

ORDINANCE NO. 828

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANDERSON ADOPTING CHAPTER
9.07 TO THE ANDERSON MUNICIPAL CODE RELATING TO MASSAGE THERAPY
REGULATIONS

WHEREAS, there is substantial research that indicates that the skillful practice of massage can provide many health benefits including relief of pain from disease, injury and other sources, and that massage can be a valuable component of a wellness program; and

WHEREAS, in 2008 by Senate Bill 731 (SB 731), the Legislature added a new Chapter 10.5 (sections 4600, et seq.) to the California Business and Professions Code, entitled "Massage Therapy Act," which provided for the formation of the "Massage Therapy Organization," a private non-profit public benefit corporation, to oversee a state-sanctioned program of certification for massage therapy professionals. The Massage Therapy Organization was renamed the California Massage Therapy Council in 2011 by Assembly Bill 619 (AB 619); and

WHEREAS, SB 731 established a voluntary certification process for persons wishing to practice massage therapy in California, with the intention of enabling persons so certified to practice massage therapy in any city within the State without being required to obtain a local permit to practice; and

WHEREAS, in September 2014, the Legislature adopted Assembly Bill 1147 (AB 1147), which went into effect on January 1, 2015, and amended the laws enacted by SB 731 and AB 619; and

WHEREAS, AB 1147 authorizes cities to adopt or enforce local ordinances that govern zoning, business licensing, or reasonable health and safety requirements for massage establishments, and makes clarifying changes regarding the local regulation of massage establishments; and

WHEREAS, the City Council wishes to adopt Anderson Municipal Code Chapter 9.07 as a result of the enactment of AB 1147 to provide broader authority for the City to regulate massage business owners related to the establishment of a permitting process for the owners of massage establishments; inspection, health, physical facility and operational requirements; and the procedure for the denial, suspension and revocation of a massage establishment permit; and

WHEREAS, this ordinance is enacted pursuant to sections 51030-51034 of the California Government Code and section 4600, et seq. of the California Business and Professions Code as amended by AB 1147.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ANDERSON DOES ORDAIN AS FOLLOWS:

Section 1. Upon the effective date of this ordinance, Chapter 9.07 of the Anderson Municipal Code, entitled "Massage Therapy Regulations," of the Anderson Municipal Code is adopted to read in full as follows:

CHAPTER 9.07 MASSAGE THERAPY REGULATIONS

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MASSAGE THERAPY REGULATIONS

9.07.010 Purpose and intent.

It is the purpose and intent of this chapter to provide for the orderly regulation of establishments providing massage therapy services, and to prevent and discourage the misuse of massage therapy as a front for prostitution and related activities in violation of state law, all in the interests of the public health, safety, and welfare, and by requiring certain

minimum qualifications for the owners, operators and massage therapy professionals of such businesses. It is the further intent of this chapter to streamline local massage therapy permitting procedures, while still facilitating and advancing the ethical practice of massage therapy, by relying upon the uniform statewide regulations enacted by the Legislature in 2008 as Sections 4600 et seq. of the California Business and Professions Code, known as the Massage Therapy Act, and as amended in 2015, and by restricting the commercial practice of massage in the City to those persons duly certified to practice by the California Massage Therapy Council formed pursuant to those statutes.

9.07.020 Definitions.

As used in this chapter, the following words and phrases shall have the following meanings, unless the context shall indicate another meaning or intent. Whenever any reference is made herein to any local law or regulation or to any state or federal statute, regulation or other law, the reference includes any subsequent amendment or superseding provision.

“California Massage Therapy Act” shall mean and refer to Section 4600 et seq. of the California Business and Professions Code.

“California Massage Therapy Council” and “CAMTC” shall mean the massage therapy organization formed pursuant to the California Massage Therapy Act.

“CAMTC certified massage professional” shall mean any person who is certified by the CAMTC as a massage practitioner or as a massage therapist pursuant to the California Massage Therapy Act.

