

INTRODUCTION OF ORDINANCE AMENDING CHAPTER 5.12 OF THE GARDEN GROVE MUNICIPAL CODE RELATING TO MASSAGE REGULATIONS

April 28, 2015

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DISCUSSION

Although many massage establishments are legitimate professional operations, past experience has shown that acts of prostitution and other unlawful sexual activity frequently occurs in some massage establishments. Courts have long recognized that some massage establishments are brothels in disguise. In addition, massage establishments have been used as fronts for human trafficking. Illegal activities occurring in massage establishments often incorporate the exploitation of women and new immigrants to this country. When illegal activities such as pandering, prostitution, or human trafficking occur in massage establishments, it has a serious deleterious effect upon surrounding areas.

Following the passage of SB 731 restricting local regulation of massage, jurisdictions throughout the State experienced a proliferation in the number of unregulated massage establishments. Responding to the concerns of local agencies, the Legislature substantially revised the law last year through the adoption of AB 1147, otherwise known as the Massage Therapy Act. The Massage Therapy Act, which was supported by both the League of California Cities and the CAMTC restores local control over massage establishments, allowing local governments to use their regulatory authority, as in the case with all other businesses, to ensure the public's safety, reduce human trafficking, and enforce local standards for the operation of massage establishments. Under the new law, responsibility for massage regulation is divided between CAMTC, which regulates the practice of massage and certifies individual massage therapists, and cities and counties, which are now once again expressly authorized to regulate the business of providing massage through land use, business licensing, and permitting requirements.

The proposed Ordinance would amend Chapter 5.12 to update the City's massage regulations to comport with the Massage Therapy Act. The Ordinance requires all persons performing massage for compensation in the City to be CAMTC-certified. Owners and operators of massage establishments are required to maintain a City massage establishment operator's permit and must adhere to the standards of conduct and conditions of operation set forth in the proposed Ordinance.

Significant elements of the amended massage regulations include the following:

- All massage practitioners must be CAMTC-certified (Section 5.12.030(A).)
- A massage establishment must obtain an Operator's Permit from the City in order to commence operation. (Section 5.12.030(B).)
- Permit applications may be denied if the owner(s) or employees have been previously convicted of prostitution or certain drug offenses. (Section 5.12.050)

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- Hours of operation are limited to 7:00 a.m. to 9:00 p.m. (Section 5.12.060(B)(1).)
- Massage establishments must notify the City of the employment of new massage practitioners. (Section 5.12.060(B)(4).)
- No alcoholic beverages are permitted onsite. (Section 5.12.060(B)(17).)
- Sexual conduct for compensation is prohibited in the provision of Massage Services. (Section 5.12.060(C)(5).)
- Operation Permits may be suspended or revoked for violation of the massage regulations. (Section 5.12.120)

FISCAL IMPACT

Costs of enforcement upon issuance of citations.

RECOMMENDATION

It is recommended that the City Council conduct the first reading of and introduce the attached Ordinance amending Chapter 5.12 of the Garden Grove Municipal Code relating to Massage Regulations.



THOMAS F. NIXON
City Attorney

Attachment: Proposed Ordinance

Recommended for Approval



Allan L. Roeder
Interim City Manager

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE
AMENDING CHAPTER 5.12 OF TITLE 5 OF THE GARDEN GROVE MUNICIPAL CODE
RELATING TO MASSAGE REGULATIONS

City Attorney Summary

This Ordinance would amend Chapter 5.12 of Title 5 of the Garden Grove Municipal Code to update the City's massage regulations to comport with the Massage Therapy Act. Effective January 1, 2015, Assembly Bill 1147, also referred to as the "Massage Therapy Act," restores local control over massage establishments, allowing local governments to use their regulatory authority, as in the case with other businesses, to ensure the public's safety, reduce human trafficking, and enforce local standards for the operation of the business of massage therapy, subject to specific limitations. This Ordinance requires all persons performing massage for compensation in the city to be certified by the California Massage Therapy Council (CAMTC) and requires all owners and operators of massage establishments to maintain a City massage establishment operator's permit and to adhere to specified standards of conduct and conditions of operation.

THE CITY COUNCIL OF THE CITY OF GARDEN GROVE HEREBY ORDAINS AS
FOLLOWS:

SECTION 1: Chapter 5.12 of Title 5 of the Garden Grove Municipal Code is hereby amended in its entirety to read as set forth in Exhibit "A" attached hereto and incorporated herein.

SECTION 2: The City Council finds that the proposed Ordinance is not subject to the California Environmental Quality Act ("CEQA"; Cal. Pub. Resources Code Section 21000 et seq.) pursuant to Section 15061(b)(3) of the State CEQA Guidelines (Cal. Code of Regs., Title 14, Section 15000 et seq.) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

SECTION 3: If any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, words or portions thereof be declared invalid or unconstitutional.

SECTION 4: The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published and posted pursuant to the provisions of law and this Ordinance shall take effect thirty (30) days after adoption.

EXHIBIT "A"

CHAPTER 5.12. MASSAGE REGULATIONS

5.12.010	Findings and Purpose
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5.12.030	State Certification and Operator's Permit Required
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5.12.180	Violations, Penalties, and Enforcement Remedies
5.12.190	Authority

SECTION 5.12.010: Findings and Purpose

The City Council finds and declares as follows:

- (1) The permit requirements and restrictions imposed by this Chapter are reasonably necessary to protect the health, safety, and welfare of the citizens of the City.
- (2) The City is authorized to regulate massage establishments pursuant to California Business and Professions Code Sections 460(c), 4612(b) and 16000, California Government Code Section 51030 *et seq.*, and Section 7 of Article XI of the California Constitution.
- (3) There is a significant risk of injury to massage clients by improperly trained and/or educated massage practitioners and this Chapter provides reasonable safeguards against injury and economic loss.
- (4) There is opportunity for acts of prostitution and other unlawful sexual activity to occur in massage establishments. Courts have long recognized massage as a pervasively regulated activity and that some massage establishments are brothels in disguise. The establishment of reasonable standards and restrictions on operations will serve to reduce the risk of illegal activity.

