

1 BEFORE THE BOARD OF SUPERVISORS

2 OF THE COUNTY OF FRESNO

3 STATE OF CALIFORNIA

4 ORDINANCE NUMBER _____

5 AN ORDINANCE ADDING CHAPTER 6.39 TO THE ORDINANCE CODE OF FRESNO
6 COUNTY, PERTAINING TO MASSAGE ESTABLISHMENTS AND OUT CALL MASSAGE
7 SERVICES.

8 The Board of Supervisors of the County of Fresno ordains as follows:

9 **Section 1.** That the Ordinance Code of Fresno County is hereby amended by adding Chapter
10 6.39 of Title 6 to read as follows:

11 Chapter 6.39 – COUNTY OF FRESNO MASSAGE ESTABLISHMENT AND OUT CALL
12 MASSAGE SERVICES ORDINANCE

13 Section 6.39.010 – Title

14 Section 6.39.020 – Purpose and Intent

15 Section 6.39.030 – Definitions

16 Section 6.39.040 – County Massage Establishment Permit, CAMTC Certification, and
Business License Required

17 Section 6.39.050 – Land Use and Zoning Requirements

18 Section 6.39.060 – Exemptions

19 Section 6.39.070 – Certified Massage Therapist Registration Requirements

20 Section 6.39.080 – Massage Establishment Permit

21 Section 6.39.090 – Action on Permit Application

22 Section 6.39.100 – Issuance of Permit

23 Section 6.39.110 – Operating Requirements

24 Section 6.39.120 – Inspection by Officials

25 Section 6.39.130 – Out Call Massage Business Permits

Section 6.39.140 – Notifications

Section 6.39.150 – Revocation of Permit

Section 6.39.160 – Suspension of Permit

Section 6.39.170 – Prohibited Conduct

Section 6.39.180 – Application of Chapter to Preexisting Massage Establishments and
Therapists.

Section 6.39.190 – Appeals

Section 6.39.200 – Violation and Penalty

Section 6.39.210 – Administrative Citation and Penalty

Section 6.39.220 – Severability

Section 6.39.230 – Grace Period and Enforcement Date

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1 Section 6.39.010 – Title.

2 This Chapter shall be known as the County of Fresno Massage Establishment and Out
3 Call Massage Services Ordinance.
4

5 Section 6.39.020 – Purpose and Intent.

6 Government Code Sections 51030 through 51034 provide authority for the legislative bodies of
7 California to license and regulate the business of massage. In enacting this chapter, the board
8 of supervisors recognizes that lawful commercial massage therapy is a respected professional
9 pursuit that can offer the public valuable health and therapeutic services. The board of
10 supervisors further recognizes that, unless properly regulated, the practice of massage therapy
11 and the operation of massage establishments may be associated with unlawful activity and may
12 pose a threat to the quality of life in the local community. Accordingly, it is the purpose and
13 intent of this chapter to protect the public health, safety, and welfare by providing for orderly
14 regulation of businesses providing massage therapy services, to prevent blighting conditions
15 and discourage prostitution and related illegal activities carried on under the guise of massage
16 therapy, and establish certain sanitation, health, and operational standards for massage
17 establishments.
18

19 Section 6.39.030 – Definitions.

- 20 A. "California Massage Therapy Council" or "CAMTC" means the Message Therapy
21 Organization formed pursuant to Business and Professions Code section 4600.5, et.
22 seq.
23 B. "Certified Massage Therapist" means any individual certified by the CAMTC as a
24 Certified Massage Therapist or as a Certified Massage Practitioner pursuant to Chapter
25

1 10.5 (commencing with Section 4600) of Division 2 of the California Business and
2 Professions Code.

3 C. "Client" means the customer or patron who pays for or receives massage services.

4 D. "For compensation" means the exchange of massage services for money, goods, or any
5 other thing of value. A massage establishment or person may not avoid the
6 requirements of this chapter by offering free massage in conjunction with other services
7 or goods provided to a client for compensation.

8 E. "Massage" or "massage services" means any method of pressure on, or friction against,
9 or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating the external
10 parts of the human body with the hands or any other parts of the body or with the aid of
11 any mechanical or electrical apparatus or other appliances or devices, with or without
12 the use of oils, creams, tonics, lotions, antiseptics, tanning products, or other similar
13 preparations. Massage shall further include baths, including aromatherapy, vapor,
14 shower, electric tub, sponge, hot towels, sauna, steam, or any other type of bath where
15 the essential nature of the service involves any method of pressure or friction against, or
16 stimulating the external parts of, the human body, with the hands or any other parts of
17 the body.