“City” shall mean the City of Anderson.

“City Manager” shall mean the City Manager of the City of Anderson or his/her designee(s).

“Client” shall mean any person on the premises of a massage establishment for the purpose of receiving massage therapy.

“Compensation” shall mean the payment, loan, advance, donation, contribution, deposit, exchange, or gift of money or anything of value.

“Employed or retained” shall mean any person who is employed or retained by a massage establishment to practice massage therapy for compensation, whether such person is employed or retained by the massage establishment on a continuing, temporary or one-time basis. A massage establishment “employs or retains” a person to practice massage therapy for compensation when:

1. That person is a directly paid employee of a massage establishment; or
2. That person’s association with a massage establishment is that of an independent contractor who receives compensation for massage therapy provided to clients of the massage establishment; or

3. That person receives a referral of clients from the massage establishment and, at any time before or after the referral, arranges in any way for compensation to flow to the massage establishment owner.

“Massage,” “massage therapy,” and “bodywork” are used in this chapter interchangeably and shall mean the skillful application of touch, including but not limited to any method of pressure or friction against, or stroking, kneading, rubbing, tapping, compression, pounding, vibrating, rocking or stimulation of the human surface of the body to produce increased awareness, relaxation, pain relief, injury rehabilitation, or neuromuscular reeducation.

“Massage establishment” shall mean any business that offers massage therapy, baths or health treatments involving massages, in exchange for compensation. Home-based massage businesses, and businesses that provide out-call massage services, are also considered to be massage establishments.

“Operator” shall mean any person who is a manager of a massage establishment, whether on a continuing, temporary or one-time basis. An operator may also be an owner.

“Out-call massage services” shall mean the engaging in or carrying on of massage therapy for compensation at locations other than at a fixed place of business.

“Owner” shall mean any of the following persons:

1. The sole proprietor of a sole proprietorship operating a massage establishment.
2. Any general partner of a general or limited partnership that owns a massage establishment.
3. Any person who has a 10 percent or greater ownership interest in a corporation that owns a massage establishment.
4. Any person who is a member of a limited liability company that owns a massage establishment.
5. All owners of any other type of business association that owns a massage establishment.

“Person” shall mean any individual, firm, association, partnership, corporation, joint venture, limited liability company, or combination of individuals.

“Police Chief” shall mean the Chief of Police of the City of Anderson, or his/her designee(s).

“Reception and waiting area” shall mean an area immediately inside the main entry door of the massage establishment dedicated to the reception and waiting of clients of the establishment and visitors, and which is not a massage therapy room or otherwise used to provide massage therapy services.

“Sole proprietorship” shall mean a massage establishment where the owner owns 100 percent of the business, is the only person who provides massage therapy for compensation for that business and has no other employees or independent contractors.

“Visitor” shall mean any person not retained or employed by the massage establishment and not receiving or waiting to receive massage therapy services but excluding law enforcement personnel or governmental officials performing governmental business.

9.07.030 Business license and other permits and authorizations required.

The requirements of this chapter are in addition to:

A. Any business license and business license tax requirements imposed pursuant to Title 5 of this code.

B. Any permits or authorizations that may be required under other applicable laws, including, but not limited to, the City’s building, fire, zoning, and health regulations.

9.07.040 Exemptions.

This chapter shall not apply to the following classes of persons while engaged in the performance of the duties of their respective professions:

A. Physicians, surgeons, chiropractors, osteopaths, naturopaths, podiatrists, acupuncturists, physical therapists, nurses, or any other person licensed to practice any healing art under the laws of the state of California, when engaging in such practice within the scope of his or her license.

B. Trainers of any amateur, semi-professional, or professional athlete or athletic team, so long as such persons do not practice massage therapy as their primary occupation at any location where they provide such services in the City.

