

ORDINANCE NO. _____
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OAKLEY
RESCINDING AND REENACTING CHAPTER 8 OF TITLE 5 OF THE OAKLEY
MUNICIPAL CODE, DEALING WITH MASSAGE ESTABLISHMENTS AND
THERAPISTS

The City Council of the City of Oakley does ordain as follows:

Section 1. Chapter 8 of Title 5 of the Oakley Municipal Code is hereby rescinded.

Section 2. Chapter 8 of Title 5 of the Oakley Municipal Code is hereby reenacted to read as follows:

MASSAGE ESTABLISHMENTS AND THERAPISTS
Chapter 8

5.8.102 Authority.

It is the purpose and intent of this chapter to provide for the orderly regulation of massage therapists and massage establishments, in the interest of the public health, safety and welfare. The City wishes both to recognize the practice of massage as a valid professional field and to discourage prostitution and other unlawful activity which otherwise may become associated with some massage establishments.

This chapter relies upon the state certification process of the California Massage Therapy Council under California Business and Professions Code Section 4600 *et seq.* In addition, this chapter provides certain minimum standards for the operation of massage establishments, their managing employees, and massage therapists and practitioners.

This chapter is adopted under the authority of Government Code sections 51030 through 51034, Government Code section 37101, Business and Professions Code section 16000, and California Constitution Article XI, Section 7.

5.8.104 Definitions.

In this chapter:

- A. *California Massage Therapy Council* or *CAMTC* means the California Massage Therapy Council created under California Business and Professions Code Section 4602.
- B. *Certified massage practitioner or practitioner* means a person who is currently certified as a massage practitioner by the CAMTC pursuant to Business and Professions Code Section 4604.2. A certified massage practitioner who is an independent contractor is one who works at a massage establishment (or has an outcall massage service), but is not a salaried employee and does not share a percentage of massage proceeds with a massage establishment.

- C. *Certified massage therapist or therapist* means a person who is currently certified as a massage therapist by the CAMTC pursuant to Business and Professions Code Section 4604. A certified massage therapist who is an independent contractor is one who works at a massage establishment (or has an outcall massage service), but is not a salaried employee and does not share a percentage of massage therapy proceeds with a massage establishment.
- D. *Chief* means the Chief of Police or his/her designee.
- E. *Department* means the police department of the City of Oakley.
- F. *Exempt therapist* means a massage therapist who practiced in the City continuously since 2002 and applied to the City and was granted an exemption to the State certification requirement before December 31, 2012. A person who is an exempt therapist shall comply with the requirements of this chapter, except for the state certification requirements.
- G. *Massage or bodywork* means the application of various techniques to the muscular structure and soft tissues of the human body as defined in Business and Professions Code Section 4601(e). Application of massage and bodywork techniques may include, but is not limited to, stroking, kneading, tapping, compression, vibration, rocking, friction, pressure and similar techniques. Examples of massage include: Swedish massage, sports massage, shiatsu, polarity therapy, rolfing, hellerwork and reflexology. *Massage* and *bodywork* have the same meaning.
- Massage* specifically excludes: diagnosis, prescription, intentional manipulation or adjustments of the skeletal structure, or any other service, procedure or therapy which requires a license to practice (chiropractic, osteopathy, orthopedics, physical therapy, podiatry or medicine), hypnosis, naturopathic, colonic irrigation, acupuncture, vacuum cupping, nutritional or dietary counseling, detoxification programs, yoga, exercise, spiritual healing, or procedures which penetrate body cavities, either manually or with any other method of intrusion.
- H. *Massage establishment* means a studio or place where certified massage therapists, certified massage practitioners or exempt therapists practice massage as provided in Business and Professions Code Section 4601(f). The following are not considered massage establishments under this chapter: a hospital, nursing home, sanitarium, physiotherapy establishment, office of a licensed medical professional, or other state-licensed physical or mental health professional or facility; nor a personal fitness training center, gymnasium, athletic facility or health club, when the giving of massage is an incidental function of the business, constituting 10% or less of the business. However, any massage practitioner at an exempt fitness center, gym, athletic facility or health club must be currently certified by CAMTC or be exempt under paragraph F herein. Any such facility existing on the effective date of this ordinance shall not be required to obtain a conditional use permit.

