



San Rafael

Agenda Item No: _____
Meeting Date: December 1, 2014

SAN RAFAEL CITY COUNCIL AGENDA REPORT	
Department: Community Development/City Attorney	
Prepared by: <u><i>Paul Jensen</i></u>	City Manager Approval: _____
Paul Jensen, Community Development Director (RB) Lisa Goldfien, Assistant City Attorney	

SUBJECT:
San Rafael Municipal Code (SRMC) Amendment to Title 10.90 (Massage Therapy). Text amendments to SRMC Title 10.90 (Massage Therapy) to reflect: 1) Changes to state law related to Massage Therapy through the passage of Assembly Bill (AB 1147), signed into law on September 18, 2014 and set to be effective on January 1, 2015; and 2) clean up, modification and clarification of Ordinance provisions related to registration, inspections, operational standards and revocation process; File No.: P14-013

- RECOMMENDATION:**
 Staff recommends that the City Council:
1. Pass Ordinance to Print, amending San Rafael Municipal Code Title 10.90 (Massage Therapy) as outlined in Attachment 1; and
 2. Direct the city Clerk to schedule the ordinance for adoption at the next regular City Council meeting of December 15, 2014

BACKGROUND:

Senate Bill SB731: The City's Massage Ordinance (SRMC 10.90) was last updated in November 2010 (Ordinance No. 1890). The 2010 update was prompted by changes in State Law (SB 731) in 2009. Professional massage therapists pushed for adoption of SB 731 in response to what they saw as patchwork, and overly harsh, local regulations of the massage therapy profession throughout the state. SB 731, called the Massage Therapy Act, created a quasi-State agency (California Massage Therapy Council aka CAMTC) to regulate massage therapists and established stringent new limits on the power of cities and counties to regulate massage therapists and massage businesses. The State law included a sunset clause, expiring on January 1, 2015, to allow the state to review the law and its impacts.

The City's 2010 update to the Massage Ordinance brought it into compliance with SB 731, and emphasized enforcement through a new administrative process, rather than the criminal process used under the prior ordinance, which had proved ineffective. Unfortunately,

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immediately following adoption of the Ordinance in 2010, the Police Department, which was assigned to implement and enforce the Ordinance, experienced substantial budget and staff reductions. Therefore, from 2010-2013, there was limited implementation and enforcement of the new Massage Ordinance.

In 2013, in an effort to step up enforcement of the Massage Ordinance, it was tasked to the Community Development Department (Code Enforcement Division). Since then, Code Enforcement staff has worked with an outside contractor, CSG Consultants, to implement for the first time the ordinance's registration process and inspections of all massage establishments. Pursuant to this program, numerous citations have been issued to noncompliant businesses, and the City has required one establishment to cease operations. Five other massage businesses have shut down on their own initiative.

Assembly Bill AB1147: Earlier this year, the State updated and extended the Massage Therapy Act. On September 18, 2014, the Governor signed AB 1147 into law, to become effective on January 1, 2015. This update to state law was performed for two reasons: 1) the current law was set to sunset on January 1, 2015 absent an extension by the Legislature; and 2) there were significant concerns expressed by numerous cities and counties throughout the state that the effects of the current law's limits on the power of local jurisdictions to regulate massage businesses had led to an explosion of new illicit massage establishments in their communities since 2009. AB 1147 extends the law for another 2-year period, from January 1, 2015 through January 1, 2017, and results in three main changes to existing law:

- Changes to CAMTC Governance. CAMTC is the quasi-governmental body that was originally established in 2009 through pursuant to SB 731 to regulate massage practitioners and their education. Under SB 731, the CAMTC Board was primarily composed of massage industry leaders. AB 1147 reduces the number of Board of Directors from 20 to 13 and broadens the diversity of the Board's makeup to include fewer massage industry members and additional representatives of a variety of stakeholders, including local law enforcement, State education, anti-human trafficking and others.
- Return Local Control. The prior law, SB 731, eliminated local zoning control of massage establishments and mandated that a city could not treat massage uses any different from any other personal or professional service uses, like nail salons, shoe repair, travel agents, doctors, etc. AB 1174 returns zoning control over massage businesses to cities. Cities can also now charge reasonable costs to cover their time in regulating massage establishments.
- Educational Requirement Changes. AB 1147 would increase educational requirements for Certified Massage Therapists and also give CAMTC the authorization to approve schools, rather than just pursue the rejection of problem schools and so-called diploma mills. According to CAMTC, the official list of approved California massage schools should be completed by 2016.

A copy of the AB 1147 in its entirety is attached as information to this staff report (Attachment 2, pages 35-53 of this report)

Regulatory Framework: It should be noted that the CAMTC regulates the practice of massage and certifies massage therapists and massage practitioners. CAMTC performs background checks and certifies massage practitioners. Cities and Counties regulate the business of providing massage through land use and business licensing requirements. Under the prior law (SB 731) or new law (AB 1174), cities are not allowed to regulate the practice of massage or

certification of massage practitioners. Cities are only allowed to verify that massage practitioners are certified through CAMTC.

ANALYSIS:

Current status of enforcement: It is important to note that there are many legitimate and worthy massage establishments in the City of San Rafael. These uses provide a vital service to residents of San Rafael and the county as a whole. However, there are also some other massage establishments that do not comply with many local requirements for operating massage establishments, and many are suspected of performing illicit activities. The City has and will continue to register and inspect all massage establishments and take enforcement action against those that are not compliant with state or local regulations. Enforcement can include warning, monetary citations, and ultimately can result in revocation or suspension of their operation.

Since the Code Enforcement Division, through its contractor, has taken over the implementation of the Massage Ordinance, the City has performed 360 inspections, observed 437 violations of the ordinance, and issued 165 citations in the amount of \$109,877. The City has revoked the certificate for one massage establishment to operate in September 2014 and is currently pursuing the revocation/suspension of one other business' certification. Lastly, the City action and enforcement has resulted in the closure of 5 other massage establishments.

The City's goal in enforcing the Massage Ordinance is to protect the public health, safety and welfare of its. In addition, the City seeks to help and support legitimate and compliant massage establishments through enforcement actions and closure of illegitimate and non-compliant massage establishments.

Proposed Revisions to Massage Ordinance: In order to achieve the above state goals, the following types of revisions to the Massage Ordinance are proposed: 1) minor changes to update language or add clarifying language; 2) changes as a result of new law (AB 1147); and 3) other process-related improvements/modifications based on the staff's experiences over the past one-and-a-half years of performing registration and inspections of massage establishments and pursuing enforcement on non-compliant businesses.

The proposed new Ordinance is provided in Attachment 1, pages 9-33 of this report) and has been marked up using trackit changes (~~strikethrough~~ text for deletions and underline text for additions). For the purposes of this discussion, staff will not identify every changes to the ordinance, but rather highlight the substantive changes.

10.90.060 (Operation of certified massage establishment—Certificate required)

This section establishes the requirement for persons who seek to operate a massage establishment who are also certified massage therapists. As certified massage therapists, the CAMTC performs background checks and we as a city are not allowed to require additional verification or background checks. The following more substantive changes are proposed to this subsection:

- *10.90.60.A.6 - Clarifies that when a massage establishment registers, it must provide the names of all massage therapists that the massage employs. Later provisions of the Ordinance already require that only certified massage therapists be employed by a massage establishment and that no visitors or patrons be permitted outside the reception area unless they are a patron receiving a massage or certified massage therapist.*

- 10.90.060.B - Based on the new state law, cities can now collect a fee to cover the staff time associated with the registration process for new certified massage establishments. A separate fee schedule amendment will be brought to the Council at a future date to establish the appropriate fee.
- 10.90.060.F - Creates a new appeals process if the city denies an application for a certified massage establishment .
- 10.90.060.I – Clarifies that massage establishments are not allowed to employ a new massage therapist, until that therapist is added to the businesses registration and the City approves the change. In addition, based on the state law, a fee can be charged by the city to cover staff time in processing such a request. Over the past year, staff has discovered many therapists working in massage establishments who are not registered to work at the business. This change will clarify that they cannot perform massage until the registration for the business is amended to include that employee and it is approved by the city.
- 10.90.060.J.2 – This section clarifies that if a certificate for a massage establishment is revoked, the city may impose a one year moratorium during which the property owner would be unable to lease to another massage establishment.
- 10.90.060.J.3 - Clarifies that a certified massage establishment certificate cannot be renewed or amended until any unpaid citations are paid (those citations that are due, meaning they are past the 30 days to pay or appeal).
- 10.90.060.J.4 - Clarifies that if a notice of revocation or suspension has been issued, the City will not process an application for a sale to a different operator at the same address. This will prevent an owner of a massage establishment who is facing a revocation hearing for their business from selling the business before the revocation hearing is conducted and the city takes action.

Section 10.90.070 (Regulations applicable to operation of massage establishment, other than certified massage establishment—Operator permit required)

This section deals with the requirement for persons who seek to own a massage establishment and are not certified massage therapists. As non-certified massage therapist, the application requirements are more stringent for these types of owners, since they do not go through the background check process by the CAMTC. The following more substantive changes are proposed to this subsection:

- 10.90.070.6 – Same as 10.90.0600A.6, but this section deals with operator permits. Operator permits are those owners of massage establishments who are not also certified massage therapists.
- 10.90.070.F - Same as 10.90.060.F, except this is for establishments operating under an operator permit.
- 10.90.070.I – Same as 10.90.060.I, except this is for establishments operating under an operator permit.
- 10.90.070.J.2 – Same as 10.90.060.J.2, except this is for establishments operating under an operator permit.

- 10.90.070.J.3 - *Same as 10.90.060.J.3, except this is for establishments operating under an operator permit.*
- 10.90.070.J.4 - *Same as 10.90.060.J.4, except this is for establishments operating under an operator permit.*

10.90.090 (Requirements for all massage establishment facilities and operations)

This section establishes the operational, physical facility and building and fire code requirements, health and safety requirements, and attire and physical hygiene requirements that all massage establishments must abide by. The following more substantive changes are proposed to this subsection:

- 10.90.090.A.3 – *This section has been added to clarify that during the hours of operation, patrons are only allowed in massage rooms if at least one certified massage practitioner is present. Furthermore, it clarifies that patrons or visitors are not permitted in any employee break room or anywhere behind the front reception area.*
- 10.90.090.A.4 - *This section was moved from 10.90.090.A.5, and updated.*
- 10.90.090.B - *This section is amended to state that a reception area is required and that if the massage establishment has no employees, the main entry door shall remain open at all times during business hours. The City has had an issue in the past with massage establishments that have multiple employees keeping their doors locked during business hours, preventing inspectors from gaining access to the business. The new state law now allows the City to require the door to remain unlocked unless the business has no employees and is a sole proprietorship.*
- 10.90.090.D.1 - *This section is amended to be consistent with the new state law to identify the prohibited type of dress for massage practitioners.*

10.90.100 (Change of business name or location)

This section identifies that any time a massage business changes its name, ownership or location, the operator must apply for a new certified massage establishment certificate or operator permit. The following more substantive change is proposed to this subsection:

- 10.90.100 - *This section is amended to clarify that no new application for a change to business owner, location or business name approved by the City until any outstanding citations paid in full.*

10.90.120 (Ground for revocation or suspension of operator permit or certified massage establishment certificate)

This section identifies the grounds for which a certified massage establishment certificate or operator permit may be brought up for revocation or suspension. The following more substantive change is proposed to this subsection:

- 10.90.120 – *Additional language is included to clarify that all owners of massage establishments are deemed to know and understand the requirements of the Ordinance and that revocation or suspension may be pursued, even on a single occasion of violation.*

10.90.130 (Hearing by permit authority for revocation or suspension)

This section establishes the process for which the City may seek revocation or suspension of a massage establishment.