C. Barbers, estheticians and cosmetologists who are duly licensed under the laws of the state of California, while providing massage therapy within the scope of their license; provided, that such massage therapy is limited solely to the neck, face, scalp, feet and lower limbs up to the knees, and hands and arms, of their clients.

D. Persons administering massages or health treatments involving massage to persons participating in single-occurrence athletic, recreational, or educational events such as road races, track meets, triathlons, educational events, or conferences; provided, that the event is open to the public or to a significant segment of the public such as employees of sponsoring or participating corporations, and the massage services are provided at the site of the event during, immediately preceding, or immediately following the event.

E. Somatic practitioners who use no physical touch of any kind at any time in their practice.

F. Enrolled students of a school of massage when they are performing massage within the City as part of a formal supervised internship or training program operated by the school, without compensation other than school credit, on the premises of a massage establishment duly authorized to operate pursuant to the terms of this chapter; and provided, that the owner of the massage establishment has first notified the Police Chief in writing of the name, residence address, and school of the students and the dates of the trainings.

9.07.050 CAMTC certification required.

A. It shall be unlawful for any person to practice massage therapy for compensation within the City unless that person is a CAMTC certified massage professional.

B. It shall be unlawful for a massage establishment to employ or retain any person to practice massage therapy for compensation, or to allow any person to perform massage therapy for compensation on the premises of a massage establishment, unless that person is a CAMTC certified massage professional.

9.07.060 Massage establishment permit required.

A. It is unlawful for any person to operate a massage establishment within the City without first obtaining a massage establishment permit.

B. It is unlawful for a massage establishment to employ or retain any person to practice massage therapy for compensation, or to allow any person to perform massage therapy for compensation on the premises of a massage establishment, unless that person is listed on the massage establishment permit issued pursuant to this chapter.

C. It is unlawful for a massage establishment to operate under any name or to conduct business under any designation not specified in the massage establishment permit issued pursuant to this chapter.

D. It is unlawful for a massage establishment to continue to operate following the sale or transfer of any interest in the massage establishment to any person who was not identified as an owner in the massage establishment permit application.

9.07.070 Massage establishment permit procedure.

A. For the purposes of this section, the "owner" of the massage establishment shall refer to and include each and every owner of the massage establishment.

B. The owner of the massage establishment shall file an application for a massage establishment permit on a form provided by the Police Chief, which shall be accompanied by a nonrefundable fee established by the City's then current fee schedule. The Police Chief shall have up to 60 days to take action on the application after the submission of all required information. The 60-day period may be extended for up to 30 additional days, if necessary.

C. The application shall include the following information:

1. The name, address, and telephone number of the massage establishment.
2. The name, residence address and telephone number, and business address and telephone number, of each owner of the massage establishment, including all previous legal names in full and all other names that the owner has ever been known as ("AKAs"), even if the owner has never legally changed his or her name to these AKAs.
3. A copy of a photographic government issued identification card for each owner.

4. The form of business under which the owner will be conducting the massage establishment, i.e., sole proprietorship, corporation, general or limited partnership, limited liability company, or other form.

a. If the owner is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the names and residence addresses of each of its officers, directors, and each shareholder holding more than 10 percent of the stock of the corporation.

b. If the owner is a general or limited partnership, the application shall set forth the name and residence address of each of the partners, including limited partners.

c. If the owner is a limited liability company, the application shall set forth the name and residence address of each of the members.

d. If one or more of the members of the foregoing business entities is a partnership, limited liability company, or corporation, the provisions of this section pertaining to a partnership, limited liability company, or corporate applicant shall apply.

5. The name and address of the owner of the real property upon, in, or from which the massage establishment is to be operated. In the event the applicant is not the legal owner of the property, the application shall be accompanied by a copy of any written lease between the applicant and the property owner authorizing use of the premises for a massage establishment, or, alternatively, if there is no written lease, then a written, notarized acknowledgment from the property owner that the property owner has been advised that a massage establishment will be operated by the applicant upon, in, or from the property owner's property.

