

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO,
CALIFORNIA, AMENDING SECTIONS 9-1603, 9-1604, 9-
1605, AND 9-1609 OF THE FRESNO MUNICIPAL CODE,
RELATED TO MASSAGE BUSINESS

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

SECTION 1. Section 9-1603 of the Fresno Municipal Code is amended to read:

SECTION 9-1603. ~~GAMTC CERTIFICATION AND LOCAL
REGISTRATION.~~ [PERMIT REQUIRED.]

(a) Individuals. It is unlawful for any individual to practice
Massage for compensation as a sole proprietorship or Employee of a
Massage Business or in any other capacity within the city unless that
individual is a Certified Massage Practitioner.

(b) Business. It is unlawful for any Massage Business to
operate within the city unless all individuals employed to perform
Massage, whether as an Employee, independent contractor, or sole
proprietorship, are Certified Massage Practitioners and the business has
obtained a valid City Registration Certificate as provided in this chapter.

[(c) Landlord. It is unlawful for any landlord to allow a Massage
Business to operate on the premises without proof of a valid City
Registration Certificate.]

1 of 17

Date Adopted:

Date Approved

Effective Date:

City Attorney Approval:



Ordinance No.

SECTION 2. Section 9-1604 of the Fresno Municipal Code is amended to read:

SECTION 9-1604. MASSAGE BUSINESS REGISTRATION.

(a) Application. The application for a City Registration Certificate shall be submitted to the ~~Chief of Police~~ [City Manager or his or her designee] and shall include all of the following:

- (1) Legal name of the Massage Business.
- (2) Address and telephone number of the Massage Business. [If the location is leased, a copy of a valid lease and the name, address, and telephone number of the landlord or property owner. For a lease to be valid, it must include the terms of the lease including start and end dates, any renewal options and terms, and the name(s) of the individual(s) who are financially responsible for paying the lease.]
- (3) Legal names of all Owners [and Operators] of the Massage Business.
- (4) A list of all the Massage Business's Employees and independent contractors who are performing Massage and their CAMTC certifications.
- (5) Residence address and telephone number of all Owners of the Massage Business.
- (6) Business address and telephone number of all Owners of the Massage Business.

(7) The form of business under which the Massage Business will be operating (i.e., corporation, general or limited partnership, limited liability company, or other form).

(8) Each Owner and Operator of the Massage Business who is not a Certified Massage Practitioner shall submit an application for a background check, including but not limited to, a criminal background check, including requiring submission of fingerprints for a state and federal criminal background check, the applicant's business, occupation and employment history for the ten years preceding the date of application, the inclusive dates of same, and the name and address of any Massage Business or other like establishment owned or operated by any person who is subject to the background check requirement of this section. If a noncertified Owner's or Operator's background check results in a finding that the city determines is relevant to owning or operating a Massage Business, then the city may regulate the establishment in any manner it deems proper that is in accordance with the law.

(9) For all Owners, a valid and current driver's license and/or identification issued by a state or federal governmental agency or other photographic identification bearing a bona fide seal by a foreign government.

(10) For all Owners, a signed statement that all of the information contained in the application is true and correct; that all Owners shall be responsible for the conduct of the Massage

Business's Employees or independent contractors providing Massage Services; and acknowledging that failure to comply with the California Business and Professions Code Section 4600 et seq., any other applicable local, state, or federal laws, or the provisions of this chapter may result in revocation of the City Registration Certificate.

[(11) Proof of a current City of Fresno Business Tax Certificate or approved application.

(12) The applicant shall certify under penalty of perjury that within five years preceding submission of the application, no Owner or Operator listed in the application has:

(i) Had a City Registration Certificate, massage professional certification, or other similar permit or license related to the practice or business of massage, denied, suspended, or revoked by the city, or any other state or local agency;

(ii) Engaged in conduct or operated a Massage Business in a manner that would be grounds for denial, suspension, or revocation of a permit under this chapter; or

(iii) Owned or managed a Massage Business where persons required to be licensed were allowed to work without the required license or permit.]

(b) Issuance. Upon provision by the Massage Business of the foregoing documentation, and approval by the ~~Chief of Police~~ [City Manager or his or her designee] or designee, the city shall issue the

Massage Business a City Registration Certificate, which shall be valid for ~~two years~~ [one year] from the date of issuance. If the application is complete and accurate and all of a Massage Business's Owners, Operators, and Employees are Certified Massage Practitioners, approval shall be ministerial. If an application is denied, the ~~Chief of Police~~ [City Manager or his or her designee] shall specify in writing the reason for the denial and the applicant shall have the right to appeal the denial to the Administrative Hearing Officer in accordance with Article 4, Chapter 1 of the Fresno Municipal Code.