- *10.90.130 – The main change in this section is that one of two hearings (appeal hearing) is removed from the process for a revocation or suspension case. In the current ordinance, there were two hearing opportunities, one before a hearing officer and a subsequent right to appeal that decision to another hearing officer. This change will result in only one administrative hearing being afforded to the massage establishment after which the operator may resort to the courts to challenge the decision.*

Additional Changes Related to Massage Establishments: In addition to the proposed amendments to the Massage Ordinance, the City may consider adoption of a moratorium to allow staff an opportunity to consider potential zoning ordinance changes applicable to massage establishments. Any such ordinance will be brought before the Council at a separate hearing.

California Environmental Quality Act: This Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to the State CEQA Guidelines, since it can be seen with certainty that there is no possibility that this Ordinance containing minor amendments to the registration, inspection and revocation processes for massage establishments or its implementation would have a significant effect on the environment and is covered by the general rule, pursuant to 14 Cal. Code Regs. Section 15061(b)(3).

PUBLIC NOTICE:

Notice of these proposed amendments was provided 10 days before the Council meeting to all massage establishments currently operating and registered with the City as well as the property owners for all sites that have a massage establishment and other interested parties (Attachment 3, page 55 of this report). In addition, notice of this hearing was published in the Marin IJ on Saturday, November 21, 2014. The draft text of the Ordinance amendments were posted on the city's web site and the public notice referred notices to the web site to review the proposed amendments.

FISCAL IMPACT:

Adoption of the Ordinance amendments would not result in a significant fiscal impact to the City, aside from the staff time of the City Attorney's office and Community Development Department that was required to review and monitor the state law update process, review the final State law, develop and prepare the draft amendments to the Ordinance and prepare this staff report.

The fiscal impact of the on-going implementation of the Ordinance is a separate matter that has been previously reviewed and authorized by the Council, through the adoption of a contract for code enforcement services with an CSG Consultant, an outside contractor, to manage the implementation of the ordinance, including registration, inspection, citation for violations, pursuing enforcement and revocation proceedings against major violators. The current contract for the code enforcement services was authorized by City Council Resolution #13734, approved June 2, 2014, and includes a not-to-exceed budget that is valid through September 2015.

CONCLUSION:

Staff has been implementing the current Massage Ordinance for the past one-and-one-half years. Certain amendments to the Ordinance are required to comply with the provisions of the new State law. In addition, during the last year and a half of enforcement, staff has discovered many areas of the Ordinance that could be clarified in order to facilitate effective enforcement.

The goal of the amendments is to strengthen the City's regulations governing massage establishments. The City welcomes and encourages legitimate massage establishments and practitioners as they perform a vital service. However, to encourage and support those legitimate massage businesses, we must inspect all establishments and enforce the City's regulations. Through the diligent implementation of the amended Ordinance, the City will clearly discourage illegitimate and non-complaint massage establishments.

Aside from these amendments, staff may return to the Council with a recommendation to adopt moratorium on new massage establishments as a way to provide the City with time to consider potential zoning modifications.

OPTIONS:

The following options may be considered by the City Council:

1. Pass the Ordinance to print (*staff recommendation*); or
2. Continue the matter to a future City Council meeting for further review and discussion, or
3. Deny the Ordinance.

ACTION REQUIRED:

It is recommended that the City Council adopt the attached Resolution.

ATTACHMENTS:

	Page#
1. Draft Ordinance with strikethrough/underline, illustrating specific edits to amending San Rafael Municipal Code Section 10.90	9
2. Assembly Bill 1147 (Massage Therapy)	35
3. Public Hearing Notice	55

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ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
SAN RAFAEL AMENDING SAN RAFAEL MUNICIPAL CODE
CHAPTER 10.90 RELATING TO MASSAGE THERAPY
PRACTITIONERS AND ESTABLISHMENTS**

WHEREAS, there is substantial research that indicates that the skillful practice of massage can provide many health benefits including relief of pain from disease, injury and other sources, and that massage can be a valuable component of a wellness program; and

WHEREAS, in 2008 by Senate Bill 731 (“SB 731”), the Legislature added new Chapter 10.5 (Sections 4600 et seq.) to the California Business and Professions Code, entitled “Massage Therapists,” which provides for the formation of a nonprofit “Massage Therapy Organization” to oversee a state-sanctioned program of certification for massage therapy practitioners; and

WHEREAS, SB 731 established a scheme for a voluntary certification process for persons wishing to practice massage therapy in California, with the intention of enabling persons so certified to practice massage therapy in any city within the State without being required to obtain a local permit to practice; and

WHEREAS, SB 731 included a sunset clause, expiring on January 1, 2015, to allow the state to review the law and it’s impacts; and

WHEREAS, the “California Massage Therapy Council” was formed to administer the laws enacted by SB 731, including the issuance of certifications to qualified massage practitioners; and

WHEREAS, in 2010, the City Council adopted San Rafael Municipal Code Chapter 10.90, establishing regulations governing massage therapy businesses and practitioners in compliance with SB 731, with the intention of reducing City involvement in local massage therapy licensing, while still encouraging and facilitating the ethical practice of massage therapy and complying with State law, by relying upon the uniform statewide regulations enacted by SB 731, and restricting the commercial practice of massage in the City to those persons duly certified to practice by the California Massage Therapy Council; and

WHEREAS, in September 2014, the Legislature adopted Assembly Bill 1147 (“AB 1147”), amending the laws enacted by SB 731, which will go into effect on January 1, 2015; and

WHEREAS, the City Council wishes to amend San Rafael Municipal Code Chapter 10.90 as a result of the enactment of AB 1147 as well as clean up, modify and clarify the Ordinance provisions related to registration, inspection, operational standards and revocation process; and

WHEREAS, this ordinance is enacted pursuant to Government Code Sections 51030-51034 and Business and Professions Code Sections 4600 et seq., as amended by AB 1147;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES HEREBY ORDAIN AS FOLLOWS:

DIVISION 1:

San Rafael Municipal Code Chapter 10.90 entitled "Massage Therapy" is hereby amended to read in its entirety as follows:

10.90.010 Purpose and intent.

It is the purpose and intent of this chapter to provide for the orderly regulation of offices and establishments providing massage therapy services, and to prevent and discourage the misuse of massage therapy as a front for prostitution and related activities in violation of state law, all in the interests of the public health, safety, and welfare, by providing certain minimum building, sanitation, and operation standards for such businesses, and by requiring certain minimum qualifications for the operators and practitioners of such businesses. It is the further intent of this chapter to streamline local massage therapy permitting procedures, while still facilitating and advancing the ethical practice of massage therapy, by relying upon the uniform statewide regulations enacted by the Legislature in 2008 as Business and Professions Code sections 4600 et seq., ~~by Senate Bill 731, known as the Massage Therapy Act,~~ and by restricting the commercial practice of massage in the city to those persons duly certified to practice by the California Massage Therapy Council formed pursuant to those statutes.

10.90.020 Definitions.

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

- A. "California Massage Therapy Council" means the Massage Therapy Organization formed pursuant to ~~Business and Professions Code section 4600.5,~~ the Massage Therapy Act.
- ~~B.~~ "Certified massage establishment" means a massage establishment, including, but not limited to, a sole proprietorship, where each massage establishment owner and each person employed or retained to practice massage therapy for compensation as defined in subsection 10.90.050(B) is a certified massage practitioner.
- ~~B.C.~~ "Certified massage establishment certificate" means the city-issued certificate required by this chapter to operate a certified massage establishment.
- ~~C.D.~~ "Certified massage practitioner" means any individual certified by the California Massage Therapy Council as a Certified Massage Practitioner or as a Certified Massage

Therapist pursuant to ~~California Business and Professions Code sections 4600 et seq.~~ the Massage Therapy Act.

~~D.E.~~ "Compensation" means the payment, loan, advance, donation, contribution, deposit, exchange, or gift of money or anything of value.

~~E.F.~~ "Inspector" means the person or persons designated by the permit authority to conduct any inspections required or permitted under this chapter.

~~F.G.~~ "Massage," "massage therapy," and/or "bodywork" for purposes of this chapter are used interchangeably and shall mean the skillful application of touch, including but not limited to, pressure, stroking, kneading, compression on or movement of the external surfaces of the body by a practitioner to produce increased awareness, relaxation, pain relief, injury rehabilitation, or neuromuscular reeducation.

~~G.H.~~ "Massage establishment" shall include the term "massage and/or bodywork office or establishment", and means any business or establishment that offers massage therapy in exchange for compensation, whether at a fixed place of business or at a location designated by the patron. Any business or establishment that offers any combination of massage therapy and bath facilities including, but not limited to, showers, baths, wet and dry heat rooms, pools and hot tubs, shall be deemed a massage establishment under this chapter.

~~H.I.~~ "Massage establishment owner" or "owner of a massage establishment" shall mean and include any of the following persons:

1. The sole proprietor of a sole proprietorship operating a massage establishment.
2. Any general partner of a general or limited partnership that owns a massage establishment.
3. Any person who has a ten (10) percent or greater ownership interest in a corporation that owns a massage establishment.
4. Any person who is a member of a limited liability company that owns a massage establishment.
5. All owners of any other type of business association that owns a massage establishment.

~~I.J.~~ "Operator permit" means the permit required by this chapter to operate a massage establishment that does not qualify as a certified massage establishment.

~~J.K.~~ "Operator" or "massage establishment operator" means any and all owners of a massage establishment.

~~L.~~ "Outcall massage service" means the engaging in or carrying on of massage therapy for compensation at a location other than a massage establishment that has been permitted pursuant to this chapter.

~~M.~~ "Patron" means an individual on the premises of a massage establishment for the purpose of receiving massage therapy.

~~K.~~

L.N. "Permit authority" means the chief of police or his or her designee charged with the administration of this chapter.

M.O. "Person" means any individual, firm, association, partnership, corporation, joint venture, limited liability company, or combination of individuals.

N.P. "Reception and waiting area" means an area immediately inside the front-main entry door of the massage establishment dedicated to the reception and waiting of patrons of the massage establishment and visitors, and which is not a massage therapy room or otherwise used for the provision of massage therapy services.

O.Q. "Sole proprietorship" ~~for purposes of this chapter shall mean~~ and include any legal form of business organization where the business owner (sometimes referred to as the "sole proprietor") is the only person employed by that business to provide massage services a massage establishment where the owner owns 100 percent of the business, is the only person who provides massage services for compensation for that business pursuant to a valid and active California Massage Therapy Council certificate, and has no other employees or independent contractors.

P.R. "Visitor" means any individual not retained or employed by the massage establishment and not receiving or waiting to receive massage therapy services, but excluding law enforcement personnel or governmental officials performing governmental business.

10.90.030 Certification by California Massage Therapy Council required for practitioners.

~~On and after March 1, 2011, it~~ shall be unlawful for any individual to practice massage therapy for compensation within the city unless that individual is a currently certified as a Certified-certified Massage-massage Practitioner-practitioner as defined in section 10.90.020.

10.90.040 (Reserved.)