6. A description of the massage establishment, including, but not limited to, the type of treatments to be administered and the proposed hours of operation.

7. The name of each person who the massage establishment will employ or retain, including, but not limited to, any operators of the massage establishment, and any persons employed or retained to perform massage therapy for compensation, whether on or off the massage establishment premises.

8. For each person who will be providing massage therapy, a copy of his or her current certification from CAMTC and a copy of his or her current CAMTC issued identification card.

9. For each owner who is a CAMTC certified massage professional, a copy of his or her current certification from CAMTC and a copy of his or her current CAMTC issued identification card.

10. A statement attesting to the following:

a. The owner will only employ or retain CAMTC certified massage professionals, and failure to comply may result in the suspension or revocation of the massage establishment permit.

b. The owner authorizes the Police Chief to investigate the truth of the information contained in the application.

c. The owner will be responsible for the conduct of all massage establishment operators, employees, agents, independent contractors, or other representatives while such persons are on the premises of the massage establishment or providing out-call massage services, and that failure to comply with the provisions of this chapter and any federal, state or local law may result in the suspension or revocation of the massage establishment permit.

d. The owner certifies under penalty of perjury that all information contained in the application is true and correct.

11. Such other information as may be required by the Police Chief to determine compliance with any other eligibility requirements for issuance of the permit as specified by federal, state or local law.

D. For each owner who is not a CAMTC certified massage professional the application shall further contain the following background information:

1. Whether any license, certificate or permit has ever been issued to the owner by any jurisdiction under the provisions of any ordinance or statute governing massage or somatic practice, and as to any such license, certificate or permit, the name and address of the issuing authority; the effective dates of such license, certificate or permit; whether such license, certificate or permit was ever suspended, revoked, withdrawn, or denied; and copies of any documentary materials relating to such suspension, revocation, withdrawal, or denial.

2. Whether the owner has had, or there is currently pending against the owner, a formal complaint alleging sexual misconduct, professional misconduct, or professional incompetence, including a lawsuit, an administrative citation, a government complaint or summons issued, or an informal complaint such as a complaint made to the owner directly or to such owner's business or place of employment.

3. Whether the owner, within the five years immediately preceding the date of application, has been convicted in any state of any felony or misdemeanor.

4. Whether the owner is currently required to register pursuant to the Sex Offender Registration Act (Chapter 5.5 commencing with Section 290 of Title 9 of Part 1 of the California Penal Code), or any similar law in any state or other jurisdiction.

5. All business locations where the owner has operated a massage establishment or provided massage therapy for compensation within the 10 years immediately preceding the date of the application, and the inclusive dates.

6. Each owner's fingerprints on a form provided by the Police Chief. Any fee for the fingerprints shall be paid by the owner.

9.07.080 Permit issuance and renewal.

A. The Police Chief shall issue a massage establishment permit if the owner meets the requirements of this chapter and no grounds for denial exist under Section 9.07.090. The Police Chief may impose conditions on the permit consistent with this chapter and applicable law. No permit granted herein shall confer any vested right to any person for more than the permit period.

B. A massage establishment permit issued pursuant to the terms of this chapter shall be valid for a term of one year and shall expire on the same date as the original approval for the permit. An application to renew the permit shall be submitted at least 30 days prior to the expiration of the current permit. For all massage establishments that are legally in existence as of the effective date of the ordinance codified in this chapter, the owner shall file an application for a massage establishment permit within six months. The Police Chief may deny a reapplication for a massage establishment permit for up to one year after an application or renewal of a permit has been denied or revoked.

9.07.090 Denial of massage establishment permit.

The Police Chief may deny an application for a massage establishment permit on any of the following grounds:

A. The massage establishment would not comply with the requirements of this chapter or other applicable law, rule or regulation, including but not limited to any local or state building, fire, zoning and health regulations.

