



For Official Use Only

**MASSAGE ESTABLISHMENT
 APPLICATION CHECKLIST**

New Application

Renewal

Massage Establishment License Fees:

- New License Application: **\$300.00** (001.00000.3385)
- Annual License Renewal: **\$150.00** (001.00000.3385)
- Background Check **\$113.00** per owner (001.21110.3778)
- Location Change: **\$300.00** (001.00000.3385)
- Sale or Transfer of Ownership: **\$50.00** plus **\$25.00** for each additional owner/officer (001.00000.3385)

Please mark a check by the box that we have received and reviewed the completed documents

Completed Massage Establishment Application for each Owner/Officer
(Each Partner or Corporate Officers also need to complete an application)

Completed LiveScan Application form if applying as New
(Each Partner or Corporate Officers need Livescan and pay for a Background check) If any owner/officer is State Certified by CAMTC, Livescan fingerprinting is not required nor do we charge for the background check fee.

Copy of California Driver's License (for each owner/officer)

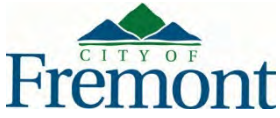
For New Applications a Completed Business Tax Application Approved by Planning & Zoning

Completed Massage Establishment Therapist/Practitioner Listing-with a copy of current certification from the CAMTC as certified massage therapist or as a certified massage practitioner and a copy of the CAMTC-issued identification card for each employee (W-2 or 1099), owner or manager performing massage. For W-2 employees we need a copy of the W-2 or paystub.

Copy of an up to date written lease between the operator and the property owner authorizing use of the premises for a massage establishment, or, alternatively, if there is no written lease, then a current written notarized acknowledgment from the property owner that the property owner has been advised that a massage establishment will be operated by the operator upon, in, or from the property owner's property.

Business Tax #: _____ Expiration date: _____

Received by: _____ Date: _____



Finance Department | Revenue Division
 39550 Liberty Street, P.O. Box 5006, Fremont, CA 94537-5006
 510 494-4790 *phone* | 510 494-4754 *fax*
businessstax@fremont.gov | www.fremont.gov

Application for Massage Establishment License

New Application Renewal

Nonrefundable fee of **\$300.00** on new applications and **\$150.00** on annual renewals.

Business Name: _____

Business Address: _____

Business Phone No.: _____ Business Fax No.: _____

Description of Services Offered: _____

Type of Business:

Sole Owner Partnership Corporation

Name: _____

Nickname/ Alias/ AKA: _____

Residence Address: _____

Daytime Phone No.: _____ Home Phone No.: _____

Driver's License or I.D. No.: _____ SSN: _____

Age: _____ Date of Birth: _____ Sex: _____ Glasses/Contacts: Yes No

Height: _____ Weight: _____ Eyes Color: _____ Hair Color: _____

Have you ever been arrested for any crimes? Yes No
If so, when, where, and for what?

Have you ever been convicted of any crimes? Yes No
List all convictions including dates, charges and locations:

Do you have any cases pending against you in court? Yes No
If so, where and for what?

Name of all partners or corporate officers:

1. _____

Nickname/ Alias/ AKA: _____

Residence Address: _____

Driver's License No.: _____ Phone No.: _____

Social Security No.: _____ Date of Birth: _____

2. _____

Nickname/ Alias/ AKA: _____

Residence Address: _____

Driver's License No.: _____ Phone No.: _____

Social Security No.: _____ Date of Birth: _____

3. _____

Nickname/ Alias/ AKA: _____

Residence Address: _____

Driver's License No.: _____ Phone No.: _____

Social Security No.: _____ Date of Birth: _____

Have you ever been issued any license or permit by any jurisdiction under the provision of any ordinance or statute governing massage practice? Yes No

If so, name of issuing authority: _____

Address: _____

Effective dates of license or permit; from: ___/___/___ to: ___/___/___

Have you ever had any license or permit denied, suspended, revoked, or withdrawn by any jurisdiction under the provision of any ordinance or statute governing massage practice?

If so, please provide copies of any documentary material relating to such denial, suspension, revocation, or withdrawal.

Have any of the partners or officers ever been arrested for any crimes? Yes No

If so, when, where, and for what?

Have any of the partners or officers ever been convicted of any crimes? Yes No

List all convictions including dates, charges and locations:

Do any of the partners or officers have any cases pending against them in court? Yes No

If so, where and for what?

List your last two (2) previous places of residence including dates:

List the name, address and dates of your last three (3) places of employment:

List the name of person(s) who will manage or be principally in charge of the operation of business:

1. _____

Nickname/ Alias/ AKA: _____

Residence Address: _____

Driver's License No.: _____ Phone No.: _____

Social Security No.: _____ Date of Birth: _____

2. _____

Nickname/ Alias/ AKA: _____

Residence Address: _____

Driver's License No.: _____ Phone No.: _____

Social Security No.: _____ Date of Birth: _____

List the name and address of the owner of the real property upon, in, or from which the certified massage establishment is to be operated. *(Provide copy of lease agreement)*

Has the manager ever been arrested for any crimes? Yes No

If so, when, where, and for what?

Has the manager ever been convicted of any crimes? Yes No

List all convictions including dates, charges and locations:

Does the manager have any cases pending against him/her in court? Yes No

If so, where and for what?

I/We certify under penalty of perjury that the statements I/we have made on this application are true and correct. I/We authorize the City of Fremont, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in this application and our qualifications for the license. I/We further understand that any misrepresentations, omissions or falsifications will be grounds for the massage license denial or future revocation.

Signature: _____ Date: _____

Signature: _____ Date: _____

Signature: _____ Date: _____

Massage Establishment Therapist/Practitioner Listing/Manager/Administrator

Therapist/Practitioner Name (First, Last)	Nickname/Alias/ AKA	Residence Address	Telephone Number	Independent Contractor (1099) <small>(Check if applicable)</small>	Employee (W-2) <small>(Check if applicable)</small>	Manager/ Administrator <small>(Check if applicable)</small>	Business Tax Account

Business Owner-please complete this form and provide the original current certification from the CAMTC as certified massage therapist or as a certified massage practitioner and the original CAMTC-issued identification card for each employee (W-2 or 1099), owner or manager performing massage for the City of Fremont to make copies. If manager or administrator is not providing massage services, please provide a copy of State issued Identification such as Driver’s License or Identification card.

Massage Establishment Name: _____ Business Tax #: _____

Submitted by: _____ Date: _____ Contact Number: _____ **Section 5.65.080**

Massage establishment permits. (d) Requirement to Amend Massage Establishment Permit Application. Whenever the information provided in the application for massage establishment permit on file with the city changes, for example by a change in employees, the operator shall, within 10 business days after such change, file an amendment to the massage establishment permit application with the finance director to reflect such change. (Ord. 20-2015 § 1, 10-13-15.)



