

ORDINANCE NO. 2016- ____

AN ORDINANCE OF THE CITY OF SAN BUENAVENTURA, CALIFORNIA, AMENDING IN ITS ENTIRETY CHAPTER 8.300 OF THE SAN BUENAVENTURA MUNICIPAL CODE, RELATING TO MASSAGE REGULATIONS

WHEREAS, Article 11, Section 5 of the California Constitution authorizes the City of San Buenaventura ("City") to make and enforce within its limits all ordinances and regulations not in conflict with general laws; and,

WHEREAS, In 2008, the Legislature adopted Senate Bill 731, which created the California Massage Therapy Council, a state-organized nonprofit organization with regulatory authority over the certification of massage professionals throughout the State of California; and,

WHEREAS, Senate Bill 731, as amended by Assembly Bill 619 in 2011 and Senate Bill 1238 in 2012, also limited the City's regulatory authority over massage establishments that exclusively hire State-certified massage professionals, preempting most local licensure and permitting requirements and land use regulations; and,

WHEREAS, The City amended the San Buenaventura Municipal Code ("SBMC") to comply with the regulations set forth in state law; and,

WHEREAS, State law has been widely criticized by local agencies as provided massage businesses with almost unprecedented protection from local zoning and land use authority, and interfering with local law enforcement efforts to close massage businesses that allow prostitution and other illegal activities; and,

WHEREAS, Prior to the passage of Senate Bill 731, the City had 32 massage businesses in commercial locations (fiscal year 2007/2008). Within five years following the passage of SB 731, there were 68 such establishments located in the City, more than a doubling over five years. Currently, the City has 54 massage businesses in commercial locations, with 22 or 41% of them concentrated on Main Street, the City's premier retail corridor; and,

WHEREAS, The increased number of massage establishments that have located in the City have resulted in an increase of police resources devoted to monitoring massage establishments. Some of those establishments are suspected of allowing illicit activity to occur on the premises; and,

WHEREAS, During City inspections and investigations of some existing massage establishments, City personnel found violations including unauthorized persons, persons running out the back door upon police contact, inappropriately dressed massage professionals, operating beyond approved hours of operation, persons using the establishment as a residence, and illegal signage; and,

WHEREAS, The illegal activities detailed in the above recital pose an immediate threat to the health and safety of establishments, their operators, employees, patrons, surrounding business, and the public; and,

WHEREAS, Assembly Bill 1147, effective January 1, 2015, was signed into law in response to criticism against Senate Bill 731 and vests local agencies with renewed authority relative to massage establishments; and,

WHEREAS, The City wishes to amend the SBMC to exercise the authority granted by Assembly Bill 1147; and,

WHEREAS, All legal prerequisites prior to the adoption of this Ordinance have occurred.

The City Council of the City of San Buenaventura does ordain as follows:

Section 1. The City Council finds that all the facts, findings, and conclusions set forth in this Ordinance are true and correct.

Section 2. Chapter 8.300 of the San Buenaventura Municipal Code is amended in its entirety to read as follows:

"Chapter 8.300
Massage Regulations

Sections

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- Sec. 8.300.390. – Penalties.
- Sec. 8.300.400. – Reserved.
- Sec. 8.300.410. – Property Owner Responsibility.
- Sec. 8.300.420. – Interpretation.
- Sec. 8.300.430. – Validity; Severability.

Sec. 8.300.010. - Purpose, Findings, and Intent.

- A. This Chapter regulates persons and establishments engaged in the practice of massage therapy in order to protect and promote public health, safety and welfare. The City of San Buenaventura wishes to promote the ethical practice of massage therapy as an important healing art, and to prevent and discourage the misuse of massage therapy as a front for prostitution and other activities in violation of law, including, but not limited to, subdivisions (a) or (b) of Section 647 and Section 236.1 of the California Penal Code.
- B. The courts have long recognized massage as a pervasively regulated activity. The regulations and restrictions contained in this Chapter are intended to discourage massage establishments from degenerating into houses of prostitution and the means utilized in this Chapter bear a reasonable and rational relationship to the goals sought to be achieved.
- C. The City has a substantial governmental interest in regulating false or misleading advertisements, or advertisements which promote illegal activity, whether by the Internet or otherwise, for the purposes of protecting its citizens from harm.
- D. There is a substantial risk of injury to massage clients by improperly trained and/or educated

massage providers and this Chapter provides reasonable safeguards against risk of injury to and economic loss by massage clients.

- E. The City Council recognizes that the oversaturation of massage establishments changes the character of a neighborhood and causes blight. Such concentration of land uses and associated illicit activities impacts quality of life, health, and safety of residents of the City of San Buenaventura. The City Council further recognizes that this is a matter of city-wide importance and does not direct this Ordinance toward any particular property, owner, or proposed business and reflects the business supportive climate of the City.
- F. This Chapter establishes a local regulatory system that allows only those massage professionals certified by the California Massage Therapy Council (CAMTC) to operate within the City. Consistent with state law, the City retains the ability to regulate massage establishment certificates of registration, health and safety issues, and land use and zoning.
- G. The provisions of this Chapter are not intended to be exclusive, and compliance shall not excuse noncompliance with any other state or local laws or regulations, including, but not limited to, all zoning regulations, business tax certificate requirements, building codes, and health and safety laws.
- H. This Chapter is enacted pursuant to Sections 37100, 51030—51034 of the California Government Code, Sections 460, 4600-4621 and 16000 of the California Business and Professions Code, and Article XI, Section 5 of the California Constitution. To the extent this Chapter may be deemed to conflict with any provision of state law, the City Council has determined that the matter is a municipal affair within the exclusive or shared province of state and local regulation.

Sec. 8.300.020. - Definitions.

As used in this Chapter:

Ancillary massage business means a business that offers massage services that are ancillary to the primary business that comply with Section 8.300.040(B)(3).

California Massage Therapy Council (CAMTC) means the massage therapy organization created pursuant to California Business and Professions Code Sections 4600 *et seq.*

CAMTC certificate means the certificate issued by the California Massage Therapy Council to certified or conditionally certified massage therapists and massage practitioners pursuant to Business and Professions Code Sections 4600 *et seq.* Also called a state certificate.

Certificate of registration means the certificate issued by the license authority upon submission of satisfactory evidence that a massage business has satisfied all the requirements of this Chapter.

City means City of San Buenaventura.

City Manager means the City Manager of the City or his/her designee.

Compensation means a payment, loan, advance, donation, contribution, deposit, exchange, gift of money or anything of value.

Conviction or convicted mean a conviction following a guilty plea, nolo contendere plea, or judgment or verdict where the time for appeal has elapsed or conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under California Penal Code Section 1203.4 allowing the applicant to withdraw his or her plea of guilty or nolo contendere and to enter a plea of not guilty, or dismissing the accusation or information.

Day means calendar day, unless otherwise specifically expressed.

