

ORDINANCE NO. G-8730

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF KERN, STATE OF CALIFORNIA DELETING CHAPTER 5.52 OF TITLE 5; AMENDING SECTIONS 5.04.020 and 5.04.160, CHAPTER 5.04, TITLE 5; AND, ADDING CHAPTER 8.70 TO TITLE 8 OF THE KERN COUNTY ORDINANCE CODE RELATING TO MASSAGE PRACTITIONERS AND MASSAGE ESTABLISHMENTS

The following ordinance, consisting of five (5) sections, was duly and regularly passed and adopted by the Board of Supervisors of the County of Kern, State of California, at a regular meeting held on the 22nd day of August, 2017, by the following vote:

AYES: Gleason, Scrivner, Maggard, Couch Perez

NOES: None

ABSENT: None



(SEAL)
ATTEST:

Chairman of the Board of Supervisors of
the County of Kern, State of California

KATHLEEN KRAUSE
Clerk of the Board of Supervisors

By
Deputy Clerk

THE BOARD OF SUPERVISORS OF THE COUNTY OF KERN ORDAINS AS FOLLOWS:

Section 1. This ordinance shall be published in accordance with Government Code section 25124 and it shall take effect and be in full force on and after the 22nd day of September, 2017.

Section 2. Section 5.52 of Title 5 of the Ordinance Code is deleted in its entirety.

Section 3. Section 5.04.020, Chapter 5.04, Title 5 of the Ordinance Code is amended as follows:

5.04.020 - Businesses requiring licenses.

Licenses shall be required to operate or maintain the following businesses, or to pursue the following occupations:

A. Loose vehicle parts dealer. "Loose vehicle parts dealer," as used in this chapter, means any person who handles or deals in used loose vehicle parts and

accessories as an incident to his regular business or whose principal business consists of buying and selling used loose vehicle parts and accessories;

B. Carnival;

C. Circus;

D. Fortune teller, clairvoyant, palm reader, spiritualist, medium or other prognosticator for a fee, donation or other consideration;

E. Itinerant peddler. "Itinerant peddler" means any person other than a secondhand oil well supply dealer, an automobile sales agency or a street vendor as defined in subsection (O) of this section, not having a fixed place of business in the county, who continuously goes about from house to house or place to place without establishing or setting up a stand or other apparatus which fixes a place from which the business is conducted for more than one (1) hour, and who gathers, receives, collects, buys, sells, disposes of, or otherwise deals in new or used articles, goods, wares or merchandise of any type or description;

F. Locksmith;

G. Weapons dealer as defined in and insofar as required by Penal Code Sections 12070 and 12071 as they now read or as they may be amended;

H. Taxicab service;

I. Shooting galleries, doll racks, or games of skill;

J. Swap meets, as defined in Section 21661 of the Business and Professions Code (graffiti prevention regulation: Section 5.04.270);

K. Reserved for future use;

L. Taxicab driver;

M. Commercial photographers without fixed place of business as defined in Section 5.24.010 of this code;

N. Temporary business. A "temporary business" means a retail business operated primarily from a fixed place of business set up with the intent or plan not to conduct such business in the same general area of the county for more than ninety (90) days. A business is a prima facie temporary business if the business premises is a motel or hotel room;

O. Street vendor. "Street vendor" as used in this chapter, means any person other than a secondhand oil well supply dealer, an automobile sales agency or an itinerant peddler as defined in subsection (E) of this section, not having a fixed place of business in the county, who goes about from place to place establishing or setting up at each a stand or other apparatus which fixes a location from which the business is conducted for more than one (1) hour, and who gathers, receives, collects, buys, sells, disposes of, or otherwise deals in new or used articles, goods, wares or merchandise of any type or description.

P. Massage Establishment. "Massage establishment" means a fixed place of business where any person engages in, conducts or carries on a business providing massage or related services. In order to obtain a business license, a massage establishment must have first obtained a "massage establishment permit" in accordance with Chapter 8.70 of this Code.