18 F. "Massage establishment" means a massage establishment having a fixed place of
19 business where any person or entity, including but not limited to a firm, association,
20 corporation, limited liability company, general partnership, or limited partnership,
21 practices or otherwise permits massage for compensation. The term "massage
22 establishment" includes businesses that offer services such as relaxation, hot tub, towel
23 wraps, baths, health treatments, tanning, or any service where the essential nature of
24 the interaction between the massage therapist, including an employee or contractor of a
25 massage therapist, and the client involves a massage.

- 1 G. "Massage therapist" means any person who, for any type of compensation, practices
2 massage or provides massage services.
- 3 H. "Operator" means a person, whether an Owner or non-Owner, who manages or
4 operates a massage establishment.
- 5 I. "Out call massage" means providing massage services for compensation at a location
6 other than at a permitted massage establishment.
- 7 J. "Owner" means any of the following persons:
- 8 a. Any person who is a sole practitioner of a sole proprietorship operating a
9 massage establishment;
 - 10 b. Any person who is a general partner of a general or limited partnership that owns
11 a massage establishment
 - 12 c. Any person who has a five percent or greater ownership interest in a firm,
13 association, or corporation that owns a massage establishment
 - 14 d. Any person who is a member of a limited liability company that owns a massage
15 establishment
 - 16 e. All owners of any other type of business entity that owns a massage
17 establishment
 - 18 f. Any person identified as an owner on the County Massage Establishment Permit.
- 19 K. "Permit" means the County massage establishment permit to engage in the business
20 activity of operating a massage establishment, which shall be obtained through the
21 process required by this chapter. Two types of permits are issued pursuant to this
22 chapter: County massage establishment permits and County out call massage business
23 permits. Unless specifically provided in this chapter, permits are not transferable.
- 24
25

1 Section 6.39.040 – County massage establishment permit, CAMTC certification, and business
2 license required.

3 A. County massage establishment permit. It is unlawful for any owner, operator, officer,
4 director, or managing employee of a massage establishment to operate or permit the
5 operation of such establishment without a valid County massage establishment permit,
6 as required by this chapter.

7 B. County out call massage business permit. It is unlawful for any person to provide out call
8 massage services without a valid County out call massage business permit, as required
9 by this chapter.

10 C. Certification. It is unlawful for any person other than a certified massage therapist to
11 provide massage services within the unincorporated areas of the County, unless
12 exempted as provided in this chapter.

13 D. Business license. It is unlawful for any person to provide massage services within the
14 unincorporated areas of the County without obtaining a business license pursuant to
15 Chapter 6.04 of the Fresno County Code of Ordinances.

16
17 Section 6.39.050 – Land use and zoning requirements.

18 The massage establishment premises and property on which the premises occupied by a
19 massage establishment are located must conform to all applicable federal, state, and county
20 land use and zoning requirements.

21
22 Section 6.39.060 – Exemptions.

23 The provisions of this chapter shall not apply to the following classes of individuals or
24 businesses while engaged in the performance of their duties:

- 1 A. Physicians, surgeons, chiropractors, osteopaths, nurses or any physical therapists who
2 are duly licensed to practice their respective professions in the state of California and
3 persons working directly under the supervision of or at the direction of such licensed
4 persons, working at the same location as the licensed person, and administering
5 massage services subject to review or oversight by the licensed person.
- 6 B. Barbers and beauticians who are duly licensed under the laws of the state of California
7 while engaging in practice within the scope of their licenses, except that this provision
8 shall apply solely to (1) the barber's massaging of the neck, or face and/or scalp of the
9 clients, or (2) the beautician's massaging of the neck, face and/or scalp, hands, or feet of
10 the clients.
- 11 C. Hospitals, nursing homes, mental health facilities, or any other health facilities duly
12 licensed by the state of California, and employees or contractors of these licensed
13 institutions, while acting within the scope of their employment or contract.
- 14 D. Accredited high schools, junior colleges, or colleges or universities whose coaches and
15 trainers are acting within the scope of their employment.
- 16 E. Trainers of amateur, semi-professional, or professional athletes or athletic teams while
17 engaging in their training responsibilities for and with the athletes; and trainers working
18 in conjunction with a specific athletic event.
- 19 F. Individuals administering massages or health treatment involving massages to persons
20 participating in single-occurrence athletic, recreational or festival events, such as health
21 fairs, road races, track meets, triathlons and other similar events provided that all of the
22 following conditions are satisfied:
- 23 1. The massage services are made equally available to all participants in the event;
 - 24 2. The event is open to participation by the general public or a significant segment
25 of the public such as employees of sponsoring or participating organizations;

- 1 3. The massage services are provided at the site of the event and either during,
2 immediately preceding or immediately following the event;
- 3 4. The sponsors of the event have been advised of and have approved the
4 provision of massage services; and
- 5 5. The persons providing the massage services are not the primary sponsors of the
6 event.

