

ORDINANCE NO. 2009- 017

**AN EMERGENCY ORDINANCE OF THE COUNCIL OF THE CITY OF
SAN BUENAVENTURA AMENDING CHAPTER 8.300 OF THE SAN
BUENAVENTURA MUNICIPAL CODE RELATING TO MASSAGE
REGULATIONS**

The Council of the City of San Buenaventura does ordain as follows:

Section 1. Chapter 8.300 of the San Buenaventura Municipal Code is amended in its entirety to read as follows:

Chapter 8.300 Massage Regulations

Sec. 8.300.010. Purpose, findings and intent.

1. This chapter regulates persons and establishments engaged in the practice of massage therapy in order to protect and promote public health, safety and welfare. The City of San Buenaventura wishes to promote the ethical practice of massage therapy as an important healing art, and to prevent and discourage the misuse of massage therapy as a front for prostitution activities in violation of law, including but not limited to, subdivisions (a) or (b) of Section 647 of the California Penal Code.

2. The City Council intends to reduce city involvement in local massage licensing, relying instead upon the uniform statewide regulations promulgated in SB 731 and by the new Massage Therapy Organization, known as the California Massage Therapy Council ("CMTC") as applicable. However, SB 731 leaves it to local jurisdictions to establish reasonable health and safety requirements for massage establishments, such as cleanliness and sanitation requirements. Moreover, it is clear that the CMTC will not be able to provide state certification to all qualified Ventura massage therapists on the effective date of SB 731, September 1, 2009. Accordingly, the City Council must establish local health and safety requirements and interim transitional licensing requirements to allow certain existing massage professionals to continue in business until they can obtain state certification, but no later than June 30, 2010.

3. The City Council finds and determines that, because all massage establishments and therapists receive city permits that expire on July 31 of each year, it will be efficient and administratively advantageous to apply transition rules to all expiring permits, and to extend the life of certain existing permits until June 30, 2010. The City Council finds and determines that permitting certain existing massage establishments and therapists to operate for the full term of their existing permits assures that they have received full value of any property interest they may have in the expiring permits.

4. The City Council finds and determines that it is in the public interest to require existing city permitted massage technicians with less than two years of experience to obtain state certification before being allowed to operate in the city. More experienced technicians and establishments are likely to have higher qualifications than the current city requirements, and the City Council wishes to increase the educational and experiential requirements of non-state certified massage technicians during the transitional period between July 31, 2009 and June 30, 2010, when all massage therapists operating in the city will be required to have a state certificate.

5. The provisions of this chapter are not intended to be exclusive and compliance shall not excuse noncompliance with any state or local laws or regulations that are uniformly applied to other professional or personal services businesses, including but not limited to, all zoning regulations, business license provisions, building code, and fire, electrical, plumbing, and health and safety code laws and regulations applicable to professional or personal services businesses.

6. This chapter is enacted pursuant to Sections 51030-51034 of the California Government Code, Sections 4600-4620 and 16000 of the California Business & Professions Code, and Article XI, Section 7 of the California Constitution. To the extent this ordinance may be deemed to conflict with any provision of state law, the City Council has determined that the matter is a municipal affair within the exclusive or shared province of state and local regulation.

Sec. 8.300.020. Definitions.

For the purpose of this chapter, unless the context clearly requires a different meaning, the words, terms and phrases hereinafter set forth shall have the meaning given them in this section:

License authority means the city official charged with the administration of this chapter.

Massage means any method of pressure on, or friction against, or striking, kneading, rubbing, tapping, pounding, vibrating, manipulating, or stimulating the external parts of the human body with the hands or with the aid of any mechanical, or electrical apparatus, or other appliances or devices, with or without such supplementary aids as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment, or similar preparations.

Massage Establishment means any business or establishment where any person engages in, conducts, carries on or permits to be engaged in, conducted, or carried on massage, whether at a fixed place of business or at a location designated by the patron. Any establishment engaging in or carrying on, or permitting any combination of massage and health treatment or massage and bathhouse, showers, hot tubs, saunas, or other dry or wet heat shall also be deemed a Massage Establishment.

