



CONSENT CALENDAR

Agenda Item # 7

AGENDA REPORT SUMMARY

Meeting Date: July 9, 2019

Subject: Ordinance No. 2019-459: Massage Businesses

Prepared by: Katie Krauss, Police Captain

Reviewed by: Andy Galea, Chief of Police

Approved by: Chris Jordan, City Manager

Attachment(s):

1. Ordinance No. 2019-459
2. California Massage Therapy Council Summary of Changes to CAMTC's Statute
3. Massage Therapy Act 2017

Initiated by:

Staff

Previous Council Consideration:

Current massage ordinance was adopted by Council on March 28, 1995

Fiscal Impact:

No fiscal impact

Environmental Review:

Not applicable

Policy Question(s) for Council Consideration:

Does the City Council wish to approve the amended Massage Ordinance (Chapter 4.20 LAMC)?

Summary:

- The current Massage Ordinance (Chapter 4.20 LAMC) was adopted by the Los Altos City Council on March 28, 1995
- Recent law changes, including the Massage Therapy Act of 2017, have changed background check procedures for practitioners and permitting conditions for local governments
- As a result, our current Massage Ordinance is out of compliance with current state law.

Staff Recommendation:

Introduce and waive further reading of Ordinance No. 2019459 amending Chapter 4.20 of the Los Altos Municipal Code regarding Massage Businesses

City Manager

CJ

Reviewed By:

City Attorney

CD

Finance Director

SE



Subject: Ordinance No. 2019-459: Massage Businesses

Purpose

The City Council is requested to approve the amended Massage Ordinance, Chapter 4.20 of the Los Altos Municipal Code.

Background

The City of Los Altos is authorized to regulate Massage Establishments (51030 GOV, 460 BPC, 4600 BPC, Article XI Section 7). Chapter 4.20 of the Los Altos Municipal Code provides for the orderly regulation of massage businesses by providing minimum standards and qualifications necessary to operate such businesses. Amendments to Chapter 4.20 LAMC are necessary due various changes in state law.

Discussion/Analysis

To ensure the revisions to the Los Altos Massage Ordinance are aligned with current California state law, the Los Altos Police Department worked closely with the City Attorney's office to update the Ordinance. The most significant amendments are outlined below.

- **Massage Practitioner Registration**

The current ordinance requires each massage therapist or practitioner to register with the police department, which includes fingerprinting and a criminal background check. Changes to State Government Code 51304 provide that local governments cannot require a California Massage Therapy Council (CAMTC) certificate holder to complete background checks. CAMTC Certification is for a two-year time period and includes LiveScan fingerprinting and a broad criminal background check. The amended Massage Ordinance requires all massage practitioners to have a valid California State Certificate from the CAMTC by January 1, 2020 to provide massage for compensation in Los Altos (4.20.040 LAMC).

- **Massage Establishment Permit**

Requirements for obtaining a Massage Establishment Permit remain in place, with additional provisions if the applicant is a corporation, limited liability company, or partnership (4.20.050(a)(15) and (16)). Any Massage Establishment Permit applicant/owner/managing employee that is not a CAMTC State Certificate Holder must submit a photograph and LiveScan fingerprints for a criminal background check must be completed (4.20.050(b) LAMC).

- **Register of Massage Therapists**

The amended massage ordinance requires the holder of a Massage Establishment Permit to maintain a register of all certified massage therapists providing massage, including their state certificate number, home address, date of hire, and whether they will perform outcall



Subject: Ordinance No. 2019-459: Massage Businesses

massages. An amended copy of the register shall be provided to the Chief of Police within five days of any changes in personnel at the establishment (4.20.080(a) LAMC). The holder of the Massage Establishment permit must also report within five days any arrests of employees for offenses other than misdemeanor traffic offenses and any disciplinary action taken by the CAMTC regarding a therapist or massage practitioner.

- **Malpractice Insurance**

Applicants for Massage Establishment permits must submit proof of malpractice insurance (4.20.050(a) (14) LAMC). Prior massage ordinance did not establish this requirement.

- **Grounds for Denial of Massage Establishment Permit**

The Police Chief shall deny an application if any personnel are registered as a sex offender under Penal Code 290PC, or if the applicant, owner, or managing employee have been convicted of any offense involving a sex-related crime (4.20.060(b)(2) and 4.20.060(b)(6d) LAMC). Prior ordinance only restricted permits for convictions involving sex crimes against children.

- **Hours of Operation**

All Massage Establishments shall be closed for business by no later than 10:00 p.m. and shall open for business no earlier than 6:00 a.m. (4.20.090h LAMC). Prior hours of operation were 6:00 a.m. to 11:00 p.m.

- **Call Out Massage Services**

Massage establishments may provide out call massage services to clients within Los Altos (4.20.110 LAMC). Prior ordinance required a referral from a physician stating that treatment in a licensed massage establishment was not recommended.

- **Inspection by Officials**

Any sworn investigating official shall have the right to enter the establishment to conduct inspections (4.20.150 LAMC).

- **Business License**

No business license will be issued to a Massage Establishment until the Massage Establishment Permit is approved (4.20.070 LAMC). Prior massage ordinance did not establish this requirement.

Options

- 1) Approve the amended Massage Ordinance, Chapter 4.20 of the Los Altos Municipal Code.



Subject: Ordinance No. 2019-459: Massage Businesses

Advantages: Allows the City to align their Massage Ordinance with the requirements of current California State law.

Disadvantages: None identified

2) Direct Staff to revise the Massage Ordinance, Chapter 4.20 of the Los Altos Municipal Code.

Advantages: None identified

Disadvantages: Extends the time period the Los Altos Municipal Code is out of compliance with California State Law. Delays the approval of Massage Establishment Permits during revisions.

Recommendation

The staff recommends Option 1.

