CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Introduction of Revision to Massage Ordinance

DATE: July 19, 2000

PREPARED BY: LARRY D. HANSEN, CHIEF OF POLICE

RECOMMENDED ACTION: That the Council adopt the following proposed Massage Ordinance.

BACKGROUND INFORMATION: There are approximately thirty massage establishments operating within the City limits. I believe six of those establishments are a front for prostitution. The purpose of this ordinance is to enable us to more effectively deal with businesses that are currently a front for prostitution and to discourage any new establishments from operating illegally.

The proposed Ordinance is modeled after an ordinance that was approved by the City of Newport Beach. Newport Beach had an escalating prostitution problem in their massage parlors and their ordinance has effectively dealt with massage parlors fronting as a business for prostitution.

This issue has been discussed in a previous Council meeting and in a community meeting. As a result of the input by massage operators and technicians, several changes have been made to the original proposal. Although not every operator and/or technician is totally happy with these changes, I believe these new revisions will give us the tools we need to deter illegal acts and at the same time allow legitimate operators to conduct their business without undue interference.

Chief Hansen will present the new Ordinance and will be available, with his staff, to answer questions.

FUNDING: None

Larry D. Hansen
Larry D. Hansen
Chief of Police

cc: City Attorney

APPROVED: H. Dixon Flynn
H. Dixon Flynn -- City Manager

PROPOSED

ORDINANCE NO. 1692

AN ORDINANCE OF THE LODI CITY COUNCIL REPEALING AND REENACTING CHAPTER 5.32 OF THE LODI MUNICIPAL CODE PERTAINING TO MASSAGE ESTABLISHMENTS

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BE IT ORDAINED BY THE LODI CITY COUNCIL AS FOLLOWS:

Section 1. Lodi Municipal Code Chapter 5.32 is hereby repealed in its entirety and reenacted as follows:

CHAPTER 5.32

MASSAGE ESTABLISHMENTS

Sections:

5.32.005 Findings and Purpose.
5.32.010 Definitions.
5.32.015 Operator's Permit Required.
5.32.020 Application for Operator's Permit.
5.32.025 Operator's Permit Issuance and Denial.
5.32.030 Massage Technician Permit.
5.32.035 Application For Massage Technician Permit.
5.32.040 Massage Technician Permit Issuance and Denial.
5.32.045 Off-Premises Massage Permit.
5.32.050 Requirements of Operation.
5.32.055 Changes Of Business.
5.32.060 Fees.
5.32.065 Exemption; Existing Permittees.
5.32.070 Transfer and Duration of Permits.
5.32.075 Suspension, Revocation, Denial and Appeal.
5.32.080 Violation and Penalty.
5.32.085 Severability.

5.32.005 Findings and Purpose. The City Council finds and declares as follows:

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

B. The City of Lodi is authorized, by virtue of the State Constitution and Section 51031 of the Government Code, to regulate massage establishments by imposing reasonable standards relative to the skill and experience of massage operators and massage technicians and reasonable conditions on the operation of the massage establishments.

C. There is significant risk of injury to massage clients by improperly trained and/or educated massage technicians and this Chapter provides reasonable safeguards against injury and economic loss.

D. There is opportunity for acts of prostitution and other unlawful sexual activity to occur in massage establishments. Courts have long recognized massage as a pervasively regulated activity and that massage establishments are often brothels in disguise. The establishment of reasonable standards for issuance of permits and restrictions on operations would serve to reduce the risk of illegal activity

E. The restrictions and requirements contained in this Chapter reduce the burdens on the Police Department and permit the deployment of the police personnel such that more serious crimes may be prevented and more important laws enforce.

F. The regulations and restrictions contained in this Chapter tend to discourage massage establishments from degenerating into houses of prostitution and the means utilized in this Chapter bear a reasonable and rational relationship to the goals sought to be achieved.

5.32.010 Definitions.

Unless the particular provision of the context otherwise requires, the definitions and provisions contained in this Section shall govern the construction, meaning, and application of words and phrases used in this Chapter.

A. "Chief of Police". The Chief of Police of the City of Lodi, or his/her designated representative.

B. "City Manager". The City Manager of the City of Lodi or his/her designated representative.

C. "City Council". The City Council of the City of Lodi.

D. "Conviction", "Convicted". A plea or verdict of guilty or a conviction following a plea of nolo contendere.

E. "~~Customer~~ Client Area". Areas open to customers of the establishment.

F. "Health Department". The Health Care Agency of the County of San Joaquin.

G. "Manager". The person(s) designated by the operator of the Massage Establishment to act as the representative and agent of the operator in managing day-to-day operations with the same liabilities and responsibilities. Evidence of management includes, but is not limited to, evidence that the individual has power to direct or hire and dismiss employees, control hours of operation, create policy or rules or purchase supplies. A manager may also be an owner. A manager must meet the standards and qualifications of Section 5.32.030, et seq., to qualify as a manager and obtain a technician permit.

H. "Massage". Any method of treating the external parts of the body for remedial, hygienic, relaxation or any other reason or purpose, whether by means of pressure on, friction against or stroking, kneading, tapping, pounding, vibrating, rubbing or other manner of touching external parts of the body with the hands, or with the aid of any mechanical or electrical apparatus or appliance with or without supplementary aids such as rubbing alcohol, liniment, antiseptic, oils, powders, creams, ointment or other similar preparations commonly used in this practice.

I. "Massage Establishment". Any business conducted within the City of Lodi where any person, firm, association, partnership, corporation, or combination of individuals engages in, conducts, carries on or permits to be conducted or carried on, for money or any other consideration, administration to another person of a massage, bath or health treatment involving massages or baths.

J. "Massage Technician". Any person who administers to another person a massage within a massage establishment in exchange for anything of value whatsoever. The term "massage therapist" and "massage practitioner" are included within this definition for purposes of this Ordinance.

K. "Operator". All persons who have an ownership interest in the Message Establishment and are responsible for its day to day operations.