Massage Therapist means any individual who administers massage to another person for any consideration whatsoever.

Person means any individual, firm, association, partnership, corporation, joint venture, or combination of individuals.

Specified anatomical areas refers to genitals, cleft of the buttocks, perineum nipple, areola, and anal regions.

Sec. 8.300.030. Massage establishment--License required.

It shall be unlawful for any person, association, partnership or corporation to engage in, conduct, carry on, or to permit to be engaged in, conducted, or carried on, in or upon any premises within the City of San Buenaventura, the operation of a Massage Establishment, without a license issued pursuant to this chapter for each and every Massage Establishment. The permit required hereby shall be in addition to any business license tax required by this Code. Massage Establishment permits shall expire on July 31 of each year, but may be renewed as provided in subsection E. of section 8.300.040.

Sec. 8.300.040. Massage establishment--License application.

A. Any person, association, partnership, or corporation desiring to obtain a permit to operate a Massage Establishment shall make an application to the license authority. A nonrefundable fee shall accompany the submission of each application to defray the cost of investigation, inspection and enforcement of this chapter. An annual nonrefundable renewal fee shall also be charged to defray associated costs of investigation, inspection and enforcement.

B. Each applicant for a license to operate a Massage Establishment shall furnish the following information:

1. The full true name and any other names used by the applicant.
2. The present address and telephone number of the applicant.
3. Driver's license number and social security number.
4. The proposed address of the Massage Establishment.
5. Each residence and business address of applicant for the three years immediately preceding the date of the application, and the inclusive dates of each such address.
6. Written proof that the applicant is at least 18 years of age.

7. Applicant's height, weight, color of eyes and hair.
8. Two photographs of applicant at least two inches by two inches taken within four months preceding the date of application.
9. Applicant's business, occupation and employment history for the three years immediately preceding the date of application.
10. The business license or permit history of the applicant, including whether such applicant has ever had any license or permit issued by any agency or board, city, county, or state revoked or suspended, or has had any professional or vocational license or permit revoked or suspended and the reason(s) therefor.
11. All criminal convictions, set forth in subsection 8.300.040.D.2., and a statement of the dates and places of such convictions.
12. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation or charter, together with the state and date of incorporation and names and residence addresses of each of its current offices and directors, and of each stockholder holding more than five percent of the stock of the corporation. If the applicant is a partnership, the application shall set forth the name and residence addresses of each of the partners, including limited partners. If the applicant is a limited partnership, it shall furnish a copy of its certificate of limited partnership filed with the county clerk. If one or more of the partners is a corporation, the provisions of this section pertaining to corporate applicants shall apply. The applicant corporation or partnership shall designate one of its officers or general partners to act as its responsible managing officer. Such person shall complete and sign all application forms required of any individual applicant under this chapter, but only one application fee shall be charged.
13. The name and address of the owner and lessor of the real property upon or in which the business is to be conducted, and a copy of the lease or rental agreement. If the applicant is not the legal owner of the property, a notarized acknowledgment from the owner of the property that a Massage Establishment will be located on his or her property is required for each establishment permit location.
14. The names, addresses and state certificates or transitional licenses of all Massage Therapists who will be working as employees or independent contractors at each establishment permit location. All Massage Establishments must employ only State Certified Massage Therapists or Transitional License holders.

15. The license authority may require the applicant to furnish fingerprints when needed for the purpose of verifying identification.

C. The license authority shall have a reasonable time, not to exceed 30 days, in which to investigate the application and background of the applicant.

