



City of San Leandro

Meeting Date: June 20, 2016

Staff Report

File Number: 16-317

Agenda Section: ACTION ITEMS

Agenda Number: 10.A.

TO: City Council

FROM: Chris Zapata
City Manager

BY: Rich Pio Roda
City Attorney

FINANCE REVIEW: Not Applicable

TITLE: Staff report for an ordinance amending San Leandro Municipal Code Chapter 4.23 to repeal provisions related to the regulation of acupuncturists and to regulate the operation of massage establishments; and to repeal the ordinance establishing a moratorium on massage related land uses.

RECOMMENDATIONS

Staff recommends that the City Council adopt the attached Ordinance amending San Leandro Municipal Code Chapter 4.23 to repeal provisions related to the regulation of acupuncturists and to regulate the operation of massage establishments; and to repeal the ordinance establishing a moratorium on massage related land uses.

BACKGROUND AND SUMMARY

In 2009, the California Legislature adopted Senate Bill 731 ("SB 731"), which added the Massage Therapy Act into state law. The Massage Therapy Act effectively eliminated local zoning authority over massage establishments and limited the City of San Leandro's ability to regulate massage establishments through business licensing, zoning, and health, safety, and welfare regulations. As a result, staff stopped enforcing provisions of the City's Zoning Code and Municipal Code that were inconsistent with SB 731.

Prior to the effective date of the Massage Therapy Act, San Leandro had 11 establishments. After the passage of the Massage Therapy Act in 2009, the number of massage establishments in the City increased to approximately 45. The noticeable increase in establishments was similar to other cities in Alameda County. Like San Leandro, cities throughout California received numerous complaints regarding illicit activity at massage establishments, including prostitution and human trafficking. Because of increased complaints, the Police Department diverted significant public safety resources to investigate complaints of illicit activity at numerous massage establishments. In San Leandro, one massage establishment, with a history of multiple offenses for prostitution since 2011, was

shut down as part of a county-wide sting operation. Another massage establishment in San Leandro had its business license revoked because of prostitution activities.

In 2014, the Governor signed Assembly Bill 1147 ("AB 1147") into law, which became effective January 1, 2015. AB 1147 amended state law to return zoning and business licensing authority over massage establishments to cities. In October 2014, the City Council adopted, and later extended, a temporary moratorium to prohibit the relocation and establishment of new and existing massage establishments pending effective changes in state law. At the time the City Council adopted the moratorium on the establishment and relocation of new and existing massage establishments, the City revoked the business license of one massage establishment for solicitation of prostitution. In October 2015, the City Council extended the temporary moratorium a second and final time to allow the City additional time to study and conduct community outreach to determine how best to regulate massage establishments. The moratorium expires on October 20, 2016.

Since the City Council established and extended the temporary moratorium on the establishment and relocation of massage establishments, staff has prepared amendments to the Municipal Code to update performance standards for massage establishments. San Leandro Municipal Code Chapter 4.23, "Massage and Acupuncture Establishments and Services," is outdated and includes provisions regulating acupuncturists throughout the City. Local regulations regarding acupuncturists are no longer required because state law comprehensively regulates acupuncture. The proposed amendments repeal and replace San Leandro Municipal Code Chapter 4.23 in its entirety to eliminate provisions regulating acupuncturists and to regulate massage establishments consistent with state law.

While AB 1147 amended state law to return significant regulatory authority over massage establishments to cities, there are still some limitations on the City's ability to regulate massage establishments. For example, cities cannot prohibit an establishment from locking its external doors if the massage establishment is owned by one individual with one or no employees or independent contractors; impose a dress code requirement on California Massage Therapy Council (CAMTC) certified massage technicians that exceed the dress code requirement delineated under state law; or prohibit specific massage techniques recognized by CAMTC as legitimate. Following review, staff has made proposed amendments to Chapter 4.23 to ensure consistency with state law and to adopt procedures and requirements that were previously banned under the 2009 Massage Therapy Act.

The main provisions of the proposed Ordinance are as follows:

- Eliminates the requirement that CAMTC certified massage technicians register with the City and adds the requirement that massage establishment operators maintain an updated list of CAMTC certified massage technicians with the City.
- Requires all massage establishment operators to obtain an operator permit. Applicants must undergo a background check including: inquiry into whether the applicant was required to register as a sex offender; inquiry into whether the applicant had been convicted of a felony; and the applicant's employment history within the past five years. These amendments permit the City to recoup its costs with an application fee from all massage establishment operators.

- The City may deny a massage establishment operator permit for any applicant that has been convicted of any crime involving dishonesty, fraud, deceit, violence, or moral turpitude within five years of the application.
- Makes it illegal for massage establishments to employ massage technicians that have had their CAMTC certifications revoked; makes it illegal for massage establishments to engage in sexually suggestive advertising; and requires massage establishment operators to notify CAMTC of any certified massage technicians that violate the Massage Therapy Act.
- Requires all individuals practicing massage in the City to obtain state certification. Allows existing massage technicians to operate pursuant to a masseuse permit issued by the City until December 1, 2016, at which point the massage therapist will have to obtain state certification.
- Sets operational requirements for massage establishments including: setting hours of operation; minimum clothing requirements for patrons and visitors; advertising limitations; and requiring visibility into the front reception area of establishments.
- Sets health and safety requirements for massage establishments including: requiring towels and linens to be properly sanitized; prohibiting invasive procedures; requiring proper draping of patrons during massage; and prohibiting alcohol on the premises of a massage establishment.
- Operator permits are valid for three years and can be renewed for subsequent three year terms. Operators with an existing massage establishment permit or those who are previously exempt from obtaining a permit under state law will receive an operator permit and be required to renew the permit on the date that the existing permit would have expired.
- Includes provisions for the City to revoke or suspend operator permits including provisions for immediate interim suspension upon determining that the suspension is necessary to protect public health, safety or welfare.

