

Chapter 5.32

MESSAGE ESTABLISHMENTS

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5.32.010 Legislative purpose.

The purpose and intent of the council in enacting this chapter is that the public health, welfare, safety and interest require the licensing and regulation of the establishments, services and persons herein defined by providing minimum building, health and sanitation standards for such establishments and by providing minimum qualifications for persons performing such services. (Prior code § 3-140)

5.32.020 Definitions.

As used in this chapter, the following terms shall have the meanings herein specified:

"Applicant" means any person who applies for a permit as required by this chapter.

"Employee" means any person, other than a massage technician, who renders any service to the permittee, who receives compensation or any consideration directly or indirectly from the permittee and who has no physical contact with permittee's customers or clients.

"Health officer" means the health officer of the county or his/her authorized representative.

"Massage" means any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating of the external parts of the body, for medical or hygienic purposes, with the hands 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, unguents or other similar preparations commonly used in this practice.

"Massage establishment" means any establishment having a fixed place of business wherein a principal function is such that massage is given, engaged in or carried on or permitted to be given, engaged in or carried on. Any establishment engaged in or carrying on or permitting any combination of massage and bathhouse shall be deemed a massage establishment.

"Massage technician" means any person, including a trainee, whether paid by fixed salary or who is an independent contractor, who administers to another person, for any form of

consideration, a bath, massage, manipulation of the body, electric vibration, magnetic stimulation or similar procedure.

"Massage technician trainee" means any person currently enrolled in a recognized school.

"Outcall massage service" means any business, not licensed as a massage establishment under provisions of this chapter, wherein a principal function is such that massage is given, engaged in or carried on, or permitted to be given, engaged in or carried on, not at a fixed location but at a location designated by the permittee, massage technician, customer or client.

"Recognized school" means any school or institution of learning, which school or institution of learning has been approved pursuant to the Private Post-Secondary Vocation Education Reform Act of 1989, commencing at Section 94300 of the Education Code, and which has for its purpose the teaching of a course consisting of seventy hours or more of the theory, ethics and practice, methods, profession or work of massage technicians, and which school or institutions of learning require a resident massage technician be furnished with a diploma or certificate of graduation from such school or institution of learning showing successful completion of such course of study already approved by the California State Department of Education.

Schools offering correspondence courses not requiring actual attendance at class of a massage technician not approved by the California State Department of Education shall not be deemed recognized.

"Person" means any individual, co-partnership, firm, association, company, corporation or combination of individuals of whatever form or character.

The foregoing definitions shall not include hospitals, nursing homes, sanitariums, persons holding an unrevoked certificate of entitlement to practice the healing arts under the laws of the state of California or persons working under the direction and control of such persons in any such establishments. (Prior code § 3-141)

5.32.030 Permit required.

It shall be unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the city, the operation of a massage establishment or an outcall massage service as defined in Section 5.32.020 without first having obtained a permit pursuant to this chapter in addition to any other permits required by law. For the purposes of these provisions, the police chief shall be the investigating official of the city who shall make the required investigation and who may be the designate of the city manager in conducting the hearing upon the application for permit hereunder.

If the applicant is a corporation, the names and residence addresses of each of the officers and directors of said corporation and of each stockholder owning more than ten percent of the stock of the corporation shall be set forth. If applicant is a partnership, the names and residence addresses of each of the partners including limited partners shall be set forth.

The applicant shall furnish information from which the city can determine whether the massage technicians, trainees or employees who work in, or will work in, applicant's massage establishment or engaged in the outcall service are employed on a salary or other fixed compensation basis or are employed as independent contractors whose compensation is based upon a percentage of the fee or money paid by the customer or client for a massage or bath. If such technician, trainee or employee is an independent contractor, applicant shall file with his/her application, a copy of all written agreements wherein the terms of such status are set forth, and applicant shall furnish information showing the amounts of said fee or money paid, or to be paid, and the method of computation thereof, under such agreements.