B. The owner has engaged in fraud or misrepresentation or has knowingly made a misstatement of material fact in the application for a massage establishment permit.

C. The owner has been the subject of a permanent injunction against the conducting or maintaining of a nuisance pursuant to Sections 11225 through 11235 of the California Penal Code, or any similar law in any state or other jurisdiction.

D. The owner has had suspended, revoked, withdrawn or denied any license, certificate or permit to practice massage or somatic therapy, or to own and/or operate a massage establishment.

E. The owner has been convicted in a court of competent jurisdiction of any offense that relates directly to the conduct or operation of a massage establishment, or of any offense the commission of which occurred on the premises of a massage establishment or while performing out-call massage services.

F. The owner has been convicted in a court of competent jurisdiction of having violated, or has engaged in conduct constituting a violation of, any of the following offenses: Section 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), or 653.22 of the California Penal Code, or conspiracy or attempt to commit any such offense, or any similar offense in any state or other jurisdiction, whether or not any criminal prosecution has been pursued or conviction obtained for such acts.

G. The owner is currently required to register pursuant to the Sex Offender Registration Act (Chapter 5.5 commencing with Section 290 of Title 9 of Part 1 of the California Penal Code), or any similar law in any state or other jurisdiction.

H. Any other unprofessional conduct or violation of any applicable law, rule or regulation that is substantially related to the providing of massage therapy.

9.07.100 Amendments to massage establishment permit.

A. The owner of a permitted massage establishment may apply to amend the permit, including, but not limited to, the hiring or termination of certified massage professionals, a change of the massage establishment's address or telephone number, and a change of the owner's address or telephone number, by submitting an application on a form provided by the Police Chief. The application shall not be granted unless the Police Chief determines that the terms of the amended permit comply with all requirements of this chapter and all other federal, state or local law.

B. A denial of an application to amend a massage establishment permit may be appealed in the same manner as a denial of an application for a permit under Section 9.07.140.

9.07.110 Display of permit and certification.

A. The massage establishment permit shall be displayed in an open and conspicuous place on the premises visible from the main entry door and/or reception and waiting area of the massage establishment.

B. Each person employed or retained by a massage establishment to perform massage therapy in or on the premises or through an out-call massage service shall have in his or her possession the valid current photograph-bearing identification card issued by CAMTC while providing massage therapy for compensation. A copy of the CAMTC certificate for each massage professional shall also be displayed in an open and conspicuous place visible from the main entry door and/or reception and waiting area of the massage establishment. The home address need not be displayed. The CAMTC certificate of a former employee and/or contractor shall be removed as soon as such person is no longer employed or retained by the massage establishment.

9.07.120 Violations of chapter.

A. For the purpose of enforcing the requirements of this chapter, the massage establishment owner shall be responsible for the conduct of all massage establishment operators, employees, agents, independent contractors, or other representatives, while such persons are on the premises of the massage establishment or providing out-call massage services on behalf of the massage establishment.

B. In addition to any other remedy available to the City under this code or state law, a massage establishment permit may be suspended or revoked by the Police Chief on the grounds provided in Section 9.07.130.

9.07.130 Grounds for suspension or revocation of massage establishment permit.

All massage establishment owners and operators shall be deemed to know and understand the requirements and prohibitions of this chapter. Any massage establishment permit issued pursuant to this chapter may be suspended or revoked by the Police Chief, where the Police Chief finds that any of the following have occurred on even a single occasion:

A. The owner, operator, or any person employed or retained by the massage establishment has violated any provision of this chapter, or other applicable law, rule or regulation.

B. The owner, operator, or any person employed or retained by the massage establishment has engaged in fraud or misrepresentation or has knowingly made a misstatement of material fact while working in or for the massage establishment.

C. The owner, operator, or any person employed or retained by the massage establishment has been the subject of a permanent injunction against the conducting or maintaining of a nuisance pursuant to this code, or Sections 11225 through 11235 of the California Penal Code, or any similar law in any state or other jurisdiction.

