

ORDINANCE NO. 808 C.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFICA REPEALING EXISTING CHAPTER 19 AND ENACTING NEW CHAPTER 19 (MESSAGE BUSINESSES) TO TITLE 5, PUBLIC WELFARE, MORALS, AND CONDUCT, OF THE PACIFICA MUNICIPAL CODE, RELATING TO THE REGULATION OF MESSAGE BUSINESSES

The City Council of the City of Pacifica, State of California, ORDAINS as follows:

SECTION 1. FINDINGS. In enacting these regulations the City Council recognizes that massage is a viable professional field offering the public valuable health and therapeutic services. The City Council finds and declares as follows:

(a) The registration and health and safety requirements imposed by this chapter are reasonably necessary to protect the health, safety and welfare of the citizens of the City.

(b) Massage businesses have been found to present opportunities for acts of prostitution and other unlawful activity, and, in fact, officers have made arrests for prostitution in massage businesses located within the City. Municipalities within the County have also reported instances where acts of prostitution have occurred in massage businesses.

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

(d) There is a significant risk of injury to clients of massage businesses by improperly trained or poorly educated massage practitioners.

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

SECTION 2. Chapter 19 (Massage, Bathing, and Health Establishments and Persons Offering Services Therein) of Title 5 (Public Welfare, Morals, and Conduct) of the Pacifica Municipal Code, as presently written, is hereby repealed.

SECTION 3. New Chapter 19 (Massage Businesses) of Title 5 (Public Welfare, Morals, and Conduct) of the Pacifica Municipal Code is adopted, to read as follows:

Chapter 19 MASSAGE BUSINESSES

5-19.01 PURPOSE AND INTENT.

(a) In enacting this chapter, the City Council recognizes that commercial massage therapy is a professional pursuit which can offer the public valuable health and therapeutic services. The City Council further recognizes that, unless properly regulated, the practice of massage therapy and the operation of massage businesses may be associated with unlawful activity and pose a threat to the quality of life in the local community. Accordingly, it is the purpose and intent of this chapter to protect the public health, safety, and welfare by providing for the orderly regulation of businesses providing massage therapy services, discouraging prostitution and related illegal activities carried on under the guise of massage therapy, and establishing certain sanitation, health, and operational standards for massage businesses.

(b) Furthermore, it is the purpose and intent of this chapter to address the negative impacts identified in the City Council's findings to reduce or prevent neighborhood blight and to protect and preserve the quality of City neighborhoods and commercial districts; and to enhance enforcement of criminal statutes relating to the conduct of operators and employees of massage businesses.

(c) It is the Council's further purpose and intent to rely upon the uniform statewide regulations applicable to massage practitioners and establishments that were enacted by the State Legislature in 2008 as Business and Professions Code sections 4600 *et seq.* by Senate Bill 731, and amended in 2011 by Assembly Bill 619 and in 2014 by Assembly Bill 1147, to restrict the commercial practice of massage in the City to those persons duly certified to practice by the California Massage Therapy Council,

and to provide for the registration and regulation of massage businesses for health and safety purposes to the extent allowed by law.

5-19.02 DEFINITIONS.

For the purposes of this chapter, unless the particular provision or the context otherwise clearly requires, the definitions in this section shall govern the construction, meaning, and application of words and phrases used in this chapter:

a) "Business" includes, but not by way of limitation, everything about which a person can be employed, and means that which occupies the time, attention, and labor of individuals for the purpose of producing a livelihood or profit, and connotes the efforts of individuals by varied and diverse methods of dealing with each other, to improve their individual economic conditions, and for the purposes of this chapter shall include, without limitation, the advertising and soliciting of massages. The term "business" includes, but is not limited to, a massage practitioner who is the sole owner, operator and employee of a massage business operating as a sole proprietorship, as well as a massage establishment which employs massage practitioners and therapists.

b) "California Massage Therapy Council" or "CAMTC" means the Massage Therapy Organization formed pursuant to Business and Professions Code section 4600.5.

c) "Certified massage practitioner" means any individual certified by the California Massage Therapy Council as a certified massage therapist or as a certified massage practitioner pursuant to California Business and Professions Code sections 4600 *et seq.*

d) "Client" means the customer or patron who pays for or receives massage services.