- I. *Outcall massage service* means a business which provides massage at a location designated by the client or the massage practitioner or therapist, other than at a massage establishment.
- J. *Owner* means an individual natural person, firm, corporation, association, organization, partnership, limited liability company, business trust, corporation or company that owns, has an equity interest in, or shares a percentage of massage therapy proceeds with, a massage establishment.

5.8.106 Massage therapist and massage practitioner registration.

- A. Massage therapist or massage practitioner. No person may practice massage in the City who is not a certified massage therapist, certified massage practitioner or exempt therapist as defined herein.
- B. All therapists and practitioners. A certified massage therapist, certified massage practitioner or exempt therapist providing or offering massage in the City must:
 - 1. Work at an establishment with a current Massage Establishment Permit issued by the City.
 - 2. Obtain a massage therapist or massage practitioner registration if providing massage for compensation in the home or other location of the therapist's or practitioner's clientele, or if providing massage for compensation at a fitness center, gym, athletic facility or health club. No massage may take place at the therapist's home occupation location.
- C. Other City permits. Registrants are advised that in addition to the permits mentioned above they must also obtain (1) a City business license, and (2) a home occupation permit if massage is practiced in the home or other location of the therapist's or practitioner's clientele. A home occupation permit is required to establish a business office for out-call services. No massages may be performed at the home occupation location. If a massage therapist is an independent contractor of a massage establishment, both the establishment and the massage therapist must obtain a City business license.
- D. Massage Therapist/Practitioner Registration. A massage therapist/practitioner that is required to register under subsection (C) above, must register with the City Police Department annually, and shall post evidence of City registration whenever massage is practiced. The registration application shall include: name, address and telephone of the massage therapist or massage practitioner; and proof of CAMTC certification or exemption pursuant to subsection (B) above. The registrant shall also indicate on the registration form whether he or she will perform outcall massage services. There is no charge for the registration. The massage therapist or massage practitioner shall notify the department within ten (10) days of any change in the information provided, except the massage therapist or massage practitioner shall immediately notify the department if

CAMTC suspends or revokes the registrant's certification or takes other disciplinary action against the massage therapist or massage practitioner, and shall include a copy of any notice or order.

A person who is a registered massage therapist or massage practitioner shall comply with the requirements of this chapter, except for the massage establishment permit requirement herein. A violation of this chapter shall be punishable by administrative citation pursuant to Oakley Municipal Code Section 1.5.002. All other enforcement tools are also available to the City, including abatement of public nuisance.

5.8.108 Massage establishment permits.

- A. **Massage Establishment.** No person may own or operate a massage establishment in the City unless:
1. Each person administering massage for compensation (whether as an employee or independent contractor) is either a certified massage therapist, a certified massage practitioner, or an exempt therapist as defined in this chapter; and
 2. The owner obtains, and continues to maintain, a current massage establishment permit; and
 3. The massage establishment obtains a use permit as required by the zoning provisions of this Code. Massage establishments shall be permitted only in the General Commercial (c) zoning district and shall not be located within 500 feet of any other massage establishment, place of worship, school or park.
- B. **Massage establishment permit application procedure.**
1. The owner of a proposed massage establishment shall be the only person eligible to obtain a massage establishment permit for such business. The owner shall not be eligible to obtain a massage establishment permit unless the owner is at least eighteen (18) years of age. A separate permit is required for each massage establishment location.
 2. The following shall be submitted to the Chief at the time of application for a massage establishment permit:
 - a. A completed application form signed by: (i) the applicant; and (ii) either the record owner of the property or the lessor of the premises (if the business premises are leased to the applicant business) where the massage establishment is to be conducted. The application shall include the applicant's full legal name and contact information, the address where the applicant desires to do business, and such other information as the department may reasonably require.
 - b. Background check. Each applicant shall submit the following:

- i. Information related to the applicant's business, occupation and employment history for the ten (10) years preceding the date of application, and the inclusive dates of same.
 - ii. The name and address of any massage business or other like establishment owned or operated by the applicant, the name of all partners and co-owners in each business, and any discipline, suspension or revocation for each such business.
 - iii. A description of any other business located in the City, even if not massage-related, that is owned or operated by the applicant.
 - iv. Information regarding any felony or misdemeanor convictions within the last five (5) years, any outstanding warrants for arrest and any pending criminal case.
 - v. The applicant's fingerprints on a form provided by the Police Department. Any fees for the fingerprints shall be paid by the applicant.
 - c. Two (2) color photographs, taken within six (6) months prior to the date of the application, that clearly show the applicant's face. Any fees for the photograph shall be paid by the applicant.
 - d. A written description of the proposed massage establishment and how it will satisfy the requirements of this chapter.
 - e. The register of massage therapists and practitioners required herein.
 - f. A statement signed by the applicant certifying under penalty of perjury that all of the information submitted in connection with the application is true and correct.
 - g. A nonrefundable application fee in an amount set by resolution of the City Council.
3. The Chief shall, within sixty (60) calendar days of the filing of a complete application, approve and issue the massage establishment permit if the requirements of this chapter have been met. The Chief may deny a permit if any one (1) of four (4) conditions is found to be true. Notice of the approval or denial of the permit shall be given to the applicant in writing by first class mail, postage prepaid. If the application is denied, the Chief shall attach to the notice a statement of the reasons for the denial. The time period set forth in this paragraph for the Chief to render a decision on the permit shall not be extended except upon the written consent of the applicant. Within fifteen (15) days of mailing of the notice, the applicant may request a reconsideration hearing. A request for reconsideration shall be submitted to the Chief in writing on a form provided by the Police Department, and shall specifically state the pertinent

facts of the case and the reasons for the request for reconsideration. The reconsideration hearing shall be held within thirty (30) days of the applicant's request. The applicant may present any evidence to refute the Chief's original decision. The Chief shall render a decision on the matter within ten (10) days of the reconsideration hearing and shall notify the applicant in the same manner as the original decision. The decision of the Chief may be appealed to the City Council.

4. Grounds for denial. The Chief may deny a massage establishment permit application if any of the following is true:
 - a. If the applicant has been convicted within the last five (5) years of any felony or misdemeanor, or has an outstanding warrant for his or her arrest or a pending criminal case regarding an offense having a reasonable relationship to the functions of a permittee.
 - b. The application was falsified in any material respect.
 - c. The applicant is required to register as a sex offender in any state.
 - d. If there has been a criminal investigation resulting in arrest related to the operation of the massage establishment business within the last five (5) years.
 - e. The massage establishment permit shall not become effective unless and until a use permit is issued as required by this chapter.

C. Permits nontransferable.

1. No person shall operate a massage establishment under the authority of a massage establishment permit at any place other than the address of the massage establishment stated in the application for the permit. The Chief may approve a change of location, provided the massage establishment complies with all ordinances and regulations of the City.
2. No massage establishment permit issued pursuant to this chapter shall be transferable to any other person or entity.
3. Any attempt to transfer a massage establishment permit is hereby declared invalid and the permit shall automatically become void effective the date of such attempted transfer.
4. Nothing in this section shall prevent the Chief from approving a second massage establishment permit for a single location provided that the holder of the massage establishment permit previously approved for such location consents in writing to the automatic expiration of such previously approved permit upon the effective date of such second permit.

D. Conditions of Massage Establishment Permit.

1. Every massage establishment shall display at all times during business hours the permit issued pursuant to the provisions of this chapter for such business. The permit shall be displayed in a conspicuous place so that it may be readily seen by all persons entering the massage establishment.
2. If an individual's CAMTC certification is suspended or revoked or if the individual is not CAMTC certified or an exempt therapist, the massage establishment may not allow that person to provide massage services, including outcall massage services, at or through the massage establishment business.
3. The massage establishment must notify the City immediately upon the establishment's notice of any disciplinary action taken by the CAMTC regarding one of the establishment's massage therapists or massage practitioners and submit a copy of any notice or order.
4. Any act or omission of anyone providing massage at the establishment's location, whether as an employee or an independent contractor, which constitutes a violation of this chapter shall also be deemed to be an act or omission of the massage establishment.
5. The massage establishment must obtain and maintain a current City Business License.
6. Compliance with all federal, state and local laws, and the requirements of this chapter.