REQUEST FOR LIVE SCAN SERVICE

Applicant Submission

CA0010500

ORI (Code assigned by DOJ)

MESSAGE ESTABLISHMENT PERMIT

Authorized Applicant Type

MESSAGE ESTABLISHMENT PERMIT

Type of License/Certification/Permit OR Working Title (Maximum 30 characters - if assigned by DOJ, use exact title assigned)

Contributing Agency Information:

Fremont Police Department

Agency Authorized to Receive Criminal Record Information

05565

Mail Code (five-digit code assigned by DOJ)

P.O. Box 5007, 2000 Stevenson Blvd

Street Address or P.O. Box

M. Fontana

Contact Name (mandatory for all school submissions)

Fremont

City

CA

State

94538

ZIP Code

(510) 790-6682

Contact Telephone Number

Applicant Information:

Last Name

First Name

Middle Initial

Suffix

Other Name: (AKA or Alias)

Last Name

First Name

Suffix

Sex

Male

Female

Date of Birth

Driver's License Number

Height

Weight

Eye Color

Hair Color

Billing

Number

(Agency Billing Number)

Place of Birth (State or Country)

Social Security Number

Misc.

Number

(Other Identification Number)

Home

Address Street Address or P.O. Box

City

State

ZIP Code

I have received and read the included Privacy Notice, Privacy Act Statement, and Applicant's Privacy Rights.

Applicant Signature

Date

Your Number:

OCA Number (Agency Identifying Number)

Level of Service:



DOJ



FBI

(If the Level of Service indicates FBI, the fingerprints will be used to check the criminal history record information of the FBI.)

If re-submission, list original ATI number:

(Must provide proof of rejection)

Original ATI Number

Employer (Additional response for agencies specified by statute):

Employer Name

Street Address or P.O. Box

Telephone Number (optional)

City

State

ZIP Code

Mail Code (five digit code assigned by DOJ)

Live Scan Transaction Completed By:

Name of Operator

Date

Transmitting Agency

LSID

ATI Number

Amount Collected/Billed



REQUEST FOR LIVE SCAN SERVICE

Privacy Notice

As Required by Civil Code § 1798.17

Collection and Use of Personal Information. The California Justice Information Services (CJIS) Division in the Department of Justice (DOJ) collects the information requested on this form as authorized by Business and Professions Code sections 4600-4621, 7574-7574.16, 26050-26059, 11340-11346, and 22440-22449; Penal Code sections 11100-11112, and 11077.1; Health and Safety Code sections 1522, 1416.20-1416.50, 1569.10-1569.24, 1596.80-1596.879, 1725-1742, and 18050-18055; Family Code sections 8700-87200, 8800-8823, and 8900-8925; Financial Code sections 1300-1301, 22100-22112, 17200-17215, and 28122-28124; Education Code sections 44330-44355; Welfare and Institutions Code sections 9710-9719.5, 14043-14045, 4684-4689.8, and 16500-16523.1; and other various state statutes and regulations. The CJIS Division uses this information to process requests of authorized entities that want to obtain information as to the existence and content of a record of state or federal convictions to help determine suitability for employment, or volunteer work with children, elderly, or disabled; or for adoption or purposes of a license, certification, or permit. In addition, any personal information collected by state agencies is subject to the limitations in the Information Practices Act and state policy. The DOJ's general privacy policy is available at <http://oag.ca.gov/privacy-policy>.

Providing Personal Information. All the personal information requested in the form must be provided. Failure to provide all the necessary information will result in delays and/or the rejection of your request.

Access to Your Information. You may review the records maintained by the CJIS Division in the DOJ that contain your personal information, as permitted by the Information Practices Act. See below for contact information.

Possible Disclosure of Personal Information. In order to process applications pertaining to Live Scan service to help determine the suitability of a person applying for a license, employment, or a volunteer position working with children, the elderly, or the disabled, we may need to share the information you give us with authorized applicant agencies.

The information you provide may also be disclosed in the following circumstances:

- With other persons or agencies where necessary to perform their legal duties, and their use of your information is compatible and complies with state law, such as for investigations or for licensing, certification, or regulatory purposes.
- To another government agency as required by state or federal law.

Contact Information. For questions about this notice or access to your records, you may contact the Associate Governmental Program Analyst at the DOJ's Keeper of Records at (916) 210-3310, by email at keeperofrecords@doj.ca.gov, or by mail at:

Department of Justice
Bureau of Criminal Information & Analysis
Keeper of Records
P.O. Box 903417
Sacramento, CA 94203-4170



REQUEST FOR LIVE SCAN SERVICE

Privacy Act Statement

Authority. The FBI's acquisition, preservation, and exchange of fingerprints and associated information is generally authorized under 28 U.S.C. 534. Depending on the nature of your application, supplemental authorities include Federal statutes, State statutes pursuant to Pub. L. 92-544, Presidential Executive Orders, and federal regulations. Providing your fingerprints and associated information is voluntary; however, failure to do so may affect completion or approval of your application.

Principal Purpose. Certain determinations, such as employment, licensing, and security clearances, may be predicated on fingerprint-based background checks. Your fingerprints and associated information/biometrics may be provided to the employing, investigating, or otherwise responsible agency, and/or the FBI for the purpose of comparing your fingerprints to other fingerprints in the FBI's Next Generation Identification (NGI) system or its successor systems (including civil, criminal, and latent fingerprint repositories) or other available records of the employing, investigating, or otherwise responsible agency. The FBI may retain your fingerprints and associated information/biometrics in NGI after the completion of this application and, while retained, your fingerprints may continue to be compared against other fingerprints submitted to or retained by NGI.

Routine Uses. During the processing of this application and for as long thereafter as your fingerprints and associated information/biometrics are retained in NGI, your information may be disclosed pursuant to your consent, and may be disclosed without your consent as permitted by the Privacy Act of 1974 and all applicable Routine Uses as may be published at any time in the Federal Register, including the Routine Uses for the NGI system and the FBI's Blanket Routine Uses. Routine uses include, but are not limited to, disclosures to: employing, governmental, or authorized non-governmental agencies responsible for employment, contracting, licensing, security clearances, and other suitability determinations; local, state, tribal, or federal law enforcement agencies; criminal justice agencies; and agencies responsible for national security or public safety.



REQUEST FOR LIVE SCAN SERVICE

Noncriminal Justice Applicant's Privacy Rights

As an applicant who is the subject of a national fingerprint-based criminal history record check for a noncriminal justice purpose (such as an application for employment or a license, an immigration or naturalization matter, security clearance, or adoption), you have certain rights which are discussed below.

- You must be provided written notification¹ that your fingerprints will be used to check the criminal history records of the FBI.
- You must be provided, and acknowledge receipt of, an adequate Privacy Act Statement when you submit your fingerprints and associated personal information. This Privacy Act Statement should explain the authority for collecting your information and how your information will be used, retained, and shared.²
- If you have a criminal history record, the officials making a determination of your suitability for the employment, license, or other benefit must provide you the opportunity to complete or challenge the accuracy of the information in the record.
- The officials must advise you that the procedures for obtaining a change, correction, or update of your criminal history record are set forth at Title 28, Code of Federal Regulations (CFR), Section 16.34.
- If you have a criminal history record, you should be afforded a reasonable amount of time to correct or complete the record (or decline to do so) before the officials deny you the employment, license, or other benefit based on information in the criminal history record.³

You have the right to expect that officials receiving the results of the criminal history record check will use it only for authorized purposes and will not retain or disseminate it in violation of federal statute, regulation or executive order, or rule, procedure or standard established by the National Crime Prevention and Privacy Compact Council.⁴

If agency policy permits, the officials may provide you with a copy of your FBI criminal history record for review and possible challenge. If agency policy does not permit it to provide you a copy of the record, you may obtain a copy of the record by submitting fingerprints and a fee to the FBI. Information regarding this process may be obtained at <https://www.fbi.gov/services/cjis/identity-history-summary-checks>.

