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AGENDA
KERMAN PLANNING COMMISSION
REGULAR MEETING
Kerman City Hall
Monday, October 12, 2015
6:30 PM

AGENDA PACKET AVAILABLE FOR REVIEW 72 HOURS PRIOR TO THE PLANNING COMMISSION MEETING AT THE PLANNING DEPT. AND ON THE CITY WEBSITE ITEMS RECEIVED AT THE MEETING WILL BE AVAILABLE FOR REVIEW AT THE CITY PLANNING OFFICE

Chairman Robert Epperson, Vice-Chairman Kevin Nehring
Commissioners Robert Bandy, Charlie Jones, Eric Kehler, Mario Nunez, Katie Wettlaufer

ALL MEETING ATTENDEES ARE ADVISED THAT ALL PAGERS, CELLULAR TELEPHONES AND ANY OTHER COMMUNICATION DEVICES SHOULD BE POWERED OFF UPON ENTERING THE COUNCIL CHAMBERS, AS THESE DEVICES INTERFERE WITH OUR AUDIO EQUIPMENT.

OPENING CEREMONIES

Call to Order – Chairman, Robert D. Epperson

Roll Call – Secretary, Olivia Pimentel

Pledge of Allegiance

AGENDA APPROVAL/ADDITIONS/DELETIONS

1. PRESENTATIONS

   A. Introduction of New Contract Planner, David Brletic of Collins & Schoettler Planning Consultants. Mr. Brletic will be assigned to Kerman on Mondays to assist on planning matters and will attend Planning Commission meeting when requested.

REQUEST TO ADDRESS THE COMMISSION

This portion of the meeting is reserved for members of the public to address the Commission on items of interest that are not on the Agenda and are within the subject matter jurisdiction of the Commission. Speakers shall be limited to (3) three minutes. It is requested that no comments be made during this period on items on the Agenda. Members of the public wishing to address the Commission on items on the Agenda should notify the Chairman when that Agenda item is called, and the Chairman will recognize your discussion at that time. It should be noted that the Commission is prohibited by law from taking any action on matters discussed that are not on the Agenda. Speakers are asked to please use the microphone, and provide their name and address.

2. APPROVAL OF MINUTES

   A. September 28, 2015

3. PUBLIC HEARING

   A. Public Hearing on Petition of Amendment to Zoning Ordinance Related To Massage Business Establishments in General Commercial Zone District Conditional Uses

      Planning Commission by motion, open public hearing, hear any public testimony, close public hearing and Recommend City Council amend Zoning Ordinance relating to permitting procedures for massage businesses establishments in General Commercial Zone District Conditional Uses

4. PETITIONS/RESOLUTIONS

   None offered.

5. ADMINISTRATIVE REPORTS

   A. Council decision on Planning Commission stipends.

COMMUNICATIONS

   A. Informational: Conditional Use Permit Application Tovar Large Family Daycare did not meet the filing deadline, will be presented as a public hearing at the November 9, 2015 meeting.

ADJOURNMENT

In compliance with the American with Disabilities Act (ADA), if you need special assistance to participate at this meeting, please contact the City Clerk at (559) 846-9380. Notification of 48 hours prior to the meeting will enable the City Clerk to make reasonable arrangement to ensure accessibility to this meeting. Pursuant to the ADA, the meeting room is accessible to the physically handicapped.

AGENDA POSTING CERTIFICATION

I, OLIVIA G. PIMENTEL, Planning Secretary for the City of Kerman, do hereby declare under penalty of perjury that I caused the above agenda to be posted at City of Kerman Planning & Development office at 850 So. Madera Avenue, and at Kerman Community/Teen Center, 15100 Kearney Plaza, and emailed to interested parties on.

/s/ Olivia G. Pimentel
Secretary to the Planning Commission

MINUTES
KERMAN PLANNING COMMISSION
Regular Meeting Kerman City Hall
Monday, September 28, 2015 6:30 p.m.
Chairman Robert Epperson, Vice-Chairman Kevin Nehring
Commissioners Robert Bandy, Charlie Jones, Eric Kehler, Mario Nunez, Katie Wettlaufer

Call to Order – Vice-Chairman, Kevin Nehring called meeting to order at 6:31 p.m.

Roll Call taken by– Secretary, Olivia Pimentel

Commissioners Present: Bandy, Kehler, Jones, Nehring, Nunez, Wettlaufer

Commissioners Absent: Epperson (excused)

Pledge of Allegiance - performed

AGENDA APPROVAL/ADDITIONS/DELETIONS - Agenda unanimously approved as presented.

1. PRESENTATIONS - None offered

REQUEST TO ADDRESS THE COMMISSION – Mrs. Tina Guidry and daughter Mia Guidry addressed the the Commission to remind the Commission of their request regarding consideration for zone change to allow 4H farm animals in residential zone for school project.

2. APPROVAL OF MINUTES

A. August 10, 2015 C/Jones made a motion to approve as presented, second C/ Wettlaufer, motion unanimously approved; 6/0/1(Epperson absent)

3. PUBLIC HEARING

A. Amend Conditional Use Permit 12-02, Mid Valley Disposal Expansion

Planning Commission by motion opened public hearing, considered any testimony, closed public hearing and approved amendment to conditional use permit 12-02, Mid Valley Disposal relating to the phasing of the project.

There were no proposed changes to the project, only to the phasing to allow immediate construction of the composting facility, followed by the other offsite and onsite improvements. All conditions remain as approved. There were no public comments or questions of staff, there was unanimous support for the project.

