



MEETING DATE: 11/05/07
ITEM NO: 6

COUNCIL AGENDA REPORT

DATE: October 18, 2007

TO: MAYOR AND TOWN COUNCIL

FROM: PAMELA JACOBS, INTERIM TOWN MANAGER *P. Jacobs*

SUBJECT: MASSAGE ORDINANCE

- A. INTRODUCTION OF AN ORDINANCE AMENDING CHAPTER 14 OF THE TOWN CODE REGARDING THE REGULATION OF MASSAGE THERAPY ESTABLISHMENTS AND MASSAGE THERAPY PRACTITIONERS
- B. ADOPT RESOLUTION AMENDING RESOLUTION 2007-026 CERTAIN DEPARTMENT FEES, RATES AND CHARGES

RECOMMENDATION:

- 1. Accept public comment.
- 2. Direct the Clerk Administrator to read the title of the ordinance (no motion required).
- 3. Move to waive the reading of the ordinance (motion required).
- 4. Introduce the ordinance to effectuate the Zoning Code amendment (motion required).
- 5. Direct the Clerk Administrator to publish the ordinance within 15 days after adoption (no motion required).
- 6. Adopt resolution amending resolution 2007-026 certain department fees, rates and charges.

BACKGROUND:

The ordinance regulating massage therapist establishments and practitioners was brought forward to Town Council on September 4, 2007. The attached staff report (Attachment 1) describes the purpose of the ordinance, and the research and outreach conducted to develop it. At the September 4th meeting, Town Council and the public commented on several sections of the ordinance. Council directed staff to address the issues and return to Council with a revised ordinance.

PREPARED BY: Scott R. Seaman, Chief of Police

Handwritten signature of Scott R. Seaman.

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Reviewed by: _____ Assistant Town Manager *OK* Town Attorney
_____ Clerk Administrator _____ Finance _____ Community Development

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DISCUSSION:

Issues raised by Council and the public included:

- Health Insurance Portability and Accountability Act (HIPAA) requirements
- The inspection of records process
- Language relating to criminalization
- Transition time for existing therapists
- Language relating to the separation of dressing/massage rooms for the client and the practitioner
- Language on Page 5, sub-section b(1) relating to personally giving massages verses the exemptions

Staff researched the issue of a potential HIPAA violation associated with Section 14.110.050, which requires a massage establishment to keep a written record of the first and last name of the client, date and hour of the service, practitioner name and service received. Staff consulted with the Town Attorney and outside counsel, and found there is no violation of HIPAA to record the first and last name of a massage client. A massage establishment and/or therapist may keep these records and a regulatory agency may inspect those records without violating HIPAA.

Staff made several changes to the ordinance based on direction from Council and additional input from stakeholders. These changes are reflected in the marked up version of the ordinance (Attachment 2) and are summarized below:

- Deleted language in section 14.110.015 (a) (3), Purpose and Intent, regarding regulating police problems and illegal purposes
- Deleted language in section 14.110.015, Definitions, regarding massage associations that recognize particular schools of massage
- Added six (6) months to the educational requirement of 300 hours
- Added language to give the Police Chief discretion in allowing therapists short of the 300 hour educational requirement to show proof of current coursework and still practice in Town
- Deleted managing employee section in 14.110.030 (b)(2)
- Added language to 14.110.040 (b) (3) regarding a 5 year grace period for previous revocations at the discretion of the Chief of Police
- Deleted confusing language in section 14.110.050 (f)
- Changed language in 14.110.050 (m) to be more specific regarding who may inspect records and premises. Specifically, the ordinance identifies sworn officers, code compliance and the town attorney. Added language about obtaining a subpoena if time and circumstances permit
- Changed language in two other sections to be consistent with above changes

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MAYOR AND TOWN COUNCIL

SUBJECT: INTRODUCTION OF MASSAGE ORDINANCE

October 18, 2007

CONCLUSION:

This final version of the ordinance (Attachment 3) establishes a process for regulating massage establishments and practitioners that is consistent with other cities in the county and state and with best practices. It allows for a streamlined process, establishes minimum educational requirements and provides for oversight of establishments by specific officials. Staff recommends the Town Council introduce the revised ordinance and adopt the resolution amending the fee schedule as submitted (Attachment 4).

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA and no further action is required.

FISCAL IMPACT:

An amendment to the fee schedule is recommended to ensure the Town adheres to its financial policies that "fees are maintained to provide for cost recovery based upon the cost of providing services." The proposed fees are intended to cover staff time to process the application, review pertinent documents, arrange for fingerprints and photographs to be taken and obtain necessary approvals. Based on estimates of this cost, the fee schedule is recommended as \$140 per therapist for an initial application and \$70 for an annual renewal. These fees are lower than the average in comparison to other cities in the county. Fees in other eight jurisdictions average \$176 for the initial fee and \$110 for renewals. Once the fee is established it will be reviewed annually and adjusted if necessary to reflect current cost of service delivery. It is difficult to estimate the exact number of therapists in Town at any one time, but based upon the current approximate number of massage therapists, these new fees are anticipated to generate additional revenues of approximately \$5,000-\$7,500 per year.

Attachments:

1. Staff Report from 9/4/07 (without ordinance)
2. Marked up ordinance adding Town Code Section 14.110.015 regarding the regulation of massage therapy establishments and massage therapy practitioners
3. Final version of ordinance
4. Resolution amending the Fee Schedule
5. Correspondence from Kelly Ranger
6. Correspondence from Tom Dragosavac



MEETING DATE: 09/04/07

ITEM NO: 8

COUNCIL AGENDA REPORT

DATE: August 27, 2007

TO: MAYOR AND TOWN COUNCIL

FROM: PAMELA JACOBS, INTERIM TOWN MANAGER

P. Jacobs

SUBJECT: MASSAGE ORDINANCE

- A. INTRODUCTION OF AN ORDINANCE AMENDING CHAPTER 14 OF THE LOS GATOS TOWN CODE REGARDING THE REGULATION OF MASSAGE THERAPY ESTABLISHMENTS AND MASSAGE THERAPY PRACTITIONERS
- B. ADOPT RESOLUTION AMENDING RESOLUTION 2007-026 CERTAIN DEPARTMENT FEES, RATES AND CHARGES

RECOMMENDATION:

1. Open and hold the public hearing.
3. Close the public hearing.
4. Direct the Clerk Administrator to read the title of the ordinance (no motion required).
5. Move to waive the reading of the ordinance (motion required).
6. Introduce the ordinance to effectuate the Zoning Code amendment (motion required).
7. Direct the Clerk Administrator to publish the ordinance within 15 days after adoption (no motion required).
8. Adopt resolution amending resolution 2007-026 certain department fees, rates and charges.

BACKGROUND:

The current ordinance regulating massage therapists was written in 1977, under Town Code section 29.10.020, under the definition of a "sex studio." Since that time, the Town has recognized that massage is a legitimate healing art, and placed certain processes in place to identify massage therapists and establishments, including filling out a short application and requiring a sponsor letter from a State of California licensed practitioner such as a doctor, surgeon, chiropractor, acupuncturist, registered nurse, osteopath or physical therapist.

PREPARED BY: Scott R. Seaman, Chief of Police

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Reviewed by: _____ Assistant Town Manager *ok* Town Attorney
_____ Clerk Administrator *se* Finance _____ Community Development

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MAYOR AND TOWN COUNCIL

SUBJECT: INTRODUCTION OF MASSAGE ORDINANCE

AUGUST 27, 2007

- Surveys were distributed to over 60 therapists in Town with an approximate 70% return rate
- Personal and phone contact was made with those therapists who chose not to participate in the survey, in order to verify whether or not they were still practicing in Town
- Two meetings were held with 9 therapists to allow for feedback and input to the proposed ordinance and process
- Finally, a Powerpoint presentation was e-mailed to several other therapists who could not make the meetings but who were still very interested in the proposed changes

Staff has been accessible and open to hearing from therapists in Town, providing information and clarification and fielding questions throughout this process.

CONCLUSION:

This ordinance and process will provide for consistency with other cities in the county and state and best practices. It allows for a streamlined process, establishes minimum requirements and provides sanctions for violators. Staff recommends the Town Council approve the ordinance and amended fee schedule as submitted.

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA and no further action is required.

FISCAL IMPACT:

An amendment to the fee schedule is recommended to ensure the Town adheres to its financial policies that "fees are maintained to provide for cost recovery based upon the cost of providing services." The proposed fees are intended to cover staff time to process the application, review pertinent documents, arrange for fingerprints and photographs to be taken and obtain necessary approvals. Based on estimates of this cost, the fee schedule is recommended as \$140 per therapist for an initial application and \$70 for an annual renewal. These fees are lower than the average in comparison to other cities in the county. Fees in other eight jurisdictions average \$176 for the initial fee and \$110 for renewals. Once the fee is established it will be reviewed annually and adjusted if necessary to reflect current cost of service delivery. It is difficult to estimate the exact number of therapists in Town at any one time, but based upon the current approximate number of massage therapists, this new fees are anticipated to generate additional revenues of approximately \$5,000-\$7,500 per year.

Attachments: 1. Ordinance
2. Resolution amending the Fee Schedule

ARTICLE XI.
REGULATION OF MESSAGE ESTABLISHMENTS AND MESSAGE
PRACTITIONERS

Sec. 14.110.015. Purpose and intent.

(a) Purpose.

(1) In enacting these regulations, the Town of Los Gatos Town Council (hereafter referred to as "Town Council") recognizes that massage is a viable professional healing art offering the public valuable health and therapeutic services.

(2) It is the purpose and intent of the Town Council that the operation of Massage Establishments and persons offering massage be regulated in the interests of public health, safety, and welfare by providing minimum building, sanitation, and health standards and to ensure that persons offering massage shall possess the minimum qualifications necessary to operate such businesses and to perform such services offered.

(3) It is the purpose and intent of this Article XI to articulate regulations to ensure that persons offering massage services are qualified and trained and can be expected to conduct their work in a lawful and professional manner.

Deleted: The Town Council finds that existing controls have not satisfactorily addressed or regulated police problems, nor have the existing controls regulated the profession so as to discourage the use of the profession for objectionable and illegal purposes.

(b) Conflicts with other provisions of this Code. In the event of any conflicts or inconsistencies between the provisions of this Article XI and the remaining provisions of this Chapter 14 or with the provisions of any other chapter(s) of the Town Code, the provisions of this Article XI shall control, unless to do so would be inconsistent with the stated purpose of this Article XI. Any massage establishment is further regulated pursuant to Chapter 29 of this Code.

(c) Responsibility for enforcement. The primary responsibility for enforcement of the provisions of this Article XI shall be vested in the Chief of Police.

Sec. 14.110.015. Definitions.

For purposes of this article, the following words, terms and phrases are defined as follows:

Managing employee means any employee of a Massage Establishment who has been designated by the holder of the Massage Establishment permit to manage the business in his/her absence. The Managing Employee may perform massages at the business only if he/she obtains and maintains in effect a Massage Practitioner permit.

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Massage means any method of treating the external parts or surfaces of the human body by bathing, rubbing, pressing, stroking, pounding, kneading, tapping, vibrating, or touching or stimulating with the hands or any part of the body, or any instrument.

Massage establishment means any establishment, having a fixed place of business where any person, firm, association, partnership, corporation, joint venture or a combination of individuals engages in, conducts, carries on or permits to be engaged in, conducted or carried on for consideration, massages or health treatments in the Town in which massages are given in return for compensation of any type; including but not limited to any hot tub/sauna establishment, personal fitness training center, spa, gymnasium, athletic facility, health club or office in which massage services are made available to clients.

Massage therapist means any person, including a non-medical Massage Practitioner or a certified massage therapist, who performs massage in return for compensation of any type and who has completed a minimum of three hundred (300) or more verifiable hours in a resident course of study from a recognized school on the theory, ethics, history, practice, methods, profession or work of massage, including the study of anatomy and physiology and hygiene, with at least seventy-five (75) hours of the required three hundred (300) hours in the areas of demonstration and practice of massage techniques from a recognized school, that which provides a diploma or certificate of completion upon successful completion of such resident course of study. The terms "massage technician" and "massage practitioner" are included within the definition for purposes of this chapter.

Massage therapist trainee means any person who is defined in "massage therapist" above, and who has written proof he/she is currently enrolled in a recognized school of massage and has completed a minimum of fifty (50) hours of instruction from said recognized school and will be working under the direct supervision of a lawfully permitted massage therapist as provided in this Article, and will only be conducting massage therapy on staff or permitted therapists of that establishment, and not members of the public.

Out-call massage service means any therapist who provides massage services at a location designated by the customer or client or the Massage Practitioner or the out-call massage service, other than at the designated approved massage establishment.

Person means any individual, partnership, firm, association, corporation, joint venture or any other combination of individuals for the purpose of doing business.

Police chief means the Los Gatos/Monte Sereno Police Chief or his or her designee.

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Recognized school means any school or institution of higher learning which has been approved pursuant to California Education Code Section 94300 et seq. or other applicable state law or regulations of California or another state, or other country which requires a resident course of study on the theory, ethics, history, practice, methods, profession or work of massage, including the study of anatomy and physiology and hygiene, and which provides a diploma or certificate of completion upon successful completion of such course of study. At least seventy-five (75) hours of the required three hundred (300) hours shall be in the areas of demonstration and practice of massage techniques. Schools offering correspondence course(s) not requiring actual attendance of class shall not be deemed a recognized school. The Town shall have the right to confirm the fact that the applicant has actually attended classes in a recognized school for the aforementioned minimum time period.

Deleted: or any public school recognized by the International Massage Association Inc., Associated Body worker and Massage Professionals Inc., American Massage Therapy Association Inc, National Certification Board of Therapeutic Massage,

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Sec. 14.110.020 Exemptions.

The provisions of this chapter shall not apply to:

(a) Physicians, surgeons, chiropractors, acupuncturists, osteopaths, registered nurses, physical therapists or other health professionals who are duly licensed to practice their respective professions under the laws of the State of California.

(b) Barbers or cosmetologists who are duly licensed under the laws of the State of California while performing massage within the scope of their licenses.

(c) Persons administering massages or health treatments involving massage to other persons who are participating in a recreational or special event that has been approved by the Town, provided that the following conditions are met:

- (1) The massage services are made available equally to all participants in the event;
- (2) The event is open to participation by the general public or a significant segment of the public;
- (3) The massage services are provided during the event in an open environment at the site of the event;
- (4) The sponsors of the event have approved the provision of massage services at the event; and
- (5) The persons providing the massage services are in compliance with all applicable Town Codes and other laws.

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Sec. 14.110.025 Permit requirements for Massage Establishments, Managing Employees and Massage Practitioners.

(a) **Massage Establishment permits.** No person shall establish, operate or maintain a Massage Establishment within Town limits without first obtaining from the Police Chief, and maintaining in effect, a Massage Establishment permit. It is unlawful to operate, establish or maintain a Massage Establishment while the Massage Establishment permit issued for such business has been suspended or revoked or has expired.

(b) **Managing Employee permit.** No person shall act as the Managing Employee for a Massage Establishment within Town limits unless he/she has obtained a Managing Employee permit from the Police Chief. It is unlawful for any person to act as the Managing Employee of a Massage Establishment while his/her Managing Employee permit has been suspended or revoked, or has expired.

(c) **Massage Practitioner permit.** No person shall practice massage or give massages in return for compensation of any type within Town limits without obtaining from the Police Chief and maintaining in effect a Massage Practitioner permit. It is unlawful for any person to practice massage or give massages in return for compensation while his/her Massage Practitioner permit has been suspended or revoked, or has expired. A person who obtains a Massage Establishment permit, or a Managing Employee permit and plans to personally give massages at the business shall also apply for and obtain a Massage Practitioner permit.

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Sec. 14.110.030 Educational requirements for Massage Practitioners, and holders of Massage Establishment permits, and Managing Employee permits.

(a) **General educational requirements.** Except as indicated below, all applicants for a Massage Establishment permit, Managing Employee permit or Massage Practitioner permit must meet the following educational standards in order to qualify for such permit, at the discretion of the Chief of Police:

(1) Possession of a diploma or certificate of completion from a recognized school which shows satisfactory completion of a resident course of study of a minimum of three hundred (300) verifiable hours on the theory, ethics, history, practice, and/or methods of massage therapy, including the study of anatomy, physiology and hygiene, with at least seventy-five (75) hours of the required three hundred (300) hours in the areas of demonstration and practice of massage techniques; or

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(2) Possession of a diploma or certificate of completion from a recognized school or public school showing satisfactory completion of a minimum of three hundred (300) verifiable hours of a non-repetitive curriculum which covers the subjects described in subsection 1 above, and a transcript or transcripts from a college or junior or community college in the State of California, or a college or junior or community college in another state from which courses would be acceptable for transfer credit to any college in the California State University and College System, which shows completion, with a passing grade or better, of at least eight (8) quarter units or six (6) semester units of courses in health theory, health care, anatomy, physiology, psychology, biomechanics or kinesiology; or

(3) Degrees, certificates, diplomas, and course work received at other institutions, American or foreign, shall be accepted only if such institution is approved by an education agency in that state or country and the curriculum or course of studies meets the criteria set out by this code. Course descriptions, school catalogs or bulletins may be required by the department to substantiate the curriculum.

(b) Exemptions from educational requirements. The following persons are exempt from the educational requirements set forth in subsection (a) above:

(1) Holders of Massage Establishment business licenses and Massage Practitioner business licenses issued by the Town before the effective date of this article shall have a period of eighteen (18) months from the effective date of this article to satisfy the educational requirements set forth in subsection (a) above.

(2) At the end of the 18 months, any therapist who does not have the required 300 hours of education will not be permitted to practice in Los Gatos. However, consideration can be given by the Chief of Police at his/her discretion, to those therapists who can prove through documentation that they are currently enrolled in coursework associated with massage therapy and compliance of the 300 hour requirement is expected in a reasonable amount of time.

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(1) Applicants for a Massage Establishment permit or Managing Employee permit who sign a declaration under penalty of perjury that they will not personally give massages at the Massage Establishment; or¶

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Sec. 14.110.035. Applications for Massage Establishment permits, Managing Employee permits, and Massage Practitioner permits.

(a) Submission of application. All persons who wish to obtain a Massage Establishment permit, Managing Employee permit, or Massage Practitioner permit from the Town shall file a written application with the Police Chief on a form provided by the Town, which contains the following information:

(1) The full name, including any nicknames or other names used presently or in the past, and the present address and phone number of the applicant;

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- (2) The applicant's two (2) most recent addresses within the last seven (7) years, and the dates of residence at each address;
- (3) Proof the applicant is over eighteen (18) years of age;
- (4) The applicant's height, weight and colors of eyes and hair;
- (5) The applicant's driver's license and/or California I.D. number (if any) and social security number;
- (6) The applicant's two (2) most recent employers within the last seven (7) years, including their names, addresses and phone numbers, and the position held by the applicant;
- (7) The names and addresses of any massage facility or other businesses involving massage by which the applicant has been employed, or self-employed as a Massage Practitioner, within the past ten (10) years;
- (8) Any criminal conviction on the part of the applicant for offenses other than traffic violations within the ten (10) years preceding the date of the application;
- (9) Any criminal charges pending against the applicant at the time of the application, other than traffic citations, the name and location of the court in which the criminal charges are pending and the applicable case numbers;
- (10) Whether the applicant has ever had a license, certificate or permit related to the practice of massage, or the operation of a Massage Establishment, or other business involving the practice of massage, suspended or revoked within the ten (10) years preceding the date of the application, the dates and reasons for any such suspensions or revocations, and the name and location of the jurisdiction or public agency which suspended or revoked such license, permit or certificate;
- (11) Whether the applicant, including the Massage Establishment, Managing Employee or Massage Practitioner permit applicant, as a member of a corporation or partnership, has ever operated or been employed at any business which has been the subject of an abatement proceeding under the California Red Light Abatement Act (California Penal Code Sections 11225 through 11325) or any similar laws in other jurisdictions. If the applicant has previously worked at such a business, he/she should state on the application the name and address of the business, the dates on which the applicant was employed at such business, the name and location of the court in which the abatement action occurred, the applicable case number and the outcome of the abatement action;
- (12) Whether the applicant provided sufficient information to the Town's satisfaction that they meet the educational requirements set forth in section 14.110.030 (except in cases involving applications for Massage Establishment permits, or Managing Employee permits, when the applicant has filed a statement under penalty of perjury that he/she will not personally give massages at the Massage Establishment);
- (13) Whether the applicant has previously applied to the Town for a Massage Establishment permit, Managing Employee permit, or Massage Practitioner permit, the date of the previous application and any other name(s) under which the application was made;

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(14) In the case of an application for a Massage Establishment permit or Managing Employee permit, the proposed name and address of the Massage Establishment, together with the name and address of any other massage business operated or managed by the applicant or in which the applicant has or had a business interest, within the ten (10) years preceding the date of the application;

(15) The name and address of the owner 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.