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

f) "City registration certificate" means a registration certificate issued by the certification officer upon submission of satisfactory evidence that a massage business employs or uses only certified massage practitioners pursuant to this chapter.

g) "Certification officer" means a representative of the Pacifica Police Department or designees.

h) "Employee" means any person employed by a massage business who may render any service to the business, and who receives any form of compensation from the business.

i) "Health Officer" means a representative from the County of San Mateo Department of Environmental Health or designee and/or a person designated by the City of Pacifica to conduct health and safety inspections.

j) "Hearing Officer" means that person designated by the City Manager who shall be selected in a manner that avoids the potential for pecuniary or other bias and in no event shall be the certification officer, nor any other officer or employee in the certification officer's department.

k) "Massage" or "massage therapy," means and refers to any method of treating the external parts of the body for remedial, health, or hygienic purposes for any form of compensation by means of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, or stimulating the external parts of the body, with or without the aid of any mechanical or electrical apparatus or appliances; or with or without supplementary aids, such as rubbing alcohol, liniments, antiseptics, oils, powders, creams, lotions, ointments, or other similar preparations commonly used in this practice; or by baths, including but not limited to Turkish, Russian, Swedish, Japanese, vapor, shower, electric tub, sponge, mineral, fomentation, or any other type of bath.

l) "Massage business" means any business that offers massage therapy in exchange for compensation. Any business that offers any combination of massage therapy and bath facilities – including, but not limited to, showers, baths, wet and dry heat rooms, pools and hot tubs – shall be deemed a massage business under this chapter. The term "massage business" includes a certified massage practitioner who is the sole owner, operator and employee of a massage business operating as a sole proprietorship.

m) "Mobile massage" means the engaging in or carrying on of massage therapy for compensation in a location other than the business operations address set forth in the massage business's City registration certificate.

- n) "Operator" or "massage business operator" means any and all owners of a massage business.
- o) "Owner" or "massage business owner" means any of the following persons:
 - a. Any person who is a general partner of a general or limited partnership that owns a massage business.
 - b. Any person who has a five percent (5%) or greater ownership interest in a corporation that owns a massage business.
 - c. Any person who is a member of a limited liability company that owns a massage business.
 - d. Any person who has a five percent (5%) or greater ownership interest in any other type of business association that owns a massage business.
- p) "Person" means any individual, firm, association, partnership, corporation, joint venture, limited liability company, or combination of individuals.
- q) "Practitioner" or "massage practitioner" shall be used interchangeably and mean any person who administers massage to another person, for any form of consideration (whether for the massage, as part of other services or a product, or otherwise).
- r) "Reception and waiting area" means an area immediately inside the front door of the massage business dedicated to the reception and waiting of patrons of the massage business and visitors, and which is not a massage therapy room or otherwise used for the provision of massage therapy services.
- s) "Registration" means the registration required by this chapter to operate a massage business.
- t) "School of massage" means any school or institution of learning that is recognized as an approved school pursuant to Business and Professions Code Division 2, Chapter 10.5, as currently drafted or as may be amended.
- u) "Sole proprietorship" means and includes any legal form of business organization where the business owner (sometimes referred to as the "sole proprietor") is the only person employed by that business to provide massage services.
- v) "Solicit" means to request, ask, demand or otherwise arrange for the provision of services.

5-19.03 CAMTC CERTIFICATION AND LOCAL REGISTRATION REQUIRED

(a) Individuals. On and after the effective date of this Ordinance, it shall be unlawful for any individual to practice massage therapy for compensation as a sole proprietorship or employee of a massage business or in any other capacity within the City unless that individual is a certified massage practitioner.