Commissioner Nehring, made a motion to adopt Resolution No. 15-04, A Resolution of the Planning Commission Approving Amendment to Conditional Use Permit 12-02, Mid Valley Disposal relating to the phasing of the project, second Commissioner Jones, approved as presented by the following vote

Yes: Bandy, Jones, Kehler, Nehring, Nunez, Wettlaufer
Noes None
Abstain: None
Absent: Epperson

4. PETITIONS/RESOLUTIONS

A. Resolution Approving Change of Regular monthly meeting dates of Planning Commission

Planning Commission Approved by motion Resolution to change regular monthly meeting dates from the fourth Monday of each month to the second Monday of each month

Commissioner Jones, made a motion to adopt Resolution No. 15-05, A Resolution of the Planning Commission Approving change of regular monthly meeting dates from the fourth Monday of each month to the second Monday of each month, second Commissioner Wettlaufer, approved as presented by the following vote

Yes: Bandy, Jones, Kehler, Nehring, Nunez, Wettlaufer
Noes None
Abstain: None
Absent: Epperson

5. ADMINISTRATIVE REPORTS

A. Setting Public Hearing on Petition of Amendment to Zoning Ordinance Related To Massage Business Establishments in General Commercial Zone District Conditional Uses

Planning Commission adopted resolution setting public hearing on October 12, 2015 to consider petition of amendment to Zoning Ordinance relating to permitting procedures for massage business establishments in General Commercial Zone District Conditional Uses.

Commissioner Wettlaufer, made a motion to adopt Resolution No. 15-06, A Resolution of the Planning Commission Approving Petition of Amendment to Zoning Ordinance Related To Massage Business Establishments in General Commercial Zone District Conditional Uses, second Commissioner Nehring, approved as presented by the following vote

Yes: Bandy, Jones, Kehler, Nehring, Nunez, Wettlaufer
Noes None
Abstain: None
Absent: Epperson

COMMUNICATIONS

ADJOURNMENT

Olivia G. Pimentel
Secretary to the Planning Commission

City of Kerman

A Place Where "Community Comes First"

CHAIRMAN Robert Epperson
VICE-CHAIRMAN Kevin Nehring
COMMISSIONERS
Robert Bandy Eric Kehler Charlie Jones
Mario Nunez Katie Wettlaufer

DEPARTMENT: PLANNING & DEVELOPMENT
STAFF REPORT
PLANNING COMMISSION MEETING
MEETING DATE: OCTOBER 12, 2015

To: Chairman and Commissioners

From: Olivia Pimentel, Planning Technician

Subject: Public Hearing on Petition of Amendment to Zoning Ordinance Related To Massage Business Establishments in General Commercial Zone District Conditional Uses

RECOMMENDATION

Planning Commission open public hearing, conduct the public hearing, close public hearing and move adoption of resolution which makes findings and recommends that the City Council adopt the Zoning Ordinance Amendment To Chapter 17.48 Of Title 17 of the Kerman Municipal Code to Require a Conditional Use Permit for Massage Establishments in the General Commercial Zone District

EXECUTIVE SUMMARY

On September 28, 2015 the Planning Commission received a petition of amendment of the zoning ordinance relating to permitting procedures for massage business establishments in the General Commercial Zone District Conditional Uses filed by the City Planner. At that time, the Planning Commission set a public hearing for October 12, 2015.

For convenience, we resubmit much of the background report submitted at the September 28, 2015, meeting. The request is necessary in order to provide the City more meaningful ability to regulate massage business establishments in the best interests of our community to the extent now allowable under state law.

In 2008, the Governor signed into law SB 731, which preempts local government controls relating to massage establishments. All local regulation of massage establishments were superseded by the law that took effect in September 2009. The bill created a non-profit organization, the California Massage Therapy Council (CAMTC) that issues licenses to massage therapists and practitioners. These laws were amended in 2011 and 2012, further limiting local governments' abilities to regulate massage establishments.

The results of the foregoing has been a proliferation of massage establishments throughout California and with that a myriad of code enforcement issues and crime. As describe in a recent article included as Attachment 'A'. In September 2014, the Governor signed AB 1147 into law. This law returns some authority to regulate massage establishments to local governments.

Currently, there is nothing in the Kerman Municipal Code to address businesses offering massage services. City staff and the Police Chief are concerned that under the current Municipal Code, the City would be unable to prevent a proliferation of massage establishments and the secondary effects in crime in the City similar to

what many California cities have been experiencing. In order to ensure the protection of the public health, safety, and welfare, City staff required time to study the effects of the massage businesses on the City and to determine what regulations might best serve the interests of the City.

On August 19, 2015, the Council adopted an urgency ordinance prohibiting the issuance of new business licenses or other permits or entitlements for massage establishments for an initial forty-five (45) day period to allow the City to study this issue in more depth.

The temporary 45-day moratorium ordinance was set to expire on October 3, 2015. The Council held a special meeting on September 29, 2015 and approved an extension of the ordinance by 120 days.

At this time and after considerable review, staff is proposing to address this matter twofold: by requiring a Conditional Use Permit (CUP) for Massage Establishment per the Proposed Ordinance attached as Attachment B and by a registration and permit process administered through the Police Department. A copy of that Massage Establishment Ordinance is attached for your convenience as Attachment C. That ordinance does not require processing through the Planning Commission. The Building & Planning Department and the Police Department will work cooperatively in the administration of the two ordinances.

FISCAL IMPACTS

There is no anticipated fiscal impact; costs would be recovered through existing planning entitlement fees.

Attachments:

A. Massage Parlor Article from City of Porterville, October 5, 2015
B. Resolution Recommending Adoption of Zoning Ordinance Amendment To Chapter 17.48 Of Title 17 of the Kerman Municipal Code to Require a Conditional Use Permit for Massage Establishments in the General Commercial Zone District
C. Proposed Ordinance Amending Chapter 17.48 to Require a Conditional Use Permit for Massage Establishments in the General Commercial Zone District.
D. Proposed Ordinance Adding Chapter 9.27 to title 9 of the Kerman Municipal Code Relating to Massage Establishments and Therapists.

