
Chapter 5.36 MESSAGE REGULATION

- 5.36.010 Title for citation.**
- 5.36.020 Purpose and intent.**
- 5.36.030 Definitions.**
- 5.36.040 California Massage Therapy Council certification and City business license required.**
- 5.36.050 Massage business permit required.**
- 5.36.060 Massage business permit application.**
- 5.36.070 Massage business operating requirements.**
- 5.36.080 Minimum premises requirements.**
- 5.36.090 Massage technician requirements.**
- 5.36.100 Advertising.**
- 5.36.110 Inspection.**
- 5.36.120 Off-premises massage.**
- 5.36.130 Violations, Penalties.**
- 5.36.140 Procedure for Imposition of Modification, Denial, Suspension and/or Revocation of Massage Business Permit.**
- 5.36.150 Appeal Procedures.**
- 5.36.160 Effect of Massage Regulation Ordinance on other Provisions of the Code.**
- 5.36.170 Promulgation of Regulations, Standards, and Other Legal Duties.**
- 5.36.180 Reapplication after denial or revocation of massage business permit.**
- 5.36.190 Exemptions.**

5.36.010 Title for citation.

This Chapter may be cited as the “Chula Vista Massage Regulation Ordinance.”

5.36.020 Purpose and Intent.

It is the purpose and intent of this Chapter to provide for the orderly regulation of massage businesses and massage technicians in the City of Chula Vista in the interest of public health, safety and welfare. The City wishes to support the ethical practice of massage therapy as a healing art and to prevent and discourage the misuse of massage therapy as a front for illegal activity such as prostitution, human trafficking and sex crimes, as defined in the California Penal Code.

This Chapter relies upon the State of California certification process of massage professionals through the California Massage Therapy Council, pursuant to the Massage Therapy Act, California Business and Professions Code Sections 4600 et seq. This Chapter is adopted under the authority of California Government Code Sections 37101 and 51030 through 51034, which allows local jurisdictions to enforce zoning and business licensing requirements for massage businesses, as well as reasonable health and safety requirements that are not in conflict with the Act; California Business and Professions Code Sections 460(c) and 16000; and the California Constitution Article XI, Section 7.

5.36.030 Definitions.

Whenever in this Chapter the following words and phrases are used, they shall mean:

- A. "California Massage Therapy Council" (CAMTC) means the non-profit organization created by the State of California, pursuant to California Business and Professions Code 4600 et seq., to regulate the massage industry.
 - B. "CAMTC Certificate" means a current, valid and authentic certificate issued by the CAMTC to a Massage Technician.
 - C. "Chief of Police" means the Chief of the Chula Vista Police Department or authorized designee.
 - D. "City" means the City of Chula Vista municipal corporation.
 - E. "City Manager" means the City Manager of the City of Chula Vista or authorized designee.
 - F. "Hearing officer" means any person appointed by the City Manager to preside over administrative hearings provided by this Chapter.
 - G. "Holistic health practitioner" means a non-medical or other health care therapist who uses acupressure (excluding acupuncture) or a massage specialty and therapeutic approach in care for clients and who is not licensed by the State of California.
 - H. "Massage" or "massage therapy" or "massage services" means any method of pressure on, or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of, the external parts of the body with the hands or other parts of the body for therapeutic purposes. Examples of massage include, but are not limited to, Swedish massage, sports massage, shiatsu, rolfing, heller work, and reflexology.
 - I. "Massage business" or "massage establishment" means a business or organization where an individual, firm, association, partnership, corporation or other combination of individuals provide, offer, sell, deliver, or dispense massage as a distinct service for compensation. Home-based massage businesses and businesses that provide off-premises massage services are also considered to be massage businesses.
 - J. "Massage business permit" means a regulatory license issued by the Chief of Police upon submission of satisfactory evidence as required in this Chapter that a massage business employs or uses only massage technicians possessing valid and current state certifications and has satisfied all other requirements pursuant to this Chapter.
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K. "Massage technician" means any person who gives or administers to another person, for any form of compensation, a massage as defined in this Chapter. The terms "massage therapist," "massage practitioner," "masseur," or any other terms used within the massage industry are included within this definition for the purposes of this Chapter. "Massage technician" also includes "holistic health practitioner" as defined in Subsection F.

L. "Off-premises massage service" or "outcall massage service" means the engaging in or carrying out of massage therapy for compensation at locations other than at a fixed place of business.