D. A permit shall be issued, within 30 days of receipt of the application, to any applicant who has furnished all of the information required by this section in the application for such license, provided:

1. The applicant has not made a material false statement in the application for the license;
2. The applicant, if an individual, or in the case of an applicant which is a corporation or partnership, any of its officers, directors, holders of five percent or more of the corporation's stock, has not, within five years immediately preceding the date of the filing of the application been convicted in a court of competent jurisdiction of any of the following offenses: Sections 266i, 315, 316, 318, or subdivision (b) of Section 647, of the California Penal Code; an offense which required registration as a sex offender with the chief of police under Penal Code Section 290; any felony offense involving the sale of a controlled substance specified in Sections 11352, 11360(a), 11379, or 11379.5 of the California Health and Safety Code; or any offense in another state which, if committed in this state, would have been punishable as one or more of the heretofore mentioned offenses; or any offense involving the use of force or violence upon the person of another; or any offense involving theft, embezzlement or moral turpitude.
3. The Massage Establishment as proposed by the applicant would comply with all applicable laws including but not limited to, health, zoning, fire and safety requirements and standards;
4. The applicant is at least 18 years of age; and
5. The applicant has fulfilled the requirements of paragraphs 1. through 3. and 5. through 16. of section 8.300.120;
6. The applicant has not had a massage Therapist, Massage Establishment, escort service, nude entertainment, , nude photo studio or similar type of license or permit suspended within one year, or revoked within one year, or revoked within three years immediately preceding the date of the filing of the application, unless the applicant can show a material change in circumstances or that mitigating circumstances exist since the revocation or suspension.

E. An application for a Massage Establishment renewal permit must be submitted to the license authority not less than 20 days before the permit expiration date. Each person who applies for the renewal of a Massage Establishment permit shall furnish the information required in subsections B.1., 2., 8., and 14. of this section 8.300.040, and shall update the information required by subsections B.10., 11., and 12. In addition, if (1) the Massage Establishment has changed location, or (2) the building in which it is located has changed ownership, or (3) the Massage Establishment has changed ownership, the applicant for a renewal permit shall furnish the information required in subsection B.13. Except as modified by the provisions of this subsection, the provisions of subsection A. shall apply to applications for Massage Establishment renewal permits.

16. Such other identification and information as may be required in order to verify the matters herein specified as required to be set forth in the application.

Sec. 8.300.050. Massage establishment--Inspection by authorized city official.

Within 25 days after a completed application for a Massage Establishment license has been filed, a city representative including but not limited to a member of the police department, fire department, building division, license authority, or any authorized representative thereof, may inspect, with or without notice during regular business hours, the proposed place of business to determine whether it conforms to the requirements of section 8.300.120. Upon completion of the inspection, said officer shall, inform the license authority in writing of the findings of the inspection.

Sec. 8.300.060. Reserved.

Sec. 8.300.070. Reserved.

Sec. 8.300.080. State Certified Massage Therapy or Transitional --License required.

It shall be unlawful for any person to act or engage in the business of acting as a Massage Therapist without a State Certified Massage Therapy or Transitional license issued pursuant to this chapter. State Certified licenses shall expire on July 31 of each year, but may be renewed as provided in subsection E. of section 8.300.090.

1. A State Certified license shall be available to any person possessing a valid state certificate as a massage practitioner, massage therapist or a conditional certificate under Business and Professions Code section 4601(b), 4601(c), 4604(a) or 4604(c). The State Certified license shall be issued only to confirm state certification as provided in this chapter and to assure that the applicant is qualified for a business license.
2. A Transitional license shall be valid until June 30, 2010, and shall be available to any person who possesses one or more of the following:

A. A diploma or certificate of graduation, and complete academic transcripts, from a recognized school. "Recognized school" means and includes any school or institution of learning, formerly listed as approved pursuant to section 94310 of the California Education Code, which has for its purpose the teaching of the theory, method, profession, or work of massage, which school requires a resident course of study of not less than 500 hours before the student may be furnished with a diploma or certificate of graduation from such school or institution of learning. Schools offering correspondence courses not requiring actual attendance at classes shall not be deemed a "recognized school." The city shall have the right to confirm the fact that the applicant has actively enrolled or participated in a recognized school for the aforementioned minimum time period.

B. Proof that the applicant is a person who is permitted by the city as a massage technician in good standing and who has held their permit continuously since July 31, 2007 or earlier

C. Proof that the applicant is a person who is permitted by the city as a massage technician in good standing and who is currently working in a massage establishment that has been permitted by the city in good standing since July 31, 2007 or earlier

D. Proof that the applicant is a person who has a valid license to practice massage therapy issued by a statewide regulatory agency existing in another state of the United States of America.

