

## ATTACHMENT 2

### ORDINANCE O20XX-\_\_

#### ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MANTECA, STATE OF CALIFORNIA, REPEAL AND ADD MANTECA MUNICIPAL CODE TITLE 9, PUBLIC PEACE, MORALS AND WELFARE CHAPTER 9.28, MASSAGE ESTABLISHMENTS ANED MASSEURS

WHEREAS, the purpose and intent of this chapter is to provide for the orderly regulation of massage businesses and to comply with state regulations as it relates to massage services; and

WHEREAS, the City of Manteca recognizes massage is a viable professional field offering the public valuable health and therapeutic services; and

WHEREAS, The City of Manteca recognizes there are significant health benefits that can result from massage, there are also significant risks of injury by persons improperly trained and/or educated in providing massage services. There are also opportunities for illegal acts of prostitution, lewdness and human trafficking that can occur in massage establishments; and

WHEREAS, this chapter establishes minimum standards for massage businesses and massage therapists so as to protect and safeguard the public health, safety and welfare and to enhance the reputation of the profession and integrity of the services provided; and

WHEREAS, the establishment of reasonable standards for the issuance of business licenses and restrictions on operations would serve to reduce the risk of illegal activity and would thereby benefit the public health; and

WHEREAS, it is the purpose and intent of the City of Manteca that massage businesses and massage therapists offering such services be regulated so as to ensure that persons offering massage services possess the minimum qualifications necessary to operate such a business and are able perform the services offered to ensure that those offering these services conduct their work in a lawful and professional manner and comply with required building, sanitation and health standards; and

WHEREAS, the City Council has considered all information related to this matter, as presented at the public meeting of the City Council identified herein, including any supporting reports by City Staff, and any information provided during public meetings.

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

**SECTION 1:** Repeal: Manteca Municipal Code section 9.28.010 through 9.28.200 of Title 9 is hereby repealed in its entirety.

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**SECTION 2:** Added. Manteca Municipal Code section 9.28.005 through 9.28.191 of Title 9 is hereby added to read as follows:

### **Chapter 9.28 MASSAGE ESTABLISHMENTS AND MASSEURS**

#### **Article 1. - General Provisions**

##### **9.28.005. - Purpose and Intent.**

It is the purpose and intent of this chapter to provide for the orderly regulation of massage businesses and to comply with state regulations as it relates to massage services. The City Council recognizes that providing massage services is a viable professional field offering the public valuable health and therapeutic services. While there are significant health benefits that can result from massage therapy, there are also significant risks of injury by persons improperly trained and/or educated in providing massage therapy services. There are also opportunities for illegal acts of prostitution, lewdness and human trafficking that can occur in massage establishments.

This chapter establishes minimum standards for massage businesses and massage therapists so as to protect and safeguard the public health, safety and welfare and to enhance the reputation of the profession and integrity of the services provided. The establishment of reasonable standards for the issuance of business licenses and restrictions on massage operations would serve to reduce the risk of illegal activity and would thereby benefit the public health.

It is the purpose and intent of the City Council that massage businesses and massage therapists offering such services be regulated so as to ensure that persons offering massage services possess the minimum qualifications necessary to operate such a business and are able perform the services offered to ensure that those offering these services conduct their work in a lawful and professional manner and comply with required building, sanitation and health standards.

##### **9.28.010 - Definitions.**

A. Unless the particular provision or the context otherwise requires, the definitions and provisions contained in this section shall govern the construction, meaning, and application of words and phrases used in this chapter.

1. "California Massage Therapy Council" or "CAMTC" shall mean the non-profit organization created to regulate the massage industry set forth in Chapter 10.5 of Division 2 of the Business and Professions Code of the State of California (commencing with Section 4600).
2. "CAMTC Certificate" shall mean a current and valid certificate issued by the California Massage Therapy Council to a massage practitioner pursuant to Business and Professions Code section 4601(b) or (c) or any later enacted amendment.