ORDINANCE NO. 2019-459

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS
AMENDING AND RESTATING CHAPTER 4.20 OF THE LOS ALTOS MUNICIPAL
CODE PERTAINING TO MASSAGE BUSINESSES**

WHEREAS, the City of Los Altos, California (the “City”) is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, the City regulates massage businesses under Chapter 4.20 of the Los Altos Municipal Code; and

WHEREAS, Assembly Bill 1147, effective January 1, 2015, approved the Massage Therapy Act (Business & Professions Code, Division 2, Chapter 10.5) and authorized local agencies to impose reasonable zoning, business licensing, and health and safety requirements on massage establishments, subject to certain restrictions; and

WHEREAS, Assembly Bill 2194, effective January 1, 2017, made additional changes to the Massage Therapy Act and imposed additional restrictions on local authority to regulate massage; and

WHEREAS, the City desires to amend its local regulatory scheme for massage businesses for consistency with state law; and

WHEREAS, the City wishes both to recognize the practice of massage as a valid professional field and to discourage prostitution, human trafficking and other unlawful activity which otherwise may become associated with some massage establishments; and

WHEREAS, it is the purpose and intent of this ordinance to provide for the orderly regulation of massage businesses in the interest of the public health, safety and welfare.

NOW, THEREFORE, the City Council of the City of Los Altos does hereby ordain as follows:

SECTION 1. AMENDMENT OF CODE. Chapter 4.20 (“Massage Businesses” of the Los Altos Municipal Code is hereby amended and restated in full as set forth on Exhibit A, attached hereto and incorporated herein by reference.

SECTION 2. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 3. CEQA. This Ordinance is not subject to review under the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines Sections 15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, and pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that it will not have a significant effect or physical change to the environment. The Ordinance revises the permitting requirements for massage establishments to conform with recent state law changes.

SECTION 4. PUBLICATION. This Ordinance shall be published as provided in

Government Code section 36933.

SECTION 5. EFFECTIVE DATE. This Ordinance shall be effective upon the commencement of the thirty-first (31st) day following the adoption date.

The foregoing Ordinance was duly and properly introduced at a regular meeting of the City Council of the City of Los Altos held on _____, 2019 and was thereafter, at a regular meeting held on _____, 2019 passed and adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Lynette Lee Eng, MAYOR

ATTEST

Jon Maginot, CMC, CITY CLERK

EXHIBIT A

CHAPTER 4.20. - MASSAGE BUSINESSES

4.20.010 - Purpose and intent.

- (a) *Purpose.*
- (1) The City of Los Altos is authorized to regulate Massage Establishments pursuant to Government Code Section 51030 et seq., Business and Professions Code Sections 460 and 4600 et seq. and Section 7 of Chapter XI of the California Constitution.
 - (2) It is the purpose and intent of this Chapter to provide for the orderly regulation of massage businesses in the interest of the public health, safety and welfare by providing minimum building, sanitation, and health standards and to ensure that persons offering massage shall possess the minimum qualifications necessary to operate such businesses and to perform such services offered.
 - (3) Specifically, the regulations in this Chapter are intended to reduce or prevent blight, protect and preserve the quality of commercial and residential properties, protect and preserve the quality of life in the City of Los Altos, deter criminal activity, enhance enforcement of criminal statutes, and prevent commercial sexual exploitation and human trafficking.
- (b) *Conflicts with other provisions of this Code.* In the event of any conflicts or inconsistencies between the provisions of this chapter with the provisions of any other chapter(s) of the Municipal Code, the provisions of this chapter shall control, unless to do so would be inconsistent with the stated purpose of this chapter. Any Massage Establishment is further regulated pursuant to Title 14 of this Code.
- (c) *Responsibility for enforcement.* The primary responsibility for enforcement of the provisions of this chapter shall be vested in the Chief of Police.

4.20.020 - Definitions.

For purposes of this chapter, the following words, terms and phrases are defined as follows:

California Massage Therapy Council (CAMTC) means the California Massage Therapy Council created pursuant to Chapter 10.5 of Division 2 of the California Business and Professions Code.

Certified Massage Therapist or CMT means a person who holds a current and valid CAMTC certification as a Massage Therapist.

Certified Massage Practitioner or CMP means a person who holds a current and valid CAMTC certification as a Massage Practitioner.

For compensation means the payment, loan, advance, donation, contribution, deposit, exchange, or gift of money or anything of value. In addition to accepting other forms of compensation, a person may be deemed to have received compensation for performing a massage when the massage is offered as part of a membership, as part of a package of services or as incidental to the purchase of a product..

Employee means any person hired by a massage establishment who renders any service for the business/owner in exchange for any form of compensation from the business, including independent contractors. For purposes of this chapter, “employee” shall include a rent-space massage therapist who provides massage at a massage establishment but is not otherwise an employee or independent contractor of the business.

Managing employee means the person who has been designated by the owner or holder of the Massage Establishment Permit to manage the business in his/her absence, or who is responsible for the day-to-day activities of a Massage Establishment.

Massage means any method of treating the external parts or surfaces of the human body by bathing, rubbing, pressing, stroking, pounding, kneading, tapping, vibrating, or touching or stimulating with the hands or any part of the body, or with the aid of any mechanical or electrical apparatus or other appliances or devices, with or without the use of oils, creams, tonics, lotions, antiseptics, tanning products, or other similar preparations. Massage shall further include baths, aromatherapy, vapor, shower, electric tub, sponge, hot towels, sauna, steam, or any other type of bathing activity where the essential nature of the service involves any method of pressure or friction against, or stimulating the external parts of the human body with the hands or any other parts of the body or devices. Massage includes the application of various manipulation or touch techniques to the muscular structure and soft tissues of the human body as defined in the Act, Business and Professions Code section 4601(e), and recognized as legitimate by CAMTC.

Massage Establishment means any establishment, having a fixed place of business where any person, firm, association, partnership, corporation, joint venture or a combination of individuals engages in, conducts, carries on or permits to be engaged in, conducted or earned on for consideration, massages or health treatments in the City in which massages are given in return for compensation of any type; including but not limited to any hot tub/sauna establishment, personal fitness training center, spa, gymnasium, athletic facility, health club or office in which massage services are made available to clients. For purposes of this Chapter, the term "Massage Establishment" shall include, but not be limited to, any establishment providing off-premises massage services as well as any establishment which offers services such as relaxation, hot tub, towel wraps, baths, health treatments, tanning, or any service where the essential nature of the interaction between the employee and the customer involves a massage.

Massage Establishment Permit means a written document authorizing the holder to engage in the business of providing massage for compensation.

Massage Practitioner Permit means a permit issued under the prior version of this chapter,

Off-premises massage services means practicing massage for compensation at a location other than at a permitted Massage Establishment. Also called outcall massage service.

Owner means any person who has any direct or indirect ownership interest in a Massage Establishment.

Person means any individual, partnership, firm, association, corporation, joint venture, nonprofit or any other combination of individuals for the purpose of doing business.

