

URGENCY ORDINANCE NO. 633-C.S.

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
SAN GABRIEL, CALIFORNIA AMENDING CHAPTER 122 OF THE SAN
GABRIEL MUNICIPAL CODE RELATING TO MASSAGE
ESTABLISHMENTS

THE CITY COUNCIL OF THE CITY OF SAN GABRIEL DOES HEREBY ORDAIN
AS FOLLOWS:

Section 1. Findings. The City Council does hereby find as follows:

A. In 2008 the California Legislature passed SB 731 which added a new Chapter 10.5 to the California Business and Professions Code which provided for the formation of the nonprofit California Massage Therapy Council to oversee a state-sanctioned program of voluntary certification for massage practitioners so that such persons could avoid being required to obtain local massage permits.

B. The Massage Therapy Act has been amended several times since its original enactment, including by AB 1147 and AB 2194 which, among other things, restored local land use control and extended the Massage Therapy Act's effective date through December 31, 2020.

C. After the adoption of SB 731 the City enacted massage regulations which require that owners and managers obtain an Operator Permit and the business obtains a Certificate of Operation.

D. When the City's land use authority was restored with the passage of AB 1147, the City reinstated the requirement that massage establishment businesses obtain a conditional use permit and provided a deadline of January 20, 2018 to apply for such permit.

E. The City has continued to have issues with massage establishments complying with the City's regulations.

F. It has been the experience of City staff that Operators leave an establishment and the City is not kept informed as required by the Ordinance; requiring the Operator Permit to be renewed every year instead of every three years will provide a better opportunity to monitor massage establishments and keep City records up to date.

G. The City has experienced problems with Operators trying to manage more than one massage establishment at the same time when businesses are located next to each other.

H. The suspension and revocation process will be streamlined by eliminating the pre-appeal determination process.

I. It will be beneficial for an Operator Permit to be obtained before an application is deemed complete for a conditional use permit to prevent the possibility of having gone through the entire conditional use permit process only to find out that the person is not qualified to own the massage establishment.

J. It is in the best interests of the public health, safety and welfare to make additional changes in the business license regulations to address the issues listed above as well other clean-up issues.

K. There are approximately 49 licensed massage establishments currently operating in the City. In order to public health, safety and welfare, the changes to Chapter 122 must go into effect immediately as provided for by Government Code section 36937.

SECTION 2. Chapter 122 of the San Gabriel Municipal Code is hereby amended to read as follows:

GENERAL PROVISIONS

§ 122.01 FINDINGS AND PURPOSE.

The City Council finds and declares as follows:

(A) The requirements and restrictions imposed by this chapter are reasonably necessary to protect the health, safety and welfare of the citizens of the City, while recognizing massage as a legitimate business interest that provides benefits to its patrons in a therapeutic setting.

(B) This chapter is enacted pursuant to the provisions of the State Constitution, Cal. Gov't Code §§ 37100, 51030 et seq., Cal. Bus. & Prof. Code §§ 460, 4600 through 4620 (The Massage Therapy Act) and 16000, and § 13 of the Chiropractic Act (initiative measure approved by the electors November 7, 1922, as amended).

(C) There is a significant risk of injury to massage clients by persons improperly trained and/or educated in providing massage services, and this chapter provides reasonable safeguards against injury and economic loss.

(D) There is opportunity for acts of prostitution, lewdness, and other unlawful sexual activity to occur in massage establishments, as well as problems relating to human trafficking in massage establishments. Courts have long recognized massage as a pervasively regulated activity and that massage establishments are often brothels in disguise. The establishment of reasonable standards for issuance of permits and restrictions on operations would serve to reduce the risk of illegal activity and would thereby benefit the public health.

(E) The provisions of this chapter are intended to enhance the efficient processing of permits for massage establishments, owners and managers and the ongoing regulation of those permittees and certificate holders by the City. The provisions of this chapter in no way limit the authority of the City to inspect massage establishments or conduct investigations to ensure permittees are complying with applicable rules and regulations.

(F) The restrictions and requirements contained in this chapter are intended, in part, to stop the practice of businesses quickly changing ownership in name upon the discovery of criminal activity by the City.