7
8 Section 6.39.070 – Certified massage therapist registration requirements.

- 9 A. Certified massage therapists must register with the Sheriff's Office prior to providing
10 massage services in the unincorporated areas of the County. The registration application
11 shall include, at a minimum, the following information: name, address, telephone
12 number(s), place(s) of employment, whether the applicant intends to engage in out call
13 massage, as defined in Section 6.39.030, and evidence of certification from the CAMTC.
14 There is no charge for the registration.
- 15 B. Certified massage therapists shall update their registration within ten (10) days of any
16 changes and shall maintain on file with the Sheriff's Office a current copy of their
17 CAMTC certificate.

18
19 Section 6.39.080 – Massage establishment permit.

- 20 A. Application. The application for a County massage establishment permit shall be
21 submitted to the Sheriff's Office and shall include all of the following:
 - 22 1. Legal name and any fictitious name of the massage establishment.
 - 23 2. Address and telephone number of the massage establishment.
 - 24 3. Legal names and any aliases of all owners of the massage establishment.

- 1 4. A written list of all the massage establishment's therapists who are performing
2 massage, and each therapist's CAMTC certification.
- 3 5. A written list of all other non-therapist staff and contractors, including clerical
4 staff, janitorial staff, etc.
- 5 6. Residence address and telephone number of all owners of the massage
6 establishment.
- 7 7. Business address and telephone number of all owners of the massage
8 establishment.
- 9 8. The form of business under which the massage establishment will be operating
10 (e.g., corporation, general or limited partnership, limited liability company, or
11 other form).
- 12 9. Each owner and operator of the massage establishment who is not a certified
13 massage therapist shall submit an application for a background check, including
14 but not limited to, a criminal background check, including requiring submission of
15 fingerprints for a state and federal criminal background check, the applicant's
16 business, occupation and employment history for the ten (10) years preceding
17 the date of application, the inclusive dates of same, and the name and address of
18 any massage establishment, massage out call service or other like business
19 owned or operated by any person who is subject to the background check
20 requirement of this section.
- 21 10. For all owners, a valid and current driver's license and/or identification issued by
22 a state or federal governmental agency or other photographic identification
23 bearing a bona fide seal by a foreign government.
- 24 11. For all owners, a signed statement that all of the information contained in the
25 application is true and correct, that all owners shall be responsible for the

1 conduct of the massage establishment's employees or contractors providing
2 massage services, and acknowledging that failure to comply with California
3 Business and Professions Code Section 4600 et seq., any other applicable local,
4 state, or federal laws, or the provisions of this chapter may result in revocation of
5 the County massage establishment permit.

6
7 Section 6.39.090 – Action on permit application.

- 8 A. The Sheriff or his or her designee shall either issue or deny a permit within sixty (60)
9 calendar days following receipt of a completed application for a massage establishment
10 permit or out call massage business permit. In taking such action, the Sheriff or his or
11 her designee shall consider the recommendations of Sheriff's Office staff investigating
12 the application, along with any other relevant information.
- 13 B. Grounds for denial of a permit. The Sheriff or his or her designee shall deny a massage
14 establishment permit or out call massage business permit on any of the following
15 grounds:
- 16 a. The applicant, owner, operator, any officer or director of a massage
17 establishment has been convicted of a violation of Section 266h, 266i, 311
18 through 312.7, 314, 315, 316, or 318, or subdivision (a), (b) or (d) of Section 647
19 of the California Penal Code, any serious and/or violent felony as defined in
20 subdivision (c) of Section 1192.7 or 667.5 of the California Penal Code, or any
21 other crime involving moral turpitude.
 - 22 b. The applicant, owner, operator, any officer or director of a massage
23 establishment has been convicted of offenses equivalent to those listed above
24 under the laws of another jurisdiction, even if expunged.
- 25