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3. "Certified Massage Therapist" or "massage therapist" shall mean any individual, certified by the CAMTC and possessing a valid CAMTC Certificate and is licensed to practice or administer massage, in exchange for any form of compensation within the City of Manteca. All persons certified by CAMTC shall have the right to perform or engage in the practice of massage consistent with the Massage Therapy Act, the qualifications established by his or her certification, and the provisions of this Chapter stated herein.
4. "City" shall mean the City of Manteca.
5. "Chief of Police" means and includes the chief of the Manteca Police Department, or his or her designated representative.
6. "Client" shall mean the customer or patron who pays for or receives massage services.
7. "Compensation" means the payment, loan, advance, donation, contribution, deposit, exchange, or gift of money or anything of value.
8. "Employee" shall mean any person employed by a massage business who may render any massage services, or who may engage in activities that further massage services, of any nature in connection with the operation of a massage business and who receives any form of compensation from the massage business. For the purposes of this chapter, the term "Employee" shall include independent contractors, agents and volunteers.
9. "Licensee" shall mean any person who receives from the City of Manteca a Business License.
10. "Manager" means a person who supervises, manages, directs, organizes, controls, or in any other way is responsible for or in charge of the conduct of the activities within a massage business. Evidence of management includes, but is not limited to, evidence that the individual has power to direct or hire and dismiss employees, control hours of operation, create policy or rules, or purchase supplies. A manager may also be an owner.
11. "Massage" or "massage therapy" shall mean any method of treating the external parts of the body for remedial, health, or hygienic purposes for any form of compensation by means of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating, of the external parts of the body with hands or other parts of the body, with or without the aid of any mechanical or electrical apparatus or appliances; or with or without such supplementary aids as rubbing alcohol, liniments, antiseptic, oils, powder, creams, lotions, ointments, or other similar preparations commonly used in this practice; or by baths, including but not limited to Turkish, Russian, Swedish, Japanese, vapor, shower, electric tub, sponge, mineral, mud, fermentation or any other type of bath.
12. "Massage business" means any business that offers massage in exchange for compensation, whether at a fixed place of business or at a location designated by the customer or client through out-call or on-site massage services. The term "massage business" includes a Certified Massage Therapist who is

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the sole owner, operator and employee of a massage business operating as a sole proprietorship. For the purposes of this Chapter, the term "massage business" shall include those businesses that provide separate massage services, such as spas and day spas, but shall not apply to massages performed to limited areas of the neck, face and/or scalp, hands or feet of the clients when that massage is accessory to and within the scope of a barber's, cosmetologist's, and esthetician's state license.

13. "Massage establishment" shall mean a fixed location where massage for compensation is regularly conducted. For the purposes of this chapter, the term "massage establishment" shall include those businesses that provide separate massage services, such as spas and day spas, but shall not apply to massages performed to limited areas of the neck, face and/or scalp, hands or feet of the clients when that massage is accessory to and within the scope of a barber's, cosmetologist's, and esthetician's state license.
14. "On-site massage" shall mean a massage given to an individual who remains fully clothed during the massage and at a location other than a massage business, and is limited to massages that take place at malls, business offices, sports complexes, convention centers and public events.
15. "Operator" or "massage business operator" shall mean any and all owners of a massage business.
16. "Out-call massage" shall mean the engaging in or carrying on of massage for compensation in a location other than a duly licensed massage establishment.
17. "Owner" shall mean any of the following:
  - a. The sole proprietor of a massage business or establishment; or
  - b. Any person who is a general partner of a general or limited partnership that owns a massage business; or
  - c. Any person who has a five percent (5%) or greater ownership interest in a corporation that owns a massage business; or
  - d. Any person who is a member of a limited liability company that owns a massage business; or
  - e. Any person who has a five percent (5%) or greater ownership interest in any other type of business association that owns a massage business.
18. "Person" shall mean any individual.
19. "Reception area" shall mean the area immediately inside the front door of the massage establishment, dedicated to the reception and waiting of clients and visitors of the massage establishment, which is not a massage room or otherwise used for the provision of massage services.
20. "Sole-Proprietorship" shall mean a massage business where the owner owns one-hundred percent (100%) of the business, is the only person who provides massage services for compensation for that business pursuant to a valid and

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active CAMTC certificate, and has no other employees or independent contractors that perform massage for the business.

21. "Spa" or "Day Spa" shall mean a business that offers a variety of services intended to meet personal needs of individuals such as skin treatment, manicures and pedicures and massage.
- B. The provisions of this chapter shall not apply to the following classes of individuals or businesses while engaged in the performance of their duties:
1. Physicians, surgeons, nurses, chiropractors, osteopaths, acupuncturists, podiatrists, physical therapists, who are duly licensed to practice their respective professions, in the State of California under the provisions of Division 2 (commencing with Section 500) of the Business and Professions Code.
  2. Persons operating or employed at hospitals, nursing homes, sanitariums, or any other health facility duly licensed by the State of California.
  3. Trainers of any amateur, semi-professional or professional athlete or athletic team, so long as such persons' practice of massage is limited to such athletes and athletic teams.
  4. Persons operating or employed at athletic clubs or fitness facilities, where such facility is designed and equipped for indoor sports, exercise, or physical education, and where massage services are provided to members of such facilities.
  5. Barbers, cosmetologists, or estheticians who are duly licensed under the laws of the State of California, while engaging in practices within the scope of their licenses, so long as the barber, cosmetologist or esthetician limits any massages he/she performs in the course of his/her professional duties to the neck, face and/or scalp, hands or feet of the clients when that massage is accessory to and within the scope of the barber's, cosmetologist's, and esthetician's state license.
  6. Enrolled students of a school of massage when they are performing massage within the City as part of a formal supervised internship or training wherein the student receives school credit, operated by the school, without receiving any form of compensation, including tips, on the premises of a massage establishment duly authorized to operate in the City.
  7. Persons performing a therapeutic modality for which the state does not offer licenses or certification under the provisions of Division 2 (commencing with Section 500) of the Business and Professions Code and the modality is performed with minimal touching and the client remains fully clothed at all times, such as Reiki, Reflexology, Rolfing or the Bowen Technique.

