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2 **Ordinance #09-05**

3 **AN ORDINANCE OF THE ALBANY CITY COUNCIL AMENDING SECTION 5-13,**
4 **MESSAGE ESTABLISHMENTS, MESSAGE TECHNICIANS AND MESSAGE**
5 **SERVICES, OF THE ALBANY MUNICIPAL CODE**

6 **WHEREAS**, the City of Albany last updated its Albany Municipal Code provisions
7 pertaining to the regulation of massage establishments in 1997;

8
9 **WHEREAS**, in 2009 the State legislation has enacted provisions that partially pre-
10 exempt local regulation;

11 **WHEREAS**, the City Attorney has been reviewing those provisions as part of an Albany
12 Municipal Code upgrading process and determined that it is appropriate to revise Albany's
13 Municipal Code provisions to harmonize state and local law; and

14 **WHEREAS**, the City Attorney recommends that the City Council adopt new Municipal
15 Code provisions pertaining to massage establishments.

16 **NOW, THEREFORE, THE ALBANY CITY COUNCIL ORDAINS THAT**
17 **CHAPTER 5-13 IS HEREBY REPEALED IN ITS ENTIRETY AND IS AMENDED TO READ**
18 **AS FOLLOWS:**

19
20 **Section 1: Chapter 5-13, entitled Massage Establishments, Massage Technicians and**
21 **Massage Services is hereby enacted and shall read as follows:**

22 **Sections:**

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5-13.1 Legislative Purpose.

In enacting these regulations the City recognizes that massage is a viable professional field offering the public valuable health and therapeutic services, including, but not limited to, massage, bodywork, and somatic therapies.

It is the purpose and intent of the City that the operation of massage establishments and persons offering massage be regulated in the interests of public health, safety, and welfare to provide minimum building sanitation and health standards, to ensure that persons offering massage possess the minimum qualifications necessary to operate such businesses and to perform such services offered, and to ensure that those offering massage services conduct their work in a lawful and professional manner.

5-13.2 Definitions.

As used in this section:

Applicant shall mean any person who applies for a permit and business license as required by this section.

Employee shall mean any person, other than a massage technician, who renders any service to the permittee, who receives compensation or any consideration directly or indirectly from the permittee, and who has no physical contact with permittee's customers or clients.

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2 *Massage* shall mean the treatment of the human body by soft tissue manipulation using a
3 variety of manipulative techniques, which may include any method of pressure on, friction
4 against, stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating the external
5 parts of the human body with the hands or with the aid of any mechanical or electrical apparatus,
6 or other appliances or devices, with or without such supplementary aids as rubbing alcohol,
7 liniment, antiseptic, oil, powder, cream, lotion, ointment, or other similar preparations. This may
8 include body/mind/spirit integration, personal growth, physical or emotional relaxation and the
9 relief of somatic pain or dysfunction. Massage includes acupressure, bodywork and somatic
10 therapies.

11 *Massage establishments* shall mean any business establishment having a fixed place of
12 business wherein the principal function of the business to provide massage services, in that
13 massage is given, engaged in or carried on, or permitted to be given, engaged in or carried on.
14 Any establishment engaged in or carrying on, or permitting any combination of massage and
15 bath house shall be deemed a massage establishment.

16 *Massage technician* shall mean any person, including a trainee (an individual enrolled in
17 a "recognized school of massage"), and whether paid by fixed salary or who is an independent
18 contractor, who administers to another person, for any form of consideration, a bath, massage,
19 manipulation of the body, electric vibration, magnetic stimulation or similar procedure.

20 *Outcall massage service* shall mean any business, not licensed as a massage
21 establishment under provisions of this section wherein a principal function is such that massage
22 is given, engaged in or carried on or permitted to be given, engaged in or carried on not at a fixed
23 location but at a location designated by the permittee, massage technician, customer or client.

24 *Person* shall mean any individual, co-partnership, firm, association, company,
25 corporation or combination of individuals of whatever form or character.

26 *Recognized school* shall mean any school or institution of learning which school or
27 institution of learning has been approved pursuant to Section 29007.5 of the State Education
28 Code, and which has for its purpose the teaching of a course consisting of seventy (70) hours or
more of the theory, ethics and practice, methods, profession or work of massage technicians, and
which school or institution of learning requires a resident massage technician be furnished with a
diploma or certificate of graduation from such school or institution of learning showing
successful completion of such course of study already approved by the State Department of
Education. Schools offering correspondence courses not requiring actual attendance at class, or
courses of a massage technician not approved by the State Department of Education shall not be
deemed "recognized schools."