Police Chief means the Los Altos Police Chief or his or her designee.

Sole provider means a massage business where the owner owns 100 percent of the business, is the only person who provides massage for compensation at or for that business, and has no other employees, independent contractors or rent-space massage therapists.

State Certificate Holder means a person who holds a current and valid California State Certificate from the CAMTC as a Massage Practitioner or Massage Therapist, per Business and Professions Code sections 4600-4620.

4.20.030 - Exemptions.

The provisions of Section 4.20.040 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, acupuncturists, osteopaths, registered nurses, physical therapists or other health professionals who are duly licensed to practice their respective professions under the laws of the State of California 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 or cosmetologists who are duly licensed under the laws of the State of California while performing massage within the scope of their licenses while engaging in practices within the scope of their licenses.
- (d) Persons administering massages or health treatments involving massage to other persons who are participating in a recreational or special event such as farmers' markets, road races, track meets, triathlons, educational events, or conferences that has been approved by the City, provided that all of the following conditions are met:
 - (1) The massage services are made available equally to all participants in the event;
 - (2) The event is open to participation by the general public or a significant segment of the public;
 - (3) The massage services are provided during the event in an open environment at the site of the event;
 - (4) The sponsors of the event have approved the provision of massage services at the event; and
 - (5) The persons providing the massage services are in compliance with all applicable City Codes and other laws.
- (e) Somatic practitioners who use no physical touch of any kind at any time in their practice.
- (f) A sole provider that is a State Certificate Holder either as a Certified Massage Practitioner or a Certified Massage Therapist. Sole providers shall file a copy of their current, valid massage practitioner or therapist certification and identification card issued by the CAMTC with the Chief of Police and obtain a business license pursuant to Chapter 4.04 of this code.

4.20.040 - Permit/certification requirements.

- (a) No person shall have an ownership interest in or operate a Massage Establishment without first obtaining a Massage Establishment Permit from the Police Chief or his/her designee.
- (b) Except as provided in Section 4.20.030, no person other than a Certified Massage Therapist or a Certified Massage Practitioner shall provide massage for compensation. Any massage practitioner that has been issued a Massage Practitioner Permit by the City prior to effective date of the ordinance amending this chapter shall have until January 1, 2020 to obtain a current and valid California State Certificate from the CAMTC as a Massage Practitioner or Massage Therapist.
- (c) Except as provided in Section 4.20.030, no person, firm, association, partnership, corporation or other entity shall employ any person other than a Certified Massage Therapist or Certified Massage Practitioner to provide massage for compensation on or after January 1, 2020.

4.20.050 - Applications for a massage establishment permit.

- (a) *Submission of application.* All persons who wish to obtain a Massage Establishment Permit from the City shall file a written application with the Police Chief on a form provided by the City. The applicant for a permit, each owner of the massage establishment and the managing employee shall submit the following information:
 - (1) The full name, including any nicknames or other names used presently or in the past, and the present address and phone number of the applicant;
 - (2) The applicant's two (2) most recent addresses within the last seven (7) years, and the dates of residence at each address;
 - (3) Proof the applicant is over eighteen (18) years of age; and
 - (4) The applicant's height, weight, and colors of eyes and hair; and
 - (5) The applicant's Driver's License and/or California I.D. number (if any) and Social Security number and CAMTC certification; and
 - (6) The applicant's two (2) most recent employers within the last seven (7) years, including their names, addresses and phone numbers, and the position held by the applicant and dates of employment; and
 - (7) The names and addresses of any massage facility or other businesses involving massage by which the applicant has been employed, or self-employed, within the past ten (10) years and the dates of employment; and
 - (8) Any criminal conviction on the part of the applicant for offenses other than traffic violations within the ten (10) years preceding the date of the application; and
 - (9) Any criminal charges pending against the applicant at the time of the application, other than traffic citations, the name and location of the court in which the criminal charges are pending and the applicable case numbers; and
 - (10) Whether the applicant has ever had a license, certificate or permit related to the practice of massage, or the operation of a Massage Establishment, or other business involving the practice of massage, suspended or revoked within the ten (10) years preceding the date of the application, the dates and reasons for any such suspensions or revocations,

and the name and location of the jurisdiction or public agency which suspended or revoked such license, permit or certificate; and

- (11) Whether the applicant has ever operated or been employed at any business which has been the subject of an abatement proceeding under the California Red Light Abatement Act (California Penal Code Sections 11225 through 11325) or any similar laws in other jurisdictions. If the applicant has previously worked at such a business, he/she should state on the application the name and address of the business, the dates on which the applicant was employed at such business, the name and location of the court in which the abatement action occurred, the applicable case number and the outcome of the abatement action; and
- (12) Whether the applicant had previously applied to the City for a Massage Establishment Permit, the date of the previous application and any other name(s) under which the application was made; and
- (13) The name and address of the owner of the real property upon or in which the business is to be conducted. In the event the applicant is not the legal owner of the property, the application must be accompanied by a copy of the lease and a notarized acknowledgment from the owner of the property that a Massage Establishment will be located on his/her property; and
- (14) Proof of malpractice insurance in the sum of not less than one hundred thousand dollars (\$100,000.00) per Massage Therapist licensed, or to be licensed, at the Massage Establishment up to a maximum of five hundred thousand dollars (\$500,000.00); this requirement can be satisfied by malpractice insurance being provided in the name of individual Massage Therapist or establishment; and
- (15) If the applicant is a corporation or limited liability company, the name of the corporation or company shall be set forth exactly as shown in its articles of incorporation or charter, together with the state and date of incorporation and the names and home addresses of each of its current officers and directors, and of each stockholder or member holding more than five percent (5%) of the stock or ownership of that corporation or company.
- (16) If the applicant is a partnership, the application shall set forth the name and home address(es) of each of the partners, including limited partners. If the applicant is a limited partnership, it shall furnish a copy of its certificate of limited partnership as filed with the Secretary of State. If one or more of the partners is a corporation, the provisions of this subsection pertaining to corporate applicants shall apply to the corporate partner as well.
- (17) Written authorization for the City, its agents and employees, to seek information and to conduct an investigation into the truth of the statements set forth in the application and into the background of the applicant; and
- (18) The applicant shall advise the City in writing of any change of address or change in fact(s) represented to City which may occur during the City's processing of the application; and
- (19) A statement under penalty of perjury that the applicant has not knowingly and with the intent to deceive made any false, misleading or fraudulent statements or omissions of

fact in his/her application or any other documents required by the City to be submitted with the application; and