M. "Operator" or "manager" means any person, who operates, supervises, manages, directs, organizes, controls or in any other way is responsible for, or is in charge of, the daily operation, conduct or activities of a massage establishment. "Operator" also includes "holistic health practitioner" as defined in Subsection F.

N. "Owner" means any of the following individuals: 1) the sole proprietor of a sole proprietorship operating a massage business; 2) any general partner of a general or limited partnership that owns a massage business; 3) any person who has a ten (10) percent or greater ownership interest in a corporation that owns a massage business; 4) any person who is a member of a limited liability company that owns a massage business; 5) all owners of any other type of business entity that owns a massage business; 6) any person identified as an owner on the massage business permit.

O. "Person" means any natural person, individual, group, firm, association, partnership, corporation, company, sole proprietorship, trust or any other entity which is recognized by law as the subject of rights or duties.

P. "Specified anatomical areas" means any of the following areas of the human body: pubic region, human genitals, perineum, anal region, and the areas of the female breast that include the areola and nipple.

5.36.040 California Massage Therapy Council certification and City business license required.

- A. It is unlawful for any person to perform massage services in Chula Vista as a massage technician, whether as full-time, part-time or temporary status, as an employee, sole practitioner, or independent contractor of a massage business, or in any other capacity, without a valid practitioner certification issued by the CAMTC.
- B. A CAMTC massage practitioner certificate does not authorize the operation of a massage establishment. Any person who desires to operate a massage establishment must apply to the City for business license and to the Chief of Police for a massage business permit.

5.36.050 Massage business permit required.

- A. It is unlawful for any person to own, maintain, manage or operate in or any premises a massage business within the City without a valid massage business permit issued by the Chief of Police as provided by this Chapter. A massage business permit also is required of any permanent or semi-permanent seated massage or reflexology installation.

5.36.060 Massage business permit application.

- A. Application. An application for a massage business permit to the Chief of Police shall be filed on a form provided by the City and shall be signed and submitted under penalty of perjury.
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B. Fee. A permit application fee is required. The application fee, which is non-refundable, shall be set by resolution of the City Council of the City of Chula Vista and shall be reflected in the City's Master Fee Schedule.

C. Approval or denial. The Chief of Police shall issue a massage business permit to operate in the City's jurisdiction to any massage business that demonstrates the following:

1. The business complies with all applicable building, zoning, fire safety, land use, health safety, state and federal laws.
 2. The business uses only massage technicians who possess a current, valid and authentic CAMTC certificate.
 3. The owner(s) and operator(s) of the massage business have provided all required information required by this Chapter; have not failed to reveal any fact material to qualification; and have not supplied information that is untrue or misleading as to a material fact pertaining to qualification criteria.
 4. The background check for any owner or operator authorized by this Chapter shows that any such individual has not been required to register under the provisions of California Penal Code section 290 (sex offender registration); has not been convicted of a violation of Penal Code section 266(h) pimping, 266(i) pandering, 315 or 316 keeping or residing in a house of prostitution, 647(a) soliciting or engaging in lewd conduct in public, 647(b) soliciting or engaging in prostitution, or 415, disturbing the peace when substituted for one of the previously listed offenses; has not been convicted of any felony drug-related offense involving a controlled substance specified in Health and Safety Code sections 11054, 11055, 11056, 11057 or 11058; has not been convicted of any act involving theft, dishonesty, fraud, deceit or moral turpitude; has not been convicted in another State of any offense which, if committed in this State, would have been punishable as one or more of the aforementioned offenses; has not had an individual or business permit, certificate or license with any agency, board, city, county, territory or State denied, revoked, restricted or suspended within the last ten years; and has not been subject to an injunction for nuisance under Penal Code section 11225 through 11235 (red light abatement) within the last ten years.
 5. The Chief of Police may deny a massage business permit application, or renewal application, to any massage business that fails to demonstrate compliance with the foregoing requirements. An applicant may appeal a denial pursuant to 5.36.140.
 6. Term. A massage business permit is valid for one year.
 7. Transfer. A massage business permit issued by the Chief of Police shall not be transferred, sold or assigned to any other Person or entity, except with the prior written permission of the Chief of Police. A written request for such transfer shall contain the same information for the new ownership as is required on an application for a new massage business permit. No massage business permit that has been suspended or revoked shall be transferred to any other Person or entity for five years from the date of such suspension or revocation. Any such transfer, sale or assignment, or attempted transfer, sale or assignment in violation of this Chapter is hereby declared invalid and the permit shall become void effective on the date of such transfer, sale or assignment or attempted transfer, sale or assignment.
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8. Change of location. A change of location of a permitted massage business shall be approved by the Chief of Police provided the massage business and the new location are in compliance with all applicable local, State and Federal laws.
9. Change of personnel. An owner or operator shall submit to the Chief of Police an updated list pursuant to Section 5.36.050.A.7 within (seven) 7 days of any change to the list.