E. Term of permit. A massage establishment permit issued under this chapter shall be valid for twenty-four (24) months from the date of issuance unless suspended or revoked.

F. Renewal. A holder of a massage establishment permit issued under this chapter shall submit an application for renewal no later than sixty (60) calendar days prior to the expiration of the permit issued for such establishment. The renewal application shall be submitted together with a nonrefundable renewal fee in an amount established by resolution of the City Council. Applications for renewal of a massage establishment permit shall be processed in accordance with the procedures governing initial applications.

G. Grounds for suspension or revocation. The Chief may suspend or revoke a massage establishment permit for the following causes:

1. The permittee has made any false, misleading or fraudulent statement of material fact in any application, report or record required to be filed with the City.

2. The permittee, or an employee, independent contractor, owner, agent, partner, director, stockholder, or manager of the massage establishment business has failed to comply with any of the requirements or conditions of this chapter.
3. An individual who is not a certified massage therapist, a certified massage practitioner, or an exempt therapist or whose CAMTC certification is suspended or revoked, has provided massage at the massage establishment.
4. The permittee, or an employee, independent contractor, owner, agent, partner, director, stockholder, or manager of the massage establishment business has allowed or permitted, with or without knowledge, the occurrence of criminal activity on the premises of the massage establishment business.
5. There have been one or more acts prohibited under California Penal Code sections 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), or 653.22 taking place on the premises of the massage establishment, whether or not any criminal prosecution has been pursued or conviction obtained for such acts, and whether or not they occurred with or without the actual knowledge of the permittee.
6. The permittee, or an employee, independent contractor, owner, agent, partner, director, stockholder, or manager of the massage establishment business has committed a misdemeanor, felony or violation of this chapter in the conduct of business.
7. The permittee has been subject to a permanent injunction against the conducting or maintaining of a nuisance pursuant to this code, or section 11225 through 11235 of the California Penal Code, or any similar provision of law in any jurisdiction outside the state of California.
8. The permittee, or an employee, independent contractor, owner, agent, partner, director, stockholder, or manager of the massage establishment business has failed to abide by any disciplinary action previously imposed by an authorized City official.

H. Procedure for suspension or revocation.

1. On determining that grounds for permit suspension or revocation exist, the Chief shall furnish written notice of the proposed suspension or revocation to the permittee. Such notice shall set forth the time and place of a hearing, and the ground(s) upon which the proposed suspension or revocation is based. The notice shall be mailed, postage prepaid, addressed to the last known address of the permittee, or shall be personally delivered to the permittee, at least ten (10) days prior to the hearing date.
2. If the permittee desires to appeal the Chief's decision, he/she may file an appeal to be heard by an Administrative Appeals Officer using procedures specified in this Code. All parties involved shall have a right to: (1) offer testimonial, documentary and tangible evidence bearing on the issues; (2) be represented by counsel; and (3)

confront and cross-examine witnesses. Any relevant evidence may be admitted that is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Any hearing under this section may be continued for a reasonable time for the convenience of a party or witness.

3. After holding the hearing in accordance with this section, upon determining that there are sufficient grounds for disciplinary action, the Administrative Hearing Officer shall impose one of the following penalties:
 - a. A warning;
 - b. Suspension of the permit for a specified period not to exceed six (6) months;
 - c. Revocation of the permit.

The Chief may, in conjunction with the issuance of a warning or suspension of a permit, order the permittee to take appropriate corrective action.

