

ORDINANCE OF THE CITY OF CHULA VISTA AMENDING SECTION 5.36.135 OF THE CHULA VISTA MUNICIPAL CODE TO AUTHORIZE THE COLLECTION OF MASSAGE AND HOLISTIC HEALTH ESTABLISHMENT LICENSE ANNUAL RENEWAL FEES AND AMENDING SECTION 5.36.190 TO REQUIRE PAYMENT OF NEW APPLICATION FEES FOLLOWING CHANGE OF LOCATION OF A MASSAGE ESTABLISHMENT

WHEREAS, the City of Chula Vista Municipal Code Section 5.36.220 relating to Massage Parlors requires an inspection of each business four times per year; and,

WHEREAS, the cost associated with these required inspections is fully burdened by the City of Chula Vista; and,

WHEREAS, there is currently no renewal requirement for massage or holistic health establishments; and,

WHEREAS, the existing Municipal Code Section 5.36.190 only requires a transfer fee when a massage establishment changes location; and,

WHEREAS, the change of location of a massage establishment requires the same amount of staff time to process as a new applicant.

NOW THEREFORE the City Council of the City of Chula Vista does hereby ordain as follows:

Section I.

Chula Vista Municipal Code Chapter 5.36 is hereby amended to read as shown in attachment A.

Section II. Severability

If any portion of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or circumstance. The City Council of the City of Chula Vista hereby declares that it would have adopted each section, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.

Section III. Construction

The City Council of the City of Chula Vista intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

Section IV. Effective Date

This Ordinance shall take effect and be in force on the thirtieth day after its final passage.

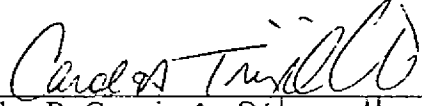
Section V. Publication

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

Presented By:

Approved as to form by:

David Bejarano
Chief of Police



Glen R. Googins for Chance Hawkins
City Attorney

Chapter 5.36

MESSAGE PARLORS AND HOLISTIC HEALTH PRACTITIONER BUSINESSES*

Sections:

- 5.36.010 Title for citation.
- 5.36.020 Purpose and intent of provisions.
- 5.36.030 Definitions.
- 5.36.035 *Repealed.*
- 5.36.040 Rules of construction of provisions – Liability – Scope – Compliance required.
- 5.36.050 License – Required.
- 5.36.060 Technician – Permit – Required.
- 5.36.070 Exceptions to applicability.
- 5.36.075 Massage and holistic health establishment permit and posting requirements – Name tags.
- 5.36.080 Massage and holistic health establishment hours and services.
- 5.36.085 Massage and holistic health establishments patron’s specified anatomical areas covered – No touching.
- 5.36.090 Plumbing and electrical requirements for massage and holistic health establishments.
- 5.36.095 Permit and posting requirements for off-premises massage and holistic health business – Name tags.
- 5.36.100 Equipment and cleanliness requirements for off-premises massage and holistic health.
- 5.36.105 Off-premises massage and holistic health appointment requirements.
- 5.36.110 Massage technician and holistic health practitioner operating requirements.
- 5.36.115 Massage establishment, holistic health establishment, massage therapist, holistic health practitioner, off-premises massage business, holistic health business advertising requirements.
- 5.36.120 Corporate officers and partners deemed applicants.
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- 5.36.210 Records of treatment to be kept – Confidentiality required – Disclosure deemed misdemeanor – Penalty.
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- 5.36.235 Applicability of provisions.
- 5.36.240 License or permit – Grounds for suspension or revocation.
- 5.36.245 License or permit – Suspension, revocation or denial – Public hearing.
- 5.36.250 *Repealed.*
- 5.36.260 *Repealed.*
- 5.36.270 *Repealed.*
- 5.36.280 Hearing – Decision of determination.
- 5.36.290 –
- 5.36.320 *Repealed.*
- 5.36.325 Unlawful operation declared nuisance.
- 5.36.330 Violation – Penalty.
- 5.36.340 Operative date – Grandfather clause.

* For statutory authority for cities to license businesses for purposes of revenue and regulation, see Gov. Code § 37101.

5.36.010 Title for citation.

This chapter may be cited as the “Chula Vista massage and holistic health practitioner establishment ordinance.” (Ord. 3025 § 1, 2005; Ord. 1312 § 2, 1970; prior code § 9.30).

5.36.020 Purpose and intent of provisions.

It is the purpose and intent of this chapter to establish appropriate rules and regulations for the conduct of massage and holistic health practitioner businesses within the city, said rules and regulations providing for the proper training and qualifications of massage technicians and holistic health practitioners, the requirements of certain facilities and the physical layout for massage and holistic health practitioner establishments and the manner in which said businesses may be conducted as necessary to protect the public health, safety and general welfare. The massage and holistic health business is declared to be a business subject to police and health regulations in the interests of protecting the patrons of such establishments. (Ord. 3025 § 1, 2005; Ord. 1312 § 2, 1970; prior code § 9.31).