- (5) The City Council recognizes that massage establishments may have a serious deleterious effect upon adjacent areas, as well as the areas in which they are located, when illegal activities such as pandering or prostitution occur thereat.
- (6) The City Council understands that illegal activities occurring in massage establishments often incorporate the exploitation of women and new immigrants to this country.
- (7) The regulations and restrictions contained in this Chapter tend to discourage massage establishments from degenerating into houses of prostitution and the means utilized in this Chapter bear a reasonable and rational relationship to the goals sought to be achieved.

SECTION 5.12.020: Definitions

The following definitions of words shall apply to this Chapter:

- (1) "Acupressure" means the act of applying manual pressure to parts of the body with the intention of treating illness and/or disease or relieving pain.
- (2) "Applicant" means an applicant for an Operator's Permit.
- (3) "City" means the City of Garden Grove.
- (4) "CAMTC" means the California Massage Therapy Council, a non-profit organization formed pursuant to California Business and Professions Code Section 4600 *et seq.*
- (5) "Certified Massage Practitioner" means any individual certified by CAMTC as a certified massage practitioner or as a certified massage therapist pursuant to California Business and Professions Code Section 4600 *et seq.*
- (6) "City Manager" means the city manager of the City or his/her designee.
- (7) "Employee" includes every owner, partner, operator, manager, supervisor, person and worker, whether paid or not, full-time or part-time, who renders personal services of any nature or is otherwise employed in support of the operation of a Massage Establishment. For purposes of this Chapter, the term Employee shall also include Certified Massage Practitioners who provide Massage Services, whether as independent contractors or otherwise, in or for a Massage Establishment.
- (8) "Manager" means a person or persons designated or permitted by the Owner or Operator of the Massage Establishment to act as the agent of the Owner or Operator in managing day-to-day operations. Evidence of management may

include, but is not limited to, evidence that the individual has power to direct or hire and dismiss employees, control hours of operation, create policy or rules, or purchase supplies. A Massage Establishment may have more than one Manager.

- (9) "Massage" or "Massage Services" means any method of applying pressure on, causing friction against, stroking, kneading, rubbing, tapping, pounding, vibrating, acupressure, stimulating, compression on or movement of the external parts of the human body of another, either directly *via* the use of hands or some other body part, with or without the aid of or by means of any mechanical or electrical apparatus, or other appliance or device, for money or any form of consideration. Massage may incorporate supplementary aids such as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment or other similar preparations commonly used in this practice.
- (10) "Massage Establishment" means any business or establishment with a fixed location where any individual, firm, association, partnership, limited liability company, corporation, or combination of individuals, offers, engages in, conducts, carries on or permits to be engaged in, conducted or carried on, Massage Services within the City, including the residence or business office of a Sole Provider who provides Massage Services at such residence or business office. Any type of business or establishment at which Massage Services are provided shall be considered a Massage Establishment for purposes of this Chapter, regardless if the business holds itself out as something other than a Massage Establishment and/or also offers or provides other types of products or services. Any business or establishment that offers any combination of Massage Services and bath facilities, including, but not limited to, showers, baths, wet and dry heat rooms, pools and hot tubs, shall be deemed a Massage Establishment under this Chapter. The residence or business office of a Sole Provider who only engages in Out-Call Massage and does not provide Massage Services at such residence or business office shall not be considered a Massage Establishment.
- (11) "Operator's Permit" means a permit issued to any Person desiring to operate a Massage Establishment by the City upon submission of satisfactory information and satisfaction of the requirements pursuant to the provisions of this Chapter.
- (12) "Out-Call Massage" shall mean the provision of Massage Services at a location other than at a Massage Establishment. Such locations may include, but are not limited to, hotel rooms, offices, or patron residences.
- (13) "Owner" or "Operator" means any and all Persons who have an ownership interest in a Massage Establishment and/or responsibility, in whole or in part, for its ongoing operations including, but not limited to, any of the following Persons: the sole proprietor of a sole proprietorship, any general or limited partner of a general or limited partnership, any shareholder of a corporation, any member or manager of a limited liability company, or any person who has an ownership interest in a Massage Establishment, whether as an individual, corporation,

limited liability company, general partner, limited partner, shareholder, member or otherwise.

- (14) "Person" means any individual or combination of individuals, sole proprietor, firm, association, partnership, corporation, limited liability company, joint venture, or other entity.
- (15) "Police Chief" means the City's Police Chief, or his/her designee, who is responsible for promulgating rules, regulations, and requirements consistent with the provisions of this Chapter and all other laws in connection with the issuance of an Operator's Permit.
- (16) "Sole Provider" means any legal form of business organization where the business 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 State Certificate, and has no other employees or independent contractors.
- (17) "State Certification" or "State Certificate" means a valid and current certificate issued by CAMTC pursuant to California Business and Professions Code Section 4600 *et seq.*, as may be amended from time to time.