### **9.28.020 - Out-Call Massage and On-Site Massage Restrictions.**

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- A. No person or massage business shall perform either on-site massage or out-call massage for compensation without possessing a CAMTC certificate in conjunction with a valid City Business License.
- B. Out-call massage shall not be performed unless authorized in writing by a physician, surgeon, chiropractor or osteopath duly licensed to practice in the State of California.
- C. Out-call massage and on-site massage shall only be conducted between the hours of 8:00 a.m. and 8:00 p.m.
- D. Out-call massage or on-site massage shall not be conducted in the following locations:
  - 1. A hotel/motel room or any other similar location used primarily for transitory habitation purposes.
  - 2. The residence of the out-call or on-site massage therapist.

### **9.28.030. - Health and Safety Requirements for All Massages.**

All massage establishment owners, operators, employees, sole proprietors, independent contractors and any person performing massage within the City shall comply with all of the following health and safety requirements.

- A. Massage establishments and massage therapists shall at all times have an adequate supply of clean sanitary towels, coverings and linens. Clean towels, coverings, and linens shall be stored in enclosed cabinets. Towels, non-disposable coverings, and linens shall not be used on more than one (1) client, unless they have first been laundered and disinfected. Disposable towels and disposable coverings shall not be used on more than one (1) client. Soiled linens and paper towels shall be deposited in separate receptacles.
- B. In the massage establishment, wet and dry heat rooms, steam or vapor rooms or cabinets, toilet rooms, showers and bathrooms, whirlpool baths, and pools shall be thoroughly cleaned and disinfected as needed, and at least once each day when the premises are open, with a hospital-grade disinfectant. Bath tubs shall be thoroughly cleaned with a hospital-grade disinfectant after each use. All walls, ceilings, floors and other physical facilities for the establishment shall be in good repair and maintained in a clean and sanitary condition.
- C. All equipment used in the massage establishment shall be maintained in a clean and sanitary condition. Instruments utilized in performing massage techniques shall not be used on more than one (1) client unless they have been sterilized, using standard sterilization methods.
- D. No massage establishment shall have any alcohol for consumption or illegal controlled substance on the premises at any time except for those massage establishments that obtain authorization from the Chief of Police and any licenses from the State of California Department of Alcohol Beverage Control that may

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be necessary to provide alcohol to a client as a part of the establishment's services.

- E. No massage shall be given by any massage therapist who is consuming, or is under the influence of, any alcoholic beverage or illegal controlled substance.
- F. No massage shall be given unless the client's genitalia and female breasts are, at all times, fully covered. Genitalia shall include the genitals, anus, and perineum of any person. No massage shall be provided to a client for sexual gratification by intentional contact, or occasional and repetitive contact with the client's genitalia or female breasts either covered or uncovered.
- G. No massage therapist or massage establishment 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 customers that services prohibited by this chapter are available nor shall any massage therapist or massage establishment employ language in any advertising text or business name that would reasonably suggest to a prospective client that any service is available that is prohibited under this chapter.
- H. A massage therapist shall not engage in lewd or dissolute conduct in any massage establishment in violation of Penal Code section 627(a), shall not solicit or engage in any act of prostitution with the intent to receive compensation, money, or anything of value from another person in violation of Penal Code section 627(b), and shall commit any acts that would constitute a violation of a crime of moral turpitude. Such conduct shall not be allowed or permitted by the massage business.

### **9.28.040 - Operating Requirements for Massage.**

All massage establishment owners, operators, employees, sole proprietors, independent contractors and any person performing massage within the City shall comply with all of the following operating requirements.