If you decide to challenge the accuracy or completeness of your FBI criminal history record, you should send your challenge to the agency that contributed the questioned information to the FBI. Alternatively, you may send your challenge directly to the FBI. The FBI will then forward your challenge to the agency that contributed the questioned information and request the agency to verify or correct the challenged entry. Upon receipt of an official communication from that agency, the FBI will make any necessary changes/corrections to your record in accordance with the information supplied by that agency. (See 28 CFR 16.30 through 16.34.) *You can find additional information on the FBI website at <https://www.fbi.gov/about-us/cjis/background-checks>.*

¹ Written notification includes electronic notification, but excludes oral notification

² <https://www.fbi.gov/services/cjis/compact-council/privacy-act-statement>

³ See 28 CFR 50.12(b)

⁴ See U.S.C. 552a(b); 28 U.S.C. 534(b); 34 U.S.C. § 40316 (formerly cited as 42 U.S.C. § 14616), Article IV(c)

[Your Government](#) [Departments](#) [Our Community](#) [Doing Business](#) [How Do I](#)

Chapter 5.65 MESSAGE ESTABLISHMENTS AND THERAPISTS

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5.65.020 Definitions.

5.65.030 Exemptions.

5.65.040 Business tax certificate required.

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Article III. Massage Establishments

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Article I. General

5.65.010 Purpose and intent.

It is the purpose and intent of this chapter to provide for the orderly regulation of establishments providing massage therapy services, and to prevent and discourage the misuse of massage therapy as a front for prostitution and related activities in violation of state law, all in the interest of the public health, safety, and welfare, by providing certain minimum building, sanitation, and operational standards for such businesses, and by requiring certain minimum qualifications for the operators and therapists of such businesses. It is the further intent of this chapter to streamline local massage therapy permitting procedures, while still facilitating and advancing the ethical practice of massage therapy, by relying upon the uniform statewide regulations enacted by the Legislature in 2008 and 2011 as Cal. Bus. & Prof. Code § [4600](#) et seq., and by restricting the commercial practice of massage in the city to those persons duly certified to practice by the California Massage Therapy Council formed pursuant to those statutes. (Ord. 20-2015 § 1, 10-13-15.)

5.65.020 Definitions.

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

“California Massage Therapy Council (CAMTC)” means the nonprofit organization formed pursuant to Cal. Bus. & Prof. Code Chapter 10.5 commencing with Section [4600](#).

“Certified massage therapist” means any individual certified by the California Massage Therapy Council as a certified massage practitioner pursuant to Cal. Bus. & Prof. Code § [4604.2](#) or as a certified massage therapist pursuant to Cal. Bus. & Prof. Code § [4604](#).

“City permitted massage therapist” means any individual who has practiced massage in the city continuously since at least 2005 (10 years), and has been granted an exemption from the state certification requirement pursuant to Section [5.65.050\(b\)](#).

“Compensation” means the payment, loan, advance, donation, contribution, deposit, exchange, or gift of money or anything of value.

“Finance director” means the finance director or his or her designee charged with the administration of this chapter.

“Inspector” means the person or persons designated by the finance director or the city manager to conduct any inspections required or permitted under this chapter.

“Massage,” “massage therapy,” and/or “bodywork” for purposes of this chapter are used interchangeably and shall mean the skillful application of touch, including, but not limited to, pressure, stroking, kneading, tapping, pounding, stimulating, compression on or movement of the external parts of the human body with the hands or other parts of the body or with the aid of any mechanical or electrical apparatus or other appliances or devices with or without the use of rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment or other similar preparations. Examples of massage include but are not limited to Swedish massage, marma, shiatsu, sports massage, pregnancy massage, neuromuscular therapy, hydrotherapy, polarity therapy, raiki, reiki, rolfing, heller work and reflexology.

“Massage establishment” shall include the term “massage and/or bodywork office or establishment,” and means any business or establishment that offers massage therapy in exchange for compensation at a fixed place of business. Any business or establishment that offers any combination of massage therapy and bath facilities including, but not limited to, showers, baths, wet and dry heat rooms, pools and hot tubs shall be deemed a massage establishment under this chapter.

“Massage establishment owner,” “owner of a massage establishment” or “owner” shall mean and include any of the following persons:

- (1) The sole proprietor of a sole proprietorship operating a massage establishment.
- (2) Any general partner of a general or limited partnership that owns a massage establishment.
- (3) Any person who has an ownership interest in a corporation that owns a massage establishment.
- (4) Any person who is a member of a limited liability company that owns a massage establishment.
- (5) All owners of any other type of business association that owns a massage establishment.

“Operator” or “massage establishment operator” means any and all owners of a massage establishment and their agents.

“Outcall massage service” means the engaging in or carrying on of massage therapy for compensation at a location other than a massage establishment that has been permitted pursuant to this chapter.

“Reception and waiting area” means an area immediately inside the front door of the massage establishment dedicated to the reception and waiting of patrons of the massage establishment and visitors, and which is not a massage therapy room or otherwise used for the provision of massage therapy services.

“Sole proprietorship” for purposes of this chapter shall mean and include any legal form of business organization where the business owner (sometimes referred to as the “sole proprietor”) is the only person employed by that business to provide massage services.

“Visitor” means any individual not retained or employed by the massage establishment and not receiving or waiting to receive massage therapy services, but excluding law enforcement personnel or government officials performing governmental business. (Ord. 20-2015 § 1, 10-13-15.)

5.65.030 Exemptions.

This chapter shall not apply to the following classes of individuals while engaged in the performance of the duties of their respective professions:

- (a) Physicians, surgeons, chiropractors, osteopaths, podiatrists, physical therapists, nurses, or any other person licensed to practice any healing art under the provisions of Cal. Bus. & Prof. Code Division 2 (commencing with Section 500) when engaging in such practice within the scope of his or her license.
- (b) Trainers of any amateur, semiprofessional, or professional athlete or athletic team, so long as such persons do not practice massage therapy as their primary occupation at any location where they provide such services in the city.
- (c) Barbers, estheticians and cosmetologists who are duly licensed under the laws of the state of California, while engaging in practices within the scope of their licenses.
- (d) Individuals in the city temporarily for disaster relief.
- (e) Individuals administering massages or health treatments involving massage to persons participating in road races, track meets, triathlons, educational events, conferences or similar single-occurrence athletic, recreational, or educational events.
- (f) Somatic therapists who use no physical touch of any kind and do not require disrobing at any time in their practice.
- (g) Enrolled students of a school of massage when they are performing massage within the city as part of a formal supervised internship or training program operated by the school, without compensation other than school credit, on the premises of a massage establishment duly authorized to operate pursuant to the terms of this chapter; and provided, that the operator of the

massage establishment has first notified the finance director in writing of the name, residence address, and school of the students and the dates of the trainings. (Ord. 20-2015 § 1, 10-13-15.)