SECTION 5.12.030: State Certification and Operator's Permit Required

- (A) Except as otherwise provided in Section 5.12.110, no individual shall engage in, conduct, carry on, practice or perform Massage Services within the City without first obtaining and thereafter maintaining State Certification and presenting proof of such State Certification, in accordance with the provisions of this Chapter.
- (B) Except as otherwise provided in Section 5.12.110, no Person shall engage in, conduct or carry on, or permit to be engaged, conducted, or carried on in or upon any premises within the City, the operation of a Massage Establishment without first obtaining and thereafter maintaining an Operator's Permit pursuant to this Chapter, and without otherwise complying with the provisions of this Chapter.
- (C) No Owner, Operator or Manager shall employ or retain any individual to conduct, carry on, practice or perform Massage Services within the City unless such individual has a State Certificate. For purposes of this Chapter, an Owner, Operator or Manager employs or retains a person if (1) that individual is a directly paid employee of the Massage Establishment, (2) that individual's association with the Massage Establishment is that of an independent contractor who receives compensation for Massage Services provided to patrons of the Massage Establishment, or (3) that individual receives a patron referral(s) from the Massage Establishment for Massage Services and arranges in any way for compensation relating to such services to flow to such Owner, Operator, Manager or Massage Establishment.

SECTION 5.12.040: Application for Operator's Permit

- (A) An application for an Operator's Permit shall be filed on forms provided by the Police Chief, and submitted under penalty of perjury. The application shall include, without limitation, the following information, documents, and fees:
- (1) The type of legal entity or entities owning the proposed Massage Establishment, i.e., whether a sole proprietorship, partnership, limited liability company, corporation, or otherwise. If the Applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation or charter together with the state and date of incorporation and the names and residence addresses of each of its current officers and directors, and of each shareholder or other person who has an ownership interest in the corporation. If the Applicant is a limited liability company, the name of the limited liability company shall be set forth exactly as shown in its articles or organization or other organizational document together with the state and date of organization and the names and residence addresses of each of its current officers and directors, and of each member or other person who has an ownership interest in the limited liability company. If the Applicant is a partnership, the application shall set forth the name and residence addresses of each of the partners, including limited partners. If it is a limited partnership, it shall furnish a copy of its certificate of limited partnership filed with the Secretary of State. If one or more of the partners is a corporation or limited liability company, the provisions of this subsection pertaining to corporations and limited liability companies shall apply. An Applicant that is a corporation, limited liability company or partnership shall designate one of its officers, members, managers, or general partners to act as its responsible managing officer. Such designated individual shall complete and sign all application forms required for an individual Applicant under this chapter, but only one application fee shall be charged.
 - (2) The precise name under which the Massage Establishment is to be conducted.
 - (3) The present or proposed address and telephone numbers of the Massage Establishment.
 - (4) The tax identification number used for income tax reporting for the Massage Establishment.
 - (5) A complete description of all services to be provided at the proposed Massage Establishment.
 - (6) A complete current list of the names and residence addresses of all current or proposed Employees of the Massage Establishment and the name and residence address of each current or proposed Manager(s) proposed to be principally in charge of the operation of the Massage Establishment.

- (7) True and correct copies of the current State Certificate and CAMTC-issued identification card for each Employee who will be providing Massage Services at the Massage Establishment.
- (8) A description of any other business to be operated on the same premises as the Massage Establishment.
- (9) The name, address, and description of any other business within the City or the State which is owned, wholly or in part, or operated by the Applicant.
- (10) A statement signed by the Applicant authorizing the City, its officers, agents and employees, to seek information and conduct an investigation into the truth of the statements set forth in the application and to ensure continual compliance with the applicable provisions of law.
- (11) A statement signed by the Applicant confirming that the Massage Establishment shall employ and only permit Certified Massage Practitioners to provide Massage Services at the Massage Establishment.
- (12) A statement signed by the Applicant confirming that the Massage Establishment shall ensure that all independent contractors who provide Massage Services at the Massage Establishment shall be in possession of a valid and current City business tax certificate at all times when Massage Services are provided.
- (13) A statement signed by the Applicant acknowledging that the Applicant, Owner(s), Operator(s) and Manager(s) shall each be responsible for the conduct of all Employees on the premises of the Massage Establishment and that failure to comply with this Chapter, or any local, state or federal law, including California Business and Professions Code section 4600 *et seq.*, may result in the revocation of the Operator's Permit and civil, administrative, or criminal penalties.
- (14) The following personal information concerning the Applicant and each Owner, Operator, and Manager of the Massage Establishment:
 - a. Full complete name and all aliases or fictitious names used within the last ten years.
 - b. A valid and current driver's license and/or identification card issued by a state or federal government agency or other photographic identification bearing a bona fide seal by a foreign government.
 - c. Current and all previous residential addresses for the last eight (8) years.
 - d. Date of Birth.
 - e. Height, weight, color of hair, eyes, and sex.

- f. Two front faced portrait photographs at least two inches by two inches in size taken within thirty (30) days of submission of the application.
 - g. The complete business, occupation, and employment history for eight (8) years preceding the date of application, including, but not limited to, the massage or similar business history and experience of the Applicant and each Owner, Operator, and Manager.
 - h. The complete massage permit history of the Applicant and each Owner, Operator, and Manager; whether such person has ever had any permit or license issued by any agency, board, city, county, territory, or state; the date of issuance of each such a permit or license; whether any such permit or license was ever denied, revoked, suspended or refused to be renewed, and the reasons therefore.
 - i. All criminal convictions, including pleas of nolo contendere, within the last ten (10) years including those dismissed or expunged pursuant to California Penal Code section 1203.4, but excluding minor traffic violations, and the date and place of each such conviction and reason therefor.
 - j. A complete set of fingerprints taken by the Police Department, subject to a fee to cover actual costs.
- (15) The name and address of the owner and lessor of the real property upon or in which the Massage Establishment 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 or her property, and that the Massage Establishment shall be subject to this Chapter
- (16) Such other identification and information as the Police Chief may reasonably require in order to discover the truth of the matters herein specified and as required to be set forth in the application.
- (17) A written statement signed and dated by the Applicant that he or she certifies under penalty of perjury that all information contained in the application is true and correct.
- (B) An application for an Operator's Permit shall be accompanied by a non-refundable application fee in an amount established by resolution of the City Council.
- (C) If, at any time during the application process or during the term of an Operator's Permit, any of the information provided in the application for an Operator's Permit on file with the City changes, for example by a change in Employees or Manager(s), the Owner or

Operator shall notify the Police Chief in writing of such change within ten (10) business days after such change.