In addition to the foregoing, any applicant for such a permit shall furnish the following information:

- A. Previous addresses (if any) for the three years immediately prior to the present address of applicant;
- B. Written proof that the individual or partnership applicant is over the age of eighteen years;
- C. Individual or partnership applicant's height, weight, sex and color of eyes and hair;
- D. Two portrait photographs at least two inches by two inches;
- E. Business, occupation or employment of the applicant for the three years immediately preceding the date of the application;

F. The history of the applicant in operation of a massage establishment or similar business or occupation, including, but not limited to, whether or not such person, in previously operating in this or another city or state under permit, has had such permit revoked or suspended and the reason therefor, and the business activity or occupation subsequent to such action of suspension or revocation;

G. All criminal convictions other than for misdemeanor traffic violations and the reasons therefor;

H. The name and address of each massage technician who is or will be employed in said establishment.

I. Such other identification and information necessary to discover the truth of the matters hereinabove specified as required to be set forth in the application.

Nothing herein contained shall be construed to deny to the investigation official the right to take the fingerprints and additional photographs of the applicant. (Prior code § 3-142)

5.32.040 Investigation and fee.

A. Upon receipt of said application, the city collector shall refer the application to the building department, the fire department, the police department and the planning and community development department, each of which within a period of thirty days from the date of application shall review records or make an inspection of the premises proposed to be devoted as a massage establishment and shall make a written recommendation to the city collector concerning compliance with the respective requirements.

B. The city collector shall, upon receipt of an application for a "massage establishment" or "recognized school" cause a notice to be published once in a newspaper of general circulation within ten days of receipt of said application. Such notice shall contain the applicant's name, the street address of such establishment, a statement that a massage establishment is intended to be carried on at said premises, and a notice that any person may submit a written statement regarding the proposed establishment to the police chief by a specified date.

C. The city collector shall upon receipt of an application for a "massage technician," "massage technician trainee," "outcall massage service," submit said application to the police chief for investigation and approval/denial. (Prior code § 3-143)

5.32.050 Issuance or denial of permit.

The police chief shall review applications submitted pursuant to this chapter and issue such permit if upon investigation it is found:

A. That the operation, as proposed by the applicant, if permitted, would comply with all applicable laws, including, but not limited to, the city's building, zoning and health regulations.

B. That the applicant has not been convicted in a court of competent jurisdiction of an offense involving lewd conduct; or an offense involving the use of force and violence upon the person of another; or a crime requiring registration under Section 290 of the state Penal Code, or of any violation of Sections 311 through 311.7, 314, 315, 316, 318 or 647(a), (b) or (d) of the state Penal Code.

C. That the applicant has not knowingly and with intent to deceive made any false, misleading or fraudulent statement of facts in the permit application or in any other document required by the city in conjunction therewith.

Otherwise, said permit shall be denied. In the event of denial, notification and reasons for denial shall be set forth in writing and shall be sent to the applicant by means of registered or certified mail or hand delivery. (Prior code § 3-144)

5.32.060 Temporary massage establishment permit.

Upon application, the police chief shall be authorized to issue a temporary massage establishment permit to any applicant who is currently the owner or operator of such an establishment pending review and investigation of the application submitted herein. Such temporary permit shall remain in effect for a period of thirty days or until issuance of the permit applied for, unless said permit has been denied for any of the reasons set forth in Section

5.32.050, in which event said temporary permit shall be of no further force and effect. (Prior code § 3-145)

5.32.070 Requirements.

All premises used by permittees hereunder shall be subject to periodic inspection by the city for safety of the structure and the proper installation of plumbing, ventilation, heating and sanitation. One artificial white light of not less than forty watts shall be provided and be lighted in each room where a massage is being administered. The walls shall be clean and painted with an approved washable, mold resistant paint in all rooms where water or steam baths are given. Floors shall be free from any accumulation of dust, dirt or refuse. All equipment used in the massage operation shall be maintained in a clean and sanitary condition. Separate restrooms shall be provided for men and women.

No service described in subsection A of Section 5.32.020 shall be carried on within any cubicle, room or booth, or any area within a massage establishment, which is fitted with a door or closure capable of being locked or secured to entry.

