Ordinance #09-05

AN ORDINANCE OF THE ALBANY CITY COUNCIL AMENDING SECTION 5-13, MASSAGE ESTABLISHMENTS, MASSAGE TECHNICIANS AND MASSAGE SERVICES, OF THE ALBANY MUNICIPAL CODE

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

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

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

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

NOW, THEREFORE, THE ALBANY CITY COUNCIL ORDAINS THAT CHAPTER 5-13 IS HEREBY REPEALED IN ITS ENTIRETY AND IS AMENDED TO READ AS FOLLOWS:

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

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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.
Massage shall mean the treatment of the human body by soft tissue manipulation using a variety of manipulative techniques, which may include any method of pressure on, friction against, stroking, kneading, rubbing, tapping, pounding, vibrating, 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 other similar preparations. This may include body/mind/spirit integration, personal growth, physical or emotional relaxation and the relief of somatic pain or dysfunction. Massage includes acupressure, bodywork and somatic therapies.

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

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

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

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

Recognized school shall mean any school or institution of learning which school or institution of learning has been approved pursuant to Section 29007.5 of the State Education 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.
5-13.3 Permit Requirement.

a. Massage Establishment Permit: Except as otherwise provided in Section 5-13.4 of this Chapter, it shall be unlawful for any person to engage in, conduct or carry on, or permit to be engaged in, conducted or carried on, in or upon any premises within the City, the operation of a massage establishment without first having obtained a massage establishment permit issued by the Police Chief pursuant to this Chapter. A separate permit shall be obtained for each separate 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.

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

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

5-13.4 Permit Exemptions.

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

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

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

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

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

e. Trainers of amateur, semiprofessional or professional athletes or athletic teams while 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.

f. Massage therapists, bodyworkers, bodywork therapists or massage and bodywork therapists if the State enacts legislation providing for the certification of such persons by a State agency, provided that such persons have obtained such certification and provided that the City is preempted from regulating such persons.
5-13.5 Business License Investigation for Massage Establishment Required; Application.

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

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

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

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

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

3. Individual or partnership applicant's height, weight, color of eyes and hair and 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.
7. All criminal convictions other than for misdemeanor traffic violations, and the reasons therefore.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5-13.7 Appeal.

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

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

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

5-13.8 Duration and Renewal.

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

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

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

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

5-13.9 Suspension and Revocation of Permits.

a. The Police Chief may revoke or suspend any permit granted under this Chapter if 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 material fact in any application for a permit or in any supplementary material;
5. An activity authorized in the permit has been conducted in an unlawful manner or in such a manner as to constitute a menace to the health, safety, or general welfare of the public;

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

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

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

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

5-13.10 Appeal of Revocation or Suspension.

No later than fifteen (15) calendar days after service of notice of revocation, suspension, denial of application, or renewal, the permittee may appeal to the City Administrator by the procedure for appeal as set forth in Section 5-13.7(b) of this Chapter. The hearing and notice of 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.
a. No permittee shall operate under any name or conduct any massage establishment under any designation or location not specified in the permit.

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

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

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

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

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

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

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

5-13.15 Hearing; Issuance or Denial of Permit.

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

5-13.16 Facilities and Operation Requirements.
Every massage establishment and every massage technician shall comply with standards established by the Alameda County Health Services for such businesses and practitioners and the following facilities and operations requirements:

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

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

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

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

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

f. All equipment used in the massage operation shall be maintained in a clean and sanitary condition. Instruments utilized in performing massage shall not be used on more than 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
establishment’s premises in such a manner that is readily visible by persons entering the establishment. A written list of massage services available and the cost of such services shall also be provided to each patron of an off-premises massage service prior to any massage service being provided. No massage services other than those set forth on the foregoing lists shall be provided. The lists of services and costs shall be written in English in readily understandable language.

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

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

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

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

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

p. Massage services shall not be made available to patrons at hot tub, sauna or tanning establishments unless the establishment holds a valid massage establishment permit. Hot 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,
steam or vapor rooms, cabinets, or bathrooms. All employees of the hot tub, sauna, or tanning establishment who practice massage at the establishment must hold a valid massage therapist permit.

5-13.17 Prohibited Conduct.

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

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

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

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

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

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

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

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

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

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

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

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

5-13.20 Massage Technician Business License Required; Application.

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

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

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

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

5-13.22 Issuance or Denial of Business License.

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

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

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

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

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

Otherwise, the business license shall be denied.

5-13.23 Massage Technician Trainee Business License.

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

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

The massage trainee business license shall expire ninety (90) days from the date issued and is not renewable, except in the case of sickness or accident for which reason the education 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.

5-13.24 Existing Operators.
All persons engaged in doing massage in the City at the time these regulations become effective who cannot qualify for a massage technician business license shall have a period of thirty (30) days within which to qualify as a massage technician trainee and obtain a massage technician trainee business license by making application therefor and paying the business license investigation fee, and submitting information required under the provisions of subsection 5-13.14 hereof.

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

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

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

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

5-13.26 Cumulative Remedies.

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

5-13.27 Penalty for Violations.

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
b. Notify the City Treasurer.

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
STATE OF CALIFORNIA )
COUNTY OF ALAMEDA ) ss
CITY OF ALBANY )

I, JACQUELINE L. BUCHOLZ, City Clerk of the City of Albany, California, do hereby certify that the whole number of members of the City Council of said City of Albany is five and that the foregoing is a true and correct copy of Ordinance No. 09-05 which was passed and adopted by the said City Council, approved and signed by the Mayor of said City, and attested by the City Clerk of said City, all at a regular meeting of the said Council on the 6th day of April 2009 A.D., and that the same was so passed and adopted by the following votes and duly published or posted according to State law.

AYES: Council Members Javandel, Lieber, Thomsen, Wile & Mayor Atkinson

NOES: None

ABSENT: None

In witness whereof, I have hereunto set my hand and affixed the official seal of the City of Albany, this 7th day of April, 2009.

JACQUELINE L. BUCHOLZ, CMC
CITY CLERK

The City of Albany is dedicated to maintaining its small town ambience, responding to the needs of the community, and providing a safe, healthy environment now and in the future.