5.36.030 Definitions.

Whenever in this article the following words or phrases are used, they shall mean:

- A. “City” means the city of Chula Vista, a municipal corporation in the state of California;
- B. “Health department” means the department of public health services of the county of San Diego when the city department is enforcing the terms of this chapter;
- C. “License” means the business license to operate a massage establishment required by this code;
- D. “Massage” means any method of pressure on, or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating the external parts of the human body with the hands or other parts of the body, with or without the aid of any mechanical or electrical apparatus or appliances, or with or without supplementary aids such as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments or other similar preparations commonly used in this practice;
- E. “Massage establishment” means an establishment having a fixed place of business where any person engages in, conducts, carries on or permits to be engaged in, conducted or carried on any business where massages, as defined in this chapter, or other similar procedures are given or administered;
- F. “Massage technician” or “technician” means any person, male or female, who gives or administers to another person, for any form of consideration, a “massage” or bath as those words are defined in this chapter;
- G. “Permit” means the permit to engage in the activities of a massage technician required by this chapter;
- H. “Person” means a natural person, firm, co-partnership, association or corporation;
- I. “Holistic health practitioner” means a nonmedical health care therapist who uses any method of pressure on, or friction against, or stroking, kneading, rubbing, tapping,

pounding, vibrating, or stimulating the external parts of the human body with the hands or other parts of the body, with or without the aid of any mechanical or electrical apparatus or appliances, rubbing alcohol, liniments, antiseptics, oils, powders, creams, lotions, ointments or other similar substances; and who claims exemption from police regulation as a massage therapist pursuant to this chapter and who presents to the police chief proof of satisfactory completion of 1,000 hours of instruction in such specialty or therapeutic approach at a school with a state-approved curriculum and proof of membership in a state or nationally chartered organization devoted to the specialty or therapeutic approach. The practice of such health care therapists, in addition to massage therapy, must include nutritional assistance, exercise programs and counseling that is directed toward health care;

J. "Holistic health practitioner business" means any business that is owned and operated by one or more holistic health practitioners and that hires or contracts with other holistic health practitioners or massage therapists for the purpose of nonmedical care;

K. "NCBTMB" means the National Certification Board for Therapeutic Massage and Bodywork;

L. "NCCAOM" means the National Certification Commission of Acupuncture and Oriental Medicine;

M. "Off-premises massage therapist" means any person who provides massage services by appointment at a location other than premises licensed as a massage establishment. It includes massage therapists who provide off-premises massage services and who are self-employed and/or who contract with or work for a business other than a massage establishment;

N. "State-approved school" means any school or institution within the United States, which is approved by the state in which it resides, for the teaching of massage;

O. "Specified anatomical areas" shall mean pubic region, human genitals, perineum, anus and the areola and nipple of the female breast. (Ord. 3025 § 1, 2005; Ord. 2408 § 1, 1990; Ord. 2307 § 1, 1989; Ord. 2256 § 2, 1988; Ord. 1312 § 2, 1970; prior code § 9.33).

5.36.035 Holistic health practitioner – Refundable fee.

Repealed by Ord. 3025 § 1, 2005. (Ord. 2547 § 2, 1993).

5.36.040 Rules of construction of provisions – Liability – Scope – Compliance required.

This chapter shall be construed liberally in order to effectuate its purposes. Unless otherwise specifically prescribed in this chapter, the following provisions shall govern its interpretation and construction:

A. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number.

B. Time is of the essence in this chapter. No license or permit holder shall be relieved of his obligation to comply promptly with any provision of this chapter by any failure of the city to enforce prompt compliance with any of its provisions.

C. Any right or power conferred or duty imposed upon any officer, employee, department or board of city is subject to transfer by operation of law to any other officer, employee, department or board of city.

D. No license or permit holder shall have any recourse whatsoever against the city for any loss, cost, expense or damage arising out of any provision or requirement of this chapter or the enforcement thereof.

E. This chapter does not relieve any license or permit holder or of any requirement of the city Charter or of any ordinance, rule, regulation or specification of the city.

F. No license or permit holder possessing such a license or permit as of the effective date of this chapter shall be relieved of his obligation to comply fully with the provisions of this chapter within the reasonable time established herein. (Ord. 3025 § 1, 2005; Ord. 1312 § 2, 1970; prior code § 9.32).

5.36.050 License – Required.

It is unlawful for any person to engage in, conduct, carry on or permit to be engaged in, conducted or carried on in or upon any premises within the city a massage establishment or holistic health practitioner business without the license required by this chapter. Any person desiring to engage in off-premises massage must obtain an off-premises massage business permit. (Ord. 3025 § 1, 2005; Ord. 1312 § 2, 1970; prior code § 9.34).

5.36.060 Technician – Permit – Required.

It is unlawful for any person to act as a massage technician or holistic health practitioner without the permit required by this chapter. (Ord. 3025 § 1, 2005; Ord. 1312 § 2, 1970; prior code § 9.35).

5.36.070 Exceptions to applicability.

The requirements of CVMC 5.36.050 et seq. shall have no application and no effect upon and shall not be construed as applying to any persons designated as follows: Physician, surgeon, chiropractor, osteopath, acupuncturist, aesthetician, barber, cosmetologist, exercise physiologist, manicurist, occupational therapist, physical therapist, hair stylist, or any registered or licensed vocational nurse working under the supervision of a physician, surgeon, chiropractor, or osteopath duly licensed to practice their respective professions in the state, nor shall the requirements of CVMC 5.36.050 et seq. apply to any treatment administered in good faith in the course of the practice of any healing art or profession by any person licensed to practice any such art or profession under the Business and Professions Code of the state or of any other law of this state. All individuals who use a massage specialty and therapeutic approach in caring for clients while under the “control and direction” of the exempted classes of individuals as listed above, must have a valid massage technician or holistic health practitioner permit and comply with the requirements of this chapter. Practical nurses or other persons without qualifications as massage technicians, holistic health practitioners, or other persons not otherwise licensed by the state to practice pursuant to the Medical Practice Act, whether employed by physicians, surgeons, chiropractors or osteopaths or not, may not give massages or massage procedures.