~~10.90.040 Certified massage practitioners—City registration certificate required.~~

~~On and after March 1, 2011, any certified massage practitioner practicing massage therapy for compensation within the city shall be required to register with the permit authority as provided in this section. There shall be no fee for the registration application or certificate, or any amendment thereof.~~

~~A. The registration application shall include the registrant's name, residence address and telephone number, employer name, work address and telephone number, and evidence of the registrant's current certification from the California Massage Therapy Council as either a certified massage practitioner or as a certified massage therapist pursuant to California Business and Professions Code sections 4600 et seq.~~

~~B. Upon registration, the permit authority shall issue the registrant a city registration certificate, valid for one (1) year. Upon application by the registrant, the city registration certificate shall be renewed annually so long as the certified massage practitioner is practicing massage therapy for compensation within the city.~~

~~C. The certified massage practitioner shall apply to the city to amend the city registration certificate within thirty (30) days after any change in the registration information, including, but not limited to, a change in work address.~~

10.90.050 Operation of massage establishments—Certified massage establishment certificate or operator permit required.

A. ~~On and after March 1, 2011, i~~It shall be unlawful for any person or persons to operate a massage establishment within the city without first obtaining a certified massage establishment certificate or an operator permit pursuant to the requirements of this chapter.

B. ~~On and after March 1, 2011, i~~It shall be unlawful for any massage establishment operator within the city to employ or retain any person to practice massage therapy for compensation, or to allow any person to perform massage therapy for compensation on the premises of a massage establishment, unless that person is a certified massage practitioner. For purposes of this chapter, a massage establishment operator "employs or retains" a person to practice massage therapy for compensation when:

1. That person is a directly paid employee of the massage establishment; or
2. That person's association with a massage establishment is that of an independent contractor who receives compensation for massage therapy provided to patrons of the massage establishment; or
3. That person receives a referral of patrons from the massage establishment and, at any time before or after the referral, arranges in any way for compensation to flow to the massage establishment operator (regardless of whether the parties involved acknowledge that compensation is flowing in exchange for the referral, or whether such parties record such compensation in their financial records).

~~3.C. It shall be unlawful for an massage establishment operator within the city to employ or retain any person to practice massage therapy for compensation, or to allow any person to perform massage therapy for compensation on the premises of a massage establishment unless and until that person is listed on the certified massage establishment certificate required by Section 10.90.060 of this chapter, or the operator permit required by Section 10.90.070 of this chapter.~~

10.90.060 Operation of certified massage establishment—Certificate required.

~~On and after March 1, 2011, n~~No certified massage establishment shall operate within the city without first obtaining a certified massage establishment certificate under this section.

A. Application for Certified Massage Establishment Certificate. All owners of the certified massage establishment, or their duly authorized agent, shall file an application for a certified massage establishment certificate for the massage establishment, on a form provided by the permit authority. For purposes of this section, the "applicant" for the certified massage establishment certificate shall refer to and include each and every owner of the massage establishment. The application shall include the following information:

1. The 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 certified massage establishment certificate.
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 (10%) 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 (1) 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 (1) 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 certified 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.

~~—The name of each person that the massage establishment employs or retains to perform massage therapy for compensation, whether on or off the massage establishment premises.~~

6.

~~5.7.~~ For each person that the massage establishment does or will employ or retain to perform massage therapy for compensation, whether on or off the massage establishment premises, a copy of that person's current certification from the California Massage Therapy Council as a certified massage practitioner or as a certified massage therapist, and a copy of that person's current California Massage Therapy Council-issued identification card.

~~6.8.~~ For each owner of the certified massage establishment, a copy of that person's current certification from the California Massage Therapy Council as a certified massage practitioner or as a certified massage therapist and a copy of that person's current California Massage Therapy Council-issued identification card.

B. Application Fee. ~~There shall be no fee to apply. An application for the a~~ certified massage establishment certificate shall be accompanied by a fee as established by the City's Master Fee Schedule.

~~B.~~

C. Massage Establishment Facilities and Operations—Requirements for Certified Massage Establishment. A certified massage establishment shall comply with the requirements of section 10.90.090, with the following exceptions:

1. Sole Proprietorship. The provisions of subsections 10.90.090(A)(2) and 10.90.090(B)(1)—(3) shall not apply to a certified massage establishment which is a sole proprietorship, even if that sole proprietorship is located in a suite of offices with other businesses.

2. Home Occupation. Where a certified massage establishment is a home occupation, as defined in section 14.03.030 of this code, and the operator has complied with the provisions of section 14.16.220 of this code pertaining to home occupations, the provisions of subsections 10.90.090(A)(2) and 10.90.090(B)(1)—(3) and (B)(5) shall not apply, and the portions of the residence subject to the requirements of subsections 10.90.090(B) and (C) shall be only those portions that are used at any time by the patron of the massage establishment.

~~—Certified Massage Establishment Certificate—Issuance—Notice to Property Owner.~~

D. The permit authority shall grant a certified massage establishment certificate to an applicant who has satisfied the requirements of this section and all other applicable laws, including, but not limited to, the city's building, zoning, and health regulations. The certificate shall include, but not be limited to, the name of the massage establishment, the address of the massage establishment, the names of the owner or owners of the massage establishment, the date of issuance of the certificate, the date of expiration of the certificate, the certificate number, a listing of the certified massage practitioners registered and authorized to perform massages for the massage establishment, and a listing of any other persons employed or retained to work in any other capacity on the premises.

E. 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 certified massage establishment is to be operated, then upon issuance of a certified massage establishment certificate, the permit authority may send a written notice to the property owner advising of the issuance of the certificate 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 certified massage establishment certificate may also be sent to the property owner.

~~D.F.~~ Notice of Denial—Appeal—Judicial Review—Appeal. If an application for a certified massage establishment certificate is denied, the permit authority shall serve on the applicant, in the manner provided in section 1.08.060 of this code, a written notice of denial which shall specify the grounds for the denial ~~and shall indicate the appeal procedures as set forth in subsection 10.90.130(D) of this code.~~ The applicant shall have the right to appeal from a decision by the permit authority to deny a certificate application by filing with the city clerk a written notice of appeal, specifying the grounds for such appeal, within fifteen (15) days after the decision has been served on the applicant. Such appeal shall be heard by a hearing officer appointed by the permit authority, upon not less than fifteen (15) days written notice to the applicant. The designated hearing officer shall consider all relevant evidence at the hearing, may continue the hearing for good cause, and may require such legal briefing as may be required to address any issues raised by the appeal. Within a reasonable time, but not more than thirty (30) days following the conclusion of the hearing, the hearing officer shall issue a written decision as to whether the application shall be granted or denied, supported by factual findings and determinations referenced by supporting evidence. The written decision shall be served on the applicant as provided in Code of Civil Procedure Section 1094.6, with a copy served on the permit authority. The written decision of the 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.

E.G. Display of Certificate. Each holder of a certified massage establishment certificate shall display that certificate in an open and conspicuous place on the premises visible from the ~~entrance~~ main entry door and/or reception and waiting area of the massage establishment.

~~F.H.~~ Term. A certified massage establishment certificate issued pursuant to the terms of this chapter shall be valid for a term of one (1) year from the date of issuance, and, unless suspended or revoked, ~~shall~~ must be renewed by the massage establishment operator annually so long as the massage establishment is operating within the city.

I. Requirement to Amend Certified Massage Establishment ~~application~~Application: Amendment Fee. In addition to the requirements of sections 10.90.100 and 10.90.110, whenever the information provided in the application for certified massage establishment certificate on file with the city changes, for example by a change in employees, the operator shall, within ten (10) business days after such change, file with the permit authority an application for amendment to the certified massage establishment ~~application with the permit authority~~ to reflect such change. An application for an amendment to a certified massage

establishment certificate shall be accompanied by a fee as established by the City's Master Fee Schedule. It shall be a violation of Section 10.90.050(C) of this chapter for the operator to allow any person to perform massage therapy for compensation on the premises of a massage establishment unless and until an amended certified massage establishment certificate has been issued by the permit authority identifying that person as employed or retained by the massage establishment to practice massage therapy for compensation.

~~G.~~

~~H.~~J. Violations—Operator Responsibility; Suspension or Revocation of Certified Massage Establishment Certificate.

1. For the purpose of enforcing the requirements of this chapter, the massage establishment operator shall be responsible for the conduct of all massage establishment employees, agents, independent contractors, or other representatives while such persons are on the premises of the massage establishment or providing outcall massage services on behalf of the massage establishment.
2. In addition to any other remedy available to the city under this code or state law, a certified massage establishment certificate may be suspended or revoked by the permit authority as provided in ~~section Sections~~ 10.90.120 and 10.90.130. Upon revocation of a certified massage establishment certificate for a massage establishment, the massage establishment shall immediately cease operation, and, if so ordered by the ~~permit authority~~ hearing officer, no other massage establishment shall be permitted to operate at that location by any person for a period of not less than one (1) year ("the moratorium period"). 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 one-year prohibition shall be provided by the permit authority to the owner of record of the property as shown on the latest county assessment roll.
3. In addition to any other remedy available to the city under this code or state law, a certified massage establishment certificate may not be renewed or amended by the operator unless and until due and unpaid citations issued to the operator pursuant to this chapter are paid in full. Citations shall not be deemed to be due and unpaid until the 30-day period for appeal of the citation has passed.
4. Notwithstanding any other provision of this chapter, where a Notice of Revocation or Suspension has been issued to the operator of a massage establishment pursuant to Section 10.90.130 of this chapter, the permit authority shall not process or grant an application for, or grant to, any applicant, a certified massage establishment certificate or operator permit for a new massage establishment at the same premises unless and until such Notice of Revocation or Suspension is: dismissed; or a final determination is made pursuant to that section that the current operator's certified massage establishment certificate or operator permit is not or should not be revoked; or any moratorium period imposed pursuant to this subsection or subsection 10.90.070(K) has expired.

10.90.070 Regulations applicable to operation of massage establishment other than certified massage establishment—Operator permit required.

~~On and after March 1, 2011, nN~~o massage establishment may operate in the city that does not qualify as a certified massage establishment, unless and until all owners of the massage establishment have applied for and obtained an operator permit for the massage establishment from the permit authority under this section.

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 authority. 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.~~ 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 (10%) 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 (1) 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 (1) 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.
- 3.
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. The name of each person that the massage establishment employs or retains to perform massage therapy for compensation, whether on or off the massage establishment premises.

~~6. The name, residence address and telephone number, and work address and telephone number of each person that the massage establishment employs or retains to perform massage therapy for compensation.~~

7. For each person that the massage establishment employs or retains to perform massage therapy for compensation, whether on or off the massage establishment premises, a copy of that person's current certification from the California Massage Therapy Council as a certified massage practitioner or as a certified massage therapist, and a copy of that person's current California Massage Therapy Council-issued identification card.

8. 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 or somatic practice, 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.

9. Whether the applicant has within the five (5) years immediately preceding the date of application been convicted in any state of any felony.

10. Whether the applicant is currently required to register under the provisions of Section 290 of the California Penal Code.

11. The applicant's business, occupation, and employment history for five (5) years preceding the date of application, and the inclusive dates of same.

12. One (1) set of fingerprints for each applicant in a form satisfactory to the permit authority. The fingerprints shall be taken at a place designated by the permit authority, and any required fee for such fingerprinting shall be paid by the applicant.