The proposed changes to Chapter 4.23 are intended to strengthen the City's standards for massage businesses to the extent allowed by state law. The Ordinance repeals the existing moratorium upon the effective date of the Ordinance.

The City held two community meetings - on August 25th and October 22, 2015 - with massage establishment owners in order to solicit input and receive feedback on the proposed amendments. The meetings included translation services and did not result in any objections from existing massage establishment providers that attended.

ATTACHMENTS

None.

PREPARED BY: Richard Pio Roda, City Attorney



City of San Leandro

Meeting Date: June 20, 2016

Ordinance

File Number: 16-318

Agenda Section: ACTION ITEMS

Agenda Number:

TO: City Council

FROM: Chris Zapata
City Manager

BY: Rich Pio Roda
City Attorney

FINANCE REVIEW: Not Applicable

TITLE: An ORDINANCE of the City of San Leandro Amending San Leandro Municipal Code Chapter 4.23 "Massage and Acupuncture Establishments and Services" to Repeal Provisions Related to the Regulation of Acupuncturists and to Regulate the Operation of Massage Establishments; and to Repeal Related Temporary Moratorium Ordinance

WHEREAS, the California Constitution, Article XI, Section 7, provides cities and counties with the authority to enact ordinances to protect the health, safety, welfare, and morals of their citizens; and

WHEREAS, California courts have affirmed the power of a city to regulate business activity in order to discourage violations of law in such cases as Cohen v. Board of Supervisors (1985) 40 Cal.3d 277, Bravo Vending v. City of Rancho Mirage (1993) 16 Cal.App.4th 383, and Prime Gas v. City of Sacramento (2010) 184 Cal.App.4th 697; and

WHEREAS, local zoning controls allow local governments to regulate the operation of lawful businesses to avoid circumstances which facilitate violations of state, federal, and local laws; and

WHEREAS, the City of San Leandro has an interest in planning and regulating the use of property within the City. Implicit in any plan or regulation is the City's interest in maintaining the quality of urban life and the character of the City's neighborhoods. Without stable, well-planned neighborhoods, sections of the City can quickly deteriorate, with tragic consequences to social, environmental, and economic values; and

WHEREAS, cities have traditionally had a high degree of local control related to local zoning and land use authority over massage establishments; and

WHEREAS, the California Legislature adopted Senate Bill 731, effective July 1, 2009, adding and repealing Chapter 10.5 (commencing with Section 4600) of Division 2 of the

Business and Professions Code, relating to massage therapy (“Massage Therapy Act”); and

WHEREAS, the Massage Therapy Act placed substantial limits on cities’ regulation of massage establishments as it relates to business licensing, zoning, and health, safety, and welfare regulation; and

WHEREAS, the California Legislature recently passed Assembly Bill 1147 which become effective January 1, 2015, amending Section 460 of, and adding and repealing Chapter 10.5 (commencing with Section 4600) of Division 2 of, the Business and Professions Code, and amending Section 51034 of the Government Code; and

WHEREAS, Assembly Bill 1147 amended the Massage Therapy Act to return land use and regulatory authority over massage establishments to cities; and

WHEREAS, in 2009, San Leandro had 11 establishments that provided massage services and now has approximately 45 establishments that provide massage services; and

WHEREAS, cities throughout California have received numerous complaints regarding illicit activity, including prostitution, at massage establishments. In San Leandro one massage establishment, with a history of multiple offenses for prostitution since 2011, was recently shut down as part of a county-wide sting operation and San Leandro Police uncovered prostitution activity at another massage establishment as part of a sting operation; and

WHEREAS, San Leandro, consistent with the Massage Therapy Act prior to Assembly Bill 1147, stopped enforcing existing zoning regulations that address the location of massage establishments near potentially sensitive areas throughout the City; and

WHEREAS, as applications for business licenses and massage permits are submitted to the City, there is no determination whether the locations of such uses are consistent with the purpose and intent of the City's zoning ordinance and unregulated massage establishments conflict with contemplated zoning and with the public health, safety, and welfare; and

WHEREAS, following changes in state law pursuant to Assembly Bill 1147, the City Council (1) intends to address community concerns regarding the establishment and operation of massage establishments, (2) has studied the potential impacts the massage establishments may have on the public health, safety and welfare, (3) has studied and determined the appropriate and necessary local regulations for massage establishments, (4) studied and determined the appropriate zoning and location for massage establishments, and (5) determined appropriate controls for protection of public health and welfare; and

WHEREAS, the City Council intends to continue the City’s previous enforcement of existing zoning regulations that require massage establishments to obtain a conditional use permit to operate in throughout the City, and intends to regulate the operation of massage establishments; and

WHEREAS, the failure of massage establishments to comply with local and state laws, particularly laws prohibiting prostitution and other illicit activity, presents an imminent threat to the public health, safety, and welfare of the residents of the City; and

WHEREAS, San Leandro has a substantial interest in promoting compliance with state

laws prohibiting prostitution and in promoting compliance with federal, state and local laws intended to discourage prostitution and other illicit activity; and

WHEREAS, the City Council adopted a temporary 45-day moratorium on the establishment and relocation of new and existing massage establishments through Ordinance 2014-019, which moratorium was extended through Ordinance 2014-022. The moratorium will expire on October 20, 2016 unless repealed before then; and;

WHEREAS, the City currently regulates acupuncturists and acupuncture establishments; and

WHEREAS, the City does not desire to regulate acupuncturists and acupuncture establishments which are regulated by state law; and

WHEREAS, the amendments to the Municipal Code propose to repeal and replace Chapter 4.23 in its entirety as shown in Exhibit A, which exhibits are attached and incorporated herein by reference.