L. "Operator's Permit". The permit required pursuant to the provisions of this Chapter to operate or manage a massage establishment.

M. "Owner". The individual(s) whose name appears on the City business license.

N. "Person". Any individual, or corporation, partnership, association or other group or combination of individuals acting as an entity.

O. "Recognized school of massage" means any school or institution of learning which teaches, through State certified instructors, the theory, ethics, practice, profession, or work of massage, which school or institution complies with the California Education Code section 94310 or 94311, and which requires a resident course of study before the student shall be furnished with a diploma or certificate of graduation. Schools offering a correspondence course not requiring actual attendance shall not be deemed a recognized school.

P. "Police Department". The Police Department of the City of Lodi.

Q. For purposes of this Chapter the term "employee" shall include independent contractors.

5.32.015 Operator's Permit Required.

A. No person shall operate a massage establishment within the City without first obtaining an operator's permit pursuant to Sections 5.32.020 and 5.32.025 of this Chapter, securing the necessary business license as required by this Code, and complying with Title 17 of this Code.

5.32.020 Application for Operator's Permit.

Any person desiring an operator's permit for a massage establishment shall file a written application on the required form with the Police Department who shall conduct an investigation. The application shall be accompanied by the appropriate filing fee established by Resolution of the City Council. The application shall be completed and signed by the operator of the proposed massage establishment, if a sole proprietorship; one general partner, if the operator is a partnership; one officer or one director, if the operator is a corporation; and one participant, if the operator is a joint venture. The application for permit does not authorize operation of a

massage establishment unless and until such permit has been properly granted. The application shall contain or be accompanied by the following information:

A. The type of ownership of the business; i.e., whether by individual, partnership, corporation or otherwise. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation or charter together with the state and date of incorporation and the names and residence addresses of each of its current officers and directors, and of each stockholder holding more than five percent (5%) of the stock of that corporation. If the applicant is a partnership, the application shall set forth the name and residence of each of the partners, including limited partners. If it is a limited partnership, it shall furnish a copy of its certificate of limited partnership filed with the Secretary of State. If one or more of the partners is a corporation, the provisions of this subsection pertaining to corporations shall apply. The applicant corporation or partnership shall designate one of its officers or general partners to act as its responsible managing officer. Such designated persons shall complete and sign all application forms required for an individual applicant under this Chapter, but only one application fee shall be charged.

B. The precise name under which the massage establishment is to be conducted.

C. The complete address and all telephone numbers of the massage establishment.

D. A complete current list of the names and residence addresses of all proposed massage technicians and employees in the massage establishment and the name and residence addresses of the manager or managing employee proposed to be principally in charge of the operation of the massage establishment.

E. A description of any other business operated on the same premises, or within the City of Lodi or the State of California which is owned or operated by the applicant.

F. The following personal information concerning the applicant:

1. Full complete name and all aliases used at any time by the applicant.

2. Current address and all previous residential addresses for eight (8) years immediately preceding the present address of the applicant.

3. Acceptable proof that the applicant is at least eighteen (18) years of age.

4. Height, weight, color of hair, eyes and gender.

5. Two- (2) front faced portrait photographs at least two inches (2") by two inches (2") in size.

6. The applicant's complete business, occupation and employment history for eight (8) years preceding the date of application, including, but not limited to, the massage or similar business history and experience of the applicant.

7. The complete massage permit history of the applicant; whether such person has ever had any permit or license issued by any agency, board, city, county, territory or state; the date of issuance of such a permit or license, whether the permit or license was denied, revoked or suspended; or if a vocational or professional license or permit was denied, revoked or suspended; and the reason therefore.

8. All criminal convictions, including pleas of nolo contendre, within the last ten (10) years including those dismissed or expunged pursuant to Penal Code Section 1203.4, but excluding minor traffic violations, and the date and place of each such conviction and reason therefore.

9. A complete set of fingerprints taken by the Police Department.

G. The name and address of the owner and lessor of the real property upon or in which the business is to be conducted. In the event the applicant is not the legal owner of the property, the application must be accompanied by a copy of the lease and a notarized acknowledgment from the owner of the property that a massage establishment will be located on his/her property.

H. Authorization for the City, its agents and employees to seek verification of the information contained in the application.

I. Such other identification and information as the Chief of Police may require in order to discover the truth of the matters herein specified and as required to be set forth in the application.

J. A statement in writing and dated by the applicant that he or she certifies under penalty of perjury that all information contained in the application is true and correct.

K. If, during the term of a permit, the permit holder has any change in information submitted on the original or renewal application, the permit holder shall notify the Police Department of such change within ten (10) business days thereafter, in writing.

5.32.025 Operator's Permit Issuance and Denial.

A. Upon receipt of a written application for a permit, the Chief of Police shall conduct an investigation to ascertain whether such permit should be issued as requested. The Chief of Police shall, within sixty (60) days of receipt of an application, approve, conditionally approve or deny the application. The sixty (60) day period may be extended for up to thirty (30) additional days, if necessary, to complete the investigation. The Chief of Police shall issue such permit as requested, unless he/she makes any of the following findings:

1. The applicant, if an individual, or any of the officers or directors of the corporation, if the applicant is a corporation; or a partner, if the applicant is a partnership, or any person directly engaged or employed in the massage establishment has, within eight (8) years preceding the date of the application,

    a. been convicted of a violation of California Penal Code Sections 266h, 266l, 314, 315, 316, 318, Subsections (a) or (b) of Penal Code Section 647 or any other provision of law pursuant to which a person is required to register under the provisions of Penal Code Section 290, or when the prosecution accepted a plea of guilty or nolo contendre to a charge of a violation of California Penal Code Section 415 or any lesser included or lesser related

offense, in satisfaction of, or as a substitute for, any of the previously listed crimes.

b. been convicted of a violation of Health and Safety Code Section11550 or any offense involving the illegal sale, distribution or possession of a controlled substance specified in Health and Safety Code Section 11054, 11055, 11056, 11057 or 11058.