- (20) Other related information requested by the Police Chief in order to evaluate the background and qualifications of the applicant for the permit sought. This may include information or documentation to indicate whether the Massage Therapist is affiliated with or a member of any recognized national or state massage therapy association or organization.
- (b) *Payment of permit fees.* At the time of filing an original application for a Massage Establishment Permit, applicants shall pay permit fees (as applicable) in an amount established by a resolution of the City Council. All fees shall be non-refundable.
 - (c) *Processing of application and investigation.* Upon receipt of an application for a Massage Establishment Permit, the Police Chief shall review the application and supplementary material. If it is clear from the face of the application and supplementary materials that the applicant is not qualified for a permit, or the application is incomplete, the application may be denied without further investigation. If it appears from the face of the application and supplementary material that the applicant may be eligible for the permit sought, the Police Chief shall verify the information submitted by the applicant and shall further investigate the qualifications of the applicant as follows:
 - (1) *Photographs/fingerprints/review of criminal history.* For any applicant/owner/managing employee that is not a State Certificate Holder, the following shall apply: The applicant shall submit a recent photograph, submit fingerprints pursuant to "Livescan" procedures and pay all costs associated with such submittal. The applicant's fingerprints will then be submitted to the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) for evaluation. Upon receipt of the report from the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI), the Police Chief shall review the criminal history (if any) of the applicant.
 - (2) *Investigation of location and premises of Massage Establishment.* The Police Chief shall refer the application to the City's applicable departments which shall review the application and, if necessary, inspect the premises to ensure that the operation of the business at the designated site will comply with the provisions of this Chapter 4.20 and the City's zoning, building and fire safety standards, and any other applicable City codes.
 - (3) *Additional investigation.* The Police Chief may conduct additional investigation in a manner authorized by law when necessary to determine whether the applicant meets the qualifications for a permit pursuant to this Chapter 4.20.

4.20.060 - Grant or denial of application for massage establishment permit.

- (a) *Time for grant or denial of applications.* The Police Chief shall grant or deny the application for a Massage Establishment Permit within thirty (30) calendar days of the applicant's submission of the application and all required supplementary material. When necessary to conduct a complete investigation of an application, the Police Chief may extend this time to a maximum of sixty (60) calendar days. Granting of a permit requires the Massage Establishment to be in compliance with Title 14 of this Code.

- (b) *Grounds for denial of Massage Establishment Permit.* The Police Chief shall deny an application for a Massage Establishment Permit or the renewal thereof if any of the following circumstances exist:
- (1) The application is incomplete and/or required supplementary materials are not submitted on a timely basis;
 - (2) The applicant, owner, managing employee, or personnel of a Massage Establishment is required to register under the provisions of California Penal Code § 290, or a similar law in another state.
 - (3) The applicant, owner or managing employee has previously had a Massage Therapist Permit, Massage Establishment Permit, or similar license, certificate or permit revoked by the City or any other public agency in any state or country, within five (5) years. Any revocation beyond five (5) years will be reviewed, and discretion for approval given by, the Chief of Police;
 - (4) The applicant, owner or managing employee has made a false, misleading or fraudulent statement or omission of fact in his/her application or other materials submitted with the application;
 - (5) The applicant, including applicant as a corporation or partnership, owner or managing employee or former employer of the applicant, owner or managing employee while such person was so employed, has been successfully prosecuted in an abatement proceeding under the California Red Light Abatement Act (Penal Code sections 11225 through 11325) or any other similar laws in another jurisdiction;
 - (6) The applicant, owner or managing employee has been convicted of:
 - (a) An offense which requires registration pursuant to California Penal Code section 290; or a violation of sections 266(h), 266(i), 311 through 311.7, 314, 315, 316, 318 or 647(b), 647(d), 647(f) 647.1 of the California Penal Code, or equivalent offenses under the laws of another jurisdiction, including any other State or Country.
 - (b) A prior offense which involves violation of California Health and Safety Code sections 11351 through 11354, 11358 through 11363, 11378 through 11380, or the sale of controlled substances specified in California Health and Safety Code sections 11054, 11056, 11057 or 11058, or equivalent offenses under the laws of another jurisdiction, including any other State or Country.
 - (c) Any offense involving dishonesty, fraud, deceit or the use of force or violence upon another person in the last ten (10) years;
 - (d) Any offense involving any sex-related crime or crime of moral turpitude.
 - (e) For purposes of this section, a plea of "nolo contendere" may also serve as the basis for the denial of a Massage Establishment Permit because the above-listed underlying offenses bear a substantial relationship to the qualifications, functions or duties of a Massage Establishment.
 - (7) The operation of the Massage Establishment at the proposed location would violate the City's zoning, building or fire regulations, or other provisions of law or the City Code.
 - (8) The applicant or the owner or managing employee of a Massage Establishment has previously violated the provisions of this Chapter or of any similar ordinance, law, rule or

regulation of the City or another public agency which regulates the operation of Massage Establishments or persons providing massage.

- (9) If an Massage Establishment Permit or a renewal thereof is approved, the Police Chief may include such restrictions and conditions in the Massage Establishment Permit as he or she deems reasonable and necessary under the circumstances to ensure compliance with the purposes and intent of this Chapter.
- (c) *Notice to applicant of grant or denial of application.* The Police Chief shall give written notice to the applicant of the grant or denial of the application for a permit by certified mail or by personal service. If the application is denied, the notice shall advise the applicant of the reasons for the denial and of his/her right to appeal the decision to the City Manager through the procedures set forth in subsection (d) below.
- (d) *Appeal of denial of Massage Establishment Permit to the City Manager.* Upon the denial of an application for a Massage Establishment Permit by the Police Chief, the applicant may appeal to the City Manager through the following procedures:
 - (1) *Request for appeal hearing.* The applicant shall file a written request for an appeal hearing, which states the specific grounds on which the decision of the Police Chief to deny the permit is contested, with the City Manager's office within ten (10) calendar days of the personal service of the Police Chief's decision to the applicant at the most recent home or business address on file with the Police Department, or within ten (10) calendar days of service of the Police Chief's decision in the United States mail by certified mail.
 - (2) *Notice of time and place of hearing.* Upon receipt of a timely request for an appeal hearing, the City Manager's office shall notify the applicant in writing of the date, time and place of the hearing before the City Manager or designee, which shall not be less than ten (10) calendar days after the service of such written notice on the applicant by in-person delivery at the most recent home or business address on file with the City or ten (10) calendar days after the deposit of the notice in an envelope addressed to the applicant in the United States mail by certified mail.
 - (3) *Hearing before the City Manager or designee.* At the hearing, both the applicant and the Police Chief shall have the right to appear and be represented by counsel, and to present evidence and arguments relevant to the grounds on which the decision to deny the application is appealed. The burden of proof shall be on the applicant to demonstrate that he/she meets the qualifications for a Massage Establishment Permit and is entitled to the issuance of such permit.
 - (4) *Decision of the City Manager or designee.* Within ten (10) calendar days of the hearing, the City Manager or designee shall issue a written decision, which states whether the decision of the Police Chief to deny the application is upheld or reversed, and the reasons for this determination. The decision shall be served upon the applicant by personal service or by certified mail. The decision of the City Manager or designee shall be final.