Disqualifying conduct means:

- A. Within five years preceding the date of filing of the application in question, or anytime thereafter, has been convicted in a court of competent jurisdiction of any of the following:
1. Any offense listed in California Government Code Section 51032, or any felony offense related to Section 11054, 11055, 11056, 11057, or 11058 of the California Health and Safety Code;
 2. Sections 243.4, 261, 261.9, 266 (subsections a through j), 267, 314 315, 316, 318, 653.22, 653.23, or Section 647 (subsections a, b, d and j) of the California Penal Code;
 3. Any offense which requires registration under Penal Code Section 290 or Health and Safety Code Section 11590, or as these sections may be amended;
 4. Any felony offense involving the use, possession, or sale of a controlled substance, as specified in Sections 11352, 11360(a), 11379, 11379.5 or 11550 of the California Health and Safety Code;
 5. Any offense involving the use of force or violence upon the person of another;
 6. Any offense involving theft, embezzlement, or moral turpitude;
 7. Permanent injunction for nuisance under Penal Code Sections 11225—11235 or Health and Safety Code Section 11570 *et seq.*;
 8. An attempt to commit or conspiracy to commit any of the above mentioned offenses;
 9. Any violation of this Chapter;
 10. Any offense in another state or territory which is the equivalent of any of the above offenses; or,
- B. Within five years preceding the date of the filing of the application in question, or any time thereafter, has had any massage establishment, operator,

technician, practitioner, therapist, or trainee certificate, license, or permit issued by any state, local agency, or other licensing authority, including the CAMTC, denied, revoked, or suspended for good cause.

C. Within ten years preceding the date of filing of the application in question, or in the case of the revocation proceedings, within five years preceding the date of the revocation notices:

1. Has engaged in the exposing of specified anatomical areas of oneself or of another person to view or in touching the specified anatomical areas of oneself or of another person while providing massage services or while within view of a customer or patron of the massage establishment; or,
2. Has been the owner, manager, or other similar position, in an establishment where the conduct described in subsection (C)(1) has occurred.

Employee means any person, including, but not limited to, a massage professional, receptionist, owner, or operator, who renders any service, with or without compensation, to the owner, manager, or agent thereof, which relates to the day-to-day operations of the massage establishment. For purposes of this Chapter, the term employee shall include salaried employees and independent contractors.

In-call massage means the provision of massage at the massage professional's place of business, whether at a commercial location or home-based in compliance with the City's home occupation permit requirements in Chapter 24.125, 'Home Occupations,' of this Code.

Independent contractor means anyone other than a salaried employee who works at or renders any service that is related to the operation of the business, whether or not that person receives compensation of any form.

License authority means the Finance & Technology Director of the City, or his or her designee.

Manager means the person(s) designated by the owner of the massage establishment to act as the representative and agent of the owner in managing the day-to-day operations of the business. The manager may be charged in the same manner and to the same extent as an owner for any violation of this Chapter. For purposes of this Chapter, the terms manager and operator shall have the same meaning.

Massage or *massage therapy* means any method of pressure on, or friction against, or striking, kneading, rubbing, tapping, pounding, vibrating, manipulating, or stimulating the external parts of the human body with the hands or with the aid of any mechanical or electrical apparatus, or other appliances or devices, with or without such supplementary aids as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment, or similar preparations.

Massage establishment means any enterprise or establishment having a fixed place of business, whether in a commercial location or otherwise, where any person engages in, conducts, carries on, or permits to be engaged in, conducted, or carried on, any of the activities set forth in the definition of massage in this Section. The term does not include businesses where massage is an ancillary service, as described in Section 8.300.040(B)(3).

Massage practitioner means a person who is certified by the CAMTC in accordance with California Business and Profession Code Section 4601(g).

Massage professional means a massage practitioner or a massage therapist.

Massage therapist means a person who is certified by the CAMTC in accordance with California Business and Profession Code Sections 4601(h) and 4604.

Off-premises massage means the business of dispatching persons from and by a massage establishment to perform massage at a location chosen by the patron.

Owner or operator means any and all owners of a massage business, including, but not limited to, the following persons: the manager or other responsible employee; the individual(s) whose name appears on the business tax certificate issued by the City; a

general partner, a limited partner, a shareholder, a sole proprietor, or any person who has a five percent or greater ownership interest in a massage business, whether as an individual, corporate entity, limited partner, shareholder, or sole proprietor.

Outcall massage means a massage performed or administered for consideration by a state certified massage professional at a location other than a massage establishment.

Person means any individual, firm, association, partnership, corporation, joint venture, or combination of individuals of whatever form or character.

Police Chief means the Police Chief of the City, or the designee thereof.

Proof of bona fide employment means proof of an employer-employee relationship between the operator of a massage business and any person working at or for the business.

Reflexology means the technique or practice in which a state certified massage professional applies hand, finger, and thumb pressure to specific reflex points on the hands, feet, or ears of a patron in order to promote relaxation and healing in the body. The practice does not involve the removal of any clothing other than shoes and socks.

Registered certificate holder means a person or business that has been issued a certificate of registration by the City.

Residence address means the actual physical home address and shall not include a post office box, mailbox service, or other similar location.

Sexual services means any of the following:

- (1) fondling or other touching of Specified Anatomical Areas;
- (2) sex acts, including without limitation, intercourse, oral copulation, or sodomy;
- (3) masturbation;
- (4) sexual stimulation by any inanimate object; or,
- (5) excretory functions as part of, or in connection with, any sexual services listed in this definition.

Sexually oriented merchandise means sexually-oriented implements, devices, and paraphernalia which are designed or marketed primarily for the stimulation of human genital organs or sado-masochistic activity. This term shall include, but is not limited to, condoms.

Specified anatomical areas refers to the genitals and anal regions.

State certification or state certificate means a valid and current certification issued by the CAMTC pursuant to California Business and Professions Code Section 4600 *et seq.* As used in this Chapter, the term shall have the same meaning as CAMTC certificate. Massage professionals possessing state certification shall be referred to as being state certified.

Visitor means any person not retained or employed by the massage establishment and not receiving or waiting to receive massage therapy services, but excludes law enforcement personnel or government officials performing governmental business.

Waiting area means a room or designated area adjacent to the front door dedicated to the reception and waiting of visitors and patrons.

Sec. 8.300.030. - Administration.

The license authority is authorized to administer this Chapter and to promulgate administrative policies and procedures required to implement the regulations and purposes set forth in this Chapter.

Sec. 8.300.040. - Exemptions.

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

A. Complete exemption.

1. Persons holding a valid certificate to practice the healing arts under the laws of the State of California, including, but not limited to, holders of medical degrees, such as physicians, surgeons, chiropractors, osteopaths, naturopaths, podiatrists, acupuncturists, physical therapists, registered nurses, and

licensed vocational nurses, and persons working under their direct supervision who are state certified and working at the same location as the licensed person;

2. State-licensed hospitals, nursing homes, sanitariums, physical therapy establishments, or other state-licensed physical or mental health facilities and their employees;
3. Schools of massage and their students in training, provided such students provide massage therapy only under the direct personal supervision of a state certified instructor;
4. Barbers, beauticians, and manicurists who are licensed by the State of California while providing massage therapy within the scope of their licenses. For barbers and beauticians, this exemption applies solely for the massaging of the neck, face, and scalp of a patron; for manicurists, massage shall be limited to the hands, arms, calves, and feet.
5. Trainers of amateur, semi-professional, or professional athletes or athletic teams.
6. Accredited high schools, junior colleges, and colleges or universities whose coaches and trainers are acting within the scope of their employment.
7. Any other business or profession exempt from the provisions of this Chapter by state law.