For the purpose of this section any individual using massage specialty and therapeutic approach in caring for clients is considered under the “control and direction” of an exempt class individual only when a member of that exempt class is physically present on the establishment premises where the massage is being administered. (Ord. 3025 § 1, 2005; Ord. 2307 § 2, 1989; Ord. 1312 § 2, 1970; prior code § 9.36).

5.36.075 Massage and holistic health establishment permit and posting requirements – Name tags.

A. The massage or holistic health establishment business permit, public health permit, and a copy of the permit of each massage therapist and holistic health practitioner working in the establishment shall be displayed in an open and conspicuous public place on the premises.

B. Each massage therapist and holistic health practitioner must wear a name tag on their outermost garment when working in the establishment. The name tag must contain the therapist or practitioner’s name as it appears on the police permit.

C. It is unlawful for any massage or holistic health establishment to employ or permit any person to act as a massage therapist or holistic health practitioner who does not possess a valid massage therapist or holistic health practitioner permit. (Ord. 3025 § 1, 2005).

5.36.080 Massage and holistic health establishment hours and services.

A. It is unlawful for any responsible person to allow the establishment to be open between the hours of 10:00 p.m. and 6:00 a.m. All customers, patrons and visitors must be excluded from the premises during those hours.

B. 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 language. No services other than those posted are allowed. (Ord. 3025 § 1, 2005).

5.36.085 Massage and holistic health establishments patron’s specified anatomical areas covered – No touching.

A. 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 the covering has been laundered after each use. In addition, no responsible person shall permit a massage to be given unless the patron is covered by the covering provided by the establishment.

B. No responsible person shall permit any person in any area within the massage establishment, which is used by the patrons or which can be viewed by patrons from such an area, unless the person’s specified anatomical areas are fully covered. This subsection does not apply to momentary nudity, occurring in bathrooms, shower areas, or dressing or locker rooms.

C. No permittee shall give a massage in any room with a patron unless the patron’s specified anatomical areas are fully covered with an opaque covering.

D. No responsible person shall permit any person to massage, or intentionally touch the specified anatomical areas of another person.

E. No permittee shall massage or intentionally touch the specified anatomical areas of another person.

F. The responsible person and permittee shall ensure that patrons are advised of this section prior to treatment. The advisal may be:

1. Posted as a documents in the room where the massage is conducted, or
2. Contained in patron intake documents, or
3. Posted in any manner approved by the chief of police. The advisal may paraphrase the language of this section so long as such language is approved by the chief of police. Language quoting these sections need not be pre-approved by the chief of police. (Ord. 3025 § 1, 2005).

5.36.090 Plumbing and electrical requirements for massage and holistic health establishments.

All plumbing and electrical installations in massage and holistic health establishments must be installed under permit and inspection by the building inspection department and such installations shall be installed in accordance with the Uniform Building Code and the Uniform Plumbing Code as adopted by this code. (Ord. 3025 § 1, 2005).

5.36.095 Permit and posting requirements for off-premises massage and holistic health business – Name tags.

- A. It is unlawful for any person to engage in off-premises massage or holistic health services who is not in possession of a valid off-premises massage or holistic health business permit.
- B. The off-premises massage and holistic health business permit must be displayed in an open and conspicuous place on the licensed business premises.
- C. Each permittee must wear a name tag on their outermost garment when providing off-premises massage or holistic health services. The name tag must contain the therapist or practitioner's name as it appears on the police permit. (Ord. 3025 § 1, 2005).

5.36.100 Equipment and cleanliness requirements for off-premises massage and holistic health.

Each permittee 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 the covering has been laundered after each use. In addition, no permittee shall give a massage unless the patron is covered by the covering provided by the permittee. (Ord. 3025 § 1, 2005).

5.36.105 Off-premises massage and holistic health appointment requirements.

- A. Any massage conducted in a place not open to public view must be by appointment only.
- B. An off-premises massage technician or holistic health practitioner may perform massage without appointment if the massage is conducted in a public place open to view of the public such as in an airport, shopping center kiosk, or salon, or at events such as marathons and street fairs. (Ord. 3025 § 1, 2005).

5.36.110 Massage technician and holistic health practitioner operating requirements.

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

B. No responsible person shall permit and no massage technician or holistic health practitioner shall be on the premises of a massage or holistic health establishment during its hours of operation while performing or available to perform any task or service associated with the operation of a massage business, unless the massage technician is fully covered from a point not to exceed four inches above the center of the kneecap to the base of the neck, excluding the arms, with the following exceptions: shorts may be worn so long as they extend down the leg a minimum of three inches from the crotch and the body above that point is fully covered to the base of the neck, excluding the arms. The covering, which includes trousers, pants or shorts, will be of opaque material and will be maintained in a clean and sanitary condition.