 The provisions of this chapter shall not apply to the following classes of persons while
engaged in the performance of the duties of their respective professions: Physicians, surgeons,
chiropractors, osteopaths, acupuncturists, nurses or physical therapists who are duly licensed to
practice their respective professions in the State of California.

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2 **5-13.3 Permit Requirement.**

3 a. Massage Establishment Permit: Except as otherwise provided in Section 5-13.4 of
4 this Chapter, it shall be unlawful for any person to engage in, conduct or carry on, or permit to be
5 engaged in, conducted or carried on, in or upon any premises within the City, the operation of a
6 massage establishment without first having obtained a massage establishment permit issued by
7 the Police Chief pursuant to this Chapter. A separate permit shall be obtained for each separate
8 massage establishment. Any applicant who will not operate a massage establishment and will be
providing exclusively off-premises massage services shall also obtain a massage establishment
permit.

9 b. Massage Technician Permit: Except as otherwise provided in Section 5-13.4 of
10 this Chapter, it shall be unlawful for any person to engage in, conduct or carry on the function of
11 a massage technician within the City without first having obtained a massage technician permit
issued by the City pursuant to this Chapter.

12 c. Additional Permits: Permits required under this Chapter shall be in addition to any
13 other license, permit, or requirement required under Federal, State, or City law or regulation. A
14 permit issued under this Chapter does not authorize the permittee to practice massage until the
15 permittee has complied with all business license requirements, zoning/planning requirements,
and all other applicable Federal, State, and City laws or regulations.

16 **5-13.4 Permit Exemptions.**

17 The permit requirements of this Chapter shall not apply to the following persons while
engaged in the performance of their duties:

18 a. Physicians, surgeons, chiropractors, osteopaths, nurses, physical therapists, or
acupuncturists who are duly licensed to practice their respective professions in the State.

19 b. Barbers, beauticians, cosmetologists, and estheticians who are duly licensed under the
20 laws of the State while engaging in practices within the scope of their licenses.

21 c. Hospitals, nursing homes, sanitariums, or any other health facility duly licensed by the
State.

22 d. Accredited high schools, junior colleges, colleges, or universities whose coaches and
23 trainers are acting within the scope of their employment.

24 e. Trainers of amateur, semiprofessional or professional athletes or athletic teams while
25 engaging in their training responsibilities for and with athletes; and trainers working in
conjunction with a specific athletic event such as road races, track meets, triathlons, biathlons, or
similar single occurrence athletic or recreational events.

26 f. Massage therapists, bodyworkers, bodywork therapists or massage and bodywork
27 therapists if the State enacts legislation providing for the certification of such persons by a State
28 agency, provided that such persons have obtained such certification and provided that the City is
preempted from regulating such persons.

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2 **5-13.5 Business License Investigation for Massage Establishment Required; Application.**

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4 a. Prior to the application for a conditional use permit, the applicant must provide
5 information to the Chief of Police for a business license investigation and pay the business
6 license investigation fee as set forth in the Master Fee Schedule, no part of which shall be
7 refundable. If the applicant is a corporation, the names and residence addresses of each of the
8 officers and directors of such corporation and of each stockholder owning more than ten (10%)
9 percent of the stock of the corporation shall be set forth. If the applicant is a partnership, the
10 names and residence addresses of each of the partners, including limited partners, shall be set
11 forth.

12 b. The applicant shall furnish information from which the Police Chief can
13 determine whether the massage technicians, trainees or employees who work in, or will work in,
14 the applicant's massage establishment or engage in the outcall service are employed on a salary
15 or other fixed compensation basis, or are employed as independent contractors whose
16 compensation is based upon a percentage of the fee or money paid by the customer or client for a
17 massage or bath. If such technician, trainee or employee is an independent contractor, the
18 applicant shall file with his application a copy of all written agreements wherein the terms of
19 such status are set forth, and the applicant shall furnish information showing the amounts of such
20 fee or money paid, or to be paid, and the method of computation thereof, under such agreements.

21 In addition to the foregoing, any applicant for such a permit shall furnish the following
22 information:

23 1. The two (2) previous addresses (if any) three (3) years immediately prior to the
24 present address of applicant.