- c. The applicant, owner, operator, any officer or director of a massage establishment is required to register under the provisions of Section 290 of the California Penal Code.
- d. The applicant, owner, operator, any officer or director of a massage establishment has been convicted of a violation of Health and Safety Code Section 11550 or any offense involving the possession or sale of a controlled substance specified in Section 11054, 11055, 11056, 11057, or 11058 of the Health and Safety Code or convicted of an equivalent offense in any other state.
- e. The applicant, owner, operator, any officer, or director of a massage establishment has been convicted of any offense involving sexual misconduct with children.
- f. The operation of a massage establishment at the proposed location would be injurious to the health, safety, or welfare of the community.
- g. The operation of the massage establishment, as proposed by the applicant, would not comply with all applicable laws, including County ordinances and regulations.
- h. The applicant knowingly made a material omission or misstatement of fact in the application.
- i. The applicant, owner, operator, any officer, or director of a massage establishment has violated any provision of this chapter or any similar law, rule or regulation of another public agency that regulates the operation of massage establishments.

C. Conditions of approval. If a permit is approved, the Sheriff or his or her designee shall include such restrictions and conditions in the permit, as the Sheriff or his or her designee deems reasonable and necessary under the circumstances to ensure compliance with the purposes and intent of this chapter.

1 D. Notice and appeal. Upon approval or denial of a permit, the Sheriff or his or her
2 designee shall prepare and forward to the applicant written notice that the permit has
3 been granted along with an attached statement of any conditions of approval, or denied.
4 The decision of the Sheriff or his or her designee upon application for a permit shall
5 become final unless a notice of appeal is filed with the county administrative officer
6 within fifteen (15) calendar days following delivery of the written notice in accordance
7 with the provisions of Section 6.39.190.
8

9 Section 6.39.100 – Issuance of massage establishment permit.

- 10 A. Upon approval by the Sheriff or his or her designee, County shall issue the massage
11 establishment a County massage establishment permit, which shall be valid for two (2)
12 years from the date of issuance, unless revoked or suspended as provided herein.
- 13 B. Amendment. A massage establishment shall apply to the County to amend its County
14 massage establishment permit within thirty (30) days after any change in the registration
15 information, including, but not limited to, the hiring or termination of certified massage
16 therapists, or change of address.
- 17 C. Renewal. A massage establishment desiring to seek an extension of its County
18 massage establishment permit shall apply to the County to renew its County massage
19 establishment permit at least thirty (30) days prior to expiration. If an application for
20 renewal of a County massage establishment permit and all required information are not
21 timely received or are timely received but not yet processed, and the permit expires, no
22 right or privilege to provide massage shall exist.
- 23 D. Fees. Fees for each massage establishment permit and out call massage business
24 permit shall be paid to the Sheriff's Office at the time the application is submitted, and
25 are nonrefundable. Fee amounts shall be set by the board of supervisors.

1 E. Transfer. A County massage establishment permit shall not be transferred, except with
2 the prior written approval of the Sheriff or his or her designee. A written request for
3 transfer shall contain the same information for the new ownership as is required for
4 applications for a County massage establishment permit pursuant to this section. If a
5 transfer is approved, the Sheriff or his or her designee shall include such restrictions and
6 conditions in the permit as the Sheriff or his or her designee deems reasonable and
7 necessary under the circumstances to ensure compliance with the purposes and intent
8 of this chapter. In the event of denial, the County shall notify the applicant of the denial
9 and reasons for the denial in writing.

10
11 Section 6.39.110 – Operating requirements.

12 Massage establishments shall comply with all applicable Federal, State, and local laws and
13 regulations and with the following requirements:

- 14 A. A certified massage therapist shall keep his or her CAMTC certification in his or her
15 possession at all times while providing massage services. A certified massage therapist
16 shall operate only under the name specified in his or her CAMTC certificate.
- 17 B. A written list of the services available and the cost of such services shall be posted in the
18 reception area within the massage establishment, and any posted signs that are in a
19 language other than English shall also be posted in English. Out call massage business
20 providers shall provide a written service list with the cost of such services to clients in
21 advance of performing any service. No owner, operator, or responsible managing
22 employee shall permit, and no certified massage practitioner shall offer to perform, any
23 services other than those posted or listed as required herein, nor shall an owner,
24 operator, or certified massage therapist request or charge a fee for service other than
25 that on the list of services.

1 C. The CAMTC certificate of each certified massage therapist employed by the massage
2 establishment or engaged as a contractor for the massage establishment shall be
3 displayed in the reception area or similar open public space on the premises. A
4 passport-size photograph of the certificate holder shall be affixed to each massage
5 therapist's CAMTC certificate.