B. Limited exemption.

1. Single-occurring special events, such as marathons, health fairs, and concerts, shall provide massage therapy services only through state certified massage professionals. A certificate of registration shall not be required so long as the event does not exceed 48 hours.
2. Massage therapy booths operating at the Ventura County Fairgrounds shall only allow state certified massage professionals to provide massage services, but shall not be required to obtain a certificate of registration.
3. Massage services that are ancillary to the primary business. For purposes of this Chapter, ancillary massage services shall be those services where less than 20 percent of the

gross floor area of the business is devoted to massage and where massage services are provided by employees of the owner of the primary business. Such businesses shall be required to comply with the following:

- (a) The massage business shall inform the license authority of all massage professional employees pursuant to Section 8.300.080, and shall notify the City of any changes to its massage employees pursuant to Section 8.300.100(B).
- (b) The massage business shall be subject to periodic inspections pursuant to Section 8.300.300.
- (c) The massage business shall comply with the Business and Professions Code relating to massage, as well as all provisions of this Chapter applicable to an ancillary massage business.

4. All massage professionals acting under the limited exemption shall comply with Section 8.300.170.

- C. Any person claiming an exemption under this section shall furnish satisfactory evidence upon request of the license authority that he or she is entitled to such exemption, including, scaled floor plan, proof of bona fide employment, or if applicable, a citation to the particular provision of state law upon which that person relies.

Sec. 8.300.050. - Business Tax Certificate—Required.

- A. All persons shall obtain a business tax certificate as required by Chapter 4.155 of this Code.
- B. Any individual applying for a business tax certificate as a massage professional shall provide proof of a current and valid state certificate before being issued a business tax certificate. Any business applying for a business tax certificate shall also obtain a certificate of registration.

Sec. 8.300.060. - Certificate of Registration—Required.

- A. No person shall engage in, conduct, carry on, or to permit to be engaged in, conducted, or carried on, in or upon any premises within the City, the operation of a massage establishment without a certificate of registration issued pursuant to this Chapter.
- B. A separate certificate of registration shall be obtained for each and every massage establishment owned or operated by such

person, and no certificate shall be transferable to a separate location of the same business.

- C. The certificate of registration shall be in addition to any other license or permit required by state or local law and shall in no way be construed to allow any person to perform, or permit to be performed, massage services within the City without a CAMTC certificate.
- D. Certificates of registration shall expire on June 30 of each year, and may be renewed as provided herein in Section 8.300.110.
 - 1. Applications and renewals for certificates of registration shall be accompanied by a fee established by Resolution of the City Council.
 - 2. No refund or rebate of a certificate of registration fee shall be allowed, regardless of whether the certificate is suspended or revoked, or because the certificate holder discontinues the business for which the certificate is required pursuant to this Chapter.
- E. If a certificate of registration is suspended, massage shall not be conducted at the location of the affected massage establishment for the period of suspension.

Sec. 8.300.070. - Certificate of Registration—Application.

- A. Any person, desiring to own or operate a massage establishment shall make an annual application to the license authority for a certificate of registration. The application shall be completed and signed by the owner of the proposed massage establishment if a sole proprietorship, or if the applicant is a corporation or partnership, it shall designate one of its officers or general partners as its authorized representative. The authorized representative shall complete and sign all application forms required of an individual applicant.
- B. The application shall contain the following statements:
 - 1. A certification under penalty of perjury that the information contained in the application is true and correct;
 - 2. A certification that the applicant shall be responsible for the conduct of all persons on the premises of the business, and acknowledgement that failure to comply with California Business and Professions Code Sections 4600 *et seq.* or the provisions of this Chapter may result in the suspension or revocation of the certificate of registration.

3. An authorization for the City, its officers, agents, and employees, to conduct an investigation into the truth of the statements set forth in the application and to ensure continual compliance with all applicable provisions of law.
4. An acknowledgement that, pursuant to Business and Professions Code Section 4614, the City may report administrative, criminal, and disciplinary action regarding any person associated with the business to the CAMTC, and that the City may verify applicant information with CAMTC records.

Sec. 8.300.080. – Certificate of Registration – Contents of Application.

- A. Contents. Each applicant for a certificate of registration shall furnish the following information:

Personal Information.

1. The full true name of the applicant, as well as all aliases and fictitious names used within the preceding five years.
2. The current residence address and personal telephone number of the applicant, and proof thereof.
3. Up to three forms of identification - originals required. Documentation satisfying this requirement shall include, but is not limited to, a valid and current driver's license, social security card, identification card issued by a state or federal governmental agency or other photographic identification bearing a bona fide seal by a foreign government.
4. Two color photographs of the applicant, at least two inches by two inches, taken within the four months preceding the date of application.
5. The employment history of the applicant and each owner for five (5) years preceding the date of the application, the inclusive dates of the employment history, and the name and address of any massage or similar business owned, whether inside or outside the City. Disclosure shall include the business tax certificate and permit history of the applicant and all owners, including whether such applicant/owner has ever had any license or permit issued by any agency, board, city, county, or state denied, revoked, or suspended, or has had any professional or vocational license or permit denied, revoked, or suspended, or if the applicant has ever been required to surrender a permit or license as a result of pending criminal charges or in lieu of said permit or license

being suspended or revoked, and the relevant dates and reason(s) therefore.

Business Information.

6. The full true name under which the business will be conducted.
7. The present or proposed address and all business telephone numbers of the massage establishment.
8. A list of all services to be provided, whether out-call massage will be offered, and a description of any other business operated on the same premises.
9. A scaled floor plan of the massage establishment, including measurements and purposes labeled for all rooms and spaces within the massage establishment.
10. The type of ownership of the business, i.e., whether by individual, partnership, corporation, or otherwise. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation or charter, together with the state and date of incorporation and names and residence addresses of each of its current officers and directors, and of each stockholder holding five percent or more of the stock of the corporation. If the applicant is a partnership, the application shall set forth the name and residence addresses of each of the partners, including limited partners. If the applicant is a limited partnership, it shall furnish a copy of its certificate of limited partnership filed with the county clerk or secretary of state. If one or more of the partners is a corporation, the provisions of this section pertaining to corporate applicants shall apply. The applicant corporation or partnership shall designate one of its officers or general partners to act as its responsible managing officer. Such person shall complete and sign all application forms required of any individual applicant under this Chapter.
11. The name, business address, and telephone number of the owner and lessor of the real property upon or in which the business is to be conducted, and a copy of the lease or rental agreement. If the applicant is not the legal owner of the real property, a notarized acknowledgment from the owner of the property that a massage establishment will be located on his or her property is required for each establishment location.