5.65.040 Business tax certificate required.

The requirements of this chapter shall be in addition to any business license and/or business tax requirements imposed pursuant to Chapter [5.05](#) for operation of a massage establishment or massage therapist. (Ord. 20-2015 § 1, 10-13-15.)

Article II. Therapists

5.65.050 Certification by California Massage Therapy Council required for therapists.

(a) Certification. On and after April 11, 2016, it shall be unlawful for any individual to practice massage therapy for compensation within the city unless that individual is a certified massage therapist as defined in Section [5.65.020](#). A certified massage therapist working in the city must:

- (1) Work at a massage establishment permitted by the city; and/or
- (2) Indicate on the registration form that he or she does outcall massage services.

(b) Exemption. A city permitted massage therapist who has lawfully practiced massage in the city continuously since at least 2005 (10 years) is exempt from the state certification requirement in subsection (a) of this section if he or she files a renewal application and pays a nonrefundable fee in the amount established by resolution of the city council for an exemption to the state certification requirement before January 1, 2016. In determining whether to grant the renewal permit, the finance director will:

- (1) Confirm the continuous 10-year history through city massage therapist permits and business tax records;
- (2) Conduct a background check;
- (3) Reconfirm that the educational and training requirements have been met, in conformance with the standards in effect at the time of the person's initial therapist permit;
- (4) Consider whether there have been any past violations of city regulations.

A massage therapist who receives an exemption from the state certification requirement shall obtain a massage therapist permit pursuant to Section [5.65.060](#) and shall comply with the applicable requirements of this chapter. (Ord. 20-2015 § 1, 10-13-15.)

5.65.060 City permitted massage therapist – Renewal application, suspension, revocation.

(a) A city permitted massage therapist who qualifies for an exemption under Section [5.65.050](#)(b) shall file an annual renewal application on the required form provided by the finance director for a city issued massage therapist permit. Failure to annually renew the massage therapist permit shall invalidate the exemption to the state certification requirement for the city permitted massage therapist.

(b) The city permitted massage therapist must include the following information in the renewal application:

- (1) City permitted massage therapist's full name, including any nicknames, aliases, or other names used presently or in the past, and present business and residential addresses and telephone numbers;
- (2) City permitted massage therapist's business and residential addresses for the five years immediately before the application date and the dates that the city permitted massage therapist worked or resided at each address;
- (3) Acceptable documentation that the city permitted massage therapist is at least 18 years of age;

- (4) City permitted massage therapist's physical description including gender, height, weight, color of eyes and hair;
 - (5) City permitted massage therapist's Livescan fingerprint certification and two recent color passport-size photographs of the city permitted massage therapist showing full face view for the purpose of establishing identification and conducting a background check;
 - (6) City permitted massage therapist's current and former driver's license numbers or state identification card for the five years immediately before the application date, if any, including state of issuance and social security number;
 - (7) Certificate from a physician licensed to practice in the state of California stating that the city permitted massage therapist has tested negative for tuberculosis. If the city permitted massage therapist has tested positive, the city permitted massage therapist must submit documentation from a physician licensed to practice in the state of California that the tuberculosis is not in an active state and the city permitted massage therapist is asymptomatic;
 - (8) City permitted massage therapist's occupation for the 10 years immediately before the date of application;
 - (9) The name, address, and letter of employment from the massage establishment that is or will be employing the city permitted massage therapist, if any, and the name of the owner or operator of same;
 - (10) City permitted massage therapist's criminal convictions for offenses other than traffic violations within 10 years before the application date;
 - (11) Any criminal charges pending against the city permitted massage therapist at the time of application, other than traffic citations, the name and location of the court in which the criminal charges are pending and the applicable case numbers;
 - (12) City permitted massage therapist's history of involvement in the massage profession, including the practice of massage, the operation of massage establishments, or similar occupations or businesses, within the last 10 years. The city permitted massage therapist must also identify any license, certificate or permit that was suspended, revoked or surrendered within the 10 years before the date of the application, the dates and reasons for any suspensions, revocations, or surrender and the name and location of the jurisdiction or public agency that suspended or revoked the license, permit or certificate or to which the license, permit or certificate was surrendered;
 - (13) A written statement signed under penalty of perjury by the city permitted massage therapist that the information provided in the application is true and correct;
 - (14) Written authorization for the city of Fremont, its agents and employees to investigate the accuracy and completeness of the information provided in the application and the qualifications of the city permitted massage therapist for the permit;
 - (15) A statement signed in the presence of the finance director or his or her designee that the city permitted massage therapist has read and understood all city of Fremont codes pertaining to massage or provision of massage services;
 - (16) Any additional information required by the finance director for review and approval of the application.
- (c) The finance director may deny the renewal application for a massage therapist permit for any of the following reasons:
- (1) If the city permitted massage therapist made a material misstatement or omission in the application or in a previous application. If the finance director finds substantial evidence that an application contains a knowing or intentional material misstatement or omission, the finance director must deny the application;
 - (2) The city permitted massage therapist violated any provision of this chapter and the permit was previously suspended or revoked for any violation of this chapter;

- (3) The city permitted massage therapist violated any provision of this chapter on more than one occasion; provided, that the city permitted massage therapist received timely notice of each violation;
 - (4) The city permitted massage therapist has been convicted of or pled guilty or no contest to any offense involving the use of force or violence upon another person, pandering, solicitation, or prostitution;
 - (5) The city permitted massage therapist was convicted of, or pled guilty or no contest to, a violation of Cal. Penal Code § [415](#) as a result of an arrest for violation of Cal. Penal Code § [647\(b\)](#);
 - (6) The city permitted massage therapist has owned, managed, or received compensation from a massage establishment or outcall massage business, whether or not located in the city of Fremont, for which advertisements that would violate Section [5.65.120\(f\)](#) were published;
 - (7) The city permitted massage therapist has previously held a massage establishment permit, massage therapist permit or similar permit or license that the city of Fremont, the state, or any other public agency has suspended or revoked or that the permittee surrendered while under investigation or being prosecuted by a government entity in a civil, administrative, or criminal proceeding for a violation of local, state or federal law;
 - (8) The city permitted massage therapist, any business owned or managed by the city permitted massage therapist while the city permitted massage therapist owned or managed the business, the city permitted massage therapist's current employer, or the city permitted massage therapist's former employer during the city permitted massage therapist's employment is or was a named party subject to a permanent injunction against the conducting or maintaining of a nuisance under Cal. Penal Code §§ [11225](#) through [11235](#), or Cal. Health & Safety Code § [11570](#) et seq., or equivalent offenses under the laws of another jurisdiction; or
 - (9) The city permitted massage therapist is or has worked at or operated a massage establishment, whether or not located in the city of Fremont without the required licenses or permits.
- (d) If prosecution is pending against the city permitted massage therapist for either conduct violating this chapter's provisions or conduct violating Cal. Bus. & Prof. Code § [4600](#) et seq., the finance director may postpone its decision on the application until the prosecution's final resolution. As used in this subsection, "prosecution" means a civil or criminal action or administrative proceeding.
- (e) The finance director may suspend or revoke a massage therapist permit where substantial evidence exists of the following:
- (1) The city permitted massage therapist consumed controlled substances in a massage establishment unless the person has a prescription for the substance;
 - (2) Any of the conditions for denial of the massage therapist permit would apply;
 - (3) The city permitted massage therapist performed, solicited or in any way made available any service that is not a legitimate, recognized massage service;
 - (4) The city permitted massage therapist provided and/or continues to provide massage in a manner that poses a danger to the health and safety of clients or the public;
 - (5) The city permitted massage therapist failed to correct a violation of this chapter after notification from the finance director; or
 - (6) The city permitted massage therapist failed to pay city business tax as required by the code.