6 D. For each massage service provided, every massage establishment shall keep and retain
7 a complete and legible written record of the following information for at least two (2)
8 years beyond the date services were provided:

- 9 1. The date and time that the service was provided;
- 10 2. The client's full name;
- 11 3. The service received;
- 12 4. The name or initials of the employee or contractor entering the information; and
- 13 5. The name of the certified massage therapist administering the service.
- 14 6. Such records shall be open to inspection and copying by County officials and
15 staff charged with enforcement of this chapter during the massage
16 establishment's regular business hours. These records may not be used by any
17 certified massage therapist, owner or operator for any purpose other than as
18 records of service provided and may not be provided to other parties by the
19 certified massage therapist, owner, or operator unless otherwise required by law.

20 E. All massage establishment operators and their employees, including certified massage
21 therapists, shall wear clean, nontransparent outer garments. Garments shall not expose
22 their genitals, pubic areas, buttocks, or chest.

23 F. No person shall enter, be or remain in any part of a massage establishment while in
24 possession of an open container of alcohol, or while consuming or using any alcoholic
25 beverages, marijuana, or controlled drugs except pursuant to a prescription for such

1 drugs. The owner, operator, or responsible managing employee, shall not permit any
2 such person, or any person who is clearly intoxicated, to enter or remain upon the
3 premises.

4 G. No massage establishment shall operate a school of massage, or use the same or
5 adjoining facilities as that of a school of massage.

6 H. No massage establishment shall place, publish or distribute, or cause to be placed,
7 published or distributed, any advertising material that depicts any portion of the human
8 body that would reasonably suggest to prospective clients that any service is available
9 other than those services listed as an available service, nor shall any massage
10 establishment employ language in the text of advertising that would reasonably suggest
11 to a prospective client that any service is available other than those services as
12 described in compliance with the provisions of this chapter.

13 I. No massage shall be given unless the client's genitals are, at all times, fully covered. A
14 massage therapist shall not, in the course of administering any massage, make physical
15 contact with the genitals of any other person, nor shall a massage therapist expose to a
16 client or allow physical contact with his or her genitals.

17 J. Where the massage establishment has staff available to assure security for clients and
18 staff behind closed doors, the entry to the reception area of the massage establishment
19 shall remain unlocked during business hours, when open for business, or when clients
20 are present.

21 K. No massage establishment located in a building or structure with exterior windows
22 fronting a public street, highway, walkway, or parking area shall block visibility into the
23 interior reception and waiting area through the use of curtains, closed blinds, tints, or any
24 other material that obstructs, blurs, or unreasonably darkens the view into the premises.

25 L. All signs shall conform to the requirements of the current ordinances of the County.

1 M. Minimum lighting consisting of at least one artificial white light of not less than forty
2 watts, or the equivalent of 40 watts for an LED lightbulb, shall be operating in each room
3 or enclosure where massage services are being performed, and in all areas where
4 clients are present.

5 N. Ventilation shall be provided in accordance with applicable building codes and
6 regulations.

7 O. Adequate dressing, locker and toilet facilities shall be provided for clients.

8 P. Massage establishments shall at all times be equipped with an adequate supply of clean
9 sanitary towels, coverings, and linens. Clean towels, coverings and linens shall be
10 stored in enclosed cabinets. Towels and linens shall not be used on more than one
11 client, unless they have first been laundered and disinfected. Disposable towels and
12 coverings shall not be used on more than one client. Soiled linens and paper towels
13 shall be deposited in separate receptacles.

14 Q. Wet and dry heat rooms, steam or vapor rooms or cabinets, toilet rooms, shower and
15 bathrooms, tanning booths, or whirlpool baths and pools shall be thoroughly cleaned and
16 disinfected as needed, and shall be disinfected at least once each day the massage
17 establishment is open. Bathtubs shall be thoroughly cleaned after each use with
18 disinfectant. All walls, ceilings, floors, and other physical facilities for the massage
19 establishment must be in good repair, and maintained in a clean and sanitary condition.
20 For purposes of this chapter, "disinfectant" means a product that is registered by the
21 federal Environmental Protection Agency and the Department of Pesticide Regulation,
22 as indicated on the label, to reduce or eliminate the presence of disease-causing
23 microorganisms, including human immunodeficiency virus (HIV) and hepatitis B virus
24 (HBV) for use in decontaminating work surfaces.
25

1 R. Instruments utilized in performing massage shall not be used on more than one client
2 unless they have been sterilized using sterilization methods approved by the County
3 Department of Public Health.

4 S. Hot and cold running water shall be provided at all times. The minimum temperature for
5 hot water shall be 100 degrees Fahrenheit.

