing any such massage services. The daily register shall at all times during business hours be subject to inspection by a health officer or a police officer and shall be kept on file for one (1) year.~~

~~5.44.350~~ **5.44.260** **Notices.**

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

~~A.~~ 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.

~~5.44.360~~ 5.44.270 **Inspection.**

The police department, building ~~inspection~~ inspector and the health ~~department~~ officer shall from time to time, ~~but not less than twice a year,~~ 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.

~~5.44.370~~ 5.44.280 **Persons ~~employed without permits~~ certificates not allowed.**

It shall be the responsibility of the permittee for the massage establishment ~~or school of massage to insure~~ to ensure that each person employed ~~shall first have obtained a valid permit pursuant to this chapter.~~ has a valid certificate from the State of

~~5.44.380~~ **Time limit for filing application.**

~~All persons who possess an outstanding business license heretofore issued for the operation of a massage establishment or school of massage and all employees thereof must file for a permit on or before December 31, 1975, if they qualify under the provisions contained in this chapter. Failure to do so and continued operation of said place of business or continued employment without a permit shall constitute a violation of all applicable provisions of this chapter.~~

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    ~~5.44.390~~—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. This chapter shall not apply to any massage therapist, massage practitioner, bodywork therapist, massage and bodywork therapist, bodyworker, bodywork practitioner, or massage and bodywork practitioner who holds a valid certificate issued by the massage therapy organization created pursuant to California Business and Professions Code Section 4600 et seq. and who is practicing consistent with the qualifications established by that certificate.~~    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. This chapter shall not apply to massage establishments or businesses, as those terms are defined in California Business and Professions Code Section 4612, subd. (b)(1), except that such establishments or businesses shall not be exempt from this chapter to the extent Section 4612 expressly permits the regulation of such businesses or establishments by a city.~~

~~D.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.

~~5.44.400~~ **5.44.300 Alcoholic beverages.**

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

~~5.44.410~~ **5.44.310 Violation—Penalty—~~Permitless~~ employees. Person with valid certificate or permit.**

Any owner, operator, manager, or permittee in charge of or in control of a massage establishment ~~or school of massage~~ who knowingly employs any person who is not in possession of a valid, unrevoked ~~permit~~ 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.

~~5.44.420~~ **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**

\_\_\_\_\_

City Attorney                      Date

Document comparison by Workshare Compare on Friday, November 20, 2015  
9:31:56 AM

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Description	Baseline Massage Regulations (existing code)
Document 2 ID	file://X:\Ordinances\2015\City Attorney\Massage Establishments - 10-13-15.docx
Description	Massage Establishments - 10-13-15
Rendering set	Standard

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Format change	
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Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

<b>Statistics:</b>	
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Deletions	251
Moved from	6
Moved to	6
Style change	0
Format changed	0
Total changes	517