5.36.070 Massage business operating requirements.

- A. CAMTC certificate to City. No owner or operator shall operate a massage business unless a copy of a current and valid CAMTC certificate first has been provided to the City for each massage technician performing massage services.
 - B. Compliance period for CAMTC certificate. Within six months of the effective date of this ordinance, an applicant for an initial massage businesses permit or for renewal of a current, valid massage business permit, pursuant to Section 5.36.050, shall demonstrate compliance with Subsection A by providing the City with a current and valid CAMTC certificate for each massage technician performing massage services at the business.
 - C. CAMTC certificate posted. No owner or operator shall operate a massage business unless an original CAMTC certificate for each massage technician performing massage is posted on the business premises in public view.
 - D. CAMTC identification carried at all times. No owner or operator shall operate a massage business, unless an original CAMTC-issued identification card or badge is carried by each massage technician while providing massage services.
 - E. Owner or operator on site. An owner or operator of a massage business shall be physically present on the business premises at all times during all hours of operation.
 - F. Hours of operation. A massage business may be open for business only between the hours of 6:00 a.m. to 10:00 p.m. No massage services may be offered or performed between 10:00 p.m. and 6 a.m.
 - G. List of services posted.
 1. A list of the services available and the costs of such services shall be posted in an open and conspicuous public place on the premises of a massage business. The services shall be described in English.
 2. An outcall massage business operator shall provide a list of services available and the costs of such services to a patron upon request.
 - H. Only listed services may be provided. No owner or operator shall permit to be offered or performed, and no massage technician shall offer or perform, any service other than those posted on the list of available services. Nor shall any owner, operator or massage technician request or charge a fee for any service other than those listed on the list of available services.
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- I. Interior doors unlocked. No owner, operator or massage technician shall lock any interior door or doors leading to a room used to provide massage when a massage is being performed. A patron may lock any door when alone in a room at any time.
 - J. Massage log. An owner or operator must maintain a record of services provided for each treatment. The record of treatment shall include the name and address of the patron, the name of the massage technician, the name of the owner or operator present, the type of service provided, and the time the service began and ended. Such records shall be maintained on the premises of the massage business for at least two years and shall be immediately available for inspection and copying by City inspectors during business hours.
 - K. External door unlocked. The door to the main entrance of the premises of a massage business shall be unlocked during business hours unless the business is owned by one (1) individual with one or no employees or independent contractors.
 - L. Professional attire or uniform required. During business hours, each owner, operator and massage technician must wear professional attire or a uniform based on the custom and practice of the massage industry in California. The attire shall be made of nontransparent material and may not expose any specified anatomical areas, as defined in Section 5.36.030.O. Swimwear, lingerie or undergarments may not be used as a uniform or be displayed as part of a uniform.
 - M. No residential, sleeping use. No massage business premises shall be used for residential or sleeping purposes. No owner or operator shall permit any Person, including an owner, operator or massage technician to reside on the business premises.
 - N. No drugs or alcohol. The sale, service, or consumption of an alcoholic beverage or any marijuana product at a massage business, or in connection with the performance of massage services, is prohibited.
 - O. No audio or video recording. Audio and/or video recording of, or the monitoring of, the patron, the massage technician or the massage therapy is prohibited, without the prior written consent of the patron.
 - P. No adult-oriented merchandise. The display, use or possession of any adult-oriented merchandise, including but not limited to sex toys and condoms, is prohibited in any part of a massage business.
 - Q. Specified anatomical areas.
 1. No owner or operator shall permit any person to massage or intentionally touch the specified anatomical areas, as defined in this Chapter, of another person while performing massage at the permitted establishment, regardless of whether the touching is over or under the patron's clothing or other covering.
 2. No owner, operator or massage technician shall enter any area that is used by a patron, unless the patron's specified anatomical areas are covered.
 - R. No sexual activity. No owner, operator or massage technician shall engage in or permit sexual activity of any kind at the massage business.
 - S. Failure to supervise. Any owner and operator shall be responsible for the conduct of their massage technicians. A violation of any provision of this Chapter or California Business and Professions Code 4609, as from time to time may be amended, by a massage technician shall be prima facie evidence of the failure to supervise.
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- T. Application to off-premises massage. Subdivisions B, D, F.1, H, J and L in this section do not apply to off-premises massage businesses.