25 2. Written proof that the individual or partnership applicant is over the age of
26 eighteen (18) years.

27 3. Individual or partnership applicant's height, weight, color of eyes and hair and
28 sex.

4. Two (2) portrait photographs at least two inches by two (2" x 2") inches.

5. Business, occupation or employment of the applicant for the three (3) years
immediately preceding the date of the application.

6. The history of the applicant in operation of a massage establishment or similar
business or occupation, including, but not limited to, whether or not such person, in previously
operating in this or another City or State under permit, has had such permit revoked or suspended
and the reason therefore, and the business activity or occupation subsequent to such action of
suspension or revocation.

1 7. All criminal convictions other than for misdemeanor traffic violations, and the
2 reasons therefore.

3 8. The name, address and telephone number of each massage technician who is or
4 will be employed in such establishment.

5 9. Such other identification and information necessary to discover the truth of the
6 matters hereinbefore specified as required to be set forth in the application.

7 10. Nothing herein contained shall be construed to deny to the investigation officials
8 the right to take the fingerprints and additional photographs of the applicant.

9 c. A business license investigation report from the Police Department will be issued
10 to the applicant within thirty (30) days of the application, unless, for good reason, the Police
11 Chief requires additional time to complete the investigative review. The report will confirm or
12 deny the application for a massage establishment based on findings that:

13 1. That the operation, as proposed by the applicant, if permitted, would comply with
14 all applicable laws, including, but not limited to, the City's building, zoning and health
15 regulations.

16 2. The applicant has not been convicted in a court of competent jurisdiction of:

17 (a) An offense involving lewd conduct, nor an offense involving the use of force and
18 violence upon the person of another; or

19 (b) A crime requiring registration under Section 290 of the State Penal Code, or any
20 violation of Sections 311 through 311.7, 314, 315, 316, 318, or 647 a, b or d of the Penal Code.

21 3. That the applicant has not knowingly and with intent to deceive made any false,
22 misleading or fraudulent statement of facts in the business investigation application or permit
23 application or any other document required by the City in conjunction therewith.

24 In the event of denial, notifications and reasons for denial shall be set forth in writing and
25 shall be sent to the applicant by means of registered or certified mail or hand delivery.

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5-13.6 Permit Issuance or Denial.

a. The Police Chief shall issue, conditionally issue or deny the application for a
permit within sixty (60) days of receipt of a complete application. When necessary, the Police
Chief may extend the time in order to issue or deny the application. The Police Chief may issue
a permit on a provisional basis pending completion of the review of the application.

b. The Police Chief shall deny a permit if any of the following circumstances exist:

1 1. The application is incomplete and/or required supplementary material is
2 not submitted within thirty (30) days of the date the material is requested;

3 2. The applicant does not have sufficient proof of the required educational or
4 certification requirements and association qualifications pursuant to Section 5-13.5, unless the
5 applicant is exempt from these requirements as provided in Section 5-13.4;

6 3. The operation as proposed by the applicant would not comply with all
7 applicable ordinances and laws, including, but not limited to, the City's building, health, and fire
8 safety ordinances;

9 4. The applicant has previously had a massage establishment permit,
10 massage technician permit, or any similar license, certificate, or permit revoked by the City or
11 any public agency during ten (10) years preceding the date of the application;

12 5. The applicant has made a material misrepresentation in the application or
13 supplementary material submitted with the application;

14 6. The applicant has been successfully prosecuted under the Red Light
15 Abatement Act (California Penal Code section 11225 et seq.) or any similar law in another
16 jurisdiction during ten (10) years preceding the date of the application; or

17 7. The applicant has been convicted of any of the offenses provided in
18 section 5-13.5(c)(2)(b) during ten (10) years preceding the date of the application.

19 8. The name proposed for the massage establishment suggests that any
20 service is available that is prohibited under this Chapter.

21 c. The Police Chief shall give written notice of the grounds for denial to the
22 applicant personally or by first class mail, postage prepaid, at the address provided in the
23 application. The notice shall advise the applicant of the right to appeal the decision.

24 **5-13.7 Appeal.**

25 The decision of the Police Chief may be appealed to the City Administrator by the
26 applicant through the following procedure:

27 a. Within thirty (30) days after mailing of the notice of denial, the applicant shall file
28 with the City Administrator a written request for an appeal hearing, which states the specific
29 grounds for appeal.