(16) Proof of malpractice insurance in the sum of not less than one hundred thousand dollars (\$100,000.00) per massage therapist licensed, or to be licensed, at the Massage Establishment up to a maximum of five hundred thousand dollars (\$500,000.00); this requirement can be satisfied by malpractice insurance being provided in the name of individual Massage Practitioner or establishment.

(17) In the case of an application for a Massage Establishment permit or Managing Employee permit, whether the applicant intends to personally provide massage services at the business;

(18) Written authorization for the Town, its agents and employees, to seek information and to conduct an investigation into the truth of the statements set forth in the application and into the background of the applicant and the Managing Employee;

(19) The applicant shall advise the Town in writing of any change of address or change in fact(s) represented to Town which may occur during the Town's processing of the application for a Massage Establishment permit; and

(20) A statement under penalty of perjury that the applicant has not knowingly and with the intent to deceive made any false, misleading or fraudulent statements or omissions of fact in his/her application or any other documents required by the Town to be submitted with the application.

(b) Other required information. Applicants for Massage Establishment permits, Managing Employee permits and Massage Practitioner permits shall also submit the following information to the Police Chief at the time of their application:

(1) A birth certificate or other legal documentation that verifies the identity of the applicant and verifies that the applicant is over eighteen (18) years of age;

(2) A diploma, certificate of completion, transcripts from each school or institution from which the Massage Practitioner has obtained training or other written proof acceptable to the Police Chief that the applicant has met the educational requirements set forth in section 14.110.030. Diplomas, certificates of completion and transcripts shall indicate the number of hours or training received by the certificate holder.

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In the case of applications for a Massage Establishment permit or Managing Employee permit only, the applicant may, if applicable, submit to the Police Chief with his/her application a written statement under penalty of perjury that he/she will not personally give massages at the Massage Establishment;

(3) Other related information requested by the Police Chief in order to evaluate the background and qualifications of the applicant for the permit sought. This may include information or documentation to indicate whether the Massage Establishment or Massage Practitioner is affiliated with or a member of any recognized national or state massage therapy association or organization.

(c) Payment of permit fees. At the time of filing an original application for a Massage Establishment permit, Managing Employee permit or Massage Practitioner permit, applicants shall pay Massage Establishment permit fees, Managing Employee permit fees or Massage Practitioner's permit fees (as applicable) in an amount established by a resolution of the Town Council. All fees shall be non-refundable. If an applicant for a Massage Establishment permit or Managing Employee permit is simultaneously applying for a Massage Practitioner permit because he/she intends to give massages at his/her business, the Town shall not charge any additional fees related to the Massage Practitioner permit.

(d) Processing of application and investigation. Upon receipt of an application for a Massage Establishment permit, Managing Employee permit or Massage Practitioner permit, the Police Chief shall review the application and supplementary material. If it is clear from the face of the application and supplementary materials that the applicant is not qualified for a permit, or the application is incomplete, the application may be denied without further investigation. If it appears from the face of the application and supplementary material that the applicant may be eligible for the permit sought, the Police Chief shall verify the information submitted by the applicant and shall further investigate the qualifications of the applicant as follows:

(1) Photographs/fingerprints/review of criminal history. The Police Chief shall either require two (2) passport style photographs and/or take a recent photograph of the applicant. Applicant shall also be responsible for submitting fingerprints pursuant to "Livescan" procedures and pay all costs associated with such submittal. The applicant's fingerprints will then be submitted to the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) for evaluation. Upon receipt of the report from the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI), the police chief shall review the criminal history (if any) of the applicant.

(2) Investigation of location and premises of Massage Establishment or permit. Upon receipt of an application for a Massage Establishment permit, the Police Chief shall refer the application to the Town's applicable department's which shall

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review the application and, if necessary, inspect the premises to ensure that the operation of the business at the designated site will comply with the provisions of this article and the Town's zoning, building and fire safety standards, and any other applicable Town codes. If a use permit is required for the Massage Establishment the applicant shall comply with the Town's zoning code. No home occupation permit shall be issued for a massage establishment or massage activities.

(3) Additional investigation. The police chief may conduct additional investigation in a manner authorized by law when necessary to determine whether the applicant meets the qualifications for a permit pursuant to this article.

Sec. 14.110.040 Grant or denial of application for Massage Establishment permit, Managing Employee permit, Massage Practitioner permit.

(a) Time for grant or denial of applications. The Police Chief shall grant or deny the application for a Massage Establishment permit, Managing Employee permit or Massage Practitioner permit within thirty (30) calendar days of the applicant's submission of the application and all required supplementary material. When necessary to conduct a complete investigation of an application, the Police Chief may extend this time to a maximum of sixty (60) calendar days. Granting of a permit requires the massage establishment and/or therapist to be in compliance with Chapter 29 of this Code.

(b) Grounds for denial of Massage Establishment permit, Managing Employee permit or Massage Practitioner permit. The Police Chief shall deny an application for a Massage Establishment, Managing Employee permit or Massage Practitioner permit if any of the following circumstances exist:

(1) The application is incomplete and/or required supplementary materials are not submitted on a timely basis;

(2) The applicant does not have the required educational qualifications, unless the applicant is exempted from these requirements pursuant to section 14.110.030 (b);

(3) The applicant has previously had a Massage Establishment permit, Managing Employee permit, Massage Practitioner permit or similar license, certificate or permit revoked by the Town or any other public agency in any state or country, within 5 years. Any revocation beyond 5 years will be reviewed, and discretion for approval given by, the Chief of Police.

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(4) The applicant has made a false, misleading or fraudulent statement or omission of fact in his/her application or other materials submitted with the application;

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(5) The applicant, including applicant as a corporation or partnership, or former employer of the applicant while the applicant was so employed, has been successfully prosecuted in an abatement proceeding under the California Red Light Abatement Act (Penal Code Sections 11225 through 11325) or any other similar laws in another jurisdiction;

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(6) The applicant has been convicted of:

(a) An offense which requires registration pursuant to California Penal Code Section 290; or a violation of Sections 266(h), 266(i), 311 through 311.7, 314, 315, 316, 318 or 647(b), 647(d), 647(f) 647.1 of the California Penal Code, or equivalent offenses under the laws of another jurisdiction, including any other State or Country.

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(b) A prior offense which involves violation of California Health and Safety Code Sections 11351 through 11354, 11358 through 11363, 11378 through 11380, or the sale of controlled substances specified in California Health and Safety Code Sections 11054, 11056, 11057 or 11058, or equivalent offenses under the laws of another jurisdiction, including any other State or Country.

(c) Any offense involving dishonesty, fraud, deceit or the use of force or violence upon another person; or

(d) Any offense involving sexual misconduct with children.

(e) For purposes of this section, a plea of "nolo contendere" may also serve as the basis for the denial of a Massage Establishment permit, Massage Practitioner permit or Managing Employee permit because the above-listed underlying offenses bear a substantial relationship to the qualifications, functions or duties of a Massage Establishment.

(7) The operation of the Massage Establishment would violate the Town's zoning, building or fire regulations, or other provisions of law or the Town Code.

(c) Notice to applicant of grant or denial of application. The Police Chief shall give written notice to the applicant of the grant or denial of the application for a permit by certified mail or by personal service. If the application is denied, the notice shall advise the applicant of the reasons for the denial and of his/her right to appeal the decision to the Town Manager through the procedures set forth in subsection (d) below.

(d) Appeal of denial of Massage Establishment permit, Managing Employee permit or Massage Practitioner permit to the Town Manager.

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Upon the denial of an application for a Massage Establishment permit, Managing Employee permit or a Massage Practitioner permit by the Police Chief, the applicant may appeal to the Town Manager through the following procedures:

- (1) Request for appeal hearing. The applicant shall file a written request for an appeal hearing, which states the specific grounds on which the decision of the Police Chief to deny the permit is contested, with the Town Manager's office within ten (10) calendar days of the personal service of the Police Chief's decision to the applicant at the most recent home or business address on file with the police department, or within ten (10) calendar days of service of the Police Chief's decision in the United States mail by certified mail.
- (2) Notice of time and place of hearing. Upon receipt of a timely request for an appeal hearing, the Town Manager's office shall notify the applicant in writing of the date, time and place of the hearing before the Town Manager or designee, which shall not be less than ten (10) calendar days after the service of such written notice on the applicant by in-person delivery at the most recent home or business address on file with the Town or ten (10) calendar days after the deposit of the notice in an envelope addressed to the applicant in the United States mail by certified mail.
- (3) Hearing before the Town Manager or designee. At the hearing, both the applicant and the Police Chief shall have the right to appear and be represented by counsel, and to present evidence and arguments relevant to the grounds on which the decision to deny the application is appealed. The burden of proof shall be on the applicant to demonstrate that he/she meets the qualifications for a Massage Establishment permit, Managing Employee permit, Massage Practitioner permit and is entitled to the issuance of such permit.
- (4) Decision of the Town Manager or designee. Within ten (10) calendar days of the hearing, the Town Manager or designee shall issue a written decision, which states whether the decision of the Police Chief to deny the application is upheld or reversed, and the reasons for this determination. The decision shall be served upon the applicant by personal service or by certified mail. The decision of the Town Manager or designee shall be final.

Sec. 14.110.045. Business license.

It is unlawful for any person, whether an employee or independent contractor of a massage establishment, to open or operate a Massage Establishment without obtaining and maintaining in effect a Town business license and paying a business license tax.

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Sec. 14.110.050 Operating requirements for Massage Establishments.

Unless otherwise specified herein, all Massage Establishments shall comply with the following operating requirements.

(a) Exterior signs. A recognizable and legible sign should be posted at the main entrance identifying the business and which clearly identifies the establishment to foot and/or automobile traffic. An additional "Massage" sign need not be in addition to the primary business sign. The sign shall be in compliance with Chapter 29 of this Code.

(b) Posting of Massage Establishment permit. A copy of the Massage Establishment permit shall be posted in a conspicuous place in such a manner that it can easily be seen by persons entering the Massage Establishment.

(c) Designation of Managing Employee. If the holder of the permit will not personally manage the business during all hours of operation, he/she shall designate one (1) or more Managing Employees who shall be in charge of the operation of the business during his/her absence. If the Managing Employee(s) will personally give massages at the business, he/she must also obtain a Massage Practitioner permit.

(d) Display of Managing Employee permit. If the holder of the permit has designated a Managing Employee, the Managing Employee permit issued to this employee shall be displayed in a conspicuous place on the premises of the Massage Establishment. Each Managing Employee permit holder shall be issued a photo identification badge from the Police Department.

(e) Display of Massage Practitioner permit. Every Massage Practitioner employed by the Massage Establishment shall hold a valid Massage Practitioner permit issued by the police department. Each Massage Practitioner permit holder shall be issued a photo identification badge from the police department. The Massage Practitioner permit holder shall display the identification badge on his/her person during business hours, or have the identification badge displayed in plain view.

(f) Dressing/massage room. Clients of the Massage Establishment shall be furnished with a dressing/massage room, or private area for changing clothes.

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(g) Payment/tips. All massage services shall be paid for in the reception area, and all tips, if any, shall be paid for in the reception area. Massage Establishments may utilize a system where tip envelopes are provided in the treatment rooms to be utilized and deposited by the client in the reception area.

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(h) Alcohol prohibited. No alcoholic beverages may be possessed or consumed on the premises of the Massage Establishment.

(i) No condoms. No condoms shall be kept at the Massage Establishment unless they are the personal property of persons on-site, and they are for the individual's personal use outside the business premises.

(j) Standard of dress. The holder of the Massage Establishment permit, Managing Employee, Massage Practitioners, and all other employees of the Massage Establishment shall remain fully clothed at all times while on the premises of the Massage Establishment. At a minimum, such clothing shall be made of a non-transparent material and shall not expose the buttocks, genital area or breasts of any employee or the holder of the permit. Bikini swimsuits and halter tops shall not be acceptable.

(k) Operating hours. All Massage Establishments shall be closed for business by no later than 10:00 p.m. and shall open for business no earlier than 6:00 a.m. A Massage Establishment operating under a Conditional Use Permit (CUP) approved prior to the enactment of this ordinance may continue to operate under the hours permitted in the use permit. The Town may set the specific operating hours for each Massage Establishment through the conditional use permit process. It shall be unlawful for any Massage Practitioner, or other employee of a Massage Establishment, to give or practice massage during the hours when the Massage Establishment is closed.

(l) List of services. A list of services available and the cost of such services shall be available in an open public place within the premises, and they shall be described in readily understandable language. Nothing in this section shall preclude the list of services to be printed in another language other than English. No owner, operator, manager, and/or responsible, Managing Employee shall permit, and no Massage Practitioner shall offer or perform, any service other than those posted.

(m) Records. Every Massage Establishment shall keep a written record of the date and hour of each service provided; the first and last name of each patron and the service received; and the first and last name of the Massage Practitioner administering the service. Said records shall be open to inspection by Town officials, limited to sworn members of the Police Department, Town code compliance officer and the Town Attorney, who is charged with enforcement of this Article XI. If time and circumstances permit, a valid subpoena should be obtained by these specific officials prior to inspection of records. These records may not be used by the Massage Establishment for any other purpose than as records of service provided, and unless otherwise required by law, they shall not be provided to third parties by the Massage Establishment. Said records shall be retained on the premises of the Massage Establishment business office for a period of not less than three (3) years.

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Sec. 14.110.055 Sanitation requirements/condition of premises.

(a) Required maintenance of Massage Establishments. All premises and facilities of the Massage Establishments shall be maintained in a clean and sanitary condition and shall be thoroughly cleaned after each day of operation.

The premises and facilities shall meet applicable Code requirements of the Town, including but not limited to those related to the safety of the structure, adequacy of the plumbing, heating, ventilating and waterproofing of rooms in which showers, water or steam baths are used.

(b) Linens. All Massage Establishments shall provide clean, laundered sheets, towels, and other linens in sufficient quantity for use by their clients. Such linens shall be laundered after each use and stored in a sanitary manner. No common use of linens or towels shall be permitted. Heavy white paper may be substituted for sheets on massage tables, so long as such paper is used only once for each client and is then discarded into a sanitary receptacle. Sanitary receptacles shall be provided for the storage of all soiled linens.

(c) Privacy standards for massage rooms, dressing rooms and rest rooms. The Massage Establishment shall provide doors on all of its dressing rooms and massage rooms. Non-transparent draw drapes, curtain enclosures or accordion-pleated enclosures are acceptable in lieu of doors for dressing and massage rooms.

(d) No residential use. No part of the Massage Establishment shall be used for residential or sleeping purposes. No cooking or food preparation will be allowed on the premises unless it is within an employee only designated kitchen area.

Sec. 14.110.060. Prohibited acts.

(a) Touching of sexual and genital parts of client during massage. No holder of a Massage Establishment permit, Managing Employee, Massage Practitioner, or any other employee of a Massage Establishment shall place either his/her hand or hands upon, or touch with any part of his/her body, a sexual or genital part of any other person in the course of a massage, or massage a sexual or genital part of any other person. Sexual and genital parts shall include the genitals, pubic area, anus or perineum of any person or the vulva or breast of a female. In the case of breast massage, female clients shall sign a written consent form, provided by the establishment and/or practitioner prior to providing breast massage.

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(b) Uncovering and exposure of sexual and genital parts before, during or after massage. No holder of a Massage Establishment permit, Managing Employee, Massage Practitioner, or other employee of a Massage Establishment shall uncover and expose the sexual or genital parts, as defined in subsection (a), above, of a client or themselves in the course of giving a massage, or before or after a massage. This subsection does not prohibit a client from turning over in the course of a massage, so long as the Massage Practitioner holds a towel, sheet, blanket or other drape over the client to protect his/her genital and sexual parts from exposure.

Sec. 14.110.065. Out-call massage services.

Any massage therapist who has complied with all applicable provisions of this Article may provide out-call massage services to clients within the Town of Los Gatos. Such Massage Practitioners shall maintain their permits upon their persons; or within their immediate reach, at all times while performing massage in the Town and shall display these upon the request of any client, police officer or code compliance officer.

Sec. 14.110.070. Transfer of Massage Establishment permit, Managing Employee permit, Massage Practitioner permit.

No Massage Establishment permit, Managing Employee permit or Massage Practitioner permit issued pursuant to this article shall be transferred, altered in name, or assigned in any manner, whether by operation of law or otherwise, from location to location or from person to person, except that any person possessing a valid Massage Practitioner permit shall be able to move from one employer to another without filing a new application or paying a new fee, so long as the permit holder notifies the police chief of the change in his/her employment within five (5) business days of their move date to the new location.

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Sec. 14.110.075. Expiration and renewal of Massage Establishment permits, Managing Employee permits, and Massage Practitioner permit; payment of renewal fee.

(a) All Massage Establishment permits, Managing Employee permits, and Massage Practitioner permits shall expire annually on the date of their issuance, unless revoked sooner by the Police Chief. Applications for renewal of a permit must be submitted to the Police Chief by no later than sixty (60) calendar days before the expiration of such permit on a form provided by the police department, which shall require the applicant for renewal to update the information contained in his/her original application. The applicant must pay the Town a non-refundable renewal fee, in the amount established by resolution of the Town Council, at the time of filing his/her application for renewal.

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After investigating the application for renewal, the Police Chief may renew the Massage Establishment permit, Managing Employee permit or Massage Practitioner permit if the applicant continues to meet the standards for the issuance of a permit, and none of the grounds for denial of a permit set forth in section 14.110.040 (b) exist. The Police Chief shall give the applicant for renewal written notice of his/her decision within sixty (60) calendar days of the submission of the application for renewal to the police department by personal service of the decision to the applicant at his/her most recent home or business address on file with the police department or deposit of the decision in the United States mail by certified mail. If the application is denied, the notice shall state the specific grounds for the denial and that the applicant may appeal to the Town Manager through the procedures set forth in section 14.110.040 (7) (d).

(b) If the holder of a Massage Establishment permit, Managing Employee permit or a Massage Practitioner permit does not file a timely application for renewal sixty (60) calendar days before expiration of the permit, he/she shall be required to file an application for a new permit pursuant to section 14.110.025 and to pay the applicable fees.

Sec. 14.110.080 Suspension and revocation of Massage Establishment permits, Managing Employee permits and Massage Practitioner permits.

(a) Grounds for suspension or revocation of Massage Establishment permit or Managing Employee permit. The Police Chief may suspend for a period of up to nine (9) months or revoke a Massage Establishment permit, or Managing Employee permit, according to procedures set forth in subsection (c) below, if there is probable cause to believe that:

- (1) The permit holder has operated or managed the Massage Establishment in a manner which violates any provision of this article, or other applicable Town Code provisions, state or federal law;
- (2) The permit holder has committed any offense involving lewdness, indecent exposure, prostitution, human trafficking or any other offense which would be grounds for denial of an application for a Massage Establishment permit or Managing Employee permit pursuant to section 14.110.040 or employees of the Massage Establishment have committed such offenses in the course of their employment and the permit holder has permitted them to do so or has failed to prevent them from doing so;
- (3) Has made a false or misleading statement or omission of fact on his/her application for a Massage Establishment permit, Managing Employee permit or for renewal of the permit, or in any supplementary materials submitted with the application; or

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(4) Is operating or managing the Massage Establishment in a manner which poses a danger to the health and safety of clients and/or the public, or without due regard for proper sanitation or hygiene.

(b) Grounds for revocation or suspension of Massage Practitioner permit. The Police Chief may suspend for a period of up to nine (9) months or revoke a Massage Practitioner permit according to the procedures set forth in subsection

(c), below, if there is probable cause to believe that:

(1) The Massage Practitioner has violated any provision of this article, or other applicable provisions of the Town Code;

(2) The Massage Practitioner has committed any violation of law related to lewdness, indecent exposure, prostitution, human trafficking or any offense which would be grounds for denial of an application for a Massage Practitioner permit pursuant to section 14.110.040;

(3) The Massage Practitioner has made a false or misleading statement or omission of fact on his/her application for a permit or for renewal of a permit or in any supplementary materials submitted with such applications; or

(4) The Massage Practitioner has practiced massage in a manner which poses a danger to the health and safety of clients or the public, or without due regard for proper sanitation or hygiene.