5.36.080 Minimum premises requirements

No person shall engage in, carry on, perform massage services, or permit to be engaged in, conducted, carried on massage services at a massage business located in a fixed premises in the City's jurisdiction, unless all of the following minimum requirements are met:

- A. Signage. A recognizable and legible sign complying with the City's sign regulations shall be posted at the main entrance.
- B. Lighting. A minimum lighting consisting of at least one artificial light of 40 watts or lumens, or higher, shall be provided and shall be operating in each room or enclosure where massage services are being provided and in all areas accessible by clients.
- C. Dressing room, locker, secured area to deposit valuables. Dressing rooms, lockers and a secured place for the protection of valuable shall be provided for patrons.
- D. Lavatories. Lavatories with hot and cold running water, soap, and single service towels in a wall-mounted dispenser shall be provided for patrons.
- E. Washbasin for employee and/or patron use. A minimum of one washbasin shall be provided for employee and/or patron use with hot and cold running water, soap, and single service towels in a wall-mounted dispenser.
- F. Ventilation. Minimum ventilation shall be provided in accordance with the City's building codes.
- G. Linens. Towels, sheets, and linens of all types shall be clean and freshly laundered. Towels, sheets, and linens shall not be used by more than one person unless the same has first been laundered. Heavy paper may be substituted for sheets provided that such paper shall not be used by more than one person and shall be discarded in a sanitary receptacle after each use.
- H. Storage cabinets. Towels, sheets and linens of all types shall be stored in cabinets.
- I. Massage table pads. Pads used on massage tables shall be covered with durable washable plastic or other acceptable waterproof material.
- J. Sterilized instruments. Disinfecting agents and sterilizing equipment measures approved by the Health Department shall be provided and used for any instruments used to perform massage.

5.36.090 Massage technician requirements.

- A. CAMTC certificate required. It is unlawful for any person to give, provide or administer to another person for any form of consideration a massage as defined in this Chapter at a massage business in the City without a valid CAMTC certificate.

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- B. Compliance period for CAMTC certificate. Within six months of the effective date of this ordinance, massage technicians must have a valid CAMTC certificate.
- C. No services unless listed. It is unlawful for a massage technician to provide any service not specifically listed on the massage establishment's posted list of services.
- D. No removal of clothing. It is unlawful for a massage technician to remove any article of the massage business uniform or any other article of clothing while providing any massage service.
- E. Specified anatomical areas.
1. It is unlawful for a massage technician to provide massage when any specified anatomical area of either the patron or the massage technician is exposed while performing massage at the permitted business.
 2. It is unlawful for a massage technician to touch the specified anatomical area of a patron while performing massage at the permitted establishment, regardless of whether the touching is over or under the patron's clothing or other covering.
- F. Sexual activity, advertising, fraudulent activity in massage service prohibited. It is a violation of this Chapter for a massage technician to engage in any unprofessional conduct as defined in California Business and Professions Code section 4609, as that section from time to time may be amended.

5.36.100 Advertising.

- A. All advertising to perform massage by any massage technician with the City's jurisdiction shall include the name under which the massage technician is certified by the CAMTC and their CAMTC certificate number. This requirement shall apply to any and all types of advertising, including but not limited to, business cards, written pamphlets, social media, and internet sites, including online bulletin boards.
- B. All advertising to perform massage at any massage business within the City's jurisdiction shall include the name of the massage business and the City business license number. This requirement shall apply to any and all types of advertising, including but not limited to business cards, written pamphlets, social media, and internet sites, including online bulletin boards.
- C. No person, massage technician, owner or operator shall engage in sexually suggestive advertising, including sexually suggestive photographs and language, related to massage services.
- D. No person, massage technician, owner or operator shall place, publish, distribute, or cause to be placed, published or distributed, any advertising matter related to performing any service that is prohibited by this Chapter or by any provision of state or federal law.

5.36.110 Inspection.

A. The investigating officials of the City, which includes but is not limited to police officers, code enforcement officers, and fire safety officers, shall have the right as otherwise provided by law to enter the premises of a massage business, including any room not being used for a massage, from time to time during regular business hours for the purpose of making a reasonable inspection to enforce compliance with this Chapter.