C. No massage technician or holistic health practitioner, while performing any task or service associated with the business of massage, shall massage or intentionally touch the specified anatomical areas of another person.

D. Each massage technician or holistic health practitioner must wear a name tag when working as a massage technician or holistic health practitioner. The name tag must contain the technician or practitioner's name as it appears on the police permit.

E. It is unlawful for any massage technician or holistic health practitioner to use towels, linens or instruments during the massage that are not in a clean or in a safe condition.

F. It is unlawful for any massage technician or holistic health practitioner to provide massage services between 10:00 p.m. and 6:00 a.m..

G. The permittee shall ensure that patrons are advised of CVMC 5.36.080, prior to treatment. The advisal may be (1) posted as a document in the room where the massage is conducted, or (2) contained in patron intake documents, or (3) posted in any other manner approved by the chief of police. The advisal may paraphrase the language of CVMC 5.36.080, so long as such language is approved by the chief of police. Language quoting these sections need not be pre-approved by the chief of police.

H. Any off-premises massage or holistic health business permittee who hires, dispatches or contracts with other off-premises massage technicians or holistic health practitioners to do off-premises massage is responsible for ensuring that those technicians or practitioners comply with all applicable regulations in this section. The permittee must also make reasonable efforts to prevent criminal activity by the other technicians or practitioners. In addition to all other grounds, prostitution by such technicians or practitioners is grounds for revoking the permit.

I. The sale or serving of food or beverage or the conducting of nonmassage business or nonholistic health business is prohibited. (Ord. 3025 § 1, 2005; Ord. 2307 § 3, 1989. Formerly 5.36.075).

5.36.115 Massage establishment, holistic health establishment, massage therapist, holistic health practitioner, off-premises massage business, holistic health business advertising requirements.

A. Each technician, practitioner, establishment, or business licensed under this section shall include the number of their police permit in any advertisement of services appearing in any newspaper, telephone directory, printed advertising medium, or electronic media. The reference does not have to contain the words “police permit.” “City of Chula Vista permit number 1111,” or similar language, will suffice so long as the correct police permit number is included.

B. Advertising hours other than those allowed in this section is grounds for regulatory action against the permittee. This subsection is regulatory only.

C. In addition to any criminal penalty, a violation of Business and Professions Code Section 17500 (false or misleading statements) is grounds for regulatory action against the permittee. (Ord. 3025 § 1, 2005).

5.36.120 Corporate officers and partners deemed applicants.

Each corporate officer or partner of a massage or holistic health establishment is deemed an applicant for a massage or holistic health permit and each must provide the information required in CVMC 5.36.150. (Ord. 3025 § 1, 2005).

5.36.125 Designation of responsible managing officer – Signature on applications.

An applicant that is a corporation or partnership shall designate one of its officers or general partners to act as its responsible managing officer. The responsible managing officer may complete and sign all applications on behalf of the corporate officers and partners. (Ord. 3025 § 1, 2005).

5.36.130 County health department inspection and investigation required before issuing massage or holistic health establishment permit.

A. In addition to the requirements of CVMC 5.36.150, any persons desiring to operate a massage or holistic health establishment shall make an application to the County of San Diego, Department of Health Services, for a health permit. An annual nonrefundable fee, the exact amount of which shall be determined and kept on record by the County Department of Health Services, shall accompany the submission of each application to the Department of Health Services to defray the cost of investigation, inspection, and enforcement of the health aspects of this section.

B. Any massage or holistic health establishment permittee failing to renew a health permit within 30 days after its expiration shall be assessed a 10 percent penalty for each month of failure to renew. This penalty shall be added to the cost of the renewal of the health permit fee. The entire sum shall be paid to the Department of Health Services. In no case shall the penalty exceed 60 percent of the renewal fee. The penalty imposed by this section, whether or not the penalty is paid, shall not prevent imposition of any other penalties prescribed by this chapter or prevent prosecution for violation of this chapter. (Ord. 3025 § 1, 2005).

5.36.135 License – Application – Investigation fee required.

Any person desiring to obtain a license to operate a massage or holistic health establishment shall make an application to the city manager. A nonrefundable required fee(s), or the required renewal fee(s), to cover the cost of an investigation, shall accompany the submission of each application. ~~The fee required by this section shall not be required for an application to renew a license granted pursuant to this chapter; provided however, any establishment licensed prior to the effective date of this chapter which was not subject to investigation and report by the chief of police shall be required to pay said fee and said investigation shall be undertaken at the time a license renewal is requested.~~ Such licenses, when issued, shall expire one year from the date of issuance and may be renewed only by filing a written request for renewal, accompanied by the annual license fee and a copy of the license to be renewed. Said application fee shall be in addition to any license, permit or fee required under any provisions of this code. (Ord. 3025 § 1, 2005; Ord 2506 § 1 (part), 1992; Ord 2408 § 1 (part), 1990; Ord 1312 § 2 (part), 1970; prior code § 9.37. Formerly 5.36.080).

5.36.140 License tax required – Rate.

Every person operating a massage or holistic health establishment shall pay a license tax in an amount as presently designated, or as may in the future be amended, in the master tax schedule, CVMC 5.07.030. (Ord. 3025 § 1, 2005; Ord. 2408 § 1, 1990. Formerly 5.36.081).