(f) A city permitted massage therapist may appeal the suspension or revocation of the massage therapist permit pursuant to Section [5.65.160](#). (Ord. 20-2015 § 1, 10-13-15.)

Article III. Massage Establishments

5.65.070 Massage establishment regulations.

(a) On and after April 11, 2016, it shall be unlawful for any person or persons to operate a massage establishment within the city without first obtaining a massage establishment permit pursuant to the requirements of this chapter.

(b) Where the operator is not the property owner, as shown on the latest county assessment roll, of the property where the massage establishment is to be operated, then upon issuance of a massage establishment permit, the finance director may send a written notice to the property owner advising of the issuance of the permit and of the regulations applicable to the massage establishment and the property pursuant to this chapter. Any other notices sent to the operator pursuant to this chapter at any time before or after issuance of the massage establishment permit may also be sent to the property owner.

(c) On and after April 11, 2016, it shall be unlawful for any massage establishment operator within the city to employ or retain any person to practice or perform massage therapy or outcall massage services for compensation unless that person is a certified massage therapist or a city permitted massage therapist. For purposes of this chapter, a massage establishment operator "employs or retains" a person to practice massage therapy or outcall massage services for compensation when:

- (1) That person is a directly paid employee of the massage establishment; or
- (2) That person's association with a massage establishment is that of an independent contractor who receives compensation for massage therapy provided to patrons of the massage establishment; or
- (3) That person receives a referral of patrons from the massage establishment and, at any time before or after the referral, arranges in any way for compensation to flow to the massage establishment operator (regardless of whether the parties involved acknowledge that compensation is flowing in exchange for the referral, or whether such parties record such compensation in their financial records). (Ord. 20-2015 § 1, 10-13-15.)

5.65.080 Massage establishment permits.

(a) Application for Massage Establishment Permits. All owners of the massage establishment, or their duly authorized agent(s), shall file an application for a massage establishment permit on a form provided by the finance director. For purposes of this section, the "applicant" for the operator shall refer to and include each and every owner of the massage establishment. The application shall include the following information:

- (1) The name, address, and telephone number of the massage establishment.
- (2) The name, residence address and telephone number, and business address and telephone number of the massage establishment operator(s) applying for the massage establishment registration certificate.
- (3) The form of business under which the applicant will be conducting the massage establishment, i.e., corporation, general or limited partnership, limited liability company, or other form. If the operator is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the names and residence addresses of each of its officers, directors, and each shareholder holding more than five percent of the stock of the corporation. If the operator is a general or limited partnership, the application shall set forth the name and residence address of each of the partners, including limited partners. If one or more of the partners is a corporation, the provisions of this section pertaining to a corporate operator shall apply. If the operator is a limited liability company, the application shall set forth the name and residence address of each of the members. If one or more of the members is a partnership, limited

liability company, or corporation, the provisions of this section pertaining to a partnership, limited liability company, or corporate applicant shall apply, as applicable.

(4) The name and address of the owner of the real property upon, in, or from which the certified massage establishment is to be operated. In the event the operator is not the legal owner of the property, the application shall be accompanied by a copy of any written lease between the operator and the property owner authorizing use of the premises for a massage establishment, or, alternatively, if there is no written lease, then a written, notarized acknowledgment from the property owner that the property owner has been advised that a massage establishment will be operated by the operator upon, in, or from the property owner's property.

(5) A description of the proposed massage establishment, including the type of treatments to be administered.

(6) The name, residence address, telephone number, and work address and telephone number of each person that the massage establishment employs or retains to perform massage therapy for compensation.

(7) For each person that the massage establishment does or will employ or retain to perform massage therapy for compensation, a copy of that person's current certification from the California Massage Therapy Council as a certified massage therapist or as a certified massage practitioner and a copy of that person's California Massage Therapy Council-issued identification card and a copy of the city registration certificate or a copy of the massage therapist permit issued by the city for each certified massage therapist.

(8) For each owner of the certified massage establishment, a copy of that person's current certification from the California Massage Therapy Council as a certified massage therapist or as a certified massage practitioner and a copy of that person's California Massage Therapy Council-issued identification card, if applicable.

(9) Whether any license or permit has ever been issued to the applicant by any jurisdiction under the provisions of any ordinance or statute governing massage practice, and as to any such license or permit, the name and address of the issuing authority, the effective dates of such license or permit, whether such license or permit was ever suspended, revoked, withdrawn, or denied; and copies of any documentary materials relating to such suspension, revocation, withdrawal, or denial.

(b) **Application Fee.** Any application for a massage establishment permit under this chapter shall be accompanied by a nonrefundable application fee in an amount established by resolution of the city council.

(c) **Term.** A massage establishment permit issued pursuant to the terms of this chapter shall be valid for a term of one year from the date of issuance, and, unless suspended or revoked, shall be renewed annually upon application by the massage establishment operator so long as the massage establishment is operating within the city.

(d) **Requirement to Amend Massage Establishment Permit Application.** Whenever the information provided in the application for massage establishment permit on file with the city changes, for example by a change in employees, the operator shall, within 10 business days after such change, file an amendment to the massage establishment permit application with the finance director to reflect such change. (Ord. 20-2015 § 1, 10-13-15.)