Now, therefore, the City Council of the City of San Leandro does ordain as follows:

SECTION I. Recitals. The above recitals are true and correct and made a part of this ordinance.

SECTION II. CEQA. Approval of the amendments is exempt from further environmental review under the general rule in California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) that CEQA only applies to projects that have the potential for causing a significant effect on the environment. As a series of text amendments and additions, it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment.

SECTION III. Approval. The City Council hereby approves the amendments to the Municipal Code, more particularly, repealing and replacing Chapter 4.23, as shown in attached Exhibit A, which is incorporated herein by reference and available for review in the City Clerk's office during normal business hours.

SECTION IV. Moratoria repealed. The temporary moratorium on the establishment and relocation of new and existing massage establishments, as established through Ordinance 2014-019, and extended through Ordinance 798-14, is repealed as of the effective date of this Ordinance.

SECTION V. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION VI. Publication and effective date. This Ordinance shall take effect thirty (30) days after adoption. The City Clerk of the City of San Leandro shall cause the Ordinance to be published in accordance with section 36933 of the Government Code of the State of California.

EXHIBIT A

Chapter 4.23

REGULATIONS FOR MASSAGE ESTABLISHMENTS AND MASSAGE TECHNICIANS

Article 1. Purpose

4-23-100 Purpose.

In enacting these regulations the City Council recognizes that massage therapy is a viable professional field offering the public valuable health and therapeutic services. It is the purpose and intent of the City Council to protect the public health, safety, and welfare and ensure massage services are provided in a lawful and professional manner by doing the following: providing minimum qualifications for massage establishments; and providing minimum building, sanitation, and operation standards for massage services. The City intends to comply with and rely upon Section 4600 et seq., of the California Business and Professions Code, which was adopted as SB 731 by the Legislature in 2008 and subsequently amended by AB 1147 by the Legislature in 2014.

Article 2. Definitions

4-23-200 Definitions.

For the purpose of this Chapter, unless otherwise apparent from the context, certain words and phrases used in this Chapter are defined as follows:

- (a) "CAMTC" or "California Massage Therapy Council" means the Massage Therapy Organization created and defined under California Business and Professions Code Section 4600 et seq.
- (b) "Certified massage technician" means a massage technician certified by the CAMTC as a certified massage practitioner or as a certified massage therapist pursuant to Section 4604 or 4604.2 of the California Business and Professions Code.
- (c) "Inspector" means an individual designated by the Permit Administrator to conduct any inspections required or permitted under this Chapter.
- (d) "Massage" means the scientific manipulation of the soft tissues, in exchange for compensation such as payment, loan, donation, contribution, deposit, exchange, or gift of money or thing of value.
- (e) "Massage establishment" means any business or premises, including a sole proprietorship, where massage is provided. Out-call massage may be provided at a location designated by the patron.
- (f) "Massage technician" or "technician" means any person who massages, excluding any person licensed under Business and Professions Code Sections 2000 et seq. (medicine), 2600 et seq. (physical therapy), 2700 et seq. (nursing), or 1000 et seq. (chiropractic), as amended.
- (g) "Operator permit" means the permit required by Section 4-23-305 to operate a massage establishment.
- (h) "Out-call massage" means massage performed by a certified massage technician at a location other than a massage establishment.
- (i) "Owner" or "operator" means any of the following individuals: the sole technician of a sole proprietorship operating a massage establishment; any general partner of a

general or limited partnership that owns a massage establishment; any person who has ten percent or greater ownership interest in a corporation that owns a massage establishment; any person who is a member of a limited liability company that owns a massage establishment; and all owners of any other type of business entity that owns a massage establishment.

(j) “Patron” means an individual not retained or employed by the massage establishment, who is receiving, waiting to receive, or that has just received massage services, but excludes law enforcement personnel or governmental officials performing governmental business.

(k) “Permit Administrator” means the City employee designated by the City Manager to oversee the implementation and enforcement of this Chapter.

(l) “Permittee” means the holder of an operator permit.

(m) “Person” means all domestic and foreign individuals, corporations, associations, syndicates, partnerships, firms, joint ventures, limited liability companies, or combination of individuals.

(n) “Sole proprietorship” means a business where the owner is the only person employed by that business to provide massage.

(o) “Visitor” means a person not retained or employed by the massage establishment and not receiving, waiting to receive, or that has just received massage services, but excludes law enforcement personnel or governmental officials performing governmental business.

Article 3. Permit and Certifications

4-23-300 Certification by CAMTC required for technicians.

It is unlawful for any person to practice massage within the City unless that person is a certified massage technician. Massage establishment owners shall ensure that all employed massage technicians are certified massage technicians. Non-certified massage technicians shall be permitted to practice massage pursuant to a valid masseur or masseuse permit issued by the City of San Leandro until December 1, 2016. Such non-certified massage technicians may be employed by massage establishments.

The Permit Administrator shall revoke a City-issued masseur or masseuse permit if he or she finds:

(a) That any information contained in or submitted with the application for the permit is not true; or

(b) That the applicant has been convicted of any of the following offenses or convicted of an offense without the State of California that would have constituted any of the following offenses if committed within the State of California:

(1) An offense involving conduct which requires registration pursuant to Section 290 of the Penal Code;

(2) An offense involving the use of force and violence upon the person of another that amounts to a felony;

(3) An offense involving sexual misconduct with children;

(4) An offense as defined in Section 315, 316, 318, 647(b) or 647b of the Penal Code of the State of California.

(c) Notice of revocation of the permit shall be given in writing to the masseur or masseuse by the Permit Administrator. The masseur or masseuse shall cease all operations under the permit within forty-eight (48) hours of delivery of said notice, unless a notice of appeal is filed consistent with the procedures provided in Section 4-23-315(d) of this Chapter.