Attachment 'A'

Massage Parlor to be discussed at City Council

By KELLI BALLARD kballard@portervillerecorder.com | Posted: Monday, October 5, 2015 9:08 am

Another arrest for prostitution adds to the list

Porterville City Hall

Another contracted employee with Best Massage was arrested for alleged prostitution less than two weeks after the matter was scheduled to be heard by the city council to consider revoking the business's license for illicit behavior, including prostitution.

Zi-Rong Wong, 35, was arrested on Sept. 24 for suspicion of prostitution at the Best Massage on Mill Street in Porterville after an undercover operation by the Porterville Police Department. Wong is only the most recent person from Best Massage to be arrested for prostitution. On three separate dates in September, the police department received complaints on the business by an unknown source. The complaint report said photographs of alleged prostitution were provided, alleging to Best Massage as the location, and complaints of male customers that "have entered the premises after business hours, allegations of having found condoms and lubricant in the business's trash, and allegations of individuals possibly living at the premises."

Wong is suspected of living at the business after police found a bed, personal items, clothing, a microwave and a refrigerator.

Xin Lu, 46, was arrested on suspicion of prostitution on Aug. 7 and Li Jiang, 51, was arrested for prostitution on April 8. Both women were arrested at Best Massage after an undercover operation by the police.

A public hearing was scheduled for the Sept. 15 city council meeting to decide whether to revoke Best Massage's business licence because of the recent prostitution arrests, but was continued to Tuesday's council meeting to give the business owner's attorney time to research the situation.

The city's charter states the city council "reserves the right to revoke the license granted any person, when, after notice to the licensee and upon hearing had, it shall appear the business licensed is unlawful, immoral or a menace to the public health, safety, morals, peace or general welfare, or is, or has been carried on in an illegal or immoral manner, or in such manner as to constitute a menace to the health, safety, morals, peace or general welfare of the people of the city."

City staff is also asking council to consider an emergency ordinance to prevent any new massage

businesses from starting within the city. If approved, the ordinance will be in effect for 45 days.

An administrative hearing will be held Tuesday to determine whether to revoke Best Massage license.

In other business, the council will:

- consider residential requests to hook up to the city's water system

- hold a public hearing to receive comments on the draft for the Housing Element

- discuss the military banner program

- hear a report evaluating the Porterville Animal Control Shelter facility and practices

The council meeting will be held at 6:30 p.m. Tuesday at city hall.

Attachment 'B'

RESOLUTION NO. 15-__

BEFORE THE PLANNING COMMISSION
CITY OF KERMAN, STATE OF CALIFORNIA

A RESOLUTION RECOMMENDING ADOPTION OF ZONING ORDINANCE AMENDMENT TO CHAPTER 17.48 OF TITLE 17 OF THE KERMAN MUNICIPAL CODE TO REQUIRE A CONDITIONAL USE PERMIT FOR MASSAGE ESTABLISHMENTS IN THE GENERAL COMMERCIAL ZONE DISTRICT

WHEREAS, at a regular meeting of the Planning Commission of the City of Kerman (the "Planning Commission") duly called and held on October 12, 2015, at 6:30 p.m., it was moved by Commission member _____second by Commission member _____ and carried that the following resolution be adopted:

WHEREAS, the Planning Commission has received a Petition of Amendment to the zoning ordinance to amend Chapter 17.48 of Title 17 of the Kerman Municipal Code to require a conditional use permit for Massage Business Establishments hereafter Proposed Ordinance"; and

WHEREAS, the Proposed Ordinance, is attached hereto as Attachment 'A' and incorporated by this reference; and

WHEREAS, the Planning Commission pursuant to chapter 17.26, Zoning Ordinance Amendments, section 17.26.030 conducted a duly noticed public hearing on October 12, 2015, to consider the zoning ordinance amendments and additions; and

WHEREAS, the Planning Department has determined that the Proposed Ordinance is statutorily exempt from environmental review pursuant to Title 14, California Code of Regulations, Section 15378(a)(I) of the California Environmental Quality Act (CEQA).

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission, after considering all the evidence presented at the public hearing as follows:

1. , The foregoing recitals are incorporated by reference as if fully set forth.

2. The following findings are hereby made:

   a. The proposed zoning ordinance amendments as set forth in the Proposed Ordinance are consistent and compatible with other goals, policies and implementation programs set forth in the General Plan.

   b. That the Proposed Ordinance amendments will not be detrimental to the public health, safety, or welfare, or materially injurious to the properties or improvements in the community.

c. The Proposed Ordinance is statutorily exempt from the California Environmental Quality Act as set forth above.

3.. Based on the foregoing, the Planning Commission recommends that the City Council adopt the Proposed Ordinance.

The foregoing resolution was adopted at a regular meeting of the Kerman Planning Commission held on this 12th day of October 2015, by the following vote.

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED BY:

_____ _____
Chairman, Robert D. Epperson Date

_____ _____
Secretary, Olivia Pimentel Date

Attachment 'C'

ORDINANCE NO. 15-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KERMAN
AMENDING CHAPTER 17.48 OF TITLE 17 OF THE KERMAN MUNICIPAL CODE
TO REQUIRE A CONDITIONAL USE PERMIT FOR MASSAGE ESTABLISHMENTS
IN THE GENERAL COMMERCIAL ZONE DISTRICT

WHEREAS, the City of Kerman recognizes that massage is a valid professional field offering the public health and therapeutic services; and

WHEREAS, it is the intent of the Council to provide for the orderly regulation of massage establishments, therapists, and practitioners in the interest of the public health, safety, and welfare; and

WHEREAS, Article 11, Section 7 of the California Constitution authorizes the City of Kerman to make and enforce within its limits all ordinances and regulations not in conflict with general laws; and

WHEREAS, the City has carefully considered the regulation of the location and manner in which businesses offering massages are to occur so as to prevent impacts on nearby residents and businesses; and