5.65.090 Grant or denial of massage establishment permit.

(a) The finance director may deny a massage establishment permit application for one or more of the following reasons:

(1) The application is incomplete and the required supplementary documents were not submitted within 20 days of a request for these documents by the finance director. An applicant whose application is denied for failure to comply with this subsection is not eligible to reapply for one year;

- (2) The applicant made a material misstatement or omission in the application or in a previous application. If the finance director finds substantial evidence that an application contains a knowing or intentional material misstatement or omission, the finance director must deny the application. If the finance director determines that an applicant made a material misstatement or omission, the applicant is not eligible to apply for a certificate under this chapter for one year from the date the application is denied, but if the applicant made a knowing or intentional material misstatement or omission, the applicant is not eligible to reapply for five years;
- (3) The massage establishment, as proposed by the applicant, would not comply with all applicable laws including, but not limited to, the provisions of this code. An applicant whose application is denied for failure to comply with this subsection is not eligible to reapply for one year;
- (4) The applicant proposes to locate the massage establishment in the same building as a massage establishment that surrendered its permit or had its permit revoked within 10 years of the application date because a person engaged in any criminal conduct and/or violation of this chapter while on the premises of the massage establishment. This subsection does not apply to renewal applications;
- (5) The applicant, or any shareholder, partner, or member of the applicant, within five years immediately preceding the date of filing of the application, has been convicted in a court of competent jurisdiction of any offense that relates directly to the operation of a massage establishment whether as a massage establishment owner or operator or as a person practicing massage for compensation, or as an employee of either; or has at any time been convicted in a court of competent jurisdiction of any felony the commission of which occurred on the premises of a massage establishment;
- (6) Any of the conditions for denial of the massage therapist permit as stated in Section [5.65.060](#) would apply;
- (7) The applicant, if an individual, has not attained the age of 18 years; or
- (8) The applicant, or any shareholder, partner, or member of the applicant, within five years of the date of application, and as established by clear and convincing evidence, has engaged in acts prohibited under Cal. Penal Code § [266](#), [266a](#), [266e](#), [266f](#), [266g](#), [266h](#), [266i](#), [266j](#), [315](#), [316](#), [318](#), [647\(b\)](#), or [653.22](#).

(b) If prosecution is pending against the applicant for either conduct violating this chapter's provisions or conduct violating Cal. Bus. & Prof. Code § [4600](#) et seq., the finance director may postpone its decision on the application until the prosecution's final resolution. As used in this subsection, "prosecution" means charges filed by the district attorney, administrative proceedings brought by a local government or agency, or a civil or criminal action maintained by the city of Fremont city attorney. (Ord. 20-2015 § 1, 10-13-15.)

5.65.100 Grounds for revocation or suspension of massage establishment permit.

- (a) In addition to any other remedy available to the city under this code or state law, a massage establishment permit may be suspended or revoked by the finance director where it is found by substantial evidence that any of the following have occurred:
- (1) The permittee, or any person employed or retained by the massage establishment, has been found to have violated any provision of this chapter; or
 - (2) Any of the conditions for denial of the massage establishment permit as listed in Section [5.65.090](#) or any of the conditions for suspension or revocation of a massage therapist permit as listed in Section [5.65.060](#) would apply; or
 - (3) The permittee has been subject to a permanent injunction against the conducting or maintaining of a nuisance pursuant to this code, or Cal. Penal Code §§ [11225](#) through [11235](#), or any similar provision of law in any jurisdiction outside the state of California; or

- (4) The operator or any employee of the massage establishment has engaged in fraud or misrepresentation or has knowingly made a misstatement of material fact while working in or for the massage establishment; or
- (5) The permittee has continued to operate the massage establishment after the operator permit has been suspended; or
- (6) Massage treatments are or have been performed on the premises of the massage establishment, with or without the permittee's actual knowledge, by any person who is not a duly authorized certified massage therapist or obtained a massage therapist permit; or
- (7) There have been one or more incidents prohibited under Cal. Penal Code § [266](#), [266a](#), [266e](#), [266f](#), [266g](#), [266h](#), [266i](#), [266j](#), [315](#), [316](#), [318](#), [647](#)(b), or [653.22](#) taking place on the premises of the massage establishment, whether or not any criminal prosecution has been pursued or conviction obtained for such acts, and whether or not they occurred with or without the actual knowledge of the certificate holder; or
- (8) The permittee or any person employed or retained by the massage establishment or any other person on the premises of the massage establishment has engaged in conduct or committed acts that a reasonable person in the patron's position would understand as an offer to perform on or engage in with the patron acts that are sexual in nature or that involve touching of the genitals, pubic area, anus, and/or areola.

(b) Upon revocation of a massage establishment permit, the massage establishment shall immediately cease operation, and, if so ordered by the finance director, no other massage establishment shall be permitted to operate at that location by any person for a period of 10 years. If the operator is not also the legal owner of the real property on which the massage establishment is situated, notice of such revocation and the period of prohibition shall be provided by the finance director to the owner of record of the property as shown on the latest county assessment roll.

(c) Notice of Denial – Appeal. If an application for a massage establishment permit is denied pursuant to this section, the finance director shall serve on the applicant by first class mail, postage prepaid, a written notice of denial which shall specify the grounds for the denial and shall indicate the appeal procedures as set forth in Section [5.65.160](#). (Ord. 20-2015 § 1, 10-13-15.)

5.65.110 Massage establishment inspection.

(a) The finance director or his/her designee shall have the right to enter any massage establishment during regular business hours, without a search or inspection warrant, to make reasonable inspection to ascertain whether there is compliance with the provisions of this chapter.

(b) The massage establishment operator shall take immediate action to correct each violation noted by the finance director or his/her designee. A reinspection will be performed within 30 days to ensure that each violation noted in the inspection has been corrected. (Ord. 20-2015 § 1, 10-13-15.)

5.65.120 Requirements for all massage establishments.

(a) Operational Requirements. Except as otherwise specifically provided in this chapter, on and after April 11, 2016, the following operational requirements shall be applicable to all massage establishments located within the city:

(1) No massage establishment shall be kept open for business between the hours of 10:00 p.m. and 7:00 a.m. A massage begun any time before 10:00 p.m. must nevertheless terminate at 10:00 p.m. The hours of operation of the massage establishment shall be displayed in a conspicuous public place in the reception area and in any front window clearly visible from outside of the massage establishment.

(2) Patrons and visitors shall be permitted in the massage establishment only during the hours of operation.

(3) The operator of the massage establishment must designate or employ a massage establishment administrator to be in charge of the operation of the business during all times that the operator is not personally managing the business. The name of the person currently in charge of the massage establishment must appear in the records of services described in subsection (a)(10) of this section. Either the owner/operator or the administrator must be present at the massage establishment at all times during business hours that:

(A) Any massage establishment personnel other than a single receptionist is present at the massage establishment; or

(B) Any member of the public is in any room of the massage establishment other than the retail portion or reception area.

(4) Except for a patron who is inside a massage therapy room for the purpose of receiving a massage, no patrons or visitors shall be permitted in or on the massage establishment premises at any time who are not fully clothed in outer garments of nontransparent material, or who display or expose themselves in underclothing, sheer clothing or similar intimate apparel.

(5) During the hours of operation, visitors shall not be permitted in massage therapy rooms except as follows: (A) the parents or guardian of a patron who is a minor child may be present in the massage therapy room with that minor child; (B) the minor child of a patron may be present in the massage therapy room with the patron when necessary for the supervision of the child; and (C) the conservator, aide, or other caretaker of a patron who is elderly or disabled may be present in the massage therapy room with that elderly or disabled person.

(6) During the hours of operation, patrons shall be permitted in massage therapy rooms only if at least one duly certified massage therapist or city permitted massage therapist is present on the premises of the massage establishment.

(7) 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 English and may also be described in such other languages as may be convenient. No massage establishment operator shall permit, and no person employed or retained by the massage establishment shall offer to perform, any services or fees other than those posted.