SECTION 5.12.050: Issuance or Denial of Operator's Permit

- (A) Upon receipt of a complete application for an Operator's Permit, the Police Chief shall conduct an investigation to ascertain whether such permit should be issued as requested. The Police Chief shall, within sixty (60) days of receipt of a complete application, approve, conditionally approve, or deny the application. The sixty (60) day period may be extended by the Police Chief for up to thirty (30) additional days to complete the investigation. The Police Chief shall issue such permit unless he or she makes any of the following findings:
- (1) Any Owner, Operator, Manager or Employee of the Massage Establishment has been convicted of a violation of Section 266i, 315, 316, 318, or subdivision (b) of Section 647 of the California Penal Code, or has been convicted in any other state of any offense that, if committed or attempted in the State of California, would have been punishable as one or more of the above-mentioned offenses.
 - (2) Any Owner, Operator, Manager or Employee of the Massage Establishment has been convicted of any felony offense involving the sale of a controlled substance specified in Section 11054, 11055, 11056, 11057, or 11058 of the California Health and Safety Code, or has been convicted in any other state of any offense that, if committed or attempted in the State of California, would have been punishable as one or more of the above-mentioned offenses.
 - (3) Any Owner, Operator, Manager or Employee of the Massage Establishment is required to register under the provisions of Section 290 of the Penal Code.
 - (4) Any Owner, Operator, or Manager of the Massage Establishment has within eight (8) years preceding the date of the application:
 - a. Engaged in conduct in another jurisdiction which, if it had occurred within the City, would have been a violation of law and/or would constitute grounds for denial, suspension, or revocation of an Operator's Permit under this Chapter.
 - b. Been subjected to a permanent injunction against the conducting or maintaining of nuisance pursuant to sections 11225 through 11235 of the Penal Code, or any similar provisions of law in a jurisdiction outside the state.
 - c. Engaged in conduct which would constitute an offense as described in Subsection (A)(1) of this Section.

- d. Been convicted of an act involving dishonesty, fraud, deceit or moral turpitude or an act of violence, which act or acts are related to the qualifications, functions, or duties of the Owner, Operator, or Manager.
 - e. Had a massage operator or massage technician permit or other similar license or permit denied, suspended, revoked, or refused to be renewed for cause by a licensing authority or by any city, county, or state.
- (5) The Applicant has made a false, misleading, or fraudulent statement or omission of fact to the City in the permit application process.
 - (6) The application does not contain all of the information required by Section 15.12.040 of this Chapter.
 - (7) The Massage Establishment as proposed by the Applicant does not comply with all requirements of this Chapter and all other applicable laws, including, but not limited to, health, zoning, fire and safety requirements and standards.
 - (8) Within a twenty-four (24) month period prior to the submittal of the application, the location of the proposed Massage Establishment (i) has been the site of a violation of this Chapter, or any similar criminal or civil ordinance, law, rule, or regulation of the State of California or any other public agency related to the operation of Massage Establishments, or (ii) has been the site of a Massage Establishment that was closed due to criminal activity. For purposes of this Subsection, closure due to criminal activity includes voluntary closure of a Massage Establishment after there have been arrests at the location or other notices relating to criminal activity.
- (B) Prior to commencing operations pursuant to an Operator's Permit issued by the Police Chief pursuant to this Chapter, Applicants shall obtain a business tax certificate pursuant to Title 5 of the Garden Grove Municipal Code and any and all appropriate zoning or land use approvals required pursuant to Title 9 of the Garden Grove Municipal Code, including any amendments thereto.
 - (C) An Operator's Permit issued pursuant to this Chapter does not authorize the Owner or Operator to operate a Massage Establishment until the Owner or Operator has complied with all applicable business licensing or tax requirements, zoning requirements, building requirements, and all other applicable federal, state, and City laws and regulations.

SECTION 5.12.060: Requirements of Operation

Each Owner, Operator and Manager of a Massage Establishment shall be responsible for ensuring compliance with each of the requirements of operation, which shall apply to all Massage Establishments.

(A) Facilities.