(d) Procedure for revocation or suspension of Massage Establishment permit, Managing Employee permit or Massage Practitioner permit.

(1) Notice to holder of permit. Whenever the Police Chief has probable cause to believe that grounds for the suspension or revocation of a Massage Establishment permit, Managing Employee permit or Massage Practitioner permit exist, he/she shall give the holder of the permit written notice of the date, time and place of a hearing to be held before the Police Chief on whether the permit should be suspended or revoked. The notice shall state the alleged grounds for the proposed revocation or suspension of the permit, and the notice shall be served on the holder of the permit personally at the most recent home or business address on file with the police department or by deposit of the notice in the United States mail by certified mail. Said notice shall also state that if no written request for a hearing is timely received, the applicant shall be deemed to waive its rights to a hearing.

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(2) Hearing before Police Chief. The hearing on the revocation or suspension of the permit shall be held before the Police Chief or his/her designee no less than ten (10) calendar days after the personal service of the notice to the holder of the permit at the most recent home or business address on file with the police department, or no less than ten (10) calendar days after deposit of the notice, addressed to the holder of the permit or certificate, in the United States mail by certified mail. At the hearing, the holder of the permit and a representative of the Town shall have the right to appear and to be represented by counsel, and to present evidence and arguments which are relevant to a determination of whether grounds for suspension or revocation of the permit or certificate exist.

(3) Decision of Police Chief. Within ten (10) calendar days after the hearing, the Police Chief shall issue a written decision which states whether the permit is suspended or revoked, the length of any suspension, and the factual basis for the decision, and that the holder of the permit may appeal any suspension or revocation to the Town Manager through the procedures set forth in paragraph (4), below. The decision of the Police Chief shall be served on the holder of the permit by personal service at the most recent home or business address on file with the police department or deposit of the notice, addressed to the holder of the permit, in the United States mail by certified mail. Said notice shall also state that if no written request for an appeal hearing is timely received, the applicant shall be deemed to waive its rights to an appeal hearing.

(4) Request for appeal hearing before the Town Manager. The holder of the permit may appeal the decision of the Police Chief by filing a written request for an appeal hearing, which states the specific grounds on which the decision of the police chief is contested, with the Town Manager's office within ten (10) calendar days of the personal service to the holder of the permit of the Police Chief's decision at the most recent home or business address on file with the police department, or within ten (10) calendar days of service of the decision by deposit of the notice, addressed to the holder of the permit, in the United States mail by certified mail.

(5) Appeal hearing before the Town Manager. Upon receipt of a timely request for an appeal hearing, the Town Manager's office shall notify the permit holder in writing of the date, time and place of the hearing before the Town Manager or designee which shall not be less than ten (10) calendar days after service of such written notice on the permit holder by personal service at the most recent home or business address on file with the police department, or ten (10) calendar days after service of the notice by deposit of the notice, addressed to the holder of the permit or certificate, in the United States mail by certified mail.

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At the hearing, both the holder of the permit and the Police Chief shall have the right to appear and be represented by counsel and to present evidence and arguments which are relevant to the grounds for the appeal, as stated in the request for an appeal hearing. Within ten (10) calendar days of the hearing, the Town Manager or designee shall issue a written decision that states whether the decision of the Police Chief is upheld, modified or reversed, and the length of any suspension.

The decision shall be served on the holder of the permit by in-person delivery or by certified mail. The decision of the Town Manager or designee shall be final.

(6) Effective date of revocation or suspension. Any suspension or revocation of a permit shall become effective immediately upon the personal service of the written decision of the Police Chief, or, in the event of an appeal, the Town Manager or designee, to the holder of the permit at the most recent home or business address on file with the city, or within five (5) calendar days of the deposit of such decision addressed to the holder of the permit into the United States mail by certified mail.

(7) Surrender of suspended or revoked Massage Establishment permit, Managing Employee permit, or Massage Practitioner permit to Police Chief. Upon a written decision by the Police Chief, or in the event of an appeal, by the Town Manager or designee, which suspends or revokes a Massage Establishment permit, Managing Employee permit, or Massage Practitioner permit, the permit shall immediately be surrendered to the Police Chief. In the case of a suspension, the Police Chief shall return the permit after the period of suspension has ended.

Sec. 14.110.085. Criminal penalties.

Except as specified in section 14.110.060, a violation of any provision of this article is a misdemeanor and may be prosecuted by the Town in the name of the people of the State of California. The maximum fine or penalty for any violation of this article shall be one thousand dollars (\$1000.00), or a term of imprisonment in the county jail for a period not exceeding six (6) months.

Except as otherwise provided, every such person shall be guilty of a separate offense for each and every day during any portion of which any violation is committed, continued or permitted by such person, and shall be punishable accordingly.

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Sec 14.110.090 Inspection by officials.

Any sworn investigating official of the Police Department, Town of Los Gatos Code Compliance Officer, Town Attorney or County Fire Department officials charged with investigating and enforcing compliance with this Article, shall have the right to enter the Massage Establishment from time to time during regular business hours for the purpose of making reasonable inspections to observe and enforce compliance with applicable regulations, laws, codes and the provisions of this Article.

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Sec. 14.110.095 Massage Establishment operated in violation of this article deemed a public nuisance.

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Any Massage Establishment which is opened, operated or maintained contrary to the provisions of this article shall be deemed a public nuisance. In addition to, or in lieu of any other available legal remedies, the Town Attorney or District Attorney of Santa Clara County may commence a civil legal action or actions in a court of competent jurisdiction to abate such nuisance and to enjoin the continued operation and maintenance of the Massage Establishment in a manner prohibited by this article.

Sec. 14.110.100 Application of this article to preexisting Massage Establishments and persons holding valid Massage Practitioner business licenses before effective date of this chapter/one-year time period for holders of preexisting business licenses to meet new educational requirements.

(a) Except as otherwise provided herein, the provisions of this chapter shall become applicable to Massage Establishments which lawfully existed in the Town prior to the effective date of this chapter, and to persons who held valid Massage Practitioner business license issued by the Town prior to the effective date of this chapter, upon the expiration of such preexisting Massage Establishment business license and/or Massage Practitioner business license and/or pursuant to section 14.110.075. In order to renew such preexisting Massage Establishment business license, the holder of the business license must file an application for a new permit pursuant to section 14.110.025, pay all applicable fees and must demonstrate, to the satisfaction of the Police Chief, that he/she meets all requirements of this chapter, except that holders of preexisting Massage Establishment business license shall have a period of eighteen (18) months from the effective date of this chapter to meet the new educational requirements set forth in sections 14.110.025 and 14.110.30, respectively.

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ORDINANCE

ORDINANCE OF THE TOWN OF LOS GATOS AMENDING CHAPTER 14 OF THE LOS GATOS TOWN CODE REGARDING THE REGULATION OF MESSAGE THERAPY ESTABLISHMENTS AND MESSAGE THERAPY PRACTITIONERS

THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DOES ORDAIN
AS FOLLOWS:

SECTION I

Chapter 14 of the Los Gatos Town Code is amended to read as follows:

Sec. 14.110.015. Purpose and intent.

(a) Purpose.

(1) In enacting these regulations, the Town of Los Gatos Town Council (hereafter referred to as "Town Council") recognizes that massage is a viable professional healing art offering the public valuable health and therapeutic services.

(2) It is the purpose and intent of the Town Council that the operation of Massage Establishments and persons offering massage be regulated in the interests of public health, safety, and welfare by providing minimum building, sanitation, and health standards and to ensure that persons offering massage shall possess the minimum qualifications necessary to operate such businesses and to perform such services offered.

(3) It is the purpose and intent of this Article XI to articulate regulations to ensure that persons offering massage services are qualified and trained and can be expected to conduct their work in a lawful and professional manner.

(b) Conflicts with other provisions of this Code. In the event of any conflicts or inconsistencies between the provisions of this Article XI and the remaining provisions of this Chapter 14 or with the provisions of any other chapter(s) of the Town Code, the provisions of this Article XI shall control, unless to do so would be inconsistent with the stated purpose of this Article XI. Any massage establishment is further regulated pursuant to Chapter 29 of this Code.

(c) Responsibility for enforcement. The primary responsibility for enforcement of the provisions of this Article XI shall be vested in the Chief of Police.

Sec. 14.110.015. Definitions.

For purposes of this article, the following words, terms and phrases are defined as follows:

Managing employee means any employee of a Massage Establishment who has been designated by the holder of the Massage Establishment permit to manage the business in his/her absence. The Managing Employee may perform massages at the business only if he/she obtains and maintains in effect a Massage Practitioner permit.

Massage means any method of treating the external parts or surfaces of the human body by bathing, rubbing, pressing, stroking, pounding, kneading, tapping, vibrating, or touching or stimulating with the hands or any part of the body, or any instrument.

Massage establishment means any establishment, having a fixed place of business where any person, firm, association, partnership, corporation, joint venture or a combination of individuals engages in, conducts, carries on or permits to be engaged in, conducted or carried on for consideration, massages or health treatments in the Town in which massages are given in return for compensation of any type; including but not limited to any hot tub/sauna establishment, personal fitness training center, spa, gymnasium, athletic facility, health club or office in which massage services are made available to clients.

Massage therapist means any person, including a non-medical Massage Practitioner or a certified massage therapist, who performs massage in return for compensation of any type and who has completed a minimum of three hundred (300) or more verifiable hours in a resident course of study from a recognized school on the theory, ethics, history, practice, methods, profession or work of massage, including the study of anatomy and physiology and hygiene, with at least seventy-five (75) hours of the required three hundred (300) hours in the areas of demonstration and practice of massage techniques from a recognized school, that which provides a diploma or certificate of completion upon successful completion of such resident course of study. The terms "massage technician" and "massage practitioner" are included within the definition for purposes of this chapter.

Massage therapist trainee means any person who is defined in "massage therapist" above, and who has written proof he/she is currently enrolled in a recognized school of massage and has completed a minimum of fifty (50) hours of instruction from said recognized school and will be working under the direct supervision of a lawfully permitted massage therapist as provided in this Article, and will only be conducting massage therapy on staff or permitted therapists of that establishment, and not members of the public.

Out-call massage service means any therapist who provides massage services at a location designated by the customer or client or the Massage Practitioner or the out-call massage service, other than at the designated approved massage establishment.

Person means any individual, partnership, firm, association, corporation, joint venture or any other combination of individuals for the purpose of doing business.

Police chief means the Los Gatos/Monte Sereno Police Chief or his or her designee.

Recognized school means any school or institution of higher learning which has been approved pursuant to California Education Code Section 94300 et seq. or other applicable state law or regulations of California or another state, or other country which requires a resident course of study on the theory, ethics, history, practice, methods, profession or work of massage, including the study of anatomy and physiology and hygiene, and which provides a diploma or certificate of completion upon successful completion of such course of study. At least seventy-five (75) hours of the required three hundred (300) hours shall be in the areas of demonstration and practice of massage techniques. Schools offering correspondence course(s) not requiring actual attendance of class shall not be deemed a recognized school. The Town shall have the right to confirm the fact that the applicant has actually attended classes in a recognized school for the aforementioned minimum time period.

Sec. 14.110.020 Exemptions.

The provisions of this chapter shall not apply to:

(a) Physicians, surgeons, chiropractors, acupuncturists, osteopaths, registered nurses, physical therapists or other health professionals who are duly licensed to practice their respective professions under the laws of the State of California.

(b) Barbers or cosmetologists who are duly licensed under the laws of the State of California while performing massage within the scope of their licenses.

(c) Persons administering massages or health treatments involving massage to other persons who are participating in a recreational or special event that has been approved by the Town, provided that the following conditions are met:

- (1) The massage services are made available equally to all participants in the event;
- (2) The event is open to participation by the general public or a significant segment of the public;
- (3) The massage services are provided during the event in an open environment at the site of the event;
- (4) The sponsors of the event have approved the provision of massage services at the event; and
- (5) The persons providing the massage services are in compliance with all applicable Town Codes and other laws.

Sec. 14.110.025 Permit requirements for Massage Establishments, Managing Employees and Massage Practitioners.

(a) Massage Establishment permits. No person shall establish, operate or maintain a Massage Establishment within Town limits without first obtaining from the Police Chief, and maintaining in effect, a Massage Establishment permit. It is unlawful to operate, establish or maintain a Massage Establishment while the Massage Establishment permit issued for such business has been suspended or revoked or has expired.

(b) Managing Employee permit. No person shall act as the Managing Employee for a Massage Establishment within Town limits unless he/she has obtained a Managing Employee permit from the Police Chief. It is unlawful for any person to act as the Managing Employee of a Massage Establishment while his/her Managing Employee permit has been suspended or revoked, or has expired.

(c) Massage Practitioner permit. No person shall practice massage or give massages in return for compensation of any type within Town limits without obtaining from the Police Chief and maintaining in effect a Massage Practitioner permit. It is unlawful for any person to practice massage or give massages in return for compensation while his/her Massage Practitioner permit has been suspended or revoked, or has expired. A person who obtains a Massage Establishment permit, or a Managing Employee permit and plans to personally give massages at the business shall also apply for and obtain a Massage Practitioner permit.

Sec. 14.110.030 Educational requirements for Massage Practitioners, and holders of Massage Establishment permits, and Managing Employee permits.

(a) General educational requirements. Except as indicated below, all applicants for a Massage Establishment permit, Managing Employee permit or

Massage Practitioner permit must meet the following educational standards in order to qualify for such permit, at the discretion of the Chief of Police:

(1) Possession of a diploma or certificate of completion from a recognized school which shows satisfactory completion of a resident course of study of a minimum of three hundred (300) verifiable hours on the theory, ethics, history, practice, and/or methods of massage therapy, including the study of anatomy, physiology and hygiene, with at least seventy-five (75) hours of the required three hundred (300) hours in the areas of demonstration and practice of massage techniques; or

(2) Possession of a diploma or certificate of completion from a recognized school or public school showing satisfactory completion of a minimum of three hundred (300) verifiable hours of a non-repetitive curriculum which covers the subjects described in subsection 1 above, and a transcript or transcripts from a college or junior or community college in the State of California, or a college or junior or community college in another state from which courses would be acceptable for transfer credit to any college in the California State University and College System, which shows completion, with a passing grade or better, of at least eight (8) quarter units or six (6) semester units of courses in health theory, health care, anatomy, physiology, psychology, bio-mechanics or kinesiology; or

(3) Degrees, certificates, diplomas, and course work received at other institutions, American or foreign, shall be accepted only if such institution is approved by an education agency in that state or country and the curriculum or course of studies meets the criteria set out by this code. Course descriptions, school catalogs or bulletins may be required by the department to substantiate the curriculum.

(b) Exemptions from educational requirements. The following persons are exempt from the educational requirements set forth in subsection (a) above:

(1) Holders of Massage Establishment business licenses and Massage Practitioner business licenses issued by the Town before the effective date of this article shall have a period of eighteen (18) months from the effective date of this article to satisfy the educational requirements set forth in subsection (a) above.

(2) At the end of the 18 months, any therapist who does not have the required 300 hours of education will not be permitted to practice in Los Gatos. However, consideration can be given by the Chief of Police at his/her discretion, to those therapists who can prove through documentation that they are currently enrolled in coursework associated with massage therapy and compliance of the 300 hour requirement is expected in a reasonable amount of time.

Sec. 14.110.035. Applications for Massage Establishment permits, Managing Employee permits, and Massage Practitioner permits.

(a) Submission of application. All persons who wish to obtain a Massage Establishment permit, Managing Employee permit, or Massage Practitioner permit from the Town shall file a written application with the Police Chief on a form provided by the Town, which contains the following information:

- (1) The full name, including any nicknames or other names used presently or in the past, and the present address and phone number of the applicant;
- (2) The applicant's two (2) most recent addresses within the last seven (7) years, and the dates of residence at each address;
- (3) Proof the applicant is over eighteen (18) years of age;
- (4) The applicant's height, weight and colors of eyes and hair;
- (5) The applicant's driver's license and/or California I.D. number (if any) and social security number;
- (6) The applicant's two (2) most recent employers within the last seven (7) years, including their names, addresses and phone numbers, and the position held by the applicant;
- (7) The names and addresses of any massage facility or other businesses involving massage by which the applicant has been employed, or self-employed as a Massage Practitioner, within the past ten (10) years;
- (8) Any criminal conviction on the part of the applicant for offenses other than traffic violations within the ten (10) years preceding the date of the application;
- (9) Any criminal charges pending against the applicant at the time of the application, other than traffic citations, the name and location of the court in which the criminal charges are pending and the applicable case numbers;
- (10) Whether the applicant has ever had a license, certificate or permit related to the practice of massage, or the operation of a Massage Establishment, or other business involving the practice of massage, suspended or revoked within the ten (10) years preceding the date of the application, the dates and reasons for any such suspensions or revocations, and the name and location of the jurisdiction or public agency which suspended or revoked such license, permit or certificate;
- (11) Whether the applicant, including the Massage Establishment, Managing Employee or Massage Practitioner permit applicant, as a member of a corporation or partnership, has ever operated or been employed at any business which has been the subject of an abatement proceeding under the California Red Light Abatement Act (California Penal Code Sections 11225 through 11325) or any similar laws in other jurisdictions. If the applicant has previously worked at such a business, he/she should state on the application the name and address of the business, the dates on which the applicant was employed at such business, the name and location of the court in which the abatement action occurred, the applicable case number and the outcome of the abatement action;

(12) Whether the applicant provided sufficient information to the Town's satisfaction that they meet the educational requirements set forth in section 14.110.030 (except in cases involving applications for Massage Establishment permits, or Managing Employee permits, when the applicant has filed a statement under penalty of perjury that he/she will not personally give massages at the Massage Establishment);

(13) Whether the applicant has previously applied to the Town for a Massage Establishment permit, Managing Employee permit, or Massage Practitioner permit, the date of the previous application and any other name(s) under which the application was made;

(14) In the case of an application for a Massage Establishment permit or Managing Employee permit, the proposed name and address of the Massage Establishment, together with the name and address of any other massage business operated or managed by the applicant or in which the applicant has or had a business interest, within the ten (10) years preceding the date of the application;

(15) The name and address of the owner 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.

(16) Proof of malpractice insurance in the sum of not less than one hundred thousand dollars (\$100,000.00) per massage therapist licensed, or to be licensed, at the Massage Establishment up to a maximum of five hundred thousand dollars (\$500,000.00); this requirement can be satisfied by malpractice insurance being provided in the name of individual Massage Practitioner or establishment.

(17) In the case of an application for a Massage Establishment permit or Managing Employee permit, whether the applicant intends to personally provide massage services at the business;

(18) Written authorization for the Town, its agents and employees, to seek information and to conduct an investigation into the truth of the statements set forth in the application and into the background of the applicant and the Managing Employee;

(19) The applicant shall advise the Town in writing of any change of address or change in fact(s) represented to Town which may occur during the Town's processing of the application for a Massage Establishment permit; and

(20) A statement under penalty of perjury that the applicant has not knowingly and with the intent to deceive made any false, misleading or fraudulent statements or omissions of fact in his/her application or any other documents required by the Town to be submitted with the application.

(b) Other required information. Applicants for Massage Establishment permits, Managing Employee permits and Massage Practitioner permits shall also submit the following information to the Police Chief at the time of their application:

(1) A birth certificate or other legal documentation that verifies the identity of the applicant and verifies that the applicant is over eighteen (18) years of age;

(2) A diploma, certificate of completion, transcripts from each school or institution from which the Massage Practitioner has obtained training or other written proof acceptable to the Police Chief that the applicant has met the educational requirements set forth in section 14.110.030. Diplomas, certificates of completion and transcripts shall indicate the number of hours of training received by the certificate holder.

In the case of applications for a Massage Establishment permit or Managing Employee permit only, the applicant may, if applicable, submit to the Police Chief with his/her application a written statement under penalty of perjury that he/she will not personally give massages at the Massage Establishment;

(3) Other related information requested by the Police Chief in order to evaluate the background and qualifications of the applicant for the permit sought. This may include information or documentation to indicate whether the Massage Establishment or Massage Practitioner is affiliated with or a member of any recognized national or state massage therapy association or organization.

(c) Payment of permit fees. At the time of filing an original application for a Massage Establishment permit, Managing Employee permit or Massage Practitioner permit, applicants shall pay Massage Establishment permit fees, Managing Employee permit fees or Massage Practitioner's permit fees (as applicable) in an amount established by a resolution of the Town Council. All fees shall be non-refundable. If an applicant for a Massage Establishment permit or Managing Employee permit is simultaneously applying for a Massage Practitioner permit because he/she intends to give massages at his/her business, the Town shall not charge any additional fees related to the Massage Practitioner permit.