13. Such other information as may be required by the permit authority to determine compliance with any other eligibility requirements for issuance of the permit as specified by federal, state, or local law. The permit authority may waive any of the requirements of this section for an owner who is also a certified massage practitioner.

B. Application Fee. Any application for an operator permit under this chapter shall be accompanied by a nonrefundable application fee in an amount established by resolution of the city council.

C. Massage Establishment Facilities and Operations. A massage establishment shall comply with the requirements of section 10.90.090.

~~B.~~

C.D. Operator Permit—Criteria for Granting or Denying. The permit authority 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 authority determines any or more of the following to be true:

1. The applicant, or any shareholder, partner, or member of the applicant, within five (5) 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 owner or operator or as a person practicing massage for compensation, 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, within five (5) years of the date of application, has been convicted in a court of competent jurisdiction of any violation of Sections 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 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 Section 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 permit; or
6. The applicant, if an individual, has not attained the age of eighteen (18) years; or
7. The applicant, or any shareholder, partner, or member of the applicant, within five (5) years of the date of application, and as established by clear and convincing evidence, has engaged in acts prohibited under California Penal Code Sections 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 (5) years immediately preceding the date of filing of the application, has had a permit or license to practice massage for compensation or to own and/or operate a massage establishment revoked or denied in any jurisdiction.

E. Operator Permit—Issuance.

The operator permit shall include, but not be limited to, the name of the massage establishment, the address of the massage establishment, the names of the owner or owners of the massage establishment, the date of issuance of the permit, the date of expiration of the permit, the permit number, a listing of the certified massage practitioners registered and authorized to perform massages for the massage establishment, and a listing of any other persons employed or retained to work in any other capacity on the premises.

~~D.F.~~ 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 authority 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—Judicial Review. If an operator permit is denied, the permit authority shall serve on the applicant, in the manner provided in section 1.08.060 of this code, a written notice of denial that shall specify the grounds for the denial, ~~and shall indicate the appeal procedures as set forth in subsection 10.90.130(D) of this code.~~

G. The applicant shall have the right to appeal from a decision by the permit authority to deny an operator permit application by filing with the city clerk a written notice of appeal, specifying the grounds for such appeal, within fifteen (15) days after the decision has been served on the applicant. Such appeal shall be heard by a hearing officer appointed by the permit authority, upon not less than fifteen (15) days written notice to the applicant. The designated hearing officer shall consider all relevant evidence at the hearing, may continue the hearing for good cause, and may require such legal briefing as may be required to address any issues raised by the appeal. Within a reasonable time, but not more than thirty (30) days following the conclusion of the hearing, the hearing officer shall issue a written decision as to whether the application shall be granted or denied, supported by factual findings and determinations referenced by supporting evidence. The written decision shall be served on the applicant as provided in Code of Civil Procedure Section 1094.6, with a copy served on the permit authority. The written decision of the 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.

~~F.H.~~ 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.

~~G.I.~~ Term. An operator permit issued pursuant to the terms of this chapter shall be valid for a term of one (1) year from the date of issuance. A permit that has not expired and has not been suspended or revoked may be renewed for another one-year period, on submittal of a written application and payment of a renewal application fee to be established by resolution of the city council.

J. Requirement to Amend Operator Permit application. In addition to the requirements of sections 10.90.100 and 10.90.110, whenever the information provided in the application for operator permit on file with the city changes, for example by a change in employees, the operator shall, within ten (10) business days after such change, file an amendment to the operator permit application with the permit authority. An amendment to an operator permit application shall be accompanied by a fee as established by the City's Master Fee Schedule. It shall be a violation of Section 10.90.050(C) of this chapter for the operator to allow any person to perform massage therapy for compensation on the premises of a massage establishment unless and until an amended operator permit has been issued by the permit authority identifying that person as employed or retained by the massage establishment to practice massage therapy for compensation.

~~H.~~

~~K.~~ Violations—Operator Responsibility; Suspension or Revocation of Operator Permit.

1. For the purpose of enforcing the requirements of this chapter, the massage establishment operator shall be responsible for the conduct of all massage establishment employees, agents, independent contractors, and other representatives, while on the premises of the business or establishment or providing outcall massage services on behalf of the massage establishment.
2. In addition to any other remedy available to the city under this code or state law, an operator permit may be suspended or revoked by the permit authority as provided in ~~section Sections~~ 10.90.120 and 10.90.130. Upon revocation of an operator permit for a massage establishment, the massage establishment shall immediately cease operation, and, if so ordered by the hearing officer, no other massage establishment shall be permitted to operate at that location by any person for a period of not less than one (1) year ("the moratorium period"). 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 one-year prohibition shall be provided by the permit authority to the owner of record of the property as shown on the latest county assessment roll.
3. In addition to any other remedy available to the city under this code or state law, an operator permit may not be renewed or amended by the operator unless and until due and unpaid citations issued to the operator pursuant to this chapter are paid in full. Citations shall not be deemed to be due and unpaid until the 30-day period for appeal of the citation has passed.
- 1.4. Notwithstanding any other provision of this chapter, where a Notice of Revocation or Suspension has been issued pursuant to Section 10.90.130 of this chapter to the operator of a prior massage establishment on the same premises, the permit authority shall not process or grant an application for, nor grant an operator permit to, any applicant for a new massage establishment certificate or operator permit at the same premises unless and until such Notice of Revocation or Suspension is: dismissed; or a final determination is made pursuant to that section that the current operator's certified massage establishment

certificate or operator permit is not or should not be revoked; or any moratorium period imposed pursuant to this subsection or subsection 10.90.060(J) has expired.

10.90.080 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 reinspection will be performed within thirty (30) days to ensure that each violation noted by the inspector has been corrected.

10.90.090 Requirements for all massage establishment facilities and operations.

- A. Operational Requirements. Except as otherwise specifically provided in this chapter, ~~on and after March 1, 2011,~~ the following operational requirements shall be applicable to all massage establishments located within the city:
 - 1. No massage establishment shall be kept open for business between the hours of ten p.m. (10:00 p.m.) of one (1) day and seven a.m. (7:00 a.m.) of the following day. A massage begun any time before ten p.m. (10:00 p.m.) must nevertheless terminate at ten p.m. (10:00 p.m.). The hours of operation of the massage establishment shall be displayed in a conspicuous public place in the reception and waiting 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. During the hours of operation, patrons shall be permitted in massage therapy rooms only if at least one (1) duly authorized certified massage practitioner is present on the premises of the massage establishment. Patrons shall not be permitted in any employee break room on the premises.
 - 4. During the hours of operation, visitors shall not be permitted in massage therapy rooms except as follows:
 - (a) the parents or guardian of a patron who is a minor child may be present in the massage therapy room with that minor child;
 - (b) the minor child of a patron may be present in the massage therapy room with the patron when necessary for the supervision of the child; 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.

- ~~2. During the hours of operation, e~~
 - ~~3.5. Except as otherwise provided herein, no visitors shall be permitted in massage therapy rooms, break rooms, dressing rooms, showers, or any other room or part of the massage establishment premises other than the reception and waiting area or the toilets.~~
 - 4.6. Except for a patron who is inside a massage therapy 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.
 - ~~5. During the hours of operation, visitors shall not be permitted in massage therapy rooms except as follows: a) the parents or guardian of a patron who is a minor child may be present in the massage therapy room with that minor child; b) the minor child of a patron may be present in the massage therapy 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 massage therapy room with that elderly or disabled person.~~
 - ~~6. During the hours of operation, patrons shall be permitted in massage therapy rooms only if at least one (1) duly authorized certified massage practitioner is present on the premises of the massage establishment.~~
 7. 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 massage establishment operator shall permit, and no person employed or retained by the massage establishment shall offer to perform, any services or request or demand fees other than those posted.
- B. Physical Facility and Building and Fire Code Requirements. Except as otherwise specifically provided in this chapter, ~~on and after March 1, 2011,~~ the following physical facility and building code requirements shall be applicable to all massage establishments located within the city:
1. Front Main Entry Door and ~~Reception~~Reception and /Waiting Area Required. One (1) ~~front-main entry~~ door shall be provided for patron entry to the massage establishment, 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-main entry door of the establishment. Unless the massage establishment is a sole proprietorship or a home occupation, the main entry door shall be unlocked at all times during business hours.
 2. 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. All interior doors, including massage therapy rooms or cubicles, 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 massage therapy rooms or cubicles.

4. Minimum lighting equivalent to at least one (1) 40-watt light shall be provided in each massage therapy room or cubicle.

5. A massage table shall be used for all massage therapy, with the exception of "Thai," "Shiatsu," and similar forms of massage 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 (18) inches.

~~5.6.~~ Beds, floor mattresses, and waterbeds are not permitted on the premises of the massage establishment, and no massage establishment shall be used for residential or sleeping purposes.

~~6.7.~~ 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.

~~7.8.~~ The massage establishment shall comply with all applicable state and local building standards (as adopted in title 12 of this code) and the fire code (as adopted in title 4 of this code).

C. Health and safety requirements. Except as otherwise specifically provided in this chapter, ~~on and after March 1, 2011,~~ the following health and safety requirements shall be applicable to all massage establishments located within the city:

1. 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 (140) degrees Fahrenheit for not less than fifteen (15) minutes during the washing or rinsing operation. Clean towels, coverings, and linens shall be stored in closed, clean cabinets when not in use.

2. All massage therapy 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~~ have been or will be open and

- such facilities ~~are~~-in use. All bathtubs shall be thoroughly cleaned and disinfected after each use.
3. 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. 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;
 - (e) Use of any needle-like instrument for the purpose of extracting skin blemishes; and
 - (f) Other similar procedures.
 5. 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 (1) patron, or shall be laundered after each use pursuant to subsection (C)(1) of this section.
 6. 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 (1) patron, or shall be fully disinfected after each use.
 7. 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 (1) patron, or shall be fully disinfected after each use.
 8. 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 for compensation, or any other employee or operator of the massage establishment, is in the massage therapy room or cubicle with the patron. No massage therapy 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. 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 Physical Hygiene Requirements. ~~On and after March 1, 2011, the~~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 within the city, including, but not limited to, all persons who are employed or retained to practice massage or bodywork for the massage establishment:

~~1. All persons shall wear clean and sanitary outer garments at all times. All outer garments shall be of a fully opaque, nontransparent material and provide complete covering from at least the mid thigh to two (2) inches below the collarbone. The midriff may not be exposed. No person shall dress in:~~

~~(a) attire that is transparent, see-through, or substantially exposes the person's undergarments;~~

~~(b) swim attire, if not providing a water-based massage modality approved by the California Massage Therapy Council;~~

~~(c) a manner that exposes the person's breasts, buttocks, or genitals;~~

~~4. (d) a manner that constitutes a violation of Section 314 of the California Penal Code.~~

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

3. All persons shall thoroughly wash their hands with soap and water or any equally effective cleansing agent immediately before providing massage therapy to a patron. No massage therapy 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. _____~~

~~F. Display of Permit and Certifications. Each person employed or retained by a massage establishment to perform massage therapy in or on the premises or through an outcall massage service shall display on his or her person the valid current photograph-bearing identification card issued to that employee by the California Massage Therapy Council pursuant to the Massage Therapy Act. A copy of each such identification card shall also be displayed in an open and conspicuous place visible from the main entry door and/or reception and waiting area of the massage establishment. The home address of any employee need not be displayed.~~

~~E.~~

~~G. Display of Permit and Certifications. Each person employed or retained by a massage establishment to perform massage therapy in or on the premises or through an outcall massage service shall display on his or her person a copy of the valid photograph-bearing identification card issued to that employee by the California Massage Therapy Council pursuant to Business and Professions Code section 4600 et seq. 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.~~

10.90.100 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 certified massage establishment certificate or operator permit and city business license. Upon a change of location of a massage establishment where there is no change of massage establishment owner(s), an application for an amended certified massage establishment certificate or operator permit shall be made to filed with the permit authority, and such application shall be granted, provided all applicable provisions of this code are complied with as to the new location, and any due and unpaid citations issued to the operator pursuant to this chapter are paid in full. Citations shall not be deemed to be due and unpaid until the 30-day period for appeal of the citation has passed.-

10.90.110 Sale or transfer of massage establishment or ownership interest therein.

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 of the massage establishment, a new certified massage establishment certificate or operator permit shall be required.