5.36.145 Technician – Permit – Application – Investigation fee.

Any person desiring to obtain a permit to act as a massage technician or holistic health practitioner shall make an application to the city manager. A nonrefundable required fee(s), shall accompany the submission of each application to cover the costs of the investigation. A permit to act as a massage technician or holistic health practitioner does not authorize the operation of a massage or holistic health establishment. Any person obtaining a permit to act as a massage technician or holistic health practitioner who desires to operate a massage establishment must separately apply for a license therefor. A person who applies for a license to operate a massage or holistic health establishment and who desires to act as a massage technician or holistic health practitioner within said massage or holistic health establishment who pays the fees and taxes required by CVMC 5.36.135 and 5.36.140 shall not be required to pay the fee required by this section. (Ord. 3025 § 1, 2005; Ord. 2506 § 1, 1992; Ord. 2408 § 1, 1990; Ord. 1312 § 2, 1970; prior code § 9.38. Formerly 5.36.090).

5.36.150 License or permit – Application – Contents required.

Any applicant for a license or permit under this chapter shall submit the following information:

- A. The full name and any other names ever used by the applicant;
- B. The current residential address and telephone number of the applicant. The previous addresses of applicant, if any, for a period of five years immediately prior to the date of the application and the dates of residence at each;

- C. The address of the proposed massage establishment or holistic health practitioner business;
- D. Written proof that the applicant is over the age of 21 years;
- E. Applicant's height, weight, color of eyes and hair;
- F. Two passport photographs at least two inches by two inches, taken within the last six months;
- G. Business, occupation or employment history of the applicant for the five years immediately preceding the date of the application;
- H. The business license or permit history of the applicant. Whether such person, in previously operating in this or another city or state under license or permit, has had such license or permit suspended or revoked, the reason therefor, and the business activity or occupation subsequent to such suspension or revocation;
- I. All arrests and/or convictions and/or nolo contendere (no contest) and guilty pleas except for minor traffic infractions. Charges dismissed pursuant to Penal Code 1203.4(a) must be included. Dates of arrest and/or conviction and/or plea and the court must also be included.
- J. A certificate from a medical doctor licensed to practice in the state of California stating that the applicant has, within 30 days immediately preceding the date of the application, been examined and found to be free of any contagious or communicable disease;
- K. Applicant shall be required to furnish his fingerprints;
- L. Applicant must furnish a diploma or certificate of graduation from a recognized school or other institution of learning wherein the method, profession and work of massage technician is taught. The terms "recognized school" or "other institutions of learning" shall mean and include any school or institution of learning which has for its purpose the teaching of the theory, method, profession or work of massage technicians; which school requires a resident course of study of not less than 500 hours (massage technician) or 1,000 hours (holistic health practitioner). Schools offering correspondence courses not requiring actual attendance of class shall not be deemed a "recognized school." The city has the right to confirm the fact that the applicant has actually attended classes in a recognized school for the aforementioned minimum time periods. Proof of successful completion of a national certification exam administered by a national professional certification organization approved by the chief of police. The exams administered by the NCBTMB and NCCAOM are approved by the chief of police;
- M. Such other identification and information as may be required in order to discover the truth of the matters hereinabove specified as required to be set forth in the application. If necessary, the Chula Vista police department may take the fingerprints and additional photographs and confirm the height and weight of the applicant;
- N. If the applicant is a corporation, the name of the corporation exactly as shown in its Articles of Incorporation or Charter, together with the state and date of incorporation and names and residential addresses of each of its current officers and directors, and of each stockholder holding more than five percent of the stock of the corporation;

O. If the applicant is a partnership, the name and residential addresses of each of the partners, including limited to partners;

P. If the applicant is limited partnership, a copy of the limited partnership's certificate of limited partnership as filed with the County Clerk;

Q. If one or more of the limited partners is a corporation, the applicant shall provide the information about that partner;

R. If the applicant is a corporation or partnership, the name of the responsible managing officer. (Ord. 3025 § 1, 2005; Ord. 1312 § 2, 1970; prior code § 9.39. Formerly 5.36.100).

5.36.155 Grounds for denial of massage establishment permit, holistic health establishment permit, off-premises business permit, massage therapist permit, holistic health practitioner permit.

In addition to the grounds for denial stated in CVMC 5.02.200, an application for a massage establishment permit, holistic health establishment permit, off-premises business permit, massage therapist permit or holistic health practitioner permit shall be denied for any of the following reasons:

A. The applicant has within 10 years immediately preceding the date of the filing of the application, been convicted of any of the following offenses:

1. Any offense described in California Penal Code Sections 266h, 266i, 315, 316, 318, 653.22, or 647(a), 647(b), 647(k)(1), 647(k)(2), or 647(k)(3).

2. Any offense described in California Penal Code, Part One, Title 9, Chapters 7.5 and 7.6; or the applicant has within five years immediately preceding the date of filing of the application been convicted of: a charge of violating any lesser included or lesser related offense, including California Penal Code Section 415, in satisfaction of, or as a substitute for, an original charge of any of the offenses listed above.

3. The applicant has been convicted of any offense, which requires registration as a sex offender under California Penal Code Section 290 or where registration pursuant to Penal Code Section 290 was part of the imposed sentence.