30 b. As soon as practicable after receiving the appeal, the City Administrator shall set
31 a date to hear the appeal, which shall be no less than fourteen (14) days nor more than thirty (30)
32 days from the date the appeal was filed. The City Administrator shall give each appellant written
33 notice of the time and place of the hearing at least ten (10) days prior to the date of the hearing,
34 either by causing a copy of the notice to be delivered to the appellant personally or by certified
35 mail addressed to the appellant at the address shown on the appeal. Continuances of the hearing
36 may be granted by the City Administrator on request of the appellant for good cause shown, or
37 on the City Administrator's own motion. The hearing shall be informal. At the hearing, the City
38 Administrator shall hear the appellant and any relevant witnesses. Upon conclusion of the

1 hearing, the City Administrator shall render a decision which shall be final. The City
2 Administrator may delegate any of the foregoing duties to his or her designee.

3 **5-13.8 Duration and Renewal.**

4 a. A permit shall be valid for two (2) years from the date of issuance unless revoked
5 or suspended.

6 b. A permittee may apply for a renewal of a permit no less than thirty (30) days prior
7 to the expiration of the permit. If an application for renewal has not been received by that time,
8 the permit shall expire upon the expiration date. The Police Chief shall send a notice by United
9 States mail of the need to renew no later than sixty (60) days prior to the expiration of the
10 permit. Any permit issued under this Chapter shall be returned to the Police Chief within forty
11 eight (48) hours of its expiration. No privilege to provide massage shall exist until an application
12 for renewal has been granted. After a permit expires, a new application may be filed.

13 c. Permits may be renewed every two (2) years by filing an application for renewal
14 under penalty of perjury updating information in the original application provided to the Police
15 Chief, together with a nonrefundable fee in an amount set forth by resolution of the City
16 Council. The application shall also include verification of continued membership, in good
17 standing, of a state or national professional association as described in Section 5-13.5 and
18 verification that the permittee has participated successfully in continuing education programs
19 following issuance of the last permit consisting of a minimum of twenty four (24) hours of
20 related coursework, of which a minimum of twelve (12) hours shall be approved by an
21 association pursuant to this Section.

22 d. After investigating the application for renewal, the Police Chief shall, within
23 thirty (30) days of receipt of a complete application, renew the permit if the permittee continues
24 to meet the requirements for the issuance of a permit, and none of the grounds for denial of a
25 permit set forth in this Chapter exist.

26 **5-13.9 Suspension and Revocation of Permits.**

27 a. The Police Chief may revoke or suspend any permit granted under this Chapter if
28 any of the following are found:

1. The permittee does not possess the qualifications for the permit as
required by this Chapter;

2. The permittee has been convicted of any violation of any provision of this
Chapter;

3. The permittee has engaged in conduct or operated a massage
establishment or has engaged in conduct as a massage therapist in a manner which violates this
Chapter, any conditions of the permit, or any of the laws which would have been grounds for
denial of the permit;

4. There is fraud, material misrepresentation, false statement, or omission of
a material fact in any application for a permit or in any supplementary material;

1 5. An activity authorized in the permit has been conducted in an unlawful
2 manner or in such a manner as to constitute a menace to the health, safety, or general welfare of
3 the public;

4 6. Upon a recommendation from the City and/or County officials which
5 states that such business is being managed, conducted, or maintained without regard for public
6 safety or public health; or

7 7. The responsible managing officer/employee designated in the permit
8 application is removed from that capacity and the Police Chief is not notified of a new managing
9 officer/employee.

10 8. For purposes of this Section, permittee, in the case of a massage
11 establishment, shall include the managing responsible officer or managing employee.

12 b. Prior to the suspension or revocation of any permit issued pursuant to this
13 Chapter, an informal hearing shall be held by the Police Chief. Written notice of the grounds for
14 the hearing, as well as its time and place, shall be sent by certified mail to the address shown on
15 the application or by hand delivery to the permittee at least fourteen (14) days prior to said
16 hearing, unless a shorter time period is agreed to by the permittee. Written notice of the Police
17 Chief's decision shall be mailed to the permittee within fourteen (14) days following the hearing.
18 No privilege to provide massage services shall exist from the time written notice is served,
19 pending decision by the Police Chief. Notwithstanding the foregoing, the Police Chief may
20 immediately suspend a permit without a prior hearing if he or she determines that the continued
21 provision of massage services pursuant to the permit constitutes an immediate and significant
22 threat to the public health, safety or welfare. In such a case, the Police Chief shall conduct the
23 foregoing hearing following the suspension.