c. been convicted of any offense in any other state, which is the equivalent of any of the above-mentioned offenses.

d. been engaged in conduct in another jurisdiction, which, if it had occurred within the City, would constitute grounds for denial, suspension or revocation under this Chapter.

e. been subjected to a permanent injunction against the conducting or maintaining of a nuisance pursuant to Sections 11225 through 11235 of the California Penal Code, or any similar provisions of law in a jurisdiction outside the State of California.

f. engaged in conduct, which would constitute an offense as described in paragraph (a) of this subsection.

g. committed an act in another jurisdiction which, if committed in this state, would have been a violation of law and, which, if done by a permittee under this Chapter, would be grounds for denial, suspension or revocation of the permit.

h. been convicted of an act involving dishonesty, fraud, theft, deceit or moral turpitude or an act of violence, which act or acts are related to the qualifications, functions or duties of the operator.

i. the applicant has had a massage operator or massage technician permit or other similar license or permit denied, suspended or revoked for cause by a licensing authority or by any City, County, or State.

2. The applicant has made a false, misleading or fraudulent statement or omission of fact to the City in the permit application process.

3. The application does not contain all of the information required by Section 5.32.020.

4. The massage establishment as proposed by the applicant does not comply with all applicable laws, including, but not limited to, health, zoning, fire and safety requirements and standards.

5. The applicant has not satisfied the requirements of this Chapter in the time specified.

6. If the applicant is denied for failure to comply with Section 2 or 3 above, the applicant may not reapply for a period of six (6) months from the date the application was denied.

B. All operators and managers shall comply with the following conditions and any other conditions specified by the Chief of Police:

1. Except to the extent required, in writing, by a state licensed medical practitioner, no massage technician or employee shall massage the genitals, gluteal fold, or anal area of any patron or the breasts of any female patron, nor shall any operator or manager of a massage establishment allow or permit such massage. No massage operator or designated manager while performing any task or service associated with the massage business, shall be present in any room with another person unless the person's genitals, gluteal fold, anus, or in the case of female, her breast(s), are fully covered.

2. No person granted a permit pursuant to this Chapter shall use any name or conduct business under any designation not specified in his or her permit.

3. All massage establishments required to be licensed under this Chapter shall have a manager on the premises at all times the massage establishment is open. The operator of each massage establishment shall file a statement with the Chief of Police designating the person or persons with power to act as a manager. The operator and/or on duty manager shall post, on a daily basis, the name of each on duty manager and each on duty technician in a conspicuous public place in the lobby of the massage establishment. The operator, or the manager in the operator's absence, shall be responsible for ensuring compliance with this Chapter.

4. No licensed establishment shall be open for business without having at least one massage technician holding a current valid permit for the specific establishment on the premises, and on duty, at all times when said establishment is open.

5. The operator and/or designated manager(s) shall ensure the massage technician permit for each on-duty massage technician is conspicuously displayed in a public place in the lobby and that each massage technician is wearing or has on their person the identification required by Section 5.32.040(B)(3) at all times when in the massage establishment. Such identification shall be provided to City regulatory officials upon demand.

6. An operator and/or on duty manager shall be responsible for the conduct of all employees while the employees are on the licensed premises. Any act or omission of any employee constituting a violation of the provisions of this ordinance shall be deemed the act or omission of the operator for purposes of determining whether the operator's license shall be revoked, suspended, denied or renewed.

7. No operator or manager shall employ any person as a massage technician who does not have a valid massage technician permit issued pursuant to this Chapter. Every operator or manager shall report to the Chief of Police any change of employees, whether by new or renewed employment, discharge or termination, on the form and in the manner required by the Chief of Police. The report shall contain the name of the employee and the date of hire or termination. The report shall be made within five (5) days of the date of hire or termination. The operator shall deliver the permit and photo identification card of any massage technician no longer employed by the operator to the Chief of Police within five (5) days.

8. All persons employed in the massage establishment shall be fully clothed at all times. Clothing shall be a fully opaque, non-transparent material and shall provide complete covering from mid-thigh to no more than three (3) inches below the collar bone.

~~9. The operator and/or on duty manager shall maintain a register of all employees, showing the name, nicknames and aliases used by the employee, home address, age, birthdate, gender, height, weight, color of hair and eyes, phone numbers, social security number, date of employment and termination, if any, and duties of each employee. The above information on each employee shall be maintained in the register on the premises for a period of two (2) years following termination. The operator and/or manager on duty shall make the register of employees available immediately for inspection by police upon demand of a representative of the Police Department at all reasonable times.~~

10. Each operator shall provide the Chief of Police with evidence of the insurance required by Section 5.32.050 within forty-five (45) days of the date of issuance of the permit.

11. The operator shall comply with all provisions of this Chapter and any applicable previsions of the Lodi Municipal Code.

5.32.030 Massage Technician Permit.

No person shall perform or administer a massage, or advertise to provide massage services in the City of Lodi, unless such person has in effect a valid massage technician permit issued pursuant to Sections 5.32.035 and 5.32.040 of this Chapter. A massage technician shall comply with the requirements of Sections 5.32.035 and 5.32.040.

5.32.035 Application For Massage Technician Permit.

A. Any person desiring a massage technician permit shall file a written application on the required form with the Police Department, which shall conduct an investigation. The applicant shall be accompanied by the appropriate filing fee established by resolution of the City Council. The application shall contain the following information:

1. A statement of the exact location at which the applicant will be working as a massage technician, including the full street address and all telephone numbers associated with said location, and the name and address of the following personal information concerning the applicant;

    a. Full complete name and all aliases used at any time by the applicant, along with complete residence address and telephone;

    b. All previous residential addresses for (8) years immediately preceding the current address of the applicant;

    c. Acceptable written proof that the applicant is a least eighteen (18) years of age;

    d. Height, weight, color of hair and eyes, and gender;

    e. Two- (2) front faced portrait photographs at least two inches (2") by two inches (2") in size;

f. The business, occupation and employment history of the applicant for the eight (8) years immediately preceding the date of the application;

g. The complete permit history of the applicant and whether such person has ever had any license or permit, issued by any agency, board, City, or other jurisdiction, denied, revoked or suspended and the reasons therefor.