WHEREAS, Senate Bill 731 has been widely criticized by local agencies and other groups for providing massage businesses with unprecedented protection from local zoning and land use authority, and interfering with local law enforcement efforts to close massage businesses allowing prostitution and other illegal activities; and

WHEREAS, the increased number of massage parlors in cities across California has resulted in an increase of police and code enforcement calls and services to many of those establishments, some of which are suspected of allowing and encouraging sexually explicit activity to occur on the premises, including prostitution; and

WHEREAS, the California Legislature passed Assembly Bill 1147, recently signed into law by Governor Jerry Brown, which went into effect on January 1, 2015, in response to widespread criticism of Senate Bill 731; and

WHEREAS, Assembly Bill 1147 authorizes cities and counties to use zoning and licensing processes to regulate massage establishments by imposing reasonable zoning, business licensing, and health and safety requirements on massage establishments; and

WHEREAS, City staff has reviewed and considered data about the adverse impacts of massage establishments and researched, studied and considered ways to possibly amend the City's business license process and the Kerman Municipal Code to reduce potential illegalities occurring at massage establishments and to mitigate adverse impacts being experienced in other communities; and

WHEREAS, City staff has recommended that the City may ameliorate the potential for criminal activity and Municipal Code violations as a result of massage establishments through the requirement of a Conditional Use Permit and through a Massage Establishments and Therapists Ordinance; and

WHEREAS, the City Planning Commission conducted a public hearing regarding a proposed ordinance requiring a Conditional Use Permit for massage establishments in the General Commercial Zone District and is recommending approval to the City Council.

THE CITY COUNCIL OF THE CITY OF KERMAN DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 17.48.030 of Title 17 of Chapter 17.48 of the Kerman Municipal Code is amended to read as follows:

Section 17.48.030 Conditional Uses.

Conditional uses in this district are as follows:

Auction houses;

Auto lease and rental;

Automobile, motorcycle, and small engine repair;

Auto sales, new and used;

Bar, liquor store, and tavern;

Boarding or rooming facilities;

Bowling alleys;

Bus depots;

Cabinet shops;

Card rooms;

Carwash;

Churches;

Equipment sales and rental;

Feed and seed store;

Furniture upholstery shops;

Glass, radiator, tire, and muffler shops;

Hotel and motel;

Hospital;

Library;

Liquor store;

Massage Establishments as defined in Section 9.27.030 of the Kerman Municipal Code;

Multiple-family residential dwellings (R-2 and R-3 district);

Outdoor sales and storage;

Second hand store;

Sign shops;

Theater and auditorium;

Utility yards;

Veterinary offices with enclosed boarding structure;

A residential dwelling associated with a business listed above.

SECTION 2. CEQA. Enactment and amendment of zoning ordinances does not constitute a project under the California Environmental Quality Act. (Title 14, California Code of Regulations, Section 15378(a)(1))

SECTION 3. Severance. If any section, subsection, phrase, or clause of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 4. Publication. This ordinance shall be published in accordance with the provisions of Government Code Section 36933.

SECTION 5. Effective Date. This ordinance shall become effective thirty (30) days after its adoption.

****

The foregoing ordinance was introduced at a regular meeting of the City Council of the City of Kerman held on _____, 2015, and was passed and adopted at a regular meeting of the City Council held on _____, 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

The foregoing ordinance is hereby approved.

_____
Stephen B. Hill
Mayor

ATTEST:

_____
Marci Reyes
City Clerk

Attachment 'D'

DRAFT ORDINANCE NO. 15-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KERMAN ADDING CHAPTER 9.27 TO TITLE 9 OF THE KERMAN MUNICIPAL CODE RELATING TO MASSAGE ESTABLISHMENTS AND THERAPISTS.

THE CITY COUNCIL OF THE CITY OF KERMAN DOES ORDAIN AS FOLLOWS:
SECTION 1. Chapter 9.27 is added to Title 9 of the Kerman Municipal Code to read as follows:

MASSAGE ESTABLISHMENTS AND THERAPISTS

Sections:

9.27.010 Purpose and Intent.
9.27.020 Findings.
9.27.030 Definitions.
9.27.040 Massage Therapist and Massage Practitioner Registration.
9.27.050 Massage establishment permits.
9.27.060 Record Keeping.
9.27.070 Health and safety requirements.
9.27.080 Inspections.
9.27.090 Hours of operation.
9.27.100 Department Coordination with CAMTC.
9.27.110 Property Owner Responsibility.
9.27.120 Applicability of Regulations to Existing Massage Establishments, Therapists and Practitioners.
9.27.130 Report to City Council.
9.27.140 Penalties for Violation.
9.27.150 Public Nuisance.

9.27.010 Purpose – Intent.

The City recognizes that massage is a valid professional field offering the public health and therapeutic services. It is the purpose and intent of this chapter to provide for the orderly regulation of massage therapists and massage establishments, in the interest of the public health, safety, and welfare. The City wishes both to recognize the practice of massage as a valid professional field and to discourage prostitution and other unlawful activity which otherwise may become associated with some massage establishments. It is not the intent of this chapter to punish legitimate massage therapists, massage practitioners and establishments.

This chapter relies upon the state certification process of the California Massage Therapy Council under California Business and Professions Code Sections 4600 *et seq*. In addition, this chapter provides certain minimum standards for the operation of massage establishments, their managing employees, and massage therapists and practitioners.

This chapter is adopted under the authority of Government Code Sections 51030 through 51034, Government Code Section 37101, Business and Professions Code Section 16000, and California Constitution Article XI, Section 7.

9.27.020 Findings.

The City Council finds and declares as follows:

A. The permit requirements and restrictions imposed by this chapter are reasonably necessary to protect the health, safety and welfare of the citizens of the City.

B. Massage establishments have been found to present opportunities for acts of prostitution and other unlawful activity, and in fact the department of public safety has made several arrests leading to convictions for prostitution in massage establishments located within the City.