(d) Processing of application and investigation. Upon receipt of an application for a Massage Establishment permit, Managing Employee permit or Massage Practitioner permit, the Police Chief shall review the application and supplementary material. If it is clear from the face of the application and supplementary materials that the applicant is not qualified for a permit, or the application is incomplete, the application may be denied without further investigation. If it appears from the face of the application and supplementary material that the applicant may be eligible for the permit sought, the Police Chief shall verify the information submitted by the applicant and shall further investigate the qualifications of the applicant as follows:

(1) Photographs/fingerprints/review of criminal history. The Police Chief shall either require two (2) passport style photographs and/or take a recent photograph of the applicant.

Applicant shall also be responsible for submitting fingerprints pursuant to "Livescan" procedures and pay all costs associated with such submittal. The applicant's fingerprints will then be submitted to the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) for evaluation. Upon receipt of the report from the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI), the police chief shall review the criminal history (if any) of the applicant.

(2) Investigation of location and premises of Massage Establishment or permit. Upon receipt of an application for a Massage Establishment permit, the Police Chief shall refer the application to the Town's applicable department's which shall review the application and, if necessary, inspect the premises to ensure that the operation of the business at the designated site will comply with the provisions of this article and the Town's zoning, building and fire safety standards, and any other applicable Town codes. If a use permit is required for the Massage Establishment the applicant shall comply with the Town's zoning code. No home occupation permit shall be issued for a massage establishment or massage activities.

(3) Additional investigation. The police chief may conduct additional investigation in a manner authorized by law when necessary to determine whether the applicant meets the qualifications for a permit pursuant to this article.

Sec. 14.110.040 Grant or denial of application for Massage Establishment permit, Managing Employee permit, Massage Practitioner permit.

(a) Time for grant or denial of applications. The Police Chief shall grant or deny the application for a Massage Establishment permit, Managing Employee permit or Massage Practitioner permit within thirty (30) calendar days of the applicant's submission of the application and all required supplementary material. When necessary to conduct a complete investigation of an application, the Police Chief may extend this time to a maximum of sixty (60) calendar days. Granting of a permit requires the massage establishment and/or therapist to be in compliance with Chapter 29 of this Code.

(b) Grounds for denial of Massage Establishment permit, Managing Employee permit or Massage Practitioner permit. The Police Chief shall deny an application for a Massage Establishment, Managing Employee permit or Massage Practitioner permit if any of the following circumstances exist:

(1) The application is incomplete and/or required supplementary materials are not submitted on a timely basis;

(2) The applicant does not have the required educational qualifications, unless the applicant is exempted from these requirements pursuant to section 14.110.030 (b);

(3) The applicant has previously had a Massage Establishment permit, Managing Employee permit, Massage Practitioner permit or similar license, certificate or permit revoked by the Town or any other public agency in any state or country, within 5 years. Any revocation beyond 5 years will be reviewed, and discretion for approval given by, the Chief of Police.

(4) The applicant has made a false, misleading or fraudulent statement or omission of fact in his/her application or other materials submitted with the application;

(5) The applicant, including applicant as a corporation or partnership, or former employer of the applicant while the applicant was so employed, has been successfully prosecuted in an abatement proceeding under the California Red Light Abatement Act (Penal Code Sections 11225 through 11325) or any other similar laws in another jurisdiction;

(6) The applicant has been convicted of:

(a) An offense which requires registration pursuant to California Penal Code Section 290; or a violation of Sections 266(h), 266(i), 311 through 311.7, 314, 315, 316, 318 or 647(b), 647(d), 647(f) 647.1 of the California Penal Code, or equivalent offenses under the laws of another jurisdiction, including any other State or Country.

(b) A prior offense which involves violation of California Health and Safety Code Sections 11351 through 11354, 11358 through 11363, 11378 through 11380, or the sale of controlled substances specified in California Health and Safety Code Sections 11054, 11056, 11057 or 11058, or equivalent offenses under the laws of another jurisdiction, including any other State or Country.

(c) Any offense involving dishonesty, fraud, deceit or the use of force or violence upon another person; or

(d) Any offense involving sexual misconduct with children.

(e) For purposes of this section, a plea of "nolo contendere" may also serve as the basis for the denial of a Massage Establishment permit, Massage Practitioner permit or Managing Employee permit because the above-listed underlying offenses bear a substantial relationship to the qualifications, functions or duties of a Massage Establishment.

(7) The operation of the Massage Establishment would violate the Town's zoning, building or fire regulations, or other provisions of law or the Town Code.

(c) Notice to applicant of grant or denial of application. The Police Chief shall give written notice to the applicant of the grant or denial of the application for a permit by certified mail or by personal service. If the application is denied, the notice shall advise the applicant of the reasons for the denial and of his/her right to appeal the decision to the Town Manager through the procedures set forth in subsection (d) below.

(d) Appeal of denial of Massage Establishment permit, Managing Employee permit or Massage Practitioner permit to the Town Manager.

Upon the denial of an application for a Massage Establishment permit, Managing Employee permit or a Massage Practitioner permit by the Police Chief, the applicant may appeal to the Town Manager through the following procedures:

(1) Request for appeal hearing. The applicant shall file a written request for an appeal hearing, which states the specific grounds on which the decision of the Police Chief to deny the permit is contested, with the Town Manager's office within ten (10) calendar days of the personal service of the Police Chief's decision to the applicant at the most recent home or business address on file with the police department, or within ten (10) calendar days of service of the Police Chief's decision in the United States mail by certified mail.

(2) Notice of time and place of hearing. Upon receipt of a timely request for an appeal hearing, the Town Manager's office shall notify the applicant in writing of the date, time and place of the hearing before the Town Manager or designee, which shall not be less than ten (10) calendar days after the service of such written notice on the applicant by in-person delivery at the most recent home or business address on file with the Town or ten (10) calendar days after the deposit of the notice in an envelope addressed to the applicant in the United States mail by certified mail.

(3) Hearing before the Town Manager or designee. At the hearing, both the applicant and the Police Chief shall have the right to appear and be represented by counsel, and to present evidence and arguments relevant to the grounds on which the decision to deny the application is appealed. The burden of proof shall be on the applicant to demonstrate that he/she meets the qualifications for a Massage Establishment permit, Managing Employee permit, Massage Practitioner permit and is entitled to the issuance of such permit.

(4) Decision of the Town Manager or designee. Within ten (10) calendar days of the hearing, the Town Manager or designee shall issue a written decision, which states whether the decision of the Police Chief to deny the application is upheld or reversed, and the reasons for this determination.

The decision shall be served upon the applicant by personal service or by certified mail. The decision of the Town Manager or designee shall be final.

Sec. 14.110.045. Business license.

It is unlawful for any person, whether an employee or independent contractor of a massage establishment, to open or operate a Massage Establishment without obtaining and maintaining in effect a Town business license and paying a business license tax.

Sec. 14.110.050 Operating requirements for Massage Establishments.

Unless otherwise specified herein, all Massage Establishments shall comply with the following operating requirements.

(a) Exterior signs. A recognizable and legible sign should be posted at the main entrance identifying the business and which clearly identifies the establishment to foot and/or automobile traffic. An additional "Massage" sign need not be in addition to the primary business sign. The sign shall be in compliance with Chapter 29 of this Code.

(b) Posting of Massage Establishment permit. A copy of the Massage Establishment permit shall be posted in a conspicuous place in such a manner that it can easily be seen by persons entering the Massage Establishment.

(c) Designation of Managing Employee. If the holder of the permit will not personally manage the business during all hours of operation, he/she shall designate one (1) or more Managing Employees who shall be in charge of the operation of the business during his/her absence. If the Managing Employee(s) will personally give massages at the business, he/she must also obtain a Massage Practitioner permit.

(d) Display of Managing Employee permit. If the holder of the permit has designated a Managing Employee, the Managing Employee permit issued to this employee shall be displayed in a conspicuous place on the premises of the Massage Establishment. Each Managing Employee permit holder shall be issued a photo identification badge from the Police Department.

(e) Display of Massage Practitioner permit. Every Massage Practitioner employed by the Massage Establishment shall hold a valid Massage Practitioner permit issued by the police department. Each Massage Practitioner permit holder shall be issued a photo identification badge from the police department. The Massage Practitioner permit holder shall display the identification badge on his/her person during business hours, or have the identification badge displayed in plain view.

(f) Dressing/massage room. Clients of the Massage Establishment shall be furnished with a dressing/massage room, or private area for changing clothes.

(g) Payment/tips. All massage services shall be paid for in the reception area, and all tips, if any, shall be paid for in the reception area. Massage Establishments may utilize a system where tip envelopes are provided in the treatment rooms to be utilized and deposited by the client in the reception area.

(h) Alcohol prohibited. No alcoholic beverages may be possessed or consumed on the premises of the Massage Establishment.

(i) No condoms. No condoms shall be kept at the Massage Establishment unless they are the personal property of persons on-site, and they are for the individual's personal use outside the business premises.

(j) Standard of dress. The holder of the Massage Establishment permit, Managing Employee, Massage Practitioners, and all other employees of the Massage Establishment shall remain fully clothed at all times while on the premises of the Massage Establishment. At a minimum, such clothing shall be made of a non-transparent material and shall not expose the buttocks, genital area or breasts of any employee or the holder of the permit. Bikini swimsuits and halter tops shall not be acceptable.

(k) Operating hours. All Massage Establishments shall be closed for business by no later than 10:00 p.m. and shall open for business no earlier than 6:00 a.m. A Massage Establishment operating under a Conditional Use Permit (CUP) approved prior to the enactment of this ordinance may continue to operate under the hours permitted in the use permit. The Town may set the specific operating hours for each Massage Establishment through the conditional use permit process. It shall be unlawful for any Massage Practitioner, or other employee of a Massage Establishment, to give or practice massage during the hours when the Massage Establishment is closed.

(l) List of services. A list of services available and the cost of such services shall be available in an open public place within the premises, and they shall be described in readily understandable language. Nothing in this section shall preclude the list of services to be printed in another language other than English. No owner, operator, manager, and/or responsible, Managing Employee shall permit, and no Massage Practitioner shall offer or perform, any service other than those posted.

(m) Records. Every Massage Establishment shall keep a written record of the date and hour of each service provided; the first and last name of each patron and the service received; and the first and last name of the Massage Practitioner administering the service.

Said records shall be open to inspection by Town officials, limited to sworn members of the Police Department, Town code compliance officer and the Town Attorney, who is charged with enforcement of this Article XI. If time and circumstances permit, a valid subpoena should be obtained by these specific officials prior to inspection of records. These records may not be used by the Massage Establishment for any other purpose than as records of service provided, and unless otherwise required by law, they shall not be provided to third parties by the Massage Establishment. Said records shall be retained on the premises of the Massage Establishment business office for a period of not less than three (3) years.

Sec. 14.110.055 Sanitation requirements/condition of premises.

(a) Required maintenance of Massage Establishments. All premises and facilities of the Massage Establishments shall be maintained in a clean and sanitary condition and shall be thoroughly cleaned after each day of operation.

The premises and facilities shall meet applicable Code requirements of the Town, including but not limited to those related to the safety of the structure, adequacy of the plumbing, heating, ventilating and waterproofing of rooms in which showers, water or steam baths are used.

(b) Linens. All Massage Establishments shall provide clean, laundered sheets, towels, and other linens in sufficient quantity for use by their clients. Such linens shall be laundered after each use and stored in a sanitary manner. No common use of linens or towels shall be permitted. Heavy white paper may be substituted for sheets on massage tables, so long as such paper is used only once for each client and is then discarded into a sanitary receptacle. Sanitary receptacles shall be provided for the storage of all soiled linens.

(c) Privacy standards for massage rooms, dressing rooms and rest rooms. The Massage Establishment shall provide doors on all of its dressing rooms and massage rooms. Non-transparent draw drapes, curtain enclosures or accordion-pleated enclosures are acceptable in lieu of doors for dressing and massage rooms.

(d) No residential use. No part of the Massage Establishment shall be used for residential or sleeping purposes. No cooking or food preparation will be allowed on the premises unless it is within an employee only designated kitchen area.

Sec. 14.110.060. Prohibited acts.

(a) Touching of sexual and genital parts of client during massage. No holder of a Massage Establishment permit, Managing Employee, Massage Practitioner, or any other employee of a Massage Establishment shall place

either his/her hand or hands upon, or touch with any part of his/her body, a sexual or genital part of any other person in the course of a massage, or massage a sexual or genital part of any other person. Sexual and genital parts shall include the genitals, pubic area, anus or perineum of any person or the vulva or breast of a female. In the case of breast massage, female clients shall sign a written consent form, provided by the establishment and/or practitioner prior to providing breast massage.

(b) Uncovering and exposure of sexual and genital parts before, during or after massage. No holder of a Massage Establishment permit, Managing Employee, Massage Practitioner, or other employee of a Massage Establishment shall uncover and expose the sexual or genital parts, as defined in subsection (a), above, of a client or themselves in the course of giving a massage, or before or after a massage. This subsection does not prohibit a client from turning over in the course of a massage, so long as the Massage Practitioner holds a towel, sheet, blanket or other drape over the client to protect his/her genital and sexual parts from exposure.

Sec. 14.110.065. Out-call massage services.

Any massage therapist who has complied with all applicable provisions of this Article may provide out-call massage services to clients within the Town of Los Gatos. Such Massage Practitioners shall maintain their permits upon their persons; or within their immediate reach, at all times while performing massage in the Town and shall display these upon the request of any client, police officer or code compliance officer.

Sec. 14.110.070. Transfer of Massage Establishment permit, Managing Employee permit, Massage Practitioner permit.

No Massage Establishment permit, Managing Employee permit or Massage Practitioner permit issued pursuant to this article shall be transferred, altered in name, or assigned in any manner, whether by operation of law or otherwise, from location to location or from person to person, except that any person possessing a valid Massage Practitioner permit shall be able to move from one employer to another without filing a new application or paying a new fee, so long as the permit holder notifies the police chief of the change in his/her employment within five (5) business days of their move date to the new location.

Sec. 14.110.075. Expiration and renewal of Massage Establishment permits, Managing Employee permits, and Massage Practitioner permit; payment of renewal fee.

(a) All Massage Establishment permits, Managing Employee permits, and Massage Practitioner permits shall expire annually on the date of their issuance, unless revoked sooner by the Police Chief.

Applications for renewal of a permit must be submitted to the Police Chief by no later than sixty (60) calendar days before the expiration of such permit on a form provided by the police department, which shall require the applicant for renewal to update the information contained in his/her original application. The applicant must pay the Town a non-refundable renewal fee, in the amount established by resolution of the Town Council, at the time of filing his/her application for renewal.

After investigating the application for renewal, the Police Chief may renew the Massage Establishment permit, Managing Employee permit or Massage Practitioner permit if the applicant continues to meet the standards for the issuance of a permit, and none of the grounds for denial of a permit set forth in section 14.110.040 (b) exist. The Police Chief shall give the applicant for renewal written notice of his/her decision within sixty (60) calendar days of the submission of the application for renewal to the police department by personal service of the decision to the applicant at his/her most recent home or business address on file with the police department or deposit of the decision in the United States mail by certified mail. If the application is denied, the notice shall state the specific grounds for the denial and that the applicant may appeal to the Town Manager through the procedures set forth in section 14.110.040 (7) (d).

(b) If the holder of a Massage Establishment permit, Managing Employee permit or a Massage Practitioner permit does not file a timely application for renewal sixty (60) calendar days before expiration of the permit, he/she shall be required to file an application for a new permit pursuant to section 14.110.025 and to pay the applicable fees.

Sec. 14.110.080 Suspension and revocation of Massage Establishment permits, Managing Employee permits and Massage Practitioner permits.

(a) Grounds for suspension or revocation of Massage Establishment permit or Managing Employee permit. The Police Chief may suspend for a period of up to nine (9) months or revoke a Massage Establishment permit, or Managing Employee permit, according to procedures set forth in subsection (c) below, if there is probable cause to believe that:

(1) The permit holder has operated or managed the Massage Establishment in a manner which violates any provision of this article, or other applicable Town Code provisions, state or federal law;

(2) The permit holder has committed any offense involving lewdness, indecent exposure, prostitution, human trafficking or any other offense which would be grounds for denial of an application for a Massage Establishment permit or Managing Employee permit pursuant to section 14.110.040 or employees of the Massage Establishment have committed such offenses in the course of their employment and the permit holder has permitted them to do so or has failed to prevent them from doing so;

(3) Has made a false or misleading statement or omission of fact on his/her application for a Massage Establishment permit, Managing Employee permit or for renewal of the permit, or in any supplementary materials submitted with the application; or

(4) Is operating or managing the Massage Establishment in a manner which poses a danger to the health and safety of clients and/or the public, or without due regard for proper sanitation or hygiene.

(b) Grounds for revocation or suspension of Massage Practitioner permit. The Police Chief may suspend for a period of up to nine (9) months or revoke a Massage Practitioner permit according to the procedures set forth in subsection

(c), below, if there is probable cause to believe that:

(1) The Massage Practitioner has violated any provision of this article, or other applicable provisions of the Town Code;

(2) The Massage Practitioner has committed any violation of law related to lewdness, indecent exposure, prostitution, human trafficking or any offense which would be grounds for denial of an application for a Massage Practitioner permit pursuant to section 14.110.040;

(3) The Massage Practitioner has made a false or misleading statement or omission of fact on his/her application for a permit or for renewal of a permit or in any supplementary materials submitted with such applications; or

(4) The Massage Practitioner has practiced massage in a manner which poses a danger to the health and safety of clients or the public, or without due regard for proper sanitation or hygiene.

(d) Procedure for revocation or suspension of Massage Establishment permit, Managing Employee permit or Massage Practitioner permit.

(1) Notice to holder of permit. Whenever the Police Chief has probable cause to believe that grounds for the suspension or revocation of a Massage Establishment permit, Managing Employee permit or Massage Practitioner permit exist, he/she shall give the holder of the permit written notice of the date, time and place of a hearing to be held before the Police Chief on whether the permit should be suspended or revoked. The notice shall state the alleged grounds for the proposed revocation or suspension of the permit, and the notice shall be served on the holder of the permit personally at the most recent home or business address on file with the police department or by deposit of the notice in the United States mail by certified mail.

Said notice shall also state that if no written request for a hearing is timely received, the applicant shall be deemed to waive its rights to a hearing.

(2) Hearing before Police Chief. The hearing on the revocation or suspension of the permit shall be held before the Police Chief or his/her designee no less than ten (10) calendar days after the personal service of the notice to the holder of the permit at the most recent home or business address on file with the police department, or no less than ten (10) calendar days after deposit of the notice, addressed to the holder of the permit or certificate, in the United States mail by certified mail. At the hearing, the holder of the permit and a representative of the Town shall have the right to appear and to be represented by counsel, and to present evidence and arguments which are relevant to a determination of whether grounds for suspension or revocation of the permit or certificate exist.

(3) Decision of Police Chief. Within ten (10) calendar days after the hearing, the Police Chief shall issue a written decision which states whether the permit is suspended or revoked, the length of any suspension, and the factual basis for the decision, and that the holder of the permit may appeal any suspension or revocation to the Town Manager through the procedures set forth in paragraph (4), below. The decision of the Police Chief shall be served on the holder of the permit by personal service at the most recent home or business address on file with the police department or deposit of the notice, addressed to the holder of the permit, in the United States mail by certified mail. Said notice shall also state that if no written request for an appeal hearing is timely received, the applicant shall be deemed to waive its rights to an appeal hearing.

(4) Request for appeal hearing before the Town Manager. The holder of the permit may appeal the decision of the Police Chief by filing a written request for an appeal hearing, which states the specific grounds on which the decision of the police chief is contested, with the Town Manager's office within ten (10) calendar days of the personal service to the holder of the permit of the Police Chief's decision at the most recent home or business address on file with the police department, or within ten (10) calendar days of service of the decision by deposit of the notice, addressed to the holder of the permit, in the United States mail by certified mail.

(5) Appeal hearing before the Town Manager. Upon receipt of a timely request for an appeal hearing, the Town Manager's office shall notify the permit holder in writing of the date, time and place of the hearing before the Town Manager or designee which shall not be less than ten (10) calendar days after service of such written notice on the permit holder by personal service at the most recent home or business address on file with the police department, or ten (10) calendar days after service of the notice by deposit of the notice, addressed to the holder of the permit or certificate, in the United States mail by certified mail.