2. All criminal convictions, including pleas of nolo contendre, within the last ten (10) years, including those dismissed or expunged pursuant to Penal Code Section 1203.4, but excluding minor traffic violations, and the date and place of each such conviction and reason therefor.

3. A complete set of fingerprints taken by the Police Department

4. Such other information and identification as the Chief of Police may require in order to discover the truth of the matters herein specified and as required to be set forth in the application.

5. Authorization for the City, its agents and employees to seek verification of the information contained in the application.

6. A statement in writing, and dated, by the applicant that he or she certifies under penalty of perjury that all information contained in the application is true and correct.

7. If, during the term of a permit, a permit holder has any change in information submitted on the original or renewal application, the permit holder shall notify the Police Department of such change within ten (10) business days thereafter in writing.

B. Each applicant must furnish an original or certified copy of a diploma or certificate and certified transcript of graduation for completion of 200 hours of instruction from an approved or recognized school of massage, wherein the method, practice, profession, theory, ethics, anatomical and physiological knowledge and practice of massage is taught by State certified

instructors. The applicant must also supply a course description, an outline of material covered, and a letter to the City from the school administrator verifying completion, from a recognized School of Massage taught by State Certified instructors.

1. The Chief of Police may consider an applicant's study of massage completed outside the State of California if proof of completion from a formalized course of study in massage practice, anatomy, and/or physiology is provided with the application. Proof of completion shall include dates of study and the name, address and phone number of the school attended.
2. Any outside course of study submitted for approval shall meet the State of California's Office of Post-secondary Education's minimum requirements and be for completion of 200 hours of on premises training.

5.32.040 Massage Technician Permit Issuance and Denial.

A. Upon receipt of a written application for a permit, the Chief of Police shall conduct an investigation in such manner as he or she deems appropriate in order to ascertain whether such permit should be issued as requested. The Chief of Police shall approve, conditionally approve or deny the application within sixty (60) days of the filing of an application. The sixty-(60) day period may be continued for an additional thirty (30) days if necessitated by the occurrence of events beyond the control of the Chief of Police. The Chief of Police shall issue such permit as requested, unless he/she makes any of the following findings:

1. The applicant has within 8 years preceding the date of the application been convicted of any of the following:
    a. A violation of Penal Code Sections 266(h), 266(I), 314, 315, 316, 318, Subsections (a) or (b) of the Penal Code Section 647 or that the applicant is required to register under the provisions of Penal Code Section 290, or when the prosecution accepted a plea of guilty or nolo contendre to a charge of a violation of California Penal Code Section 415 or any lesser

included or lesser related offense in satisfaction of, or as a substitute for, any of the previously listed crimes.

b. A violation of Health and Safety Code Section ~~115500~~ 11550 or any offense involving the illegal sale, distribution or possession of a controlled substance specified in Health and Safety Code Section ~~1054~~ 11054, 11055, 11056, 11057, or 11057, or

c. any offense in any other state which is the equivalent of any of the above-mentioned offenses.

2. The applicant has engaged in conduct, which would constitute an offense as described in paragraph (a) of Subsection 1, within eight (8) years immediately prior to the filing of any application.

3. The applicant has committed an act, which, if committed in the State would have been a violation of law and which, if done by a permittee under this Chapter, would be grounds for denial, suspension or revocation of the permit.

4. The applicant has been convicted of an act involving dishonesty, fraud, theft, deceit or moral turpitude or an act of violence, which act or acts are substantially related to the qualifications, functions or duties of a massage technician.

5. The applicant has had a massage establishment permit or massage technician's permit or other similar license or permit denied, suspended or revoked for cause by a licensing authority or by any City, County, or State within 8 years prior to the date of the application.

6. The applicant has knowingly made a false, misleading or fraudulent statement or omission of fact to the City in the permit application process.

7. The application does not contain the information required by Section 5.32.035.

8. The applicant has not satisfied the requirements of this Chapter in the time specified.

9. If the application is denied for failure to comply with Section 6 or 7 above, the applicant may not reapply for a period of 6 months from the date the application was denied.

B. All massage technicians shall comply with the following conditions and any other conditions specified by the Chief of Police on issuance of the massage technician's permit.

1. Except to the extent required, in writing, by a state licensed medical practitioner, no massage technician, massage technician aide, or employee shall massage the genitals, gluteal fold, or anal area of any patron or the breast(s) of any female patron. No massage technician, massage technician aide or employee, while performing any task or service associated with the massage business, shall be present in any room with another person unless the person's genitals, gluteal fold, anus, or, in the case of female, her breast(s), are fully covered.

2. No massage technician shall massage any patron unless the person's genitals, gluteal fold, anus, or, in the case of female, her breast(s), are fully covered at all times while the technician or other employee is present in the same room as the patron.

3. The massage technician shall wear or have on their person a photo identification card prepared and issued by the City at all times when present in the massage establishment. Such identification shall be provided to City regulatory official upon demand. The identification card shall be worn on outer clothing with the photo side facing out. If a massage technician changes his or her business address, he or she shall, prior to such change, obtain from the Chief of Police a new photo identification card and advise the Police Department, in writing, of the new business address.

4. Massage technicians shall not perform any massage at any location other than the location specified on the permit, unless performing an off-premises massage pursuant to permit.

5. While on duty the massage technician shall not use any name other than that specified on the photo identification card.

6. Massage attendant shall be fully clothed at all times. Clothing shall be of a fully opaque, non-transparent material and provide complete covering from mid-thigh to no more than three (3) inches below the collarbone.