(c) Amendment. A Massage Business shall apply to the city to amend its City Registration Certificate within thirty days after any change in the Registration information, including, but not limited to, the hiring or termination of Certified Massage Practitioners, or change of address.

(d) Renewal. A Massage Business shall apply to the city to renew its City Registration Certificate at least thirty days prior to expiration. If an application for renewal of a City Registration Certificate and all required information are not timely received and the certificate expires, no right or privilege to provide Massage shall exist.

(e) Fees. ~~There shall be no fee for the Registration application or City Registration Certificate, or any amendment or renewal thereof. The provisions of this chapter shall not prevent the city from establishing fees for health and safety inspections as may be conducted from time to time, and for the background checks, fingerprinting, and~~

~~subsequent arrest notification for Owners who are not CAMTC certified and who are subject to such background checks pursuant to this chapter.~~ [Each application for a City Registration Certificate shall be accompanied by a nonrefundable fee as set forth in the Master Fee Schedule. The fee shall be to defray in part the cost of the investigation and report required by this chapter. A copy for the receipt for the nonrefundable fee shall accompany the application.]

(f) Transfer. A City Registration Certificate shall not be transferred [or assigned] except with the prior written approval of the Chief of Police [City Manager or his or her designee]. A written request for transfer shall contain the same information for the new ownership as is required for applications for a City Registration Certificate pursuant to this section. In the event of denial, notification of the denial and reasons therefor shall be provided in writing and shall be provided to the applicant by personal delivery or by registered certified mail.

[(g) Overconcentration. To avoid an overconcentration of Massage Businesses in the city and to protect the public health, safety, and welfare, in those zones where Massage Businesses are permitted, no Massage Business shall be permitted to locate within 500 feet of an existing Massage Business.]

SECTION 3. Section 9-1605 of the Fresno Municipal Code is amended to read:

SECTION 9-1605. OPERATING REQUIREMENTS. As of the effective date of this chapter, no person shall engage in, conduct, carry on, or permit

any Massage within the city unless all of the requirements set forth below are met:

(a) ~~A Certified Massage Practitioner shall have his or her CAMTC certification in his or her possession at all times while providing Massage Services. [It shall be unlawful for any Certified Massage Practitioner to be present on the premises of a Massage Business or perform Massage on a Client without having prominently displayed his or her CAMTC certification card issued by CAMTC. The identification card shall be in good and readable condition, and displayed on the outermost garment at approximately chest height.]~~

(b) A list of the services available and the cost of such services shall be posted in the reception area within the Massage Business, and shall be described in readily understandable language. Outcall Massage providers shall provide a service list to Clients in advance of performing any service. No Owner, Operator, or responsible managing Employee shall permit, and no Certified Massage Practitioner shall offer to perform, any services other than those posted or listed as required herein, nor shall an Owner, Operator, or Certified Massage Practitioner request or charge a fee for service other than that on the list of services.

(c) A copy of the CAMTC certificate of each Certified Massage Practitioner employed by the Massage Business shall be displayed in the reception area or similar open public space on the premises.

(d) For each Massage Service provided, every Massage Business shall keep a complete and legible written record of the following information: the date and hour that the service was provided; the service received; the name or initials of the Employee entering the information; and the name of the Certified Massage Practitioner administering the service. Such records shall be open to inspection and copying by city officials and staff charged with enforcement of this chapter. These records may not be used by any Certified Massage Practitioner, Owner or Operator for any purpose other than as records of service provided and may not be provided to other parties by the Certified Massage Practitioner, Owner, or Operator unless otherwise required by law. Such records shall be retained on the premises of the Massage Business for a period of at least two years.

(e) Massage Businesses shall at all times be equipped with an adequate supply of clean sanitary towels, coverings, and linens. Clean towels, coverings and linens shall be stored in enclosed cabinets. Towels and linens shall not be used on more than one Client, unless they have first been laundered and disinfected. Disposable towels and coverings shall not be used on more than one Client. Soiled linens and paper towels shall be deposited in separate receptacles.

(f) Wet and dry heat rooms, steam or vapor rooms or cabinets, toilet rooms, shower and bath rooms, tanning booths, or whirlpool baths and pools shall be thoroughly cleaned and disinfected as needed, and at least once each day the Massage Business is open,

with disinfectant. Bathtubs shall be thoroughly cleaned after each use with disinfectant. All walls, ceilings, floors, and other physical facilities for the Massage Business must be in good repair, and maintained in a clean and sanitary condition.

(g) Instruments utilized in performing Massage shall not be used on more than one Client unless they have been sterilized using approved sterilization methods.