C. The California legislature and the courts have long recognized the necessity of imposing reasonable regulations and standards for the operation of massage establishments, including but not limited to minimum educational and experience requirements, passage of a practical examination of competence, sanitary conditions, hours of operation, and other operational regulations designed to minimize opportunities for illegal activities and to ensure the protection of the health, safety and welfare of citizens.

D. Some establishments, seeking to avoid regulations applicable to massage establishments, attempt to characterize or advertise themselves as “relaxation” or feature other services, including, but not limited to, tanning, hot towel wraps, steam baths, or saunas. Such establishments are considered to be similarly susceptible to opportunities for prostitution and other illegal activities, and are therefore regulated pursuant to this chapter.

E. There is a significant risk of injury to clients of massage establishments by improperly trained and/or educated massage therapists.

F. The presence of establishments known or reputed to be places of prostitution or other illegal activity can have an adverse impact on surrounding properties and result in blight, foster further illegal activities, and generally become a public nuisance.

G. The costs of investigation, surveillance and prosecution of criminal activities in or at massage establishments, both in terms of requirements for specialized training and operations, are extraordinary.

H. Effective investigation, enforcement and prosecution of prostitution and other illegal activities in or at massage establishments often require a disproportionate diversion of public safety and law enforcement resources not only from within the city, but also from other jurisdictions.

I. Minimum hours of training and experience, restrictions on advertising, and standards for professional conduct contained in this chapter are consistent with recommended standards promulgated by nationally recognized trade organizations for massage therapists.

9.27.030 Definitions.

A. California *Massage Therapy Council* or *CAMTC* means the California Massage Therapy Council created under Business and Professions Code Section 4602.

B. *Certified Massage Practitioner* or *Practitioner* means a person who is currently certified as a massage practitioner by the CAMTC pursuant to Business and Professions Code Section 4604.2. A certified massage practitioner who is an independent contractor is one who works at a massage establishment (of has an outcall massage service), but is not a salaried employee and does not share a percentage of massage proceeds with a massage establishment.

C. *Certified Massage Therapist* or *Therapist* means a person who is currently certified as a massage therapist by the CAMTC pursuant to Business and Professions Code Section 4604. A Certified Massage Therapist who is an independent contractor is one who works at a massage establishment (or has an Outcall Massage Service), but is not a salaried employee and does not share a percentage of massage therapy proceeds with a Massage Establishment.

D. *Chief or Chief of Police* means the Chief of Police of the City of Kerman or his/her designee.

E. *Department* means the Police Department of the City of Kerman.

F. *Massage* or *bodywork* means the application of various techniques to the muscular structure and soft tissues of the human body as defined in Business and Professions Code *Section* 4601(e). Application of massage and bodywork techniques may include, but is not limited to, stroking, kneading, tapping, compression, vibration, rocking, friction, pressure, and similar techniques. Examples of massage include Swedish massage, sports massage, shiatsu, polarity therapy, rolfing, hellerwork and reflexology. *Massage* and *bodywork* have the same meaning.

G. *Massage Establishment* means a studio or place where Certified Massage Therapists, or Certified Massage Practitioners practice massage as provided in Business and Professions Code Section 4601(f). The following are not considered Massage Establishments under this chapter: a hospital, nursing home, sanitarium, physiotherapy establishment, office of a licensed medical professional, or other state-licensed physical or mental health professional or facility; nor a personal fitness training center, gymnasium, athletic facility, health club, beauty shop, or day spa and salon when the giving of massage is an incidental function of the business, constituting 10% or less of the business. *Outcall Massage Service* means a business which provides massage at a location designated by the client or massage practitioner or therapist, other than at a massage establishment.

H. *Owner* means an individual natural person, firm, corporation, association, organization, partnership, limited liability company, business trust, corporation or company that owns, has an equity interest in, or shares a percentage of massage therapy proceeds with, a massage establishment.

9.27.040 Massage Therapist and Massage Practitioner registration.

A. Massage Therapist or Massage Practitioner. No person may practice massage in the City who is not a Certified Massage Therapist or Certified Massage Practitioner as defined in the definitions above.

B. All Therapists and Practitioners. A Certified Massage Therapist or, Certified Massage Practitioner providing or offering massage in the City must:

1. Work at a City-permitted Massage Establishment as an employee or independent contractor; or

2. Obtain a Massage Therapist or Massage Practitioner registration if providing massage for compensation in the therapist's or practitioner's own home, or providing outcall massage services.

C. Other City permits. Registrants are advised that they must also obtain (i) a City business license, and (ii), a home occupation permit if massage is practiced at the therapist's or practitioner's home. If a Massage Therapist or Practitioner is an independent contractor of a massage establishment, he or she must obtain a City business license.

D. Massage Therapist/Practitioner Registration. A Massage Therapist or Massage Practitioner that is required to register under subsection B above, must register with the City Police Department annually, and shall post evidence of City registration whenever massage is practiced. The registration application shall include: name, address and telephone of the massage therapist or massage practitioner; and proof of CAMTC certification or exemption pursuant to subsection B above. The registrant shall also indicate on the registration form whether he or she will be providing massage at the registrant's home and whether he or she will perform outcall massage services. There is no charge for the registration. The Massage Therapist or Massage Practitioner shall notify the Police Department in writing within ten (10) days of any change in the information provided shall immediately notify the Police Department in writing if CAMTC suspends or revokes the registrant's certification or takes other disciplinary action against the Massage Therapist or Massage Practitioner, and shall include a copy of any notice or order.

9.27.050 Massage Establishment Permits.

A. Massage Establishment. No person may own or operate a Massage Establishment in the City unless:

1. Each person administering massage for compensation (whether as an employee or an independent contractor) is either a Certified Massage Therapist or a Certified Massage Practitioner under this chapter; and

2. The owner obtains, and continues to maintain, a current Massage Establishment Permit pursuant to this chapter.

B. Land Use and Zoning Requirements. The premises and property on which the premises occupied by a Massage Establishment are located must conform to all applicable land use and zoning requirements.