(b) Businesses. On and after the effective date of this Ordinance, it shall be unlawful for any business to provide massage for compensation within the City unless all individuals employed by the massage business to perform massage, whether as an employee, independent contractor, or sole proprietorship, are certified massage practitioners and said business has obtained a valid City registration certificate as provided in this chapter.

(c) Exemption. The Council recognizes that some massage practitioners currently practicing in Pacifica may not meet the standards set forth by the CAMTC due to changes in educational or other requirements, particularly changes in requirements concerning hours of schooling. Therefore, non-CAMTC certified individuals lawfully practicing massage therapy in Pacifica at the time this chapter goes into effect will be allowed to continue practicing without certification from the CAMTC. Non-CAMTC practitioners shall complete the same City registration and renewal process as CAMTC certified practitioners, but shall not be required to provide a CAMTC certification.

5-19.04 MASSAGE BUSINESS REGISTRATION

(a) Application. The registration application for a City registration certificate shall include all of the following:

- (1) Legal name of the massage business.
- (2) Address and telephone number of the massage business.
- (3) Legal names of all owners of the massage business.
- (4) A list of all of the massage business's employees and independent contractors who are performing massage and their CAMTC certification.

(5) Residence address and telephone number of all owners of the massage business.

(6) Business address and telephone number of all owners of the massage business.

(7) The form of business under which the massage business will be operating (i.e., corporation, general or limited partnership, limited liability company, or other form).

(8) Each owner or operator of the massage business who is not a CAMTC-certified massage practitioner shall submit an application for a background check, including the following: the individual's business, occupation, and employment history for the five (5) years preceding the date of the application; the inclusive dates of such employment history; the name and address of any massage business or similar business owned or operated by the individual whether inside or outside the County of San Mateo and its incorporated cities.

(9) For all owners, a valid and current driver's license and/or identification issued by a state or federal governmental agency or other photographic identification bearing a bona fide seal by a foreign government.

(10) For all owners, a signed statement that all of the information contained in the application is true and correct under penalty of perjury; that all owners shall be responsible for the conduct of the business's employees or independent contractors providing massage services; and acknowledging that failure to comply with the California Business and Professions Code sections 4600 *et seq.*, any local, state, or federal law, or the provisions of this chapter may result in revocation of the business's City registration certificate.

(b) Issuance. Upon provision by the massage business of the foregoing documentation, the certification officer shall issue the massage business a City registration certificate, which shall be valid for two (2) years from the date of issuance. No reapplication will be accepted within one (1) year after an application or renewal is denied or a certificate is revoked. The certification officer may decline to issue a City registration certificate if any of the required information is not true, complete, or correct,

or if an individual required to submit to a background check pursuant to subsection (8) above fails to pass such background check. City registration certificates may not be issued to a massage business seeking to operate at a particular location if:

(1) another massage business is or was operating at that particular location and that massage business is currently serving a suspension or revocation pursuant to Section 5-19.11, during the pendency of the suspension or one year following revocation;

(2) another massage business is or was operating at that particular location and that massage business has received a Notice of Suspension, Revocation or fine issued pursuant to Sections 5-19.10 and 5-19.11, during the ten day period following receipt of the Notice or while any appeal of a suspension, revocation or fine is pending.

(3) another massage business is or was operating at that particular location and that massage business has outstanding fines issued pursuant to Section 5-19.10 that have not been paid.

(c) Amendment. A massage business shall apply to the City to amend its City registration certificate within thirty (30) days after any change in the registration information, including, but not limited to, the hiring or termination of certified massage practitioners, the change of the business's address, or changes in the owner's addresses and/or telephone numbers.

(d) Renewal. A massage business shall apply to the City to renew its City registration certificate at least thirty (30) days prior to the expiration of said City registration certificate. If an application for renewal of a City registration certificate and all required information is not timely received and the certificate expires, no right or privilege to provide massage shall exist.