24 **5-13.10 Appeal of Revocation or Suspension.**

25 No later than fifteen (15) calendar days after service of notice of revocation, suspension,
26 denial of application, or renewal, the permittee may appeal to the City Administrator by the
27 procedure for appeal as set forth in Section 5-13.7(b) of this Chapter. The hearing and notice of
28 the decision shall be given in the same manner as provided in Section 5-13.7(b) of this Chapter.
The decision of the City Administrator shall be final.

5-13.11 Burden of Proof.

Unless otherwise specifically prohibited by law, the burden of proof is on the applicant or
permittee in any hearing or other matter under this Chapter.

5-13.12 Permits Nonassignable.

No permit shall be sold, transferred, or assigned by the permittee or by operation of law,
to any other person. Any such sale, transfer, or assignment, or attempted sale, transfer or
assignment shall constitute an immediate revocation of the permit and the permit shall thereafter
be null and void.

5-13.13 Change of Name or Location, Expansion of Building.

1 a. No permittee shall operate under any name or conduct any massage establishment
2 under any designation or location not specified in the permit.

3 b. In the case of any proposed change of name, notification thereof shall be made to
4 the Police Chief within thirty (30) days prior to the change. Any proposed change of name is
5 subject to the approval of the Police Chief.

6 c. Any proposed change of location of a massage establishment is subject to the
7 approval of the Police Chief, in addition to compliance with all City ordinances and regulations.

8 d. Prior to expanding the size of a massage establishment, a massage establishment
9 permittee shall obtain the approval of the Police Chief based upon a determination by the Police
10 Chief of whether the expanded establishment will satisfy the requirements of this Chapter.

11 e. In case of any change of location or expansion of the massage establishment,
12 inspection thereof by the City's Building Division shall be made as required in this Chapter
13 within thirty (30) days of receipt of the application.

14 f. Any notification of a proposed change of name or any application for a change of
15 location or expansion of a business shall be accompanied by a nonrefundable fee, in an amount
16 established by resolution of the City Council.

17 **5-13.14 Conditional Use Permit Fee; Recommendations by City Departments; Notice of**
18 **Hearing.**

19 The applicant, with an approved business license investigation report, shall apply for a
20 conditional use permit. All conditional use permit applications for a massage establishment,
21 except establishments already existing, shall be accompanied by a conditional use permit fee as
22 set forth in the Master Fee Schedule, no part of which shall be refundable. Upon receipt of a
23 conditional use permit application, the Community Development and Environmental Resources
24 Department shall process the application and forward to it to the Fire Department which within a
25 period of thirty (30) days from the date of application shall review records or make an inspection
26 of the premises proposed to be devoted as a massage establishment and shall make a written
27 recommendation to the Planning and Zoning Commission concerning compliance with the
28 respective requirements.

29 **5-13.15 Hearing; Issuance or Denial of Permit.**

30 The Planning and Zoning Commission shall schedule and conduct a Conditional Use
31 Permit hearing under Section 20-2 of the Zoning Code and may grant the permit provided that
32 applicant meets the findings required by subsection 20-4.3b. of the Zoning Code. When the
33 conditional use permit is granted the applicant must then obtain a business license.

34 **5-13.16 Facilities and Operation Requirements.**

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2 Every massage establishment and every massage technician shall comply with standards
3 established by the Alameda County Health Services for such businesses and practitioners and the
4 following facilities and operations requirements:

5 a. All premises used by licensees or permittees hereunder shall be subject to periodic
6 inspection by the City for safety of the structure and the propriety of plumbing, ventilation,
7 heating and sanitation.

8 b. One (1) artificial white light of not less than forty (40) watts shall be provided and
9 be lighted in each room where a massage is being administered.

10 c. The massage establishment's premises and facilities shall meet and be maintained
11 in a condition to comply with all applicable code requirements of the City and Alameda County,
12 including, but not limited to, those related to the safety of structures, adequacy of the plumbing,
13 lighting, heating, ventilation, waterproofing of rooms in which showers, water or steam baths are
14 used, and the health and cleanliness of the facility.

