



CONSENT CALENDAR

Agenda Item # 4

AGENDA REPORT SUMMARY

Meeting Date: August 27, 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

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:

Adopt 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 CONS). 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. On July 9, 2019, Council introduced an ordinance amending Chapter 4.20.

Discussion/Analysis

Ordinance No. 2019-459 will go into effect 31 days after adoption.

Options

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

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

Disadvantages: None identified

- 2) Direct Staff to make revisions to 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.