10.90.120 Grounds for revocation or suspension of operator permit or certified massage establishment certificate.

All massage establishment operators shall be deemed to know and understand the requirements and prohibitions of this chapter. Any operator permit or certified massage establishment certificate issued pursuant to this chapter may be suspended or revoked by the permit authority after a hearing, where it is found by clear and convincing evidence that any of the following have occurred on even a single occasion:

- A. The person(s) to whom the operator permit or certified massage establishment certificate 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. Any owner of a massage establishment which is operating pursuant to a certified massage establishment certificate is no longer qualified as a certified massage practitioner for any reason; or
- C. The permittee/certificate holder 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 Sections 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

- D. The permittee/certificate holder or any person employed or retained by the massage establishment is required to register under Section 290 of the California Penal Code; or
- E. The permittee/certificate holder has been subject to a permanent injunction against the conducting or maintaining of a nuisance pursuant to this code, or Section 11225 through 11235 of the California Penal Code, or any similar provision of law in any jurisdiction outside the State of California; or
- F. The permittee/certificate holder or any employee of the massage establishment has engaged in fraud or misrepresentation or has knowingly made a misstatement of material fact while working in or for the massage establishment; or
- G. The permittee/certificate holder has continued to operate the massage establishment after the operator permit or certified massage establishment certificate has been suspended; or
- H. Massage treatments are or have been performed on the premises of the massage establishment, with or without the permittee's/certificate holder's actual knowledge, by any person who is not a duly authorized certified massage practitioner; or
- I. There have been one (1) or more acts prohibited under California Penal Code Sections 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), or 653.22 taking place on the premises of the massage establishment, 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/certificate holder; or
- J. The permittee/certificate holder 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 the 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.

10.90.130 Hearing by permit authority for revocation or suspension.

- A. Written Notice Required. The permit authority, before revoking or suspending any operator permit or certified massage establishment certificate, shall ~~give-serve~~ the permittee/certificate holder ~~with at least ten (10) days' written Notice of Revocation or Suspension notice, provided in the manner set forth in section 1.08.060 of this code,~~ of the alleged grounds for revocation or suspension and ~~the date for a hearing, to be held no less than ten (10) days and no more than sixty (60) days after the service of the written notice, -shall conduct a hearing in the matter of to consider~~ whether the permit shall be revoked or suspended. ~~The hearing shall be conducted at least ten (10) days from the date of written notice, -which shall be provided in the manner set forth in section 1.08.060 of this code.~~

B. Hearing. The permit authority shall appoint a hearing officer to hear and 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 authorityhearing officer from time-to-time. The hearing officer may require such legal briefing as may be required to address any issues raised at the hearing.

~~B. — The permit authority shall, at the conclusion of the hearing, make findings of fact based upon the evidence submitted and shall decide whether or not the permit/certificate shall be revoked or suspended.~~

C. Notice of Decision; Judicial Review. Within a reasonable time, but not more than thirty (30) days following the conclusion of the hearing, the administrative hearing officer shall issue a written decision as to whether the permit/certificate shall be revoked or suspended, 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 appellantpermittee/certificate holder 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.

~~C. —~~

~~D. The permit authority's written notice of decision shall be served on the permittee/certificate holder, within thirty (30) days of the conclusion of the hearing, in the manner provided in section 1.08.060 of this code, and, in the case of a revocation or suspension, such notice of decision shall indicate the appeal procedures as set forth hereinafter.~~

~~E. Appeal. Any applicant for or holder of an operator permit or certified massage establishment certificate shall have the right to appeal from a decision by the permit authority to deny a permit/eertificate application or renewal application, or to approve such an application with conditions, or to suspend or revoke an operator permit or certified massage establishment certificate, by filing with the city clerk a written notice of appeal, specifying the grounds for such appeal, within fifteen (15) days after the decision has been served on the applicant or permittee/certificate holder. Such appeal shall be heard by an administrative hearing officer appointed by the city manager or his designee, upon not less than fifteen (15) 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 thirty (30) 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.~~

10.90.140 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 10.04~~ chapter 10.04 of this code for operation of a massage establishment.

10.90.150 Exemptions.

This chapter shall not apply to the following classes of individuals 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 therapy 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 practitioners who use no physical touch of any kind at any time in their practice.
- G. Enrolled students of a school of massage 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 of the massage establishment has first notified the permit authority in writing of the name, residence address, and school of the students and the dates of the trainings.

10.90.160 Violations a public nuisance; penalties, nuisance abatement, and other remedies.

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 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 chapter, or chapters 1.40, 1.40, 1.42, 1.44, or 1.46 of this code, or under state law.

DIVISION 3:

~~—This Ordinance is exempt from the California Environmental Quality Act (“CEQA”) pursuant to the State CEQA Guidelines, since it can be seen with certainty that there is no possibility that this Ordinance, containing minor amendments to the registration, inspection and revocation processes for massage establishments or its implementation, would have a significant effect on the environment and is covered by the general rule, pursuant to 14 Cal. Code Regs. Section 15061(b)(3).~~

~~This Ordinance is exempt from the California Environmental Quality Act (“CEQA”) pursuant to the State CEQA Guidelines, since it can be seen with certainty that there is no possibility that this Ordinance or its implementation would have a significant effect on the environment (14 Cal. Code Regs. Section 15061(b)(3)).~~

DIVISION 4:

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have adopted the Ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

DIVISION 5:

A summary of this Ordinance shall be published and a certified copy of the full text of this Ordinance shall be posted in the office of the City Clerk at least five (5) days prior to the Council meeting at which it is adopted.

This Ordinance shall be in full force and effect thirty (30) days after its final passage, and the summary of this Ordinance shall be published within fifteen (15) days after the adoption, together with the names of the Councilmembers voting for or against same, in the Marin Independent Journal, a newspaper of general circulation published and circulated in the City of San Rafael, County of Marin, State of California.

Within fifteen (15) days after adoption, the City Clerk shall also post in the office of the City Clerk, a certified copy of the full text of this Ordinance along with the names of those Councilmembers voting for and against the Ordinance.

GARY O. PHILLIPS, Mayor

ATTEST:

ESTHER C. BEIRNE, City Clerk

The foregoing Ordinance No. _____ was read and introduced at a regular meeting of the City Council of the City of San Rafael on _____, the ____ day of _____ 2014, and was ordered passed to print by the following vote, to wit:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

and will come up for adoption as an Ordinance of the City of San Rafael at a Regular Meeting of the Council to be held on the ____ day of _____, 2014.

ESTHER C. BEIRNE, City Clerk

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Assembly Bill No. 1147

CHAPTER 406

An act to amend Section 460 of, and to add and repeal Chapter 10.5 (commencing with Section 4600) of Division 2 of, the Business and Professions Code, and to amend Section 51034 of the Government Code, relating to healing arts.

[Approved by Governor September 18, 2014. Filed with
Secretary of State September 18, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1147, Bonilla. Massage therapy.

Existing law, until January 1, 2015, provides for the voluntary certification of massage practitioners and massage therapists by the California Massage Therapy Council. Existing law specifies the requirements for the council to issue to an applicant a certificate as a massage practitioner or massage therapist. Existing law authorizes a city, county, or city and county to impose certain requirements on massage establishments or businesses that are the sole proprietorship of an individual certified pursuant to existing state law or that employ or use only persons who are so certified. Existing law authorizes a city, county, or city and county to, among other things, adopt reasonable health and safety requirements, as specified, pertaining to those massage establishments or businesses, and to require an applicant for a business license to operate a massage business or establishment to fill out an application that requests relevant information, as specified.

This bill would reenact, revise, and recast these provisions to, among other things, establish an interim board of directors to govern the council until September 15, 2015, and provide for the appointment of a new board of directors consisting of 13 members, as specified, whose 4-year terms would begin on that date. The bill would authorize the board to establish fees reasonably related to the costs of providing services and performing its duties, not to exceed \$300. The bill would require the board to provide at least 90 days' advance notice prior to holding a meeting to vote upon a proposal to increase the certification fees, as specified, except as provided. The bill would also require the board to notify certificate holders of a board action that increases those fees.

The bill would discontinue the issuance of new massage practitioner certificates after January 1, 2015, except as provided, but would authorize the renewal of massage practitioner certificates issued prior to January 1, 2015. The bill would require that all certificates issued pursuant to these provisions be subject to renewal every 2 years, except as provided. The bill would require the council to develop policies, procedures, rules, or bylaws

governing the approval and unapproval of schools that provide education required for certification, as specified.

The bill would authorize the council to deny an application for a certificate, or to discipline a certificate holder for a violation of these provisions, as specified. The bill would require the board to exercise its denial or discipline authority by means of fair and reasonable procedures that, among other things, provide the applicant or certificate holder with notice and an opportunity to be heard, as specified. The bill would provide that unprofessional conduct in violation of these provisions includes, among other things, engaging in sexually suggestive advertising related to massage services and engaging in sexual activity while providing massage services for compensation.

The bill would, notwithstanding any other law, prohibit a city, county, or city and county from enacting or enforcing an ordinance that conflicts with these provisions or other corresponding specified provisions. However, the bill would authorize a city, county, or city and county to adopt or enforce local ordinances that govern zoning, business licensing, or reasonable health and safety requirements for establishments or businesses of a licensed or certified healing arts professional, including a certified massage therapist. The bill would also make clarifying and conforming changes regarding local regulation of massage establishments or businesses.

The bill would authorize a court to issue an injunction or to provide any other relief it deems appropriate for violations of these provisions, as specified. The bill would provide that the powers and duties of the council are subject to review by the appropriate committees of the Legislature and would require the council to provide a specified report to these committees on or before June 1, 2016.

The bill would provide that these provisions are issues of statewide concern, and therefore applicable statewide. The bill would also provide that its provisions are severable.

The bill would repeal these provisions on January 1, 2017.

The people of the State of California do enact as follows:

SECTION 1. Section 460 of the Business and Professions Code is amended to read:

460. (a) No city, county, or city and county shall prohibit a person or group of persons, authorized by one of the agencies in the Department of Consumer Affairs or an entity established pursuant to this code by a license, certificate, or other means to engage in a particular business, from engaging in that business, occupation, or profession or any portion of that business, occupation, or profession.

(b) (1) No city, county, or city and county shall prohibit a healing arts professional licensed with the state under Division 2 (commencing with Section 500) or licensed or certified by an entity established pursuant to

this code from engaging in any act or performing any procedure that falls within the professionally recognized scope of practice of that licensee.