6 T. A minimum of one wash basin for employees shall be provided at all times. The basin
7 shall be located within or as close as practicable to the area devoted to performing of
8 massage services. Sanitary paper towels and hand soap shall be provided at each
9 basin.

10 U. Pads used on massage tables shall be covered with fabric or paper, which shall be
11 changed after each client.

12 V. All massage establishments shall comply with all state and federal laws and regulations
13 for disabled access.

14 W. A massage establishment shall operate only under the name specified in its County
15 massage establishment permit.

16 X. Clients of a massage establishment shall be limited to adults 18 years of age and older,
17 and minors when accompanied by a parent or legal guardian.

18 Y. Massage establishments shall not be open 24 hours per day. Hours of operation shall
19 be no earlier than 6:30 am and no later than 10:00 pm.

20 6.39.120 – Inspection by officials.

21 As a condition of the County massage establishment permit, any and all investigating officials of
22 the County of Fresno and the State of California shall have the right to enter massage
23 establishments during regular business hours to conduct reasonable inspections to observe and
24 enforce compliance with the provisions of this chapter, as well as any other applicable
25 requirements, including, but not limited to, building, fire, planning and health requirements.

1
2 6.39.130 – Out call massage business permits.

- 3 A. Permit. No person shall perform out call massage in the County without an out call
4 massage business permit as required by this chapter.
- 5 B. CAMTC certificate – Any person performing out call massage in the unincorporated
6 areas of the County must be a Certified massage therapist pursuant to Chapter 10.5
7 (commencing with Section 4600) of Division 2 of the California Business and
8 Professions Code.
- 9 C. Recordkeeping. Any person performing out call massage services shall maintain written
10 records, at the massage therapist's principal place of business, of all out call massage
11 services performed. These records shall be retained for at least two (2) years beyond
12 the date services were provided. Record shall be made of each appointment at which
13 massage services were provided and shall include:
- 14 a. Date and time;
 - 15 b. Client's full name and address;
 - 16 c. Address where services were provided; and
 - 17 d. Name of the massage therapist providing services.
 - 18 e. Inspection of records. These records shall be open to inspection upon request
19 only by officials charged with enforcement of this chapter or emergency medical
20 personnel. Information within these records shall only be used to ensure
21 compliance with this chapter, or any other applicable State or Federal laws, or as
22 necessary in providing emergency medical treatment, and shall remain
23 confidential.
 - 24 f. No out call services on premises owned by massage therapist. Out call massage
25 services shall not be provided at any location owned, leased, rented or under the

1 control of the massage therapist, including residential dwellings and business
2 offices, unless that location is licensed as a massage establishment or is
3 otherwise exempted as provided in this chapter.
4

5 6.39.140 – Notifications.

6 A. A massage establishment shall immediately notify the Sheriff's Office of any changes in
7 registration status.

8 B. A permittee shall immediately report to the Sheriff's Office any of the following:

9 a. Arrests of any employees, contractors, owners, or operators of the registrant's
10 massage establishment;

11 b. Resignations, terminations, or transfers of certified massage therapists employed
12 by or contracted with the registrant's massage establishment;

13 c. The occurrence of any event involving the registrant's massage establishment or
14 the certified massage therapists employed there that constitutes a violation of
15 this chapter or state or federal law.
16

17 6.39.150 – Revocation of Permit.

18 A. Revocation for cause: Notice of revocation. The Sheriff or his or her designee may
19 revoke a massage establishment permit or out call massage business permit for good
20 cause. Before the Sheriff or his or her designee revokes a permit, the Sheriff or his or
21 her designee shall provide written notice of the revocation by personal delivery or
22 certified mail. The notice shall provide for revocation of the permit fifteen (15) calendar
23 days after service of the notice (the date of mailing or personal service) unless the
24 permittee requests an appeal hearing. The notice shall instruct the permittee on how to
25 file an appeal.