Section 4. Section 5.04.160, Chapter 5.04, Title 5 of the Ordinance Code is amended as follows:

Table 5.04.160 is deleted in its entirety and replaced with the following table:

Table 5.04.160

Business License Fees

	Initial Annual Fee	Annual Renewal Fee
1. Loose vehicle parts dealer	\$105.00	\$ 65.00
2. Carnival	211.00	166.00
3. Circus	181.00	166.00
4. Fortuneteller, clairvoyant, palm reader, etc.	130.00	65.00
5. Itinerant peddler	130.00	65.00
6. Locksmith and security device sales	105.00	40.00
7. Weapons dealer	130.00	65.00
8. Taxicab service	80.00	65.00
9. Shooting galleries, doll racks and games of skill:		
No fixed place of business	55.00+	40.00+
	25.00/day	25.00/day
Fixed place of business	55.00+	40.00+
	25.00/day	25.00/day
10. Swap meets and flea markets	281.00	216.00
11. Taxicab driver	55.00	40.00
12. Commercial photographer	80.00	40.00

13. Temporary business	130.00	115.00
14. Street vendor	130.00	65.00
15. Massage Establishment (as defined in Chapter 8.70 of this Code)	166.00	75.00
16. Business providing massage or related services other than a massage establishment	136.00	75.00

Section 5. Section 8.70 is added to Title 8 of the Ordinance Code to read as follows:

Chapter 8.70

MESSAGE/BODYWORK PRACTITIONER PERMITS AND REGULATIONS

- 8.70.010** **Definitions.**
- 8.70.020** **CAMTC – Permit Required.**
- 8.70.030** **Massage Business Permit Required.**
- 8.70.040** **Exemptions.**
- 8.70.050** **Application for Massage Establishment Permit.**
- 8.70.060** **Requirements for Massage Establishments.**
- 8.70.070** **Issuance of Massage Establishment Permit.**
- 8.70.080** **Permit denial or non-renewal.**
- 8.70.090** **Regulations.**
- 8.70.100** **Prohibited conduct.**
- 8.70.110** **Inspection.**
- 8.70.120** **Massage Establishment Permit Fees.**
- 8.70.130** **Violations and Administrative Penalties.**
- 8.70.140** **Appeal and Cost Recovery.**
- 8.70.150** **Severability.**
- 8.70.160** **No Conflict with State or Federal Law.**

8.70.010 **Definitions.**

As used in this chapter:

- A. "CAMTC" means California Massage Therapy Council.
- B. "Compensation" means a payment, loan, advance, donation, contribution, deposit, forgiveness of debt, or gift of money, or anything of value.
- C. "Convicted" means having pled guilty or having received a verdict of guilty, including a verdict following a plea of nolo contendere, to a crime.
- D. "Department" means the Kern County Public Health Department.
- E. "Director" means the Director of the Public Health Department or any individual designated by the Director to act on his or her behalf.
- F. "Massage " means, regardless of its designation, the systematic manual

or mechanical manipulations of the soft tissues of the body by such movements as rubbing, stroking, kneading, pressing, tapping, pounding, vibrating, rolling, compression and friction, for the purpose of promoting circulation of the blood and lymph, relaxation of muscles, relief from pain, restoration of metabolic balance, neuromuscular reeducation, prevention, rehabilitation, healing, or other benefits both physical and mental, including, but not limited to, deep tissue and pre and post sports massage, manual lymph drainage therapeutic technique and myofascial release.

G. "Massage Establishment" means a fixed place of business where massage or similar procedures are performed.

H. "Massage Practitioner" means any person, other than a medical practitioner licensed by the state of California, who administers to another person for any form of consideration a massage, baths or other similar procedures.

I. "Off-premise massage" means the performing of massage for a fee, profit or other compensation at a location other than the massage establishment, including, and limited to, the following:

1. "Off-premise public" when the client remains fully clothed and limited to modalities that do not require the removal of clothing, including, but not limited to, chair massage, reflexology, sports massage, and acupressure, shiatsu and Thai massage. Off premise public is limited to areas open to the public, but limited to sidewalks, sports complexes, convention centers, public events, and business lobbies or common areas open to the public or other employees;
2. "Off-premise private" when the client may or may not remain fully clothed and limited by Section 8.70.100.

J. "Owner" means all persons who have an ownership interested in the massage establishment and are responsible for its day-to-day operations.

K. "Reflexology" is the application of specific pressures to reflex points in the hands and feet. It is a clothed session with only the removal of shoes and socks allowed.