Sec. 8.300.090. Massage Therapy License Application.

A. Any person desiring to obtain a license to provide Massage Therapy services shall make an application to the license authority. A nonrefundable fee shall accompany the submission of each initial application to defray the cost of investigation and examinations required by this chapter. An annual nonrefundable renewal fee shall also be charged to defray associated costs of renewal as permitted by Business and Professions Code section 4612(b)(3).

B. Each applicant for a permit to act as a massage technician shall furnish the following relevant background information to the license authority:

1. The full true name and any other names used by the applicant.
2. The present address and telephone number of the applicant.
3. Driver's license number and social security number.

4. Each residence and business address of the applicant for the three years immediately preceding the date of the application, and the inclusive dates of each such address.
5. Written proof that the applicant is at least 18 years of age.
6. Applicant's height, weight, color of eyes and hair.
7. Three photographs of applicant at least two inches by two inches taken within a month preceding the date of application. If the applicant will be working in more than one establishment, additional photographs may be required.
8. Applicant's business, occupation and employment history for the three years immediately preceding the date of application.
9. The business license or permit history of the applicant including whether such applicant has ever had any license or permit issued by any agency or board, city, county, or state revoked or suspended, or has had any professional or vocational license or permit revoked or suspended, and the reason(s) therefor.
10. Sufficient information, including a copy of any state certificate, to determine the current status of the applicant under Business and Professions Code section 4602.5.
11. The Massage Establishment(s), if any, at which the applicant expects to be employed.
12. If seeking a Transitional License, one or more of the following:
 - a. A diploma or certificate of graduation, and complete academic transcripts, from a recognized school. "Recognized school" means and includes any school or institution of learning, formerly listed as approved pursuant to section 94310 of the California Education Code, which has for its purpose the teaching of the theory, method, profession, or work of massage, which school requires a resident course of study of not less than 500 hours before the student may be furnished with a diploma or certificate of graduation from such school or institution of learning. Schools offering correspondence courses not requiring actual attendance at classes shall not be deemed a "recognized school." The city shall have the right to confirm the fact that the applicant has actively enrolled or participated in a recognized school for the aforementioned minimum time period.
 - b. Proof that the applicant is a person who is permitted by the city as massage technicians in good standing and who has held their permits continuously since July 31, 2007 or earlier.

c. Proof that the applicant is a person who is permitted by the city as a massage technician in good standing and who is currently working in a Massage Establishment that has been permitted by the city in good standing since July 31, 2007 or earlier.

d. Proof that the applicant is a person who has a valid license to practice massage therapy issued by a statewide regulatory agency existing in another state of the United States of America.

13. Such other identification and information as may be required in order to verify the truth of the matters herein specified as required to be set forth in the application.

C. The license authority shall have a reasonable time, not to exceed 30 days, in which to investigate the application and background of the applicant.

D. Within 30 days of receipt of an application, a State Certified Massage Therapy or Transitional License shall be issued to any applicant who has furnished all of the information and fees required by this chapter, provided:

1. The applicant has not made a material false statement in the application for the permit;
2. Applicant is at least 18 years of age;

E. An application for a Massage Therapist renewal license must be submitted to the license authority not less than 20 days before the permit expiration date. Each applicant for a Massage Therapist renewal license shall furnish the information required by subsections B.1., 2., 7., and 15., of this section 8.300.090, as applicable, and shall update the information required by subsections B.9. of this section. Except as modified by the provisions of this subsection, the provisions of subsection A. shall apply to applications for Massage Therapist renewal licenses.

F. A license to act as a Massage Therapist does not authorize the operation of a Massage Establishment. Any person obtaining a permit to act as a Massage Therapist who desires to operate a Massage Establishment must make a separate application for an establishment permit as provided in this chapter.

Sec. 8.300.100. Exemptions.