(2) This subdivision shall not be construed to prohibit the enforcement of a local ordinance in effect prior to January 1, 2010, related to any act or procedure that falls within the professionally recognized scope of practice of a healing arts professional licensed under Division 2 (commencing with Section 500).

(c) This section shall not be construed to prevent a city, county, or city and county from adopting or enforcing any local ordinance governing zoning, business licensing, or reasonable health and safety requirements for establishments or businesses of a healing arts professional licensed under Division 2 (commencing with Section 500) or licensed or certified by an entity established under this code or a person or group of persons described in subdivision (a).

(d) Nothing in this section shall prohibit any city, county, or city and county from levying a business license tax solely for revenue purposes, nor any city or county from levying a license tax solely for the purpose of covering the cost of regulation.

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

CHAPTER 10.5. MASSAGE THERAPY ACT

4600. This chapter shall be known and may be cited as the Massage Therapy Act. Whenever a reference is made to the Massage Therapy Act by any statute, it shall be construed to refer to this chapter.

4600.5. (a) It is the intent of the Legislature that this act enable consumers and local governments to more easily identify certified massage professionals, provide for consistent statewide certification and oversight of massage professionals, ensure that schools approved by the council that are teaching massage provide a high level of training, assist local governments and law enforcement in meeting their duty to maintain the highest standards of conduct in massage establishments by vetting and disciplining certificate holders, provide for a self-funded nonprofit oversight body to certify massage professionals, and ensure full compliance with, and execution of, the requirements of this act.

(b) It is the intent of the Legislature that broad control over land use in regulating massage establishments be vested in local governments so that they may manage those establishments in the best interests of the individual community, and that the requirements and practice of the profession of massage therapy remain a matter of statewide concern, regulation, and oversight.

(c) It is the intent of the Legislature that local governments impose and enforce only reasonable and necessary fees and regulations, in keeping with the requirements of existing law and being mindful of the need to protect legitimate business owners and massage professionals, particularly sole

providers, during the transition period after this act becomes law and thereafter for the sake of developing a healthy and vibrant local economy.

(d) It is the intent of the Legislature that local governments, law enforcement, nonprofit stakeholders, the massage industry, and massage professionals work together going forward to improve communication and share information to further increase the value of statewide certification, to collaborate in the implementation of this act, and to develop a model ordinance reflecting best practices in massage regulation for cities and counties to adopt that will respect local control, patient privacy, and the dignity of the profession of massage therapy.

4601. As used in this chapter, the following terms shall have the following meanings:

(a) “Approved school” or “approved massage school” means a school approved by the council that meets minimum standards for training and curriculum in massage and related subjects, that meets any of the following requirements, and that has not been otherwise unapproved by the council:

(1) Is approved by the Bureau for Private Postsecondary Education.

(2) Is approved by the Department of Consumer Affairs.

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

(A) A public institution.

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

(C) A for-profit institution.

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

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

(5) Is a school requiring equal or greater training than what is required pursuant to this chapter and is recognized by the corresponding agency in another state or accredited by an agency recognized by the United States Department of Education.

(b) “Certificate” means a valid certificate issued by the council pursuant to this chapter.

(c) “Compensation” means a payment, loan, advance, donation, contribution, deposit, or gift of money, or anything of value.

(d) “Council” means the California Massage Therapy Council created pursuant to this chapter, which shall be a nonprofit organization exempt from taxation under Section 501(c)(3) of Title 26 of the United States Code.

(c) "Massage" means the scientific manipulation of the soft tissues. For purposes of this chapter, the terms "massage" and "bodywork" shall have the same meaning.

(f) "Massage establishment" or "establishment" means a fixed location where massage is performed for compensation, excluding those locations where massage is only provided on an out-call basis.

(g) "Massage practitioner" means a person who is certified by the council pursuant to Section 4604.2 and who administers massage for compensation.

(h) "Massage therapist" means a person who is certified by the council under Section 4604 and who administers massage for compensation.

(i) "Sole provider" means a massage business where the owner owns 100 percent of the business, is the only person who provides massage services for compensation for that business pursuant to a valid and active certificate issued in accordance with this chapter, and has no other employees or independent contractors.

4602. (a) The California Massage Therapy Council, as defined in subdivision (d) of Section 4601, is hereby established and shall carry out the responsibilities and duties set forth in this chapter.

(b) The council may take any reasonable actions necessary to carry out the responsibilities and duties set forth in this chapter, including, but not limited to, hiring staff, entering into contracts, and developing policies, procedures, rules, and bylaws to implement this chapter.

(c) The council may require background checks for all employees, contractors, volunteers, and board members as a condition of their employment, formation of a contractual relationship, or participation in council activities.

(d) The council shall issue a certificate to an individual applicant who satisfies the requirements of this chapter for that certificate.

(e) The council is authorized to determine whether the information provided to the council in relation to the certification of an applicant is true and correct and meets the requirements of this chapter. If the council has any reason to question whether the information provided is true or correct or meets the requirements of this chapter, the council is authorized to make any investigation it deems necessary to establish that the information received is accurate and satisfies any criteria established by this chapter. The applicant has the burden to prove that he or she is entitled to certification.

(f) Until September 15, 2015, the council shall be governed by a board of directors comprised of two representatives selected by each professional society, association, or other entity, which membership is comprised of massage therapists and that chooses to participate in the council. To qualify, a professional society, association, or other entity shall have a dues-paying membership in California of at least 1,000 individuals for the last three years and shall have bylaws that require its members to comply with a code of ethics. The board of directors shall also include each of the following persons:

(1) One member selected by each statewide association of private postsecondary schools incorporated on or before January 1, 2010, which member schools have together had at least 1,000 graduates in each of the previous three years from massage therapy programs that meet the approval standards set forth in subdivision (a) of Section 4601, unless a qualifying association chooses not to exercise this right of selection.

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

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

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

(5) One member appointed by the Office of the Chancellor of the California Community Colleges, unless that entity chooses not to exercise this right of selection. The person appointed, if any, shall not be part of any massage therapy certificate or degree program.

(6) The council's bylaws shall establish a process for appointing other professional directors to the council who have knowledge of the massage industry or can bring needed expertise to the operation of the council for purposes of complying with Section 4603.

(g) At 12 p.m. Pacific standard time on September 15, 2015, the term of each member of the board of directors established pursuant to subdivision (f) shall terminate, and the terms of 13 new members of the board of directors who shall be chosen in the following manner, shall begin:

(1) One member shall be a representative of the League of California Cities, unless that entity chooses not to exercise this right to appoint.

(2) One member shall be a representative of the California Police Chiefs Association, unless that entity chooses not to exercise this right to appoint.

(3) One member shall be a representative of the California State Association of Counties, unless that entity chooses not to exercise this right to appoint.

(4) One member shall be a representative of an "anti-human trafficking" organization to be determined by the council. This organization shall appoint one member, unless the organization chooses not to exercise this right to appoint.

(5) One member shall be appointed by the Office of the Chancellor of the California Community Colleges, unless that office chooses not to exercise this right to appoint.

(6) One member shall be a member of the public appointed by the Director of the Department of Consumer Affairs, unless the director chooses not to exercise this right to appoint.

(7) One member shall be appointed by the California Association of Private Postsecondary Schools, unless that entity chooses not to exercise this right to appoint.

(8) One member shall be appointed by the American Massage Therapy Association, California Chapter, who shall be a California-certified massage therapist or massage practitioner who is a California resident and who has

been practicing massage for at least three years, unless that entity chooses not to exercise this right to appoint.

(9) One member shall be a public health official representing a city, county, city and county, or state health department, to be determined by the council. The city, county, city and county, or state health department chosen, shall appoint one member unless that entity chooses not to exercise this right to appoint.

(10) (A) One member shall be a certified massage therapist or a certified massage practitioner who is a California resident who has practiced massage for at least three years prior to the appointment, selected by a professional society, association, or other entity which membership is comprised of massage therapist professionals, and that chooses to participate in the council. To qualify, a professional society, association, or other entity shall have a dues-paying membership in California of at least 1,000 individuals, have been established since 2000, and shall have bylaws that require its members to comply with a code of ethics.

(B) If there is more than one professional society, association, or other entity that meets the requirements of subparagraph (A), the appointment shall rotate based on a four-year term between each of the qualifying entities. The qualifying entity shall maintain its appointment authority during the entirety of the four-year term during which it holds the appointment authority. The order in which a qualifying professional society, association, or other entity has the authority to appoint shall be determined by alphabetical order based on the full legal name of the entity as of January 1, 2014.

(11) The members appointed to the board in accordance with paragraphs (1) to (10), inclusive, shall appoint three additional members, at a duly held board meeting in accordance with the board's bylaws. One of those appointees shall be an attorney licensed by the State Bar of California, who has been practicing law for at least three years and who at the time of appointment represents a city in the state. One of those appointees shall represent a massage business entity that has been operating in the state for at least three years. The council shall establish in its bylaws a process for appointing an additional member, provided that the member has knowledge of the massage industry or can bring needed expertise to the operation of the council for purposes of complying with Section 4603.

(h) Board member terms shall be for four years.

(i) The board of directors shall establish fees reasonably related to the cost of providing services and carrying out its ongoing responsibilities and duties. Initial and renewal fees for certificates shall be in an amount sufficient to support the functions of the council in the administration of this chapter, but in no event shall exceed three hundred dollars (\$300). The renewal fee shall be reassessed biennially by the board.

(j) The meetings of the council shall be subject to the rules of the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code). The board may adopt additional policies and procedures that provide

greater transparency to certificate holders and the public than required by the Bagley-Keene Open Meeting Act.

(k) Prior to holding a meeting to vote upon a proposal to increase the certification fees, the board shall provide at least 90 days' notice of the meeting, including posting a notice on the council's Internet Web site unless at least two-thirds of the board members concur that there is an active threat to public safety and that voting at a meeting without prior notice is necessary. However, the board shall not waive the requirements of subdivision (j).

(l) If the board approves an increase in the certification fees, the council shall update all relevant areas of its Internet Web site and notify all certificate holders and affected applicants by email within 14 days of the board's action.

4603. Protection of the public shall be the highest priority for the council in exercising its certification and disciplinary authority, and any other functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

4604. (a) In order to obtain certification as a massage therapist, an applicant shall submit a written application and provide the council with satisfactory evidence that he or she meets all of the following requirements:

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

(2) The applicant has successfully completed the curricula in massage and related subjects totaling a minimum of 500 hours, or the credit unit equivalent, that incorporates appropriate school assessment of student knowledge and skills.

(A) Of the 500 hours, a minimum of 100 hours of instruction shall address anatomy and physiology, contraindications, health and hygiene, and business and ethics.

(B) All of the 500 hours shall be from schools approved by the council.

(3) The applicant has passed a massage and bodywork competency assessment examination that meets generally recognized psychometric principles and standards and that is approved by the council. The successful completion of this examination may have been accomplished before the date the council is authorized by this chapter to begin issuing certificates.

(4) The applicant has successfully passed a background investigation pursuant to Section 4606, and has not violated any of the provisions of this chapter.

(5) All fees required by the council have been paid.

(6) The council may issue a certificate to an applicant who meets the qualifications of this chapter if he or she holds a current and valid registration, certification, or license from any other state whose licensure requirements meet or exceed those defined within this chapter. If an applicant has received education at a school that is not approved by the council, the council shall have the discretion to give credit for comparable academic work completed by an applicant in a program outside of California.