(e) Fees. The registration application, and any amendment to or renewal of an existing registration certificate, shall be accompanied by a fee as specified by resolution of the City Council, no part of which shall be refundable. The provisions of this section shall not prevent the City from establishing additional fees for safety inspections as may be conducted from time to time, and for the background checks, fingerprinting, and subsequent arrest notification for owners of a massage business who are not CAMTC-

certified and who are subject to such background checks pursuant to this chapter. There are certain fees for appeals as described below.

(f) Transfer. A City registration certificate shall not be transferred except with the prior written approval of the certification officer. A written request for such transfer shall contain the same information for the new ownership as is required for applications for registration pursuant to this section. In the event of denial, notification of the denial and reasons therefore shall be provided in writing and shall be provided to the applicant by personal delivery or by registered or certified mail. A City registration certificate may not be transferred during any period of suspension or one year following revocation pursuant to Section 5-19.11, during the ten day period following a massage businesses' receipt of a Notice of Suspension, Revocation or fine issued pursuant to Sections 5-19.10 and 5-19.11 or while any appeal of a suspension, revocation or fine is pending. Further, a City registration certificate may not be transferred until all outstanding fines issued pursuant to Section 5-19.10 have been paid.

(g) Use permit: An application for a use permit shall be filed in the office of the Planning Department pursuant to the provisions of Article 33 of Chapter 4 of Title 9 of this Code if the massage establishment has 640 square feet or greater of treatment space. If a use permit is required, a City registration certificate will not be issued until approval of the use permit.

5-19.05 OPERATING REQUIREMENTS.

On or after the effective date of this Ordinance, no person shall engage in, conduct, carry on, or permit any massage within the City unless all of the following requirements are met:

(a) Massage shall be provided or given only between the hours of 7:00 a.m. and 9:00 p.m. No massage business shall be open and no massage shall be provided between 9:00 p.m. and 7:00 a.m. A massage commenced prior to 9:00 p.m. shall nevertheless terminate at 9:00 p.m., and, in the case of a massage business, all clients shall exit the premises at that time. It is the obligation of the massage business, to inform clients of the requirement that services must cease at 9:00 p.m.

(b) A list of the services available and the cost of such services shall be posted in the reception area within the massage premises, and shall be described in readily understandable language. For mobile massage, the massage practitioner shall make a list of the services and the cost of such services available for review by the client upon request. No owner, manager, operator, or responsible managing employee shall permit, and no massage practitioner shall offer or perform, any service other than those posted or listed as required herein, nor shall an operator or a massage practitioner request or charge a fee for any service other than those on the list of services available and posted in the reception area of the business.

(c) A copy of the CAMTC certificate of each and every massage practitioner employed in the business shall be displayed in the reception area or similar open public place on the premises. For mobile massage, the massage practitioner shall have the CAMTC certification on his or her person when providing services and be able to produce it when asked. CAMTC certificates of former employees and/or contractors shall be removed as soon as those massage practitioners are no longer employed by or offering services through the massage business.

(d) For each massage service provided, every massage business shall keep a complete and legible written record of the following information: the date and hour that service was provided; the service received; the name or initials of the employee entering the information; and the name of the massage practitioner administering the service. Such records shall be open to inspection and copying by police officers, or other City officials charged with enforcement of this chapter. These records may not be used by any massage practitioner or operator for any purpose other than as records of service provided and may not be provided to other parties by the massage practitioner or operator unless otherwise required by law. Such records shall be retained on the premises of the massage business for a period of two (2) years and be immediately available for inspection during business hours.

(e) Massage businesses shall at all times be equipped with an adequate supply of clean sanitary towels, coverings, and linens. Clean towels, coverings, and linens shall be stored in enclosed cabinets. Towels and linens shall not be used on more than one (1) client, unless they have first been laundered and disinfected. Disposable towels and

coverings shall not be used on more than one (1) client. Soiled linens and paper towels shall be deposited in separate, approved receptacles.