D. The owner, operator, or any person employed or retained by the massage establishment has been convicted in a court of competent jurisdiction of any offense that relates directly to the conduct or operation of a massage establishment, or has at any time been convicted in a court of competent jurisdiction of any offense the commission of which occurred on the premises of a massage establishment or while performing out-call massage services.

E. The owner, operator, or any person employed or retained by the massage establishment has been convicted in a court of competent jurisdiction of having violated, or has engaged in conduct constituting a violation of, any of the following offenses: Section 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), or 653.22 of the California Penal Code, or conspiracy or attempt to commit any such offense, or any similar offense in any state or other jurisdiction, whether or not any criminal prosecution has been pursued or conviction obtained for such acts, and whether or not such acts occurred with or without the actual knowledge of the owner.

F. The owner, operator, or any person employed or retained by the massage establishment is currently required to register pursuant to the Sex Offender Registration Act (Chapter 5.5 commencing with Section 290 of Title 9 of Part 1 of the California Penal Code), or any similar law in any state or other jurisdiction.

G. The owner has continued to operate the massage establishment after the massage establishment permit has been suspended.

H. Massage therapy has been performed for compensation by a person who is not a CAMTC certified massage professional, with or without the actual knowledge of the owner.

I. The owner, operator or any person employed or retained by the massage establishment has engaged in conduct or committed acts that a reasonable person in the client's position

would understand as an offer to perform on or engage in with a client acts that are sexual in nature or that involve the touching of the client's genitals, pubic area, anus, or areola.

J. Any other unprofessional conduct or violation of any applicable law, rule or regulation that is substantially related to the providing of massage therapy.

9.07.140 Appeal of denial, suspension or revocation of massage establishment permit.

A. Where there are grounds to deny, suspend or revoke a massage establishment permit, the Police Chief shall provide 15 calendar days' prior written notice, mailed to the last known address of the owner of the massage establishment, specifying the grounds for such action. The decision of the Police Chief shall be based on a preponderance of the evidence.

B. For the purposes of this chapter, including imposing the one-year moratorium period pursuant to Subsection F of this section, the decision of the Police Chief on the denial, suspension or revocation of the massage establishment permit shall become final, and not subject to any right of appeal, upon any of the following circumstances:

1. The owner has failed to file a timely notice of appeal.
2. The owner has ceased business operations on or prior to the hearing date on the notice of appeal.
3. The owner has failed to appear at the appeal hearing.

C. The owner may appeal the decision of the Police Chief by filing a written notice of appeal with the City Clerk within 15 calendar days after deposit of the decision in the mail, specifying in detail the grounds for such appeal. The notice of appeal shall be accompanied by a nonrefundable fee established by the City's then current fee schedule. Failure to file a timely appeal will be considered a failure on the part of the owner to exhaust his or her administrative remedies for the purpose of seeking judicial review under Subsection H of this section. In the event an appeal is timely filed, the suspension or revocation of a massage establishment permit shall not be effective until a final decision has been rendered by the City Manager.

D. The appeal shall be heard by the City Manager. The City Clerk shall provide at least 10 calendar days' prior written notice of the date, time and place of the hearing.

E. The following rules shall apply to the conduct of the hearing:

1. All parties shall have the right to be represented by legal counsel, to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues, and to impeach any witness regardless of which party first called him or her to testify, and to rebut evidence.
2. The hearing is informal, and is not conducted according to technical rules relating to evidence and witnesses. Any relevant evidence that is determined to be reliable will be admitted, regardless of its admissibility in a civil action. Hearsay evidence will be allowed for

the purpose of supplementing or explaining other evidence, but over timely objection such evidence will not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action. The rules of privilege shall be effective to the extent they are otherwise required by statute to be recognized at the hearing. Irrelevant and unduly repetitious evidence shall be excluded.