15 d. Massage establishments and massage technicians shall at all times have an
16 adequate supply of clean sanitary towels, coverings, and linens. Towels, nondisposable
17 coverings, and linens shall not be used on more than one client, unless they have first been
18 laundered and disinfected. Disposable towels and disposable coverings shall not be used on more
19 than one client. Soiled linens and paper towels shall be deposited in separate receptacles.

20 e. In the massage establishment, wet and dry heat rooms, steam or vapor rooms or
21 cabinets, toilet rooms, shower and bathrooms, tanning booths, whirlpool baths, and pools shall be
22 thoroughly cleaned and disinfected as needed, and at least once each day when the premises are
23 open, with a disinfectant. Bathtubs shall be thoroughly cleaned with a disinfectant after each use.
24 All walls, ceilings, floors, and other physical facilities for the establishment shall be in good
25 repair, and maintained in a clean and sanitary condition.

26 f. All equipment used in the massage operation shall be maintained in a clean and
27 sanitary condition. Instruments utilized in performing massage shall not be used on more than
28 one client unless they have been sterilized, using standard sterilization methods.

g. Clients of the massage establishment shall be furnished with a dressing room.
Dressing rooms will be used only by clients. Dressing rooms need not be separate from the room
in which the massage is being performed.

h. Toilet facilities shall be provided in convenient locations near the massage
establishment and shall consist of at least one unisex toilet with lavatories or wash basins
provided with soap and both hot and cold running water either in the toilet room or vestibule.

i. A minimum of one wash basin for employees shall be provided at all times. The
basin shall be located within or as close as practicable to the area devoted to performing of
massage services. Soap and sanitary towels shall also be provided at each basin.

j. A list of all massage services available, the price thereof, and the length of time of
each massage service shall be posted in an open and conspicuous public place on the

1 establishment's premises in such a manner that is readily visible by persons entering the
2 establishment. A written list of massage services available and the cost of such services shall
3 also be provided to each patron of an off-premises massage service prior to any massage service
4 being provided. No massage services other than those set forth on the foregoing lists shall be
5 provided. The lists of services and costs shall be written in English in readily understandable
6 language.

6 k. All payments for massage service provided at a massage establishment, including
7 gratuities or tips, shall be made only in the designated reception area. At least one sign, with
8 lettering not less than one-half inch in height, shall be posted in an open and conspicuous public
9 place on the establishment's premises in such a manner that is readily visible by persons entering
10 the establishment, stating, "All payments for massage services, including gratuities and tips, shall
11 be made only in the designated reception area."

10 l. Every massage establishment and every person providing off-premises massage
11 service shall maintain a written record of the date and time of each massage service provided; the
12 name of each patron and the service received; and the name of the massage therapist providing
13 the service. The written records shall be kept on the premises and shall be open to inspection by
14 the City. The records shall be retained for a period of at least two (2) years.

14 m. All massage therapists and all other employees of a massage establishment shall
15 remain fully clothed in clean outer garments while in public areas of the massage establishment
16 and while performing massage services, including off-premises massage services. At a
17 minimum, such clothing shall be made of non-transparent material and shall not permit exposure
18 of the buttocks, genital area or breasts of any employee.

17 n. The managing employee of a massage establishment and any off-premises
18 massage service shall keep a complete and current list of the names and residence address of all
19 managing employees and massage therapists employed by or contracting with the massage
20 establishment. This list shall be kept on the premises of the massage establishment or the
21 business office of the off-premises massage service and shall be available for inspection at any
22 time during business hours by the Chief of Police.

20 o. No electrical, mechanical or other devices of any kind shall be used by the owner,
21 operator, managing employee or massage therapist of the massage establishment or off-premises
22 massage service for audio and/or video recording or for monitoring the performance of a
23 massage, or the conversation or other sounds in the massage cubicle, booth, room or other
24 massage area, without the express written consent of the patron. No massage cubicle, booth,
25 room or other massage area may be fitted with a two-way mirror, audio and/or video recording
26 equipment, or any other recording, eavesdropping or monitoring device or equipment. No device
27 of any kind shall be installed or used which would operate in any way to detect or interfere with
28 law enforcement surveillance or communication equipment.

26 p. Massage services shall not be made available to patrons at hot tub, sauna or
27 tanning establishments unless the establishment holds a valid massage establishment permit. Hot
28 tub, sauna, or tanning establishments which offer massage services must comply with all
provisions of this Chapter. Massage services shall not be given in any room or area in which a
hot tub, sauna, shower or Jacuzzi is located, or in wet and dry heating rooms, tanning rooms,

1 steam or vapor rooms, cabinets, or bathrooms. All employees of the hot tub, sauna, or tanning
2 establishment who practice massage at the establishment must hold a valid massage therapist
3 permit.