8.70.020 CAMTC – Permit Required.

Except as provided in section 8.70.040, it shall be unlawful for any person to provide massage for compensation without having first obtained appropriate certification through the CAMTC.

A. Effective immediately the County will no longer issue massage permits.

B. For those persons providing massage for compensation who currently have County issued massage permits, those permits are not subject to renewal by the County.

C. Notwithstanding this section, business establishments currently providing massage or related services who meet all conditions of this ordinance except having employed individual(s) who are not CAMTC certified prior to the effective date hereof that desire to continue providing said services after the effective date hereof may be given a conditional permit and a reasonable time to obtain CAMTC certified employees or for its employee(s) to obtain CAMTC certification. The length of time allowed to obtain CAMTC certified employees or CAMTC certification shall be determined by the director. Any conditional permit shall not, however, exceed one (1) year from the effective date hereof.

8.70.030 Massage Establishment Permit Required.

It shall be unlawful for any owner of a massage establishment to operate a

massage business at any location in the County, except as exempted in section 8.70.040, without first obtaining an establishment permit from the Director. The permit must be prominently displayed on the premises in which the business is conducted. The permit is non-transferable.

8.70.040 Exemptions.

The following massage service providers are exempt from the permit requirement in this Section:

- A. Physicians, surgeons, chiropractors, osteopaths, podiatrists, acupuncturists or physical therapists duly licenses to practice in the state of California;
- B. Trainers of any amateur, semiprofessional, or professional athlete or athletic team while engaging in their training responsibilities for and with athletes;
- C. Barbers, beauticians, and cosmetologists who are duly licensed under the laws of the state of California while engaging in practices within the scope of their licenses, limited solely to the massaging of the neck, face, scalp, hands up to the wrist of the clients, or feet up to the ankle of the clients. This includes manicurists, nail technicians and estheticians licensed by the state of California as required by the Barbering and Cosmetology Act;
- D. Hospitals, nursing homes, sanitariums or other health care facilities duly licensed by the state of California;
- E. Registered nurses or state licensed vocational nurses;
- F. Accredited high schools, junior colleges and colleges and universities where coaches and trainers are acting within the scope of their employment;
- G. Persons attending a CAMTC recognized school while performing massage or related services as part of the school's curriculum on the school's premises under direct supervision of an instructor employed by the school.

8.70.050 Application for Massage Establishment Permit.

- A. To apply for a massage establishment permit, the owner(s) shall:
 - 1. File an application with the Director upon a form provided by the Director;
 - 2. Provide a complete set of fingerprints in the manner required by the Director from all persons with an ownership interest in the massage business who are not CAMTC certified, for the purpose of a undergoing a criminal background check; and
 - 3. Pay an appropriate fee, as established by department's uncodified fee ordinance.
- B. The application form shall require the applicant to provide, under penalty of perjury, the following information:
 - 1. The name(s), address(es), and any other identifying information regarding the owner(s) as requested by the Director;
 - 2. A description of all services to be rendered by the massage business;
 - 3. The address of any facilities proposed to be operated under a Massage Establishment permit, and a copy of the rental agreement or lease showing the names of the landlord and all of the tenants or lessees who are parties to the rental agreement; or, if the Owner owns the premises, a copy of the deed and a disclosure of any other person or entity with a shared ownership interest in the premises;
 - 4. The number of individuals to be employed by the massage business, and the names and CAMTC certificate numbers of any Massage Practitioners who shall operate under that permit;
 - 5. All permits, certificates, or licenses related to the practice of massage or the operation of a massage establishment or massage service, currently or formerly

held by all owner(s), issued in Kern County or elsewhere, including any discipline imposed by the issuing authority and a statement whether the permit holder is currently the subject of a disciplinary process;

6. All felony or misdemeanor convictions for each person with an ownership interest in the massage business; and

7. Any additional information as required by the Director.

C. If the owner of the massage establishment is or includes 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 the officers, directors, and each stockholder holding more than 10% of the stock of the corporation.

D. If the owner is, or includes, a partnership, the application shall set forth the name and the residence address of each of the partners, including limited partners. If one or more of the partners is a corporation, the applicant shall provide the name of the corporation exactly as shown in its Articles of Incorporation, together with the names and residence addresses of each of the officers, directors, and each stockholder holding more than 10% of the stock of the corporation.