3. Any objections to the conduct of the hearing and/or to the introduction of evidence that is not timely made will be deemed waived. For the purposes of making a timely objection, an objection is timely if made before submission of the case for decision.

4. At any time after a hearing has commenced and prior to the time the hearing is concluded, the Police Chief may, with the consent of the City Manager, serve the owner with an amended or supplemental notice of violation to conform to the evidence presented or adduced at the hearing.

If the amended or supplemental notice presents new causes or allegations, the owner shall be afforded a reasonable opportunity to prepare a defense thereto. Any new causes or allegations shall be deemed denied and any objections to the amended or supplemental causes or allegations may be made orally at the hearing.

5. When a party does not proficiently speak or understand the English language, the party may provide an interpreter at the party's own expense. An interpreter shall not have any involvement in the issues of the case prior to the hearing.

F. After the hearing on the appeal, the City Manager may refer the matter back to the Police Chief for a new investigation and decision, may affirm or modify the decision of the Police Chief, or may overturn the decision of the Police Chief. Upon the revocation of a massage establishment permit, the massage establishment shall immediately cease operation, and, if so ordered by the City Manager, no other massage establishment shall be permitted to operate at that location by any person for a period of not less than one year ("the moratorium period").

G. The decision of the City Manager shall be rendered within 30 days from the close of the hearing and shall be mailed to the last known address of the owner of the massage establishment. If the owner of the massage establishment is not also the legal owner of the real property on which the massage establishment is situated, notice of such denial, suspension or revocation and, if applicable, the one-year moratorium period shall be provided to the owner of record of the property as shown on the latest county assessment roll.

H. The decision of the City Manager shall be final and shall be subject to judicial review according to the provisions and time limits set forth in Section 1094.6 of the California Code of Civil Procedure.

I. Notwithstanding any other provision of this chapter, where a notice of revocation or suspension has been issued by the Police Chief to the owner of a massage establishment, the

Police Chief shall not issue a massage establishment permit for a new massage establishment at the same location unless and until such notice of revocation or suspension is dismissed by the Police Chief; or a final determination is made that the current massage establishment permit is not or should not be suspended or revoked; or any suspension or moratorium period imposed pursuant to this section has expired.

9.07.150 Advertising practices.

It shall be unlawful for any massage establishment to engage in any of the following advertising practices:

A. To falsely state or advertise, or put out any sign or card or other device, or falsely represent to the public through any print or electronic media, that any person who is employed or retained to perform massage therapy for compensation is a CAMTC certified massage professional by use of the title "licensed," "certified," "certified massage practitioner (CMP) or certified massage therapist (CMT), or the use of any other term that implies or suggests that the person is currently a CAMTC certified massage professional.

B. To fail to include the legal name under which any massage professional is certified and his or her CAMTC certificate number in any advertising of massage therapy for compensation. For the purposes of this section, pseudonyms are not sufficient.

C. To publish or distribute any advertising matter or business identification card through any print or electronic media that are classified as for adults only or similar classification.

D. To publish or distribute any advertising matter or business identification card that is sexually suggestive or that would reasonably suggest that any service is available other than a massage as defined in this chapter.

9.07.160 Requirements for all massage establishment facilities and operations.

A. Operational Requirements. Except as otherwise specifically provided in this chapter, the following operational requirements shall be applicable to all massage establishments located within the City:

1. No massage establishment shall be kept open for business between the hours of ten p.m. of one day and seven a.m. of the following day. A massage begun any time before ten p.m. must nevertheless terminate at ten p.m.

2. Clients and visitors shall be permitted in the massage establishment only during the hours of operation.

3. Clients shall be permitted in massage therapy rooms only if at least one CAMTC certified massage professional is present on the premises of the massage establishment.

4. No visitors shall be permitted in massage therapy rooms except the parents or guardian of a minor child who is a client; a minor child when necessary for the client's supervision of the child; or the conservator, aide, or other caretaker of a client.