- (1) Subject to applicable provisions of the City's codes, a recognizable and legible sign shall be posted at the main entrance identifying the business as a Massage Establishment.
- (2) No Massage Establishment located in a building or structure with exterior windows fronting a public street, highway, walkway, or parking area, shall, during business hours, block visibility into the interior reception and waiting area through the use of curtains, closed blinds, or any other material that obstructs, blurs or darkens the view into the premises.
- (3) The hours of operation shall be displayed in a conspicuous place in the reception area and in any front window clearly visible from outside of the Massage Establishment. Patrons and visitors shall be permitted in the Massage Establishment only during the posted hours of operation.
- (4) Front doors used for patron access shall remain unlocked during business hours unless the Massage Establishment is a business entity owned by one individual with one or no employees or independent contractors.
- (5) Minimum lighting shall be provided in accordance with the City's electrical code and, in addition, at least one artificial light of not less than 40 watts shall be provided in each room or enclosure where massage services are performed and shall be activated at all times while a patron is in such room or enclosure.
- (6) Closed cabinets or other covered space shall be provided and utilized for the storage of clean linens, and receptacles acceptable to the City shall be provided for the deposit of soiled linen.
- (7) The walls in all rooms where water or steam baths are given shall have a washable, mold-resistant surface.
- (8) A minimum of one toilet and one separate wash basin shall be provided for patrons in each Massage Establishment, which basin shall provide soap or detergent and hot running water at all times. A permanently installed soap dispenser, filled with soap, and a single service towel dispenser shall be provided at the restroom handwash sink. A trash receptacle shall be provided in each toilet room. Showers may be provided at the operator's option.
- (9) All Massage Establishments shall have clean and sanitary towels, sheets and linens in sufficient quantity to meet the requirements of this Chapter. Reuse of towels, sheets and linens is prohibited unless the same have first been laundered. Heavy white paper may be substituted for sheets, provided that such paper is used only once and then discarded into a sanitary receptacle.

- (10) All walls, ceilings, floors, pools, showers, bathtubs, steam rooms and all other physical facilities including appliances and apparatuses for the Massage Establishment must be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms, or steam or vapor cabinets, shower compartments and toilet rooms shall be thoroughly cleaned and disinfected each day the business is in operation. Bathtubs shall be thoroughly cleaned and disinfected after each use.
- (11) Disinfecting agents and sterilizing equipment shall be provided for any instruments used in performing acts of Massage and the instruments shall be disinfected and sterilized after each use.
- (12) A massage table shall be provided in each massage room or enclosure and the Massage shall be performed on this massage table. The tables must have a minimum height of eighteen (18) inches. Two-inch thick foam pads with a maximum width of four feet may be used on a massage table and must be covered with durable, washable plastic or other waterproof material. Beds, mattresses, waterbeds, futons, sofa beds, or any type of portable or convertible beds are not permitted on the premises.
- (13) No part of the Massage Establishment shall be used for residential or sleeping purposes.

(B) Operations.

- (1) No Massage Establishment shall be open for business or operated between the hours of nine (9:00) p.m. and seven (7:00) a.m.
- (2) (a) A register of all Certified Massage Practitioners who are currently providing, or who have previously provided, Massage Services on the premises, showing the names, nicknames, and aliases used by such Employees, along with the dates of their employment and termination, if applicable, and (b) copies of each Certified Massage Practitioner's current State Certificate and CAMTC-issued identification card, shall be maintained on file on the premises of each Massage Establishment, and shall be made available upon request to any individual, including but not limited to, any duly authorized official of the City.
- (3) Within ten (10) business days of a Massage Establishment hiring or contracting with a new Certified Massage Practitioner to provide Massage Services, written notice of the name and residential address of the new Employee and copies of his or her current State Certificate and CAMTC identification card shall be filed with the Police Chief.

- (4) Written notice shall be provided to the Police Chief within five (5) days of the expiration, revocation, suspension, or surrender of an Employee's State Certification, and no Employee whose State Certification is expired, revoked, suspended, or surrendered shall be permitted to provide Massage Services at the Massage Establishment until and unless valid State Certification have been reestablished and notice and copies of such Employee's current State Certificate and CAMTC identification card have been provided to the Police Chief.
- (5) All documents or information pertaining to a Certified Massage Practitioner that is required to be maintained or provided pursuant to this Section 5.12.060(B) shall be maintained at the Massage Establishment for a minimum of two (2) years following the date that the Certified Massage Practitioner ceases providing Massage Services at the Massage Establishment.
- (6) A Manager shall be present on the premises at all times the Massage Establishment is open. A written statement designating the person or persons with power to act as a Manager shall be filed with the Police Chief prior to commencement of operation of the Massage Establishment and within ten (10) days of any managerial change.
- (7) The name of each on-duty Manager and each on-duty Certified Massage Practitioner shall be posted in a conspicuous public place in the lobby of the Massage Establishment on a daily basis.
- (8) No Massage Establishment shall be open for business without having at least one (1) Certified Massage Practitioner on the premises and on-duty.
- (9) Any and all Employees providing Massage Services shall carry and have on their persons, visible for the patron to see, a current and valid CAMTC-issued identification card that was issued to them.
- (10) Any and all changes of address or ownership of a Massage Establishment shall be reported immediately to the Police Chief. Operator's Permits are issued to specific Owners and for specific locations only. A new Operator's Permit shall be obtained prior to the proposed relocation of a Massage Establishment, the opening of another location, or a change in ownership of the Massage Establishment.
- (11) No Massage Establishment shall operate as a school of Massage, or use the same facilities as that of a school of Massage.
- (12) Each service offered, the price thereof, and the minimum length of time such service shall be performed shall be posted in an open and conspicuous public location in each Massage Establishment. All letters and numbers shall be capitals, and not less than one inch in height. No services shall be performed and no sums shall be charged for such services other than those posted. Nothing herein prohibits a voluntary tip from being paid by the patron. All arrangements for

services to be performed shall be made in a room in the Massage Establishment which is not used for administration of Massages, baths or health treatments, unless no other room exists in the Massage Establishment.