4-23-305 Operator permit.

No massage establishment may operate in the City unless and until all owners of the massage establishment have applied for and obtained an operator permit from the Permit Administrator pursuant to this section. Massage establishment owners who have an existing massage establishment permit or who were previously exempt from obtaining a massage establishment permit shall be issued an operator permit without having to submit an application and will be required to renew the operator permit on the date that the existing massage establishment permit would have expired or pursuant to this Chapter.

(a) Application for Operator Permit. All owners of the massage establishment, or their duly authorized agent, shall file an application for an operator permit for the massage establishment on a form provided by the Permit Administrator. For purposes of this section, the “applicant” for the operator permit shall refer to and include each and every owner of the massage establishment. The application shall include the following information:

- (1) Name, address, and telephone number of the massage establishment;
- (2) The name, residence address and telephone number, and business address and telephone number of the massage establishment owner(s) applying for the operator permit;
- (3) The form of business under which the applicant will be conducting the massage establishment, i.e., corporation, general or limited partnership, limited liability company, or other form. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the names and residence addresses of each of its officers, directors, and each shareholder holding more than ten percent of the stock of the corporation. If the applicant is a general or limited partnership, the application shall set forth the name and residence address of each of the partners, including limited partners. If one or more of the partners is a corporation, the provisions of this section pertaining to a corporate applicant shall apply. If the applicant is a limited liability company, the application shall set forth the name and residence address of each of the members. If one or more of the members is a partnership, limited liability company, or corporation, the provisions of this section pertaining to a partnership, limited liability company, or corporate applicant shall apply, as applicable;
- (4) The name and address of the owner of the real property upon, in, or from which the massage establishment is to be operated. In the event the applicant is not the legal owner of the property, the application shall be accompanied by a copy of any written lease between the applicant and the property owner authorizing use of the premises for a massage establishment, or, alternatively, if there is no written lease, then a written, notarized acknowledgment from the property owner that the property owner has been advised that a massage establishment will be operated by the applicant upon, in, or from the property owner’s property;
- (5) A description of the proposed massage establishment, including the type of treatments to be administered;
- (6) For each person that the massage establishment employs or retains to perform massage, a copy of that person’s current certification from the CAMTC as a certified massage technician, and a copy of that person’s CAMTC identification card. The City shall maintain a list of massage technicians retained to perform massage at the massage establishment;
- (7) Whether any license or permit has ever been issued to the applicant by any jurisdiction under the provisions of any ordinance or statute governing massage, and as to any such license or permit, the name and address of the issuing authority, the effective dates of such license or permit, whether such license or permit was ever suspended, revoked, withdrawn, or

denied; and copies of any documentary materials relating to such suspension, revocation, withdrawal, or denial;

(8) Whether the applicant has within the five years immediately preceding the date of application been convicted in any state of any felony;

(9) Whether the applicant is currently required to register under the provisions of Section 290 of the California Penal Code;

(10) The applicant's business, occupation, and employment history for five years preceding the date of application, and the inclusive dates of same;

(11) One set of fingerprints for each applicant in a form satisfactory to the Permit Administrator. The fingerprints shall be taken at a place designated by the Permit Administrator, and any required fee for such fingerprinting shall be paid by the applicant;

(12) Such other information as may be required by the Permit Administrator to determine compliance with any other eligibility requirements for issuance of the operator permit as specified by Federal, State, or local law. The Permit Administrator may waive any of the requirements of this section for an owner who is also a certified massage technician.

(b) Application and Compliance Fee. Any application for an operator permit under this Chapter shall be accompanied by a nonrefundable application fee. The fee to issue or to renew an operator permit shall be established from time to time by resolution of the City Council and shall be included within the City's Master Fee Schedule. The fee shall be calculated so as to recover the cost of administration and enforcement of this Chapter, including, for example, issuing an operator permit, administering this Chapter, establishment inspection and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this Chapter. All fees and interest upon proceeds of fees shall be used exclusively to fund the program. Fees are nonrefundable except as may be required by law.

(c) Issuance or Denial. The Permit Administrator shall grant an operator permit for the massage establishment if the massage establishment owners have satisfied the requirements of this section and all other applicable laws including, but not limited to, the City's building, zoning, and health regulations, unless the Permit Administrator determines any or more of the following to be true:

(1) The applicant, or any shareholder, partner, or member of the applicant, within five years immediately preceding the date of filing of the application, has been convicted in a court of competent jurisdiction of any offense that relates directly to the operation of a massage establishment whether as a massage establishment operator or as a person practicing massage, or as an employee of either; or has at any time been convicted in a court of competent jurisdiction of any felony the commission of which occurred on the premises of a massage establishment; or

(2) The applicant is currently required to register under the provisions of Section 290 of the California Penal Code; or

(3) The applicant, or any shareholder, partner, or member of the applicant, has been convicted in a court of competent jurisdiction of any violation of Section 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), or 653.22 of the California Penal Code, or conspiracy or attempt to commit any such offense, or any other crime involving dishonesty, fraud, deceit, violence, or moral turpitude, or any offense in a jurisdiction outside of the State of California that is the equivalent of any of the aforesaid offenses; or

(4) The applicant, or any shareholder, partner, or member of the applicant, has been subjected to a permanent injunction against the conducting or maintaining of a nuisance pursuant

to Sections 11225 through 11235 of the California Penal Code, or any similar provision of law in a jurisdiction outside the State of California; or

(5) The applicant, or any shareholder, partner, or member of the applicant, has knowingly made a false statement or omission of a material fact in the application for the operator permit; or

(6) The applicant, if an individual, has not attained the age of eighteen years; or

(7) The applicant, or any shareholder, partner, or member of the applicant, within five years of the date of application, and as established by clear and convincing evidence, has engaged in acts prohibited under California Penal Code Section 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), or 653.22; or

(8) The applicant, or any shareholder, partner, or member of the applicant, within five years immediately preceding the date of filing of the application, has had a permit or license to practice massage or to own and/or operate a massage establishment revoked or denied in any jurisdiction.