12. The full true name and other names used, residence address, and personal telephone number, as well as copies of state certificates, of all massage professionals who will be working as employees at the establishment location. If the owner or operator will be providing massage services, he or she must provide proof of state certification. The license authority or police chief may further require those persons whom the applicant has identified as providing massage to personally appear and produce original valid and current state certificates and identification as specified in subsection A.3 of this section. The information required herein shall be duplicated in a personnel register as described in Section 8.300.180(B)(14), which shall be presented to the license authority prior to issuance of the certificate of registration.
 13. Designation of an employee who shall act as a manager, and the residence address and personal telephone number of said manager. The manager shall not have any disqualifying conduct in his or her background and a declaration attesting to this fact shall be submitted with the license authority.
 14. Designation of an employee who may act as a receptionist, and proof of W-2 employment thereof. The receptionist shall not have any disqualifying conduct in his or her background and a declaration attesting to this fact shall be submitted with the license authority.
 15. A fire clearance issued by the City's Fire Department upon an inspection of the business premises must be submitted within 30 days of the application's approval.
 16. Proof of current and valid Worker's Compensation insurance from an insurer authorized to do business in California, in an amount as required by law, or a certificate of exemption therefrom.
 17. Written consent by the property owner allowing a massage business on the premises and acknowledgement that, in addition to any other liability that may be imposed by law, the property owner may be held legally responsible for the costs of any nuisance abatement under this Chapter.
 18. Such other identification and information as may be required by the license authority in order to verify the truth of the matters required to be set forth in the application.
- B. Any owner with an interest of five percent or more in a massage business, and not state-certified, may, in addition to the

information required in Section 8.300.080(A), be required to furnish the following information:

1. Each residence address of the applicant for the five years immediately preceding the date of the application, and the inclusive dates of each such address.
2. The applicant's height, weight, color of eyes, and hair.
3. All criminal convictions, including pleas of nolo contendere, within the last ten years including those convictions dismissed or expunged pursuant to Penal Code Section 1203.4, but excluding infraction traffic violations, and the date and place of each such conviction and reason therefore.
4. A complete set of fingerprints for the purpose of verifying identification and criminal history. Where so required, there shall be payment of a non-refundable fee to defray the actual costs to conduct a police records review and to submit fingerprints to the Department of Justice and the Federal Bureau of Investigation through LiveScan or the equivalent.

Sec. 8.300.090. – Certificate of Registration – Application review.

- A. The license authority shall have a reasonable time, not to exceed 30 days from receipt of the application, in which to investigate the contents thereof. The 30-day period may be extended for up to ten additional days, if necessary, to complete the investigation. The license authority shall issue the certificate, unless he or she makes any of the following findings:
1. The applicant or any owner has made a materially false or misleading statement or omission of fact in the application, or failed to provide information, documentation, and assurances required by this Chapter or by the license authority; or,
 2. Any disqualifying conduct;
 3. The massage establishment, as proposed by the applicant, would not comply with the requirements of this Chapter and all applicable laws, including, but not limited to, health, zoning, business tax, fire, and safety requirements and standards; or,
 4. The applicant or any owner is not at least 18 years of age; or,
 5. The application is incomplete and supplementary information is not timely or forthcoming; or,

6. The applicant or any owner is delinquent in paying city fees, fines, or penalties; or,
 7. There is substantial evidence of prostitution occurring at the location of the proposed massage establishment; or,
 8. The location of the massage establishment, had a certificate of registration revoked or suspended by the City within the last 365 days; or,
 9. Failure to maintain bona fide employment. Satisfactory proof of bona fide employment may be requested by the license authority by written payroll documentation evidencing the employer's compliance for withholding of California income tax, unemployment insurance contributions, and disability contributions from the employee and written payroll documentation of the employer's compliance with Internal Revenue Service (IRS) requirements for the withholding of federal income taxes, Social Security (FICA) contributions, and Medicare contributions from the employee. Such written documentation can include, but is not limited to, W-2 wage and tax statements. This information shall be for licensing only and is not public information.
- B. If prosecution is pending against the applicant or any owner for conduct violating either this Chapter or the provisions of Business and Professions Code Sections 4600, *et seq.* the license authority may postpone the decision on the application until the prosecution's final resolution. As used in this subsection, prosecution means charges filed by the district attorney, administrative proceedings brought by a local government or agency, or a civil or criminal action maintained by the City Attorney.
- C. Where issuance of a certificate of registration is denied, the applicant may utilize the hearing procedures set forth in Sections 8.300.350 and 8.300.360.

Sec. 8.300.100. - Notification of Changes.

- A. Each owner or operator shall provide advance written notice to the license authority whenever there is a change in information which was required to be submitted in the application for the certificate of registration in the first instance.
- B. Employees. Every owner or operator shall report to the license authority any change of employees, or change in management, whether by new or renewed employment, discharge, or termination. The report shall be made within 30 days of the date of hire or termination.

- C. Upon the sale, conveyance, or transfer of any interest in a massage establishment, the certificate of registration heretofore issued for said establishment or business shall be null and void, and a new application shall be made by any person desiring to own or operate the massage establishment. Any sale or conveyance of any interest in an existing massage establishment, or any application for an extension or expansion of the building or place of business of the massage establishment, may require inspection and shall require compliance with the provisions of this Chapter.

Sec. 8.300.110. - Certificate of Registration—Duration and Renewal.

Certificates of registration issued pursuant to this Chapter shall remain in effect, unless revoked, until the following June 30. An application for renewal must be submitted to the license authority not less than 20 days before the certificate expiration date. Renewal applications shall require the applicant to update any information which may have changed from the initial application. An owner/applicant who is not state-certified and who owns five percent or more of the business may be required to undergo a background check and submit a nonrefundable fee set by Resolution of the City Council.

Sec. 8.300.120. - Certificate of Registration—

Nonassignability/transferability.

No certificate of registration may be sold, transferred, or assigned to any other person or entity. Any such sale, transfer, or assignment, or attempted sale, transfer, or assignment shall be deemed to constitute a voluntary surrender of the certificate and such certificate shall thereafter be null and void.

Sec. 8.300.130. - Off-premises Massage Unlawful.

It shall be unlawful, and a misdemeanor, subject to punishment in accordance with Chapter 1.150 of this Code, for any person to provide, arrange, or receive, or to offer to provide, arrange, or receive, off-premises massage anywhere within the City.

Sec. 8.300.140. - Out-call and Incall massage.

It shall be unlawful, and a misdemeanor, subject to punishment in accordance with Chapter 1.150 of this Code, for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted, or carried on, in or upon any premises in the City:

- A. The operation of outcall or incall massage services without state certification.
- B. The operation of outcall or incall massage services without a city-issued business license.
- C. The operation of incall massage services without a certificate of registration.
- D. Outcall and incall massage professionals, owners, and operators shall inform the license authority that their business is outcall and/or incall massage.
- E. Outcall and incall massage services when operating from a residence shall comply with Chapter 24.125, 'Home Occupations,' of this Code.
- F. Outcall massage and incall massage shall comply with the following provisions of this Chapter:
 - 1. Section 8.300.150 relating to prohibited conduct;
 - 2. Section 8.300.170 relating to massage professionals;
 - 3. Section 8.300.180 relating to operating requirements;
 - 4. Section 8.300.210 relating to sanitation requirements;
 - 5. Section 8.300.220 relating to building and facility requirements;
 - 6. Section 8.300.250 relating to advertising;
 - 7. Section 8.300.290 relating to change of location; and,
 - 8. Section 8.300.300 relating to periodic inspections.

Sec. 8.300.150. Prohibited Conduct.

- A. It shall be unlawful and a misdemeanor, subject to punishment in accordance with Chapter 1.150 of this Code, for any person to provide, arrange, or receive or offer to provide, arrange or receive, massage for compensation anywhere within the City unless the massage professional complies with this Chapter.
- B. It shall be unlawful and a misdemeanor, subject to punishment in accordance with Chapter 1.150 of this Code, for any person to solicit, request, or receive a massage after 10:00 p.m. or before 7:00 a.m.
- C. It shall be unlawful and a misdemeanor, subject to punishment in accordance with Chapter 1.150 of this Code, for any person to massage or intentionally touch the specified anatomical areas or female breasts of another person, nor shall any operator of a

massage establishment allow or permit such contact to the above-specified areas. Massage of the female breast area is permitted only with the written consent of the person receiving the massage, together with a referral from a licensed California health care provider.