- (13) Any posted signs which are in a language other than English shall also be posted in English.
 - (14) The Operator's Permit issued to the Massage Establishment shall at all times be displayed in an accessible and conspicuous place, visible from the entrance and/or reception and waiting area of the Massage Establishment.
 - (15) Copies of the current State Certificates held by the Employees providing Massage Services at the Massage Establishment shall at all times be displayed in an accessible and conspicuous place in clear view of the public.
 - (17) No alcoholic beverages or controlled substances shall be sold, served, furnished, kept, consumed, or possessed on the premises of any Massage Establishment.
 - (18) A notice substantially similar to the notice required by Section 52.6 of the California Civil Code shall be posted in a conspicuous place near the public entrance of each Massage Establishment or in another conspicuous location in clear view of the public and Employees where similar notices are customarily posted.
- (C) Prohibited Conduct.
- (1) Each Owner, Operator and Manager shall be responsible for the conduct of all Employees providing Massage Services while such Employees are on the premises of the Massage Establishment. Any act or omission of any Employee constituting a violation of this Chapter shall be deemed the act or omission of each of the Owners, Operators, and Manager(s) for purposes of determining (a) compliance with this Chapter, and (b) whether the Operator's Permit, business tax certificate, and/or any other permit required by the City shall be revoked, suspended, denied or renewed.
 - (2) No Owner, Operator or Manager shall hire, employ or allow an individual to perform Massage Services unless such individual possess a valid and current State Certificate. Each Owner, Operator and Manager of a Massage Establishment shall have a continuing obligation to verify that all Employees providing Massage Services hold the State Certification required by this Chapter.
 - (3) No electrical, mechanical or artificial device shall be used by any Massage Establishment staff for audio and/or video recording or for monitoring the performance of a Massage, of the conversation or of other sounds in the Massage rooms or enclosures, without the prior written consent of the patron.

- (4) No Employee shall violate the provisions of Section 647(b) of the California Penal Code, or any other state law involving a crime of moral turpitude.
- (5) No Employee shall engage in any form of unprofessional conduct as defined by Section 4609(a)(1) of the California Business and Professions Code, as may be amended from time to time, including without limitation:
 - a. Engaging in any form of sexual activity on the premises of a Massage Establishment.
 - b. Engaging in sexual activity while providing Massage Services for compensation.
 - c. Providing Massage of the genitals or anal region.
 - d. 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 for such Massage.
- (6) No Employee shall dress, while engaged in the practice of Massage, or while visible to patrons in the Massage Establishment, in any of the following:
 - a. Attire that is transparent, see-through, or substantially exposes the person's undergarments.
 - b. Swim attire, if not providing a water-based massage modality approved by CAMTC.
 - c. A manner that exposes the Employee's breast, buttocks, or genitals.
 - d. A manner that constitutes indecent exposure in violation of Section 314 of the California Penal Code.
- (7) No Employee shall expose their genitals, pubic region, buttocks, anus, or in the case of a female, her breasts below a point immediately above the top of the aureole, to the view of a Massage Establishment Patron.
- (8) A Massage Establishment patron's genitals, anus, and in the case of a female, her breasts, must be fully covered at all times while a Certified Massage Practitioner or other Employee is present in the same room as the patron.

SECTION 5.12.070: Inspection by City Officials

Any duly authorized official of the City, including but not limited to, the City police, designated representatives, code enforcement officers, health officials and building and fire inspectors, shall have the right to enter any Massage Establishment premises from time to time during regular business hours prior to the issuance of an Operator's Permit and subsequently thereafter for the purposes of making reasonable inspections to ensure compliance with this Chapter and other applicable laws, including building, fire, electrical, plumbing or health and safety regulations.

SECTION 5.12.080: Issuance of Notice of Violation

Whenever a City official makes an inspection of a Massage Establishment and finds that any provision of this Chapter or any other applicable provision of this Code has been violated, the City official may give notice of such violation by means of an inspection report or other written notice, including, but not limited to, issuing a citation for each and every violation of this Chapter or other applicable provision of this Code. In any such notification, the investigating official shall:

- (1) Set forth the specific violation or violations found;
- (2) If appropriate, establish a specific and reasonable period of time for the correction of the violation or violations. If the investigating official determines that the violation or violations are minor in nature, the investigating official may issue a warning to the Massage Establishment Owner and/or Operator that any further violation of this Chapter or other applicable provision of this Code may result in revocation or suspension of the Operator's Permit. No time to correct need be given in the event of health and safety violations or violation of criminal law; and
- (3) State that failure to comply with any notice issued in accordance with the provisions of this Chapter or other applicable provision of this Code may result in revocation or suspension of the Operator's Permit.

Nothing in this Section shall preclude the investigating official from initiating suspension, revocation or other legal proceedings, or issuing a criminal or administrative citation, if he/she deems it appropriate based on the violation(s) found to exist, rather than first issuing a warning or a notice of violation.

SECTION 5.12.090: Duration of Operator's Permits and Transfers

- (A) No Operator's Permit issued hereunder shall be transferable to any other Person, Owner, location, or Massage Establishment. A new and/or separate Operator's Permit shall be obtained for each separate Massage Establishment and/or location and in the event of any change in ownership of a Massage Establishment. Any attempt to transfer an Operator's Permit to another Person or location is hereby declared invalid and the Operator's Permit shall automatically become void effective the date of such attempted transfer.

- (B) An Operator's Permit shall be good for and expire in twelve (12) months from the date of issuance, unless suspended or revoked.
- (C) Renewal applications with required application fee shall be filed with the Police Chief no later than thirty (30) days prior to the expiration of the twelve (12) month permit term.
- (D) Each Applicant for renewal shall file such information as may be reasonably required by the Police Chief.

SECTION 5.12.100: Out-Call Massage

- (A) No Person shall perform an Out-Call Massage in the City without possessing a valid and current State Certificate.
- (B) Notwithstanding any other provision of this Chapter, an Operator's Permit shall be required for any Massage Establishment with a fixed place of business providing Out-Call Massage.