This chapter shall not apply to:

A. Persons holding a valid certificate to practice the healing arts under the laws of the State of California and their employees, including, but not limited to, holders of medical degrees such as physicians, surgeons, chiropractors, osteopaths,

naturopaths, podiatrists, acupuncturists, physical therapists, registered nurses and licensed vocational nurses;

B State-licensed hospitals, nursing homes, sanitariums, physiotherapy establishments, or other state-licensed physical or mental health facilities and their employees;

C. Schools of massage and their students in training, provided such students provide Massage Therapy only under the direct personal supervision of an instructor;

D. Barbers and cosmetologists who are licensed under the laws of the State of California while providing Massage Therapy within the scope of their licenses, 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 patrons;

Sec. 8.300.110. Operative date for Massage Therapists.

The massage technician permit of any person who does not qualify for a Transitional License shall expire, and not be subject to renewal, effective July 31, 2009. Massage technicians who are qualified for a Transitional License shall be granted a renewal upon request pursuant to the procedures in Section 8.300.090E, provided that any such renewal shall expire on June 30, 2010, and such license shall not be further renewed.

The purpose and intent of this section and chapter is to establish a local regulatory system that allows only state certified massage therapists and massage practitioners to operate within the city. This section and chapter are also intended to allow a transitional period for certain existing permittees to continue practicing while they obtain state certification on or before June 30, 2010.

Sec. 8.300.120. Operating requirements--Massage Establishments.

No person, association, partnership, or corporation shall engage in, conduct or carry on, or permit to be engaged in, conducted or carried on, the operation of the Massage Establishment unless each and all of the following requirements are met:

1. Each person employed or acting as a massage Therapist shall have a valid license issued pursuant to the provisions of this chapter, and it shall be unlawful for any owner, operator, responsible managing employee, manager, or licensee in charge of or in control of a Massage Establishment to employ or permit any person to act as a massage Therapist who is not in possession of a valid unrevoked massage Therapist permit for that establishment. Each establishment shall file with the city and keep at all times current, copies of state certification of any massage practitioners or massage therapists working at the establishment.

2. Each person present in the establishment in any area outside the waiting area or other areas open to any member of the public shall be a State Certified or Transitional Massage Therapist license holder, or the Massage Establishment owner.
3. The possession of a valid Massage Establishment business license and/or establishment license does not authorize the possessor to perform work for which a massage Therapist permit is required.
4. A list of services available and the cost of such services shall be posted in an open and conspicuous public place on the premises. The services shall be described in readily understandable English language. No owner, operator, responsible managing employee, manager, or licensee in charge of, or in control of the Massage Establishment, shall permit, and no massage Therapist shall offer to perform, any services other than those posted.
5. The Massage Establishment business license, operating permit, and a copy of the permit of each and every massage Therapist employed or working in the establishment shall be displayed in an open and conspicuous public place on the premises.
6. A recognizable and readable sign in English shall be posted in the main entrance identifying the establishment as a Massage Establishment, provided that all such signs shall comply with the sign requirements of the city.
7. Clean and sanitary towels, sheets and linens shall be provided for each patron receiving massage services. No common use of towels or linens shall be permitted and reuse is prohibited unless they have been first laundered. Heavy white paper may be substituted for sheets provided that such paper is used only once for each person, then discarded into a sanitary receptacle.
8. Disinfecting agents and sterilizing equipment sufficient to ensure the cleanliness and safe condition thereof shall be provided for any instruments used in performing any massage.
9. Pads used on massage tables shall be covered with durable, washable plastic or other waterproof material.
10. In steam rooms and rooms containing tubs or showers the shower areas shall be finished with a smooth, hard, nonabsorbent surface to a height of not less than 70 inches above the drain inlet in accordance with Uniform Building Code section 1711. Toilet rooms and toilet compartments shall be of similar construction to a height of four feet.