(b) A certificate issued pursuant to this chapter and any identification card issued by the council shall be surrendered to the council by any certificate holder whose certificate is suspended or revoked.

4604.1. (a) The council shall not accept applications to issue any new certificates to practice as a certified massage practitioner on or after January 1, 2015.

(b) Certificates to practice as a certified massage practitioner for applications accepted prior to January 1, 2015, may be renewed without any additional educational requirements.

(c) A massage practitioner certificate and any identification card issued by the council, shall be surrendered to the council by any certificate holder whose certificate is suspended or revoked.

4604.2. (a) A person who was issued a conditional certificate to practice as a massage practitioner shall, within five years of being issued the conditional certificate by the council, complete and report to the council the completion of, at least 30 hours of additional education per year from approved schools or from continuing education providers approved by the council, until he or she has completed a total of at least 250 hours of education.

(b) A conditional certificate issued to any person pursuant to this section shall immediately be nullified, without need for further action by the council, if proof of completion of the requirements specified in subdivision (a) is not filed with the council within the time period specified in subdivision (a).

(c) Notwithstanding subdivision (a) of Section 4604.1, the council shall issue a new certificate to practice as a massage practitioner to a person that successfully completes the requirements described in subdivision (a).

4605. Except as otherwise provided, a certification issued pursuant to this chapter shall be subject to renewal every two years in the manner prescribed by the council. A certificate issued by the council shall expire after two years unless renewed as prescribed. The council may provide for the late renewal of a certificate.

4606. (a) Prior to issuing a certificate to an applicant, or designating a custodian of records, the council shall require the applicant or the custodian of records candidate to submit fingerprint images as directed by the council and in a form consistent with the requirements of this section.

(b) The council shall submit the fingerprint images and related information to the Department of Justice for the purpose of obtaining information as to the existence and nature of a record of state and federal level convictions and of state and federal level arrests for which the Department of Justice establishes that the applicant or candidate was released on bail or on his or her own recognizance pending trial.

(c) Requests for federal level criminal offender record information received by the Department of Justice pursuant to this section shall be forwarded to the Federal Bureau of Investigation by the Department of Justice. The Department of Justice shall review the information returned from the Federal Bureau of Investigation, and shall compile and disseminate a fitness determination regarding the applicant or candidate to the council. The Department of Justice shall provide information to the council pursuant to subdivision (p) of Section 11105 of the Penal Code.

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

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

(f) The council is authorized to receive arrest notifications and other background materials about applicants and certificate holders from a city, county, or city and county.

4607. The council may discipline an owner or operator of a massage business or establishment who is certified pursuant to this chapter for the conduct of all individuals providing massage for compensation on the business premises.

4608. In addition to the other requirements of this chapter, a certificate holder shall:

(a) Display his or her original certificate wherever he or she provides massage for compensation. A certificate holder shall have his or her identification card in his or her possession while providing massage services for compensation.

(b) Provide his or her full name and certificate number upon the request of a member of the public, the council, or a member of law enforcement, or a local government agency charged with regulating massage or massage establishments, at the location where he or she is providing massage services for compensation.

(c) Include the name under which he or she is certified and his or her certificate number in any and all advertising of massage for compensation.

(d) Notify the council within 30 days of any changes in the certificate holder's home address or the address of any massage establishment or other location where he or she provides massage for compensation, excluding those locations where massage is only provided on an out-call basis. A certificate holder also shall notify the council of his or her primary email address, if any, and notify the council within 30 days of a change of the primary email address.

4609. (a) It is a violation of this chapter for an applicant or a certificate holder to commit any of the following acts, the commission of which is grounds for the council to deny an application for a certificate or to impose discipline on a certificate holder:

(1) Unprofessional conduct, including, but not limited to, any of the following:

(A) Engaging in sexually suggestive advertising related to massage services.

(B) Engaging in any form of sexual activity on the premises of a massage establishment where massage is provided for compensation, excluding a residence.

(C) Engaging in sexual activity while providing massage services for compensation.

(D) Practicing massage on a suspended certificate or practicing outside of the conditions of a restricted certificate.

(E) Providing massage of the genitals or anal region.

(F) Providing massage of female breasts without the written consent of the person receiving the massage and a referral from a licensed California health care provider.

(2) Procuring or attempting to procure a certificate by fraud, misrepresentation, or mistake.

(3) Failing to fully disclose all information requested on the application.

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

(5) Impersonating a certificate holder, or permitting or allowing a noncertified person to use a certificate.

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

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

(8) Denial of licensure, revocation, suspension, restriction, citation, or any other disciplinary action against an applicant or certificate holder by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision, order, judgment, or citation shall be conclusive evidence of these actions.

(9) Being convicted of any felony, misdemeanor, infraction, or municipal code violation, or being held liable in an administrative or civil action for an act, that is substantially related to the qualifications, functions, or duties of a certificate holder. A record of the conviction or other judgment or liability shall be conclusive evidence of the crime or liability.

(10) Dressing while engaged in the practice of massage for compensation, or while visible to clients in a massage establishment, in any of the following:

(A) Attire that is transparent, see-through, or substantially exposes the certificate holder's undergarments.

(B) Swim attire, if not providing a water-based massage modality approved by the council.

(C) A manner that exposes the certificate holder's breasts, buttocks, or genitals.

(D) A manner that constitutes a violation of Section 314 of the Penal Code.

(E) A manner that is otherwise deemed by the council to constitute unprofessional attire based on the custom and practice of the profession in California.

(11) Committing any act punishable as a sexually related crime or being required to register pursuant to the Sex Offender Registration Act (Chapter

5.5 (commencing with Section 290) of Title 9 of Part 1 of the Penal Code), or being required to register as a sex offender in another state.

(b) The council may deny an application for a certificate for the commission of any of the acts described in subdivision (a). The council may also discipline a certificate holder, in any manner permitted by this chapter, for the commission of any of those acts by a certificate holder.

(c) The council shall deny an application for a certificate, or revoke the certificate of a certificate holder, if the applicant or certificate holder is required to register pursuant to the Sex Offender Registration Act (Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1 of the Penal Code), or is required to register as a sex offender in another state.

4610. (a) An applicant for a certificate shall not be denied a certificate, and a certificate holder shall not be disciplined pursuant to this chapter except according to procedures that satisfy the requirements of this section. Denial or discipline that is not in accord with this section shall be void and without effect.

(b) The council may discipline a certificate holder by any, or a combination, of the following methods:

(1) Placing the certificate holder on probation, which may include limitations or conditions on practice.

(2) Suspending the certificate and the rights conferred by this chapter on a certificate holder for a period not to exceed one year.

(3) Suspending or staying the disciplinary order, or portions of it, with or without conditions.

(4) Revoking the certificate.

(5) Taking other action as the council deems proper, as authorized by this chapter or policies, procedures, rules, or bylaws adopted by the board.

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

(d) Any denial or discipline shall be decided upon and imposed in good faith and in a fair and reasonable manner. Any procedure that conforms to the requirements of subdivision (f) is fair and reasonable, but a court may also find other procedures to be fair and reasonable when the full circumstances of the denial or discipline are considered.

(e) A procedure is fair and reasonable if the procedures specified in subdivision (f) or (g) are followed or if all of the following apply:

(1) Denial or discipline shall be based on a preponderance of the evidence. In determining the basis for the denial or discipline, the council may consider all written documents or statements as evidence, but shall weigh the reliability of those documents or statements.

(2) The provisions of the procedure are publicly available on the council's Internet Web site.

(3) The council provides 15 calendar days prior notice of the denial or discipline and the reasons for the denial or discipline.

(4) The council provides an opportunity for the applicant or certificate holder, to be heard, orally or in writing, not less than five days before the

effective date of the denial or discipline, by a person or body authorized to decide whether the proposed denial or discipline should go into effect.

(f) (1) Notwithstanding any other law, if the council receives notice that a certificate holder has been arrested and charges have been filed by the appropriate prosecuting agency against the certificate holder alleging a violation of subdivision (b) of Section 647 of the Penal Code or any other offense described in paragraph (11) of subdivision (a) of Section 4609, the council shall immediately suspend, on an interim basis, the certificate of that certificate holder, and take all of the following additional actions:

(A) Notify the certificate holder at the address last filed with the council that the certificate has been suspended and the reason for the suspension within 10 business days.

(B) Provide notification of the suspension by email to the clerk or other designated contact of the city, county, or city and county in which the certificate holder lives or works, pursuant to the council's records, within 10 business days.

(C) Provide notification of the suspension by email to any establishment or employer, whether public or private, that the council has in its records as employing the certificate holder, within 10 business days.

(2) Upon notice to the council that the charges described in paragraph (1) have resulted in a conviction, the council shall permanently revoke the suspended certificate. The council shall provide notice to the certificate holder, at the address last filed with the council by a method providing delivery confirmation, within 10 business days that it has evidence of a valid record of conviction and that the certificate will be revoked unless the certificate holder provides evidence within 15 days from the date of the council's mailing of the notice that the conviction is either invalid or that the information is otherwise erroneous.

(3) Upon notice that the charges described in paragraph (1) have resulted in an acquittal or have been otherwise dismissed prior to conviction, the certificate shall be immediately reinstated and the certificate holder and any establishment or employer that received notice pursuant to this section shall be notified of the reinstatement within 10 business days.

(g) (1) Notwithstanding any other law, if the council determines that a certificate holder has committed an act punishable as a sexually related crime or a felony that is substantially related to the qualifications, functions, or duties of a certificate holder, the council may immediately suspend the certificate of that certificate holder. A determination to immediately suspend a certificate pursuant to this subdivision shall be based upon a preponderance of the evidence and the council shall also consider any available credible mitigating evidence before making a decision. Written statements by any person shall not be considered by the council when determining whether to immediately suspend a certificate unless made under penalty of perjury. If the council suspends a certificate in accordance with this subdivision, the council shall take all of the following additional actions:

(A) Notify the certificate holder within 10 business days, at the address last filed with the council, by a method providing delivery confirmation,

that the certificate has been suspended, the reason for the suspension, and that the certificate holder has the right to request a hearing pursuant to paragraph (2).

(B) Notify by email or any other means consistent with the notice requirements of this chapter, any business or employer, whether public or private, that the council has in its records as employing or contracting with the certificate holder for massage services, and the California city, county, or city and county that has jurisdiction over that establishment or employer, that the certificate has been suspended within 10 business days.

(2) A certificate holder whose certificate is suspended pursuant to this subdivision shall have the right to request, in writing, a hearing to challenge the factual basis for the suspension. If the holder of the suspended certificate requests a hearing on the suspension, the hearing shall be held within 30 calendar days after receipt of the request. A holder whose certificate is suspended based on paragraph (1) shall be subject to revocation or other discipline in accordance with subdivision (a).

(3) If the council determines, after a hearing conducted pursuant to this subdivision, to lift the suspension, the certificate shall be immediately reinstated and the certificate holder, any establishment or employer, and the city, county, or city and county that has jurisdiction over that establishment or employer, that received notice pursuant to this section shall be notified of the reinstatement within 10 business days.

(h) Any notice required under this section may be given by any method reasonably calculated to provide actual notice. Any notice given by mail shall be given by first-class or certified mail sent to the last address of the applicant or certificate holder shown on the council's records.