SECTION 5.12.110: Exemptions

The provisions of this Chapter shall not apply to the following:

- (1) Treatment or services administered or provided in good faith by healing arts professionals who are duly licensed pursuant to the California Business and Professions Code or any other law of the State of California, including, but not limited to, physicians, surgeons, dentists, chiropractors, osteopaths, podiatrists, acupuncturists, physical therapists, physician assistants, or nurses, or by cosmetologists, barbers, estheticians, or manicurists who are duly licensed pursuant to California Barbering and Cosmetology Act, California Business and Professions Code section 7300 *et seq.*, while in the course of engaging in practices within the scope of their respective professional licenses. This exemption shall not be construed to apply or extend to treatments or services constituting "Massage," as defined in this Chapter, that are administered or provided by any Person acting as an independent contractor to one of the foregoing types of licensed professionals, if such Person is engaged in, or is purported to be engaged in, the business of Massage.
- (2) Chair Massages administered by fully clothed individuals to fully clothed patrons in office or public locations.
- (3) Hospitals, nursing homes, sanatoriums, or other health facilities duly licensed by the State of California, or activities engaged in by employees of such facilities in the course of their employment while working on the premises of such State-licensed facilities.

- (4) The activities of coaches or trainers employed by accredited junior high schools, high schools, junior colleges, colleges, or universities, while acting within the scope of such employment.
- (5) Massage therapy or health treatment involving Massage provided by trainers of amateur, semi-professional, or professional athletes or athletic teams, or at athletic facilities or events, while acting within the scope of their employment, so long as such Persons do not provide Massage Services as their primary occupation at any location where they provide such services within the City.
- (6) Schools of cosmetology or barbering which comply with the requirements of California Business and Professions Code section 7362 *et seq.* when instructors are acting within the scope of their employment or when students are working as unpaid externs pursuant to the requirements of California Business and Professions Code Section 7395.1.

SECTION 5.12.120: Operator's Permit Suspension or Revocation

- (A) After an investigation, notice and opportunity to respond, an Operator's Permit may be revoked or suspended by the Police Chief where any of the following is found:
 - (1) The business conducted is not substantially the same as that which was permitted under the Operator's Permit.
 - (2) The Massage Establishment is being operated in violation of any provision of this Chapter, Business and Professions Code Section 4600 *et seq.*, or any other laws which would have been grounds for denial of the Operator's Permit.
 - (3) The Applicant, Owner, Operator or Manager has engaged in fraud, or made a material omission or misrepresentation in obtaining or maintaining an Operator's Permit.
 - (4) The Massage Establishment has continued to operate after the applicable Operator's Permit has been suspended.
 - (5) The Applicant, Owner, Operator, or Manager of the Massage Establishment has acted in a manner detrimental to the public health, safety or welfare with regard to Massage Services.

SECTION 5.12.130: Administrative Hearings

- (A) All administrative hearings regarding a denial, nonrenewal, suspension, or revocation of a Massage Establishment Operator's Permit shall occur in accordance with this Section.

- (B) Upon determining that grounds for denial, nonrenewal, revocation, or suspension of an Operator's Permit exists, the Police Chief shall furnish written notice of a denial, nonrenewal, or proposed revocation or suspension of an Operator's Permit to the affected Applicant or Owner (hereinafter the "Appellant"). Such notice shall state the reasons for the denial, nonrenewal or proposed revocation or suspension and shall state that the a written request for an administrative hearing may be filed within fifteen (15) calendar days of the date of the notice. The notice shall be personally served, or sent by certified mail, postage prepaid, to the address provided by the Appellant and shall be mailed by the City within twenty-four (24) hours of the date of the notice. In the case of a proposed suspension or revocation of an Operator's Permit, the notice shall also be delivered by posting the notice at the location of the Massage Establishment. Any request for an administrative hearing shall be filed with the City Clerk along with a filing fee, in an amount set by resolution of the City Council, to defray the cost of such hearing. The request along with the filing fee must be received by the City Clerk within fifteen (15) calendar days of the date of the City's notice or, if required, the posting of the notice, whichever date is later. The written request for an administrative hearing shall state in detail each basis on which the request is made and include copies of all documents in support of the appeal. If the request for a hearing is received by the City Clerk within fifteen (15) calendar days of the later of the date of the notice or, if required, the posting of the notice referred to herein, the City Clerk shall transmit the request to the City Manager, and a hearing shall be provided. If a written request is not received by the City Clerk within such period, the Police Chief's action shall be deemed to be the final decision.

- (C) Upon timely receipt of a written request for an administrative hearing, the City Manager shall conduct a hearing. Absent a timely request by the Appellant for a continuance, which request is granted, the City Manager shall conduct the hearing within thirty (30) calendar days of the City's receipt of the request for the hearing. Notice of time and place of the hearing shall be given by personal service or via certified mail, postage prepaid, at least fifteen (15) calendar days in advance of the date set for the hearing. At the hearing, the Appellant and the City shall be entitled to present relevant evidence and call witnesses who shall testify under oath and be subject to cross-examination. The scope of the hearing pursuant to this Section shall be limited to those issues raised in writing by the Appellant, as submitted pursuant to subsection (B) of this Section. The City Manager shall not be bound by the statutory rules of evidence in the conduct of the hearing. Technical rules relating to evidence and witnesses shall not apply to hearings provided for in this Chapter. Any relevant evidence may be admitted if it is material and of a type that is customarily relied upon by responsible persons in the conduct of their affairs regardless of the existence of any common law or statutory rule which might make admission of such evidence improper over objection in civil actions. Hearsay testimony may be admissible and used for the purpose of supplementing or explaining any evidence

given in direct examination, but shall not be sufficient in itself to support a finding unless such testimony would be admissible over objection in civil actions. The rules of privilege shall be applicable to the extent permitted in civil actions. Irrelevant, collateral, undue, and repetitious testimony shall be excluded.