B. Arrests for any of the above violations may also be grounds for denial. (Ord. 3025 § 1, 2005).

5.36.160 Renewal of massage therapist or holistic health practitioner permit.

A. Renewal of a Permit Shall Be Annual. All current massage therapists, holistic health practitioners, off-premises massage technicians and off-premises holistic health practitioners working in the city of Chula Vista, must renew license annually.

B. Additionally, in order to renew a massage technician, holistic health practitioner, off-premises massage or holistic health business permit, the permittee must provide proof of 12 hours of continuing education in massage therapy. The continuing education hours must be obtained from a facility or organization approved by the NCBTMB, NCCAOM, or a state-approved school or any other certification organization recognized by the chief of police.

C. Additionally, the permittee must show proof that the permittee's national certification is current. Proof from NCBTMB, NCCAOM, or any other certification organization recognized by the chief of police, is sufficient. (Ord. 3025 § 1, 2005).

5.36.165 Equipment and cleanliness requirements for massage and holistic health establishments.

- A. Disinfecting agents and sterilizing equipment must be used to ensure that any instruments used in performing any massage are clean and safe.
- B. Pads used on massage tables must be covered in a workmanlike manner with durable, washable plastic or other waterproof material.
- C. Cleanable and nonabsorbent waste containers with tight-fitting covers shall be provided for the storing of all waste matter and shall be maintained in a clean and sanitary condition.
- D. 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.
- E. 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. (Ord. 3025 § 1, 2005).

5.36.170 Facilities – Required generally.

No license to conduct a massage or holistic health establishment shall be granted unless an inspection by the city manager reveals that the proposed establishment complies with each of the following minimum requirements:

- A. A recognizable and legible sign shall be posted at the main entrance identifying the premises as a massage or holistic health establishment;
- B. Minimum lighting shall be provided in accordance with the building code of the city and, in addition, at least one artificial light of not less than 60 watts shall be provided in each room or enclosure where massage services are performed on patrons;
- C. Minimum ventilation shall be provided in accordance with the building code of the city;
- D. Equipment approved by the health department for disinfecting and sterilizing instruments used in performing acts of massage shall be provided;
- E. Hot and cold running water shall be provided at all times;
- F. Closed cabinets shall be provided, which cabinets shall be utilized for the storage of clean linen;
- G. In any establishment in which massage services are rendered only to members of the same sex at any one time, such persons of the same sex may be placed in a single separate room or the operators of the massage establishment may elect to place such persons of the same sex in separate enclosed rooms or booths having adequate ventilation to an area outside said room or booth while massage services are being performed;

H. Adequate bathing, dressing, locker and toilet facilities shall be provided for patrons. A minimum of one tub or shower, one dressing room containing a separate locker for each patron to be served, which locker shall be capable of being locked, and a minimum of one toilet and one wash basin shall be provided by every massage or holistic health establishment; provided however, that if male and female patrons are to be served simultaneously at said establishment, a separate massage room or rooms, separate dressing facilities and separate toilet facilities shall be provided for male and female patrons. Further, in those establishments where steam rooms or sauna baths are provided if male and female patrons are to be served simultaneously, separate steam rooms or sauna rooms shall be provided for male and female patrons;

I. All walls, ceilings, floors, pools, showers, bathtubs, steam rooms, and all other physical facilities for the establishment must be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms, or steam or vapor cabinets, shower compartments and toilet rooms shall be thoroughly cleaned and disinfected with a disinfectant approved by the health department each day the business is in operation. Bathtubs shall be thoroughly cleaned and disinfected with a disinfectant approved by the health department after each use;

J. Clean and sanitary towels and linens shall be provided for each patron of the establishment. No common use of towels or linens shall be permitted;

K. A minimum of one separate wash basin shall be provided in each massage establishment for the use of employees of any such establishment, which basin shall provide soap or detergent and hot and cold running water at all times and shall be located within or as close as practicable to the area devoted to the performing of massage services. In addition, there shall be provided at each wash basin, sanitary towels placed in permanently installed dispensers.

This section shall be construed to require minimum standards only. All applicable provisions of this code have full force and effect. The applicant shall be required to comply with all applicable provisions of this code. (Ord. 3025 § 1, 2005; Ord. 1312 § 2, 1970; prior code § 9.40. Formerly 5.36.110).

5.36.175 License or permit – Issuance prerequisites – Appeal of denial – Transferability.

A. Any applicant for a permit pursuant to these provisions shall present to the police department the application containing the aforementioned and described information. The chief of police shall have a maximum time period of 90 days in which to investigate the application and the background of the applicant. Based on such investigation, the chief of police, or his representative, shall render a recommendation as to the approval or denial of the permit to the city manager or his designee.

B. The department of building and housing, the fire department and the county health officer shall inspect the premises proposed to be devoted to the massage or holistic health establishment and shall make separate recommendations to the city manager or designee concerning compliance with the foregoing provisions.

C. The city manager, or his designee, after receiving the aforementioned and described recommendations, shall grant a permit to the establishment if all requirements for a

massage or holistic health establishment described herein are met, and shall issue a permit to all persons who have applied to perform massage services unless it appears that any such person has deliberately falsified the application or unless it appears that the record of any such person reveals a conviction of a felony or a crime of moral turpitude. The city manager or designee may recommend to the city council that an individual business establishment shall be subject to a public hearing and council approval, when in his judgment any such business establishment has an effect upon the public health, safety or welfare of the community.