4.20.070 - Business license.

It is unlawful for any person to open or operate a Massage Establishment or be self-employed in massage therapy (sole provider) without obtaining and maintaining in effect a City business

license and paying a business license tax as required by Chapter 4.04 of this Code. No business license shall be issued to a Massage Establishment until the investigation is completed and the Massage Establishment Permit is approved.

4.20.080 - Register of massage therapists.

- (a) The holder of a Massage Establishment Permit shall maintain a register of all certified massage therapists or certified massage practitioners providing massage at the establishment, including independent contractors and rent-space therapists, and each such person's state certificate number, home address, date of hiring, and whether the massage therapist or massage practitioner will be performing outcall massages. An amended copy of the register shall be provided to the chief within five (5) days of the date of hiring, commencement of services, or termination of services by each massage therapist or massage practitioner at the establishment. Such filings shall be accompanied by a statement, signed by the owner, that all of the information in the register is true and correct.
- (b) The holder of a Massage Establishment Permit shall report within five (5) days to the Chief of Police, or his or her designee any of the following:
 - (1) Arrests of any massage therapist, massage practitioner, employee or owner for an offense other than a misdemeanor traffic offense; or
 - (2) Any disciplinary action taken by the CAMTC regarding a massage therapist or massage practitioner and submit a copy of any notice or order.

4.20.090 - Operating requirements for massage establishments.

Unless otherwise specified herein, all Massage Establishments shall comply with all of the following operating requirements.

- (a) *Exterior signs.* A recognizable and legible sign should be posted at the main entrance identifying the business and which clearly identifies the establishment to foot and/or automobile traffic. An additional "Massage" sign need not be in addition to the primary business sign. The sign shall be in compliance with Title 14 of this Code.
- (b) *Display of Massage Establishment Permit.* A copy of the current Massage Establishment Permit shall be displayed in a conspicuous, public place within the Massage Establishment premises. A copy of each Certified Massage Therapist's and Certified Massage Practitioner's CAMTC certification shall be kept on the premises and available for inspection.
- (c) *Dressing/massage room.* Clients of the Massage Establishment shall be furnished with a dressing/massage room, or private area for changing clothes.
- (d) *Payment/tips.* All massage services shall be paid for in the reception area, and all tips, if any, shall be paid for in the reception area. Massage Establishments may utilize a system where tip envelopes are provided in the treatment rooms to be utilized and deposited by the client in the reception area.

- (e) *Alcohol prohibited.* No alcoholic beverages may be possessed or consumed on the premises of the Massage Establishment except as allowed pursuant to Section 23399.5 of the Business and Professions Code or other state or federal law.
- (f) *No condoms.* No condoms shall be kept at the Massage Establishment.
- (g) *Standard of dress.* All Certified Massage Therapists and Certified Massage Practitioners shall meet the dress code requirements in California Business and Professions Code section 4609, subdivision (a)(10), and all other employees, contractors, and owners of the Massage Establishment shall remain fully clothed in clean outer garments while on the premises of the Massage Establishment. At a minimum such clothing shall be made of non-transparent material.
- (h) *Operating hours.* All Massage Establishments shall be closed for business by no later than 10:00 p.m. and shall open for business no earlier than 6:00 a.m. A Massage Establishment operating under a Conditional Use Permit (CUP) approved prior to the enactment or amendment of this Chapter may continue to operate under the hours permitted in the Use Permit. Nothing in this chapter shall be construed to prevent the City from setting specific operating hours for each Massage Establishment through the Conditional Use Permit process (if required). It shall be unlawful for any Massage Therapist, Massage Practitioner or other employee of a Massage Establishment, to give or practice massage during the hours when the Massage Establishment is closed.
- (i) *List of services.* A list of services available and the cost of such services shall be available in an open public place within the premises, and they shall be described in readily understandable language. Nothing in this section shall preclude the list of services to be printed in another language other than English. No owner, operator, manager, and/or responsible person, of a Massage Establishment shall permit, and no Massage Therapist shall offer or perform, any service other than those posted.
- (j) *Records.* Every Massage Establishment shall keep a written record of the date and hour of each service provided; the first and last name of each patron and the service received; the compensation received for the services, including any gratuity or tip; and the first and last name of the Massage Therapist or Massage Practitioner administering the service. Said records shall be open to inspection by City officials, limited to sworn members of the Police Department, City Code Compliance Officer, and the City Attorney, who is charged with enforcement of this Chapter 4.20. A valid subpoena should be obtained by these specific officials prior to inspection of records. These records may not be used by the Massage Establishment for any other purpose than as records of service provided, and unless otherwise required by law, they shall not be provided to third parties by the Massage Establishment. Said records shall be retained on the premises of the Massage Establishment business office for a period of not less than three (3) years.
- (k) *Identification of employees.* Certified Massage Therapists and Certified Massage Practitioners shall have in their possession their CAMTC-issued picture identification cards while on the Massage Establishment premises or otherwise engaged in the business of providing massage for compensation.
- (l) *Devices prohibited.* No device, including, but not limited to, an audio or video recording device, shall be used by a Massage Establishment, Certified Massage Therapist, or Certified Massage Practitioner to monitor the practice of a massage, or any conversation or other sounds in

massage rooms without the expressed consent of the client. No device of any kind shall be installed or used which would operate in any way to detect or interfere with law enforcement surveillance or communication equipment.