- A. CAMTC certification shall be worn by and on the massage therapist's person during working hours and at all times when the massage therapist is inside a massage establishment or providing out-call massage. No owner, operator or manager of a massage establishment shall allow or permit a person to administer massage for such establishment unless the massage therapist possesses and wears a valid CAMTC certificate.
- B. Massage shall only be performed between the hours of 6:00 a.m. and 10:00 p.m. No massage business shall be open and no massage shall be provided between 10:00 p.m. and 6:00 a.m. A massage commenced prior to 10:00 p.m. shall terminate prior to 10:00 pm. and all clients shall exit the massage establishment prior to 10:00 pm.
- C. A list of services available and the cost of each service shall be posted in the reception area within the massage establishment, and shall be described in English if another language is also used to list the available services. Out-call service

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providers shall provide such a list to clients in advance of performing any service. No owner, manager, or operator shall permit, and no massage therapist shall offer to perform any service other than those posted or listed, as required herein, nor shall an owner, manager, or operator nor a massage therapist request or charge a fee for any service other than those on the list of available services posted in the reception area or provided to the client in advance of any outcall services.

- D. The massage establishment premises and facilities shall meet and be maintained in a condition to comply with all applicable code requirements of the City, including, but not limited to, those related to the safety of structures, adequacy of the plumbing, lighting, heating, ventilation, waterproofing of rooms in which showers, water or steam baths are used, and the health and cleanliness of the facility.
- E. Clients of the massage establishment shall be furnished with a private dressing room. Dressing rooms need not be separate from the room in which the massage is being performed.
- F. Toilet facilities shall be provided in convenient locations within the massage establishment and shall consist of at least one (1) unisex toilet with lavatories or wash basins provided with soap and both hot and cold running water either in the toilet room or vestibule.
- G. A minimum of one (1) 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. Soap and sanitary towels shall also be provided at each basin.
- H. The CAMTC certificate of each and every massage therapist performing massage shall be displayed in the reception area or in the area where massage is to be performed. CAMTC certificates of former employees, independent contractors, or volunteers shall be removed as soon as those massage therapists are no longer performing massage at the location. All records of employees, independent contractors, or volunteers who have performed massage for a massage business shall be retained by the owner of the massage business for a period of two (2) years.
- I. The owner and/or manager of the massage establishment shall maintain a roster of all employees, including operators, managers and massage therapists, showing each individual's name, nick-name or alias, home address, date of birth, gender, phone number, Social Security Number, CAMTC certificate number, date of employment, and the individual's job duties for the massage establishment. This roster and all of the information contained therein shall be maintained on the massage establishment's premises for a period of two years following the last date of employment of each employee listed on the roster. Upon consent or upon obtaining an applicable warrant, the operator or manager on duty shall make



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the roster immediately available for inspection by City or Police Department representatives during all hours the massage establishment is open for business.

- J. Massage therapists shall be fully clothed at all times. Clothing shall be of a fully opaque, non-transparent material and said garments shall not expose their genitals, pubic areas, buttocks, or breasts. Swim attire may not be worn unless the massage therapist is providing a water-based massage modality approved by the CAMTC. A massage therapist shall not wear any clothing that is deemed by the CAMTC to constitute unprofessional attire. All employees of the massage business, including owners and managers, shall also adhere to these clothing requirements.
- K. Every massage business shall keep a written or electronic record of the date and hour of each treatment administered, the name and address of each client, the name of the massage therapist administering treatment, and the type of treatment administered. Such written or electronic record shall be available for inspection by officials charged with the enforcement of this chapter. Such records shall be kept on the premises of a massage establishment for a period of two (2) years and shall be open to inspection by the City during the massage business' normal business hours.
- L. Where the massage establishment has staff available to ensure security, the entry to the reception area of the massage business shall remain unlocked during business hours when the establishment is open for business or when clients are present.
- M. No massage establishment shall simultaneously operate as a school of massage or share facilities with a school of massage.
- N. Minimum lighting consisting of at least one (1) artificial light of not less than forty (40) 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.
- O. No massage establishment shall allow any person to reside within the massage establishment or in any attached structures owned, leased or controlled by the massage establishment owners.
- P. All massage establishments must comply with all state and federal laws and regulations pertaining to disabled clients.
- Q. All massage establishments must comply with the City's sign ordinance pursuant to Title 17, Article 3, Chapter 17.54 of the Manteca Municipal Code.
- R. All front, reception, hallway or front exterior doors (except back or exterior doors used solely for employee entrance to and exit from the massage establishment) shall be unlocked during business hours, except as may be permitted by applicable law, which allow for safety doors that may be opened from the inside when locked. No massage may be given within any cubicle, room, booth or any other area within a massage establishment that is fitted with a lock of any kind (such as

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a locking door knob, padlock, dead bolt, sliding bar or similar device) unless the door is an exterior door. No entry doors to any room shall be obstructed by any means. The requirement that an exterior door must remain unlocked at all times does not apply to any massage establishment owned by one individual with one or no employees or independent contractors.