At the hearing, both the holder of the permit and the Police Chief shall have the right to appear and be represented by counsel and to present evidence and arguments which are relevant to the grounds for the appeal, as stated in the request for an appeal hearing. Within ten (10) calendar days of the hearing, the Town Manager or designee shall issue a written decision that states whether the decision of the Police Chief is upheld, modified or reversed, and the length of any suspension.

The decision shall be served on the holder of the permit by in-person delivery or by certified mail. The decision of the Town Manager or designee shall be final.

(6) Effective date of revocation or suspension. Any suspension or revocation of a permit shall become effective immediately upon the personal service of the written decision of the Police Chief, or, in the event of an appeal, the Town Manager or designee, to the holder of the permit at the most recent home or business address on file with the city, or within five (5) calendar days of the deposit of such decision addressed to the holder of the permit into the United States mail by certified mail.

(7) Surrender of suspended or revoked Massage Establishment permit, Managing Employee permit, or Massage Practitioner permit to Police Chief. Upon a written decision by the Police Chief, or in the event of an appeal, by the Town Manager or designee, which suspends or revokes a Massage Establishment permit, Managing Employee permit, or Massage Practitioner permit, the permit shall immediately be surrendered to the Police Chief. In the case of a suspension, the Police Chief shall return the permit after the period of suspension has ended.

Sec. 14.110.085. Criminal penalties.

Except as specified in section 14.110.060, a violation of any provision of this article is a misdemeanor and may be prosecuted by the Town in the name of the people of the State of California. The maximum fine or penalty for any violation of this article shall be one thousand dollars (\$1000.00), or a term of imprisonment in the county jail for a period not exceeding six (6) months.

Except as otherwise provided, every such person shall be guilty of a separate offense for each and every day during any portion of which any violation is committed, continued or permitted by such person, and shall be punishable accordingly.

Sec 14.110.090 Inspection by officials.

Any sworn investigating official of the Police Department, Town of Los Gatos Code Compliance Officer, Town Attorney or County Fire Department officials charged with investigating and enforcing compliance with this Article, shall have the right to enter the Massage Establishment from time to time during regular business hours for the purpose of making reasonable inspections to observe and enforce compliance with applicable regulations, laws, codes and the provisions of this Article.

Sec. 14.110.095 Massage Establishment operated in violation of this article deemed a public nuisance.

Any Massage Establishment which is opened, operated or maintained contrary to the provisions of this article shall be deemed a public nuisance. In addition to, or in lieu of any other available legal remedies, the Town Attorney or District Attorney of Santa Clara County may commence a civil legal action or actions in a court of competent jurisdiction to abate such nuisance and to enjoin the continued operation and maintenance of the Massage Establishment in a manner prohibited by this article.

Sec. 14.110.100 Application of this article to preexisting Massage Establishments and persons holding valid Massage Practitioner business licenses before effective date of this chapter/one-year time period for holders of preexisting business licenses to meet new educational requirements.

(a) Except as otherwise provided herein, the provisions of this chapter shall become applicable to Massage Establishments which lawfully existed in the Town prior to the effective date of this chapter, and to persons who held valid Massage Practitioner business license issued by the Town prior to the effective date of this chapter, upon the expiration of such preexisting Massage Establishment business license and/or Massage Practitioner business license and/or pursuant to section 14.110.075. In order to renew such preexisting Massage Establishment business license, the holder of the business license must file an application for a new permit pursuant to section 14.110.025, pay all applicable fees and must demonstrate, to the satisfaction of the Police Chief, that he/she meets all requirements of this chapter, except that holders of preexisting Massage Establishment business license shall have a period of eighteen (18) months from the effective date of this chapter to meet the new educational requirements set forth in sections 14.110.025 and 14.110.30, respectively.

SECTION II

In the event that any part of this ordinance is held to be invalid, the invalid part or parts shall be severed from the remaining portions which shall remain in full force and effect.

SECTION III

This ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on _____, 20____ and adopted by the following vote as an ordinance of the Town of Los Gatos at a regular meeting of the Town Council of the Town of Los Gatos on _____, 20____. This ordinance takes effect 30 days after it is adopted.

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:

CLERK ADMINISTRATOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

Rev: 6/2/04

RESOLUTION NO.

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
AMENDING RESOLUTION 2007-026 CERTAIN DEPARTMENT FEES,
RATES, AND CHARGES**

WHEREAS, that the Town of Los Gatos Financial Policies require an annual evaluation of the Schedule of Fees and Charges to ensure that recovery of the cost of providing services is recovered where appropriate, and the last update of fees, rates and charges went into effect July 1, 2007,

WHEREAS, that certain fees for the Police Department relating to massage permitting be amended and adopted,

WHEREAS, that those fees that are currently in effect will continue and remain in effect without interruption, but shall be increased to reflect increased costs of providing service,

RESOLVED, that Resolution 2007-026 adopting departmental fees, rates, and charges is hereby amended,

RESOLVED, that the Police Department Fee Schedule page, attached here to as Exhibit A shall become effective upon adoption of this resolution.

PASSED AND ADOPTED at a regular meeting of the Town Council held on the 5th day of November, 2007 by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:

CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

Alana,

Thanks for taking the time to speak with me on the phone yesterday. I would like to recap the important points of our conversation.

- You have reviewed the Scotts Valley ordinance and feel it is inadequate
- The current incarnation of the ordinance will remain the same except for the following changes:
 1. Inclusion of foreign schools in the "Recognized Schools" definition
 2. No grandfather clause
 - Chief Seamans will review current therapists' credentials to determine fitness
 3. Increase the time allotment for acquiring 300 hours of training by six months to 18 months
- Penalties for violation will remain; misdemeanor 6 months jail and \$1000.00 fine
- No Exceptions for therapists working under the license of state licensed medical professional

Except for the changes to the HIPPA violations and changing rooms issue required by the council, this is where we left off at the last meeting. We seem to be at an impasse.

You stated that the reason we are in the situation we are in due to the problem of therapist using the "under the direct supervision of" a medical practitioner wording of the current ordinance to gain a business license and avoid detection by the Los Gatos Police.

In actuality the reason you are unable to track massage therapy business licenses is because there is a problem with the database. That is evidenced by the fact that the Economic Vitality Manager was unable to pull up that basic information to include in my business plan.

You don't seem interested in the massage industry as a whole. You just want to have a giant club at the ready to use at your discretion. There are many things that need discussion and I hope to include other Town officials in the process.

Thank you for efforts and I will take your advice and take my opportunity to speak at the next council meeting next month.

Sincerely,

Kelly Ranger

P.S. please find attached the data request form for the city of San Jose. This is the formal request process I was describing used by individuals to request information about business in their town. All tax data should be retrievable with little effort.

-----Original Message-----

From: Alana Forrest [mailto:AForrest@losgatosca.gov]

Sent: Monday, October 08, 2007 10:11 AM

To: Kelly Ranger

Cc: Pamela Jacobs

Subject: RE: New Massage ordinance

Kelly - I have read your comments, looked at the Scott's Valley code and would be happy to speak to you today or give you my comments on email. Let me know. Thanks.

Captain Alana Forrest
Support Services Division
408-354-6859

>>> "Kelly Ranger" <kelly.ranger@comcast.net> 10/4/

ATTACHMENT 5

Alana et al,

I am gratified that you are including the massage therapy community in your process and, in so doing, upholding the Los Gatos Monte Sereno Police Department Vision. As I walked into the lobby of the police department for my meeting with you, I was comforted by the credo displayed on the wall.

For those on the Cc list that don't know it:

Los Gatos - Monte Sereno Police Department Vision

1. Build a highly competent, professional Police department providing traditional law enforcement.
2. Building community relationships
3. Engaging in community problem solving

Our ultimate goal is to know every one in our community

I am sure those beliefs and values will save us from the tumultuous process recently experience by the Scotts Valley Police Department over the same issues. I spoke to Scotts Valley Police Department's, Jeannette Roland – Chief Secretary, and according to Jeannette the process was quite "difficult and painful".

The original version of the Scotts Valley code was copied from San Jose. Jeannette told me that the turning point of the ordinance discussions was the large number of outraged therapists at the council meetings. The result of those council meetings was to create a subcommittee to work with the massage therapist community. Mayor Stephanie Aguilar was on the subcommittee – seajems@pacbell.net

The resulting ordinance may be found at the following link:
<http://www.municode.com/Resources/gateway.asp?pid=13736&sid=5>

Jeannette shared some additional great info:

- **Current Challenge** – Scotts Valley is now at the first renewal and having problems with the volume. She said they should have made it a part of the regular business license renewal process. (I assume that means they have a some how staggered renewal process for business licenses)
- **The major complaint from therapists** is the need to be fingerprinted every year (not a problem as far as I can see)

Massage regulation is a complex problem faced by many before us, and it is *still* not adequately addressed. [Click here](#) for more reading on difficulties others have encountered at both the state and local level. Many states and communities have had to revise their attempts two and three times. I personally have been researching and working on some possible solutions through outreach and partnerships.

I don't believe you have been given adequate time or resources to meet the challenge. I am absolutely certain that a satisfactory conclusion can not be reach within the 6 working days before you go out of town Alana, which only leaves a few options that I can think of:

1. Create a subcommittee to address this issue
2. Massage therapists contribute by comment at the council meeting – 3 minutes at a time.
3. Consider the Scotts Valley Massage Ordinance

I realize that the originally proposed ordinance was written with the belief that our town council was the main audience. It is not only our town council that has a problem with the ordinance; it is the massage community in our town as well. I am certain that in the process of crafting this new ordinance our respective communities will get to know each other and respect the challenges faced by each.

There are several other issues that need to be addressed such as:

- The Grandfather Clause - Legal Definition of Grandfather Clause from Nolo Press: A provision in a new law that limits its application to people who are new to the system; people already in the system are exempt from the new regulation. For example, when Washington, D.C. raised its drinking age from 18 to 21, people between those ages, who could drink under the old law, were allowed to retain the right to legally consume alcohol under a grandfather clause. According to that definition there would be no educational requirement for therapists already in the system. The problem with prostitution is an ETHICAL problem not a technical problem. No amount of education will guarantee ethical behavior.
- The Violations section – misdemeanor criminal penalty for basically an administrative infraction is inappropriate and does not accomplish your aims. It just leaves therapists vulnerable to all kinds of abuses. I realize that you would not use it that way, but we don't make laws based on whether the executives are ethical or not.
- There are a few issues with the Scotts Valley code I would like to comment on but it is far superior to the San Jose code or the currently proposed Los Gatos code. Scotts Valley is still working out the kinks but on the whole is reasonably successful.

I look forward to hearing from you Alana, and from anyone else on the Cc list that would like to comment.

Regards,
Kelly Ranger

-----Original Message-----

From: Alana Forrest [mailto:AForrest@losgatosca.gov]

Sent: Monday, October 01, 2007 10:40 AM

To: Kelly Ranger

Subject: RE: New Massage ordinance

That's when I am out of town too and need to write this up before I leave. So, next week is good. thanks.

>>> "Kelly Ranger" <kelly.ranger@comcast.net> 10/1/2007 10:27 AM >>>

Great, I will gather my thoughts, put them together in an email and give you some windows of time that I will be available by phone. I should get back to you within a week. I will be leaving town from October 12th until the 16th. That I know for sure.

Thanks for taking the time to be available and for working so diligently on this project. This is a great opportunity for Los Gatos to be leaders on this challenging issue.

Regards,
Kelly

-----Original Message-----

From: Alana Forrest [mailto:AForrest@losgatosca.gov]

Sent: Monday, October 01, 2007 9:29 AM

To: Kelly Ranger

Subject: Re: New Massage ordinance

I will be able to talk on the phone only. I have other critical projects I am working on besides this so I am very busy in the next few weeks and I am out of state for business mid-October. In order to be prepared to answer your questions, please let me know what issues you have about the ordinance via email prior to our phone call.

As you heard at the council meeting, I was tasked with specifics; relating to revising the language for the dressing rooms, reviewing any HIPPA issues regarding record keeping, inspections of records by officials, establishment/managing employee language and transition time/process for the new ordinance. I do plan on adding 6 months to the grandfather clause for the educational requirement and possibly language regarding allowance to practice while attending school in furtherance of the 300 hour requirement. I do not plan on delving into other issues around the ordinance. Please let me know dates/times that work for a phone discussion. Thank you.

Alana

Captain Alana Forrest
Support Services Division
408-354-6859

>>> "Kelly Ranger" <kelly.ranger@comcast.net> 9/28/2007 8:07 PM >>>
Hello Captain Forrest,

I hope you had a great time on your vacation. I look forward to an opportunity to meet to further discuss the new massage ordinance. Please let me know if you can find some time soon to talk and share information.

Regards,
Kelly Ranger

Chapter 5.10 MESSAGE ESTABLISHMENTS*

***Editor's note:** Ord. No. 176.1, § 1, adopted June 21, 2006, amended ch. 5.10 in its entirety to read as herein set out. Former ch. 5.10, §§ 5.10.010--5.10.180, pertained to similar subject matter, and derived from Ord. No. 176, § 1, adopted Sept. 7, 2005.

Sections:

- 5.10.010 Purpose.
- 5.10.020 Definitions.
- 5.10.030 Permit Required.
- 5.10.040 Exemptions.
- 5.10.050 Filing Applications and Fees.
- 5.10.060 Term of Permit.
- 5.10.070 Issuance of Permits.
- 5.10.080 Massage Establishment and Outcall Operating Requirements.
- 5.10.090 Renewal of Permits.
- 5.10.100 Application of Regulations to Existing Massage Establishments, Outcall Services, and Massage Technicians.
- 5.10.110 Revocation of Permits.
- 5.10.120 Right of Appeal.
- 5.10.130 Other Code Provisions.
- 5.10.140 Violations: Penalties.

5.10.010 Purpose.

It is the purpose and intent of the City Council that the operation of massage establishments, outcall massage services, and persons offering massage be regulated in the interests of public health, safety and welfare. Further, it is the intent of this chapter to insure that such businesses and persons operate in a manner that prevents criminal behavior.

(Ord. No. 176.1, § 1, 6-21-2006)

5.10.020 Definitions.

For the purposes of this chapter, certain words and phrases used herein are defined as follows:

A. As used in this chapter "massage" or "massaging" shall mean the application of a system of structured touch, pressure, movement, and holding to the soft tissues of the human body with the purpose of positively affecting the health and well-being of the client. The practice includes the external application of water, heat, cold, lubricants, salt scrubs, or other topical preparations, and the use of devices that mimic or enhance the actions of the hands. Massage does not include the prescription of legend drugs or controlled substances, the diagnosis of illness or disease, or any treatment for which a license to practice medicine, chiropractic, physical therapy, or podiatry is required. (2) "Massage" does not include touching that meets either of the following criteria: (A) It is done as part of movement education, energy balancing, or any other technique, profession, or modality in which any soft tissue manipulation is incidental to, and not the central aim of, the practice. (B) It is done while engaging in the practice of another somatic technique, profession, or modality with established standards and ethics in which a practitioner is qualified, provided that such services are not designated or implied to be massage or massage therapy.

B. "Massage establishment" shall mean any premises or establishment having a fixed place of business where any person, firm, association, or corporation engages in or carries on, or permits to be engaged in or carried on, any massage or massaging. Any establishment engaged in or carrying on or permitting any combination of massage and bathhouse shall be deemed a massage establishment.

C. "Out call massage service" shall mean any business where a function of such business is to engage in or carry on massage, not at a fixed location but at a location designated by the customer, massage therapist or other person.

D. "Massage practitioner" means any person who administers massage to another person for any form of consideration.

E. "Person" shall mean any individual, copartnership, firm, association, joint stock company, corporation, or combination of individuals of whatever form or character.

G. "Employee" shall mean any and all persons, other than the massage therapist, employed by the massage establishment who may render any service to the permittee, and who receives compensation from the establishment and who has no physical contact with customers and clients. The term "employee" shall include independent contractors who are regularly employed by the establishment and who work at the massage establishment.

H. "Recognized school" shall mean any school or institution of learning which teaches the theory, ethics, practice, profession, and work of massage which furnishes the student with a diploma or certificate of graduation from such school or institution of learning following the successful completion of such course of study or learning, and which has been approved pursuant to the provisions of the California Education Code, or an existing school or institution of learning outside the State of California.

Schools offering a correspondence course not requiring attendance shall not be deemed a recognized school. The City shall have the right to confirm that the applicant has actually attended class in a recognized school.

I. "Permittee" shall mean the operator of a massage establishment and out call massage service.

(Ord. No. 176.1, § 1, 6-21-2006)

5.10.030 Permit Required.

It shall be unlawful for any person to engage in, perform or provide, give, conduct, or carry on, or to permit to be engaged in, conducted, or carried on in or upon any premises in the City any massage or massaging or operation of a massage establishment or an out call massage service, as defined in Section 5.10.020 of this chapter, unless such person holds a valid permit therefor pursuant to the provisions of this chapter.

(Ord. No. 176.1, § 1, 6-21-2006)

5.10.040 Exemptions.

The provisions of this chapter shall not apply to the following classes of persons while engaged in the performance of the duties of their respective professions:

A. Persons licensed to practice any healing art pursuant to Division 2 of the Business and Profession Code or the Chiropractic Act, including, but not limited to, physicians, surgeons, chiropractors, osteopaths, acupuncturists, or physical therapists who are duly

licensed to practice their respective professions in the State of California and are acting within the scope of that license;

B. Nurses registered under the laws of the State of California acting within the scope of that license;

C. Persons licensed or certificated pursuant to Division 3, Chapter 10 of the Business and Professions Code, including, but not limited to, cosmetologists, barbers and estheticians who are duly licensed under the laws of the State of California and are acting within the scope of that license;

D. Hospitals, nursing homes, sanitariums or other health care facilities duly licensed by the State of California acting within the scope of that license;

E. Accredited high schools, junior colleges, and colleges or universities where coaches and trainers are acting within the scope of their employment; and

F. Trainers of amateur, semi-professional or professional athletes or athletic teams acting within the scope of their employment.

(Ord. No. 176.1, § 1, 6-21-2006)

5.10.050 Filing Applications and Fees.

Every applicant for a permit to maintain, operate, or conduct a massage establishment or out call massage service or work as a massage practitioner shall obtain a business license from the Director of Finance, file an application for a massage permit with the Chief of Police upon a form provided by the City, provide proof of insurance and submit proof that the applicant and his/her employees, if any, has submitted her/his fingerprints to the Department of Justice via LiveScan.

(Ord. No. 176.1, § 1, 6-21-2006)

5.10.060 Term of Permit.

All permits shall be issued on a fiscal year basis, as follows: from the first day of July to the 30th day of the succeeding June, inclusive.

(Ord. No. 176.1, § 1, 6-21-2006)

5.10.070 Issuance of Permits.

After an investigation, the Chief of Police shall issue a permit within thirty (30) days following the application filing date if s/he finds:

A. A complete and written application form therefor has been filed;

B. The required fee for the permit, as established by resolution of the City Council, has been paid to the Director of Finance;

C. That the applicant, and his employees, agents, or any person connected or associated with the applicant as a partner, director, officer, stockholder, or manager, has not been convicted in a court of competent jurisdiction by final judgment within the last ten (10) years of an offense involving lewd conduct.

D. That the applicant, and his employees, agents, or any person connected or associated with the applicant as a partner, director, officer, stockholder, or manager, has not knowingly made any false, misleading, or fraudulent statement of a material fact in

the application for a permit or in any report or record required to be filed with any City agency;

E. That the applicant has not had a similar type permit previously revoked for good cause within the past year, unless the applicant has shown a material change in circumstances since the date of revocation;

F. That the applicant and his/her employees, if any, each have a certificate of education from a recognized school.

(Ord. No. 176.1, § 1, 6-21-2006)

5.10.080 Massage Establishment and Outcall Operating Requirements.

A. It is unlawful for any owner, manager, operator, responsible managing officer/employee, or permittee to employ or permit a person to act as a massage practitioner who is not in possession of a valid, unrevoked massage permit issued pursuant to this chapter.

B. It is unlawful for any person to engage in the business of massage or act as a massage practitioner and provide any type of massage service without having a valid permit issued by the Chief of Police for the purposes of providing massages.

C. It shall be unlawful for any owner, proprietor, manager, or other person in charge of any massage establishment or out call massage service to employ any person who is under eighteen (18) years of age.