5. Except as provided in Subsection A.(4) of this section, no visitors shall be permitted in massage therapy rooms, break rooms, dressing rooms, showers, or any other room or part of the massage establishment premises other than the reception and waiting area or the toilets.

6. Except for a client who is inside a massage therapy room for the purpose of receiving a massage, no clients or visitors shall be permitted in or on the massage establishment premises at any time who are less than fully clothed in outer garments of nontransparent material, or who display or expose themselves in underclothing or similar intimate apparel.

7. A list of services available and the cost of such services shall be posted in an open and conspicuous public place on the premises, or provided to clients before services are rendered. The services shall be described in English and may also be described in such other languages as may be convenient. No massage establishment shall permit, and no person employed or retained by the massage establishment shall offer to perform, any services or request or demand fees other than those posted.

8. All payments for massage therapy services, including gratuities or tips, shall be made only in the designated reception and waiting area and not in the massage therapy room. Any gratuities or tips that are solicited from the client in violation of this provision shall be presumed to be for the purpose of committing a sexually related act and may be grounds for the suspension or revocation of the owner's massage establishment permit.

9. No condoms, or written material or merchandise of a sexually explicit nature, shall be furnished, used, stored or kept on the premises of a massage establishment.

10. No electrical, mechanical or artificial device shall be used by the massage establishment for audio and/or video recording or for monitoring the performance of a massage, or the conversation or other sounds in the massage therapy room or cubicle, without the knowledge or written consent of the client.

9.07.170 Administrative fines and costs.

A. Any person who violates the provisions of this chapter may be subject to administrative fines in an amount not to exceed one thousand dollars, or such other amount as may be permitted under Section 36901 of the California Government Code. In addition to the recovery of administrative fines, the City may recover its costs and expenses incurred in enforcing a violation of this chapter. An order to pay administrative fines and costs may be appealed pursuant to Section 9.07.140.

B. Notwithstanding any other provision of this chapter, a massage establishment permit may not be issued, renewed or amended unless and until due and unpaid citations are paid in full.

9.07.180 Public nuisance.

Any use or condition caused or permitted to exist in violation of any of the provisions of this chapter shall be and is hereby declared a public nuisance.

9.07.190 Civil injunction.

The violation of any provision of this chapter shall be and is hereby declared to be contrary to the public interest and shall, at the discretion of the City, create a cause for injunctive relief.

9.07.200 Remedies cumulative - Each day a separate offense.

Any person subject to this chapter who personally, or through an agent, employee, independent contractor or other representative, violates any provision of this chapter shall be guilty of a separate offense for each and every day during any portion of which any such violation is committed, continued or permitted by such person. All remedies provided herein shall be cumulative and not exclusive.

Section 2. Severability.

If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, phrase, or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unconstitutional.

Section 3. Publication and effective date.

This ordinance shall be published in accordance with the provisions of Government Code section 36933.

This ordinance shall take effect 30 days after its final passage.

The City Clerk shall certify to the adoption of this ordinance and shall cause it to be posted and/or published in accordance with the law.

The foregoing ordinance was introduced at a regular meeting of the City Council of the City of Anderson held on May 19, 2020, and enacted at a regular meeting of the City Council of the City of Anderson held on June 2, 2020, by the following vote:

AYES: Councilmember Baugh, Browning, Neutze, Gallagher and Mayor Hunt.

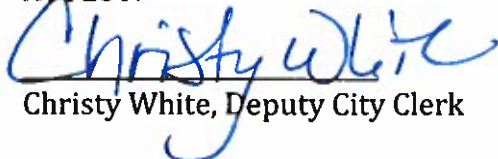
NOES: None.

ABSTAIN: None.

ABSENT: None.


Melissa Hunt, Mayor of the City of Anderson

ATTEST:


Christy White, Deputy City Clerk