11. Walls of toilet and bathing facilities shall be smooth, waterproof and kept in good repair.
12. All walls, ceilings, floors, pools, showers, bathtubs, wet and dry heat rooms, tables and all other physical facilities shall be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms or cabinets, showers and toilet rooms shall be thoroughly cleaned at least once each day the business is in operation. Bathtubs shall be thoroughly cleaned after each use.
13. All building, plumbing and electrical installations shall be installed under permit issued by the division of building and safety and such installations shall be installed in accordance with the Uniform Building Code and the Uniform Plumbing Code and National Electrical Code. Minimum lighting shall be provided of at least 40 watts of artificial light or its equivalent in natural lighting in each enclosed room or booth where massage services are being performed on a patron.
14. Cleanable and nonabsorbent waste containers with tightfitting covers shall be provided for the storing of all waste matter and shall be maintained in a clean and sanitary condition.
15. Closed cabinets or containers shall be provided for the storage of laundered towels and linens. Nonabsorbent containers or laundry bags shall be provided for damp or soiled linen, and linen shall be kept therein until removed for laundering.
16. All establishments shall be so equipped, maintained, and operated as to effectively control the entrance, harborage, and breeding of vermin, including flies. When flies or other vermin are present, effective control measures shall be instituted for their control or elimination.
17. Each establishment shall provide to all patrons, clean, sanitary and opaque coverings capable of covering the patron's specified anatomical areas. No common use of such covering shall be permitted, and reuse is prohibited unless having been adequately cleaned.
18. No massage Therapist shall, during the performance of any services for which a massage Therapist permit is required, massage or intentionally touch or make physical contact with specified anatomical areas of another person. No owner, operator, responsible managing employee, manager or licensee in charge of or in control of a Massage Establishment shall, during the course of any service or task associated with the operation of a massage operation, permit any person to massage, or intentionally touch or make physical contact with specified anatomical areas of another person.

19. Every person operating a Massage Establishment and each person doing business as a massage Therapist shall keep a record of the date and hour of each treatment or service, the name and address of the patron, the name of the Therapist administering such treatment or services and a description of the treatment or service rendered. Said records shall be open to inspection by health officials charged with the responsibility of preventing the spread of communicable or contagious disease and with maintaining the public health. Said health officials shall use the information obtained from such records only for the purposes specified. Failure to record such information or knowingly falsifying such records may be grounds for suspension or revocation of a Massage Establishment or massage Therapist license. The license authority or its designee, shall be permitted to inspect said records periodically to ensure compliance with this section. Said records shall be maintained for a period of four years.
20. No Massage Establishment or Massage Therapist shall provide massage therapy after 10 PM or before 8 AM.

Sec. 8.300.130 Reserved.

Sec. 8.300.140. Employment of and services rendered to minors prohibited.

A. Generally. No holder of a Massage Establishment, outcall, or massage Therapist license shall employ any person under 18 years of age; nor shall such licensee provide any service for which it requires said license to any patron, customer or person under 18 years of age, except at the special instance and request of a parent, guardian, or other person in lawful custody of the minor upon whose behalf the licensee is engaged.

B. Location of Massage Establishment and massage schools. Massage Establishments and massage schools may be located on the same premises providing that:

1. Students at the school shall practice only on other students and not on patrons of the establishment.
2. Students at the school must be 18 years of age or older.

Sec. 8.300.150. Operating requirements for massage Therapists.

A. No massage Therapist, while performing any task or service associated with the massage business, shall be present in any room with another person unless the person's specified anatomical areas are fully covered.

B. No massage Therapist, while performing any task for service associated with the business of massage, shall massage or intentionally touch or make physical contact with the specified anatomical areas of another person.

Sec. 8.300.160. Reserved.

Sec. 8.300.170. Name of business.

No person licensed to do business as herein provided shall operate under any name or conduct his or her business under any designation not specified in his or her license.

Sec. 8.300.180. Change of location.

A change of location of a licensed Massage Establishment shall be approved by the license authority, providing all applicable provisions of this chapter are complied with, the department of building inspection and fire department have inspected the new location and have advised that said premises complies with the requirements of this chapter, all other applicable laws have been complied with, and a change of location fee has been paid to the license authority. The license authority shall not approve any change of location until the Massage Establishment licensee has complied with all applicable provisions of this chapter and all other applicable laws.

Sec. 8.300.190. Sale or transfer.