D. During the term of a permit, the permittee and each massage practitioner who works for the permittee or on the permittee's business premises shall maintain in full force and effect professional liability or massage malpractice insurance or other such policy as required by the Chief of Police as follows:

1. Minimum policy limit of five hundred thousand dollars (\$500,000.00);
2. Issued by an admitted insurer or insurers as defined by the California Insurance Code; and
3. Providing that no cancellation, change in coverage, or expiration by the insurance company or the insured shall occur during the term of the business permit, without thirty (30) days written notice to the Chief of Police prior to the effective date of such cancellation or reduction in coverage.

E. Every person to whom or for whom a permit shall have been granted shall display such permit and a valid business license in a conspicuous place within the massage establishment so that the permit may be readily seen by persons entering the premises. Persons engaged in an out call massage service shall have their permit available for inspection at all times while providing out call massage services.

(Ord. No. 176.1, § 1, 6-21-2006)

5.10.090 Renewal of Permits.

Massage permits shall be valid for twelve (12) months after issuance unless suspended or revoked. Permittees shall have thirty (30) days from date of expiration to renew their permit. If, upon the 31st day an application of renewal has not been received, the permit shall be deemed suspended until such time as the renewal application has been received. If a renewal application and all required information for the renewal is not received within sixty (60) days after expiration, the permit shall be deemed expired and no privilege to provide massage shall exist.

Renewals shall be processed and investigated as though they were initial applications, except that the applicant is only required to submit proof that the applicant and his/her employees, if any, has submitted her/his fingerprints to the Department of Justice via LiveScan, proof of current insurance as required by this chapter and any information which has changed from the last application or renewal.

(Ord. No. 176.1, § 1, 6-21-2006)

5.10.100 Application of Regulations to Existing Massage Establishments, Outcall Services, and Massage Technicians.

The provisions of this chapter shall be applicable to all persons and businesses whether the business was established before or after the effective date of the ordinance codified in this chapter, except that massage establishments or outcall services legally in business prior to the effective date shall have ninety (90) days to file for a massage permit and to comply with the provisions of this chapter. Massage practitioners who have valid massage permits from the City shall have until the expiration of their current massage permit to apply for a massage permit under the terms of this chapter.

(Ord. No. 176.1, § 1, 6-21-2006)

5.10.110 Revocation of Permits.

The Chief of Police shall revoke any permit issued pursuant to the provisions of this chapter if s/he finds:

- A. That the permittee, or his employees, agents, or any person connected or associated with the permittee as a partner, director, officer, stockholder, or manager, has been convicted in a court of competent jurisdiction by final judgment within the last ten (10) years of an offense involving lewd conduct.
- B. That the permittee has violated any provision of this chapter or is in violation of any general or special condition of the permit;
- C. That the permittee has had a similar type permit previously revoked for good cause and has not shown a material change in circumstances since the date of such revocation.

Prior to revoking the permit, the Chief of Police shall give not less than five (5) days written notice to the permittee to show cause, at a time and place set by the notice, why the permit should not be revoked. At the hearing, the permittee shall appear and submit evidence why the permit should not be revoked. Within ten (10) days after the hearing, the Chief of Police shall make a written determination as to whether the permit should be revoked, and the decision shall be mailed to the permittee.

(Ord. No. 176.1, § 1, 6-21-2006)

5.10.120 Right of Appeal.

The permittee may appeal any of the matters set forth in Section 5.10.110 in writing to the City Council within ten (10) days of receipt of the Chief of Police's written decision. The City Council shall immediately schedule the matter for hearing, and cause written notice of the hearing to be given to the applicant or permittee not less than five (5) days prior to the hearing. At the hearing, the permittee shall appear and offer evidence why the decision of the Chief of Police should be overturned. Within ten (10) days after the hearing, the City Council shall make a written determination, and the decision shall be

mailed to the permittee. The decision of the City Council shall be final.

(Ord. No. 176.1, § 1, 6-21-2006)

5.10.130 Other Code Provisions.

The provisions of this chapter shall be in addition to all other regulations, laws, requirements, and fees set forth in this Code.

(Ord. No. 176.1, § 1, 6-21-2006)

5.10.140 Violations: Penalties.

Any person violating any provision of this chapter shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punishable as provided in Chapter 1, Section 1.08.010(B) and/or Title 4 of this Code.

(Ord. No. 176.1, § 1, 6-21-2006)

RECEIVED

OCT 19 2007

To: Town Council and Police Department

From: Tom Dragosavac
(408) 264-1768
portalicia@juno.com

Re: Proposed Massage Ordinance

October 19, 2007

I am offering this memo in hopes it will help Los Gatos in writing the best possible massage ordinance. I spoke at the public hearing on the matter without having had the opportunity to study to proposal. I believe there are a number of serious problems with it. Three minutes does not allow detailed response to 20 pages of legal regulations. I am also sending this to you in email form, which facilitates the addition of attachments for reference that are too bulky for printing.

The email version will have attached this memo from me, a copy of a Model Ordinance for California municipalities prepared in 2000 by the American Massage Therapy Association, a copy of SB731, the proposed state title law for massage therapy which should be in place before the end of next year, and three one-page fact sheets prepared by the AMTA to briefly explicate SB731. I am also including an e-copy of the proposed ordinance itself as of a month ago when I started this work.

This memo refers to the attached material is referred to in this memo by section and verse. However I hope you will take a moment to read through the Model Ordinance and its introductory remarks for the sake of enlarging the vision of how an ordinance might operate.

I am greatly impressed at the dedication to service that Town Counsel work entails. It appears to me that the labor is great and the outer rewards are few. I saw the harsh criticism to which you expose yourselves. Massage therapists are also dedicated to service in the highest sense, or we don't long survive in the profession. I know I could never serve in your way, so I heartfully appreciate your work. I don't know how you can make time for all that comes your way. I hope you can take the time to make this ordinance really good. Thank you.

ATTACHMENT 6

PROPOSED MASSAGE ORDINANCE

Problems, suggested changes, relevant documents

A memo to the Los Gatos Town Council and Police Department

From: Tom Dragosavac
Massage therapist in Los Gatos, 12 years
Co-owner, The Massage Zone
(408) 264-1768
portalicia @juno.com

EXEMPTIONS: Please exempt clothed chair massage in an open space observable to the walk-in public. There are no public health issues here. No prostitute would choose this venue to conduct business. No one is physically exposed. This exemption is in the model ordinance I've attached. Recruitment of quality therapists for my business would be made difficult without this exemption.

Does this ordinance apply to massage therapists working on the premises of those described in paragraphs a and b under 14.110.020? Does this apply to those working in Chiropractic offices or cosmetology and hair salons? I was told it does not, however it reads to me like it does.

EDUCATION REQUIREMENTS: I have spoken and corresponded with Beverly May, Co-Chair of the AMTA Governmental Relations Committee. She has been working with cities and counties on ordinances since 1987 and been working with CA League of Cities lobbyist Yvonne Hunter and a Taskforce of police reps on the wording of SB 731. Regarding "recognized schools", Beverly says that IMA in no way recognizes schools. ABMP is a privately owned business that recognizes any school that pays them to be "affiliated" and that sends them customers. AMTA does not recognize schools. You want to be sure to not exclude either community college programs or trade school programs.

Look at the community of therapists you are proposing to regulate. Until now the standard has been 100 hours. Until the last 10 years or so the trade schools and community colleges were not in massage education. Schools were privately owned and keyed to the state's idea of a 100-hour minimum. Some did more, a few did a lot more. Practitioners did their certification program, started practicing and after a few years were no longer looking for beginner's programs, but educating themselves as their interest and clientele evolved. Those who started with the 100 hours, which includes most of your most experienced therapists today are not graduates of 300 hour residential training programs because that was not the standard at the time of their initial training. To expect them to take time off from making a living, pay \$20 per classroom hour to go back to school to learn from young people with a fraction of their knowledge and therapeutic subtlety would be terribly burdensome. The widest possible latitude for including educational experiences packaged in small bits, as are CEU-type classes should be written into the law. Much of this work is very advanced and would not consider

admitting beginners. Classes like this were never certified by anyone until the National Certification Board began doing so in 1992. Only gradually did educators begin to take the trouble to get themselves certified based on student demand. To avoid driving out or underground your most experienced practitioners you need to be much more generous in the grand-mothering provisions. At the very least you could extend the period for educational catch-up until people can certify through the state procedure. Please take a look at Sec. 4604 of SB731 for an example of how to work grand-fathering by adding credit for extended work experience to the educational criteria. The model ordinance also does a great job by including approved CEU education, allowing some for experience, and qualifying National Certification. (section 5.0)

It is complicated to qualify people's education even for people in the massage field. This is not the area of expertise of a police department. Efforts by local departments to make judgements on this will result in arbitrary decisions that harass, intimidate, burden, and drive valuable therapists out. These are people who are not prostitutes and who contribute to the public health.

Why not simply grand-mother in any therapist already working who has not violated any of the Penal Code related to sex offences. Education requirements could just apply to new people.

RENEWAL: Sec. 14.110.075, p. 15. The proposed ordinance does not simply treat tardy renewal with a late-fee to encourage prompt compliance. As written, one day late cancels a permit holder out and they get to reapply as though for the first time. What happens then to grand-fathered permit holders? This is harsh, intimidating, humiliating, taxing, and disruptive to ongoing business. Unfortunately the tone of this provision pervades the proposed ordinance. But this provision must be changed. There is actually advantage to the administration of this law to not having all the renewals come in on the same day. The language of the renewal section to the effect that we might renew you and we might not suggests a precarious basis for one's business in a hostile arbitrary legal environment. Make renewal easy and businesslike.

REQUIRING LANDLORD ACKNOWLEDGMENT: Sec 14.110.035 (a) (15), p. 7. Making sure that landlords know they are harboring businesses that concern the police as potential sites of illegal depraved activity in need of extra regulation and oversight may lead some landlords to avoid renting to "massage establishments". It could lead to lease non-renewals. Why should one engage this vaguely looming trouble when one can as easily rent to other businesses without this baggage. Once again this provision constitutes intimidation and harassment.

BADGES: The idea that massage therapists must wear or display photo-ID badges that they are certified non-prostitutes by the local police is a humiliation ritual. The idea that failure to comply in this can give you a criminal record by this ordinance or, if the enforcer chooses leniency, just get you revoked constitutes intimidation.

CLIENT PRIVACY AND RECORD-KEEPING: Does the required record of client-therapist sessions add enough power to the policing of illegal sexual activity to justify its privacy infringement? Does one imagine that the patrons of prostitutes sign in

with their real names? If one is involved in illegal activity, why would one keep accurate records of activity? How do police actually use such records?

PERMIT DENIAL BASED ON PREVIOUS PERMIT REVOCATION

ANYWHERE ANY TIME: Sec. 14.110.040 (b) (3). The proposed ordinance requires the police chief to deny a permit to anyone who has ever been revoked anywhere. Someone who had been revoked in Illinois for tardy renewal 12 years ago, would be ineligible in Los Gatos. This should be an option, should only go back 5 years, and should be subject to appeal – the applicant should have the opportunity to explain himself. The attached model ordinance handles this well. If all towns used the proposed ordinance a therapist could be driven completely from the profession forever by someone who didn't like them and filed a complaint that led to an arbitrary revocation. This puts fear into the client-therapist relationship and the entire practice. It constitutes intimidation.

REVOCATION AND APPEAL: Since permit revocation or non-renewal threatens a person's livelihood, it is too strong a penalty for minor infractions unrelated to targeted illegal sexual activity. The law should include less drastic enforcement tools such as conditional probation of the permit, and citation and fine. While authority is vested in the chief of police, realistically, routine tasks and decisions will be delegated. Interpretation of therapist action and application of the law and sanctions will vary with the perceptions and personality of the delegated persons. A good administrator will in the normal course of things need to stand behind the decisions of his staff. Regarding appeal to the Town Manager, the Manager and the Police Chief need to be able to work together harmoniously on issues of much greater import than one therapist's permit. How likely is a Manager to be willing to overrule the decision of a Chief on a routine matter the Chief is charged with administering? The standard of evidence for suspension and revocation in the proposed ordinance is just "there is probable cause to believe that:" any provision of the ordinance has been violated. Is an anonymous phone call probable cause? Is an evasive manner in answering questions probable cause? Is an uninvestigated written complaint probable cause? My guess is that "probable cause" is whatever the enforcing officer wants it to be in a given case. I would suggest explicitly making suspension and revocation last resort enforcement after other means have failed for general code violation and health hazards while keeping probable cause as the standard only for targeted sex crimes and false application information. As now written, enforcement is all too arbitrary and "in-house". The massage therapist lacks basic due process protections. There is little protection from dire consequences to false accusation.

CRIMINAL PENALTIES: Sec.14.110.085, p. 19. "a violation of any provision of this article is a misdemeanor." It goes on to stack up the possibility of unlimited prison time and fines at the discretion of the prosecutor. It criminalizes the smallest non-compliance. It thus gives all town officials near infinite power to harass and intimidate. I don't for a minute anticipate that present personnel are intent on harassment and intimidation. This is not about their intent. This is about the empowerment of public officials by explicit law to exercise vast, nearly unlimited discretion over the lives of citizens. That in itself is intimidation without any official intent at all to use it. So leave

it out. Officials come and go. The law remains as written. There are some literalists in government. Limit criminal penalties to activities which are already considered to be criminal. Treat code violations as citations and fines, or through conditional probation of the permit as modeled in SB731, section 4602. Write these provisions into the law, Do not threaten the livelihood and freedom of people over compliance issues that do not involve sex crimes. Massage therapists are not prostitutes.

COMPLIANCE: One of the therapists who spoke at the 9/4/07 Town Council meeting suggested that real massage therapists are natural allies of the police in identifying prostitution posing as massage therapy. We want the public to know the value that we truly offer for their lives and not miss out on that because of negative or fearful association of massage therapy with sexuality. An ordinance can serve these purposes when people willingly comply. Permit seeking will be maximized by minimizing obstacles. Creating a population of practicing therapists for whom the financial and regulatory requirements are too great for their business volume or situation will not create an atmosphere of cooperation or compliance.

STATE CERTIFICATION: A copy of SB731 is attached. It will most likely be law before the end of next year according to the AMTA Co-Chair of the American Massage Therapy Assn's Government Relations Committee, Beverly May. She works in Redwood City and has been involved in the drafting of the bill. The last two pages, sections 4612 and 4613, lay out the restrictions on and rights of towns to regulate massage therapists. This law will drastically alter the legal environment in which a local ordinance must function. When the state law passes, the local ordinance will need to be rewritten to dovetail local needs into the new state law. Why not take a gentler approach now that will involve less disruption of local businesses and less administrative set-up, when the state is about to make much of present structure moot. For example, why get the police department into the complex business of certifying therapists' educational credentials when the state is about to set this all up nicely?

MODEL ORDINANCE: As an alternative to how an ordinance could look, please review the attached sample put together by the AMTA for California towns. The introductory analysis written by Beverly May in 2000 is illuminating. This Model Ordinance, while requiring more education, gives it flexibility that corresponds to real-world learning patterns and experience. It specifically exempts chair massage and reflexology treatments that involve touching only hands, feet, and ears.

FINANCIAL BURDEN AND BUSINESS LICENSES: The proposed ordinance imposes special financial burdens on massage therapists that do not apply to other businesses in order to finance law enforcement efforts targeting crimes other than massage therapy. To date the Finance Office has been charging massage therapists at the "professional" rate of \$200 each rather than the \$150 rate for normal businesses. A therapist who works one or two days per week in Los Gatos, as many do, does not compare in resources with a legal or medical office. It is difficult to make a good living in massage therapy. Many, perhaps most, therapists must work a little here and a little there and hope it adds up to a living. This leads to multiple liability for business licenses

and town permits whose fees take a big proportional bite out of income. Prior to 2000 none of us at the massage booth in Whole Foods dreamed that we should each secure separate business licenses to work a few hours a week in the fully permitted Whole Foods store. At that time the Finance Office took the fund-raising initiative to get all non-employee therapists in town to get individual permits, regardless of how much work they did. It was very successful. Our 6-foot by 8-foot one person space in Whole Foods one year paid the town \$2,400.00 in business license fees. At one point the Finance Office even told us that any therapist must pay an additional \$200.00 to work at any other location in Los Gatos, as though she were a Starbucks' store.

To ease the additional financial burden of this proposed ordinance, please direct the Finance Office to 1) charge massage therapists at the same rate as normal (rather than professional) businesses; and 2) make it clear that no one-person massage business (sole proprietorship, no employees) will be charged multiple business license fees for multiple locations in town – one therapist, one business license.

MODEL MASSAGE ORDINANCE

ORDINANCE ANALYSIS

This ordinance is offered as a guideline for issuing licenses in California cities and counties which regulate massage.

This ordinance recognizes that massage therapists are a professional group providing a service to the community while contributing financially to the city and enhancing the local business environment.

Cost and Burdens

Currently most massage ordinances were written to control the use of the massage profession by the adult entertainment industry. There are many problems with this approach. Most notable is the fact that even the most stringent adult entertainment licensing and zoning restrictions rarely prevent criminal activity. Further, they are exceedingly burdensome to massage therapists as well as to public resources. Administrative staff time is wasted assuring that applicants have met any number of requirements for licensing. And every few years both staff and council need again to confront possible revisions to correct the problems of the latest ordinance.

Regulating Therapeutic Massage and Adult Entertainment Massage together is no longer acceptable to therapeutic massage professionals or their clients. To do so results in Adult Entertainment establishments operating openly, while therapeutic massage is often forced into a "grey market" status. Many Massage Therapists do not seek local permits because:

1. They do not feel that regulations designed for Adult Entertainment businesses are appropriate to them.
2. Fees are often prohibitive to the incomes of the massage therapist.
3. Many current ordinances do not recognize chair massage.

Consequently, not only do these legitimate massage therapists not get massage permits, but often don't even get business licenses, resulting in significant loss of revenue for the city as many massage therapists have little choice but to work without licenses, often working quietly in their homes or clients homes.

For the general public, not seeing a clear distinction between Adult Businesses and Therapeutic Massage means an uncertainty about whether the massage will be a psychologically and perhaps physically safe experience. Potential clients have a right to have access to massage that they know is therapeutic and not a front for adult entertainment.

No ordinance, by itself, can control illicit activity. It must be part of an effective enforcement and abatement program. It is the experience of this organization that unless the community is prepared to commit the considerable resources necessary to enforce the state prostitution laws, massage will still be used as a front by the sex industry. Enforcement and abatement curtail

illegal activities in massage establishments. Meanwhile the public can still receive massages and massage therapists can work as professionals and contribute to the tax revenues of the city. Now is the time for a more appropriate response to this issue. Much has changed since the 1960's and 70's when local jurisdictions first began to regulate massage. To continue to assume that most massage is a front for prostitution is out-dated.

According to a 1993 study by Eisenberg et al. at Harvard Medical School and Beth Israel Hospital, over 34% of Americans use alternative or complementary health care, spending about \$10 billion dollars a year out-of-pocket -only \$3 billion less than the sum for all hospitalizations in this country. Massage was the third most commonly used practice. A recent update of this study revealed even higher figures. The National Institutes of Health Office of Complementary and Alternative Medicine (CAM) issues a significant number of grants for the study of massage. Studies in prestigious facilities such as the Touch Research Institute (TRI) at University of Miami Medical School (funded largely by Johnson & Johnson) have demonstrated the efficacy of massage in addressing a wide range of health and wellness concerns. Clearly, the public is also aware of the legitimacy and benefits of massage, as the profession grows and expands into health clubs and spas, hospitals, hotels and corporations, airports and even downtown "Back Rub" businesses. It was an integrated part of the Healthcare Services at the 1996 Olympics in Atlanta. Massage is offered and credentialed through managed care providers such as Blue Cross and the Blue Shield mylifepath program in California. There are numerous professional associations with membership standards, codes of ethics and grievance procedures to represent and regulate their members. Our industry has a number of professional journals, and state regulation in some 33 states. In this state, the California Coalition on Somatic Practices (CCSP) represents most of the massage and other somatic organizations, assuring a forum to address common issues. CCSP maintains a comparative chart of private certifications in the massage and broader somatics field.