- D. It shall be unlawful and a misdemeanor, subject to punishment in accordance with Chapter 1.150 of this Code, for any person to engage in the practice of massage for compensation, or while visible to patrons, all employees shall wear clean outer garments. The garments shall not include:
 - 1. Attire that is transparent, see-through, or substantially exposes any undergarments;
 - 2. Swim attire;
 - 3. Attire that exposes the certificate holder's breasts, buttocks, or genitals;
 - 4. Attire that constitutes a violation of Section 314 of the Penal Code; or
 - 5. Attire that would otherwise be deemed by the CAMTC to constitute unprofessional attire based on the custom and practice of the profession in California.
- E. It shall be unlawful and a misdemeanor, subject to punishment in accordance with Chapter 1.150 of this Code, for any person to provide a massage use or possess, or permit to be used or possessed, any sexually oriented merchandise.
- F. It shall be unlawful and a misdemeanor, subject to punishment in accordance with Chapter 1.150 of this Code, for any person to offer or engage in sexual services on any premises where a massage professional is present to conduct or is conducting a massage.
- G. It shall be unlawful and a misdemeanor, subject to punishment in accordance with Chapter 1.150 of this Code, for any person to sell, serve, or furnish an alcoholic beverage on the premises where a massage professional is present to conduct or is conducting a massage without a valid alcoholic beverage license from the state and conditional use permit from the City.
- H. Controlled substances may not be consumed where a massage professional is present to conduct or is conducting a massage unless the person has a prescription for the substance.
- I. No video or audio recording devices or surveillance cameras of any type may be installed in rooms where massage services are

provided. No live-viewing, broadcasting or streaming of audio or video may occur in a room where massage is provided.

- J. No massage professional, nor any owner or operator of a massage establishment or an ancillary massage business shall place, publish, or distribute or cause to be placed, published, or distributed any advertising or decorative matter that depicts any portion of the human body that would reasonably suggest to prospective patrons that any service is available other than those services posted on the premises as required in this Chapter; nor shall any massage professional, nor any owner or operator of a massage establishment employ language in the text of any advertising or decoration that would reasonably suggest to a prospective patron that any service is available other than those services posted on the premises as required by this Chapter.
- K. Discrimination. No massage professional, nor any owner or operator of a massage establishment or an ancillary massage business may discriminate or exclude patrons on the basis of race, gender, religion, age, disability or sexual orientation.
- L. No person shall allow another person to reside, dwell, or live inside the massage establishment or ancillary massage business at any time, nor shall any person reside, dwell, or live inside the massage establishment or ancillary massage business at any time. Evidence of residential use shall include, but is not limited to, the presence of packed suitcases, bedding, and a large amount of toiletries and clothing or shoes.
- M. No person shall employ anyone under 18 years of age to perform massage therapy services.
- N. No person shall provide massage therapy services on anyone under 18 years of age, except at the special instance and request of a parent, guardian, or other person in lawful custody of the minor who shall provide said request in writing or otherwise be present at the location the massage is being conducted at the time of treatment.

Sec. 8.300.160. Reserved.

Sec. 8.300.170. - Massage Professionals—Requirements.

All massage professionals shall be required to meet the requirements of this section. Similarly, all owners and operators shall ensure the massage professionals they employ meet the requirements of this section.

- A. No person shall provide massage as a principal, employee, agent or otherwise within the City without a current and valid state certification.
- B. All state certified massage professionals shall have their original CAMTC identification cards in their possession while providing massage, and shall produce said cards upon request by any patron, City staff, or law enforcement officer.
- C. Where a state certified massage professional is employed as an independent contractor, he or she must make a separate application for a business tax certificate.
- D. Where a state certified massage professional is employed as a salaried employee (W-2), he or she shall provide proof thereof upon request by the license authority or Police Chief, or an agent thereof.

Sec. 8.300.180. - Operating Requirements.

- A. It shall be unlawful for any person, including, but not limited to, an owner, operator, massage professional, or employee, to engage in, conduct, or carry on, or permit to be engaged in, conducted or carried on, the operation of the massage establishment unless each and all of the following requirements are met:
 - 1. An owner or operator shall be personally liable for the conduct of all persons on the massage establishment or ancillary massage business premises. Moreover, any act or omission of any person, whether an employee or otherwise, which constitutes a violation of the provisions of this Chapter, shall be deemed the act or omission of the owner or operator for purposes of determining whether the massage establishment certificate of registration shall be revoked, suspended, denied, or not renewed.
 - 2. No massage establishment or ancillary massage business shall operate, nor shall any massage be administered in the City, between the hours of 10:00 p.m. and 7:00 a.m. A massage begun any time before 10:00 p.m. must nevertheless terminate by 10:00 p.m. and all patrons shall exit the premises at that time.
 - 3. The hours of operation must be displayed in a conspicuous public place in the waiting areas and in any front window in a manner clearly visible from outside of the business.

4. Patrons and visitors shall be permitted only during hours of operation.
- B. In addition to the above, an owner or operator of a massage establishment shall comply with the following:
1. There shall be at least one on-duty state certified professional on the premises at all times when the massage establishment is open. If no state certified professional is available, the massage establishment shall lock the front door and prohibit the entry of any patrons or visitors.
 2. No person lacking state certification shall be employed as a receptionist without prior notification and approval by the license authority.
 3. Each person present in the massage establishment in any area outside the waiting area shall be a patron, an employee, independent contractor, vendor serving the massage establishment, or the massage establishment owner or operator.
 4. Visitors shall only be permitted in the waiting area; however, the following exceptions may apply:
 - (a) The parent or guardian of a patron who is a minor may be present in the massage therapy room with that minor;
 - (b) The minor of a patron may be present in the massage therapy room with the patron when necessary for the supervision of the minor; or,
 - (c) The conservator, aid or other caretaker of a patron who is elderly or disabled may be present in the massage therapy room with that elderly or disabled person.
 5. Each massage establishment shall file with the City and keep at all times current copies of the state certification of any massage professional working at the massage establishment.
 6. No person shall permit or authorize another person to work, nor shall any person whether for compensation or otherwise, in a massage establishment on a trial or provisional basis.
 7. A manager shall be on the premises at all times the massage establishment is open. The owner of each massage establishment shall designate the person or

persons with power to act as a manager in the certificate of registration. Where the owner designates himself or herself as the manager, a secondary manager shall also be named. The owner shall post the name and photograph (a minimum size of 4" x 6") of each manager, along with the designation Manager, in a conspicuous public place in the waiting area of the massage establishment.

8. No massage establishment shall operate under any business name or conduct business under any designation not specified in the certificate of registration. The name under which the business is conducted must match the name of the business under which the corresponding business tax certificate is issued. If the applicant is a corporation, the name shall be exactly as shown on the articles of incorporation or on a valid DBA (doing business as). Any and all changes of name or designation under which the business is to be conducted, and if applicable, changes of business information, shall be reported to the license authority within 14 days.
9. Proof of valid and current Worker's Compensation insurance or a certificate of exemption therefrom shall be maintained on the premises at all times.
10. Any posted signs which are in a language other than English shall also be posted in English.
11. Recognizable and legible signs complying with the requirements of this Code shall be posted at the main entrance identifying the business as a massage establishment. The sign, and front of the business, shall not be illuminated by strobe or flashing light.
12. A list of services available, the price thereof, and the minimum length of time such services shall be performed shall be posted in an open and conspicuous public place on the premises. No owner or operator in charge of or in control of the massage establishment shall offer or permit, and no employee shall offer to perform or perform, any services other than those posted.
13. The original massage establishment certificate of registration, original employee business tax certificates, manager designation(s), and a copy of the CAMTC certificate or CAMTC identification card of each and every

massage professional employed or working in the establishment shall be displayed in an open and conspicuous public place on the premises.