(G) The restrictions and requirements contained in this chapter are intended to be in addition to the requirement of a valid business license issued pursuant to Title XI, Chapter 110 of the San Gabriel Municipal Code and the requirement to obtain a conditional use permit pursuant to Chapter 153.

(H) The regulations and restrictions contained in this chapter are intended 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 within the confines allowed by state law.

(I) The provisions of this chapter are not intended to be exclusive and compliance therewith shall not excuse noncompliance with any state or local laws or regulations that are uniformly applied to other professional or personal service businesses.

(J) The California Massage Therapy Council ("CAMTC") can better, and more efficiently, regulate massage technicians in order to best protect the public and it is in the public interest to require that all persons providing massage in the City have a certificate from the CAMTC. However, in order to protect the public health, safety and welfare of the residents and visitors to the City of San Gabriel, it is necessary for the City to additionally regulate Massage Establishment businesses.

§ 122.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CALIFORNIA MASSAGE THERAPY COUNCIL or **CAMTC**. The nonprofit organization created to regulate and issue massage practitioner and therapist certificates pursuant to Cal. Bus. & Prof. Code §§ 4600 et seq.

CAMTC CERTIFICATE. A massage practitioner or massage therapist certificate issued by the CAMTC.

CERTIFICATE OF OPERATION. The certificate issued by the Finance Director entitling a business to be operated as a massage establishment.

CHIEF OF POLICE. The Chief of Police of the City of San Gabriel, or his or her designee.

CITY. The City of San Gabriel.

CITY MANAGER. The City Manager or his or her designee, including a hearing officer.

COMPENSATION. The payment, loan, advance, donation, contribution, deposit, exchange, or gift of money or anything of value.

CONVICTION or **CONVICTED**. A conviction following a guilty plea, nolo contendere plea, or judgment or verdict where the time for appeal has elapsed or conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Cal. Penal Code § 1203.4 allowing the applicant to withdraw his or her plea of guilty or nolo contendere and to enter a plea of not guilty, or dismissing the accusation or information.

EMPLOYEE. Any person, other than a massage practitioner, massage therapist, or Operator, who renders any service, with or without compensation, to the Operator or agent of an Operator of a massage establishment relating to the day-to-day operation of the massage establishment whether as an employee or independent contractor.

FINANCE DIRECTOR. The Finance Director of the City, or his or her designee.

MAIN ENTRY DOOR. A door from the outside of the establishment leading into the reception area.

MANAGER. The person(s) designated by the owner of the massage establishment to act as the representative and agent of the owner in managing day-to-day operations with corresponding responsibilities. Evidence of management includes, but is not limited to, the ability of the individual to direct or hire and dismiss employees, control hours of operation, create policy or rules or purchase supplies, and ensure that the massage establishment complies with the requirements of this code and of other laws. A **MANAGER** may also be an owner. A **MANAGER** must have a valid Operator Permit.

MASSAGE. Any method of treating the external parts of the body for remedial, health, hygienic, or relaxation purpose. **MASSAGE** includes, but is not limited to, treatment by means of manual pressure, acupressure, friction, stroking, kneading, rubbing, tapping, pounding, vibrating, with or without the aid of or by means of any mechanical, electronic, or electrical apparatus or appliance, and with or without rubbing alcohol, liniments, aromatics, antiseptics, oils, powders, creams, lotions, ointments, or other similar preparations. **MASSAGE** specifically includes the application of any of these methods to the scalp, neck, or feet of any individual. (Some persons practicing massage may be exempt from all or parts of the permit requirements; please consult § 122.03).

MASSAGE ESTABLISHMENT. Any enterprise or establishment having a fixed place of business where any person engages in, conducts, carries on, or permits to be engaged in, conducted, or carried on, any of the activities set forth in the definition of **MASSAGE** in this section.

MASSAGE PRACTITIONER. A person who is certified as such by the CAMTC in accordance with the Massage Therapy Act.

MASSAGE TECHNICIAN. A massage practitioner or massage therapist certified by CAMTC.

MASSAGE THERAPIST. A person who is certified as such by the CAMTC in accordance with the Massage Therapy Act.

MASSAGE THERAPY ACT. Chapter 406 of the 2013-2014 Legislative Session, as the same may be amended from time to time.

OPERATOR. All persons who own or manage a massage establishment.

OPERATOR PERMIT. The permit issued by the Chief of Police allowing a person to own or manage a massage establishment.