- (m) *Advertising.* No person or Massage Establishment shall advertise in any manner or form that he, she, or it provides massage for compensation unless the person or Massage Establishment meets the permit and certification requirements of this Chapter. All advertisements for massage and Massage Establishments and the services offered therein shall reflect the professional nonsexual nature of the business. No Massage Establishment granted a Massage Establishment Permit under this Chapter shall distribute or cause to be distributed any advertising matter that depicts any service is available other than those services authorized by this Chapter.
- (n) *Entry and exit.* All Massage Establishment clients shall enter and exit exclusively through the front door of the Massage Establishment. The front door shall be the door facing the street or, if no such door exists, the door that is most visible to members of the public passing by the Massage Establishment.
- (o) *Sex and gender discrimination prohibited.* A Massage Establishment cannot provide services only to persons of a single sex or gender, nor may it refuse to serve any individual based on sex or gender.
- (p) *Sexual Acts.* All Certified Massage Therapists and Certified Massage Practitioners shall comply with the Massage Therapy Act (B&P Code § 4609(a)) provisions relating to sexual acts, including the prohibitions on: engaging in any form of sexual activity on the premises of a massage establishment where massage is provided for compensation, excluding a residence; engaging in sexual activity while providing massage services for compensation; providing massage of the genitals or anal region; or 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.
- (q) *Client draping.* No Certified Massage Therapist, Certified Massage Practitioner, or other employee or contractor of a Massage Establishment shall uncover and expose the sexual or genital parts of a client or themselves in the course of giving a massage, or before or after a massage. This subsection does not prohibit a client from turning over in the course of a massage, so long as the Massage Therapist or Massage Practitioner holds a towel, sheet, blanket or other drape over the client to protect his/her genital and sexual parts from exposure. Sexual and genital parts shall include the genitals, pubic area, anus or perineum of any person or the vulva or breast of a female.
- (r) *Schools.* No Massage Establishment shall operate a school of massage and thereby instruct, or offer massage by, persons who are not state certificate holders in the practice of massage.

4.20.100 - Sanitation requirements/condition of premises.

- (a) *Required maintenance of Massage Establishments.* All premises and facilities of the Massage Establishments shall be maintained in a clean and sanitary condition and shall be thoroughly cleaned after each day of operation. The premises and facilities shall meet applicable Code requirements of the City, including but not limited to those related to the safety of the structure, adequacy of the plumbing, heating, ventilating and waterproofing of rooms in which showers, water or steam baths are used.

- (b) *Linens.* All Massage Establishments shall provide clean, laundered sheets, towels, and other linens in sufficient quantity for use by their clients. Such linens shall be laundered after each use and stored in a sanitary manner. No common use of linens or towels shall be permitted. Heavy white paper may be substituted for sheets on massage tables, so long as such paper is used only once for each client and is then discarded into a sanitary receptacle. Sanitary receptacles shall be provided for the storage of all soiled linens.
- (c) *Privacy standards for massage rooms, dressing rooms and rest rooms.* The Massage Establishment shall provide doors on all of its dressing rooms and massage rooms. Nontransparent draw drapes, curtain enclosures or accordion-pleated enclosures are acceptable in lieu of doors for dressing and massage rooms.
- (d) *No residential use.* No part of the Massage Establishment shall be used for residential or sleeping purposes. No cooking or food preparation will be allowed on the premises unless it is within an employee only designated kitchen area.

4.20.110 - Out-call massage services.

Any Massage Establishment who has complied with all applicable provisions of this Chapter 4.20 may provide out-call massage services to clients within the City of Los Altos. Such Massage Establishments shall maintain their permits upon their persons; or within their immediate reach, at all times while performing massage in the City and shall display these upon the request of any client, police officer or code compliance officer.

4.20.120 - Transfer of massage establishment permit.

No Massage Establishment Permit issued pursuant to this Chapter 4.20 shall be transferred, altered in name, or assigned in any manner, whether by operation of law or otherwise, from location to location or from person to person.

4.20.130 - Expiration and renewal of massage establishment permit; payment of renewal fee.

- (a) All approved Massage Establishment Permits shall be effective from January 1 to December 31 of the calendar year, unless revoked sooner by the Police Chief. If a Massage Establishment Permit issued prior to effective date of this chapter expires prior to January 1, 2020, the applicant may apply for, and be issued, a Massage Establishment Permit that runs from the date of expiration until December 31, 2019, and any fees for the new permit shall be prorated accordingly.
- (b) Applications for renewal of a permit must be submitted to the Police Chief by no later than sixty (60) calendar days before the expiration of such permit on a form provided by the Police Department, which shall require the applicant for renewal to update the information contained in his/her original application. The applicant must pay the City a non-refundable renewal fee, in the amount established by resolution of the City Council, at the time of filing his/her application for renewal.

- (c) After investigating the application for renewal, the Police Chief may renew the permit if the applicant continues to meet the standards for the issuance of a permit, and none of the grounds for denial of a permit set forth in subsection 4.20.060(b) exist. The Police Chief shall give the applicant for renewal written notice of his/her decision within sixty (60) calendar days of the submission of the application for renewal to the Police Department by personal service of the decision to the applicant at his/her most recent home or business address on file with the Police Department or deposit of the decision in the United States mail by certified mail. If the application is denied, the notice shall state the specific grounds for the denial and that the applicant may appeal to the City Manager through the procedures set forth in section 4.20.060(d).
- (d) If the holder of a Massage Establishment Permit does not file a timely application for renewal sixty (60) calendar days before expiration of the permit, he/she shall be required to file an application for a new permit pursuant to section 4.20.050 and to pay the applicable fees.

4.20.140 - Suspension and revocation of massage establishment permit.

- (a) *Grounds for suspension or revocation of Massage Establishment Permit.* The Police Chief may suspend for a period of up to nine (9) months or revoke a Massage Establishment Permit, according to procedures set forth in subsection (b) below, if there is good cause to believe that:
 - (1) The permit holder has operated or managed the Massage Establishment in a manner which violates any provision of this Chapter 4.20, or other applicable City Code provisions, state or federal law;
 - (2) The permit holder has committed any offense involving lewdness, indecent exposure, prostitution, human trafficking or any other offense which would be grounds for denial pursuant to section 4.20.060, or employees of the Massage Establishment have committed such offenses in the course of their employment and the permit holder has permitted them to do so or has failed to prevent them from doing so;
 - (3) An individual who is not a Certified Massage Therapist, or a Certified Massage Practitioner, or whose CAMTC certification is suspended or revoked, has provided massage at the Massage Establishment.
 - (4) The permit holder/applicant, owner or managing employee has made a false or misleading statement or omission of fact on his/her application for a permit, or for renewal of the permit, or in any supplementary materials submitted with the application; or
 - (5) The permit holder is operating or managing the Massage Establishment in a manner which poses a danger to the health and safety of clients and/or the public, or without due regard for proper sanitation or hygiene.