(d) Notice to Property Owner. Where the applicant is not the record owner, as shown on the latest County assessment roll, of the property upon, in, or from which the massage establishment is to be operated, then upon issuance of an operator permit, the Permit Administrator may send a written notice to the property owner advising of the issuance of the permit and of the regulations applicable to the massage establishment and the property pursuant to this Chapter. Any other notices sent to the applicant pursuant to this Chapter at any time before or after issuance of the operator permit may also be sent to the property owner.

(e) Notice of Denial—Appeal. If an operator permit is denied, the Permit Administrator shall serve on the applicant, in the manner provided in Section 4-23-315 of this Code, a written notice of denial that shall specify the grounds for the denial and shall indicate the appeal procedures.

(f) Display of Permit. Each holder of an operator permit shall display that permit in an open and conspicuous place on the premises visible from the entrance and/or reception and waiting area of the massage establishment or stored in a binder behind the counter and immediately available upon request from an inspector.

(g) Term. An operator permit issued pursuant to the terms of this Chapter shall be valid for a term of three years from the date of issuance. A permit that has not expired and has not been suspended or revoked may be renewed for another three-year period, on submittal of a written application and payment of a renewal application fee to be established by resolution of the City Council.

(h) Requirement to Amend Operator Permit Application. In addition to the requirements of Sections 4-23-410 and 4-23-415, whenever the information provided in the application for operator permit on file with the City changes, the operator shall, within ten business days after such change, file an amendment to the operator permit application with the Permit Administrator. The applicant shall file an amendment to the information required by Section 4-23-305(a)(6) with the Permit Administrator prior to permitting any certified massage technician employed or retained to perform massage to begin providing services on the premises of the massage establishment.

(i) Violations and Remedies.

(1) Operator Responsible for Employees. For the purpose of enforcing the requirements of this Chapter, the operator shall be responsible for the conduct of all massage

employees, agents, independent contractors, or other representatives while such persons are on the premises of the massage establishment.

(2) Revocation. An operator permit may be suspended or revoked by the Permit Administrator as provided in Section 4-23-315. Upon revocation, the massage establishment shall immediately cease operation, and, if so ordered by the Permit Administrator, no other massage establishment shall be permitted to operate at that location by any person for a period of not less than three years. If the operator is not also the legal owner of the real property on which the massage establishment is situated, notice of such revocation and the three-year prohibition shall be provided by the Permit Administrator to the owner of record of the property as shown on the latest County assessment roll.

(3) Cumulative Remedies. The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.

4-23-310 Revocation or suspension—Reasons.

Any operator permit issued pursuant to this Chapter may be suspended or revoked by the Permit Administrator after a hearing, where it is found by clear and convincing evidence that any of the following have occurred:

(a) Finding of Violation. The person(s) to whom the operator permit has been issued, or any person employed or retained by the massage establishment, has been found to have violated any provision of this Chapter; or

(b) Prohibited Conduct. The permittee or any person employed or retained by the massage establishment has been convicted in a court of competent jurisdiction of having violated, or has engaged in conduct constituting a violation of, any of the following: California Penal Code Section 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), or 653.22, or conspiracy or attempt to commit any such offense, or any offense in a jurisdiction outside of the State of California that is the equivalent of any of the aforesaid offenses; or

(c) Registration under Penal Code Section 290. The permittee or any person employed or retained by the massage establishment is required to register under Section 290 of the California Penal Code; or

(d) Nuisance Injunction. The permittee has been subject to a permanent injunction against the conducting or maintaining of a nuisance pursuant to this Code, or Sections 11225 through 11235 of the California Penal Code, or any similar provision of law in any jurisdiction outside the State of California; or

(e) Fraud or Misrepresentation. The permittee or any employee has engaged in fraud or misrepresentation or has knowingly made a misstatement of material fact while working in or for the massage establishment; or

(f) Operation during Suspension. The permittee has continued to operate the massage establishment after the operator permit has been suspended; or

(g) Massage without Certification. Massage has been performed on the premises with or without the permittee's actual knowledge, by any person who is not a CAMTC, or equivalent, authorized, certified massage technician; or

(h) Prohibited Acts. There have been one or more acts prohibited under California Penal Code Section 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), or 653.22 taking place on the premises, whether or not any criminal prosecution has been pursued or conviction obtained for such acts, and whether or not they occurred with or without the actual knowledge of the permittee; or

(i) Sexual Touching. The permittee or any person employed or retained by the massage establishment or any other person on the premises of the massage establishment has engaged in conduct or committed acts that a reasonable person in a patron's position would understand as an offer to perform on or engage in with the patron acts that are sexual in nature or that involve touching of the patron's genitals, pubic area, anus, and areola.

(j) Negligent Supervision. The permittee failed to provide adequate supervision of the massage establishment, resulting in a pattern of at least three violations of this Code or State or Federal law.

4-23-315 Revocation or suspension—Hearing procedure.

(a) Written Notice Required. The Permit Administrator, before revoking or suspending any operator permit, shall give the permittee at least ten calendar days' written notice of the alleged grounds for revocation or suspension and shall conduct a hearing in the matter of whether the permit shall be revoked or suspended. The hearing shall be conducted at least ten calendar days from the date of written notice which shall be provided in the following manner:

(1) Service of Notice and Order. All notices shall be posted on the property and also served upon the record owner and any tenant. A copy of the notice shall also be served on each of the following if known to the Permit Administrator or disclosed from official public records: the holder of any mortgage or deed of trust or other lien or encumbrance; the owner or holder of any lease; and the holder of any other estate or legal interest of record in or to the building or the land on which it is located. The failure of the Permit Administrator to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served to relieve any such person from any duty or obligation imposed by the provisions of this section.