OUT-CALL MASSAGE. Any business or enterprise that engages in or performs massage for any form of consideration or in exchange for anything of value whatsoever at a location other than a massage establishment.

OWNER. All of the following:

(1) The sole proprietor of a massage establishment, i.e., where the owner is the only person performing massage at that establishment;

(2) In the case of a general business, each owner of the business;

(3) In the case of a corporation, each stockholder holding more than 10% of the corporation and each officer and director of the corporation;

(4) In the case of a partnership, each partner, excluding limited partners owning less than 10% of the partnership, and where a partner is a corporation, the provisions pertaining to a corporate applicant in division (3) above apply.

PATRON. An individual on the premises of a massage establishment for the purpose of receiving a massage.

PERMIT. An Operator Permit or Certificate of Operation, unless the context indicates otherwise.

PERMITTEE. Any person who has obtained a Certificate of Operation or Operator Permit from the City.

PERSON WHO HAS ENGAGED IN DISQUALIFYING CONDUCT. A person who:

(1) Within ten years preceding the date of filing of the application in question or, in the case of revocation proceedings, within ten years preceding the date of the revocation notice, has been convicted in a court of competent jurisdiction of any of the following:

(a) A violation of any provision of law pursuant to which a person is required to register under the provisions of Cal. Penal Code § 290;

(b) Conduct in violation of Cal. Penal Code §§ 266h, 266i, 314, 315, 316, 318, 653.22, 653.23, or § 647(a), (b), or (d);

(c) An attempt to commit or conspiracy to commit any of the above mentioned offenses;

(d) When the prosecution accepted a plea of guilty or nolo contendere to a charge of a violation of Cal. Penal Code §§ 415, 602, or any lesser included or related offense, in satisfaction of, or as a substitute for, any of the previously listed crimes;

(e) Any crime committed while engaged in the management or ownership of a massage establishment or the practice of massage;

(f) A violation of Cal. Health & Safety Code § 11550 or any offense involving the illegal sale, distribution or possession of a controlled substance specified in Cal. Health & Safety Code §§ 11054, 11055, 11056, 11057 or 11058; or

(g) Any offense under a statute of any state or ordinance of any City or county, which is the equivalent of any of the aforementioned offenses, including Business & Professions Code § 4609(a).

(2) Within ten years preceding the date of the filing of the application in question or, in the case of revocation proceedings, within ten years preceding the date of the revocation notice, has had any massage establishment, Operator, technician, practitioner, therapist, or trainee certificate, license, or permit issued by any state, local agency, or other licensing authority, including the CAMTC: denied, revoked, or

suspended for any reason other than lack of sufficient education; or has had to surrender such a certificate, license, or permit as a result of pending criminal charges or administrative proceedings for suspension or revocation of any such certificate, license, or permit;

(3) Within five years preceding the date of filing of the application in question or, in the case of revocation proceedings, within five years preceding the date of the revocation notice, has been convicted in a court of competent jurisdiction of any of the following:

(a) Any crime, other than an infraction or those listed above, involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or another, or substantially injure another;

(b) Any crime, other than an infraction or crimes relating to those offenses listed above, where the crime or act is substantially related to the management or ownership of a massage establishment or the practice of massage, including a violation of the Massage Therapy Act;

(4) Has been subjected to a permanent injunction against the conducting or maintaining of a nuisance pursuant to Cal. Penal Code §§ 11225 through 11235 of the Penal Code as the same may be amended from time to time, or any similar provisions of law in a jurisdiction outside the State of California; or

(5) Has been found to be maintaining a nuisance in connection with the same or similar type of business; or

(6) Within five years preceding the date of filing of the application in question or, in the case of revocation proceedings, within five years preceding the date of the revocation notice,

(a) Has engaged in the exposing of specified anatomical areas of oneself or of another person to view, or in touching the specified anatomical areas of oneself or of another person, while providing massage services or while within view of a customer or patron of the massage establishment; or

(b) Has been the owner, manager, or other similar position, in an establishment where the conduct described in division (6)(a) above has occurred.

(7) **DISQUALIFYING CONDUCT** does not include the failure to obtain a certificate of operation or Operator Permit without any prior oral or written notification by the City that such was required, provided that the business and/or person cease operations immediately upon notification.