D. Any person denied a permit by the city manager or his designee pursuant to these provisions shall be notified pursuant to Chapter 1.40 CVMC regarding an appeal why the permit should be granted. The decision pursuant to Chapter 1.40 CVMC shall be final upon the applicant. Also, the city council may elect on its own motion to review any determination of the city manager granting or denying a permit, in which case, that decision shall then constitute the exhaustion of administrative remedy.

E. All permits issued hereunder are nontransferable; provided however, a change of location of a massage establishment may be permitted pursuant to the provisions herein. (Ord. 3025 § 1, 2005; Ord. 2790, 1999; Ord. 2718 § 1, 1998; Ord. 1312 § 2, 1970; prior code § 9.42. Formerly 5.36.130).

5.36.180 Name of business.

No person licensed to do business as herein provided shall operate under any name or conduct his business under any designation not specified in this permit. (Ord. 3025 § 1, 2005; Ord. 1312 § 2, 1970; prior code § 9.44. Formerly 5.36.150).

5.36.190 Change of location – New application Fee required.

~~A change of location of a licensed massage or holistic health establishment may be approved by the city manager provided all applicable provisions of this code are complied with and a change of location required fee(s) has been paid to city, to cover the costs of investigation shall deem the permit and license null and void. A new application shall be made by any person, firm or entity desiring to operate the massage or holistic health establishment in a different location in the city.~~ (Ord. 3025 § 1, 2005; Ord. 2506 § 1, 1992; Ord. 2408 § 1, 1990; Ord. 1312 § 2, 1970; prior code § 9.45. Formerly 5.36.160).

5.36.200 Sale or transfer of business – Effect – Fee for transfer of interest.

A. Upon the sale or transfer of any interest in a massage or holistic health establishment, the permit and license shall be null and void. A new application shall be made by any person, firm or entity desiring to own or operate the massage or holistic health establishment. The required fee(s) shall be payable for each such application involving sale or other transfer of any interest in an existing massage or holistic health establishment. The provisions of CVMC 5.36.150 shall apply to any person, firm or entity applying for a massage or holistic health establishment permit for premises previously used as such establishment.

B. Any such sale or transfer of any interests in an existing massage or holistic health establishment or any application for an extension of the building or other place of

business of the massage or holistic health establishment, shall require inspection and shall require compliance with CVMC 5.36.170. (Ord. 3025 § 1, 2005; Ord. 2506 § 1, 1992; Ord. 2408 § 1, 1990; Ord. 1312 § 2, 1970; prior code § 9.46. Formerly 5.36.170).

5.36.205 Employment of persons not possessing permits prohibited.

It is unlawful for the holder of a license to operate a massage or holistic health establishment to employ or otherwise allow a person who has not obtained a valid massage technician's or holistic health practitioner's permit to practice acts of massage. (Ord. 3025 § 1, 2005; Ord. 1312 § 2, 1970; prior code § 9.47. Formerly 5.36.180).

5.36.210 Records of treatment to be kept – Confidentiality required – Disclosure deemed misdemeanor – Penalty.

Every person, association, firm or corporation operating a massage or holistic health establishment under a license as herein provided shall keep a record of the date and hour of each treatment, the name and address of the patron, and the name of the technician administering such treatment. Said record shall be open to inspection by officials charged with the enforcement of these provisions for the purposes of law enforcement and for no other purpose. The information furnished or secured as a result of any such inspection shall be confidential. Any unauthorized disclosure or use of such information by any officer or employee of the city shall constitute a misdemeanor and such officer or employee shall be subject to the penalty provisions of this code, in addition to any other penalties provided by law. Identical records shall be kept of treatments rendered off the business site, and, in addition, shall describe the address where the treatment was rendered. Said records shall be maintained for a period of two years. (Ord. 3025 § 1, 2005; Ord. 1312 § 2, 1970; prior code § 9.48. Formerly 5.36.190).

5.36.220 Inspection required four times per year.

The departments of building inspection, housing, fire, health, and police shall, from time to time and at least four times each year, make an inspection of each massage establishment in the city for the purpose of determining that the provisions of this code are met. (Ord. 3025 § 1, 2005; Ord. 1312 § 2, 1970; prior code § 9.49. Formerly 5.36.200).

5.36.230 Off-premises massages – Permitted when.

It is unlawful for any person to engage in, conduct, carry on or permit to be engaged in, conducted or carried on the business of massage in any hotel room, motel room, guest-house or other place of public accommodation.

A. It is unlawful for any persons to engage in, or operate an off-premises massage or holistic health business without an off-premises massage or holistic health business police permit.

B. Any persons possessing an off-premises massage or holistic health business permit is also permitted to operate as a massage therapist or holistic health practitioner.

C. Any person desiring to operate an off-premises massage or holistic health business, but who will not provide massage services may obtain an off-premises massage or holistic health business permit so long as the following conditions are met:

1. The person meets the application requirements for an off-premises massage business permit except for the education requirements.

D. This section shall not be construed to:

1. Prohibit maintaining a licensed massage or holistic health establishment upon the premises of a place of public accommodation; or
2. Prevent the holder of a license or the holder of a permit employed by the holder of a license issued pursuant to this chapter from giving or administering massages within hospitals, convalescent centers, rest homes or the private home of a patron. (Ord. 3025 § 1, 2005; Ord. 1312 § 2, 1970; prior code § 9.50. Formerly 5.36.210).