The position taken by this ordinance is that massage therapists should be treated as self-regulating professionals and need not be saddled with additional zoning, building or health and safety requirements other than those generally applicable to other professionals. Fees should bear a reasonable relationship to the costs of issuance, with enforcement costs being borne by violators. Educational standards are flexible both to allow graduates of state approved or nationally accredited schools to enter the profession, and to meet the needs of diverse communities within this state. We have tried to accommodate the variety of levels and types of training which applicants obtain which prepare them to practice their specialty. Please keep in mind that currently the California Bureau of Private Post-Secondary Education approves massage programs of as little as 100 hours of training. It is common for practitioners to enter the profession with the minimum training, and continue their education as needed. Additionally, non-massage somatic practitioners whose work may involve touch but is very different from what is considered to be massage, have at times found themselves needing to complete massage training or take an exam which is irrelevant to their work. In many cases, these professions are self regulated and have educational requirements exceeding those of many massage therapists.

Professional standards should not be established by city councils - rather they are set by professional associations, schools and testing agencies, and/or state law. In California, state licensing law is unlikely in the near future for a number of reasons. Meanwhile, reasonable

standards already exist in the private sector which should be recognized and adapted for local use.

Regulation of massage as a vice issue is inappropriate and unfair to both massage professionals and the public. If massage regulation is deemed necessary, it should merely provide a simple means of obtaining a permit, and a legally sound, streamlined process for revoking permits of violators.

This ordinance provides the tools necessary to support such a program. Most of its provisions have been drafted from ordinances existing in California, and in some cases, from state laws where such exists.

This model ordinance can be customized for the needs of particular communities. Your comments and suggestions are welcomed.

Please send your comments or suggestions to

Beverly May
bevmay@comcast.net

April 2000

*******MODEL ORDINANCE*******
*******REGULATING*******
*******MASSAGE THERAPISTS*******

1.0 Purpose and Intent

2.0 Definitions

3.0 Massage Permit Required

4.0 Permit Applications and Fees

5.0 Requirements for Issuance of Permit

6.0 Appeal of Denial of Permit

7.0 Revocation or Suspension of Permits; Appeal

8.0 Existing Massage Practitioner Permits

9.0 Exemptions

10.0 (Reserved)

1.0 Purpose and Intent

The purpose and intent of this Ordinance is to recognize massage as a business occupation and health enhancement service and provide a means for issuing appropriate permits.

2.0 Definitions

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

2.1 "Permit" means the permit to engage in the activities of a massage therapist as required by this chapter.

2.2 "Permit Administrator" means the city official responsible for issuing, revoking and otherwise administering the permit program.

2.3 "Massage" or "massage therapy" mean the skillful application of touch to enhance health and well being, in which soft tissue manipulation is primary.

2.4 "Massage therapist" or "massage professional" means a health care practitioner who offers services to the public for compensation, using a massage specialty in caring for clients, and has obtained a permit as required by this Chapter.

2.6 A person who has engaged in "disqualifying conduct" means a person who:

2.6.1 Within five years immediately preceding the date of filing of the application for a issuance of a permit under this Chapter has been convicted in a court of competent jurisdiction of:

2.6.1.1 Any misdemeanor or felony offense which relates directly to the practice of massage therapy, whether as a massage business owner or operator, or as a massage technician or professional; or,

2.6.1.2 Any felony the commission of which occurred on the premises of a massage establishment; or

2.6.1.3 Within five years immediately preceding the date of the filing of the application for a permit under this Chapter has had any massage establishment, operator, technician or trainee license or permit, which was issued by the State of California, or by any county or municipality, revoked; or

2.6.1.4 Within five years immediately preceding the date of the filing of the application for a permit under this Chapter has been convicted in a court of competent jurisdiction of:

(i) Any violation of Section 266h, 266i, 315, 316, 318, or subdivision (b) of Section 647 of the California Penal Code; or

(ii) Any offense in a jurisdiction outside the State of California which is the equivalent of any of the aforesaid offenses.

2.7 "Recognized school of massage" means any school or institution of learning which:

2.7.1 teaches the theory, ethics, practice, profession and work of massage therapy;

2.7.2 requires a residence course of study before the student shall be furnished with a diploma or certificate of completion; and,

2.7.3 has been approved pursuant to California Education Code Section 94300, or, if said school is not located in California, has complied with standards commensurate with those required in said Section 94300 and has obtained certification under any similar state approval program, if such exists.

2.7.4 Transcripts from more than one recognized school can be combined to meet the educational standards required in Section 5.0.

2.8 "State or national professional massage therapy organization or association devoted to the massage specialty and health enhancement approach" means an organization or association that has been determined by the Permit Administrator to meet each of the following requirements: 2.8.1 Requires that its members meet minimum educational requirements appropriate to the nature of their work;

2.8.2 Offers and encourages participation in continuing education programs;

2.8.3 Has an established code of ethics and has enforcement procedures for the suspension and revocation of membership of persons violating the code of ethics.

2.8.4 The organization does not discriminate on the basis of race, sex, creed, color, age or sexual orientation.

3.0 Massage Therapist Permit Required.

3.1 It shall be unlawful for any person to act as a massage therapist unless such person holds a valid permit issued by the Permit Administrator.

3.2 A massage therapist permit shall be issued to any person who has fulfilled the requirements of this Chapter, unless grounds for denial of such permit are found to exist. The Permit Administrator may deny a permit to the permit applicant if:

- (1) The applicant made a material misstatement in the application for a permit, or;
- (2) The applicant is a person who has engaged in other, stated disqualifying conduct, as described under this Chapter.
- (3) All fees have been paid.

4.0 Applications, Fees, and Renewals of Permits.

4.1 The Permit Administrator shall provide each applicant with an application form, requesting the information needed to determine whether the applicant meets the requirements for issuance of a permit pursuant to this Chapter.

4.2 All fees shall be in the amount as established by city council resolution. Fees shall reflect actual costs of investigation and issuance of massage permits.

4.3 Within sixty (60) working days following receipt of a completed application, the permit administrator shall either issue the permit, or mail a written statement of his or her reasons for denial thereof. If the administrator takes neither action, the permit shall be deemed to be issued. The applicant shall furnish the following information:

(1) Name, residence address and telephone number; the previous addresses of applicant, if any, for a period of three years immediately prior to the date of the application and the dates of residence at each;

(2) Social security number and driver's license number, if any;

(3) Applicant's weight, height, color of hair and eyes;

(4) Two prints of a recent passport-size photograph of applicant;

(5) Written evidence that the applicant is at least eighteen years of age;

(6) Business, occupation or employment of the applicant for the three years immediately preceding the date of application. This information shall include, but not be limited to, a statement as to whether or not the applicant, in working as a massage or bodywork technician or similar occupation under a permit or license, has had such permit or license revoked or suspended, and the reasons therefor.

(7) The name and address of the recognized school attended, the dates attended, and a copy of the diploma or certificate of completion awarded the applicant. All applicants may be required to furnish additional evidence of enrollment and attendance of the required class hours or if such evidence is not available are subject to an oral interview by the permit administrator or his or her appointee to establish the bona fide completion of educational requirements.

(8) Such other identification and information as the city may require in order to discover the truth of the matters required to be set forth in the application.

4.4 Temporary Permit: Massage therapists may request a sixty day temporary permit upon payment of all fees for the first year. A temporary permit will be issued for use during the interim period. However, the temporary permit may be revoked at any time upon failure to meet the requirements for a permanent permit, or upon violation of other provisions of this ordinance.

4.5 The massage permit shall have a number assigned by the city for the purposes of identification.

5.0 Requirements for Issuance of Massage Therapist Permit

No permit will be issued unless the applicant meets the following two criteria.

5.1 Holds and maintains a current National Certification of the type described in Section 5.2.5, or

5.2 Is a member in good standing in a state or national professional association as defined in Section 2.8, and satisfies ONE of the following conditions;
;

5.2.1 Has completed five hundred hours of instruction in the massage specialty and health enhancement approach from an approved school as defined in Section 2.7 or classes in massage therapy and related topics offered through State approved colleges and universities;
or,

5.2.2. Has completed two hundred fifty hours of such instruction and, in addition, two hundred fifty hours of practical experience in the massage specialty and health enhancement approach in the form of paid employment as documented by IRS tax returns or other affidavit. Proof of practical experience may include, but is not limited to, 1040 tax returns or W-2 tax forms provided to the applicant and certified by the employing professional and documentation of hours;
or,

5.2.3. Has completed a minimum of 100 hours of such training from an approved school, and proof of 400 hours additional training in:

(a) Continuing educational classes in the massage field and related classes offered by a recognized school of massage or bodywork as defined in section 2.7; or

(b) Classes and workshops as in section (a) approved by the Board of Registered Nurses for nursing CE credit or approved in Category A by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB); or

(c) Programs as in section (a) approved and certified by qualifying professional organizations as defined by Section 2.8; or,

(d) Adult education classes in massage and related topics offered through State approved colleges and universities;
or,

5.2.4 Has completed a minimum of 100 hours of such training from an approved school, and proof of 150 hours additional training as in Section 5.2.3 a-d, and in addition, two hundred fifty hours of practical experience as in Section 5.1.1.2;

5.2.5 Has passed an independently prepared and administered National Certification exam which has been recognized by objective standards to fairly evaluate professional levels of skill, safety and competence, as determined by the National Commission for Certifying Agencies

(NCCA) or a similar certifying body. To meet the requirements of 5.2, the practitioner need not maintain active certification after passing the exam.

6.0 Appeal of denial of massage therapist permit.

6.1 The Permit Administrator shall give written notice to the applicant of a denial of an application for a massage therapist permit. Said notice shall set forth the grounds for the denial of the license or permit, and shall be mailed to the applicant at the applicant's address.

6.2 Within 30 days from the date of receipt of the notice of denial in the mail, the applicant may appeal the decision in writing to the Permit Administrator, setting forth in detail the ground or grounds for the appeal.

6.3 Upon receipt of a notice of appeal, the Permit Administrator shall designate a person to conduct a hearing in accordance with the City's hearing procedures. Such hearing shall be not less than 30 days from the date the appeal was received by the Permit Administrator. Written notice shall be given by mail to the applicant of the date, time, place for the hearing.

7.0 Revocation or suspension of Permits; Appeal

7.1 The Permit Administrator may suspend or revoke any permit issued pursuant to this Chapter in the event that he or she determines:

7.1.1 The permittee has violated any provisions of this Chapter;

7.1.2 The permittee has engaged in disqualifying conduct, as described in this Chapter; or,

7.1.3 The permittee has made a material misstatement in the application for a permit.

7.2 A person may appeal from the suspension or revocation of his or her permit pursuant to the procedure set forth in section 6.0 of this Chapter.

8.0 Existing Massage Practitioner Permits. All persons currently authorized by the city to practice massage holding existing massage permits who desire to continue practice shall be granted two (2) years from the effective date to comply with all requirements of this chapter.

9.0 Exemptions.

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

9.1.1 Any person holding an unrevoked license by the State of California while performing activities encompassed by the legal scope of practice of such professional license,

9.1.2. Practitioners who work on fully clothed clients using one of the following systems while in the course of providing work under this system:

a. Reflexology practitioners providing massage exclusively to the feet and/or hands and/or ears.

b. Practitioners of educational systems in which touch is incidental and in which touch and words are used to deepen awareness of existing patterns of movement in the human body as well as to suggest new possibilities of movement.

c. Practitioners using a non-touch contact to affect the energy systems of the body.

d. Chair massage (also called on-site or seated massage) practitioners working on clients seated upright in a chair.

9.1.3 The Permit Administrator may exempt from the requirements of this section practitioners of recognized proprietary somatic modalities which are not "massage" as commonly understood but which may fall within the definition of massage herein because of touching or other contact, if said practitioners are certified to practice by that modality's guild or other professional organization.

9.2 This chapter shall not apply to individuals administering massages or health treatment involving massage to persons participating in road races, track meets, triathalons, educational events or conferences and similar single occurrence athletic or recreational or educational events; provided that all of the following conditions are met:

9.2.1 The massage services are made equally available to all participants in the event.

9.2.2 The event is open to participation by the general public or a significant segment of the public such as employees of sponsoring or participating corporations.

9.2.3 The massage services are provided at the site of the event in a public setting and either during, immediately preceding or immediately following the event.

9.2.4 The sponsors of the event have been advised of and have approved the provision of massage services and the qualifications required of those performing such services.

9.3 Out of State Visitors

9.3.1 This chapter shall not apply to individuals in the city or state temporarily for educational events or disaster relief.

9.4 Exemptions from Zoning Restrictions

9.4.1 Those massage businesses in which all persons engaging in activities which require them to obtain a permit under this chapter possess the qualifications of, and have obtained valid permits as massage therapists shall be zoned as business, professional or commercial, and shall be permitted in any neighborhood that allows for home occupations or in areas where home occupations are not excluded.

BILL NUMBER: SB 731 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY JULY 9, 2007
AMENDED IN ASSEMBLY JUNE 25, 2007
AMENDED IN SENATE MAY 8, 2007
AMENDED IN SENATE APRIL 26, 2007
AMENDED IN SENATE APRIL 19, 2007
AMENDED IN SENATE APRIL 16, 2007

INTRODUCED BY Senator Oropeza

FEBRUARY 23, 2007

An act to add and repeal Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code, relating to massage therapy.

LEGISLATIVE COUNSEL'S DIGEST

SB 731, as amended, Oropeza. Massage therapy.

Existing law provides for the regulation of various healing arts professionals, including physicians and surgeons, chiropractors, physical therapists, and acupuncturists. Existing law authorizes the legislative body of a city or county to enact ordinances providing for the licensing and regulation of the business of massage when carried on within the city or county.

This bill would, commencing July 1, 2008, provide for the certification of massage practitioners and massage therapists by the Massage Therapy Organization, which would be a nonprofit organization meeting specified requirements, and would impose certain duties on the organization. The bill would require applicants for certification to be 18 years of age or older, to meet specified educational criteria, to provide to the organization and update certain information, to provide fingerprints for submission to the Department of Justice for a criminal background check, and to pay fees required by the organization. The bill would require the Department of Justice to review specified information and to provide to the organization fitness determinations and certain other information. The bill would allow the organization to take certain disciplinary action against certificate holders and would require the organization to take certain action with regard to suspending or revoking a certificate if the certificate holder has been arrested for, and charged with, specified crimes. The bill would make it an unfair business practice for a person to state, advertise, or represent that he or she is certified ~~of~~ or licensed by a governmental agency as a massage therapist or practitioner, or to make other false representations, as specified. The bill would prohibit a city, county, or city and county from enacting certain ordinances regulating the practice of massage by a certificate holder, as specified. The bill would make ~~specified~~ its provisions subject to review by the Joint Committee on Boards, Commissions, and Consumer Protection. The bill would require the organization to provide the committee with a specified report by September 1, 2012. The bill would repeal these provisions on January 1, 2014.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Chapter 10.5 (commencing with Section 4600) is added to Division 2 of the Business and Professions Code, to read:

CHAPTER 10.5. MASSAGE THERAPISTS

4600. As used in this chapter, the following terms shall have the following meanings:

(a) "Approved school" or "approved massage school" means a facility that meets minimum standards for training and curriculum in massage and related subjects and that is approved by any of the following:

(1) The Bureau For Private Postsecondary And Vocational Education pursuant to Section 94739 of the Education Code prior to July 1, 2007, and as of the date on which an applicant met the requirements of paragraph (2) of subdivision (b) or subparagraph (A) of paragraph (2) of subdivision (c) of Section 4601.

(2) The Massage Therapy Organization or the Department of Consumer Affairs.

(3) An institution accredited by the Accrediting Commission for Senior Colleges and Universities or the Accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges and that is one of the following:

(A) A public institution.

(B) An institution incorporated and lawfully operating as a nonprofit public benefit corporation pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code, and that is not managed by any entity for profit.

(C) A for-profit institution.

(D) An institution that does not meet all of the criteria in subparagraph (B) that is incorporated and lawfully operating as a nonprofit public benefit corporation pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code, that has been in continuous operation since April 15, 1997, and that is not managed by any entity for profit.

(4) A college or university of the state higher education system, as defined in Section 100850 of the Education Code.

(5) A school of equal or greater training that is approved by the corresponding agency in another state or accredited by an agency recognized by the United States Department of Education.

(b) "Compensation" means the payment, loan, advance, donation, contribution, deposit, or gift of money or anything of value.

(c) "Massage therapist," "bodyworker," "bodywork therapist," or "massage and bodywork therapist" means a person who is certified by the Massage Therapy Organization under subdivision (c) of Section 4601 and who administers massage for compensation.

(d) "Massage practitioner," "bodywork practitioner," or "massage and bodywork practitioner" means a person who is certified by the Massage Therapy Organization under subdivision (b) of Section 4601 and who administers massage for compensation.

(e) "Organization" means the Massage Therapy Organization created pursuant to this chapter, which shall be a nonprofit organization exempt from taxation under Section 501(c)(3) of Title 26 of the United States Code. The organization may commence activities as authorized by this section once it has submitted a request to the Internal Revenue Service seeking this exemption.

(f) "Registered school" means a facility that meets minimum standards for training and curriculum in massage and related subjects and that either was recognized by the Bureau for Private Postsecondary and Vocational Education pursuant to Section 94931 of the Education Code prior to July 1, 2007, and as of the date on which an applicant met the requirements of paragraph (2) of subdivision (b) or subparagraph (A) of paragraph (2) of subdivision (c) of Section 4601, or is recognized by the organization or the Department of Consumer Affairs, by an institution accredited by the senior commission or the junior commission of the Western Association of Schools and Colleges as defined in paragraph (2) of subdivision (a) of Section 4600, by a college or university of the state higher education system as defined in Section 100850 of the Education Code, or by a school of equal or greater training that is approved by the corresponding agency in another state.

(g) For purposes of this chapter, the terms "massage" and "bodywork" shall have the same meaning.

4600.5. (a) A Massage Therapy Organization, as defined in subdivision (e) of Section 4600, shall be created and shall have the responsibilities and duties set forth in this chapter. The organization may take any reasonable actions to carry out the responsibilities and duties set forth in this chapter, including, but not limited to, hiring staff and entering into contracts.

(b) (1) The organization shall be governed by a board of directors made up of at least two representatives from each professional society, association, or other entity, whose membership is comprised of massage therapists and that chooses to participate in the organization. To qualify, a professional society, association, or other entity shall have a membership in California of at least 1,000 individuals for the last three years, and shall have bylaws that require its members to comply with a code of ethics. The board of directors shall also include each of the following persons:

(A) One member selected by each statewide association of private postsecondary schools incorporated on or before July 1, 2008, whose member schools have together had at least 1,000 graduates in each of the previous three years from massage therapy programs meeting the approval standards set forth in subdivision (a) of Section 4600, except from those qualifying associations that choose not to exercise this right of selection.

(B) One member selected by the League of California cities, unless that entity chooses not to exercise this right of selection.

(C) One member selected by the California State Association of Counties, unless that entity chooses not to exercise this right of selection.

(D) One member selected by the Director of Consumer Affairs, unless that entity chooses not to exercise this right of selection.

The organization's bylaws shall establish a process by which any other directors may be selected.

(2) The initial board of directors shall establish the organization, initiate the request for tax-exempt status from the Internal Revenue Service, and solicit input from the massage community concerning the operations of the organization. The initial board of directors, in its discretion, may immediately undertake to issue the certificates authorized by this chapter after adopting the necessary bylaws or other rules, or may establish by adoption of bylaws the permanent governing structure prior to issuing certificates.

(c) The board of directors shall establish fees reasonably related to the cost of providing services and carrying out its ongoing responsibilities and duties. Initial and renewal fees shall be

established by the board of directors annually.

4601. (a) The organization shall issue a certificate under this chapter to an applicant who satisfies the requirements of this chapter.

(b) (1) In order to obtain certification as a massage practitioner, an applicant shall submit a written application and provide the organization with satisfactory evidence that he or she meets all of the following requirements:

(A) The applicant is 18 years of age or older.

(B) The applicant has successfully completed, at a single approved school, curricula in massage and related subjects totaling a minimum of 250 hours that incorporates appropriate school assessment of student knowledge and skills. Included in the hours shall be instruction addressing anatomy and physiology, contraindications, health and hygiene, and business and ethics, with at least 100 hours of the required minimum 250 hours devoted to these curriculum areas.

(C) All fees required by the organization have been paid.

(2) New certificates shall not be issued pursuant to this subdivision after December 31, 2013.

(c) In order to obtain certification as a massage therapist, an applicant shall submit a written application and provide the organization with satisfactory evidence that he or she meets all of the following requirements:

(1) The applicant is 18 years of age or older.

(2) The applicant satisfies at least one of the following requirements:

(A) He or she has successfully completed the curricula in massage and related subjects totaling a minimum of 500 hours. Of this 500 hours, a minimum of 250 hours shall be from approved schools. The remaining 250 hours required may be secured either from approved or registered schools, or from continuing education providers approved by, or registered with, the organization or the Department of Consumer Affairs. After December 31, 2013, applicants may only satisfy the curricula in massage and related subjects from approved schools.