8.70.060 Requirements for Massage Establishments.

All massage establishments must comply with the following requirements:

A. The massage establishment premises and facilities shall meet and be maintained in a condition to comply with the current edition of the California Code of Regulations, Title 24, and Title 17 of this Code.

B. Handwashing facilities shall be provided within or adjacent to the toilet rooms and shall be equipped with an adequate supply of hot and cold running water under pressure.

1. Handwashing facilities must provide soap in a dispenser and sanitary towels.

2. Handwashing facilities shall be readily accessible to massage/bodywork practitioners.

C. All portions of a massage establishment shall be provided with adequate light by means of windows, skylights, or with an approved artificial light. Adequate ventilation shall be provided by means of windows or a mechanical operating ventilating system.

8.70.070 Issuance of Massage Establishment Permit.

A. The Director shall have 90 days following receipt of a completed application for a massage establishment permit to investigate the application and the background of the non-CAMTC applicant, including, but not limited to, any past criminal convictions.

B. After investigation, the Director shall approve the permit if he finds:

1. A completed written application form has been filed;

2. The required fee has been paid;

3. The applicant has been fully cooperative in the investigation of her/her application;

4. The applicant has not knowingly made any false, misleading or fraudulent statements in the application;

5. The applicant is proposing to operate the Establishment in a building that complies with all of the health, zoning, fire, building and safety requirements and standards of the laws of the state of California and the County;

6. The applicant, employees, agents, partners, officers, directors, or

shareholders of the corporation holding more than 10% of the stock, if the applicant is a corporation, or any of the partners, including limited partners, if the applicant is a partnership, has not been convicted in a court of competent jurisdiction of an offense involving conduct which requires registration under California Penal Code Section 290, or of conduct violating Penal Code Sections 220, 261, 264.1, 266e, 266h, 266i, 314, 315, 316, 318, 647(a), and 647(b) or convicted of an attempt to commit any of the above-mentioned offenses or convicted in any state of any offense which, if committed or attempted in this state, or conspiracy to commit any of the above offenses, would have been punishable as one or more of the above-mentioned offenses, or any crime involving dishonesty, fraud, deceit, or moral turpitude;

7. The applicant, employees, agents, partners, officers, directors, or shareholders of the corporation holding more than 10% of the stock, if the applicant is a corporation, or any of the partners, including limited partners, if the applicant is a partnership, has not been convicted, within the past five years, in a court of competent jurisdiction of any offense involving the controlled substances designated in Sections 11054, 11055, 11056, 11057, or 11058 of the Health and Safety Code or violation in any other state of an offense which, if committed in this state, would have been punishable as one or more of the above-mentioned offenses;

8. The applicant, employees, agents, partners, officers, directors, or shareholders of the corporation holding more than 10% of the stock, if the applicant is a corporation, or any of the partners, including limited partners, if the applicant is a partnership, has not been found in violation of Chapter 9.44 of this Code within the past five (5) years, or found to be in violation of any other county or city municipal code related to synthetic drugs within the past five (5) years;

9. The applicant, employees, agents, partners, officers, directors, or shareholders of the corporation holding more than 10% of the stock, if the applicant is a corporation, or any of the partners, including limited partners, if the applicant is a partnership, has not been convicted in a court of competent jurisdiction of an offense involving the maintenance of a nuisance in connection with the same or similar business operation;

10. The applicant has not had a massage establishment permit or a permit for a similar type establishment revoked by the County or any other jurisdiction within the past three (3) years;

11. The applicant is not delinquent in payment to the County for any taxes, fees, charges, fines, or penalties assessed against or imposed upon the applicant.

C. Upon review of all documentation provided, the Director shall issue the massage establishment permit. The massage establishment permit shall be valid from the date of issuance and remain in effect as long as the establishment remains in compliance with state statutes, rules, regulations, orders, and county ordinances related to public and environmental health. Any person who becomes subject to the requirements of this chapter shall pay the applicable fee, established by uncodified ordinance, according to the following schedule:

1. July, August, September, October, November, December – the full fee.
2. January, February, March, April, May, June – one half (1/2) the cost of the fee.

3. Notwithstanding the term of the permit, a yearly fee shall be due and payable on July 1 of each and every year.

D. The Director shall provide written notice to the applicant of the decision and the grounds therefore as soon as possible after arriving at the decision. If denied, an applicant may reapply if he or she can provide evidence that the ground or grounds

for denial of the applicant no longer exist; provided, however, that no such reapplication may be made sooner than one year after the original application.

