



MEETING DATE: 11-19-2007
AGENDA ITEM: 8

COUNCIL AGENDA REPORT

DATE: November 13, 2007

TO: MAYOR AND TOWN COUNCIL

FROM: ORRY P. KORB, TOWN ATTORNEY *OK*

SUBJECT: ADOPT AN ORDINANCE OF THE TOWN OF LOS GATOS AMENDING CHAPTER 14 OF THE TOWN CODE REGARDING THE REGULATION OF MASSAGE THERAPY ESTABLISHMENTS AND MASSAGE THERAPY PRACTITIONERS

RECOMMENDATION:

Adopt the ordinance introduced by Council on November 5, 2007.

DISCUSSION:

On November 5, 2007, Council voted to introduce an ordinance amending the Town Code to add a comprehensive system of regulating massage therapy establishments and massage therapy practitioners. Adoption of the ordinance completes Council's action on this matter. The ordinance amending Town Code becomes effective 30 days after adoption.

Attachment: Proposed Ordinance

PREPARED BY: ORRY P. KORB, TOWN ATTORNEY

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Reviewed by: *PS* Town Manager _____ Assistant Town Manager _____ Clerk _____
Finance _____ Community Development _____

Rev: 11/14/07 3:35 pm

Reformatted: 7/19/99

File# 301-05

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 XI, 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 XI, 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 XI shall have a period of eighteen (18) months from the effective date of this Article XI to satisfy the educational requirements set forth in subsection (a) above.

(2) At the end of 18 months from the effective date of this Article XI, 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 had 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 or 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 XI 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 XI.

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 five (5) years. Any revocation beyond five (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. 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.

(c) Violation of provisions of this section may be charged separately as a felony as permitted by state law.

Sec. 14.110.065. Out-call massage services.

Any massage therapist who has complied with all applicable provisions of this Article XI 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 XI 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 XI, 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 XI, 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 XI 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 XI, 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 XI.

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

Any Massage Establishment which is opened, operated or maintained contrary to the provisions of this Article XI 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 XI.

Sec. 14.110.100 Application of this Article XI 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 November 5, 2007 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