C. Massage establishment permit application procedure.

1. The owner of a proposed massage establishment shall be the only person eligible to obtain a massage establishment permit for such business. The owner shall not be eligible to obtain a massage establishment permit unless the owner is at least eighteen (18) years of age.

2. A separate permit is required for each Massage Establishment location.

3. The following shall be submitted to the Chief at the time of application for a massage establishment permit:

a. A completed application form signed by: (i) the applicant; and (ii) either the record owner of the property or the lessor of the premises (if the business premises are leased to the applicant business) where the massage establishment is to be conducted. The application shall include the applicant's full legal name and contact information, the address where the applicant desires to do business, and such other information as the Police Department may reasonably require.

b. Background check. Each applicant shall submit the following:

i. Information related to the applicant's business, occupation and employment history for the 10 years preceding the date of application, and the inclusive dates of same.

ii. The name and address of any massage business or other like establishment owned or operated by the applicant, the name of all partners and co-owners in each business, and any discipline, suspension, or revocation for each business.

iii. A description of any other business located in the City of Kerman, even if not massage-related, that is owned or operated by the applicant.

iv. Information regarding any felony or misdemeanor convictions within the last five years, any outstanding warrants for arrest and any pending criminal case.

v. The applicant's fingerprints on a form provided by the Police Department. Any fees for the fingerprints shall be paid by the applicant.

c. Two (2) color photographs, taken within six (6) months prior to the date of the application, that clearly show the applicant's face. Any fees for the photographs shall be paid by the applicant.

d. A written description of the proposed massage establishment and how it will satisfy the requirements of this chapter.

e. A detailed floor plan in feet and inches drawn to scale showing: entrances, exits, windows, interior doors, restrooms, all other separately enclosed rooms with dimensions, including but not limited to closets, storerooms, break rooms, and changing rooms, and location of massage tables and chairs.

f. The register of massage therapist and practitioners required by this chapter.

g. A statement signed by the applicant certifying under penalty of perjury that all of the information submitted in connection with the application is true and correct.

h. A nonrefundable application fee in an amount set by resolution of the City Council.

4. The Chief shall, within sixty (60) calendar days of the filing of a complete application, approve and issue the Massage Establishment permit if the requirements of this chapter have been met. The Chief may deny a permit if any one of grounds for denial as set forth below is found to be true. Notice of the approval or denial of the permit shall be given to the applicant in writing by first class mail, postage prepaid. If the application is denied, the Chief shall attach to the notice a statement of the reasons behind the denial. The time period set forth in this paragraph for the Chief to render a decision on the permit shall not be extended except upon the written consent of the applicant. Within fifteen (15) days of mailing of the notice, the applicant may request a reconsideration hearing. A request for reconsideration shall be submitted to the Chief in wiring on a form provided by the Police Department, and shall specifically state the pertinent facts of the case and the reasons for the request for reconsideration. The reconsideration hearing shall be held within thirty (30) days of the applicant's request. The applicant may present any evidence to refute the Chief's original decision. The Chief shall render a decision on the matter with ten (10) days of the reconsideration hearing and shall notify the applicant in the same manner as the original decision. The decision of the Chief is final.

5. Grounds for denial. The Chief may deny a Massage Establishment Permit application if any of the following is true:

a. If the applicant has been convicted within the last five years of any felony or misdemeanor, or has an outstanding warrant for his or her arrest or a pending criminal case regarding an offense having reasonable relationship to the functions of a permittee.

b. The application was falsified in any material respect.

c. The applicant is required to register as a sex offender in any state.

d. If there has been a criminal investigation resulting in arrest related to the

operation of the Massage Establishment within the last five (5) years.

D. Permits nontransferable.

1. No person shall operate a Massage Establishment under the authority of a massage permit at any place other than the address of the Massage Establishment stated in the application for the permit. The Chief may approve a change of location, provided the Massage Establishment complies with all ordinances and regulations of the City and requirements of this chapter.

2. No massage establishment permit issued pursuant to this chapter shall be transferable to another person or entity.

3. Any attempt to transfer a Massage Establishment is hereby declared invalid and the permit shall automatically become void effective the date of such attempted transfer.

4. Nothing in this section shall prevent the Chief from approving a second Massage Establishment permit for a single location provided that the holder of the Massage Establishment Permit previously approved for such location consents in writing to the automatic expiration of such previously approved permit upon the effective date of such second permit.

E. Conditions of Massage Establishment Permit.

1. Every Massage Establishment shall display at all times during hours the permit issued pursuant to the provisions of this chapter for such business. The permit shall be displayed in a conspicuous place so that it may be readily seen by all persons entering the Massage Establishment.

2. If an individual's CAMTC certification is suspended or revoked or if the individual is not CAMTC certified, the Massage Establishment may not allow that person to provide massage services, including Outcall Massage Services, at or through the Massage Establishment.

3. The Massage Establishment must notify the City immediately upon the notice of any disciplinary action taken by the CAMTC regarding one of the establishment's Massage Therapists or Massage Practitioners and submit a copy of any notice or order.

4. Any act or omission of anyone providing massage at the establishment's location, whether as an employee or an independent contractor, which constitutes a violation of this chapter shall also be deemed to be an act or omission of the Massage Establishment.

5. Compliance with all federal, state, and local laws, and the requirements of this chapter.

F. Content of permit. The permit shall specify the legal name of permitee. An establishment permit shall specify the name and address of the business location. A Massage Establishment Permit authorizes massage services only at the location specified in the permit.

G. Term of permit. A Massage Establishment Permit issued under this chapter shall be valid for twenty-four (24) months from the date of issuance unless suspended or revoked. However, it shall expire immediately upon the revocation or expiration of the related Conditional Use Permit.