PROOF OF BONA FIDE EMPLOYMENT. Proof of an employer-employee relationship between the Operator of the massage establishment and any person working at the massage establishment. Satisfactory **PROOF OF BONA FIDE EMPLOYMENT** must be shown by written payroll documentation evidencing the employer's compliance with California Employment Development Department (EDD) requirements for the withholding of California income tax, unemployment insurance contributions, and disability contributions from the employee and written payroll documentation of the employer's compliance with Internal Revenue Service (IRS) requirements for the withholding of federal income taxes, Social Security (FICA) and Medicare contributions from the employee. Such written documentation can include, but is not limited to, W-2 wage and tax statements.

RECEPTION AREA. An area immediately inside the main entry door of the massage establishment dedicated to the reception and waiting of patrons and visitors of the massage establishment and which is not a massage room or otherwise used for the provision of massage services.

RESIDENCE ADDRESS. The actual physical home address and shall not include a P.O. Box, mailbox service, or other similar location.

SOLE PROVIDER. A massage business where the owner owns 100% of the business, is the only person who provides massage services for compensation for that business pursuant to a valid and active CAMTC Certificate, and has no other employees or independent contractors.

SPA. Facilities such as mineral baths, salt rooms, mineral rooms, saunas, steam rooms, whirlpools and other therapeutic baths.

SPECIFIED ANATOMICAL AREAS. Any of the following human anatomical areas: genitals; pubic area; buttocks; anus; or female breasts below a point immediately above the top of the areolae, without a health care referral and written consent of the patron.

VISITOR. A nonemployee who has entered the massage establishment for purposes other than receiving services.

§ 122.03 EXCEPTIONS.

(A) *Complete exception.* The requirements of this chapter shall have no application and no effect upon and shall not be construed as applying to:

(1) Any physician, surgeon, chiropractor, acupuncturist, osteopath, or physical therapist licensed to practice such profession in the State of California, within the scope of their license;

(2) Any registered nurse or licensed vocational nurse, licensed to practice under the laws of the State of California, who is an employee of and working under the on-site direction of a physician, surgeon, chiropractor, osteopath, or physical therapist, duly licensed to practice their respective professions in this state.

(a) Any other person providing massage services that is employed by a physician, surgeon, chiropractor, osteopath, or physical therapist, shall be required to have a valid CAMTC certificate, as well as work under the adequate supervision of such physician, surgeon, chiropractor, osteopath, or physical therapist as required by state law or regulation. If no specific law or regulation applies, adequate supervision shall have the same meaning as set forth in 16 California Code of Regulations § 312.

(b) If a duly licensed acupuncturist wishes to provide massage therapy services to his or her clients by an individual(s) other than his- or her- self, said individual(s) must have a valid CAMTC certificate and the office of the acupuncturist shall be subject to all the provisions of this Chapter 122, as well as any other applicable provisions of the San Gabriel Municipal Code.

(3) Any person licensed to practice any healing art under the provisions of Cal. Bus. & Prof. Code Div. 2 (commencing with § 500) when engaging in such practice within the scope of such license.

(4) State-licensed hospitals, nursing homes, sanatoriums, or other health care facilities duly licensed by the State of California, and the employees of such facilities while working on the premises of such state-licensed facilities.

(5) Accredited high schools, junior colleges, and colleges or universities whose coaches and trainers are acting within the scope of their employment.

(6) Barbers, beauticians, or manicurists who are duly licensed by the State of California pursuant to the Barbering and Cosmetology Act set forth in Cal. Bus. & Prof. Code §§ 7300 et seq., as the same may be amended from time to time, while engaging in practices within the scope of such license, except that this exemption applies solely for the massaging of the neck, face, and/or scalp of the customer or client of said barber or beautician or, in the case of a licensed manicurist, the massaging of the forearms, hands, calves, and/or feet at a state licensed facility. However, if a state licensed establishment also has a certificate of operation from the City to operate as a massage establishment, the business must also comply with all provisions of this Chapter 122.

(7) Schools of cosmetology or barbering which comply with the requirements of Cal. Bus. & Prof. Code §§ 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 Cal. Bus. & Prof. Code § 7395.1.

(8) Any other business or professions exempt by state law.