8.70.080 Permit denial or non-renewal.

A. The Director may deny or refuse to renew any permit granted under this chapter on the grounds that the applicant or permit holder has failed to comply with the permit conditions or other requirements of this chapter.

B. The Director may deny or refuse to renew any permit if any of the following are found:

1. The permit holder does not possess the qualifications for the permit as required by this Chapter;

2. The permit holder has been convicted or any violation of any provision of this Chapter;

3. The permit holder has engaged in conduct or operated a massage establishment or is engaged in conduct as a massage practitioner in a manner which violates this chapter, any conditions of the permit, or any of the laws which would have been grounds for denial of the permit;

4. There is fraud, material misrepresentation, false statement, or omission of a material fact in any application for a permit or in any supplemental material;

5. An activity authorized under the permit has been conducted in an unlawful manner or in such a manner as to constitute a menace to the health, safety, or general welfare of the public;

6. For purposes of this section, permit holder, in the case of a massage establishment, shall include the managing responsible officer or managing employee.

C. When the Director concludes grounds for denial or refusal to renew a license exists, the Director shall serve the applicant or permit holder, either personally or by certified mail addressed to the business or residence address of the applicant or permit holder with a notice of denial or refusal to renew the permit. This notice shall state the reasons for the proposed action, the effective date of the decision, that the applicant or permit holder has the right to appeal the decision to the Director, or his/her designee, and that the decision will be final if no appeal is filed within 15 calendar days of the date of the notice of denial or refusal.

8.70.090 Regulations.

A. A recognizable and readable sign shall be posted at the main entrance identifying the massage establishment.

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

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

D. All equipment used in the massage establishment shall be maintained in a

clean and sanitary condition. Instruments utilized in performing massage shall not be used on more than one client unless they have been sterilized, using standard sterilization methods.

E. Clients of the massage establishment shall be furnished with a dressing room. Dressing rooms will be used only by clients of the same sex at the same time. Dressing rooms need not be separate from the room in which the massage is being performed.

F. Toilet facilities shall be provided in convenient locations within the massage establishment and shall consist of at least one unisex toilet with lavatories or washbasins provided with soap and both hot and cold running water either in the toilet room or vestibule.

G. A minimum of one washbasin for employees shall be provided at all times. The basin shall be located within or as close as practicable to the area devoted to performing of massage services. Soap and sanitary towels shall also be provided at each basin.

H. All massage establishments shall be operated in compliance with state and local health laws and regulations.

I. All employees of the massage establishment and all persons performing massage shall be eighteen years of age or older.

J. It shall be the responsibility of the holder of the massage establishment permit to ensure that each massage practitioner operating at the establishment shall have first obtained a valid CAMTC certificate.

K. The holder for the massage establishment permit shall maintain a current file of all persons operating at the establishment. The file shall contain true names and aliases used by such employees, age, birth date, color of the hair and eyes, home address, phone numbers, social security number and the date of employment and termination. The manager of the massage establishment shall have access to the records for inspection by the Director during business hours.

L. Every person holding a permit pursuant to this chapter shall keep a record of the date and hour of each treatment, the name and address of the patron and the name of the massage professional administering such treatment. The record shall be open to inspection by the Director during business hours. Such records shall be maintained for a period of two years.

M. No holder of a massage establishment permit shall allow communication devices to be installed or used in any manner on the premises of the massage establishment so as to interfere with or hinder inspection by Department staff.

N. A massage shall be provided or given only between the hours of seven a.m. and ten p.m. All clients shall exit the premises by ten p.m. and no massage establishment shall allow any person to reside within the premise or in attached structures owned, leased, or controlled by the massage business.

O. Either a manager or the holder of a massage establishment permit shall, during business hours, be present, be responsible for and provide that the premises be readily accessible and open for inspection by Department employees, law enforcement officers or other government employees who are charged with enforcement of health and safety or other laws of the County or state.

P. No massage establishment shall operate under any name not specified in the permit.

Q. Except as otherwise provided in this Chapter, massage shall be performed only at a massage establishment for which a permit has been issued and is valid.