- 1 B. Appeal. Within fifteen (15) calendar days of service of the revocation notice, the
2 permittee may file an appeal of the revocation in accordance with the provisions of
3 Section 6.39.190. If an appeal is filed, the hearing officer may approve, conditionally
4 approve, modify, or deny the revocation based upon grounds as set forth in subsection
5 (E) of this section.
- 6 C. Stay of revocation pending appeal. If an appeal is filed, the revocation decision of the
7 Sheriff or his or her designee shall be stayed pending a decision by the hearing officer.
- 8 D. Effect of no appeal: Final decision. If after the passage of fifteen (15) calendar days from
9 service of the revocation notice the permittee has not requested an appeal, the
10 revocation decision of the Sheriff or his or her designee shall become final.
- 11 E. Grounds for revocation. A permit may be revoked for good cause on the basis of any of
12 the following:
- 13 a. The permit was obtained by fraud or as the result of a materially false statement;
14 or
 - 15 b. Any person making use of such permit is violating or has violated any conditions
16 of such permit; or
 - 17 c. The detriment to the public health or safety, or the nuisance arising from the
18 conduct of the massage establishment, or from changed circumstances,
19 necessitates the revocation of the permit; or
 - 20 d. The permittee has violated, or permitted any other person under his/her control
21 or supervision or oversight to violate, any provision of this chapter or of other
22 local, State, or Federal law in connection with the practice of massage or
23 operation of a massage establishment; or
 - 24 e. The permittee has committed any offense involving lewdness, indecent
25 exposure, prostitution, or any other offense which would be grounds for denial of

1 an application, or employees or contractors of the establishment have committed
2 such offenses in the course of their employment and the permittee has failed to
3 prevent them from doing so. The employer or contracting party shall be
4 responsible for those acts of its employees or contractors and massage
5 therapists that are done in the course and scope of their employment, or which
6 occur on the premises of the massage establishment.
7

8 6.39.160 Suspension of permit.

9 A. Grounds for immediate suspension of permit. The Sheriff or his or her designee may
10 immediately suspend a County massage establishment permit or out call massage
11 business permit if there is reasonable cause to believe that:

- 12 a. The permit holder is operating or managing the establishment or providing
13 services in a manner which poses an immediate danger to the health or safety of
14 employees, contractors, clients, or the public; or
15 b. The permit holder has been convicted of any offense involving lewdness,
16 indecent exposure, prostitution, sexual battery, or any sex-related crime. The
17 only permit that shall be immediately suspended under this provision shall be the
18 permit belonging to the person convicted.

19 B. Notice of suspension. If the Sheriff or his or her designee immediately suspends a
20 permit, the Sheriff or his or her designee shall provide written notice to the permittee by
21 personal notice or certified mail. The notice shall contain a statement that the permit is
22 immediately suspended and such suspension shall remain in effect during the period of
23 time that an appeal may be filed or an appeal is under consideration. The notice shall
24 provide information on the appeal process and explain that the suspension may lead to a
25 permanent revocation of the permit.

1 C. Appeal. Within fifteen (15) calendar days of service of the immediate suspension (the
2 date of mailing or personal service), the permittee may file an appeal of the suspension
3 and request a hearing in accordance with Chapter 2.81. If an appeal is filed, the hearing
4 officer may permanently revoke the permit, reinstate the permit, conditionally reinstate
5 the permit, or modify the suspension, based upon findings related to circumstances
6 described in Section 6.39.130(A) and (E).

7 D. Effect of no appeal: Final decision. If after the passage of fifteen (15) calendar days from
8 service of the suspension notice the permittee has not filed an appeal, the decision of
9 the Sheriff or his or her designee to suspend the permit shall become final and the
10 permit shall be permanently revoked.

11 E. No reapplication will be accepted within one (1) year after a County massage
12 establishment permit is revoked.
13

14 6.39.170 – Prohibited conduct.

15 Prohibited conduct shall include, but not be limited to, the following:

16 A. It shall be unlawful for (1) any massage therapist, or other person present on the
17 business premises, to massage the genital area of any patron or (2) for any operator of a
18 massage establishment to allow or permit such massage.

19 B. It shall be unlawful for (1) any massage therapist to be other than fully clothed at all
20 times in nontransparent clothing that does not expose their genitals, pubic area, buttocks
21 or chest or (2) any operator of a massage establishment to allow or permit clothing that
22 does not conform to this requirement.

23 C. It shall be unlawful for any holder (permittee) of a County massage establishment permit,
24 a County out call massage business permit, and/or holder of a CAMTC certificate to
25 engage in prohibited conduct as defined in Business and Professions Code Section

1 4609 or any other State or local law and in violation of any of the requirements of this
2 chapter.

3
4 **6.39.180 Application of chapter to preexisting massage establishments and therapists.**

5 Any current owner of a massage establishment on the effective date of the ordinance codified in
6 this chapter pursuant to a valid County-issued business license shall be required to obtain a
7 County massage establishment permit within six (6) months from the effective date of the
8 ordinance codified in this chapter, or earlier upon revocation of the business license. Failure to
9 do so shall be a violation of this chapter and subject to the penalties of Sections 6.39.190 and
10 6.39.200.