1. The owner or operator of a Massage Establishment shall notify the license authority in advance of any intention to rename, change management, or convey the business to another person or entity.
2. Upon sale or transfer of any interest in a Massage Establishment, any license or permits heretofore issued for said establishments or business shall be null and void. A new application shall be made by any person, firm or entity desiring to own or operate the Massage Establishment. A fee shall be payable for each such application involving sale or other transfer of any interest in an existing Massage Establishment. The provisions of section 8.300.040 of this chapter shall apply to any person, association, partnership, or corporation applying for a Massage Establishment license for premises previously used as such establishment.

Any such sale or transfer of any interest in any existing Massage Establishment or any application for an extension or expansion of the building or other place of business of the Massage Establishment shall require inspection and shall require compliance with the provisions of this chapter.

Sec. 8.300.200. Periodic inspection.

The license authority, fire and police departments may make reasonable and periodic inspections, with and without notice during regular business hours, of the foyer, hallways, restrooms and other areas used or intended for use in common by customers, and unoccupied rooms of each and every Massage Establishment in the city during hours of the business operation for the purpose of determining that there is compliance with the provisions of this chapter, and other local ordinances and regulations, and the laws of the State of California.

Sec. 8.300.210. Issuance of notice of violation.

Whenever the police chief, code enforcement officer, license authority, fire department official, or designee thereof makes an inspection of a Massage Establishment and finds that any provision of this chapter has been violated, the inspector shall give notice of such violation by means of an inspection report or other written notice. In any such notification, the inspector shall set forth the specific violation or violations found, and state that failure to comply with any notice issued in accordance with the provisions of this chapter may result in the inspector filing a complaint with the license authority for revocation or suspension of the license.

If the inspector determines that the violations exist, said inspector may establish a specific and reasonable period of time for the correction of the violation or violations before filing of a complaint with the license authority for revocation or suspension of the license or permit.

Sec. 8.300.220. Grounds for suspension of license or permit.

Any city official may recommend to the license authority that a license or permit be revoked or suspended where it is determined that grounds exist.

Sec. 8.300.230. Grounds for revocation or suspension of license or permit.

Any license or permit issued pursuant to this chapter may be suspended or revoked by the license authority after a hearing before the license authority or his or her designee, where it is found that:

1. The permittee has violated any provision of this chapter; or
2. The licensee has had a material misstatement or omission in any document or application provided to the city by or on behalf of the licensee.
3. The licensee has engaged in the fraud or misrepresentation or has knowingly made a misstatement of material fact while working in or for a

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Massage Establishment or while engaging in any aspect of providing outcall massage services; or

4. The licensee has failed to correct a violation found pursuant to section 8.300.210 or other provisions of this chapter; or
5. The licensee has continued to operate a Massage Establishment after the license or permit has been suspended; or
6. The licensee has allowed a person to work as a Massage Therapist who:
 - (a) Does not have a valid State Certified Massage Therapy or Transitional license.

Sec. 8.300.235. Grounds for revocation or suspension of Business License.

Any finding supporting suspension or revocation of a license pursuant to Section 8.300.230 shall also be grounds for suspension or revocation of any business license.

Sec. 8.300.240. Hearing by license authority for revocation or suspension.

A. The license authority, before revoking or suspending any license or permit, shall give the licensee at least ten days' written notice of the alleged grounds for revocation or suspension and shall conduct a hearing in the matter of whether the license or permit shall be revoked or suspended. The hearing shall be conducted no sooner than ten days for the date of written notice.

B. The license authority shall consider all material presented at the hearing. The hearing may be continued for good cause by the license authority or his or her designee from time to time. The license authority, shall at the conclusion of the hearing, make a decision whether or not the license or permit shall be revoked or suspended. Notice of the license authority's decision shall be given to the licensee within 30 days of the conclusion of the hearing.

Sec. 8.300.250. Right to appeal.

An applicant or licensee aggrieved by the decision of the license authority shall have the right to appeal to the city manager or his or her designee. Notice of appeal must be filed with the city clerk within 15 days after service of the decision of the license authority. The notice of appeal shall state the basis for such appeal and shall be accompanied by a filing fee as set by resolution of the city council.

Sec. 8.300.260. Procedure for appeal.