(f) Wet and dry heat rooms, steam or vapor rooms or cabinets, toilet rooms, shower and bath rooms, tanning booths, whirlpool baths and pools shall be thoroughly cleaned and disinfected as needed, and at least once each day the premises are open, with a disinfectant approved by the health officer. Bathtubs shall be thoroughly cleaned after each use with a disinfectant approved by the health officer. All walls, ceilings, floors, and other physical facilities for the business must be in good repair, and maintained in a clean and sanitary condition.

(g) Instruments utilized in performing massage shall not be used on more than one (1) client unless they have been sterilized, using approved sterilization methods.

(h) All massage business operators and their employees, including massage practitioners, shall wear clean, non-transparent outer garments. Said garments shall not expose their genitals, pubic areas, buttocks, or chest, and shall not be worn in such manner as to expose the genitals, pubic areas, buttocks, or chest. For the purposes of this section, outer-garments means a garment worn over other garments and does not include garments like underwear, bras, lingerie or swimsuits.

(i) No person shall enter, be, or remain in any part of a massage business while in possession of an open container of alcohol, or consuming or using any alcoholic beverage or drugs except pursuant to a prescription for such drugs. The owner, operator, responsible managing employee, or manager shall not permit any such person to enter or remain upon such premises.

(j) No massage business shall operate as a school of massage, or use the same facilities as that of a school of massage.

(k) No massage business shall place, publish or distribute, or cause to be placed, published or distributed any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective clients that any service is available other than those services listed as an available service pursuant to section 5-19.05(b), nor shall any massage business employ language in the text of such advertising that would reasonably suggest to a prospective client that any service is available other than those services as described in compliance with the provisions of this chapter.

(l) No massage shall be given unless the client's genitals are, at all times, fully covered. A massage practitioner shall not, in the course of administering any massage, make physical contact with the genitals, or anus of any other person regardless whether the contact is over or under the persons clothing. Providing massage of female breasts without the written consent of the person receiving the massage and a referral from a licensed California health care provider is prohibited.

(m) Where the business has staff available to assure security for clients and massage staff are behind closed doors, the entry to the reception area of the massage business shall remain unlocked during business hours when the business is open for business or when clients are present.

(n) No massage business located in a building or structure with exterior windows fronting a public street, highway, walkway, or parking area shall, during business hours, block visibility into the interior reception and waiting area through the use of curtains, closed blinds, tints, or any other material that obstructs, blurs, or unreasonably darkens the view into the premises. For the purpose of this sub-section, there is an irrebuttable presumption that the visibility is impermissibly blocked if more than 10 percent of the interior reception and waiting area is not visible from the exterior window.

(o) All signs shall be in conformance with the current ordinances of the City.

(p) Minimum lighting consisting of at least one (1) artificial light of not less than forty (40) watts shall be provided and shall be operating in each room or enclosure where massage services are being performed on clients, and in all areas where clients are present.

(q) Ventilation shall be provided in accordance with applicable building codes and regulations.

(r) Hot and cold running water shall be provided at all times.

(s) Adequate dressing, locker and toilet facilities shall be provided for clients.

(t) A minimum of one (1) wash basin for employees shall be provided at all times. The basin shall be located within or as close as practicable to the area devoted to performing of massage services. Sanitary towels shall also be provided at each basin.

(u) Pads used on massage tables shall be covered with material acceptable to the health officer.

(v) All massage businesses shall comply with all state and federal laws and regulations for handicapped clients.

(w) A massage practitioner shall operate only under the name specified in his or her CAMTC certificate. A massage business shall operate only under the name specified in its City registration certificate.

(x) No massage business shall allow any person to reside within the massage business or in attached structures owned, leased or controlled by the massage business.

(y) Other than custodial or maintenance staff, no persons shall be permitted within the premises of a massage business between the hours of 11:00 p.m. and 6:00 a.m.

5-19.06 INSPECTION BY OFFICIALS.