### **Article 2. - Licensing and State Certification.**

#### **9.28.050 - CAMTC Certification Required.**

- A. It shall be unlawful for any person to perform or engage in the practice of massage for compensation within the City unless that person possesses a current, valid, unsuspended and unrevoked CAMTC certificate.
- B. It shall be unlawful for any massage business or massage establishment to provide massage for compensation within the City unless all persons employed by the massage business or massage establishment to perform massage, whether as an employee, independent contractor, volunteer, or sole proprietorship, possess a current, valid, unsuspended and unrevoked CAMTC certificate.

#### **9.28.060 - Time for Compliance with CAMTC Certification.**

- A. Any individual holding a valid Business License issued by the City to perform or engage in massage for compensation within the City prior to the effective date of this chapter, may continue to provide such massage services under that license until that license expires, but shall otherwise comply with the requirements of this chapter. Upon expiration of said license issued by the City, any person who desires to continue to provide massage for compensation within the City shall first obtain a current, valid, unsuspended and unrevoked CAMTC certificate.
- B. Any massage business holding a valid Business License issued by the City to provide massage for compensation within the City may continue to operate as a massage business until the license expires provided that all of the massage business' employees providing massage services possess a CAMTC certificate or the equivalent state certificate for massage. Upon expiration of the massage business' City Business License, any massage business that desires to continue to provide massage for compensation within the City shall first ensure that all of the massage business' employees providing massage possess a current, valid, unsuspended and unrevoked CAMTC certificate.
- C. All persons, massage businesses or massage establishments, including its owners, operators, managers, and employees engaged in the practice of massage for compensation within the City shall comply with all health and safety and operating requirements set forth in this Chapter 9.28.030 and 9.28.040, upon its effective date.

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### 9.28.070. - City Business License.

It shall be unlawful for any person or massage business to conduct massage for compensation within the City without first obtaining a valid City Business License.

- A. Application for License.
  - a. An applicant wishing to obtain a Business License from the City shall complete a Business License Application form completely and accurately and shall provide a copy of a current and valid CAMTC certificate possessed by every person who will be performing or engaging in the practice of massage for the massage business.
  - b. Every massage business owner[s] or manager[s] who does not qualify as a massage therapist and is not CAMTC certified must obtain a Massage Business Permit and be subject to a background check and fingerprinting pursuant to Section 9.28.090 prior to the issuance of a City Business License. If any massage business owner[s] or manager[s] is denied a Massage Business Permit then a City Business License cannot be issued to the massage business until such time as the denied business owner[s] or manager[s] is removed from the application for the City Business License.
  - c. Prior to the issuance of a City Business License, the City shall make a reasonable investigation into the information provided in the application to confirm the facts stated therein.
- B. Issuance of License. All business licenses shall be issued in accordance with the Manteca Municipal Code Chapter 5.04 – Business Licenses Generally.
- C. Renewal of License. A City Business License shall be valid for one (1) year from the renewal date, which is determined at the time the initial application is received and the Business License is issued. The City Business License must be renewed within thirty (30) days after the expiration of said City Business License. If an application for renewal of a City Business License and all required information is not timely received and the license expires, no right or privilege to provide massage shall exist.
- D. Fees. The fee for a City Business License shall be assessed pursuant to Manteca Municipal Code 5.12.030 and 5.04.120.
- E. It shall be unlawful for a massage business to conduct massage for compensation within the City if the CAMTC certification of a massage business owner or manager is revoked or suspended and if that massage business owner or manager has not obtained a Massage Business Permit pursuant to Section 9.28.090.

### 9.28.080. - Exchange of Information.

The City may, from time to time, request information from CAMTC pertaining to any person who possesses a CAMTC certificate and who is engaging in the practice of

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massage in the City. The requested information may include, but need not be limited to, the current status of a person's CAMTC certificate, any history of disciplinary action(s) taken against the person, the home and work addresses of the CAMTC certificate holder, and any other information that may be necessary to verify a fact relevant to administering the provisions of this chapter.