(2) Method of Service. Service shall be made upon all persons entitled thereto either personally or by mailing a copy by certified First Class U.S. Mail to each such person at their address as it appears on the last equalized assessment roll of the county or as known to the Permit Administrator. If no address of any such person appears or is known to the Permit Administrator, then a copy shall be mailed to the address of the parcel of land involved in the proceedings. The failure of any such person to receive such notice shall not affect the validity of any proceedings taken under this section. Service shall be effective on the date of the mailing.

(3) Proof of Service. At the time of service, each person affecting service shall complete a written declaration under penalty of perjury, which declares the time, date and manner in which service was made. The declaration shall be affixed to the copy of the notice and order retained by the Permit Administrator.

(b) Hearing. The Permit Administrator shall consider all evidence at the hearing. The hearing may, after being commenced within the time specified pursuant to subsection (a) of this section, be continued for good cause by the Permit Administrator from time to time. The Permit Administrator shall, at the conclusion of the hearing, make findings of fact based upon the evidence submitted and shall decide whether or not the permit shall be revoked or suspended.

(c) Notice of Decision. The Permit Administrator's written notice of decision shall be served on the permittee, within thirty business days of the conclusion of the hearing, in the manner provided in subsection (a) of this section, and, in the case of a revocation or suspension, such notice of decision shall indicate the appeal procedures as set forth hereinafter.

(d) Appeal. Any applicant or permittee shall have the right to appeal from a decision by the Permit Administrator to deny a permit or renewal application, or to approve such an

application with conditions, or to suspend or revoke an operator permit, by filing with the City Clerk a written notice of appeal specifying the grounds for such appeal, within ten calendar days after the decision has been served on the applicant or permittee. The appeal must also include the appeal fee established by resolution of the City Council and included within the Master Fee Schedule. Such appeal shall be heard by an administrative hearing officer appointed by the City Manager or designee, upon not less than ten business days written notice to the appellant. The designated administrative hearing officer shall consider all relevant evidence at the hearing, may continue the hearing for good cause, and shall require such legal briefing as may be required to address any issues raised by the appeal. Within a reasonable time, but not more than twenty business days following the conclusion of the hearing, the administrative hearing officer shall issue a written decision affirming, denying, or modifying the decision from which the appeal was taken, supported by factual findings and determinations referenced by supporting evidence. The written decision shall be served on the appellant as provided in Code of Civil Procedure Section 1094.6(b), with a copy submitted to the City Clerk and the City Attorney. The written decision of the administrative hearing officer shall be final and shall be subject to judicial review according to the provisions and time limits set forth in Code of Civil Procedure Section 1094.6.

4-23-320 Immediate Interim Suspension

(a) Grounds for immediate suspension of permit. The Chief of Police may immediately suspend an operator permit on an interim basis if he or she determines that an immediate suspension is necessary to protect the health, safety or welfare of the public and:

(1) Determines that the permittee is operating or managing the massage establishment or providing services in the massage establishment in a manner which poses an immediate danger to the health or safety of employees, clients, or the public; or

(2) The permittee or any massage technician has been arrested for any offense involving lewdness, indecent exposure, prostitution, sexual battery, human trafficking, or any sex-related crime in connection with the massage establishment.

(b) Notice of suspension. If the Chief of Police immediately suspends a permit, the Chief of Police shall provide written notice to the permittee by personal notice or certified mail. The notice shall contain a statement that the permit is immediately suspended and such suspension shall remain in effect during the period of time that an appeal may be filed or an appeal is under consideration. The notice shall provide information on the appeal process and explain that the suspension may lead to permanent revocation of the permit.

(c) Appeal. Within fifteen (15) calendar days of service of the immediate suspension (the date of mailing or personal service), the permittee may file an appeal of the suspension and request a hearing in accordance with Section 4-23-315(b) of this Chapter.

(d) Effect of no appeal: Final decision. If after the passage of fifteen (15) calendar days from service of the suspension notice, the permittee has not filed an appeal, the decision of the Chief of Police to suspend the permit shall become final and the operator permit shall be revoked by the Permit Administrator.

Article 4 Requirements

4-23-400 Massage establishment inspection.

(a) The Inspector shall have the right to enter any massage establishment during regular business hours, without a search or inspection warrant, to make reasonable inspection to ascertain whether there is compliance with the provisions of this Chapter.

(b) The massage establishment operator shall take immediate action to correct each violation noted by the Inspector. A re-inspection will be performed within thirty business days to ensure that each violation noted by the Inspector has been corrected.

4-23-405 Requirements—All massage establishments.

(a) Operational Requirements. Except as otherwise specifically provided in this Chapter, the following operational requirements shall be applicable to massage establishments located within the City:

(1) No massage establishment shall be open for business between the hours of nine p.m. of one day and seven a.m. of the following day. Massage begun any time before nine p.m. must nevertheless terminate at nine p.m. The hours of operation shall be displayed in a conspicuous public place in the reception area and in any front window clearly visible from outside of the massage establishment.

(2) Patrons and visitors shall be permitted in the massage establishment only during the hours of operation.

(3) Except for a patron who is inside a room for the purpose of receiving a massage, no patrons or visitors shall be permitted in or on the massage establishment premises at any time who are less than fully clothed in outer garments of nontransparent material, or who display or expose themselves in underclothing or similar intimate apparel.