14. Every massage establishment shall maintain a register of all individuals employed, which shall be available on demand for inspection at all reasonable times by the license authority, police chief, other law enforcement, or an agent thereof. The owner or operator shall have a continuing obligation to duly update the register, and the information contained therein shall be maintained at the massage establishment a minimum of two years following the date that any person ceases providing services/employment to the massage establishment. The register shall include, but is not limited to, the following information:

- (a) Name, nicknames, and/or aliases;
- (b) Current home address and telephone number;
- (c) Date of birth and gender;
- (d) The dates of employment, and termination, if any;
- (e) The duties of each person;
- (f) A good quality, actual size, color photocopy of a valid and current CAMTC-issued identification card.

- C. Location of massage establishment and massage schools. Massage establishments and massage schools may be located on the same premises provided that:

- 1. Students at the school shall practice only on other students, but may practice on patrons of the establishment if they are under the supervision of a licensed massage professional.
- 2. Students performing massage must be 18 years of age or older.

Sec. 8.300.190.Reserved.

Sec. 8.300.200. – Reserved.

Sec. 8.300.210 – Sanitation Requirements.

- A. Any person or business providing massage, including ancillary businesses, shall comply with the following:

1. Clean and sanitary towels, sheets, and linens shall be provided for each patron receiving massage services. No common use of towels or linens shall be permitted, and reuse is prohibited unless they have been first laundered. Heavy white paper may be substituted for sheets provided that such paper is used only once for each person, then discarded into a sanitary receptacle.
2. Disinfecting agents and sterilizing equipment sufficient to ensure the cleanliness and safe condition thereof shall be provided for any instruments used in performing any massage.
3. Massages shall be administered only on standard or portable massage tables or chairs which are covered with a durable, washable plastic or other acceptable waterproof material. Tables should have a minimum height of 18 inches. No massages are allowed to take place on the floor or mats on the floor. No more than one patron may occupy a massage table at a time.
4. Table showers are prohibited.
5. A massage shall not be given by, and no patron shall be in the presence of, any person unless the patron's specified anatomical areas are fully covered by a completely opaque, nontransparent covering. Each patrons shall be provided clean, sanitary, and opaque coverings capable of covering the patron's specified anatomical areas. No common use of such covering shall be permitted, and reuse is prohibited unless having been adequately cleaned or laundered.
6. A record shall be kept of the date and hour of each treatment or service, the name and address of the patron, the name of the massage professional administering such treatment or services and a description of the treatment or service rendered. Said records shall be open to inspection by health officials charged with the responsibility of preventing the spread of communicable or contagious disease and with maintaining the public health. Said health officials shall use the information obtained from such records only for the purposes specified. Failure to record such information or knowingly falsifying such records may be grounds for suspension or revocation of a certificate of registration or business tax certificate. The license authority, police chief, or code enforcement staff shall be permitted to inspect said records periodically to ensure compliance with this Section. Said records shall be maintained for a period of two years.

7. Beds, mattresses, water beds, futons, sofa beds, foam pads, or any other type of portable or convertible beds shall not be permitted in the establishment.
8. Cleanable and nonabsorbent waste containers with tight-fitting covers shall be provided for the storing of all waste matter and shall be maintained in a clean and sanitary condition.
9. Closed cabinets or containers shall be provided for the storage of laundered towels and linens. Nonabsorbent containers or laundry bags shall be provided for damp or soiled linen, and linen shall be kept therein until removed for laundering.

Sec. 8.300.220. – Building and Facility Requirements.

- A. A massage establishment or an ancillary massage business shall comply with the following:
 1. The building, or unit within the building where the massage establishment or ancillary massage business is located, shall comply with all applicable building code requirements. All building, plumbing, and electrical installations shall be installed under permit issued by the division of building and safety and such installations shall be installed in accordance with the California Building Code, the California Plumbing Code, and California Electrical Code.
 2. In steam rooms and rooms containing tubs or showers, the shower areas shall be finished with a smooth, hard, nonabsorbent surface to a height of not less than 70 inches above the drain inlet in accordance with California Building Code. Toilet rooms and toilet compartments shall be of similar construction to a height of four feet.
 3. Walls of toilet and bathing facilities shall be smooth, waterproof, and kept in good repair.
 4. All walls, ceilings, floors, pools, showers, bathtubs, wet and dry heat rooms, tables, and all other physical facilities shall be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms, or cabinets, showers and toilet rooms shall be thoroughly cleaned at least once each day the business is in operation. Bathtubs shall be thoroughly cleaned after each use.
 5. All building, plumbing, and electrical installations shall be installed under permit issued by the division of building and safety and such installations shall be installed in accordance

with the California Building Code, the California Plumbing Code, and the California Electrical Code.

6. Minimum lighting shall be provided of at least 40 watts of artificial light or its equivalent in natural lighting in each enclosed room or booth where massage services are being performed on a patron. No strobe, flashing lights, or dimmer switches shall be used. No colored lights shall be used nor shall any coverings be used which change the color of the primary light source.
 7. At least one front door which opens to the waiting area shall be the sole means of entry and egress for patrons and visitors.
 8. All interior doors of massage treatment rooms shall not have any locking mechanisms or be capable of being locked or blocked to prevent entry in any manner; however, if a massage treatment room leads directly onto a common hallway that is shared with other, unrelated businesses, the door may remain locked for privacy and security reasons.
 9. All massage establishments or ancillary massage businesses shall be so equipped, maintained, and operated as to effectively control the entrance, harborage, and breeding of vermin, including flies. When flies or other vermin are present, effective control measures shall be instituted for their control or elimination.
 10. Any application for an extension or expansion of a building or other place of business of a massage establishment or an ancillary massage business shall require inspection(s) and shall comply with the provisions and regulations of this Code, including but not limited to, zoning, and building, safety and occupancy standards.
 11. No massage establishment shall be equipped with tinted or one-way glass in any treatment room or office.
- B. In addition to the above requirements, no massage establishment located in a building or structure with glass windows fronting a public street, highway, walkway, or parking area shall hang or use curtains, blinds, shutters, tints or any other material that obstructs, blurs or darkens the view into the premises, unless said windows are installed in a massage therapy room or provide a view into a defined space dedicated solely to the provision of massage services where compliance with this provision would interfere with the privacy of a patron.

Sec. 8.300.230. – Reserved.

Sec. 8.300.240. – Reflexology.

- A. Any person performing reflexology shall be state certified.
- B. Any establishment providing reflexology, either exclusively or in addition to massage, shall obtain a certificate of registration and shall be bound by the requirements of this Chapter.

Sec. 8.300.250. – Advertising.