(B) *Partial exception.*

(1) Businesses that offer massage services that are ancillary to the primary business shall only be required to comply with the provisions set forth in division (B)(2) of

this section. For purposes of this division, ancillary massage services shall be those services where less than 20% of the gross floor area of the business is devoted to massage.

(2) Massage services provided under division (B)(1) of this section shall be required to comply with the following:

(a) Massage services must be performed by the holder of a valid CAMTC certificate.

(b) The business shall comply with the following provisions of this chapter:

1. Section 122.50(A)(1) relating to hours;
2. Section 122.50(C) relating to instruments, equipment and personnel;
3. Section 122.50(D)(1) through (3) relating to personnel lists;
4. Section 122.50(E) relating to prohibited conduct;
5. Section 122.51(A) through (F) relating to building and facility requirements;
6. Section 122.52 relating to inspections.

(C) *Evidence of entitlement to exception.* Any person claiming exception under this section shall furnish satisfactory evidence upon request that he or she is entitled to such exception, including, proof of bona fide employment, or if applicable, a citation to the particular provision of state law upon which that person relies.

§ 122.04 BUSINESS LICENSE AND OTHER PERMITS REQUIRED.

(A) Nothing herein relieves an individual or business from obtaining a City business license, conditional use permit in accordance with Chapter 153 of this Code, or other permit if otherwise required by law.

(B) Any individual applying for a business license as a massage technician shall provide proof of a current CAMTC certificate before being issued a business license.

§ 122.05 FLOOR PLANS REQUIRED.

(A) All massage establishments shall be required to submit a scaled floor plan as part of their application for a certificate of operation, which floor plan must be approved by the City as part of the conditional use permit process.

(B) All businesses that claim a partial exemption from this chapter pursuant to § 122.03(B) shall be required to submit scaled floor plans in order to verify the applicability of the exemption.

(C) No changes may be made to the approved floor plan without written approval from the Community Development Department, which may require modification of the conditional use permit by the Planning Commission.

MESSAGE PRACTITIONERS AND MESSAGE THERAPISTS

§ 122.15 CAMTC CERTIFICATE REQUIRED.

(A) No person shall provide massage services, including out-call massage services, from any location in the City without having been issued a CAMTC certificate, regardless of whether such person has an Operator Permit or the business has a certificate of operation.

(B) Any person certified by the state who desires to own or manage a massage establishment, must additionally obtain an Operator Permit in accordance with the provisions of this Chapter.

(C) No Operator of a massage establishment shall hire as an employee or utilize as an independent contractor any person to perform massage unless such person has been issued a CAMTC certificate.

CERTIFICATES OF OPERATION AND OPERATOR PERMITS

§ 122.30 CERTIFICATE OF OPERATION AND OPERATOR PERMIT REQUIREMENT.

(A) No person shall own or manage any massage establishment in any location within the City without first having obtained an Operator Permit. An Operator Permit must be obtained for each owner of a business or proposed business, and any identified manager, in order for an application for a conditional use permit for such business to be complete.

(B) No massage establishment shall be allowed to operate within the City unless the business first obtains a certificate of operation. No certificate of operation shall be approved until each Operator identified in the application has obtained an Operator Permit. A certificate of operation shall not be granted until such time as a conditional use permit has been obtained for the location.

(C) Any person desiring to obtain a certificate of operation and/or an Operator Permit shall make application in accordance with the provisions of this subchapter, which application shall be accompanied by a nonrefundable fee in an amount established by resolution of the City Council.

(D) All applications shall be dated and shall contain the following statements:

(1) A certification under penalty of perjury that the information contained in the application is true and correct;

(2) An authorization for 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 all applicable provisions of law; and

(3) An acknowledgement that by applying for an Operator Permit, the applicant understands that he or she is responsible for having a working knowledge of the City's regulations relating to massage establishment operations, be responsible for the day-to-day operations of the business and be responsible for all violations of employees and independent contractors that may take place in the massage establishment which such person owns or manages and that such violations are grounds for revocation of the Operator Permit.

(E) The provisions of §§ 122.05, 122.50, 122.51, 122.52 and 122.99 shall apply to any business that operates as a massage establishment, even if such business fails to obtain Operator Permits or certificates of operation. The City may immediately order a business that fails to have a certificate of operation or a permitted Operator on the premises to cease operation until such failures have been resolved.