(h) All Massage Business Operators and their Employees, including Certified Massage Practitioners, shall wear clean, nontransparent outer garments. Garments shall not expose their genitals, pubic areas, buttocks, or chest.

(i) No person shall enter, be or remain in any part of a Massage Business while in possession of an open container of alcohol, or consuming or using any alcoholic beverages or controlled drugs except pursuant to a prescription for such drugs. The Owner, Operator, or responsible managing Employee, shall not permit any such person, or any person who is clearly intoxicated, to enter or remain upon the premises. [Except as may be expressly permitted by Business and Professions Code Section 23399.5, no alcoholic beverage or drug, other than a prescription medication in the possession of the person for whom the prescription was written, shall be stored or kept on the premises of a Massage Business.]

(j) No Massage Business shall operate a school of Massage, or use the same facilities as that of a school of Massage.

(k) No Massage Business shall place, publish or distribute, or cause to be placed, published or distributed, any advertising material that depicts any portion of the human body that would reasonably suggest to prospective Clients that any service is available other than those services listed as an available service, nor shall any Massage Business employ language in the text of advertising that would reasonably suggest to a prospective Client that any service is available other than those services as described in compliance with the provisions of this chapter.

(l) No Massage shall be given unless the Client's genitals are, at all times, fully covered. A [Certified Massage P]practitioner shall not, in the course of administering any Massage, make physical contact with the genitals of any other person, nor shall a practitioner [Certified Massage Practitioner] expose to a Client or allow physical contract with his or her genitals. [No sexual aids, including but not limited to condoms, may be kept on site.]

(m) Where the Massage Business has staff available to assure security for Clients and staff behind closed doors, the entry to the reception area of the Massage Business shall remain unlocked during business hours, when open for business, or when Clients are present.

(n) No Massage Business located in a building or structure with exterior windows fronting a public street, highway, walkway, or parking area shall block visibility into the interior reception and waiting area through the use of curtains, closed blinds, tints, or any other

material that obstructs, blurs, or unreasonably darkens the view into the premises.

(o) All signs shall be in conformance with the current ordinances of the city.

(p) Minimum lighting consisting of at least one artificial light of not less than forty watts shall be provided and shall be operating in each room or enclosure where Massage Services are being performed on Clients, and in all areas where Clients are present.

(q) Ventilation shall be provided in accordance with applicable building codes and regulations.

(r) Adequate dressing, locker and toilet facilities shall be provided for Clients.

(s) Hot and cold running water shall be provided at all times.

(t) A minimum of one wash basin for Employees shall be provided at all times. The basin shall be located within or as close as practicable to the area devoted to performing of Massage Services. Sanitary towels shall also be provided at each basin.

(u) Pads used on Massage tables shall be covered with fabric or paper, and shall be changed after each Client.

(v) All Massage Businesses shall comply with all state and federal laws and regulations for disabled access.

(w) A Certified Massage Practitioner shall operate only under the name specified in his or her CAMTC certificate.

(x) A Massage Business shall operate only under the name specified in its City Registration Certificate.

(y) Clients of a Massage Business shall be limited to adults 18 years of age and older and minors when accompanied by a parent or legal guardian.

[(z) Massage shall be provided or given only between the hours of 7:00 a.m. and 10:00 p.m. No Massage Business shall be open and no Client shall be in the establishment between 10:00 p.m. and 7:00 a.m.]

(aa) Upon request, proof of bona fide employment must be shown by written payroll documentation evidencing the employer's compliance with California Employment Development Department (EDD) requirements for the withholding of income tax, unemployment insurance contributions, and disability contributions from the employee and written payroll documentation of the employer's compliance with Internal Revenue Service (IRS) requirements for the withholding of Federal income taxes, Social Security (FICA) and Medicare contributions from the employee. Such written documentation can include, but is not limited to, W-2 wage and tax statements.

(bb) Living Quarters Prohibited. No person or persons shall be allowed to reside, dwell, occupy or live inside a Massage Business at any time. Beds and floor mattresses shall not be permitted on the premises.]

(cc) Responsibility of the Owner. It shall be the responsibility of the Owner who employs or allows any person to provide Massage Services, to ensure such person complies with the requirements of this Article and all laws. The Owner shall be held responsible for the conduct of all Employees and all persons on the premises who engage in providing Massage Services. Any act or omission of any person providing Massage Services shall be deemed the act or omission of the Owner for the purpose of determining whether the City Registration Certificate may be revoked, suspended, or denied. Proof of knowledge of any violation of this section shall not be required for purposes of suspension, revocation, or denial of a City Registration Certificate.]