11
12 **6.39.190 – Appeals**

13 The decision of the Sheriff or his or her designee upon application for a permit or revocation of a
14 permit shall become final unless a notice of appeal is filed with the county administrative officer
15 within fifteen (15) calendar days following delivery of the written notice, in accordance with
16 Chapter 2.81 of the Fresno County Ordinance Code. The notice of appeal shall be submitted in
17 writing, shall identify by permit application number and date of denial or revocation, shall specify
18 the grounds upon which the appeal is taken, and shall contain the name, address, and
19 telephone number of the applicant. The date of filing is determined by either (1) the date the
20 notice of appeal is delivered to the county administrative officer, if delivered in person, or (2) the
21 postmark on the envelope addressed to the county administrative officer, if delivered by mail.

22 Upon receipt of the notice of appeal, staff to the office of the county hearing officer shall set the
23 matter for hearing and provide at least 10 calendar days' written notice to the parties of the date,
24 time, and location of the hearing.

1 Immediately upon receipt of the notice of hearing from staff to the office of the county hearing
2 officer, the sheriff or his or her designee shall prepare a hearing packet that includes all
3 massage establishment permit history and records, any records regarding violations of this
4 Chapter, as well as a statement from the Sheriff's Office setting forth its grounds for permit
5 denial or revocation, and shall provide a copy of the hearing packet to the office of the county
6 hearing officer. The sheriff or his or her designee shall serve the hearing packet by mail on the
7 applicant at least seven calendar days before the date set for the hearing. Staff to the office of
8 the county hearing officer shall deliver a copy of the hearing packet to the hearing officer.

9
10 6.39.200 – Violation and penalty.

11 Any violation of this Chapter is a misdemeanor, punishable upon conviction by imprisonment in
12 the county jail for a term not to exceed six months, or by a fine not to exceed one thousand
13 dollars (\$1,000) or by both fine and imprisonment.

14
15 6.39.210 – Administrative citation and penalty.

16 A. Administrative citation. In the alternative, the County may, at its discretion, issue an
17 administrative citation for any violation of this Chapter.

18 a. Penalty. The administrative penalty to be assessed for each violation of this
19 Chapter shall be as follows:

- 20 i. First violation, one thousand dollars (\$1000.00);
- 21 ii. Second occurrence of the same violation within a year of the first
22 violation, twelve hundred fifty dollars (\$1250.00);
- 23 iii. Third or subsequent occurrence of the same violation within a year of the
24 first violation, two thousand dollars (\$2000.00).

1 B. Injunctive relief. In addition, at the request of the Sheriff or his or her designee, the
2 County Counsel may institute a civil action to ensure compliance with this Chapter,
3 including an action for injunctive relief and or to recover damages incurred as a result of
4 any violation

5
6 **6.39.220 – Severability.**

7 If any portion of this Chapter is held to be invalid by any court of competent jurisdiction, such
8 decision shall not affect the validity or effectiveness of the remaining portions of this Chapter.
9 The board hereby declares it would have passed each remaining portion irrespective of the fact
10 that any one or more portions are declared invalid.

11
12 **6.39.230 – Grace Period and Enforcement Date**

13 To ensure that massage establishments currently operating in the unincorporated areas of the
14 county as of the effective date of this Chapter have adequate notice of the requirements of this
15 Chapter, and are not unduly burdened by the changes required by this Chapter, the Sheriff's
16 Office shall not enforce the provisions of this Chapter in regards to these existing massage
17 establishments until one hundred and eighty (180) days following the effective date. The
18 Sheriff's Office shall make reasonable efforts at community outreach to legitimate massage
19 establishments currently operating in the unincorporated areas of the county as of the effective
20 date of this Chapter to inform such establishments of the provisions of this Chapter.

21
22 For new massage establishments that move into the unincorporated areas of the county
23 following the effective date of this Chapter, the Sheriff shall not enforce the provisions of this
24 Chapter until thirty (30) days following the date of that massage establishment's relocation into
25 an unincorporated area of the County.

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Section 2: This ordinance shall take effect thirty (30) days after final passage.

#

THE FOREGOING was passed and adopted by the following vote of the Board of Supervisors of the County of Fresno this ___ day of _____, 202019, to wit:

- AYES:
- NOES:
- ABSENT:
- ABSTAINED:

Ernest Buddy Mendes, Chairman of the Board of Supervisors of the County of Fresno

ATTEST:
BERNICE E. SEIDEL



1 BERNICE E. SEIDEL
2 Clerk of the Board of Supervisors
3 County of Fresno, State of California

4 By _____

5 Deputy

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