5.36.235 Applicability of provisions.

The provisions of this chapter shall be applicable to all persons and businesses described herein whether the herein described activities were established before or after January 23, 1971. (Ord. 3025 § 1, 2005; Ord. 1312 § 2, 1970; prior code § 9.51. Formerly 5.36.220).

5.36.240 License or permit – Grounds for suspension or revocation.

In the event that any person holding a license or permit issued pursuant to this chapter violates or causes or permits to be violated any of the provisions of this chapter, or any provision of any other ordinance or law relating to or regulating said business or occupation, or conducts or carries on such business or occupation in an unlawful manner, the city manager, may, in addition to other penalties provided by ordinance, suspend or revoke the license or permit issued pursuant to this chapter. For the purpose of this section, a criminal court conviction shall not be required to support a finding of a violation of any law. (Ord. 3025 § 1, 2005; Ord. 1312 § 2, 1970; prior code § 9.52. Formerly 5.36.230).

5.36.245 License or permit – Suspension, revocation or denial – Public hearing.

Before denying, suspending or revoking a license or permit issued pursuant to this chapter, the city manager shall offer the applicant or permittee a hearing as provided in Chapter 1.40 CVMC. (Ord. 3025 § 1, 2005; Ord. 2718 § 1, 1998; Ord. 1312 § 2, 1970; prior code § 9.53. Formerly 5.36.240).

5.36.250 Hearing – Notice required.

Repealed by Ord. 2718 § 1, 1998. (Ord. 1312 § 2, 1970; prior code § 9.54).

5.36.260 Hearing – Procedure generally.

Repealed by Ord. 2718 § 1, 1998. (Ord. 1312 § 2, 1970; prior code § 9.55).

5.36.270 Hearing – Rules of evidence.

Repealed by Ord. 2718 § 1, 1998. (Ord. 1312 § 2, 1970; prior code § 9.56).

5.36.280 Hearing – Decision of determination.

At the conclusion of the hearing, the city manager shall make an order. Such order can:

- A. Dismiss the charges;
- B. Suspend or revoke the license or permit; or

C. Affix such other conditional and probationary orders as may be proper for the enforcement of this chapter. A copy of the decision specifying findings of fact and the reasons for the decision shall be furnished to the license or permit holder. (Ord. 3025 § 1, 2005; Ord. 1312 § 2, 1970; prior code § 9.57).

5.36.290 Effect of decision stayed when.

Repealed by Ord. 2718 § 1, 1998. (Ord. 1312 § 2, 1970; prior code § 9.58).

5.36.300 Hearing – Not required when – Effect.

Repealed by Ord. 2718 § 1, 1998. (Ord. 1312 § 2, 1970; prior code § 9.59).

5.36.310 Appeal – Petition required.

Repealed by Ord. 2718 § 1, 1998. (Ord. 1312 § 2, 1970; prior code § 9.60).

5.36.320 Appeal – Public hearing – Notice – Effect of decision.

Repealed by Ord. 2718 § 1, 1998. (Ord. 1312 § 2, 1970; prior code § 9.61).

5.36.325 Unlawful operation declared nuisance.

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. 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 abatement, removal or injunction thereof, in the manner provided by law. The city attorney shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as shall abate or remove such massage establishment and restrain and enjoin any person from operating, conducting, or maintaining, a massage establishment contrary to the provisions of this chapter. (Ord. 3025 § 1, 2005).

5.36.330 Violation – Penalty.

A. Every person, except those persons who are specifically exempted by this chapter, whether acting as an individual, owner, employee of the owner, operator or employee of the operator, or whether acting as a mere helper for the owner, employee or operator, or whether acting as a participant or worker in any way, who gives massages or conducts a massage or holistic health establishment or room, or who does or practices any of the other things or acts mentioned in this chapter without first obtaining a permit and paying for a license so to do from the city, or shall violate any provision of this chapter is guilty of a misdemeanor.

B. Any owner, operator, manager, or permittee in charge or in control of a massage or holistic health establishment who knowingly employs a person performing as a massage technician or holistic health practitioner as defined in this chapter who is not in possession of a valid permit, or who allows such an employee to perform, operate or practice within such a place of business, is guilty of a misdemeanor.

C. Any massage or holistic health 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, revoke the business license pursuant to the

procedure set forth in CVMC 5.36.240, commence an action or actions, proceeding or proceedings, for the abatement, removal and injunction thereof, in the manner provided by law; and shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such massage establishments and restrain and enjoin any person from operating, conducting or maintaining a massage or holistic health establishment contrary to the provisions of this chapter. (Ord. 3025 § 1, 2005; Ord. 2256 § 3, 1988; Ord. 1312 § 2, 1970; prior code § 9.62).

5.36.340 Operative date – Grandfather clause.

All persons holding a (1) valid massage technician permit, (2) valid holistic health practitioner permit, or (3) an off-premises massage permit and a (1) current business tax certificate or (2) proof of employment as a massage technician or holistic health practitioner within the city of Chula Vista on November 1, 2005, will have one year from the date of adoption of the ordinance codified in this chapter to meet the requirements contained in CVMC 5.36.150(L). (Ord. 3025 § 1, 2005).