(4) During the hours of operation, visitors shall not be permitted in massage rooms except as follows: (a) the parents or guardian of a patron who is a minor child may be present in the room with that minor child; (b) the minor child of a patron may be present in the room with the patron when necessary for the supervision of the child; and (c) the conservator, aid, or other caretaker of a patron who is elderly or disabled may be present in the room with that elderly or disabled person.

(5) During the hours of operation, patrons shall be permitted in massage rooms only if at least one duly authorized certified massage technician is present on the premises of the massage establishment.

(6) A list of services available and the cost of such services shall be posted in an open and conspicuous public place on the premises, or provided to patrons before services are rendered. The services shall be described in English and may also be described in such other languages as may be convenient. No operator shall permit, and no person employed or retained by the massage establishment shall offer to perform, any services or fees other than those posted.

(7) For all employees employed or retained by the massage establishment but who do not provide massage, the following documents shall be available to City staff upon inspection pursuant to Section 4-23-400: (a) for individuals over the age of eighteen years old, a copy of a valid driver's license or identification card showing the employee's age; or (b) for individuals under eighteen years of age, a copy of a permit to employ or to work as required by California Labor Code Section 1299 and Education Code Section 49160.

(8) No massage establishment, including a massage establishment providing out-call massage, shall employ a certified massage technician who has had his or her CAMTC certification revoked or suspended pursuant to Business and Professions Code Sections 4609 or 4610.

(9) No massage establishment, including a massage establishment providing out-call massage, shall engage in sexually suggestive advertising or permit a certified massage technician

to engage in sexually suggestive advertising in violation of Business and Professions Code Section 4609(a)(1)(A).

(10) An operator shall notify CAMTC of any certified massage technicians that commit any violation of Business and Professions Code Section 4609(a) that occur while the certified massage technician is employed by the operator's massage establishment.

(11) Condoms, pornographic material and sexually oriented paraphernalia or novelty items must not be kept or used for any purpose in a massage establishment.

(b) Physical Facility and Building and Fire Code Requirements. Except as otherwise specifically provided in this Chapter, the following physical facility and building code requirements shall be applicable to all massage establishments located within the City:

(1) Front Door and Reception Area. One front door shall be provided for patron entry, which shall open to an interior patron reception and waiting area immediately inside the front door. All patrons and any persons other than individuals employed or retained by the massage establishment shall be required to enter and exit through the front door.

(2) Visibility. No massage establishment located in a building or structure with exterior windows fronting a public street, highway, walkway, or parking area shall 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.

(3) Locks. All interior doors, including rooms or cubicles in which massage occurs, but excluding individual dressing rooms and toilet rooms, shall be incapable of being locked and shall not be blocked to prevent opening. Draw drapes, curtain enclosures, or accordion-pleated closures in lieu of doors are acceptable on all inner rooms or cubicles. All entrance and exit doors on the premises of a massage establishment shall remain unlocked during business hours unless the massage establishment is a business entity owned by one individual with one or fewer employees or independent contractors.

(4) Lighting. Minimum lighting equivalent to at least one forty watt light shall be provided in each room or cubicle in which massage is provided.

(5) Tables, Mats, and Beds. A massage table shall be used for all massage, with the exception of "Thai," "Shiatsu," and similar forms of therapy, which may be provided on a padded mat on the floor, provided the patron is fully attired in loose clothing, pajamas, scrubs, or similar style of garment. Massage tables shall have a minimum height of eighteen inches. Beds, floor mattresses, and waterbeds are not permitted on the premises of the massage establishment. These restrictions shall not apply to limit specific massage techniques recognized by CAMTC as legitimate. No massage establishment shall be used for residential or sleeping purposes.

(6) Lockers. All locker facilities that are provided for the use of patrons shall be fully secured for the protection of the patrons' valuables, and each patron shall be given control of the key or other means of access.

(7) Building and Fire Codes. The massage establishment shall comply with all applicable State and local building standards (as adopted in Chapter 7-5 of this Code) and the fire code (as adopted in Chapter 3-3 of this Code).

(c) Health and Safety Requirements. Except as otherwise specifically provided in this Chapter, the following health and safety requirements shall be applicable to all massage establishments including massage establishments that provide out-call massage, as applicable, located within the City:

(1) Towels and Linens. The massage establishment shall at all times be equipped with an adequate supply of clean sanitary towels, coverings, and linens, and all massage tables shall be covered with a clean sheet or other clean covering for each patron. After a towel, covering, or linen has been used once, it shall be deposited in a closed receptacle and not used again until properly laundered and sanitized. Towels, coverings, and linens shall be laundered either by regular commercial laundering, or by a noncommercial laundering process that includes immersion in water at least one hundred forty degrees Fahrenheit for not less than fifteen minutes during the washing or rinsing operation. Clean towels, coverings, and linens shall be stored in closed, clean cabinets when not in use.

(2) Cleaning and Disinfecting. All rooms or cubicles, wet and dry heat rooms, toilet rooms, shower compartments, hot tubs, and pools shall be thoroughly cleaned and disinfected as needed, and at least once each business day when the premises are open and such facilities are in use. All bathtubs shall be thoroughly cleaned and disinfected after each use.

(3) Liquids, Creams, and Powders. All liquids, creams, or other preparations used on or made available to patrons shall be kept in clean and closed containers. Powders may be kept in clean shakers. All bottles and containers shall be distinctly and correctly labeled to disclose their contents. When only a portion of a liquid, cream, or other preparation is to be used on or made available to a patron, it shall be removed from the container in such a way as not to contaminate the remaining portion.