R. Massage practitioners shall be fully clothed at all times while administering massage or otherwise visible to clients. Massage practitioners' clothing shall not include:

1. Attire that is transparent, see-through, or expose the practitioners' undergarments;
2. Swim attire, if not providing a water-based massage modality approved by the CAMTC; or
3. Attire that exposes the individual's breasts, buttocks, or genitals.

S. An original CAMTC certificate for each massage practitioner employed in the business shall be displayed in the reception area or similar open public place on the premises. Likewise, a CAMTC certificate shall also be visibly displayed in the work station or worn by and clearly visible on the massage practitioner's person during working hours, and at all times when the massage professional is inside a massage business or providing off-premise massage.

T. All exterior doors shall remain unlocked from the inside during business hours unless otherwise allowed by law. A person operating a massage establishment shall be responsible for and provide that said premises shall, during business hours, be readily accessible and open for inspection by Department staff or law enforcement officers.

U. No alcoholic beverages or drugs may be sold, served, used, or possessed on business premises during business hours. "Alcoholic beverage" includes a mixture of one or more alcoholic beverages ingested separately or as a mixture as defined in California Business and Professions Code section 23004. "Drug" shall include all narcotics, drugs, or controlled substances as defined in California Health and Safety Code Chapter 2 (commencing with Section 11053) of Division 10 and Title 9 of this Code, Chapter 9.44.

8.70.100 Prohibited Conduct.

A. No owner, manager, operator, responsible managing employee or permit holder shall allow, offer or perform any service other than those permitted under this Chapter.

B. No owner, manager, operator, employee or sub-contractor of a massage establishment, while on the premise of a massage establishment and/or during the course of performing massage, shall:

1. Expose the sexual or genital part of the permit holder, employee or sub-contractor;
2. Expose the sexual or genital part of any other person; or
3. Intentionally touch or make physical contact with the genitals, anus and or perineum of another person. Sexual and genital part shall include the genitals, anus and/or perineum of any person and the breasts of any female.

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

D. A massage practitioner shall not violate the provisions of Section 647(a) and (b) of the California Penal Code, or any other state law involving a crime of moral turpitude, and such practices shall not be allowed or permitted by the massage

establishment permit holder, manager, operator or responsible managing employee.

E. A massage practitioner shall not massage a client of one sex within the view of a client of the opposite sex, and such practices shall not be allowed or permitted by the massage establishment permit holder, except for "off-premise public" massages as specified in sub-section 1.1. of section 8.80.010. Parents, spouse, registered domestic partner, guardians, or caregivers are excluded from this requirement.

F. No owner, manager operator, responsible managing employee or permit holder of a massage establishment shall allow or permit a person to administer massage for such establishment unless the practitioner possesses a valid CAMTC certificate. It shall be the responsibility of the massage establishment permit holder to ensure that each person operating as a massage practitioner shall first have obtained a valid CAMTC certificate.

G. Personal knowledge of any violation of this section shall not be required to be shown where a massage establishment permit is suspended or revoked.

8.70.110 Inspection.

A. The Department may inspect any massage establishment to determine whether the establishment is operating in compliance with the provisions of State law and this Chapter, or for the purpose of providing educational materials to employees of the establishment in culturally and linguistically appropriate languages regarding employee rights, and information on a variety of resources, including linkage to health care services, victim services, and emergency numbers and hotlines to call for information and assistance.

B. Inspections shall be performed in a reasonable manner and at times that are reasonable under the circumstances, taking into consideration the normal business hours of the massage establishment.

C. Refusal to allow an inspection under this section is a violation of this Chapter subject to permit revocation under section 8.70.130 and is punishable as a misdemeanor.

D. Nothing in this Section shall be construed to limit or restrict the lawful authority of a law enforcement officer or other designated County employee to enter any massage establishment permitted under this Chapter.

8.70.120 Massage Establishment Permit Fees.

The annual permit fee for massage establishments shall be established by uncodified ordinance.

8.70.130 Violations and Administrative Penalties.

A. Any massage establishment operated, conducted or maintained contrary to the provisions of the Chapter shall be considered a public nuisance and subject to any and all civil and administrative remedies and penalties.

B. Each massage establishment in violation of this Chapter shall be charged with a separate offense for each and every day during which any violation of any provision of this Chapter is committed, continued or permitted.