### **9.28.090. - Massage Business Permit for Owners and Managers who do not qualify as Massage Therapists and who are not CAMTC Certified.**

Every massage business owner[s] and manager[s] who does not possess a current and valid CAMTC certificate, must obtain a Massage Business Permit from the Chief of Police, or his/her designee, prior to obtaining a Business License, according to the following procedures:

- A. The massage business owner[s] and manager[s] shall complete an application that requests information regarding topics including, but not limited to, the applicant's current business name and location, occupation, employment history for the five (5) years preceding the date of the application, and the name and address of any massage business or like establishment previously owned or managed by the applicant.
- B. Every massage business owner[s] and manager[s] subject to this section shall personally appear at the City Police Department to be fingerprinted. The Chief of Police, or his/her designee, shall conduct or cause to be conducted on his or her behalf a background investigation of the applicant.
- C. At the time of the fingerprinting, the applicant shall pay the Police Department a fingerprinting fee and the cost of obtaining criminal history information and conducting a background investigation. Fees are set forth in the City's fee schedule in amounts established by resolution of City Council and may be amended by Council from time to time.
- D. The Chief of Police, or his/her designee, shall determine, based on the background investigation and the information submitted with the application, whether a Massage Business Permit shall be issued. If the Chief of Police, or his/her designee, determines that the applicant is not qualified, the Chief of Police, or his/her designee, shall inform the applicant in writing and specify the reasons for the denial. The Chief of Police shall serve the applicant with notice of the denial either personally or by certified mail addressed to the business or residence address of the applicant. The notice of denial shall contain an advisement of the applicant's right to request an appeal. The City may deny a Massage Business Permit for the following reasons:
  - (a) The applicant has provided materially false information in applying for a Massage Business Permit.
  - (b) Within five (5) years immediately preceding the date of the filing of the application the applicant has been convicted of, or has pled guilty to, any of the following offenses: violation of Penal Code sections 243.4, 261, 266a

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through 266j, inclusive, 267, 288, 314 to 316 inclusive, 318, 647(a), 647(b), 647(d), 647(i), 647(j) or any offense requiring registration under Penal Code section 290 or Health and Safety Code section 11590; any felony offense involving the possession for sale, sale, transportation, furnishing, or giving away of a controlled substance specified in Health and Safety Code sections 11054 to 11058, inclusive, as amended; any offense in another state which if committed in California, would have been punishable as one (1) or more of the offenses mentioned here; any offense involving the use of force or violence upon the person of another; or any offense involving theft, embezzlement, or moral turpitude;

- (c) Within five (5) years immediately preceding the date of the filing of the application the applicant has had a massage license suspended or revoked; unless the applicant can show that mitigating circumstances exist since the revocation or suspension.
- E. The applicant may appeal the decision of the Chief of Police, or his/her designee, to the City Manager, or his/her designee, by filing a notice of appeal within ten (10) calendar days of being served with the decision. The applicant is deemed served either on the date that the decision was personally served on the applicant or on the date that the decision was mailed to the applicant through certified mail. The Chief of Police's decision shall be final if no notice of appeal is filed with the City Clerk within the time permitted.
- F. A notice of appeal must be in writing, shall explain the reason(s) for the appeal and shall be mailed to, or personally delivered to, the City Manager's Office, or his/her designee, with a filing fee of two-hundred-fifty dollars (\$250.00). The City Manager, or his/her designee, shall schedule a hearing within thirty (30) calendar days of receiving the notice of appeal, and shall provide written notice of the time, date and location of the hearing to the appellant at least seven (7) calendar days before the scheduled hearing.
- G. The hearing shall be conducted by the City Manager or his/her designee. The City Manager, or his/her designee, shall render a decision within thirty (30) calendar days of the conclusion of the hearing, unless the parties agree otherwise. The City Manager, or his/her designee, shall notify the appellant in writing of the decision. The decision of the City Manager, or his/her designee, may be appealed pursuant to Manteca Municipal Code 1.10.500 – Judicial Review.
- H. If a Massage Business Permit is granted by the Chief of Police, or his/her designee, it shall be valid until such time as the permittee terminates the permit or the permit is suspended or revoked pursuant to Manteca Municipal Code Section 9.28.100. The permit shall be non-transferrable and cannot be sold.
- I. A Massage Business Permittee shall notify the Chief of Police, or his/her designee, in writing at least thirty (30) days after the sale of the massage business or establishment for which he/she obtained the Massage Business Permit is completed.

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- J. A Massage Business Permit shall be non-transferable and every new owner of a massage business or establishment who does not qualify as a massage therapist and is not CAMTC Certified must obtain a Massage Business Permit before operating a massage business or establishment.