7. The massage technician consents to the inspection of the massage establishment by the City's Building and Safety, Fire Department and Police Department and the Health Department for the purpose of determining that the provisions of this Chapter or other applicable laws or regulations are met. The massage technician consents to the inspection of the occupied massage rooms by the Police Department for the purpose of determining that the provisions of this Chapter are met upon occurrence of any of the conditions described in Section 5.32.050(20) which would require the posting of the Notice to All Patrons.

5.32.045 Off-Premises Massage Permit

A. For purposes of this Chapter, a massage performed or administered off-premises and requiring an off-premises massage permit shall be one performed or administered for money or any other consideration by a licensed massage technician at a location other than a licensed massage establishment.

B. No person shall perform or administer a massage off the premises of a massage establishment, for money or any other consideration, without obtaining a massage technician permit under Sections 5.32.035 and 5.32.040 in conjunction with a valid operators permit and an off-premises massage permit under this Section. Any person desiring an off-premises massage permit shall file a written application on the required form with the Police Department,

which shall conduct an investigation. The applicant shall accompany the application with the appropriate filing fee. The application shall contain or be accompanied by the following information:

1. The complete name, including all aliases used at any time, residence and business address and telephone number of the applicant.
2. The precise name and complete address and telephone number of each person receiving the off-premises massage.
3. The complete address at which the off-premises massage is to be conducted.
4. The specific reasons necessitating the performance of the massage at a location other than a massage establishment. If the off-premises massage is to be conducted at a commercial business during normal business hours while patron remains fully clothed, a letter from the commercial business confirming these conditions shall accompany the application.
5. Such other information deemed necessary by the Chief of Police.

C. Upon receipt of a written application for an off-premises massage permit, the Chief of Police shall initiate an investigation to ascertain whether such permit should be issued as requested. Within ten (10) days of the filing of an application, the Chief of Police shall approve, conditionally approve or deny the application. The Chief of Police shall issue the permit unless he or she finds that it is not reasonably necessary to perform or administer the massage at a location other than the massage establishment. The Chief of Police may specify conditions of the issuance of the off-premises massage permit that are reasonably necessary to ensure compliance with this Chapter and other laws.

D. An off premises permit for chair massage only shall be valid for a period of one year. Chair massage is where a patron receives a massage while fully clothed in a public or semi public area. The areas massaged are the head, neck, back and arms only. ~~The Chief of Police must receive a letter from the property or business owner stating their knowledge and approval~~

~~of chair massage in or adjacent to their business, the location where the chair massage will take place, the hours to be conducted and that only a recognized massage chair may be used.~~

5.32.050 Requirements of Operation.

A. Facilities

1. Structure. Massage shall be carried on in a structure, which is located in a zoning district which permits such use. When a new massage establishment is constructed, three (3) sets of plans shall be submitted to the City of Lodi Community Development Department for approval and shall be accompanied by the appropriate fees.

2. Signs. Each operator shall post and maintain, adjacent to the main entrance and the front of the business, a readable sign identifying the premises as a massage establishment. The sign and the front of the business shall not be illuminated by strobe or flashing lights. Each operator and/or on duty manager shall display the operator's permit in a conspicuous public place in the lobby of the massage establishment. The hours of operation must be posted in the front window and clearly visible from the outside. The operator and/or on duty manager must also post, on a daily basis in a conspicuous public place in the lobby, the name of the operator and/or on duty manager as well as any on duty massage technicians.

3. Services List. Each operator shall post and maintain a list of services available and the cost of such services in a conspicuous public place within the premises. No operator or responsible managing employee shall permit, and no massage technician shall offer or perform, any service other than those posted.

4. Lighted Each operator shall provide in each room where massage is given sufficient lighting and ventilation that complies with the Uniform Building Code. ~~The lighting in each massage room shall be at least one (1) sixty (60) watt white light bulb and shall be activated at all times while the patron is in such room or~~

~~enclosure. No strobe flashing lights shall be used. No colored lights shall be used nor shall any coverings be used which change the color of the primary light source.~~

5. Bath Facilities: A minimum of one (1) toilet and one (1) separate wash basin shall be provided for patrons in each massage establishment, which basin shall provide soap or detergent and hot running water at all times and shall be located within close proximity to the area devoted to the performing of massage services. A permanently installed soap dispenser, filled with soap, and a single service towel dispenser shall be provided at the restroom handwash sink. No bar soap can be used. A trash receptacle shall be provided in each toilet room. Showers may be provided at the operator's option.

6. Separate Rooms: If male and female patrons are to be treated simultaneously at the same massage establishment separate massage rooms shall be provided for male and female patrons.

7. Maintenance All facilities for the massage establishment must be in good repair and shall be thoroughly cleaned and sanitized each day the business is in operation. All walls, floors and ceilings of each restroom and shower area shall be made smooth and easily cleanable. No carpeting shall be installed in any of these areas.

8. Massage Table A massage table shall be provided in each massage room and the massage shall be performed on this massage table. The tables should have a minimum height of eighteen inches (18"). Two-inch (2") thick foam pads with a maximum width of four feet (4') may be used on a massage table and must be covered with durable, washable plastic or other waterproof material. Beds, floor mattresses and waterbeds are not permitted on the premises.

B. Operations

1. Equipment Each operator and/or on duty manager shall provide and maintain on the premises adequate equipment for disinfecting and sterilizing instruments used in massage.

2. Inspections The operator and/or on duty manager consents to the inspection of the massage establishment by the City's Community Development Department, Fire Department and Police Department and the County Health Department for the purpose of determining that the provisions of this Chapter or other applicable laws or regulations are met.

   a. The City's Community Development Department, Fire Department, Police Department and the County Health Department may, from time to time, make an inspection of each massage establishment for the purpose of determining that the provisions of this Chapter, State law or other applicable laws or regulations are met.. Criminal investigations may be conducted as directed by the Chief of Police. The Police Department may inspect the occupied massage rooms for the purpose of determining that the provisions of this Chapter are met upon occurrence of any of the conditions described in Section 5.32.050(17) which would require the posting of the Notice To All Patrons. During an inspection, the Police Department may verify the identity of all on-duty employees.

   b. Inspections of the massage establishment shall be conducted during business hours.

   c. A person who operates a massage establishment or his or her agent, servant, or employee commits an offense if he or she refuses to permit a lawful inspection of the premises by a representative of the Police Department at anytime it is occupied or open for business.