C. The Director may suspend summarily any Massage Practitioner permit issued under this Chapter pending a noticed suspension or revocation hearing when, in the opinion of the Director, the public health or safety requires such summary suspension. The Director shall provide written notice of such summary suspension to the Massage Practitioner by hand delivery or registered mail.

D. Upon determination by the Department that a person has engaged in any

conduct that violates the provisions of this Chapter, the Director may:

1. Suspend a massage establishment permit;
2. Revoke a massage establishment permit;
3. Impose administrative penalties on the massage establishment;
4. Both suspend the permit and impose administrative penalties on the massage establishment; or
5. Both revoke the permit and impose administrative penalties on the massage establishment.

E. Penalties for massage establishment operating without a massage establishment Permit:

1. Administrative fine: Up to \$250 per day of operating without a permit; and
2. Permit penalty: Business location and owner of massage establishment ineligible for a massage establishment permit for 180 days.
3. Repeat violations:
 - a. Administrative fine: Up to \$500 per day of operating without a permit; and
 - b. Permit penalty: Business location and owner of massage establishment permanently ineligible for a massage establishment permit.

F. Penalties for massage establishment employing any person under 18 years of age.

1. Administrative fine: None.
2. Permit penalty: Sixty (60) day suspension of massage establishment permit. Business location and owner of massage establishment ineligible for a massage establishment permit for 60 days.
3. Repeat violations: Massage establishment permit permanently revoked. Business location and owner of massage establishment permanently ineligible for a massage establishment permit.

G. Penalties for solicitation charges or convictions, as defined by California Penal Code section 647(a) or (b) for anyone working at massage establishment.

1. Administrative fine: \$1,500 to be paid by massage establishment owner; and
2. Permit penalty: Revocation of massage establishment permit. Business location and owner of massage establishment permanently ineligible for a massage establishment permit.
3. Any fine or penalty pursuant to this sub-division shall be reversed if solicitation charges are dismissed or if there is a criminal adjudication of "not guilty."

H. Penalties for trafficking charges or convictions, as defined by California Penal Code section 236.1, for anyone working at massage establishment.

1. Administrative fine: \$1,500 to be paid by massage establishment owner; and
2. Permit penalty: Permit revocation. Business location and owner of massage establishment permanently ineligible for a massage establishment permit.
3. Any fine or penalty pursuant to this sub-division shall be reversed if trafficking charges are dismissed or if there is a criminal adjudication of "not guilty."

I. Penalties for massage establishment knowingly employing individual without CAMTC certification.

1. Administrative fine: \$500 per unpermitted massage practitioner to be paid by massage establishment owner.
2. Permit penalty: None.
3. Repeat violations:

- a. Administrative fine: Up to \$1,000 per unpermitted massage practitioner to be paid by massage establishment.
 - b. Permit penalty: Massage establishment permit suspended for 60 days. Business location and owner of massage establishment ineligible for a massage establishment permit for 60 days.
 - J. Penalties for massage establishments used for residential sleeping purposes.
 - 1. Administrative fine: Up to \$500 to be paid by massage establishment owner.
 - 2. Permit penalty: None.
 - 3. Repeat violations:
 - a. Administrative fine: Up to \$1,000 to be paid by massage establishment owner.
 - b. Permit penalty: 30 day suspension of massage establishment permit. Business location and owner of massage establishment ineligible for a massage establishment permit for 30 days.
 - K. Penalties for any massage practitioner improperly attired in violation of Section 8.70.090.
 - 1. Administrative fine: Up to \$250 per person to be paid by massage establishment owner.
 - 2. Permit penalty: None.
 - 3. Repeat violations:
 - a. Administrative fine: Up to \$500 fine per person to be paid by massage establishment owner.
 - b. Permit penalty: Sixty (60) day suspension of massage establishment permit. Business location and owner of massage establishment ineligible for a massage establishment permit for 60 days.
 - L. Penalties for massage establishment operating between the hours of 10:00 p.m. and 7:00 a.m.
 - 1. Administrative fine: \$500 to be paid by the massage establishment owner.
 - 2. Permit penalty: Thirty (30) day suspension of massage establishment permit. Business location and owner of massage establishment ineligible for a massage establishment permit for 30 days.
 - 3. Repeat violations:
 - a. Administrative fine: \$1,000 for second occurrence within 24 months and up to \$1,500 for third and each subsequent occurrence within 24 months.
 - b. Permit penalty: Sixty (60) day suspension of massage establishment permit. Business location and owner of massage establishment ineligible for a massage establishment permit for 60 days.
 - M. Penalties for practicing massage for compensation without a CAMTC certification.
 - 1. Administrative fine: \$250 fine.
 - 2. Repeat violations:
 - a. Administrative fine: \$500 for second occurrence within 24 months; \$1,000 fine for third and each subsequent occurrence within 24 months.
 - N. Penalties for refusal to allow an inspection of the massage establishment.
 - 1. Administrative fine: \$1,000 fine.
 - 2. Permit penalty: Permit revocation. Business location and owner of massage establishment permanently ineligible for a massage establishment permit.