### **9.28.100. - Massage Business Permit—Grounds for Suspension and Revocation.**

The Chief of Police, or his/her designee, may suspend and/or revoke a Massage Business Permit issued under this Chapter for one (1) or more of the following reasons:

- A. A Massage Business Permittee made a false, misleading or fraudulent statement or omission of fact to the City in the permit application process;
- B. A Massage Business Permittee violated a provision or provisions of this Chapter or the Massage Therapy Act or some other state or federal law. Including a violation of Penal Code sections 243.4, 261, 266a through 266j, inclusive, 267, 288, 314 to 316 inclusive, 318, 647(a), 647(b), 647(d), 647(i), 647(j) or any offense requiring registration under Penal Code section 290 or Health and Safety Code section 11590; any felony offense involving the possession for sale, sale, transportation, furnishing, or giving away of a controlled substance specified in Health and Safety Code sections 11054 to 11058, inclusive, as amended; any offense in another state which if committed in California, would have been punishable as one (1) or more of the offenses mentioned here; any offense involving the use of force or violence upon the person of another; any offense involving the use of force or violence upon the person of another; or any offense involving theft, embezzlement, or moral turpitude;
- C. The massage establishment is not being maintained in compliance with the provisions of this chapter, the Massage Therapy Act (Business & Professions Code Sections 4600-4621), any other provision of the Manteca Municipal Code or any other local, state or federal law, and the Massage Business Permittee has failed to promptly remedy any deficiency for which they have received notice.
- D. The massage business has knowingly employed, allowed, or permitted a person who was not certified by CAMTC to perform massage services at the massage establishment.

### **9.28.110. - Massage Business Permit—Process for Suspension and Revocation.**

- A. The Chief of Police, or his/her designee, shall send written notice of the suspension or revocation to the permittee and the notice shall be served on the permittee either personally or by certified mail addressed to the business or residence address of the permittee. The notice shall contain a description of the grounds for the suspension or revocation of the permit along with supporting facts, and the notice shall contain an advisement of the permittee's right to request an appeal.

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- B. Suspension or revocation issued pursuant to subsection (A) shall be effective five (5) calendar days from the date appearing on the notice, unless a timely appeal is filed in accordance with subsection (C).
- C. The decision of the Chief of Police, or his/her designee, may be appealed to the City Manager's Office, or his/her designee. An appeal must be in writing, shall explain the reason(s) for the appeal, and shall be mailed to, or personally delivered to, the City Manager's Office, or his/her designee, with a filing fee of two-hundred-fifty dollars (\$250.00) within five (5) calendar days of the date of the written notice of suspension or revocation. The City Manager, or his/her designee, shall schedule a hearing within thirty (30) calendar days of receiving the written appeal, and shall provide written notice of the time, date and location of the hearing to the appellant at least seven (7) calendar days before the scheduled hearing.
- D. The hearing shall be conducted by the City Manager or his/her designee. The City Manager, or his/her designee, shall render a decision within thirty (30) calendar days of the conclusion of the hearing, unless the parties agree otherwise. The City Manager, or his/her designee, shall notify the appellant in writing of the decision. The decision of the City Manager, or his/her designee, may be appealed pursuant to Manteca Municipal Code 1.10.500.

### **9.28.120. - Inspection of Massage Establishment by Officials.**

The investigating and enforcing officials of the City, including but not limited to the Chief of Police, or his/her designees, Chief Building Official or his/her designees, the Chief of the Fire Department or his/her designee, shall have the right to enter the massage establishment premises, from time to time, during regular business hours, for the purpose of making reasonable inspections to observe and enforce compliance with applicable laws, statutes and regulations, and with the provisions of this chapter. The Chief Building Official and/or the Chief of the Fire Department may charge a fee for any safety inspections, which shall be established by Council.

### **9.28.130 - Applicability of Other Ordinances.**

Nothing contained in this chapter shall be construed to exempt any person from complying with the provisions of any other applicable ordinance, rule, or regulation, or to exempt a massage establishment or massage therapist from the provisions of any zoning, licensing or other building ordinance, rule or regulation.

### **9.28.140. - Notifications.**

- A. Any person or massage Business Licensee shall notify the City Finance Department of any amendments or changes necessary to the information provided to the City pursuant to Section 9.28.070.

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- B. Any person or massage Business Licensee who holds a City Business License pursuant to Section 9.28.070 shall inform the Police Department within five (5) days if any of following events occur:
- (a) Arrest of any employee, owner, manager, operator of the massage establishment of any crime listed in Section 9.28.090(D)(ii).
  - (b) Any event involving an employee, owner, manager, operator or independent contractor, volunteer that may constitute a violation of this Chapter or any state or federal law.
- C. This provision shall be complied even if the licensee believes that the City has or will receive the information from another source.