3. Linen Common use of towels or linen shall not be permitted. Towels and linen shall be laundered or changed promptly after each use.

4. Living Prohibited. No person or persons shall be allowed to live inside the massage establishment at any time. All living quarters shall be separate form the massage establishment. No food of any kind shall be prepared for sale or sold in the establishment unless an appropriate food-vending permit is granted by the County of San Joaquin.

5. Alcoholic Beverages/Drugs. No person shall enter, be in, or remain in, any part of a massage establishment licensed under this Chapter while in possession of, consuming, using or under the influence of any alcoholic beverage or controlled substance. The owner, operator and manager shall be responsible to ensure that no such person shall enter or remain upon the massage establishment. Service of alcoholic beverages must comply with Alcoholic Beverage Control requirements.

6. Recordings. No electrical, mechanical or artificial device shall be used by the operator or any employee of the massage establishment for audio and/or video recording or for monitoring the performance of a massage, or the conversation or other sounds in the massage rooms without the knowledge or consent of the patron.

7. Roster. The owner, operator or on duty manager of the massage establishment shall keep a complete and current list of the names and residence addresses of all massage technicians and employees of the massage establishment and the name and residence addresses of the manager or managing employee purported to be principally in charge of the operation of the massage establishment. This roster shall be kept at and/or on the premises and be available for inspection by officials charged with enforcement of this Chapter.

8. Coverings Each massage establishment shall provide to all patrons clean sanitary and opaque coverings capable of covering the patrons specified anatomical areas, including the genitals, gluteal fold, anus and female breast(s). No common use of such coverings shall be permitted and re-use is prohibited unless adequately cleaned.

9. Records. Every person operating a massage establishment shall keep a record of the dates and hours of each treatment or service, the name and address of the patron, the name of technician administering such service and a description of the treatment or service rendered. These records shall be prepared prior to administering any massage or treatment and shall be retained on the premises of the Massage establishment for a period of twenty-four (24) months after such treatment or service. These records shall be open to inspection upon demands only by officials charged with enforcement of this Chapter and for no other purpose. The Police Department shall periodically inspect the records to ensure compliance with this Section. The information furnished or secured as a result of any such records should be used only to ensure and enforce compliance with this Chapter or any other applicable State or Federal laws and shall remain confidential. Any unauthorized disclosure or use of such information by any officer or employee of the City of Lodi shall constitute a misdemeanor.

10. Hours of Operation. The owner must advise the City, in writing, at the time of the application for a permit of the business hours and any changes in hours. No person shall operate a massage establishment or administer a massage in any massage establishment or administer a massage pursuant to an off premises massage permit between the hours of 10:00 p.m. and ~~8:00~~ 6:00 a.m. A massage begun any time before 10:00 p.m. must nevertheless terminate at 10:00 p.m. All customers, patrons and visitors shall be excluded from the massage establishment

during these hours and be advised of these hours. The hours of operation must be displayed in a conspicuous public place in the lobby within the massage establishment and in the front window clearly visible from the outside.

11. Advertising. No massage establishment granted a permit under this article 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 reasonable suggest to prospective customers or clients that any service is available other than those services described in this Chapter, nor shall any massage establishment employ language in the text of such advertising that would reasonably suggest to a prospective patron that any service is available other than those services authorized by this Chapter.

12. Insurance. No person shall engage in, conduct or carry on the business of a massage establishment unless there is on file with the City Clerk, in full force and effect at all times, documents issued by an insurance company authorized to do business in the State of California evidencing that the permittee is insured under a liability insurance policy providing minimum coverage of $100,000.00 for injury or death to one person arising out of the operation of any massage establishment and the administration of a massage.

13. Handicapped Areas. All massage establishments must comply with all State and Federal laws and regulations for handicapped customers.

14. Compliance. Proof of compliance with all applicable provisions of the Lodi City Municipal Code shall be provided.

15. Doors. All front, reception, hallway or front exterior doors (except back or rear exterior doors used for employee entrance to and exit from the massage establishment) shall be unlocked during business hours if two or more employees are on site. No massage may be given within any cubicle, room, booth or any

area within a massage establishment, which is fitted with a door capable of being locked, unless the only door is an exterior door.

16. Access. No person(s) other than valid permit holders under this Ordinance and ~~customers~~ clients will be allowed anywhere in the massage establishment other than the lobby/reception area during hours of operation. Entry doors to any room shall not be obstructed by any means.

17. Discrimination. No message establishment may discriminate or exclude patrons on the basis of the race, sex, religion, age, or handicap.

18. Notices. The Chief of Police may require that the following notice be posted in the event that any employee of the massage establishment or any person who has been aided and abetted by an employee of the massage establishment has been found, after full hearing by administrated proceeding or State Court, to have violated any of the offenses listed in Section 5.32.025 or 5.32.040:

NOTICE TO ALL PATRONS

THIS MASSAGE ESTABLISHMENT AND THE MASSAGE ROOMS DO NOT PROVIDE COMPLETE PRIVACY AND ARE SUBJECT TO INSPECTION BY THE LODI POLICE DEPARTMENT WITHOUT PRIOR NOTICE.

a. The notice set forth above shall be prepared and issued by the Chief of Police.

b. The notices shall be conspicuously posted in a location within the massage establishment that is easily visible to any person entering the premises and in each massage room. The notice shall be so posted for twelve (12) months following the violation of any of the offenses set forth above.

c. The requirement for posting the notice described in this Section is cumulative and in addition to all other remedies, violations and penalties

set forth in this Chapter, or in the ordinance, laws, rules or regulation of the City of Lodi, County of San Joaquin and the State of California.