The investigating and enforcing officials of the City, including, but not limited to, the police, code enforcement, health officer and director of building and planning, or designees, shall have the right to enter the premises from time to time during regular business hours for the purpose of making reasonable inspections to observe and enforce compliance with building, fire, electrical, plumbing or health regulations, and to enforce compliance with applicable regulations, laws, and statutes, and with the provisions of this chapter. The City may charge a fee for any safety inspections to cover the cost of the inspection.

5-19.07 NOTIFICATIONS.

(a) A massage business shall notify the certification officer, or his or her designee, of any changes described in Section 5-19.04 pursuant to the timelines specified therein.

(b) A registrant shall report to the certification officer any of the following within 96 hours of the occurrence:

(1) arrests of any employees or owners of the registrant's massage business for an offense other than a misdemeanor traffic offense;

(2) resignations, terminations, or transfers of practitioners employed by the registrant's massage business;

(3) any event involving the registrant's massage business or the massage practitioners employed therein that constitutes a violation of this ordinance or state or federal law.

(c) This provision requires reporting to the certification officer even if the massage business believes that the certification officer has or will receive the information from another source.

5-19.08 EXEMPTIONS.

(a) The provisions of this chapter shall not apply to the following classes of individuals or businesses while engaged in the performance of their duties:

(1) Physicians, surgeons, chiropractors, osteopaths, nurses or any physical therapists who are duly licensed to practice their respective professions in the State of California and persons working directly under the supervision of or at the direction of such licensed persons, working at the same location as the licensed person, and administering massage services subject to review or oversight by the licensed person.

(2) Barbers and beauticians who are duly licensed under the laws of the State of California while engaging in practices within the scope of their licenses, except that this provision shall apply solely to the massaging of the neck, face and/or scalp, hands or feet of the clients.

(3) Hospitals, nursing homes, mental health facilities, or any other health facilities duly licensed by the State of California, and employees of these licensed institutions, while acting within the scope of their employment.

(4) Accredited high schools, junior colleges, and colleges or universities whose coaches and trainers are acting within the scope of their employment.

(5) Trainers of amateur, semi-professional or professional athletes or athletic teams while engaging in their training responsibilities for and with athletes; and trainers working in conjunction with a specific athletic event.

(6) Individuals administering massages or health treatment involving massage to persons participating in single-occurrence athletic, recreational or festival events, such as health fairs, road races, track meets, triathlons and other similar events; provided, that all of the following conditions are satisfied:

(A) The massage services are made equally available to all participants in the event;

(B) 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;

(C) The massage services are provided at the site of the event and either during, immediately preceding or immediately following the event;

(D) The sponsors of the event have been advised of and have approved the provisions of massage services;

(E) The persons providing the massage services are not the primary sponsors of the event.

5-19.09 VIOLATION; PENALTIES; UNLAWFUL BUSINESS PRACTICES MAY BE ENJOINED; REMEDIES CUMULATIVE.

Unless otherwise exempted by the provisions of this chapter, every person, whether acting as an individual, owner, employee or agent of the owner, or operator who gives massages or conducts a massage business in violation of this chapter shall be guilty of a misdemeanor. The City Attorney may reduce the penalty to an infraction.

Any massage business operated, conducted, or maintained contrary to the provisions of this chapter shall constitute an unlawful business practice pursuant to Business & Professions Code Section 17200 *et seq.*, and the City Attorney or District Attorney may, in the exercise of discretion, in addition to or in lieu of taking any other action permitted by this chapter, commence an action or actions, proceeding or proceedings in the Superior Court of San Mateo County, seeking an injunction prohibiting the unlawful business practice and/or any other remedy available at law, including but not limited to fines, attorneys' fees and costs. All remedies provided for in this chapter are cumulative.

5-19.10 ADMINISTRATIVE FINES.

(a) Violations. Upon a finding by the certification officer that a business has violated any provision of this chapter, the certification officer may issue an administrative fine of up to the amount as specified by resolution of the City Council.