Any act or omission of any employee, as defined, which constitutes a violation of this chapter shall be deemed a violation of the holder of the permit.

- (b) Procedure for revocation or suspension of Massage Establishment Permits.

- (1) *Notice to holder of permit.* Whenever the Police Chief has good cause to believe that grounds for the suspension or revocation of a Massage Establishment Permit exist, he/she shall give the holder of the permit written notice of the intended suspension or revocation to the holder of permit by personal delivery or by certified mail. The notice shall provide for suspension or revocation of the Massage Establishment Permit 15 calendar days after service of the notice upon the holder of permit, unless the holder of permit requests an appeal hearing. The notice shall provide information on the appeal process and shall state the alleged grounds for the proposed revocation or suspension of the permit, and the notice shall be served on the holder of the permit personally at the most recent home or business address on file with the Police Department or by deposit of the notice in the United States mail by certified mail. Said notice shall also state that if no written request for a hearing is timely received, the applicant shall be deemed to waive its rights to an appeal.
- (2) *Request for appeal hearing before the City Manager.* The holder of the permit may appeal the decision of the Police Chief by filing a written request for an appeal hearing, which states the specific grounds on which the decision of the Police Chief is contested, with the City Manager's office within ten (10) calendar days of the personal service to the holder of the permit of the Police Chief's decision at the most recent home or business address on file with the Police Department, or within ten (10) calendar days of service of the decision by deposit of the notice, addressed to the holder of the permit, in the United States mail by certified mail.
- (3) *Notice of time and place of hearing.* Upon receipt of a timely request for an appeal hearing, the City Manager's office shall notify the permit holder in writing of the date, time and place of the hearing before the City Manager or designee which shall not be less than ten (10) calendar days after service of such written notice on the permit holder by personal service at the most recent home or business address on file with the Police Department, or ten (10) calendar days after service of the notice by deposit of the notice, addressed to the holder of the permit or certificate, in the United States mail by certified mail.
- (4) *Appeal hearing before the City Manager or designee.* At the hearing, both the holder of the permit and the Police Chief shall have the right to appear and be represented by counsel and to present evidence and arguments which are relevant to the grounds for the appeal, as stated in the request for an appeal hearing. Within ten (10) calendar days of the hearing, the City Manager or designee shall issue a written decision that states whether the decision of the Police Chief is upheld, modified or reversed, and the length of any suspension. The decision shall be served on the holder of the permit by in-person delivery or by certified mail. The decision of the City Manager or designee shall be final.
- (5) *Effective date of revocation or suspension.* Any suspension or revocation of a permit shall become effective immediately upon the personal service of the written decision of the Police Chief, or, in the event of an appeal, the City Manager or designee, to the holder of the permit at the most recent home or business address on file with the City, or within five (5) calendar days of the deposit of such decision addressed to the holder of the permit into the United States mail by certified mail.
- (6) *Surrender of suspended or revoked Massage Establishment Permit to Police Chief.* Upon a written decision by the Police Chief, or in the event of an appeal, by the City Manager or designee, which suspends or revokes a permit, the permit shall immediately be surrendered to the Police Chief. In the case of a suspension, the Police Chief shall return the permit after the

period of suspension has ended. No reapplication will be accepted within one (1) year after a permit is revoked.

(c) *Immediate suspension of a Massage Establishment Permit.*

- (1) The Police Chief may immediately suspend an establishment permit if there is reasonable cause to believe that:
 - (A) The permit holder is operating or managing the Massage Establishment, or providing services in a manner which poses an immediate danger to the health or safety of employees, clients, or the public;
 - (B) The holder of the permit has been convicted of any offense involving lewdness, indecent exposure, prostitution, sexual battery or any sex-related crime.
- (2) If the Police Chief immediately suspends a permit, the Police Chief shall provide notice be given to the holder of the permit by personal delivery or by certified mail. The notice shall contain a statement that the Massage Establishment Permit is immediately suspended and such suspension shall remain in effect during the pendency of the suspension and appeal process. The notice shall provide information on the appeal process. The notice shall contain a statement that the suspension may lead to a permanent revocation of the establishment permit.
- (3) Following the receipt of such immediate suspension notice and within fifteen (15) calendar days thereafter, the holder of the permit may file an appeal of the suspension and request a hearing be held in accordance with this Section.
- (4) If after 15 calendar days from the receipt of the suspension notice, the holder of the permit has not requested an appeal, the Police Chief's decision to suspend shall become final and the establishment permit shall be permanently revoked.

4.20.150 - Inspection by officials.

Any sworn investigating official of the Police Department, City of Los Altos Code Compliance Officer, Building Official, City Attorney or County Fire Department officials charged with investigating and enforcing compliance with this Chapter 4.20, shall have the right to enter the Massage Establishment from time to time during regular business hours for the purpose of making reasonable inspections to observe and enforce compliance with applicable regulations, laws, codes and the provisions of this Chapter 4.20.

4.20.160 - Criminal penalties.

A violation of any provision of this Chapter is a misdemeanor and may be prosecuted by the City in the name of the people of the State of California. The maximum fine or penalty for any violation of this Chapter 4.20 shall be one thousand dollars (\$1,000.00), or a term of imprisonment in the county jail for a period not exceeding six (6) months.

Except as otherwise provided, every such person shall be guilty of a separate offense for each and every day during any portion of which any violation is committed, continued or permitted by such person, and shall be punishable accordingly.

4.20.170 - Massage establishment operated in violation of this Chapter is deemed a public nuisance.

Any Massage Establishment which is opened, operated or maintained contrary to the provisions of this Chapter 4.20 shall be deemed a public nuisance. In addition to, or in lieu of any other available legal remedies, the City Attorney or District Attorney of Santa Clara County may commence a civil legal action or actions in a court of competent jurisdiction to abate such nuisance and to enjoin the continued operation and maintenance of the Massage Establishment in a manner prohibited by this Chapter 4.20

4.20.180 - Application of this Chapter to pre-existing massage establishments.