5.32.055 Changes Of Business.

A. Every massage establishment operator shall report immediately to the Police Department any and all changes of ownership or management of the massage establishment, including, but not limited to, changes of manager or other person principally in charge, stockholders holding more than five percent (5%) of the stock of the corporation, officers, directors and partners in any and all changes of name, style or designation under which the business is to be conducted, and all changes of address or telephone numbers of the massage business. A change of location of any of the premises may be approved by the Chief of Police provided there is compliance with all applicable regulations of the City of Lodi.

B. No massage establishment permit may be sold, transferred or assigned by a permittee, or by operation of law, to any other person or persons. Any such sale, transfer or assignment, or attempted sale, transfer or assignment, shall be deemed to constitute a voluntary surrender of such permit and such permit shall thereafter be null and void; provided and excepting, however, that if the permittee is a partnership and one or more of the partners should die, one or more of the surviving partners may acquire, by purchase or otherwise, the interest of the deceased partner or partners without effecting a surrender or termination of such permit, and in such case the permit, upon notification to the Chief of Police, shall be placed in the name of the surviving partners. A massage establishment permit issued to a corporation shall be deemed terminated and void when either any outstanding stock of the corporation is sold, transferred or assigned after the issuance of a permit, or any stock authorized but not issued at the time of the granting of a permit is thereafter issued or sold, transferred or assigned. No massage technician permit may be sold, transferred or assigned by a permittee, or any operation of law, to any other person or persons.

5.32.060 Fees.

A. The City Council shall establish by resolution, and from time to time may amend, the fees for the administration of this Chapter. The City shall include in this resolution a Health Services Fee Schedule prescribing annual fees to be paid by the operator of each massage establishment, such fees to be paid directly to the County of San Joaquin Health Department and retained by the County as reimbursement for said service related to this Chapter. Fees required by this Chapter shall be in addition to any required under any other chapter of this Code.

5.32.065 Exemption; Existing Permittees.

A. The requirements of this Chapter shall have no application and no effect upon and shall not be construed as applying to any persons designated as follows: State licensed physicians, surgeons, chiropractors, physical therapists, osteopaths, licenses of the California Department of Consumer Affairs or any registered or licensed vocational nurse working on the premises of, and under the direct supervision of, a State licensed physician, surgeon, chiropractor or osteopath. Practical nurses or other persons without qualifications a massage technicians, whether employed by physicians, surgeons chiropractors or osteopaths or not, may not give massage or massage procedures.

B. Commencing on the effective date of this Ordinance, all permits are to be issued in accordance with the provisions of this Chapter.

C. Existing operator's, managers, and massage technician's permits shall continue in effect until expiration. All existing permit holders shall have an additional twelve (12) months from the effective date of this ordinance to meet and comply with the 200 hour training requirements.

5.32.070 Transfer and Duration of Permits.

A. No permit issued hereunder shall be transferable to any other person or establishment, provided, however, an additional location or change of location of a massage technician permit will be allowed upon prior written notice to the Chief of Police and payment of the appropriate fee.

B. Permits for massage operators, managers and technicians shall be ~~renewed on a year to year basis~~ renewed every two (2) years provided that the permittees continue to meet the requirements set out in this Chapter.

C. Applicants for the next ensuing permit shall be filed with the Chief of Police before the expiration of the existing permit. Temporary Permits will not be issued and renewal application must be filed no later than sixty (60) days prior to the expiration of the permit to prevent a lapse of the permit.

D. Renewal applications shall require such information as may be required by the Chief of Police to update the information contained in the original permit application. The applicant shall accompany the application for renewal with the appropriate filing fee.

5.32.075 Suspension, Revocation, Denial and Appeal.

A. Violation and Non-Compliance. The Chief of Police may refuse to renew a permit or may revoke or suspend an existing permit on the grounds that the applicant or permit holder has failed to comply with the permit conditions or other requirement of this Chapter. If a suspended permit lapses during the suspension period, a new application must be made at the end of the suspension period. In any such case, the applicant or permit holder shall have the right to appeal to the City Council in the time and manner set forth in this Section.

B. Revocation and Suspension of Operator's Permit.

1. The Chief of Police may revoke or refuse to renew an operator's permit if he or she makes any of the findings for denial of a permit under Section 5.32.025(A), 5.32.025(B) 1 or 7 or upon any subsequent violation of any provision within one year following prior suspension under subsection 2 below, or upon demonstrated inability to operate or manage the massage establishment in a law abiding manner, thus necessitating action by law enforcement officers;

2. The Chief of Police may suspend an operator's permit for a period of thirty (30) days for each violation of Section 5.32.025() not listed above, 5.32.045(B) or 5.32.050.

C. Revocation and Suspension of Massage Technician Permit.

1. The Chief of Police may revoke or refuse to renew a massage technician permit if he or she makes any of the findings for denial of a permit under Section 5.32.040(A), 5.32.040(B) 1, 2, or 6 or upon any subsequent violation of any provision of this Chapter within one year following a suspension under subsection 2 below;

2. The Chief of Police may suspend a massage technician permit for a period of thirty (30) days for each violation of Section 5.32.040(B) not listed above, 5.32.045(B) or 5.32.050.

D. Notice.

1. When the Chief of Police concludes that grounds for denial, suspension, revocation or refusal to renew a permit exist, the Chief of Police shall serve the applicant or permit holder, either personally or by certified mail addressed to the business or residence address of applicant or permit holder, with a Notice Of Denial or Notice Of Intent to Suspend, Revoke Or Refuse To Renew Permit. This Notice shall state the reasons for the proposed action, the effective date of the decision, the right of the applicant or permit holder to appeal the decision to the City Council, and the decision will be final if no appeal is filed within the time permitted.

E. Appeal.

1. The right to appeal to the City Council shall terminate upon the expiration of fifteen (15) days of the date of mailing of the notice. The notice of appeal is to be sent to the Police Department of the City of Lodi, Attention Chief of Police.