- O. Penalties for any other violations of this Chapter not specified above in this section.
 - 1. Administrative fine: Up to \$500 fine to be paid by massage establishment owner.
 - 2. Repeat violations:
 - a. Administrative fine: Up to \$1,000 for second occurrence within 24 months; \$2,000 fine for third and each subsequent occurrence within 24 months, to be paid by massage establishment owner.
 - b. Permit penalty: Up to 60 day suspension of massage establishment permit. Business location and owner of massage establishment ineligible for a massage establishment permit for up to 60 days.
- P. Written notice of each violation shall be provided to the owner(s) of the property upon which the massage establishment is located.

8.70.140 Appeal and Cost Recovery.

A. Upon a determination by the department that a person has engaged in any conduct that violates the provisions of this chapter, the director, or his/her designee, shall notify the owner(s) of the massage establishment or individual performing massage without a CAMTC certificate, that there has been an initial determination of violation under the provisions of this chapter. The initial determination notice will specify the violation and the sanction imposed, including the effective date of the suspension or revocation, if applicable. The notice shall further state that the owner(s) of the massage establishment or individual performing massage without a CAMTC certificate may, within fifteen (15) days, submit to the department any written or documentary evidence to contest the initial determination of violation.

B. After receiving such evidence, if applicable and provided, the director, or his/her designee, shall prepare a final written decision and shall serve this decision upon the owner(s) of the massage establishment or individual performing massage without a CAMTC certificate. Upon written request, the offender(s) shall have the right to receive copies of any records or files upon which the administrative decision is based. This final determination shall be served through certified mail within sixty (60) days of the final determination.

C. The owner(s) of the massage establishment or individual performing massage without a CAMTC certificate shall have the right to appeal the final decision of the department to the board of supervisors. To obtain a review of the final determination, the owners or individual must file with the clerk of the board of supervisors within fifteen (15) days of the date of the final determination, a written request for a hearing. The timely filing of a request for hearing shall hold in abeyance any permit suspension until the administrative review is heard and decided.

D. If a review is requested, the clerk of the board of supervisors shall provide written notice, within thirty (30) days of its receipt of the request, to the owner(s) of the massage establishment or individual performing massage without a CAMTC certificate of the date, time and place of the hearing on the appeal.

E. At the time fixed in the notice, the board of supervisors shall proceed to hear testimony from any interested person regarding the specified violation deemed by the department to be the basis for the proposed administrative penalty, and any other matter which the board of supervisors may deem pertinent thereto.

F. Upon the conclusion of the hearing the board of supervisors will make a determination based on the evidence presented at the hearing, and may impose a

suspension penalty without regard to the limits in Section 8.70.130.

G. The decision of the board of supervisors shall be final.

H. Any person who is assessed an administrative fine or whose permit is suspended or revoked under this Chapter, regardless of whether any fine, suspension, or revocation is held in abeyance by the Department, shall be liable to the County for its costs incurred in enforcing this Chapter, including, but not limited to, the costs of inspection, investigation, administration, administrative proceedings, court proceedings, monitoring, and attorneys' fees if, at the conclusion of all proceedings, the fee or permit action is substantially sustained. Within 30 days of the final decision, the Department shall calculate its costs and invoice accordingly.

8.70.150 Severability.

If any of the provisions of this Chapter or the application thereof to any person or circumstance is held invalid, the remainder of this Chapter, including the application of such part or provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.

8.70.160 No Conflict with State or Federal Law.

Nothing in this Chapter shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any Federal or State law.