5.8.110 Record keeping.

A. The holder of a massage establishment permit shall maintain:

1. A register of all certified massage therapists, certified massage practitioners and exempt therapists providing massage at the establishment, including independent contractors, and each such person's state certificate number, home address, date of hiring, and whether the massage therapist or massage practitioner will be performing outcall massages. An amended copy of the register shall be provided to the Chief within five (5) days of the date of hiring, commencement of services, or termination of services by each massage therapist or massage practitioner at the establishment. Such filings shall be accompanied by a statement, signed by the owner, that all of the information in the register is true and correct.
2. A daily register, approved in form by the Chief, of each client, the assigned room (or location of outcall massage service), the massage therapist or practitioner who treated the client, a description of service(s) performed, the price of the services, including any gratuity or tip, and the time of the appointment. The daily register shall be completed by the close of business every day, and shall be available for inspection by the City at all times during regular business hours. The register shall be considered confidential, not for public review, and may be inspected by the City only as part of a criminal investigation or during proceedings to investigate compliance with this chapter. These records shall be retained for at least one year.

B. A massage therapist or practitioner registered pursuant to PHMC §6.30.030 above, is responsible for compliance with subsection A.2 of this section.

5.8.112 Health and safety requirements.

The operator of a massage establishment and a registered massage therapist or practitioner shall conduct the massage establishment business in a safe and sanitary manner, and shall:

- A. Comply with all applicable building, fire, safety, health, electrical, plumbing, mechanical, heating and ventilating, sanitation, and other laws applicable to the premises;
- B. Provide for the regular removal of garbage and refuse, and the safe storage or removal of flammable materials;
- C. Maintain all equipment used to perform massage services in a safe and sanitary condition, including the regular application of cleansers and bacterial cleaning agents;
- D. Launder all materials furnished for the personal use of the client, such as towels and linens, before each use;
- E. Maintain all bathroom and plumbing fixtures in a sanitary condition, provide hot and cold running water, and comply with sanitation requirements of the county health department;
- F. Provide a wash basin for therapists and employees, located within or as close as practicable to the area devoted to the massage therapy services. Each wash basin shall be equipped with hot and cold running water, soap in a dispenser and sanitary towels. In the case of a massage establishment located in a home, existence of a bathroom meeting this requirement is sufficient;
- G. Provide either a separate room or dressing and locker facilities for each client. However, dressing and undressing may occur in the same room as massage therapy if the client is alone in the room with the door(s) closed and opaque coverings are present on any windows while undressing or dressing. The massage therapist or other clients may not be present in the same room when the client is undressing;
- H. In each room or cubicle where massage is administered, have lighting whenever the area is occupied equivalent to a minimum of an incandescent 25-watt clear-glass light bulb;
- I. For a massage establishment in which the therapist or practitioner is an employee, all massage services shall be paid for in the reception area, and all tips, if any, shall be paid in the reception area. For a massage establishment at which a therapist or practitioner is an independent contractor, all massage services and all tips, if any, may be paid in the same room where the massage occurred, provided the door to the room is fully open. A massage establishment which is located in a home is exempt from this subsection because by the nature of the site it does not include a reception area;
- J. Comply with portions of the Massage Therapy Act (B&P Code § 4608) relating to the requirements that a certificate holder display his or her original certificate wherever he or she provides massage for compensation; and to have his or her identification card in his or her possession while providing massage services for compensation;