4 **5-13.17 Prohibited Conduct.**

5 a. Massage shall be provided or given only between the hours of six o'clock (6:00)
6 A.M. and eleven o'clock (11:00) P.M. No massage establishment shall be open and no client
7 shall be in the establishment between eleven o'clock (11:00) P.M. and six o'clock (6:00) A.M.

8 b. No alcoholic beverages shall be sold, served, furnished, kept, consumed, or
9 possessed on the premises of any massage establishment.

10 c. No owner, manager, operator, responsible managing employee, or permittee shall
11 permit, and no massage technician contractor shall offer or perform, any service other than those
12 permitted under this Chapter.

13 d. No permittee or employee of a massage establishment shall:

14 1. Expose the sexual or genital part of the permittee/employee in the course
15 of a massage; or

16 2. Touch or expose the sexual or genital part of any other person in the
17 course of a massage. Sexual and genital parts shall include the genitals, pubic area, anus, and
18 perineum of any person and the breasts of any female.

19 3. No permittee or employee of a massage establishment shall place, publish
20 or distribute or cause to be placed, published or distributed any advertising matter that depicts
21 any portion of the human body that would reasonably suggest to prospective customers that any
22 service is available that is prohibited under this Chapter nor shall any massage establishment
23 employ language in any advertising text or business name that would reasonably suggest to a
24 prospective client that any service is available that is prohibited under this Chapter.

25 e. While on the premises of a massage establishment or while otherwise performing
26 massage services, a massage therapist shall not use or give as his/her own, any name other than
27 that specified on the massage therapist's permit.

28 f. Condoms shall not be furnished or stored at any massage establishment.

g. Massage therapists shall not be under eighteen (18) years of age.

5-13.18 Advertising Operations.

No massage establishment or outcall massage service granted a conditional use permit or
business license under this section shall place, publish or distribute or cause to be placed,
published or distributed any advertising manner that depicts any portion of the human body that
would reasonably suggest to prospective customers, clients or patrons that any service is
available other than those services described in paragraphs a and e of subsection 5-13.2, nor shall

1 any such establishment or service indicate in the text of such advertising that any service is
2 available other than those so described.

3 No service described in paragraph a of subsection 5-13.2 shall be carried on within any
4 cubicle, room, booth or any area within a massage establishment, which is fitted with a door or
5 closure capable of being locked or secured to entry.

6 **5-13.19 Inspection by City; Right of Entry of City Officials.**

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8 Inspection officials of the City, including the Chief of Police, shall have the right to enter
9 the premises during regular business hours for the purpose of making reasonable inspections to
10 enforce compliance with building, fire, electrical, plumbing or health regulations, and for the
11 purpose of determining that the provisions of this section, and other provisions of law, are being
12 complied with. In the event the applicant for either a massage establishment conditional use
13 permit or a massage technician's business license is in violation of any Federal, State or local
14 health law or regulation, the application may be denied. In the event a conditional use permit or a
15 business license has been issued, it may be revoked or suspended in the manner hereinafter set
16 forth in this section.

14 **5-13.20 Massage Technician Business License Required; Application.**

15 It shall be unlawful for any person to practice massage as a principal, an employee, or
16 otherwise, within the City unless such person has a business license.

17 a. The applicant shall furnish a diploma or certificate of graduation from a
18 recognized school wherein the method, profession and work of massage techniques are taught, or
19 an equivalent of training and/or recent experience and the written recommendation (business
20 license investigation) from the Police Department.

21 **5-13.21 Business License Investigation and Fee; Investigation by Police Department.**

22 All applications for a massage technician or trainee business license shall be
23 accompanied by a business license investigation fee as cited in the City of Albany Master Fee
24 Schedule, no part of which shall be refundable. The business license investigation shall be
25 conducted by the Police Department and a written recommendation shall be submitted to the
26 applicant for issuing of a business license.