(B) The applicant has passed an examination that has been approved by the organization.

(3) All fees required by the organization have been paid.

(d) The organization shall issue a certificate to an applicant who meets the other qualifications of this chapter and holds a current and valid registration, certification, or license from any other state whose licensure requirements meet or exceed those defined within this chapter. The organization shall have discretion to give credit for comparable academic work completed by an applicant in a program outside of California.

(e) An applicant applying for a massage therapist or massage practitioner certificate shall file with the organization a written application provided by the organization, showing to the satisfaction of the organization that he or she meets all of the requirements of this chapter.

(f) Any certification issued under this chapter shall be subject to renewal every two years in a manner prescribed by the organization, and shall expire unless renewed in that manner. The organization may provide for the late renewal of a license. Certificates issued pursuant to this section or subdivision (a) or (c) of Section 4604 on or before December 31, 2013, shall, after December 31, 2013, be renewed without any additional educational requirements, provided that the certificate holder continues to be qualified pursuant to this chapter.

(g) (1) The organization shall have the responsibility to

determine that the school or schools from which an applicant has obtained the education required by this chapter meet the requirements of this chapter. If the organization has any reason to question whether or not the applicant received the education that is required by this chapter from the school or schools that the applicant is claiming, the organization shall investigate the facts to determine that the applicant received the required education prior to issuing a certificate.

(2) For purposes of paragraph (1) and any other provision of this chapter for which the organization is authorized to receive factual information as a condition of taking any action, the organization shall have the authority to conduct oral interviews of the applicant and others or to make any investigation deemed necessary to establish that the information received is accurate and satisfies any criteria established by this chapter.

4601.2. No certificates shall be issued by the organization pursuant to this chapter prior to July 1, 2008.

4601.5. (a) Prior to issuing a certificate to the applicant or designating a custodian of records, the organization shall require the applicant or the custodian of records candidate to submit fingerprint images in a form consistent with the requirements of this section. The organization shall submit the fingerprint images and related information to the Department of Justice for the purpose of obtaining information as to the existence and nature of a record of state and federal level convictions and of state and federal level arrests for which the Department of Justice establishes that the applicant or candidate was released on bail or on his or her own recognizance pending trial. Requests for federal level criminal offender record information received by the Department of Justice pursuant to this section shall be forwarded to the Federal Bureau of Investigation by the Department of Justice. The Department of Justice shall review the information returned from the Federal Bureau of Investigation, and shall compile and disseminate a fitness determination regarding the applicant or candidate to the organization.

(b) The Department of Justice shall provide information to the organization pursuant to subdivision (p) of Section 11105 of the Penal Code.

(c) The Department of Justice and the organization shall charge a fee sufficient to cover the cost of processing the request for state and federal level criminal offender record information.

(d) The organization shall request subsequent arrest notification service from the Department of Justice, as provided under Section 11105.2 of the Penal Code, for all applicants for licensure or custodian of records candidates for whom fingerprint images and related information are submitted to conduct a search for state and federal level criminal offender record information.

(e) This section shall become operative July 1, 2008.

4601.6. Organization directors, employees, or volunteer individuals may undergo the background investigation process delineated in Section 4601.5.

4602. (a) The organization may discipline a certificate holder by any, or a combination, of the following methods:

- (1) Placing the certificate holder on probation.
- (2) Suspending the certificate and the rights conferred by this chapter on a certificate holder for a period not to exceed one year.
- (3) Revoking the certificate.
- (4) Suspending or staying the disciplinary order, or portions of it, with or without conditions.
- (5) Taking other action as the organization, as authorized by this

chapter or its bylaws, deems proper.

(b) The organization may issue an initial certificate on probation, with specific terms and conditions, to any applicant.

(c) (1) Notwithstanding any other provision of law, if the organization receives notice that a certificate holder has been arrested and charges have been filed by the appropriate prosecuting agency against the certificate holder alleging a violation of subdivision (b) of Section 647 of the Penal Code or any other offense described in subdivision (h) of Section 4603, the organization shall take all of the following actions:

(A) Immediately suspend, on an interim basis, the certificate of that certificate holder.

(B) Notify the certificate holder at the address last filed with the organization that the certificate has been suspended, and the reason for the suspension.

(C) Notify any business that the organization has in its records as employing the certificate holder that the certificate has been suspended.

(2) Upon notice to the organization that the charges described in paragraph (1) have resulted in a conviction, the suspended certificate shall become subject to permanent revocation. The organization shall provide notice to the certificate holder that it has evidence of a valid record of conviction and that the certificate will be revoked unless the certificate holder provides evidence that the conviction is either invalid or that the information is otherwise erroneous.

(3) Upon notice that the charges have resulted in an acquittal, or have otherwise been dismissed prior to conviction, the certificate shall be immediately reinstated and the certificate holder and any business that received notice pursuant to subparagraph (C) of paragraph (1) shall be immediately notified of the reinstatement.

4602.5. (a) Upon the request of any law enforcement agency or any other representative of a local government agency with responsibility for regulating, or administering a local ordinance relating to, massage or massage businesses, the organization shall provide information concerning a certificate holder, including, but not limited to, the current status of the certificate, any history of disciplinary actions taken against the certificate holder, the home and work addresses of the certificate holder, and any other information in the organization's possession that is necessary to verify facts relevant to administering the local ordinance.

(b) The organization shall accept information provided by any law enforcement agency or any other representative of a local government agency with responsibility for regulating, or administering a local ordinance relating to, massage or massage businesses. The organization shall have the responsibility to review any information received and to take any actions authorized by this chapter that are warranted by that information.

4603. It is a violation of this chapter for a certificate holder to commit, and the organization may deny an application for a certificate or discipline a certificate holder for, any of the following:

(a) Unprofessional conduct, including, but not limited to, denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a certificate holder by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision, order, or judgment shall be conclusive evidence of these actions.

(b) Procuring a certificate by fraud, misrepresentation, or

mistake.

(c) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision or term of this chapter or any rule or bylaw adopted by the organization.

(d) Conviction of any felony, or conviction of a misdemeanor that is substantially related to the qualifications or duties of a certificate holder, in which event the record of the conviction shall be conclusive evidence of the crime.

(e) Impersonating an applicant or acting as a proxy for an applicant in any examination referred to under this chapter for the issuance of a certificate.

(f) Impersonating a certified practitioner or therapist, or permitting or allowing an uncertified person to use a certificate.

(g) Committing any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications or duties of a certificate holder.

(h) Committing any act punishable as a sexually related crime.

4603.5. It shall be the responsibility of any certificate holder to notify the organization of his or her home address, as well as the address of any business establishment where he or she regularly works as a massage therapist or massage practitioner, whether as an employee or as an independent contractor. A certificate holder shall notify the organization within 30 days of changing either his or her home address or the address of the business establishment where he or she regularly works as a massage therapist or massage practitioner.

4604. (a) Notwithstanding Section 4601, the organization may grant a massage practitioner certificate to any person who applies on or before January 1, 2010, with one of the following:

(1) A current valid massage permit or license from a California city, county, or city and county and documentation evidencing that the person has completed at least a 100-hour course in massage at a state-approved or registered school, or out-of-state school recognized by the organization as providing comparable education, has been practicing for at least three years, and has provided at least 1,000 hours of massage to members of the public for compensation.

(2) Documentation evidencing that the person has completed at least a 100-hour course in massage at a state-approved or registered school, or out-of-state school recognized by the organization as providing comparable education, has been practicing for at least three years, and has provided at least 1,750 hours of massage to members of the public for compensation. For purposes of this subdivision, evidence of practice shall include either of the following:

(A) A W-2 form or employer's affidavit containing the dates of the applicant's employment.

(B) Tax returns indicating self-employment as a massage practitioner or massage therapist or any other title that may demonstrate experience in the field of massage.

(3) Documentation evidencing that the person holds a current valid certificate of authorization as an instructor at a massage school approved by the organization or the Department of Consumer Affairs, or holds the position of a massage instructor at a school accredited by an agency recognized by the United States Department of Education, or colleges and universities of the state higher education system, as defined in Section 100850 of the Education Code.

(b) (1) After reviewing the information submitted under subdivision (a), the organization may require additional information necessary to enable it to determine whether to issue a certificate.

(2) If an applicant under paragraph (1) of subdivision (a) or

paragraph (1) of subdivision (c) has not complied with Section 4601.5, or its equivalent, when obtaining a license or permit from the city, county, or city and county, the organization shall require the applicant to comply with Section 4601.5 prior to issuing a certificate pursuant to this section.

(c) (1) A person applying for a massage practitioner certificate on or before January 1, 2010, who meets the educational requirements of either paragraph (1) or (2) of subdivision (a), but who has not completed the required number of practice hours prior to submitting an application pursuant to this section, may apply for a conditional certificate.

(2) An applicant for a conditional certificate shall , within five years of being issued the conditional certificate, be required to complete at least 30 hours of additional education per year from schools or courses described in paragraph (5) until he or she has completed a total of at least 250 hours of education , which may include massage education hours previously completed in a massage course described in either paragraph (1) or (2) of subdivision (a) .

(3) Upon successful completion of the requirements of this subdivision, the organization shall issue a certificate to the person that is not conditional.

(4) The organization shall immediately revoke the conditional certificate issued to any person pursuant to this subdivision if the time period specified in paragraph (2) expires without proof of completion of the requirements having been filed with the organization.

(5) Any additional education required by this section may be completed through courses provided by any of the following:

(A) An approved school.

(B) A registered school.

(C) A provider approved by, or registered with, the organization or the Department of Consumer Affairs.

(D) A provider that establishes to the satisfaction of the organization that its course or courses are appropriate educational programs for this purpose.

(d) Nothing in this section shall preclude the organization from exercising any power or authority conferred by this chapter with respect to a conditional certificate holder.

4605. It is an unfair business practice for any person to state or advertise or put out any sign or card or other device, or to represent to the public through any print or electronic media, that he or she is certified, registered, or licensed by a governmental agency as a massage therapist or massage practitioner.

4606. It is an unfair business practice for any person to hold oneself out or use the title of "certified massage therapist" or "certified massage practitioner" or any other term, such as "licensed," "registered," or "CMT," that implies or suggests that the person is certified as a massage therapist or practitioner without meeting the requirements of Section 4601 or 4604.

4607. The superior court in and for the county in which any person acts as a massage practitioner or massage therapist in violation of the provisions of this chapter, may, upon a petition by any person, issue an injunction or other appropriate order restraining the conduct. The proceedings under this paragraph shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

4608. Nothing in this chapter is intended to limit or prohibit a person who obtains a certification pursuant to this chapter from providing services pursuant to, and in compliance with, Sections

2053.5 and 2053.6.

4612. (a) (1) The holder of a certificate issued pursuant to this chapter shall have the right to practice massage, consistent with this chapter and the qualifications established by his or her certification, in any city, county, or city and county in this state and shall not be required to obtain any other license, permit, or other authorization, except as provided in this section, to engage in that practice.

(2) Notwithstanding any other provision of law, a city, county, or city and county shall not enact an ordinance that requires a license, permit, or other authorization to practice massage by an individual who is certified pursuant to this chapter and who is practicing consistent with the qualifications established by his or her certification. No provision of any ordinance enacted by a city, county, or city and county that is in effect before the effective date of this chapter, and that requires a license, permit, or other authorization to practice massage, may be enforced against an individual who is certified pursuant to this chapter.

(3) Except as provided in subdivision (b), nothing in this section shall be interpreted to prevent a city, county, or city and county from adopting or enforcing any local ordinance governing zoning, business licensing, and reasonable health and safety requirements for massage establishments or businesses. Subdivision (b) shall not apply to any massage establishment or business that employs or uses persons to provide massage services who are not certified pursuant to this chapter.

(b) (1) This subdivision shall apply only to massage establishments or businesses that are sole proprietorships, where the sole proprietor is certified pursuant to this chapter, and to massage establishments or businesses that employ or use only persons certified pursuant to this chapter to provide massage services. For purposes of this subdivision, a sole proprietorship is a business where the owner is the only person employed by that business to provide massage services.

(2) (A) Any massage establishment or business described in paragraph (1) shall maintain on its premises evidence for review by local authorities that demonstrates that all persons providing massage services are certified.

(B) Nothing in this section shall preclude a city, county, or city and county from including in a local ordinance a provision that requires a business described in paragraph (1) to file copies or provide other evidence of the certificates held by the persons who are providing massage services at the business.

(3) A city, county, or city and county may charge a massage business or establishment a business licensing fee sufficient to cover the costs of the business licensing activities established by a local ordinance described in this section.

(4) Nothing in this section shall prohibit a city, county, or city and county from adopting land use and zoning requirements applicable to massage establishments or businesses, provided that these requirements shall be no different than the requirements that are uniformly applied to other professional or personal services businesses.

(5) Local building code or physical facility requirements applicable to massage establishments or businesses shall not require additional restroom, shower, or other facilities that are not uniformly applicable to other professional or personal service businesses, nor shall building or facility requirements be adopted that (A) require unlocked doors when there is no staff available to

assure security for clients and massage staff who are behind closed doors, or (B) require windows that provide a view into massage rooms that interfere with the privacy of clients of the massage business.

(6) A city, county, or city and county may adopt reasonable health and safety requirements with respect to massage establishments or businesses, including, but not limited to, requirements for cleanliness of massage rooms, towels and linens, and reasonable attire and personal hygiene requirements for persons providing massage services, provided that nothing in this paragraph shall be interpreted to authorize adoption of local ordinances that impose additional qualifications, such as medical examinations, background checks, or other criteria, upon any person certified pursuant to this chapter.

(7) Nothing in this section shall preclude a city, county, or city and county from doing any of the following:

(A) Requiring an applicant for a business license to operate a massage business or establishment to fill out an application that requests the applicant to provide relevant information.

(B) Making reasonable investigations into the information so provided.

(C) Denying or restricting a business license if the applicant has provided materially false information.

(c) An owner or operator of a massage business or establishment subject to subdivision (b) shall be responsible for the conduct of all employees or independent contractors working on the premises of the business. Nothing in this section shall preclude a local ordinance from authorizing suspension, revocation, or other restriction of a license or permit issued to a massage establishment or business if violations of this chapter, or of the local ordinance, occur on the business premises.

(d) Nothing in this section shall preclude a city, county, or city and county from adopting a local ordinance that is applicable to massage businesses or establishments described in paragraph (1) of subdivision (b) and that does either of the following:

(1) Provides that duly authorized officials of the city, county, or city and county have the right to conduct reasonable inspections, during regular business hours, to ensure compliance with this chapter, the local ordinance, or other applicable fire and health and safety requirements.

(2) Requires an owner or operator to notify the city, county, or city and county of any intention to rename, change management, or convey the business to another person.

4613. (a) Nothing in this chapter shall restrict or limit in any way the authority of a city, county, or city and county to adopt a local ordinance governing any person who is not certified pursuant to this chapter.

(b) Nothing in this chapter is intended to affect the practice rights of any person licensed by the state to practice or perform any functions or services pursuant to that license.

4615. (a) This chapter shall be subject to the review required by Division 1.2 (commencing with Section 473).

(b) The organization shall provide to the Joint Committee on Boards, Commissions, and Consumer Protection by September 1, 2012, a report as required by Section 473.2.

4620. This chapter shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.



SB 731 Fact Sheet # 1 – How will SB 731 Affect you?

1. This is a title act (certification) – not a practice act (license). It defines the titles you can use, but not what you can do.
2. The certification is voluntary.
 - a. If you work in a city or county that has no massage regulations, you can work freely. If you are an employee, you need only whatever education the employer requires, and nothing else from the government.
 - b. If you are self-employed, you will still need a business license and to comply with whatever zoning and health and safety regulations that all businesses need.
3. If you work in a city or county that regulates massage, you can choose whether to obtain the new certification. Those who choose to be certified by the newly created Massage Therapy Organization (MTO) do not need any additional city or county massage permits to practice
 - a. If you don't certify, you will be subject to all local massage regulations.
 - b. All self-employed businesses still need business licenses.
 - c. Businesses where everyone providing massage maintain certification:
 - i. shall be zoned similarly to other professional or personal services businesses
 - ii. Shall not be required to have additional restrooms or showers
 - iii. Can keep unlocked front doors when there is no staff available to assure client security
 - iv. Do not need windows into massage rooms
 - v. Shall not require medical exams
4. Has no effect on those practicing under the Freedom of Healthcare Act, so the bill will not limit their scope of practice. SB 731 does not define massage, as it is not necessary in a title act
5. Will go into effect July 1, 2008 – if the bill passes



Fact Sheet # 2 What Does SB 731 do?

1. Creates a Massage Therapy Organization
 - a. A new private non-profit organization
 - b. Responsible to the CA state legislature
 - c. Initial board members to be selected from:
 - i. Professional massage organizations that have at least 1,000 members in CA for each of the last 3 years and has a Code of Ethics for its members
 - ii. Each incorporated statewide association of private-post-secondary schools whose member schools have graduated at least 1,000 students in each of the previous 3 years.
 - iii. 1 member from each of the following that choose to provide one:
The League of CA Cities, The CA State Association of Counties and the CA Department of Consumer Affairs
 - iv. Other Board members can be added when the Board creates its Bylaws
 - d. Board will issue certifications to qualified Massage Practitioners and Massage Therapists.
 - e. Board can suspend and revoke certification or otherwise discipline certificants
 - f. The bill would create two tiers – massage practitioner and massage therapist. Responding to concerns from local officials and other professions, this version of the bill would phase out the lower tier after 2013.
 - g. The certification is a certification by a private agency established by the state, not a state certification
 - h. Only those holding one of the certifications by the Massage Therapy Board can use the following titles (or any other title that implies the following):
Tier 1:
 1. Massage Practitioner
 2. Massage and bodywork practitioner
 3. Bodywork Practitioner
 4. Certified Massage Practitioner
 2. Certified Massage and bodywork practitioner
 3. Certified Bodywork Practitioner
Tier 2:
 1. Massage Therapist
 2. Massage and bodywork Therapist
 3. Bodyworker
 4. Bodywork Therapist
 5. Certified Massage Therapist
 6. Certified Massage and bodywork Therapist
 7. Certified bodyworker
 8. Certified Bodywork Therapist



Fact Sheet #3 Who Can Certify?

I. Massage Practitioner

1. Must have 250 hours of training in one approved school.
2. After 2013, no new massage practitioner certificates will be issued.
3. After 2013 those holding a Practitioner Certificate can still practice.

II. Massage Therapist:

1. Training Required must have A, B or C):
 - A. 500 hours of training
 - a. at least 250 must be from 1 program at an approved school
 - b. the remaining 250 hours from registered or approved schools or from approved continuing education (CEU) providers
 - c. After 2013, all initial education must be from approved schools
 - B. Have passed an exam approved by the organization
 - C. Have a registration, certification or license from another state having equal or greater requirements
2. Renewals are every 2 years.
3. Initial applicants will be fingerprinted (as is required of many professions in CA)

III. If you don't qualify under I or II above:

Until January 1, 2010 (2 years after this bill would go into effect), a person can qualify as a Massage Practitioner with:

1. Option 1:

- A. A valid massage permit or license from a CA city or county
- AND
- B. 100 hours of training at a registered or approved school
- C. has practiced for 3 years at least 1000 paid massages (average 6.5 hours a week)
- OR

2. Option 2:

- A. 100 hours (but has no valid local massage permit)
- AND
- B. has practiced for the last 3 years at least 1750 hours paid massages (average 11.2 hours/week)
- C. Proof of practice will be from a W2 or employee affidavit, tax returns, or proof of being an approved instructor.

3. Conditional Permit

- A. Will be offered until 2010
- B. 100 hours of training but less than the experience required by Option 1 or 2
- C. must obtain 30 hours approved CEU each year until they have 250 hours.

Note: Typically voluntary laws like this do not have "grandfather" provisions since if you decide not to be certified by the organization, you can still practice. A grandfather provision is common when a new law requires that everyone practicing the profession must be licensed by the state. The provision will allow those who have been practicing for a reasonable length of time to be "grandfathered" into the new law without needing to go back to school. Although these provisions are common in most new licensing laws, the CA Legislature is not very supportive of these provisions. In the case of this bill, they are even less supportive, since if someone doesn't have the training to be certified, they have a choice of obtaining more education or working without being certified, under local massage ordinances, if any in their city or county.