B. The investigating officials of the City shall, at least four times per 12-month period, inspect each massage business in the City for the purpose of determining compliance with this Chapter.

5.36.120 Off-premises massage.

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

5.36.130 Violations, Penalties.

A. It shall be unlawful for any person to violate any provision or fail to comply with the requirements of this Chapter or any regulation adopted hereunder. Each day that a violation continues is deemed to be a new and separate offense.

B. Any person violating any of the provisions or failing to comply with any of the requirements of this Chapter or any regulation adopted hereunder shall be guilty of a misdemeanor punishable by a fine of not more than \$1,000 or imprisonment for a period of not more than six months, or by both a fine and imprisonment. No proof of knowledge, intent, or other mental state is required to establish a violation. At the sole discretion of the City Prosecutor, any violation of this Chapter may in the alternative be cited and prosecuted as an infraction.

C. Any condition caused or allowed to exist in violation of any of the provisions of this Chapter or any regulation adopted hereunder is a public nuisance. Such violation may be abated by the City, or by the City Attorney on behalf the people of the state of California, as a nuisance in any manner provided for in this code, including summary abatement, or otherwise provided by law or equity, including a restraining order, injunction, or any other order or judgment in law or equity issued by a court of competent jurisdiction. The City, or the City Attorney on behalf of the People of the State of California, may seek injunctive relief to enjoin violations of, or to compel compliance with, this Chapter or seek any other relief or remedy available at law or equity, including the imposition of monetary civil penalties. All expenses incurred by the City in connection with any action to abate a public nuisance will be chargeable as authorized by law to the person(s) creating, causing, committing, or maintaining the public nuisance.

D. A City employee may issue administrative citations or civil penalties in accordance with Subsection I in this Section for violation(s) of any of the provisions of this Chapter or any regulation adopted hereunder. When a violation occurs, it is not required that a warning or notice to cure first be given before an administrative citation or civil penalty may be issued. Any report where the City's Police Department has concluded that a violation of this Chapter has occurred may be considered by the City for review, processing and issuance of an administrative citation or civil penalty.

E. Each criminal citation or complaint, administrative citation, and civil penalty issued for a violation of any provision of this Chapter may be issued, levied, or assessed against one or more of: the owner, the permittee, operator, massage technician, and any other person who caused, created, committed, or maintained the violation.

F. A violation of any provision of this Chapter by any owner, permittee, operator, massage technician or any other person shall constitute grounds for modification, denial, suspension or revocation of the massage business permit.

G. The Chief of Police or designee may deny, suspend or revoke a massage business permit for any violation of this Chapter. A change of ownership shall have no effect on the accumulation of violations against the massage business.

The City may issue an administrative citation or civil penalty for any violation of this Chapter as follows:

1. First offense — not to exceed one hundred dollars \$100.00;
2. Second offense within any continuous period of twelve (12) consecutive months — not to exceed five hundred dollars (\$500.00);
3. Third and fourth offenses within any continuous period of twelve (12) consecutive months — not to exceed one thousand dollars (\$1,000.00);
4. Fifth and subsequent offenses within any continuous period of twelve (12) consecutive months — not to exceed three thousand (\$3,000.00).

H. Whenever in this Chapter any act or omission is made unlawful, it shall include causing, aiding, abetting, suffering, or concealing the fact of such act or omission.

I. The remedies specified in this section are cumulative and in addition to any other remedies available under state or local law for violation of this code.

5.36.140 Procedure for Imposition of Modification, Denial, Suspension and/or Revocation of Massage Business Permit.

A. In addition to any other penalty authorized by law, a massage business permit may be denied, modified, suspended, or revoked for any violation of this Chapter or federal, state, or local law in accordance with the provisions of this section.

B. The Chief of Police shall have the authority to modify a massage business permit to impose additional conditions or amend existing terms or conditions in the event of any violation of any condition of the permit or any violation of this Chapter or federal, state, or local law.

C. Any modification of conditions or denial, suspension or revocation of a massage business permit shall be in accordance with the following procedures.