Upon receipt of the notice of appeal with the required fee, the city clerk shall set the matter for hearing at least 14 days, but not more than 28 days in the future. The city

clerk shall thereupon give the appealing party written notice of the time and place of the hearing. If the appealing party deems additional time is necessary to prepare the party's presentation to the city manager or his or her designee, the hearing shall be continued to a later date, not to exceed 30 days beyond the date previously set.

At the time and place set for the hearing upon the appeal from the decision of the license authority, the city manager or his or her designee shall give the appealing party a reasonable opportunity to be heard in order to show cause why the determination of the license authority should not be upheld. In cases where an application has been denied or a final approval withheld the burden of proof to show that the action taken by the license authority's authority shall be upon the appealing party. The determination of the city manager or his or her designee shall be final and conclusive.

Sec. 8.300.270. Additional penalties for violations.

In addition to other penalties provided herein, any person who violates any provision of this chapter is guilty of a misdemeanor as set forth in section 1.150.010 of the San Buenaventura Municipal Code.

Sec. 8.300.280. Nuisance abatement.

Any Massage Establishment operated, conducted, or maintained contrary to the provisions of this chapter shall be, and the same is hereby declared to be unlawful and a public nuisance, and the city attorney may, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings, for the abatement removal and enjoinder thereof, in the manner provided by law.

Sec. 8.300.290. Interpretation.

No provision of this article shall be deemed, whether directly or indirectly, to authorize any act which is otherwise prohibited by any law of the State of California or to require any act which is otherwise prohibited by any law of this State of California. No provision of this article is intended to or shall be interpreted to, either directly or indirectly, prohibit any act or acts which are prohibited by any law of the State of California.

Sec. 8.300.300. Validity; severability.

If any section, subsection, sentence, clause, phrase, provision or portion of this chapter, or the application thereof to any person or circumstances, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or provisions of this chapter or their applicability to distinguishable situations or circumstances. In enacting this chapter, it is the desire of the council to regulate validly to the full measure of its legal authority in the public interest, and to that end, the city council hereby declares that it would have adopted this chapter and each section, subsection, sentence, clause, phrase, provision or portion thereof, irrespective of the

fact that any one or more sections, subsections, sentences, clauses, phrase or portions thereof might be declared invalid or unconstitutional in whole or in part, as applied to any particular situation or circumstances, and to this end the provisions of this chapter are intended to be severable.


Section 2. CEQA Findings. The City Council further finds that the enactment of this ordinance is exempt from review under Section 15061(b)3 of the State CEQA Guidelines because it is an emergency measure and because it can be seen with certainty that it has no possibility of causing a significant effect on the environment.

Section 3. Effective Immediately. This Ordinance must take effect immediately in order to avoid having all existing massage technician permits lapse on July 31, 2009. If these permits were to lapse, existing massage technicians would experience severe economic hardship because they would be unable to continue working in Ventura. Moreover, at the present time, the CMTC is neither legally authorized nor administratively able to issue state massage therapist or massage practitioner certifications, so there is no alternative means for existing massage technicians to continue in practice without the procedures in this Ordinance. Because the Council has determined that there is a current and immediate threat to the public health, safety and welfare, this Ordinance shall be effective immediately upon adoption.

PASSED and ADOPTED this 27 day of July 2009.


Christy Weir, Mayor

ATTEST:


Mabi Covarrubias Plisky
City Clerk

APPROVED AS TO FORM

By:


Ariel Pierre Calonne
City Attorney

STATE OF CALIFORNIA)
COUNTY OF VENTURA) ss
CITY OF SAN BUENAVENTURA)


I, ELAINE M. PRESTON, Deputy City Clerk of the City of San Buenaventura, California, certify that the foregoing Ordinance was passed and adopted by the City Council of the City of San Buenaventura, at a regular meeting on July 27, 2009, by the following vote:

AYES: Councilmembers Brennan, Summers, Morehouse, Andrews, Monahan, Deputy Mayor Fulton, and Mayor Weir.

NOES: None.

ABSENT: None.

IN WITNESS WHEREOF, I have set my hand and affixed the seal of the City of San Buenaventura on July 28, 2009.


Deputy City Clerk