SECTION 4. Section 9-1609 of the Fresno Municipal Code is amended to read:

SECTION 9-1609. SUSPENSION AND REVOCATION OF CITY REGISTRATION CERTIFICATE.

(a) Reasons. The City Registration Certificate may be suspended or revoked upon any of the following grounds:

(1) A ~~practitioner~~ [Certified Massage Practitioner] is no longer in possession of a current and valid CAMTC certification. This subsection shall apply to a sole proprietor or a person employed or used by a Massage Business to provide Massage.

(2) An Owner or sole proprietor: is required to register under the provisions of the California Penal Code section 290 (sex offender registration); is convicted of California Penal Code Section 266i (pandering), 315 (keeping or residing in a house of

ill fame), 316 (keeping disorderly house), 318 (prevailing upon person to visit a place for prostitution), 647(b) (engaging in or soliciting prostitution), 653.22 (loitering with intent to commit prostitution), or 653.23 (supervision of prostitute); has a business permit or license denied, revoked, restricted, or suspended by any agency, board, city, county, territory, or state; is subject to an injunction for nuisance pursuant to California Penal Code Sections 11225 through 11235 (red light abatement); is convicted of a felony offense involving the sale of a controlled substance; is convicted of any crime involving dishonesty, fraud, deceit, violence, or moral turpitude; or is convicted in any other state of an offense which, if committed in this state, would have been punishable as one or more referenced offenses in this subsection.

(3) The city determines that a material misrepresentation was included on the application for a City Registration Certificate or renewal.

(4) Violations of any of the following occurred on the premises of a Massage Business or were committed by a ~~practitioner~~ [Certified Massage Practitioner]: California Business and Professions Code Section 4600 et seq.; any local, state, or federal law; or the provisions of this ~~chapter~~ [article].

(b) Procedures. Written notice of the suspension or revocation shall be served on the sole proprietor or Owner(s) by certified mail with

the legal violation and supporting facts. The notice shall contain an advisement of the right to request an appeal~~[.] hearing before the Administrative Hearing Officer.~~

(c) Time Period of Suspension of Permit. The ~~Chief of Police~~ [City Manager or his or her designee, Chief of Police or F]finance [D]director or city manager may suspend a Registration for a period between five days and the remainder of the certification term, at his or her discretion.

(d) Effective Date of Suspension or Revocation. Suspension or revocation will be effective ~~ten days~~ [five days] from the ~~date appearing on~~ [receipt of] the notice, unless a timely appeal is filed in accordance with [this section]. ~~Article 4, Chapter 1 of the Fresno Municipal Code.~~

[(e) Appeal. An appeal can be made to the City Manager or his or her designee. An appeal must be received within five days of receipt of the notice to suspend or revoke. A hearing shall be held within ten days of the request for appeal being received. If the suspension or revocation is upheld, the Massage Business shall immediately close. If the appellant is not satisfied with the decision of the City Manager or his or her designee, the appellant may appeal to the Administrative Hearing Officer pursuant to Article 4, Chapter 1 of this code. The Massage Business, however, shall remain closed until the decision of the Administrative Hearing Officer is final.]

~~[(f)](e)~~ Reapplication. No reapplication will be accepted within ~~one year~~ [five years] after a City Registration Certificate is revoked.

[(g) An individual identified as an Owner or Operator of a Massage Business that has had a City Registration Certificate revoked may not serve as an Owner, Operator, or Employee of a Massage Business in the city, nor be on the premises of any Massage Business, for five years after the City Registration Certificate is revoked.]

[(h) It shall be unlawful for any Owner or Operator of a Massage Business to knowingly allow any Owner or Operator who has had a City Registration Certificate revoked within the last five years to be present on the premises of their Massage Business.]

[(i) If a City Registration Certificate has been revoked and that revocation has become final pursuant to this article, no subsequent Massage Business shall be issued a City Registration Certificate at the address or fixed location of the revoked City Registration Certificate for a period of two years from the date the revocation became final.]

[(j) If a City Registration Certificate is subsequently revoked for the address of the same fixed location within three years of a prior revocation, and that subsequent revocation has become final, no City Registration Certificate shall be issued for any address on the same parcel for a period of three years from the date the subsequent revocation became final.]

SECTION 5. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its final passage.

* * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____, 2019.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2019
Mayor Approval/No Return: _____, 2019
Mayor Veto: _____, 2019
Council Override Vote: _____, 2019

YVONNE SPENCE, CMC MMC
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN,
City Attorney

BY: _____
Katie Doerr Date
Chief Assistant City Attorney

KBD:ns [80435ns/kbd] - 6/4/18