H. Renewal. A holder of a Massage Establishment Permit issued under this chapter shall submit an application for renewal no later than sixty (60) calendar days prior to the expiration of the permit issued for such establishment. The renewal application shall be submitted together with a nonrefundable fee in an amount established by resolution of the City Council. Applications for renewal of massage establishment permit shall be processed in accordance with the procedures governing initial applications.

I. Grounds for suspension or revocation. The Chief may suspend or revoke a massage establishment permit for the following causes:

1. The permittee has made any false, misleading, or fraudulent statement of material fact in any application, report, or record required to be filed with the City.

2. The permittee, or any employee, independent contractor, owner, agent, partner, director, stockholder, or manager of the massage establishment business has failed to comply with any of the requirements or conditions of this chapter.

3. An individual who is not a certified massage therapist, a certified massage practitioner or whose CAMTC certification is suspended or revoked, has provided massage at the massage establishment.

4. The permittee, or an employee, independent contractor, owner, agent, partner, director, stockholder, or manager of the massage establishment business has allowed or permitted, with or without knowledge, the occurrence of criminal activity on the premises of the massage establishment business.

5. There have been one or more acts prohibited under California Penal Code sections 246, 266a, 266e, 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 permittee.

6. The permittee, or an employee, independent contractor, owner, agent, partner, director, stockholder, or manager of the massage establishment business has committed a misdemeanor, felony, or violation of this chapter in the conduct of the business.

7. The permittee has been subject to a permanent injunction against the conducting or maintaining of a nuisance pursuant to this code, or section 11225 through 11235 of

the California Penal Code, or any similar provision of law in any jurisdiction outside the state of California.

8. The permittee, or an employee, independent contractor, owner, agent, partner, director, stockholder, or manager of the massage establishment has failed to abide by any disciplinary action previously imposed by an authorized City official.

J. Procedure for suspension or revocation.

1. On determining that grounds for permit suspension or revocation exist, the Chief shall furnish written notice of the proposed suspension or revocation to the permittee. Such notice shall set forth the time and place of a hearing, and the ground(s) upon which the proposed suspension or revocation is based. The notice shall be mailed, postage prepaid, addressed to the last known address of the permittee, or shall be personally delivered to the permittee, at least ten (10) days prior to the hearing date.

2. Hearings shall be conducted in accordance with procedures established by the Chief which may include retention of an independent hearing officer. All parties involved shall have a right to: (i) offer testimonial, documentary, and tangible evidence bearing on the issues; (ii) be represented by counsel; and (iii) confront and cross-examine witnesses. Any relevant evidence may be admitted that is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Any hearing under this section may be continued for a reasonable time for the convenience of a party or witness.

3. After holding the hearing in accordance with this section or upon receipt of the decision of an independent hearing officer and upon determining that there are sufficient grounds for disciplinary action, the Chief shall impose one of the following penalties:

    a. A warning;

    b. Suspension of the permit for a specified period not to exceed six (6) months; or

    c. Revocation of the permit.

    d. The Chief may, in conjunction with the issuance of a warning or the suspension of a permit, order the permittee to take appropriate corrective action.

9.27.060 Record Keeping.

A. The holder of a Massage Establishment Permit shall maintain:

1. A register of all Certified Massage Therapists and Certified Massage Practitioners, providing massage at the establishment, including independent contractors, and each such person's state certificate number, home address, date of hiring, and whether the Massage Therapist or Massage Practitioner will be performing outcall massages. An amended copy of the register shall be provided to the Chief within five (5) days of

the date of hiring, commencement of services, or termination of services by each Massage Therapist or Massage Practitioner at the establishment. Such filings shall be accompanied by a statement, signed by the owner, that all of the information in the register is true and correct.

2. A daily register, approved in form by the Chief, of each client, the assigned room (or location of outcall massage service), the massage therapist or practitioner who treated the client, a description of service(s) performed, the price of the services, including any gratuity or tip, and the time of the appointment. The daily register shall be completed by the close of business every day, and shall be available for inspection by the City at all times during regular business hours. The register shall be considered confidential, not for public review, and may be inspected by the City only as part of a criminal investigation or during proceedings to investigate compliance with this chapter. These records shall be retained for at least one year.

B. A Massage Therapist or Practitioner registered under this chapter is responsible for compliance with subsection A.2 of this section.

9.27.070 Health and Safety Requirements.

The operator of a Massage Establishment and a registered Massage Therapist or Practitioner shall conduct the Massage Establishment business in a safe and sanitary manner, and shall:

A. Comply with all applicable building, fire, safety, health, electrical, plumbing, mechanical, heating and ventilating, sanitation, and other laws applicable to the premises;

B. Provide for the regular removal of garbage and refuse, and the safe storage or removal of flammable materials;

C. Maintain all equipment used to perform massage services in a safe and sanitary condition, including the regular application of cleansers and bacterial cleaning agents;

D. Launder all materials furnished for the personal use of the client, such as towels and linens, before each use;

E. Maintain all bathroom and plumbing fixtures in a sanitary condition, provide hot and cold running water, and comply with sanitation requirements of the county health department;

F. Provide a wash basin for therapists and employees, located within or as close as practicable to the area devoted to the massage therapy services. Each wash basin shall be equipped with hot and cold running water, soap in a dispenser and sanitary towels. In the case of a massage establishment located in a home, existence of a bathroom meeting this requirement is sufficient;

G. Provide either a separate room or dressing and locker facilities for each client. However, dressing and undressing may occur in the same room as massage therapy if the client is alone in the room with the door(s) closed and opaque coverings are present on any windows while

undressing or dressing. The massage therapist or other clients may not be present in the same room when the client is undressing;

H. In each room or cubicle where massage is administered, have lighting whenever the area is occupied equivalent to a minimum of an incandescent 25-watt clear-glass light bulb;