- K. Comply with the portions of the Massage Therapy Act (B&P Code § 4609(a)) relating to sexual acts, including not allowing certificate holders: to engage in any form of sexual activity on the premises of a massage establishment where massage is provided for compensation, excluding a residence; to engage in sexual activity while providing massage services for compensation; to provide massage of the genitals or anal region; or to provide massage of female breasts without the written consent of the person receiving the massage and a referral form from a licensed California health care provider.
- L. Comply with the portions of the Massage Therapy Act (B&P Code § 4608, 4609, 4611) relating to advertising, including requiring certificate holders: to include the name under which he or she is certified and his or her certificate number in any and all advertising of massage for compensation; to not engage in sexually suggestive advertising related to massage services; to not hold him-or herself out as a certified massage therapist or practitioner, or use terms such as “licensed” or “certified,” that implies that an uncertified person is certified as a massage therapist or practitioner; to not falsely state or advertise or put out any sign or card, or to falsely represent to the public, that any individual is licensed, certified, or registered as a massage therapist or practitioner if that individual is not so certified;
- M. Comply with the portions of the Massage Therapy Act (B&P Code § 4609) related to dressing requirements, including dressing while engaged in the practice of massage for compensation, or while visible to clients in a massage establishment, in attire that is not: transparent, see-through, or substantially exposes the certificate holder’s undergarments; swim attire, if not providing a water-based massage modality approved by CAMTC; a manner that exposes the certificate holder’s breasts, buttocks, or genitals; a manner that constitutes a violation of section 314 of the Penal Code; or a manner that has been deemed by CAMTC to constitute unprofessional attire; and
- N. Not serve or permit the consumption of alcoholic beverages unless the massage establishment has a current and valid (California Department of Alcoholic Beverage Control) ABC license and all required City approvals, nor permit the consumption of any drugs, except pursuant to a valid prescription.

5.8.114 Inspections.

The Chief may inspect the premises at the time of permitting a massage establishment, and may make periodic, reasonable inspections of the establishment during normal business hours to assure compliance with CAMTC requirements, this chapter and applicable fire, health and safety requirements. If any violations are found, the Chief shall notify the holder of the massage establishment permit in writing. The Chief may give the establishment ten (10) days to correct the violation(s), or, if the violation(s) presents a danger to public health or safety, close the establishment until the violation(s) is corrected.

5.8.116 Hours of operation.

No massage establishment and no registered massage therapist or practitioner may provide massage service between the hours of 10:00 p.m. and 7:00 a.m. Clients and visitors shall be excluded from a massage establishment during those hours.

5.8.118 Department coordination with CAMTC.

The Chief of Police shall designate a person in the Police Department to coordinate with CAMTC, including maintaining a list of certified therapists and practitioners practicing in the City, maintaining a list of massage establishments operating in the City, receiving notices and information from CAMTC, and notifying CAMTC of any arrest or conviction of Penal Code section 647 or other act punishable as a sexually related crime. (Business and Professions Code § 4614.)

5.8.120 Property owner responsibility.

Any place where lewdness, assignation or prostitution occurs is a public nuisance which may be abated and permanently enjoined, and for which the City may recover damages from the property owner, as well as from the person conducting or maintaining the nuisance. (Penal Code §§ 11225 and 11226.)

5.8.122 Applicability of regulations to existing massage establishments, therapists and practitioners.

- A. Any massage establishment that was validly operating as of the effective date of this ordinance must apply for a massage establishment permit within ninety (90) days of the effective date of this Chapter.
- B. Registrations for massage therapists, massage practitioners and exempt therapists shall continue in effect until their normal expiration.

Section 3. California Environmental Quality Act (CEQA) Finding.

This ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3), Review for Exemption, because it can be seen with certainty that the project will not have a significant effect on the environment; therefore the project is not subject to CEQA.

Section 4. Severability.

In the event any section or portion of this ordinance shall be determined to be invalid or unconstitutional, such section or portions shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

Section 5. Effective Date and Publication.

This ordinance shall take effect and be in force thirty (30) days from and after the date of its passage. The City Clerk shall cause the ordinance to be published within fifteen (15) days after its passage in a newspaper of general circulation, or by publishing a summary of the proposed ordinance, posting a certified copy of the proposed ordinance in the City Clerk's Office at least five (5) days prior to the City Council meeting at which the ordinance is to be adopted, and within fifteen (15) days after its adoption, publishing a summary of the ordinance with the names of the Council Members voting for and against the ordinance.

Section 6. Previous Ordinance Rescinded.

Upon this ordinance becoming effective, Ordinance No. 04-15 shall be rescinded and shall have no further force or effect.

The foregoing ordinance was adopted with the reading waived at a regular meeting of the Oakley City Council on _____, 2015 by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

APPROVED:

Doug Hardcastle, Mayor

ATTEST:

Libby Vreonis, City Clerk

Date