- A. No person shall place, publish, or distribute, or cause to be placed, published, or distributed, any advertising matter in any form of media whether printed or electronic that would reasonably suggest to prospective patrons that any service or activity is offered or available for immoral purposes, or in a manner intended to arouse, appeal to or gratify a prurient interest, lust, sexual, or passionate desire.
- B. No person shall advertise a massage establishment, an ancillary massage business, or out-call massage services through any print or electronic media that is classified for Adults Only or other similar classification.
- C. No person may discriminate or exclude patrons on the basis of race, gender, religion, age, disability, or sexual orientation in any advertisement.
- D. A person who does not possess a valid CAMTC certificate and for anyone that employs or retains such a person shall not:
 - 1. State or advertise or put out any sign or card or other device, or represent to the public through any print or electronic media, that such person is certified, registered, or licensed by a government agency as a massage therapist or massage practitioner; or,
 - 2. Hold oneself out or use the title of certified massage therapist, certified massage practitioner, or any other term, such as licensed, registered, or CAMTC that implies or suggests that such person is the holder of a CAMTC certificate.

Sec. 8.300.260. – Reserved.

Sec. 8.300.270. – Reserved.

Sec. 8.300.280. – Locational Criteria.

- A. No massage establishment may be located within 500 feet of another massage establishment in the City. This Section shall not apply to businesses operating under a limited exemption.
- B. The distance between a proposed massage establishment and another massage establishment shall be measured in a straight line, without regard to intervening structures or objects, from the nearest point of the building or structure used as a part of the premises where a massage business is located to the nearest point of any building or structure to be used by a proposed massage business.
- C. Any massage business lawfully operating on January 1, 2015 that is not in compliance with the locational requirements of this Section is hereby deemed a nonconforming business use. A nonconforming business use may be permitted to continue so long as all permits and licenses do not expire or be revoked, but any such nonconforming business use shall be subject to Sections 24.465.010 to 24.465.040 of this Code.
- D. Notwithstanding any provision of this title to the contrary, none of the locational criteria set forth in this section may be waived, reduced, or modified in any manner by the variance procedures set forth in Chapter 24.535.

Sec. 8.300.290. – Change of Location.

A change of location of the massage establishment may be approved by the license authority provided there is compliance with all applicable rules and regulations of the city and the new location is zoned for such use. The license authority shall not approve any change of location if the owner or operator of the massage establishment cannot show compliance with provisions of this Chapter and other applicable laws.

Sec. 8.300.300. – Periodic Inspection.

- A. The license authority, City's Code Enforcement staff, or any law enforcement or fire department officer may make reasonable and periodic inspections of the massage establishment, with or without notice, during regular business hours for the purpose of determining that there is compliance with the provisions of this Chapter and other state and local laws. Inspections may

involve verification of the identity and state certifications of all employees.

- B. No person shall refuse to permit, cause delay of, or interfere with, a lawful inspection or compliance check of the massage establishment premises by the officials listed in subsection A of this Section at any time.

Sec. 8.300.310. – Issuance of Notice of Violation.

Where any provision of this Chapter has been violated, any official listed in Section 8.300.300, or designee, shall give notice of such violation by means of a written notice. In any such notification, the inspector shall set forth the specific violation or violations found, the date of violation, the inspector's contact information, a date by which the inspector shall be contacted, and a date by which the violations shall be corrected. It shall be the duty of the massage establishment owner or operator to promptly contact said inspector. Failure to duly contact said inspector and otherwise correct the violation(s) in accordance with the provisions of this Chapter may result in revocation or suspension of the certificate of registration. Where necessary, the notice may also serve as a notice of revocation or suspension per Section 8.300.330.

Sec. 8.300.320. – Grounds for Revocation, Suspension, or Nonrenewal of Certificate of Registration.

- A. Any certificate of registration issued pursuant to this Chapter may be suspended or revoked by the license authority after a hearing before the license authority upon any of the following grounds:
 - 1. A violation of any provision of this Chapter or of California Business and Professions Code Sections 4600 *et seq.*
 - 2. There have been repeated violations of the provisions of this Chapter which require ongoing supervision or action by law enforcement officers which demonstrate that the owner or operator is unable to operate or manage the massage establishment in a law abiding manner.
 - 3. There is substantial evidence of prostitution occurring at the massage establishment.
 - 4. A finding is made that would have justified denying the application for the certificate of registration in the first instance.
 - 5. The registered certificate holder has continued to operate a massage establishment after the certificate of registration has been suspended.

6. Failure to timely contact any official listed in Section 8.300.300 after having received a notice of violation.
 7. The owner or operator, or registered certificate holder, has allowed a person to provide massage who:
 - (a) Does not have a valid and current state certificate; or,
 - (b) Does not have a valid and current city business tax certificate.
- B. In addition, any disciplinary action taken by CAMTC shall be considered in determining grounds for revocation, suspension or nonrenewal. Any revocation by CAMTC of a practitioner license for a provider who is a sole practitioner shall result in immediate revocation of the certificate of registration and require reapplication by the sole practitioner for a new certificate of registration.

Sec. 8.300.330. – Notice of Revocation or Suspension of Certificate of Registration.

A notice of intent to revoke or suspend a certificate of registration shall contain a statement of the violation(s) which constitute the basis for the revocation or suspension. The license authority, shall serve the notice on the owner or operator of the massage establishment, as well as on the property owner, by personal delivery or U.S. mail to the address shown on the last application or renewal. Service shall be deemed complete when personal service is made, or when the notice is mailed (postmark date). The notice will include information about the right to a hearing requested within fifteen (15) days of service, and the exhaustion of administrative remedies as a prerequisite to litigation.

Sec. 8.300.340. – Grounds for Revocation, Suspension, or Nonrenewal of Business Tax Certificate.

Any finding supporting revocation, suspension, or nonrenewal of a certificate of registration pursuant to Section 8.300.320 shall also be grounds for revocation, suspension, or nonrenewal of any business tax certificate pursuant to Chapter 4.155, Article 5.

Sec. 8.300.350. – Hearing by License Authority.

- A. A hearing to revoke, suspend, or deny any certificate of registration shall be scheduled before the license authority within thirty (30) days of the filing of the request with the city clerk. Notice of the time and place of the hearing shall be given to the owner/operator and property owner at least fifteen (15) days in advance of the date of the hearing, which may be

continued for good cause by the license authority upon the mutual consent of the parties.

- B. The license authority shall consider all material presented at the hearing. Formal rules of evidence shall not apply, and any interested person may present relevant evidence bearing on the issue(s) involved in the matter. Hearsay evidence may be admissible if it is the sort upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Irrelevant, collateral, and repetitious testimony shall be excluded.
- C. The applicant shall have the burden of proving that he or she meets the requirements for issuing the certificate of registration in the first instance; the City has the burden in proving that grounds exist for revoking, suspending, or denying a certificate of registration.
- D. The registered holder/applicant shall not provide his or her own interpreter for the hearing. Where an interpreter is needed, the registered holder/applicant shall notify the City, and City shall provide the interpreter. Failure to request an interpreter shall be deemed a voluntary and intelligent waiver of the right to an interpreter.
- E. Written notice of the license authority's decision shall be issued to the registered holder/applicant, as well as the property owner, within 30 days of the conclusion of the hearing. The decision shall provide notice of the right to appeal the decision to the City Manager.

Sec. 8.300.360. – Appeals.