Towels, sheets and linens of all types and items for personal use of operators and patrons shall be clean and freshly laundered. Towels, clothes and sheets shall not be used for more than one person. Reuse of such linen is prohibited unless the same has first been laundered. Heavy white paper may be substituted for sheets provided that such paper is used once for every person and then discarded into a sanitary receptacle.

Dressing and locker facilities shall be available for patrons. Security deposit facilities for the protection of the valuables of patrons shall also be available. (Prior code § 3-146)

5.32.080 Advertising.

No massage establishment or outcall massage service granted a permit under this chapter 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, clients or patrons that any service is available other than those services described in the definitions of "massage" and "outcall massage service" of Section 5.32.020, nor shall any such establishment or service indicate in the text of such advertising that any service is available other than those so described. (Prior code § 3-147)

5.32.090 Inspection by city.

Inspection officials of the city, including the health officer and police chief, shall have the right to enter the premises from time to time during regular business hours for the purpose of making reasonable inspections to enforce compliance with building, fire, electrical, plumbing or health regulations, and for the purpose of determining that the provisions of this chapter, and other provisions of law, are being complied with. In the event the applicant for either a massage establishment permit or a massage technician's permit has a contagious and communicable disease or venereal disease, or if the applicant is in violation of any federal, state or local health law or regulation, the application may be denied. In the event a permit has been issued, it may be revoked or suspended in the manner set forth in this chapter. (Prior code § 3-148)

5.32.100 Transfer of permit.

No massage establishment permit shall be transferable except with the written approval of the police chief. An application for such a transfer shall be in writing and shall be accompanied by the applicable application, fingerprinting and investigation fees which shall be nonrefundable. The application for such transfer shall contain the same information as required herein for an initial application for such a permit. In the event of denial, notification and reasons for denial shall be set forth in writing and shall be sent to the applicant by means of registered or certified mail or hand delivery. (Prior code § 3-149)

5.32.110 Massage technician permit required.

It shall be unlawful for any person to practice massage as a principal, an employee, or otherwise within the city, unless such person has been issued a massage technician permit upon approval of the police chief and such permit remains in effect in conformity with the provisions of this chapter.

The application shall be upon a form provided by the city collector and shall set forth the following information:

- A. The applicant's full name, residential address and residence telephone number;
- B. The name and address of the massage establishment where the applicant is to be employed and the name of the owner of same;
- C. The names and addresses of any and all previous establishments where applicant has been employed as a massage technician;
- D. The criminal record, if any, other than misdemeanor traffic violations, of the applicant;
- E. Whether any permit to engage in the practice of massage as a massage technician or otherwise has previously been denied applicant or revoked and, if so, the circumstances of such denial or revocation;
- F. A portrait photograph of at least two inches by two inches, together with a complete set of such person's fingerprints which shall be taken by the police chief or his/her agent;
- G. Written proof that applicant is over the age of eighteen years;
- H. A certificate from a medical doctor stating that the applicant has, within thirty days immediately prior to filing his/her application herein, been examined and found to be free from any contagious and communicable disease or venereal disease;
- I. Applicant shall also furnish a diploma or certificate of graduation from a recognized school wherein the method, profession and work of massage techniques are taught. (Prior code § 3-150)

5.32.120 Massage technician permit investigation and fee.

All applications for a massage technician permit shall be accompanied by the applicable application, fingerprinting and investigation fees which shall be nonrefundable.

Upon receipt of said application, the city collector shall refer the application to the police department which, within a period of thirty days from the date of application, shall make investigation and determination concerning compliance with the respective requirements. (Prior code § 3-151)

5.32.130 Issuance or denial of massage technician permit.

The police chief shall approve and issue such permit if upon investigation and the report filed it is found:

A. That the applicant has not been convicted in a court of competent jurisdiction of an offense involving lewd conduct; or an offense involving the use of force and violence upon the person of another; or a crime requiring registration under Section 290 of the state Penal Code, or of any violation of Sections 311 through 311.7, 314, 315, 316, 318 or 647(a), (b) or (d) of the state Penal Code.