(F) Within 30 working days following receipt of a completed application, the Finance Director shall either issue the certificate of operation and the Chief of Police shall issue an Operator Permit or mail a written statement of the reasons for denial thereof. Notwithstanding the above, failure of the City to act upon a completed application within the time frame set forth above shall not be deemed approval of the application pursuant to this chapter. Any certificate of operation or permit issued pursuant to this division (F) shall be deemed conditional pending the City's receipt of the California Department of Justice report on the applicant's fingerprints. If the fingerprint report demonstrates that the applicant has made any false, misleading, or fraudulent statement of material fact in the permit application or in any report or record required to be filed therewith, or discloses any disqualifying conduct, the permit shall be subject to denial or revocation pursuant to this chapter.

§ 122.31 OPERATOR PERMIT.

(A) It shall be the responsibility of each and every Operator to have a working knowledge of the City's regulations relating to massage establishment operations and be responsible for the day-to-day operation of the business.

(B) *Application; contents.* Applicants for Operator Permits shall submit the following information to the Police Department on a form supplied by the Department:

- (1) The full true name of the applicant;
- (2) A complete statement listing and explaining any and all aliases and fictitious names used by the applicant within the ten years immediately preceding the application;
- (3) The current residence address and business address and current residence and business telephone number of the applicant;
- (4) The name and address of the massage establishment for which the Operator Permit is sought;
- (5) A list of all previous residential and business addresses for a minimum of eight years immediately preceding the present address of the applicant and the dates of residence for each address;
- (6) The applicant's place of birth, and original documentation to verify both the applicant's identity and employment authorization (if applicable), as listed under 8 U.S.C. 1324a(b)(1) and 8 C.F.R. part 274a.2(b)(1). Documentation to satisfy this requirement may include, but is not limited to, a California driver's license, California identification card, social security card, resident alien ("green") card, United States passport (unexpired or expired), unexpired foreign passport that contains a temporary I-551 stamp, or an unexpired employment authorization document issued by the United States Government in compliance with 8 C.F.R. part 274a.2(b)(1)(v)(A);
- (7) The history of the applicant as to any similar business or occupation within ten years immediately preceding the filing of the application. Such information shall include, but not be limited to, the names and addresses of any other massage establishments or similar businesses the applicant has owned, managed, provided massage services at, or worked at, whether the applicant has had a permit or license to operate, manage, provide massage services at, or work at a massage establishment denied, revoked, or suspended in any jurisdiction; the reasons for any such denial, revocation, or suspension; and the business, activity, or occupation the applicant engaged in subsequent to such denial, revocation, or suspension;
- (8) All criminal convictions within the last ten years, excluding minor traffic violations, and the date and place of each such conviction and reason therefor;
- (9) Such other reasonable identification and information as the Chief of Police may require in order to discover the truth of the matter specified as required to be set forth in the application;

(C) The applicant shall have his or her picture taken by the Police Department or otherwise supply a photograph as directed by the Department; and

(D) Once the information required by division (A) of this section is submitted, the applicant shall have his or her fingerprints taken for a criminal history background (Livescan) check in the manner directed by the Police Department.

(E) The Chief of Police shall issue the Operator Permit, unless after investigation he or she makes any of the following findings:

- (1) The applicant has failed to provide information, documentation, and assurances required by this chapter or by the Chief of Police; has failed to reveal any fact material to qualification; or has supplied information that is untrue or misleading as to a material fact pertaining to the qualification criteria; or
- (2) The applicant is a person who has engaged in disqualifying conduct; or
- (3) There is substantial evidence that the applicant has engaged in disqualifying conduct, even if there is no conviction for such conduct; or
- (4) The applicant has violated any provision of this chapter, or any similar ordinance, law, rule, or regulation of any other public agency which regulates the operation of massage establishments; or
- (5) The applicant is not at least 18 years of age; or

(6) The applicant is delinquent in paying City fees or penalties owed in relation to any permit issued pursuant to this chapter.

(F) If the criminal history background check report demonstrates that the applicant has made any false, misleading, or fraudulent statement of material fact in the permit application or in any report or record required to be filed therewith, or discloses any disqualifying conduct, the permit shall be subject to denial.