The provisions of this Chapter shall be applicable to all persons and businesses described herein. Massage Establishment Permits issued by the City before the effective date of the ordinance amending this chapter shall not be renewed. Persons holding such permits must submit a written application for a Massage Establishment Permit and comply with the requirements set forth in this Chapter and be issued a Massage Establishment Permit as set forth in this Chapter.



CALIFORNIA MASSAGE THERAPY COUNCIL

One Capitol Mall, Suite 800 | Sacramento, CA 95814
tel 916.669.5336 fax 916.669.5337 www.camtc.org

Summary of Changes to CAMTC's Statute

On September 22, 2016, California Assembly Bill AB 2194 was signed into law by Governor Jerry Brown. The revisions to the Massage Therapy Act ("Act") and Government Code section 51034 will become operative on January 1, 2017. The bill made some technical edits, provided much needed clean up after the sweeping changes made by AB 1147, extended the Act for another four years, made some clarifying changes to CAMTC's denial and disciplinary provisions, and made some other more substantive changes.

Changes Applicable to Local Regulation of Massage Businesses

- One of the more significant changes made to the Act (Business and Professions Code sections 4600 et. seq.) is the change of current section 4600.5(c) from intent language to its placement in 4603.1 as directive language. The current statute states that it is the intent of the Legislature that local governments impose and enforce only reasonable and necessary fees and regulations. The new version of the law, Business and Professions Code section 4603.1, now provides:

Local governments shall impose and enforce only reasonable and necessary fees and regulations on massage businesses and massage establishments, 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.

- Changes were also made to the intent language in Business and Professions Code section 4600.5(b), where the legislature showed their strong support of revocable registrations by adding the following language:
 - Local governments should give strong consideration to establishing a registration program that grants local governments the ability to either suspend or revoke a registration of massage business for specific violations.
- Changes were also made to Government Code section 51034. This section was partially renumbered and the following provisions were added:

- Local governments can't require a massage business or establishment to have a shower or a bath; and
- While the law already provides that local governments can't require a CAMTC certificate holder to pass a background check, this provision has been clarified to state that this includes a criminal background check or submission of fingerprints for a state or federal background check.

Changes Applicable to Procedures for Denial and Discipline

- The procedures related to denials and discipline have been clarified in the following ways:
 - Provision that allows a certificate holder to request a hearing on a suspension based on evidence has been clarified to state that the hearing is an "oral hearing or consideration of a written statement." This makes it clear that "hearing" doesn't mean an in person hearing;
 - Written statements and declarations signed under penalty of perjury can currently be used to "determine the basis" of the denial or discipline. This provision has been clarified to state that this includes using those statements and declarations to make a final decision on denial or discipline;
 - The procedures set forth in CAMTC's law are deemed to meet the requirements for fair procedure;
 - Final decisions to deny or impose discipline are specifically authorized to be made based solely on written statements or declarations made under penalty of perjury, and those providing the statements or declarations can't be required to appear at an oral hearing or provide additional documents; and
 - It has been clarified that certification is not a fundamental vested right, and the legal standard on review has been defined as the substantial evidence test.
- Lawsuits against CAMTC related to individual certification denials or discipline must now be brought within 90 days.

Technical Changes

- The law was changed to state (as it previously did before AB 1147) that all education be from "approved schools" instead of "schools approved by the council," so that the law again requires approval by BPPE or one of the other organizations listed in Business and Professions Code section 4601.

- The provision stating that owners and operators of massage businesses and establishments are responsible for the conduct of all those providing massage for compensation on the premises has been clarified. It now states that this provision applies to owners and operators who are applicants for CAMTC certification, when it previously stated that it applied to owners or operators who were certificate holders.
- The law again requires (as it previously did before AB 1147) that when a certificate holder is suspended based on an arrest with charges filed for 647(b) or another act punishable as a sexually related crime, that their employer of record be notified of the suspension by mail (current statute only specifies notification by email).
- The deadline to submit the feasibility study has been extended until January 1 of 2017.
- The Act has been extended for a four year time period.

MASSAGE THERAPY ACT 2017

BUSINESS AND PROFESSIONS CODE SECTION 460

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.

BUSINESS AND PROFESSIONS CODE SECTION 4600-4621

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. Local governments should give strong consideration to establishing a registration program that grants local governments the ability to either suspend or revoke a registration of massage business for specific violations.

(c) 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.

(e) “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) The council shall be governed by a board of directors comprised of 13 members who shall be chosen in the following manner:

(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.

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

(h) 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.

(i) 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.

(j) 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 (i).

(k) 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.

4603.1 Local governments shall impose and enforce only reasonable and necessary fees and regulations on massage businesses and massage establishments, 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.

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 approved schools.

(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 or is an applicant for certification 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 (e) is fair and reasonable.

(e) A procedure is fair and reasonable and meets requirements for fair procedure 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 and making a final decision that denial or discipline shall be imposed, the council may consider all written documents or statements as evidence, but shall weigh the reliability of those documents or statements. A final decision to deny or impose discipline may be based solely on a written statement or declaration made under penalty of perjury and the individual providing the written statement or declaration made under penalty of perjury shall not be required to appear at an oral hearing or provide additional documents or information beyond the written statement or declaration made under penalty of perjury that was already provided.

(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 or first-class mail 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, an oral hearing or consideration of a written

statement to challenge the factual basis for the suspension. If the holder of the suspended certificate requests an oral hearing or consideration of a written statement on the suspension, the oral hearing or consideration of a written statement 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 90 days after the effective date of the denial or discipline. Certification issued pursuant to this chapter is not a fundamental vested right and judicial review of denial and disciplinary decisions made by the council shall be conducted using the substantial evidence standard of review. 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 January 1, 2017, 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.
- (c) This section shall be repealed on January 1, 2021.

- 4621.** (a) This chapter shall remain in effect only until January 1, 2021, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2021, 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.

GOVERNMENT CODE SECTION 51034

- 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) Require a massage establishment to have a shower or bath.
- (5) Impose client draping requirements that extend beyond the covering of genitalia and female breasts, or otherwise mandate that the client wear special clothing.
- (6) 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.
- (7) 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.
- (8) 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, including a criminal background check or requiring submission of fingerprints for a federal or state criminal 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.
- (9) 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.
- (10) 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.
- (11) 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.