I. For a massage establishment in which the therapist or practitioner is an employee, all massage services shall be paid for in the reception area, and all tips, if any, shall be paid in the reception area. For a massage establishment at which a therapist or practitioner is an independent contractor, all massage services and all tips, if any, may be paid in the same room where the massage occurred, provided the door to the room is fully open. A massage establishment which is located in a home is exempt from this subsection because by the nature of the site it does not include a reception area;

J. Comply with the portions of the Massage Therapy Act (B&P Code §4608) relating to the requirements that a certificate holder display his or her original certificate wherever he or she provides massage for compensation; and to have his or her identification card in his or her possession while providing massage services for compensation;

K. Comply with the portions of the Massage Therapy Act (B&P Code §4609(a)) relating to sexual acts, including not allowing certificate holders: to engage in any form of sexual activity on the premises of a massage establishment where massage is provided for compensation, excluding a residence; to engage in sexual activity while providing massage services for compensation; to provide massage of the genitals or anal region; or to provide massage of female breasts without the written consent of the person receiving the massage and a referral form from a licensed California health care provider;

L. Comply with portions of the Massage Therapy Act (B&P Code §§ 4608, 4609, 4611) relating to advertising, including requiring certificate holders: to include the name under which he or she is certified and his or her certificate number in any and all advertising of massage services; to not hold him- or herself out as a certified massage therapist or practitioner, or use terms such as “licensed” or “certified,” that implies that an uncertified person is certified as a massage therapist or practitioner; to not falsely state or advertise or put out any sign or card, or to falsely represent to the public, that any individual is licensed, certified, or registered as a massage therapist or practitioner if that individual is not so certified;

M. Comply with the portions of the Massage Therapy Act (B&P Code §4609) related to dressing requirements, including dressing while engage in the practice of massage for compensation, or while visible to clients in a massage establishment, in attire that is not: transparent, see-through, or substantially exposes the certificate holder’s undergarments; swim attire, if not providing a water-based massage modality approved by CAMTC; a manner that exposes the certificate holder’s breasts, buttocks, or genitals; a manner that constitutes a violation of section 314 of the Penal Code; or a manner that has been deemed by CAMTC to constitute unprofessional attire; and

N. Not serve or permit the consumption of alcoholic beverages unless the massage establishment has a current and valid (California Department of Alcoholic Beverage Control)

ABC license and all required City approvals, nor permit the consumption of any drugs, except pursuant to a valid prescription.

9.27.080 Inspections

The Chief may inspect the premises at the time of permitting a massage establishment, and may make periodic, reasonable inspections of the establishment during business hours to assure compliance with the CAMTC requirement, this chapter and applicable fire, health and safety requirements. If any violations are found, the Chief shall notify the holder of the massage establishment permit in writing. The Chief may give the establishment ten (10) days to correct the violation(s), or, if the violation(s) present a danger to public health or safety, close the establishment until the violation(s) is corrected.

9.27.090 Hours of Operation.

No massage establishment and no registered massage therapist or practitioner may provide massage service between the hours of 10:00 p.m. and 7:00 a.m. Clients and visitors shall be excluded from a massage during those hours.

9.27.100 Department Coordination with CAMTC.

The Chief of Police shall designate a person in the Police Department to coordinate with CAMTC, including maintaining a list of certified therapists and practitioners practicing in the City, maintaining a list of massage establishments operating in the City, receiving notices and information from the CAMTC, and notify CAMTC of any arrest or conviction of Penal Code section 647 or other act punishable as a sexually related crime. (Business and Professions Code §4614.)

9.27.110 Property Owner Responsibility.

Any place where lewdness, assignation or prostitution occurs is a public nuisance which may be abated and permanently enjoined, and for which the City may recover damages from the property owner, as well as from the person conducting or maintaining the nuisance. (Penal Code §§ 11225 and 11226.)

9.27.120 Applicability of Regulations to Existing Massage Establishments, Therapists and Practitioners.

A. Any massage establishment that was validly registered as of the date of this ordinance to operate a massage establishment must apply for a massage establishment permit within forty-five (45) days of the effective date of this Chapter. Any registration issued hereunder prior to the effective date of this Ordinance shall be null and void upon the passage of forty-five (45) days from the effective date hereof. Notwithstanding the prior sentence, if an application for a massage establishment is submitted prior to the expiration of the massage establishment registration, the prior registration shall continue in effect until such time as a determination is made by the City on the massage establishment permit application.

B. Registrations for massage therapists and massage practitioners shall continue in effect until their normal expiration.

9.27.130 Report to City Council.

Annually, the Police Department shall report to the City Council on permits issued, denied, suspended, or revoked and any enforcement activity related to massage establishments.

9.27.140 Penalties for Violation.

A. Criminal proceedings. Any person who violates a provision of this chapter shall be guilty of a misdemeanor unless the City Attorney elects to prosecute the violation as an infraction.

B. Injunction and abatement. Nothing in this chapter shall be deemed to prevent the City of Kerman from commencing a civil action to enjoin the continued violation of any provision of this chapter or to abate a nuisance, as an alternative, or in conjunction with any other civil or criminal proceeding.

9.27.150 Public Nuisance.
Any violation of this chapter shall be considered a public nuisance pursuant to Title 17 of the Kerman Municipal Code.
SECTION 2. Severance. If any section, subsection, phrase, or clause of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.
SECTION 3. CEQA. This ordinance is exempt from CEQA pursuant to Title 14, California Code of Regulations Section 15061(b)(3) under the general rule that CEQA does not apply to activities which can be seen with certainty to have no effect on the environment. Adopting regulations relating to massage establishments will not create any environmental impacts.
SECTION 4. Publication**.** This ordinance shall be published in accordance with the provisions of Government Code Section 36933.
SECTION 4. Effective Date. This ordinance shall become effective thirty days after its adoption.

The foregoing ordinance adopted at a regular meeting of the City Council of the City of Kerman held on _____, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: APPROVED:

_____ _____
Marci Reyes, City Clerk Mayor, City of Kerman