(G) For any person that has a valid CAMTC certificate, the applicant shall only be required to provide the information specified in subsection (B)(1)-(4) and have his or her picture taken or provide a photograph as specified in subsection (C) above. No independent background check shall be conducted, but in determining whether to issue the Operator Permit, the Chief of Police may rely on information supplied by CAMTC.

(H) Permits issued pursuant to this section shall remain in effect, unless revoked, for a period of one year. Applications for the renewal of a permit shall be filed on a form supplied by the City with the Chief of Police. Temporary permits shall not be issued and expired permits are not valid unless the permittee has a written receipt showing that the renewal application was filed at least 30 days prior to expiration, without action having been taken by the Chief of Police. Renewal applications shall be signed under penalty of perjury and shall be accompanied by a nonrefundable filing fee established by resolution of the City Council. A permittee shall be required to update the information contained in his or her original permit application and provide any new and/or additional information as may be reasonably required by the Chief of Police in order to determine whether the permit should be renewed, including all information required by division (B) or (G) of this section. If requested, a new photograph shall be supplied. Failure to provide this documentation shall be grounds for nonrenewal of the permit in addition to those items set forth in § 122.33 below. It is the Operator's obligation to keep track of when the renewal is due and to renew in a timely fashion.

(I) Any decision to deny or not renew an Operator Permit shall be made in writing and shall set forth the reasons for the decision. The notice shall include a statement of appeal rights pursuant to § 122.34 below.

(J) Every person to whom an Operator Permit has been granted pursuant to this chapter shall be issued an identification badge by the Police Department which shall contain the person's name, photograph, expiration date, and any other information deemed necessary by the Chief of Police. The badge shall be worn so as to be readily visible at all times while on the premises of the massage establishment.

(K) Permits issued pursuant to this chapter may not be assigned or transferred.

(L) It is the duty of each Operator to notify the Finance Department whenever there is a change in information which was required to be submitted in the application for the Operator Permit in the first instance. Such notification shall be in writing and made within ten business days of the change on a form provided by the City.

(M) Each Operator of a massage establishment shall be responsible for the conduct of all employees and independent contractors working on the premises of the business. Failure of the employees or independent contractors of a massage establishment to comply with this chapter may result in the revocation of the Operator's permit.

(N) The Operator of the massage establishment is responsible for verifying that all persons hold the appropriate CAMTC certificate as required by this chapter.

(O) Any requirement of this chapter applying to an Operator shall apply to each and every Operator of a massage establishment.

§ 122.32 CERTIFICATE OF OPERATION.

(A) Applications for a certificate of operation shall be filed with the Finance Department and shall include the information set forth below:

(1) The full name of the applicant;

(2) The name under which the business is to be conducted, which name must match the name of the business under which the corresponding business tax certificate is issued under Chapter 110. No massage establishment business shall operate under

any business name or conduct business under any designation not specified in the certificate of operation. If the applicant is a corporation, the name shall be exactly as shown on the articles of incorporation or on a valid DBA ("doing business as");

(3) The address of the proposed massage establishment;

(4) A detailed description of the operation and type of services to be provided by the massage establishment, including other therapies to be provided, and other businesses to be operated on the same premises;

(5) The full legal name and residence address of each owner of the massage establishment and of the manager(s) who will be in charge of the operation of the massage establishment if other than the owner(s);

(6) A legal size copy of the floor plan approved as part of the conditional use permit, drawn to scale with measurements in feet and inches and labeled in English. The floor plan shall show: entrances; exits; windows; interior doors; restrooms; all other separately enclosed rooms with dimensions, including, but not limited to closets, storerooms, break rooms, and changing rooms; and location of massage tables and chairs;

(7) The full name, address, and phone number of the legal owner of the property, if other than the applicant on which the massage establishment is to be located, along with a copy of the signed lease and a notarized acknowledgement from the owner of the property that a massage establishment will be located on his or her property; and

(8) The hours and days of operation.

(B) The Finance Director shall issue a certificate of operation upon verification of the following:

(1) The massage establishment will comply with all applicable laws, including, but not limited to building, fire, zoning, health, and safety regulations, as well as any conditions which have been imposed to comply with such laws;

(2) Each person identified as an Operator, i.e., the owner(s) and manager(s), has obtained an Operator Permit; and

(3) A conditional use permit, if required, has been obtained.