2. In the event an appeal is timely filed, the suspension or revocation shall not be effective until a final decision has been rendered by the City Council. If no appeal is filed, the suspension or revocation shall become effective upon expiration of the period for filing appeals.

3. The City Council may preside over the hearing on appeal or, in the alternative, the City Manager may appoint a hearing officer to conduct the hearing, receive relevant evidence and submit to the City Council findings and recommendations to be considered by the City Council. The City Council shall render its decision within forty-five (45) days from the date of the hearing or, in the event that a hearing officer has been appointed, within forty-five (45) days from the date on which the City Council receives the findings and recommendations of the hearing officer. The decision of the City Council shall be final. The applicant shall be entitled to notice of the basis for the proposed action, a copy of the documents upon which the decision was based and the opportunity to present contrary evidence at the hearing. ~~If the denial is based upon failing the test, the applicant shall be entitled to review their test at the Police Department but shall not be entitled to a copy of the test.~~

4. Notice of the date, time and place of the hearing shall be mailed at least ten (10) days prior to the date of the hearing, by U.S. Mail, with proof of service attached, addressed to the address listed on the massage application, massage technician application, or, the address given in the Notice of Appeal, as the case may be.

5. The following rules and evidence shall apply:

   a. Oral evidence shall be taken only under oath or affirmation. The hearing officer shall have authority to administer oaths, and to receive and rule on admissibility or evidence.

b. Each party shall have the right to call and examine witness, to introduce exhibits, and to cross-examine opposing witnesses who have testified under direct examination. The hearing officer may call and examine any witness.

c. Technical rules relating to evidence and witnesses shall not apply to hearing provided for in this Chapter. Any relevant evidence may be admitted if it is material and is evidence customarily relied upon by responsible persons in the conduct of their affairs regardless of the existence of any common law or statutory rule which might make admission of such evidence improper over objection in civil actions. Hearsay testimony may be admissible and used for the purpose of supplementing or explaining any evidence given in direct examination, but shall not be sufficient in itself to support a finding unless such testimony would be admissible over objection in civil actions. The rules of privilege shall be applicable to the extent they are now, or are hereafter permitted in civil actions. Irrelevant, collateral, undue, and repetitious testimony shall be excluded.

6. No permit granted herein shall confer any vested right to any person or business for more than the permit period. All massage operators, managers and

technicians subjected to this Chapter shall comply with the provisions of this Chapter as they may be amended hereafter.

5.32.080 Violation and Penalty.

A. Violations of this Chapter may be enforced pursuant to the provisions of Chapter 1.08 of the Lodi Municipal Code.

B. Any massage establishment operated, conducted or maintained contrary to the provisions of this Chapter shall be, and the same is hereby declared to be, unlawful and a public nuisance, and the City may, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings, for the abatement, removal and enjoyment thereof, in the manner provided by law, and shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such massage establishments and restrain and enjoin any person from operating, conduction or maintaining a massage establishment contrary to the provisions of this Chapter.

5.32.085 Severability.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed his Ordinance, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

Approved this ____ day of _____, 2000

_____
STEPHEN J. MANN
Mayor

Attest:

SUSAN J. BLACKSTON
City Clerk

State of California
County of San Joaquin, ss.

I, Susan J. Blackston, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1692 was introduced at a regular meeting of the City Council of the City of Lodi held July 19, 2000 and was thereafter passed, adopted and ordered to print at a regular meeting of said Council held _____, 2000, by the following vote:

AYES: COUNCIL MEMBERS -

NOES: COUNCIL MEMBERS -

ABSENT: COUNCIL MEMBERS -

ABSTAIN: COUNCIL MEMBERS -

I further certify that Ordinance No. 1692 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

SUSAN J. BLACKSTON
City Clerk

Approved as to Form:

RANDALL A. HAYS
City Attorney

CITY OF LODI

Carnegie Forum
305 West Pine Street, Lodi

NOTICE OF PUBLIC HEARING

Date: Wednesday, July 19, 2000

Time: 7:00 p.m.

For information regarding this notice please contact:
Jacqueline L. Taylor
Interim City Clerk
Telephone: (209) 333-6702

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that on **Wednesday, July 19, 2000** at the hour of 7:00 p.m., or as soon thereafter as the matter may be heard, the City Council will conduct a Public Hearing at the Carnegie Forum, 305 West Pine Street, Lodi, to consider the following matter:

a) Revision of Existing Massage Ordinance.

All interested persons are invited to present their views and comments on this matter. Written statements may be filed with the City Clerk at any time prior to the hearing scheduled herein, and oral statements may be made at said hearing.

If you challenge the subject matter in court, you may be limited to raising only those issues you or someone else raised at the Public Hearing described in this notice or in written correspondence delivered to the City Clerk, P.O. Box 3006, at or prior to the Public Hearing.

Jacqueline L. Taylor
Interim City Clerk

Dated: July 5, 2000

Approved as to form:

Randall A. Hays
City Attorney

MEMORANDUM

Office of the Lodi City Clerk

TO: Honorable Mayor and
Members of the Lodi City Council

FROM: Jacqueline L. Taylor
Interim City Clerk

CC: City Manager
Deputy City Manager

DATE: June 29, 2000

SUBJECT: PROPOSED MASSAGE ORDINANCE REVISIONS – Ordinance #1692

Attached is a copy of the proposed massage ordinance revisions. This document is provided to you in advance for your review, and will be included in the July 19 packet for the public hearing.

The timeline for this document is as follows:

July 5, 2000	Council sets public hearing for July 19, 2000 and orders the publication of the public hearing
July 19, 2000	Council conducts public hearing and introduces ordinances
August 2, 2000	Council adopts ordinance and orders publication of the document
September 1, 2000	Ordinance becomes effective 30 days from adoption.

If you have any questions regarding this document, please contact Chief Hansen at 333-6725 or City Attorney Hays at 333-6701. Questions regarding this memo or the public hearing timeline process should be directed to the City Clerk's office at 333-6702.