B. That the applicant has not knowingly and with intent to deceive, made any false, misleading or fraudulent statement of facts in the permit application or in any other document required by the city in conjunction therewith.

Otherwise said permit shall be denied. In the event of denial, notification and reasons for denial shall be set forth in writing and shall be sent to the applicant by means of registered or certified mail or hand delivery. (Prior code § 3-152)

5.32.140 Massage technician trainee permit.

Any person currently enrolled in a recognized school may apply for a temporary permit as a massage technician trainee. In addition to the payment of the fees required by Section 5.32.120 and the information required by Section 5.32.110, the applicant shall submit a letter signed by the director or administrator of applicant's recognized school showing the date the applicant was officially enrolled and the estimated date the applicant will graduate.

The applicant shall also submit a letter signed by the owner or operator of a massage establishment, stating his/her willingness to employ the applicant to do massage as a massage

technician trainee, working under his/her direct supervision and control, during the time the applicant is completing the course of study as a massage technician.

The massage technician trainee permit shall expire ninety days from the date issued and is not renewable, except in the case of sickness or accident for which reason the education was delayed. Applicant is expected to complete his/her massage technician course of study during the ninety-day period the permit is valid. The trainee must, at all times, comply with all laws and ordinances in effect and the failure to comply may render the applicant ineligible to obtain a massage technician's permit. Upon presentation of a copy of his/her diploma or certificate of graduation from a recognized school, the trainee will be issued the regular massage technician permit. (Prior code § 3-153)

5.32.150 Existing operators.

All persons engaged in doing massage in the city at the time these regulations become effective who cannot qualify for a massage technician permit shall have a period of thirty days within which to qualify as a massage technician trainee and obtain a massage technician trainee permit by making application therefor, paying the investigation fee and submitting information required under the provisions of Section 5.32.140. (Prior code § 3-154)

5.32.160 Display of permits--Register.

The owner or operator shall display the massage establishment permit issued and the permit of each and every massage technician or massage technician trainee employed in the establishment in an open and conspicuous place on the premises.

Massage technicians shall wear an identification name plate which shall contain a photograph and surname of the technician, and must be worn on the front of the outermost garment at all times during the hours of operation of any massage establishment or outcall massage service granted a permit pursuant to this chapter.

The operator of a massage establishment or an outcall massage service must maintain a register, or written listing, of all persons employed by him or her, whether as independent contractors or otherwise, as massage technicians, trainees and employees and their permit numbers. Such register shall be available for inspection at all times during regular business hours. (Prior code § 3-155)

5.32.170 Notification of changes.

Every massage establishment owner or operator shall report immediately to the police chief any and all changes of address or ownership of the massage establishment and any changes or transfers of massage technicians or massage technician trainees employed in the business or practice. (Prior code § 3-156)

5.32.180 Suspension or revocation of permits.

Any massage establishment or massage technician's permit issued under this chapter shall be subject to suspension or revocation by the police chief for violation of any provision of this chapter or for any grounds that would warrant the denial of the issuance of such permit in the first instance.

Prior to the suspension or revocation of any permit issued under this chapter, the permittee shall be entitled to a hearing held before the city manager, at which time evidence will be received for the purpose of determining whether or not such permit shall be suspended or revoked or whether the permit may be retained. In the event the permit is suspended or revoked, the notification and reasons for such suspension or revocation shall be set forth in writing and sent to the permittee by means of registered or certified mail or hand delivery. (Prior code § 3-157)

5.32.190 Appeals.

Appeals to the council from any denial, suspension or revocation by the city manager or any city department hereunder may be made within ten days after notification of such action. (Prior code § 3-158)

5.32.200 Cumulative remedy.

In addition to the remedies herein, or in this code provided, the operation of massage establishment or of an outcall massage service in violation of this chapter shall be deemed a public nuisance and may be enjoined. (Prior code § 3-159)

5.32.210 Violation--Penalty.

Any person who violates, or causes another to violate, any of the provisions of this chapter is guilty of a misdemeanor and upon conviction shall be punished as set forth in Section 1.20.010 of this code. (Prior code § 3-160)