- A. Any person aggrieved by the decision of the license authority shall have the right to appeal to the City Manager. The notice of appeal shall state the specific basis for such appeal, accompanied by supporting substantiating evidence, and must be filed with the City Clerk within 15 days following the date of the notice of decision. Failure to timely file an appeal shall be deemed a waiver of all rights of appeal.
- B. The City Clerk shall not accept an appeal, and no hearing shall be held, unless the appellant has paid a filing fee, in an amount set by Resolution of the City Council, to defray the cost of such appeal. Any appeal without the payment of fees shall be considered to be untimely.
- C. If a timely appeal is filed, the effect of the license authority's decision will be stayed pending the City Manager's resolution of the matter, unless the license authority specifically finds that the public health, safety, or welfare is endangered.

- D. Upon receipt of the notice of appeal with the required fee, the City Clerk shall set the matter for hearing at least 14 days, but not more than 30 days, from the date of the appeal request. The City Clerk shall give the appealing party and property owner written notice of the time and place of the hearing. The hearing may be continued to a later date only upon the mutual consent of the parties.
- E. The appeal hearing shall be conducted as described above in Section 8.300.350.
- F. The City Manager's decision shall be communicated in writing to the appellant and property owner within 20 days after the close of the hearing. The City Manager's decision shall state whether the decision of the license authority is affirmed, modified, or reversed and shall state the reasons therefore. The decision of the City Manager will include notice that the decision is final and conclusive, that judicial review may be sought therefrom pursuant to California Civil Procedure Code Section 1094.5, and that any action filed in the superior court shall be filed within 90 calendar days following the City Manager's notice of decision.
- G. The affected registered certificate holder may have up to 30 days following a final decision revoking, suspending, or denying the certificate of registration to cease operations.

Sec. 8.300.370. – Surrender of Certificate of Registration.

If the certificate of registration is revoked or suspended, or renewal denied, the registration shall be surrendered to the license authority within 30 days of a final decision. If no appeal is filed, the revocation or suspension shall become effective within 30 days of the expiration of the period for filing an appeal.

Sec. 8.300.380. – Reapplication After Surrender.

- A. A person may not apply for a new certificate of registration pursuant to this Chapter for a period of one year of the date of surrender of a certificate of registration.
- B. No certificate of registration shall be issued to any person for a massage establishment at a location affected by suspension of a certificate of registration during the period of suspension.
- C. No certificate of registration shall be issued to any person for a massage establishment at a location affected by revocation of a certificate of registration for a period of one year from the date revocation is effective.

Sec. 8.300.390. – Penalties.

- A. A violation of any provision of this Chapter shall be a misdemeanor, as set forth in Section 1.150.010 of this Code, unless, in the sole discretion of the City Attorney, it is reduced to an infraction. Any violation herein shall be prosecuted as a general intent crime.
- B. The City may seek redress through the City's administrative penalty process for civil penalties pursuant to Chapter 1.050.
- C. Each day a violation of this Code or other ordinance of the City continues shall constitute a separate offense.
- D. In addition to the above, any massage establishment operated, conducted, or maintained contrary to the provisions of this Chapter shall be, and the same is hereby declared, to be unlawful and a public nuisance, and the City Attorney may, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings, for the abatement, removal, and enjoinder thereof, in any manner provided by law.
 - 1. Nuisance abatement cost liability. Any person creating, causing, committing, or maintaining any nuisance related to a massage establishment or out-call massage business, as well as the property owner where such nuisance is located, is liable for the costs of abating the nuisance. Abatement costs include, without limitation, law enforcement and staff time incurred by the City, court costs, and costs of repair. Abatement costs do not include attorney's fees unless, at the time of request of such fees, they are sought in writing by the City, and in which case, they may be awarded to the prevailing party in any action to abate the relevant nuisance.
 - 2. Nuisance abatement lien. In addition to any other remedies or powers under civil or criminal law, the City Attorney is hereby authorized to collect all abatement costs from the abatement of any nuisance through a nuisance abatement lien. Prior to the recordation of this lien, notice shall be provided to the owner of record of the parcel of land on which the nuisance is maintained, based on the last equalized assessment roll or the supplemental roll, whichever is more current. Such notice shall comply with the procedures set forth in California Government Code Section 38773.1, or any permitted alternative procedures allowed by law.

3. Cost of nuisance abatement as a special assessment.
As an alternative to a nuisance abatement lien as set forth above in Section 8.300.390(B)(2), the cost of abatement related to a massage establishment or out-call massage business may be applied as a special assessment upon the parcel of land on which the massage establishment or out-call massage business is located. Any such process to place a special assessment upon a parcel of land will comply with the notice and procedural requirements set forth in California Government Code Section 37773.5 or any successor or replacement provision, or any permitted alternative procedures allowed by law.
- E. City may also take such other steps and may apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such massage establishments and restrain and enjoin any person from operating, conducting or maintaining a massage establishment contrary to the provisions of this Chapter. If an injunction is sought, attorney's fees and costs will be assessed at the discretion of the court against the party subject to said injunction.

Sec. 8.300.400. - Reserved.

Sec. 8.300.410. – Property Owner Responsibility.

Each property owner of the physical premises on which a massage establishment is located must provide the acknowledgement in Section 8.300.080(A)(17), above, consenting to a massage business on their premises and acknowledging that the property owner may incur liability imposed by law, including, but not limited to, the costs of any nuisance abatement under this Chapter. The City may provide property owners with notices of violations, fines, convictions, suspensions, or revocations of massage establishment certificates and licenses or otherwise, related to this Chapter on said property.

Sec. 8.300.420. - Interpretation.

No provision of this Chapter shall be deemed, whether directly or indirectly, to authorize any act which is otherwise prohibited by any law of the State of California or to require any act which is otherwise prohibited by any law of this State of California. No provision of this Chapter is intended to or shall be interpreted to, either directly or indirectly, prohibit any act or acts which are prohibited by any law of the State of California.

Sec. 8.300.430. - Validity; severability.

If any section, subsection, sentence, clause, phrase, provision, or portion of this Chapter, or the application thereof to any person or circumstances, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or provisions of this Chapter or their applicability to distinguishable situations or circumstances. In enacting this Chapter, it is the desire of the City Council to regulate validly to the full measure of its legal authority in the public interest, and to that end, the City Council hereby declares that it would have adopted this Chapter and each section, subsection, sentence, clause, phrase, provision or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions thereof might be declared invalid or unconstitutional in whole or in part, as applied to any particular situation or circumstances, and to this end the provisions of this Chapter are intended to be severable.”

Section 3. CEQA Findings. This ordinance is exempt from review under the California Environmental Quality Act (CEQA; California Public Resources Code Sections 2100 *et seq.*) and CEQA Guidelines (Title 14, California Code of Regulations Sections 15000 *et seq.*) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378 of the CEQA Guidelines because it has no potential for resulting in direct or indirect physical change to the environment).

Section 4. This ordinance shall go into effect on the thirty-first (31st) day after its passage. Upon the effective date of this ordinance, Ordinance No. 2015-016, an interim urgency measure prohibiting new or expanded massage establishments in the City, shall no longer be of force and effect.

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PASSED AND ADOPTED this _____ day of _____ 2016.

Eric Nasarenko, Mayor

ATTEST

City Clerk

APPROVED AS TO FORM
GREGORY G. DIAZ, CITY ATTORNEY

Jennifer Lee
Assistant City Attorney