(4) Invasive Procedures. No invasive procedures shall be performed on any patron. Invasive procedures include, but are not limited to: (a) application of electricity that contracts the muscle; (b) penetration of the skin by metal needles; (c) abrasion of the skin below the nonliving, epidermal layers; (d) removal of skin by means of any razor-edged instrument or other device or tool; and (e) use of any needle-like instrument for the purpose of extracting skin blemishes; and (f) other similar procedures.

(5) Garments Provided to Patrons. All bathrobes, bathing suits, and/or other garments that are provided for the use of patrons shall be either fully disposable and not used by more than one patron, or shall be laundered after each use pursuant to subsection (C)(1) of this Section.

(6) Combs and Brushes. All combs, brushes, and/or other personal items of grooming or hygiene that are provided for the use of patrons shall be either fully disposable and not used by more than one patron, or shall be fully disinfected after each use.

(7) Footwear. No patrons shall be allowed to use any shower facilities of the massage establishment unless such patrons are wearing slip-resistant sandals or flip-flops while in the shower compartment. All footwear such as sandals or flip-flops that are provided for the use of patrons either shall be fully disposable and not used by more than one patron, or shall be fully disinfected after each use.

(8) Draping and Contact with Genitals. The patron's genitals, pubic area, anus, and areola must be fully draped at all times while any individual employed or retained by the massage establishment to practice massage, or any other employee or operator, is in the room or cubicle with the patron. No massage shall be provided to a patron that results in intentional contact, or occasional and repetitive contact, with the genitals, pubic area, anus, or areola of a patron.

(9) Alcohol. No alcoholic beverages shall be sold, served, or furnished to any patron; nor shall any alcoholic beverages be kept or possessed on the premises of a massage establishment.

(d) Attire and Hygiene. The following attire and physical hygiene requirements shall be applicable to all employees, and any other persons who work permanently or temporarily on the premises of a massage establishment or while performing out-call massage, as applicable, within the City, including, but not limited to, all persons who are employed or retained to practice massage:

(1) Garments. All persons shall comply with the dress requirements specified in Business and Professions Code Section 4609(a)(10) while providing massage.

(2) Exposure. No operator, employee, or visitor shall, while on the premises of a massage establishment, and while in the presence of any patron, customer, employee or visitor, expose his or her genitals, buttocks, or chest.

(3) Clean Skin. All persons shall thoroughly wash their hands with soap and water or any equally effective cleansing agent immediately before providing massage. No massage shall be provided upon a surface of the skin or scalp of a patron where such skin is inflamed, broken (e.g., abraded or cut), or where a skin infection or eruption is present.

(e) Display of Permits and Certifications. Each massage establishment shall require any person employed or retained to perform massage in or on the premises to display on his or her person a copy of the valid photograph-bearing identification card issued to that employee by the CAMTC. A copy of each such identification card shall also be displayed in an open and conspicuous place visible from the entrance and/or reception and waiting area of the massage establishment. The home address of any employee need not be displayed.

4-23-410 Change of business name or location.

No person permitted to operate a massage establishment under this Chapter shall operate under any name or conduct business under any designation not specified in the operator permit and City business license. Upon a change of location where there is no change of ownership, an application for an amended operator permit shall be made to the Permit Administrator, and such application shall be granted, provided all applicable provisions of this Code are complied with as to the new location.

4-23-415 Sale or transfer of massage establishment or ownership interests.

Upon a sale or transfer of any massage establishment, or upon the sale or transfer of some or all of the interest of any massage establishment owner to a person who is not already an owner, a new operator permit shall be required.

4-23-420 Compliance monitoring.

(a) Compliance with this Chapter shall be monitored by the Police Department. The City may designate any number of additional persons to monitor compliance with this Chapter.

(b) Compliance checks shall be conducted so as to allow the Police Department to determine, at a minimum, if the massage establishment is conducting business in a manner that complies with this Chapter.

Article 5. Miscellaneous

4-23-500 Business license required.

The requirements of this Chapter shall be in addition to any business license and business license tax requirements imposed pursuant to Chapter 2-2 of this Code for operation of a massage establishment.

4-23-505 Exemptions.

The permit requirements of this Chapter shall not apply to the following classes of individuals and businesses while engaged in the performance of the duties of their respective professions:

- (a) Physicians, surgeons, chiropractors, osteopaths, podiatrists, physical therapists, nurses, or any other person licensed to practice any healing art under the provisions of Division 2 (commencing with Section 500) of the Business and Professions Code when engaging in such practice within the scope of his or her license;
- (b) Trainers of any amateur, semi-professional, or professional athlete or athletic team, so long as such persons do not practice massage as their primary occupation at any location where they provide such services in the City;
- (c) Barbers, estheticians and cosmetologists who are duly licensed under the laws of the State of California, while engaging in practices within the scope of their licenses;
- (d) Individuals in the City temporarily for educational events or disaster relief;
- (e) Individuals administering massages or health treatments involving massage to persons participating in road races, track meets, triathlons, educational events, conferences or similar single-occurrence athletic, recreational, or educational events;
- (f) Somatic technicians who use no physical touch of any kind at any time in their practice;
- (g) Enrolled students of an “approved school” or “approved massage school,” as defined in Business and Professions Code Section 4601(a), when they are performing massage within the City as part of a formal supervised internship or training program operated by the school, without compensation other than school credit, on the premises of a massage establishment duly authorized to operate pursuant to the terms of this Chapter; and provided that the operator has first notified the Permit Administrator in writing of the name, residence address, and school of the students and the dates of the trainings.

4-23-510 Violations a misdemeanor and a nuisance.

Any massage provided or massage establishment operated, conducted, or maintained contrary to the provisions of this Chapter shall be, and the same is hereby declared to be, a misdemeanor 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 the manner provided by law. Such remedies shall be in addition to any other judicial and administrative penalties and remedies available to the City under this Code or State or Federal law.