- (D) At the conclusion of the hearing, the City Manager shall decide whether grounds for denial, nonrenewal, revocation or suspension exist and shall uphold, modify or overturn the decision of the Police Chief, stating factual findings, and his/her conclusion. The decision of the City Manager shall be final.
- (E) In the event that an Operator's Permit is suspended, revoked or expires, the Massage Establishment shall surrender the Operator's Permit to the Police Chief no later than the end of the third (3rd) business day after the suspension or revocation decision becomes final or the expiration occurs.

SECTION 5.12.140: Burden of Proof at Hearings

Unless otherwise specifically provided by law, the burden of proof shall be on the City in any administrative hearing under this Chapter to establish by a preponderance of the evidence that (a) an application for an Operator's Permit shall be denied or (b) an Operator's Permit shall be suspended, revoked, or not renewed.

SECTION 5.12.150: Resubmission after Denial or Revocation

In the event an Operator's Permit for a proposed or existing Massage Establishment is denied or revoked pursuant to this Chapter, the Owner or Operator of such Massage Establishment may not resubmit an application for an Operator's Permit for a period of one (1) year from the effective date of such denial or revocation, unless accompanied by sufficient evidence that the grounds for denial or revocation of the Operator's Permit no longer exist. For purposes of this Section, the effective date of a denial or revocation of an Operator's permit shall be the later of (a) the date written notice of denial or revocation of the Operator's Permit by the Police Chief pursuant to Section 5.12.130(B) is deposited in the United States mail or (b) the date of the decision of the City Manager following an administrative hearing pursuant to Section 5.12.130(F) becomes final.

SECTION 5.12.160: Judicial Review

Judicial review of any decision of the City Manager may be made pursuant to Section 1094.5 of the California Code of Civil Procedure only if the petition for writ of mandate is filed no later than the ninetieth (90th) day following the date on which the decision becomes final. If the date is not otherwise specified, the decision is final on the date it is made. In issuing a final decision, the City Manager shall provide notice to the Appellant (as defined in Section 5.12.130) that the time within which judicial review must be sought is governed by Section 1094.6 of the California Code of Civil Procedure.

SECTION 5.12.170: No Refund of Business Licenses Taxes

No refund or rebate of business licenses taxes shall be allowed by reason of the fact that the Massage Establishment discontinues an activity for which a business license tax is required, or because the Operator's Permit is suspended or revoked.

SECTION 5.12.180: Violations, Penalties, and Enforcement Remedies

- (A) Violations of this Chapter shall be a misdemeanor. Any Person violating any provision of this Chapter shall be subject to criminal and/or administrative citations or civil actions, pursuant to Chapters 1.04 and 1.22 of the Garden Grove Municipal Code.
- (B) Injunctive relief may be instituted by the City Attorney, in addition to or separate from, criminal and/or administrative sanctions, pursuant to Garden Grove Municipal Code section 1.04.090.
- (C) In addition to the above-described remedies, the City Council hereby authorizes the following administrative abatement process with respect to Massage Establishments conducted in violation of this Chapter.
 - (1) The City Council hereby finds and declares that the conducting of a Massage Establishment in violation of any provision of this Chapter to be detrimental to the public health, safety, and general welfare of the community, and therefore a public nuisance as defined by Civil Code Section 3480.
 - (2) Whenever the Police Chief determines that any Massage Establishment, premises or property is operated in violation of any provision of this Chapter, the Police Chief may give notice to the responsible party stating the violation of this Chapter and the conditions that constitute a public nuisance. The notice shall set a reasonable date, not less than ten (10) business days from date of service, for a public hearing to be held by the City Council as to why the business should not be closed, or otherwise subjected to special conditions regarding further operation of the business. The notice shall be personally served or mailed by certified mail to the responsible party.
 - (3) After the conduct of the hearing by the City Council, the City Council shall make a determination as to whether a public nuisance exists. The City Council may adopt an abatement order with written findings in support of its determination. If a public nuisance finding is made, the City Council shall issue an abatement order to close the business or otherwise impose operating conditions on the business so as to bring the business in compliance with this Chapter. The order shall then be served by first-class mail on the responsible party.
 - (4) If such nuisance is not abated as directed in the abatement order, then the City Attorney may file a civil action to enjoin further operation of the business.

- (D) Nothing in this Section shall preclude the City from pursuing any other legally available enforcement remedies.

SECTION 5.12.190: Authority

- (A) The Police Chief shall have the power and authority to promulgate rules, regulations, and requirements consistent with the provisions of this Chapter and other law in connection with the issuance of an Operator's Permit. The Police Chief may designate an employee of his or her department to make decisions, investigate, or take any other action permitted or required under this Chapter.
- (B) Pursuant to California Business and Professions Code section 4614(b), as it may be amended from time to time, the Police Chief is authorized to transmit to CAMTC copies of any final action of denial of an Operator's Permit application, or revocation or suspension of an Operator's Permit occurring pursuant to this Chapter. The Police Chief is also authorized to transmit information to CAMTC concerning: (1) any information related to criminal activity or unprofessional conduct allegedly engaged in by any Certified Massage Practitioner or any other Person providing Massage Services in the City, including, but not limited to, police reports and declarations of conduct.