25 **5-13.22 Issuance or Denial of Business License.**

26 The City Treasurer shall issue a business license if:
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1 a. The business license investigation by the Police Department recommends the
2 issuance of a business license upon the finding that the applicant has not been convicted in a
3 court of competent jurisdiction of:

4 1. An offense involving lewd conduct, or an offense involving the use of
5 force and violence upon the person of another;

6 2. Has not been convicted of any crime requiring registration under Section
7 290 of the State Penal Code, or of any violation of Sections 311 through 311.7, 314, 315, 316,
8 318 or 647 a, b or d of the Penal Code.

9 b. That the applicant has not knowingly and with intent to deceive made any false,
10 misleading or fraudulent statement of facts in the business investigation application or in any
11 other document required by the City in conjunction therewith.

12 c. That the applicant, whether as owner or as a masseuse, has not had his/her permit
13 suspended or revoked following an investigation of unlawful conduct.

14 Otherwise, the business license shall be denied.

15 **5-13.23 Massage Technician Trainee Business License.**

16 Any person currently enrolled in a "recognized school" may apply for a quarterly
17 business license (ninety (90) days) as a massage technician trainee. In addition to the payment of
18 the business license investigation fee required by subsection 5-13.12 and the information
19 required by subsection 5-13.11, the applicant shall submit a letter signed by the director or
20 administrator of the applicant's "recognized school" showing the date the applicant was officially
21 enrolled and the estimated date the applicant will graduate.

22 The applicant shall also submit a letter signed by the owner or operator of a massage
23 establishment, stating his willingness to employ the applicant to do massage as a massage
24 technician trainee, working under his direct supervision and control, during the time the
25 applicant is completing the course of study as a massage technician.

26 The massage trainee business license shall expire ninety (90) days from the date issued
27 and is not renewable, except in the case of sickness or accident for which reason the education
28 was delayed. Applicant is expected to complete his massage technician course of study during
the ninety (90) day period the business license is valid. The trainee must, at all times, comply
with all laws and ordinances in effect and the failure to comply may render the applicant
ineligible to obtain a massage technician's business license. Upon presentation of a copy of his
diploma or certificate of graduation from a "recognized school" the trainee will be issued the
regular massage technician business license.

29 **5-13.24 Existing Operators.**

1 All persons engaged in doing massage in the City at the time these regulations become
2 effective who cannot qualify for a massage technician business license shall have a period of
3 thirty (30) days within which to qualify as a massage technician trainee and obtain a massage
4 technician trainee business license by making application therefor and paying the business
5 license investigation fee, and submitting information required under the provisions of subsection
6 5-13.14 hereof.

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8 **5-13.25 Display of Business License; Register of Employees.**

9 The owner or operator shall display the massage establishment business license issued
10 and the business license of each and every massage technician or massage technician trainee
11 employed in the establishment in an open and conspicuous place on the premises.

12 Massage technicians shall wear or otherwise clearly display an identification name plate
13 which shall contain a photograph of the technician, given and surname of the technician, and
14 assigned business license number, which plate must be worn on the front of the outermost
15 garment at all times during the hours of operation of any massage establishment or outcall
16 massage service granted a business license pursuant to this section, or otherwise be clearly
17 displayed in the room where the massage service is being given.

18 The operator of a massage establishment or an outcall massage service must maintain a
19 register, or written listing, of all persons employed by him, whether as independent contractors
20 or otherwise, as massage technicians, trainees and employees, and their business license
21 numbers. Such register shall be available for inspection at all times during regular business
22 hours.

23 **5-13.26 Cumulative Remedies.**

24 In addition to the remedies herein, or in this Code, provided the operation of a massage
25 establishment or of an outcall massage service in violation of this section shall be deemed a
26 public nuisance and may be enjoined.

27 **5-13.27 Penalty for Violations.**

28 Any person who violates or causes another to violate, any of the provisions of this section
is guilty of a misdemeanor, and upon conviction shall be punished as set forth in Section 1-9 of
this Code.

5-13.28 Cease of Business.

If at any time during the duration of a permit issued under this Chapter a permittee ceases
to do business as a massage establishment and/or a massage technician, the permittee shall:

- a. Return any permit issued under this Chapter to the Police Chief within five (5)
business days; and

1 b. Notify the City Treasurer.

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Section 2: Publication

This ordinance shall be published in a newspaper of general circulation in the City of Albany, which said newspaper is designated for that purpose, or it shall be posted in three locations.

Section 3: Severability

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of the ordinance, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clause or phrases be declared invalid.

Section 4: Effective Date

This ordinance shall become effective 30 days on or after its final passage and adoption.

Date:

Mayor Marge Atkinson