(8) The massage establishment permit and a copy of the CAMTC certificate or the city permit of each massage therapist employed or operating in the massage establishment must be conspicuously displayed in the facility such that it can easily be seen by anyone entering the establishment.

(9) Customers must pay for massage services at the reception counter. All tips, if any, must be received at the reception counter.

(10) Records of services provided to each patron must be maintained and retained for one year from the date of service. Records of services shall include the name and address of the patron, the name of the massage therapist, the name of the massage administrator, the type of service provided, the time the service began and ended and the amount paid for the services including the tip.

(b) Physical Facility and Building and Fire Code Requirements. Except as otherwise specifically provided in this chapter, on and after April 11, 2016, the following physical facility and building code requirements shall be applicable to all massage establishments located within the city:

(1) Front Door and Reception/Waiting Area Required. One front door shall be provided for patron entry to the massage establishment, which shall open to an interior patron reception and waiting area immediately inside the front door. All patrons and any persons other than individuals employed or retained by the massage establishment shall be required to enter and

exit through the front door of the establishment. The front door shall remain unlocked during business hours, except if the massage establishment is only owned by one person with one or no employees or independent contractors.

(2) No massage establishment located in a building or structure with exterior windows fronting a public street, highway, walkway, or parking area shall block visibility into the interior reception and waiting area through the use of curtains, closed blinds, tints, or any other material that obstructs, blurs, or unreasonably darkens the view into the premises.

(3) All interior doors, including massage therapy rooms or cubicles, but excluding individual dressing rooms and toilet rooms, shall be incapable of being locked and shall not be blocked to prevent opening. Draw drapes, curtain enclosures, or accordion-pleated closures without a locking mechanism in lieu of doors are acceptable on all inner massage therapy rooms or cubicles.

(4) Minimum lighting equivalent to at least one 40-watt light shall be provided in each massage therapy room or cubicle.

(5) Minimum ventilation must be provided in accordance with applicable building code provisions.

(6) A massage table shall be used for all massage therapy, with the exception of "Thai," "shiatsu," and similar forms of massage therapy, which may be provided on a padded mat on the floor, provided the patron is fully attired in loose clothing, pajamas, scrubs, or similar style of garment. Massage tables shall have a minimum height of 18 inches. Beds, futons, mattresses, and waterbeds are not permitted on the premises of the massage establishment, and no massage establishment shall be used for residential or sleeping purposes.

(7) All locker facilities that are provided for the use of patrons shall be fully secured for the protection of the patrons' valuables, and each patron shall be given control of the key or other means of access.

(8) The massage establishment must not be used for residential or sleeping purposes unless the massage establishment is properly zoned and has all necessary use and building permits, and the massage establishment is owned by one individual with one or fewer employees or independent contractors.

(9) The massage establishment shall comply with all applicable state and local building standards (as adopted in Title [15](#)) and the fire code (as adopted in Title [15](#)).

(c) Health and Safety Requirements. Except as otherwise specifically provided in this chapter, on and after April 11, 2016, the following health and safety requirements shall be applicable to all massage establishments located within the city:

(1) The massage establishment shall at all times be equipped with an adequate supply of clean sanitary towels, coverings, and linens, and all massage tables shall be covered with a clean sheet or other clean covering for each patron. After a towel, covering, or linen has been used once, it shall be deposited in a closed receptacle and not used again until properly laundered and sanitized. Towels, coverings, and linens shall be laundered either by regular commercial laundering, or by a noncommercial laundering process that includes immersion in water at least 140 degrees Fahrenheit for not less than 15 minutes during the washing or rinsing operation. Clean towels, coverings, and linens shall be stored in closed, clean cabinets when not in use.

(2) All massage therapy rooms or cubicles, wet and dry heat rooms, toilet rooms, shower compartments, hot tubs, and pools shall be thoroughly cleaned and disinfected as needed, and at least once each business day when the premises are open and such facilities are in use. All bathtubs shall be thoroughly cleaned and disinfected after each use.

(3) All liquids, creams, or other preparations used on or made available to patrons shall be kept in clean and closed containers. Powders may be kept in clean shakers. All bottles and containers shall be distinctly and correctly labeled to

disclose their contents. When only a portion of a liquid, cream, or other preparation is to be used on or made available to a patron, it shall be removed from the container in such a way as not to contaminate the remaining portion.

- (4) No invasive procedures shall be performed on any patron. Invasive procedures include, but are not limited to:
 - (A) Application of electricity that contracts the muscle;
 - (B) Penetration of the skin by metal needles;
 - (C) Abrasion of the skin below the nonliving, epidermal layers;
 - (D) Removal of skin by means of any razor-edged instrument or other device or tool;
 - (E) Use of any needle-like instrument for the purpose of extracting skin blemishes;
 - (F) Other similar procedures.
 - (5) All bathrobes, bathing suits, and/or other garments that are provided for the use of patrons shall be either fully disposable and not used by more than one patron, or shall be laundered after each use pursuant to subsection (c)(1) of this section.
 - (6) All combs, brushes, and/or other personal items of grooming or hygiene that are provided for the use of patrons shall be either fully disposable and not used by more than one patron, or shall be fully disinfected after each use.
 - (7) No patrons shall be allowed to use any shower facilities of the massage establishment unless such patrons are wearing slip-resistant sandals or flip-flops while in the shower compartment. All footwear such as sandals or flip-flops that are provided for the use of patrons either shall be fully disposable and not used by more than one patron, or shall be fully disinfected after each use.
 - (8) The patron's genitals, anus, and female breasts must be fully draped at all times while any individual employed or retained by the massage establishment to practice massage for compensation, or any other employee or operator of the massage establishment, is in the massage therapy room or cubicle with the patron. No massage therapy shall be provided to a patron that results in intentional contact, or occasional and repetitive contact, with the genitals or anus of a patron and shall not be provided massage to female breasts without the written consent of the person receiving the massage and a referral from a licensed California health care provider.
 - (9) No alcoholic beverages shall be sold, served, or furnished to any patron in violation of any state law or regulation; nor shall any alcoholic beverages be kept or possessed on the premises of a massage establishment unless the establishment maintains an Alcohol Beverage Control license or permit in good standing.
- (d) Attire and Physical Hygiene Requirements. On and after April 11, 2016, the following attire and physical hygiene requirements shall be applicable to all employees and any other persons who work permanently or temporarily on the premises of a massage establishment within the city, including, but not limited to, all persons who are employed or retained to practice massage or bodywork for the massage establishment:
- (1) All persons shall wear clean and sanitary outer garments at all times. All outer garments shall be of a fully opaque, nontransparent material and shall constitute professional attire based on the custom and practice of the profession in California. While engaged in massage for compensation, therapists shall not violate Cal. Penal Code § [314](#) or dress in a manner that exposes the therapists' breasts, buttocks or genitals, or in swim attire, unless providing a water-based massage modality.

(2) No massage establishment operator, employee, or visitor shall, while on the premises of a massage establishment or while performing any outcall massage service, and while in the presence of any patron, customer, employee or visitor, expose his or her genitals, buttocks, or chest.