### **9.28.150. - Nuisance.**

Any massage business or establishment operated, conducted, or maintained contrary to the provisions of this chapter shall be unlawful and a public nuisance, and the City Attorney may, in the exercise of discretion, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings, for the abatement, removal and enjoinder thereof, in any manner provided by law, and shall take such other steps and shall apply to such court(s) as may have jurisdiction to grant such relief as will abate or remove such businesses and restrain and enjoin any person from operating, conducting, or maintaining a massage establishment or business contrary to the provisions of this chapter. All remedies provided for in this chapter are cumulative.

### **9.28.160. - Unlawful Business Practices May Be Enjoined.**

Any massage establishment or business operated, conducted, or maintained contrary to the provisions of this chapter shall constitute an unlawful business practice pursuant to Business & Professions Code section 17200 et seq., and the City Attorney and/or District Attorney may, in the exercise of its discretion, in addition to or in lieu of taking any other action permitted by this chapter, commence an action or actions, proceeding or proceedings in an appropriate court of jurisdiction, seeking an injunction prohibiting the unlawful business practice and/or any other remedy available at law, including but not limited to fines, attorney's fees and costs.

### **9.28.170. - Criminal Prosecution.**

A violation of any of the provisions or failing to comply with any of the mandatory requirements of this chapter shall constitute a misdemeanor and at the discretion of the City Attorney, a violation of any provision of this chapter may be prosecuted in a criminal court. Any violation of this chapter prosecuted as a misdemeanor shall be punishable by a fine of not more than one thousand dollars (\$1,000.00), per violation or by im-



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prisonment in the County Jail for a period of not more than six (6) months, or by both fine and imprisonment. All remedies provided for in this Chapter are cumulative.

### **9.28.180. - Administrative Fines.**

A violation of any of the provisions or failing to comply with any of the mandatory requirements of this chapter, may result in the issuance of an administrative citation and the City may, at its discretion, seek an administrative fine of up to one thousand dollars (\$1,000.00).

- A. Each violation of any provision of this chapter shall constitute a separate and distinct violation for each and every day during which any violation of any provision of this chapter is committed, continued or permitted by such person.
- B. Notice of the assessed fine shall be served by certified mail with the legal violation and supporting facts. The notice shall contain an advisement of the right to file an appeal and the process for contesting the imposition of the fine with the City. The appeal process and timeline shall follow those procedures and timelines set forth in Manteca Municipal Code Chapter 1.10 et al.
- C. If an appeal is not filed and the fine is not paid within ten (30) days from either the date of the notice of fine or a notice of determination from the Hearing Officer, the fine may be referred to a collection agency within or external of the City.
- D. Any outstanding amounts owed to the City may be recovered through a lien against any real property owned by the offending party or a personal obligation lien against the offending party.

### **9.28.190. - Prosecutorial Discretion.**

Pursuant to the City Attorney's prosecutorial discretion, the City may enforce violations of this chapter as criminal, civil, and/or administrative violations utilizing administrative remedies. All remedies provided for in this chapter are cumulative.

### **9.28.191. - Application to Existing Businesses.**

All requirements set forth in this Chapter are deemed to be necessary for the protection of the public health, safety, and welfare and shall be applicable to and govern all existing and proposed massage businesses and establishments immediately upon the date the ordinance is codified in this Chapter, and shall become effective.

**SECTION 3: Severability.** If any section, sub-section, subdivision, paragraph, clause or phrase in this Ordinance, or any part thereof, is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections or portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, sub-section, subdivision, paragraph, sentence, clause

**ATTACHMENT 2**

or phrase of this Ordinance, irrespective of the fact that any one or more sections, sub-sections, subdivisions, paragraphs, sentences, clauses or phrases may be declared invalid or unconstitutional.

**SECTION 4: Effective Date.** This Ordinance shall become effective thirty (30) days following adoption.

City of Manteca, a municipal corporation

MAYOR: \_\_\_\_\_  
BENJAMIN J. CANTU

ATTEST: \_\_\_\_\_  
LISA BLACKMON, CITY CLERK

STATE OF CALIFORNIA }  
COUNTY OF SAN JOAQUIN } SS:  
CITY OF MANTECA }

I, Lisa Blackmon, City Clerk of the City of Manteca, do hereby certify that the foregoing Ordinance had its first reading and was introduced during the public meeting of the City Council on the \_\_\_\_ day of \_\_\_\_, 20\_\_, and had its second reading and was adopted and passed during the public meeting of the City Council on the \_\_\_\_ day of \_\_\_\_, 20\_\_, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: \_\_\_\_\_  
LISA BLACKMON  
City Clerk