(b) Separate Violations. Each violation of any provision of this chapter shall constitute a separate violation. Each client to whom massage is provided or offered in violation of this chapter shall also constitute a separate violation. Each day upon which a massage business remains open for business in violation of this chapter shall also constitute a separate violation.

(c) Fine Procedures. Notice of the fine shall be served by certified mail with the legal violation and supporting facts. The notice shall contain an advisement of the right to file an appeal with the hearing officer contesting the imposition of the fine.

(d) Appeals. Appeals must be requested in writing, and shall provide facts disputing the violation and may be accompanied by declarations and exhibits. Appeals must be addressed to the hearing officer, and must be received within ten (10) days of the date appearing on the notice of the fine and a copy of the appeal and any supporting materials must be sent to the certification officer, who may respond to the appeal in writing within ten (10) days of receipt of the appeal and may provide additional evidence in support of the fine. The hearing officer may request, in writing, additional evidence from either the Appellant or the certification officer. The decision of the hearing officer shall be based solely on the materials submitted by the Appellant and the certification officer and be provided by certified mail. The hearing officer may sustain the fine, overrule the fine or decrease the amount of the fine. However the total fine shall not be reduced below the minimum amount as specified by resolution of the City Council. The decision will constitute a final administrative order with no additional administrative right of appeal.

(e) Failure to Pay Fine. If said fine is not paid within thirty (30) days from the date appearing on the notice of the fine or of the notice of determination from the hearing officer after the decision, the fine may be referred to a collection agency within or

external to the City. In addition, any outstanding fines must be paid prior to the issuance or renewal of any registration.

5-19.11 DENIAL, SUSPENSION AND REVOCATION OF CITY REGISTRATION CERTIFICATES

(a) Reasons. City registration certificates may be denied, suspended or revoked by the certification officer upon finding any of the following grounds:

(1) A massage practitioner is no longer in possession of current and valid CAMTC-certification. This subsection shall apply to a sole proprietor or a person employed or used by a massage business to provide massage.

(2) An owner or sole proprietor: is required to register under the provisions of California Penal Code section 290 (sex offender registration); is convicted of California Penal Code sections 266i (pandering), 315 (keeping or residing in a house of ill-fame), 316 (keeping disorderly house), 318 (prevailing upon person to visit a place for prostitution), 647(b) (engaging in or soliciting prostitution), 653.22 (loitering with intent to commit prostitution), 653.23 (supervision of prostitute); has a business permit or license denied, revoked, restricted, or suspended by any agency, board, city, county, territory, or state; is subject to an injunction for nuisance pursuant to California Penal Code sections 11225-11235 (red light abatement); is convicted of a felony offense involving the sale of a controlled substance; is convicted of any crime involving dishonesty, fraud, deceit, violence, or moral turpitude; or is convicted in any other state of an offense which, if committed in this state, would have been punishable as one or more referenced offenses in this subdivision.

(3) The City determines that a material misrepresentation was included on the application for a certificate of registration or renewal.

(4) Violations of any of the following occurred on the premises of a massage business or were committed by a massage practitioner: California Business and Professions Code sections 4600 *et seq.*; any local, state, or federal law; or the provisions of this chapter.

(b) Procedures. Written notice of the denial, suspension or revocation shall be served on the sole proprietor or owners by certified mail with the legal violation and supporting facts. The notice shall contain an advisement of the right to request an appeal hearing before the hearing officer.

(c) Time Period of Suspension. The certification officer may suspend a City registration certificate for a period between five (5) days and the end of the license term, at his or her discretion.

(d) Effective Date of Suspension or Revocation. Suspension or revocation issued pursuant to subsection (b) will be effective ten (10) days from the date appearing on the order, unless a timely appeal is filed in accordance with subsection (e).

(e) Appeal.

(1) The decision of the certification officer is appealable to the hearing officer.

(2) An appeal must be in writing, and be hand-delivered or mailed to the hearing officer.

(3) An appeal must be received by the hearing officer on or before the effective date of suspension or revocation provided by subsection (d).