1. The Chief of Police shall conduct an investigation whenever they have reason to believe that an owner, permittee, operator, massage technician or other person is in violation of, or has failed to comply with, any condition of the massage business permit, any requirements of this Chapter or any federal, state, or local law.
 2. Should the investigation reveal substantial evidence to support a finding that a violation occurred, the Chief of Police shall issue a written notice of intention to deny, modify, suspend and/or revoke the permit. The written notice shall be served on the responsible person, shall specify the facts which, in the opinion of the Chief of Police, constitute substantial evidence to establish grounds for modification, denial, suspension and/or revocation, and state that the permit will be modified, denied, suspended and/or revoked within thirty (30) calendar days from the date the notice is given unless the owner or permittee aggrieved by the Chief of Police's decision files with the City Manager a request for
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an administrative hearing to appeal the decision pursuant to Section 5.36.150. All reports and exhibits supporting the violation and intended to be used as evidence by the City at the hearing must be included with the written notice.

5.36.150 Appeal Procedures.

A. Any affected person(s) may appeal a decision of the Chief of Police imposing a fine or modifying, denying, suspending, and/or revoking a massage business permit to the City Manager within ten (10) calendar days from the date the notice is given. Said appeal shall be in writing and filed with the City Manager upon forms provided by the Police Department and shall specify therein that the decision of the Chief of Police was in error and identify the facts and circumstances on which the claim of error is based. If an appeal is filed within the time limit specified, it shall automatically stay proceedings in the matter until a determination is made by the City Manager. The City Manager shall set the matter for hearing before a hearing officer appointed by the City Manager at the soonest date convenient to the appellant. The City shall notify the parties in writing of the date and location of the hearing at least ten (10) business days prior to said date.

B. The fee to request an appeal pursuant to this Chapter shall be in the form of a deposit, the amount to be determined by the City Manager in accordance with any applicable law based on the anticipated staff cost to conduct the hearing. If the cost of the hearing or appeal exceeds the deposited amount, the requesting party shall be responsible for payment of the additional costs incurred. If the hearing officer determines that the violation is not supported by the evidence, the entire deposited amount will be returned to the party that requested the appeal. The appeal hearing shall be conducted pursuant to Sections 1.30.090 and 1.30.100 and 1.40 of this Code.

5.36.160 Effect of Massage Regulation Ordinance on other Provisions of the Code.

The issuance of any permit pursuant to this Chapter shall not relieve the Owner of the obligation to comply with all other provisions of this code, including but not limited to zoning, building, land use, and fire safety.

5.36.170 Promulgation of Regulations, Standards, and Other Legal Duties.

A. In addition to any regulations adopted by the City Council, the City Manager or designee is authorized to establish, consistent with the terms of this Chapter, any additional administrative rules, regulations and standards governing the issuance, denial or renewal of massage business permits and any other subject determined to be necessary to carry out the purposes of this Chapter.

B. Regulations shall be published on the City's website and maintained and available to the public in the Office of the City Clerk.

C. Regulations promulgated by the City Council or the City Manager shall become effective and enforceable upon date of publication on the City's website or, with respect to existing permitted massage businesses, upon the date specified in a written notice to Permittees by the City.

5.36.180 Reapplication after denial or revocation of massage business permit.

If a massage business permit is denied or revoked as a result of violation(s) of this Chapter or state or federal laws, no massage business permit may be issued to the applicant, or to another applicant

for a massage business at the same location, for a period of five (5) years from the date of denial or revocation.

5.36.190 Exemptions.

A. Persons holding an active and valid certificate or license to practice the healing arts under the laws of the State of California and their employees and contractors who are working under the direct on-site supervision of licensed providers such as, but not limited to, holders of medical degrees such as physicians, surgeons, chiropractors, osteopaths, naturopaths, podiatrists, physical therapists, registered nurses, and licensed vocational nurses, when practicing the healing arts within the scope of, and incidental to, an applicable license.

B. State-licensed hospitals, nursing homes, sanitariums, physiotherapy businesses or other state-licensed physical or mental health facilities and their employees or independent contractors.

C. Approved schools of massage and their students in training, provided such students provide massage therapy only under the direct personal supervision of an instructor. Such instructor must be physically present on the establishment premises while the massage is being administered.

D. Barbers and cosmetologists who are licensed under the State of California, providing massage therapy within the scope of, and incidental to, their licenses, provided that such massage therapy is limited solely to the neck, face, scalp, feet, lower limbs up to the knees, and hands and arms of their clients.

E. Athletic trainers employed by a professional or semi-professional athlete or athletic team, or athletic trainers hired by a local, state, or federal government agency, or the Chula Vista Elite Athlete Training Center, so long as such persons do not practice massage therapy as their primary occupation at any location in the City.