(3) All persons shall thoroughly wash their hands with soap and water or any equally effective cleansing agent immediately before providing massage therapy to a patron. No massage therapy shall be provided upon a surface of the skin or scalp of a patron where such skin is inflamed, broken (e.g., abraded or cut), or where a skin infection or eruption is present.

(e) Display of Permit and Certifications. Each person employed or retained by a massage establishment to perform massage therapy in or on the premises or through an outcall massage service shall display on his or her person a copy of the valid photograph-bearing identification card issued to that employee by the California Massage Therapy Council pursuant to Cal. Bus. & Prof. Code § [4600](#) et seq. A copy of each such identification card shall also be displayed in an open and conspicuous place visible from the entrance and/or reception and waiting area of the massage establishment. The home address of any employee need not be displayed.

(f) Advertisements. All advertisements for a massage establishment must reflect the professional nonsexual nature of the business. An operator or any person acting on behalf of the operator must not place, publish or distribute or cause to be placed, published or distributed any advertising matter regarding the massage establishment that contains text, or depicts any portion of the human body, that would reasonably suggest to prospective clients that a service is available that is not a legitimate, recognized massage service. (Ord. 20-2015 § 1, 10-13-15.)

5.65.130 Change of business name or location.

No person permitted to operate a massage establishment under this chapter shall operate under any name or conduct business under any designation not specified in the massage establishment operator certificate and city business tax certificate. Upon a change of location of a massage establishment where there is no change of massage establishment owner(s), an application for an amended massage establishment operator certificate shall be made to the finance director, and such application shall be granted, provided all applicable provisions of this code are complied with as to the new location. (Ord. 20-2015 § 1, 10-13-15.)

5.65.140 Sale or transfer of massage establishment or ownership interest therein.

Upon a sale or transfer of any massage establishment, or upon the sale or transfer of some or all of the interest of any massage establishment owner to a person who is not already an owner of the massage establishment, a new massage establishment operator certificate shall be required. Any new owners must submit a new application to the city. (Ord. 20-2015 § 1, 10-13-15.)

5.65.150 Establishment owner background check.

(a) General Requirement. An owner of a massage establishment must apply to the finance department (for referral to the police department) for annual investigation of the applicant's background and history.

(b) Application for Background Check. Each applicant for a background check shall submit the following:

(1) Information related to the applicant's business, occupation and employment history as set forth in Cal. Bus. & Prof. Code § [4612](#)(e).

(2) Other information as the department may reasonably require.

(3) Livescan fingerprint certificate.

(4) An application fee in the amount established by resolution of the city council.

(c) Background Clearance. The city will issue background clearance within 60 days if:

- (1) The owner's information is complete;
- (2) The owner has not made a material false statement;
- (3) The owner has not committed a violation of any provision of Cal. Health & Safety Code § [4603](#) or any law related to the operation of a business, including a massage establishment; and
- (4) The background clearance does not indicate any information that is relevant to owning or operating a massage establishment. (Ord. 20-2015 § 1, 10-13-15.)

5.65.160 Appeal of revocation or suspension.

(a) **Written Notice Required.** The finance director, before revoking or suspending any operator permit, shall give the permittee at least 10 days' written notice of the revocation or suspension. The notice must state the effective date of the suspension or revocation, the length of any suspension imposed, and the alleged grounds for the revocation or suspension. The notice must be served on the permittee in person or by certified mail at the most recent home or business address on file.

(b) **Written Appeal.** If a permittee wishes to contest a proposed suspension or revocation, he or she must request a hearing within 14 days after receiving notice of the intended revocation or suspension. The request must be served on the city clerk by mail or in person. If a permittee fails to timely or properly serve a hearing request, he or she waives the right to a hearing before suspension or revocation.

(c) **Hearing.** If a hearing request is timely and properly served, a hearing must be held before a hearing officer before suspension or revocation. A hearing officer designated by the city manager shall preside at the hearing. The hearing officer's jurisdiction is limited to determining whether substantial evidence exists to provide grounds as specified in this chapter for suspension or revocation of the permit. If the hearing officer finds that grounds do not exist for revocation but do exist for suspension, the hearing officer must order the permit suspended. The hearing officer's duties are to:

- (1) Receive evidence regarding the proposed suspension or revocation; and
- (2) Preserve the evidence whether or not it is admitted; and
- (3) Record the hearing on audio tape and preserve the tape for the record; and
- (4) Decide whether grounds exist for the suspension or revocation.

Both the permittee and the city have the right to appear and be represented by counsel, cross-examine witnesses, and present evidence and arguments whether good cause exists for suspension or revocation.

(d) **Notice of Decision.** Within 14 days following the hearing, the hearing officer must issue a written decision that states whether the permit is suspended, revoked, or that no grounds exist to either suspend or revoke the license or permit, the factual and legal basis for the decision, and a notice that the permittee may appeal any suspension or revocation as described in subsection (e) of this section. The decision of the hearing officer must be served on the permittee by certified U.S. mail. The hearing officer's decision is effective on the date the decision is personally served on or mailed to the parties.

(e) **Appeal.** The hearing officer's decision is subject to review under Cal. Code of Civ. Proc. § [1094.6](#). Any request for review must be filed within 90 days of service of the hearing officer's decision. The city council hereby expressly makes Cal. Code of Civ. Proc. § [1094.6](#) applicable to all proceedings for review of decisions under this chapter. (Ord. 20-2015 § 1, 10-13-15.)

5.65.170 Applicability of regulations to existing massage establishments.

This chapter applies to all massage establishments that lawfully existed in the city and that held valid permits issued by the city before the effective date of this chapter. Preexisting massage establishment licenses/permits shall continue to be valid until their expiration. In order to renew a preexisting license or permit, the licensee or permittee must timely file a new application under this chapter and pay all applicable fees. (Ord. 20-2015 § 1, 10-13-15.)

Article IV. Enforcement

5.65.180 Violations a public nuisance – Penalties, nuisance abatement, and other remedies.

Any massage establishment operated, conducted, or maintained contrary to the provisions of this chapter shall be, and the same is hereby declared to be, unlawful and a public nuisance, and the city attorney may, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings, for the abatement, removal and enjoinder thereof, in the manner provided by law. Such remedies shall be in addition to any other judicial and administrative penalties and remedies available to the city. (Ord. 20-2015 § 1, 10-13-15.)

5.65.190 Operator responsibility.

For the purpose of enforcing the requirements of this chapter, the massage establishment operator shall be responsible for the conduct of all massage establishment employees, agents, independent contractors, and other representatives while on the premises of the business or establishment or providing outcall massage services on behalf of the massage establishment. (Ord. 20-2015 § 1, 10-13-15.)

The Fremont Municipal Code is current through Ordinance 05-2021, passed April 20, 2021.

Disclaimer: The City Clerk's office has the official version of the Fremont Municipal Code. Users should contact the City Clerk's office for ordinances passed subsequent to the ordinance cited above.

City Website: <http://www.fremont.gov/>

City Telephone: (510) 284-4060

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