(i) An applicant or certificate holder may challenge a denial or discipline decision issued pursuant to this section in a court of competent jurisdiction. Any action challenging a denial or discipline, including any claim alleging defective notice, shall be commenced within one year after the effective date of the denial or discipline. If the action is successful, the court may order any relief, including reinstatement, that it finds equitable under the circumstances.

(j) This section governs only the procedures for denial or discipline decision and not the substantive grounds for the denial or discipline. Denial or discipline based upon substantive grounds that violates contractual or other rights of the applicant or certificate holder, or is otherwise unlawful, is not made valid by compliance with this section.

4611. (a) It is an unfair business practice for a person to do any of the following:

(1) To hold himself or herself out or to use the title of "certified massage therapist" or "certified massage practitioner," or any other term, such as "licensed," "certified," "CMT," or "CMP," in any manner whatsoever that implies or suggests that the person is certified as a massage therapist or massage practitioner, unless that person currently holds an active and valid certificate issued by the council pursuant to this chapter.

(2) To falsely state or advertise or put out any sign or card or other device, or to falsely represent to the public through any print or electronic media, that he or she or any other individual is licensed, certified, or registered by a governmental agency as a massage therapist or massage practitioner.

(b) In addition to any other available remedies, engaging in any of the prohibited behaviors described in subdivision (a) constitutes unfair competition under Section 17200.

4612. (a) Notwithstanding any other law, a city, county, or city and county shall not enact or enforce an ordinance that conflicts with this chapter or Section 51034 of the Government Code.

(b) Nothing in this chapter shall prevent a city, county, or city and county from licensing, regulating, prohibiting, or permitting an individual who provides massage for compensation without a valid certificate.

4614. (a) Upon the request of any law enforcement agency or any other representative of a local government agency with responsibility for regulating or administering a local ordinance relating to massage or massage establishments, the council shall provide information concerning an applicant or a certificate holder, including, but not limited to, any of the following:

(1) The current status of an application or certificate.

(2) Any history of disciplinary actions.

(3) The home and work addresses of the applicant or certificate holder.

(4) The name and home and work addresses of any person whose certificate has been suspended and the length of the suspension, if the work address is located within the jurisdiction of agency making the request.

(5) Any other information in the council's possession that is necessary to verify facts relevant to administering the local ordinance.

(b) Upon the request of the council, any law enforcement agency or any other representative of a local government agency with responsibility for regulating or administering a local ordinance relating to massage or massage establishments is authorized to provide information to the council concerning an applicant or certificate holder, including, but not limited to, any of the following:

(1) The current status of any local application or permit.

(2) Any history of legal or administrative action taken against the applicant or certificate holder.

(3) Any information related to criminal activity or unprofessional conduct allegedly engaged in by a certificate applicant or certificate holder, including, but not limited to, police reports and declarations of conduct.

(4) The home and work addresses of the applicant or certificate holder.

(5) Any other information in the possession of the law enforcement agency or other local government agency that is necessary to verify information or otherwise implement this chapter.

(c) The council shall accept information provided by any law enforcement agency or any other representative of a local government agency with responsibility for regulating or administering a local ordinance relating to massage and review that information in a timely manner. The council shall have the responsibility to review any information received pursuant to this

subdivision and to take any actions authorized by this chapter that are warranted by that information.

4615. (a) The council shall have the responsibility to determine whether the school from which an applicant has obtained the education required by this chapter meets the requirements of this chapter.

(1) If the council has any reason to question whether or not the applicant received the education that is required by this chapter from the school or schools that the applicant is claiming, the council shall investigate the facts to determine that the applicant received the required education prior to issuing a certificate.

(2) For purposes of this section and any other provision of this chapter that authorizes the council to receive factual information as a condition of taking any action, the council may conduct oral interviews of the applicant and others or conduct any investigation deemed necessary to establish that the information received is accurate and satisfies the criteria established by this chapter.

(b) The council shall develop policies, procedures, rules, or bylaws governing the requirements and process for the approval and unapproval of schools consistent with Section 4601, including any corrective action required to return a school to approved status. These policies, procedures, rules, or bylaws shall address topics including, but not limited to, what constitutes an acceptable curriculum, facility requirements, student-teacher ratios, clinical practice requirements, and provisions for the acceptance of accreditation from a recognized accreditation body or other form of acceptance. The council shall exercise its authority to approve and unapprove schools and specify corrective action in keeping with the purposes set forth in Section 4603.

(c) The council may charge a reasonable fee for the inspection or approval of schools, provided the fees do not exceed the reasonable cost of the inspection or approval process.

4616. The council shall be sued only in the county of its principal office, which shall be in Sacramento, unless otherwise designated by the council.

4617. The superior court of a county of competent jurisdiction may, upon a petition by any person, issue an injunction or any other relief the court deems appropriate for a violation of this chapter by any person or establishment operating in that county subject to the provisions of this chapter. An injunction proceeding under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

4618. The Legislature finds and declares that due to important health, safety, and welfare concerns that affect the entire state, establishing a uniform standard of certification for massage practitioners and massage therapists upon which consumers may rely to identify individuals who have achieved specified levels of education, training, and skill is a matter of statewide concern and not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this chapter shall apply to all

cities, counties, and cities and counties, including charter cities and charter counties.

4619. (a) This chapter shall be liberally construed to effectuate its purposes.

(b) The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(c) If any provision of this chapter or the application of these provisions to any person or circumstance is held to be invalid, the invalidity shall not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

4620. (a) On or before June 1, 2016, for the time period beginning on January 1, 2015, the council shall provide a report to the appropriate policy committees of the Legislature that includes all of the following:

(1) A feasibility study of licensure for the massage profession, including a proposed scope of practice, legitimate techniques of massage, and related statutory recommendations.

(2) The council's compensation guidelines and current salary levels.

(3) The status of the council's progress towards revising the school approval process.

(4) Performance metrics, including, but not limited to:

(A) The annual number of denied certificate applications, and a brief description of the grounds for each decision.

(B) The annual number of suspended, revoked, or otherwise disciplined certificates, and a brief description of the grounds for each decision.

(C) The number of certificates taken off suspension, and a brief description of the grounds for each decision.

(D) The number of schools inspected and unapproved and a brief description of the grounds for each decision to unapprove.

(E) The total number of complaints about certificate holders received annually, including a subtotal of complaints received from local law enforcement and the action taken by the council as a result of those complaints.

(b) The council shall testify in person if requested by the appropriate policy committees of the Legislature.

4621. (a) This chapter shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

(b) Notwithstanding any other law, the powers and duties of the council shall be subject to review by the appropriate policy committees of the Legislature.

SEC. 3. Section 51034 of the Government Code is amended to read:

51034. (a) The Legislature in enacting this chapter recognizes the existing power of a city or county to regulate a lawful massage business pursuant to Section 37101, or pursuant to Section 16000 or 16100 of the

Business and Professions Code, or under Section 7 of Article XI of the California Constitution.

(b) Nothing contained in this chapter shall be a limitation on that existing power or on the existing authority of a city to license for revenue purposes. A city, county, or city and county shall not enact or enforce an ordinance that conflicts with the provisions of this section or Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code.

(c) Nothing contained in this chapter shall authorize a city, county, or city and county to do any of the following:

(1) Prohibit a person of one sex from engaging in the massage of a person of the other sex.

(2) Define a massage establishment as an adult entertainment business, or otherwise regulate a massage establishment as adult entertainment.

(3) Require a massage establishment to have windows or walls that do not extend from the floor to ceiling, or have other internal physical structures, including windows, that interfere with a client's reasonable expectation of privacy.

(4) Impose client draping requirements that extend beyond the covering of genitalia and female breasts, or otherwise mandate that the client wear special clothing.

(5) Prohibit a massage establishment from locking its external doors if the massage establishment is a business entity owned by one individual with one or no employees or independent contractors.

(6) Require a massage establishment to post any notice in an area that may be viewed by clients that contains explicit language describing sexual acts, mentions genitalia, or specific contraception devices.

(7) Impose a requirement that a person certified pursuant to Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code take any test, medical examination, or background check or comply with education requirements beyond what is required by Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code.

(8) Impose a requirement that an individual holding a certificate issued in accordance with Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code, obtain any other license, permit, certificate, or other authorization to provide massage for compensation. However, this paragraph shall not be construed to prohibit a city, county, or city and county from requiring by ordinance that a massage business or establishment obtain a license, permit, certificate, or other authorization in order to operate lawfully within the jurisdiction.

(9) Impose a dress code requirement on a person certified pursuant to Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code in excess of those already imposed pursuant to paragraph (10) of subdivision (a) of Section 4609 of the Business and Professions Code.

(10) Prohibit a person certified pursuant to Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code from performing massage for compensation on the gluteal muscles, prohibit specific massage techniques recognized by the California Massage Therapy Council as legitimate, or impose any other specific restriction on professional practice beyond those set forth in subparagraph (E) of paragraph (1) of subdivision (a) of Section 4609 of the Business and Professions Code, except as authorized by Section 460 of the Business and Professions Code.

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NOTICE OF PUBLIC HEARING – CITY COUNCIL

You are invited to attend the City Council hearing on the following proposed project:

PROJECT: San Rafael Municipal Code (SRMC) Amendment to Title 10.90 (Massage Therapy). Text amendments to SRMC Title 10.90 (Massage Therapy to reflect: 1) Changes to state law related to Massage Therapy through the passage of Assembly Bill (AB) 1147, signed into law on September 18, 2014 and set to become effective on January 1, 2015; and 2) clean up, modification and clarification of ordinance provisions related to registration, inspections, operational standards and revocation process; File No.: P14-013

As required by state law, the project's potential environmental impacts have been assessed. Planning staff recommends that this project will not have a significant effect on the environment as it is covered by the general rule, pursuant to CEQA Guidelines Section 15061(b)(3), and is not subject to environmental review.

MEETING DATE/TIME/LOCATION: Monday, December 1, 2014, 7:00 p.m. City Council Chambers, 1400 Fifth Ave at D St, San Rafael, CA

FOR MORE INFORMATION: Contact Raffi Boloyan, Project Planner at (415) 485-3095 or raffi.boloyan@cityofsanrafael.org. You can view the draft amendments on the City's web site at <http://www.cityofsanrafael.org/massage>. You can also view the staff report after 5:00 p.m. on the Friday before the meeting at <http://www.cityofsanrafael.org/meetings>.

WHAT WILL HAPPEN: You can comment on the project. The City Council will consider all public testimony and decide whether to approve or deny the proposed amendments.

IF YOU CANNOT ATTEND: You can send a letter to the Community Development Department, Planning Division, City of San Rafael, P. O. Box 151560, San Rafael, CA 94915-1560. You can also hand deliver it prior to the meeting.

At the above time and place, all letters received will be noted and all interested parties will be heard. If you challenge in court the matter described above, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered at, or prior to, the above referenced public hearing (Government Code Section 65009 (b) (2)).

Judicial review of an administrative decision of the City Council must be filed with the Court not later than the 90th day following the date of the Council's decision. (Code of Civil Procedure Section 1094.6)

Sign Language and Interpretation and assistive listening devices may be requested by calling (415) 485-3085 (voice) or (415) 485-3198 (TDD) at least 72 hours in advance. Copies of documents are available in accessible formats upon request.

Public transportation to City Hall is available through Golden Gate Transit, Line 22 or 23. Para-transit is available by calling Whistlestop Wheels at (415) 454-0964.

To allow individuals with environmental illness or multiple chemical sensitivity to attend the meeting/hearing, individuals are requested to refrain from wearing scented products.



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