(4) The filing of a timely appeal will stay a suspension or revocation pending a decision on the appeal by the hearing officer.

(5) A hearing shall be scheduled before the hearing officer within thirty (30) days. Either the Appellant or the certification officer may request, in writing directed to the hearing officer, a continuance of the hearing. Such requests must be supported by good cause. The decision whether to grant a continuance is at the discretion of the hearing officer, who shall consider whether granting the continuance poses a threat to public health or safety in light of the severity of the violations alleged.

(6) The decision of the hearing officer shall be a final administrative order, with no further administrative right of appeal or reconsideration. The hearing officer may sustain a denial, suspension or revocation, overrule a denial, suspension or revocation, reduce a revocation to a suspension and/or reduce the length of a suspension. However no revocation or suspension shall be reduced

to a length of less than a five day suspension. Further the hearing officer may stay the effective date of any suspension for a reasonable time following a hearing.

(f) Reapplication. No reapplication will be accepted within one (1) year after a certificate is revoked.

(g) Evidence. The following rules shall apply to any hearing required by this section. All parties involved shall have the right to offer testimonial, documentary, and tangible evidence bearing on the issues, to be represented by counsel, and to confront and cross-examine witnesses. Any relevant evidence may be admitted if it is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Formal rules of evidence and discovery do not apply to proceedings governed by this chapter. Unless otherwise specifically prohibited by law, the burden of proof is on the registrant in any hearing or other matter under this chapter.

5-19.12 HOME OCCUPATION AND MOBILE MASSAGE

(a) Subsections c, f, i, m, n, o, p, q, r, s, t, v, x, and y of Section 5-19.05 of this chapter shall not apply when a massage practitioner is providing mobile massage services.

(b) Where a massage business is a home occupation, and the operator has complied with Section 9-4.3101 of this code pertaining to home occupations, Subsections f, i, m, n, q, t, x, and y of Section 5-19.05 of this chapter related to businesses operating from a commercial location shall not apply.

5-19.13 PUBLIC NUISANCE

It shall be unlawful and a public nuisance for a massage business to be operated, conducted, or maintained contrary to the provisions of this chapter. The City may exercise its discretion, in addition to or in lieu of prosecuting a criminal action, to commence proceedings for the abatement, removal, and enjoinder of that business in any manner provided by law.

SECTION 4. SEVERABILITY. If any provision(s) of this ordinance is declared invalid by a court of competent jurisdiction, it is the intent of the City Council that such invalid provision(s) be severed from the remaining provisions of the ordinance so that regulation and control of massage may remain in place.

SECTION 5. CEQA. This ordinance is exempt from the provisions of the California Environmental Quality Act because it is not a project and because there is no possibility that the ordinance may have a significant effect on the environment.

SECTION 6. This ordinance shall be effective thirty (30) days from the date of passage thereof.

SECTION 7. The City Clerk shall publish this ordinance according to law.

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Introduced at a regular City Council meeting held on August 8, 2016. PASSED AND ADOPTED this 12th day of September, 2016, by the following vote:

AYES, Councilmembers: Keener, Nihart, Ervin, O'Neill, Digre

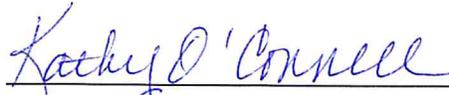
NOES, Councilmembers: None

ABSTAIN, Councilmembers: None

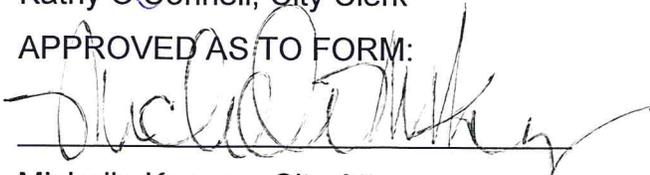
ABSENT, Councilmembers: None


Sue Digre, Mayor

ATTEST:


Kathy O'Connell, City Clerk

APPROVED AS TO FORM:


Michelle Kenyon, City Attorney