(4) Any decision to deny the Certificate of Operation shall be made in writing and shall set forth the reasons for the decision. The notice shall include a statement of appeal rights pursuant to § 122.34 below.

(C) Every massage establishment for which a certificate of operation has been granted pursuant to this chapter shall display the certificate in a conspicuous place so it may be readily seen by persons entering the premises.

(D) A certificate of operation is not transferable to a separate location of the same business, to a different business at the same location, or to the same business under different ownership at the same location, or the same business under a different name.

(E) It is the duty of each Operator to notify the Finance Department whenever there is a change in information which was required to be submitted in the application for the certificate of operation in the first instance. Any sale or transfer of any reportable interest of an owner in a massage establishment, which interest would be required to be reported under division (A) of this section in the first instance, shall render the certificate of operation temporarily suspended and subject to revocation in accordance with the provisions of this chapter unless prior to the effective date of such sale or transfer, the new owner applies for and obtains an Operator Permit.

(F) Notwithstanding any other provision of this code to the contrary, where a notice of suspension or revocation has been issued regarding a massage establishment, or the business has otherwise been required to close because of suspension or revocation proceedings against the Operator, the Finance Department shall not process or issue a new application for a certificate of operation for said location unless or until the revocation or suspension proceedings are dismissed or a final determination is made that the current certificate of operation should not be suspended or revoked, or a two-year period has

passed since the occurrence of the activity which gave rise to the suspension or revocation proceedings or other criminal actions.

(G) Notwithstanding any other provision of this code to the contrary, when a massage establishment has been closed due to criminal activity and such decision is final, no new massage establishment may open in such location and no certificate of operation shall be issued for such location for a period of two years from the date of such final determination. For purposes of this section, closure due to criminal activity includes voluntary closure of the business after there have been arrests at the location or other notices relating to criminal activity or notices relating to suspension or revocation proceedings. This provision is not meant to prohibit the issuance of a certificate of operation to a business which initially failed to obtain a certificate of operation without any prior oral or written notification by the City that such was required.

(H) Where the applicant for the certificate of operation is not the record owner, as shown on the latest county assessment roll, then upon issuance of the certificate, the City shall send written notice to the property owner advising of the issuance of the certificate and the regulations applicable to the massage establishment and the property pursuant to this chapter; this may be accomplished by including a copy of this chapter with the notice.

§ 122.33 SUSPENSION, REVOCATION AND NONRENEWAL OF OPERATOR PERMITS AND CERTIFICATES OF OPERATION.

(A) Subject to the procedures set forth in this section, the Chief of Police may suspend or revoke a permit, or determine not to renew an Operator Permit, issued pursuant to this chapter whenever the Chief of Police determines that any of the following has occurred:

(1) The permittee, or an employee or independent contractor working on the premises, is conducting operations in a manner contrary to the provisions of this code;

(2) The permittee, or an employee or independent contractor working on the premises, is conducting operations in a manner which constitutes a public nuisance;

(3) The permittee, or an employee or independent contractor working on the premises, is conducting operations in a manner which is detrimental to the health, safety, or welfare of the City or its inhabitants;

(4) There is substantial evidence of prostitution;

(5) The permittee, or any employee or independent contractor working on the premises, has engaged in disqualifying conduct; or

(6) The Chief of Police makes any of the findings that would have justified denying the application in the first instance.

(B) If, in the discretion of the Chief of Police, an alleged violation is minor and capable of correction and there have not been previous violations by the Operator or the massage establishment, then prior to suspension or revocation a written notice may be given to the permittee of the alleged violation(s) involved to allow a period of time to correct the alleged violation(s). Such period shall not exceed five business days, at the end of which period, an inspection shall be conducted to determine whether the alleged violation(s) has been corrected. For purposes of this section, written notice shall include a notice of violation, an administrative citation, or a criminal citation.

(C) If the Chief of Police determines that an alleged violation is not minor or capable of correction, that an alleged violation(s) continues without correction, or that there have been previous violations of this chapter, even if for different reasons, then the Chief of Police may issue a notice of suspension or revocation, along with an administrative or criminal citation. Examples of a violation which will be determined by the Chief of Police to be not capable of correction include but are not limited to substantial evidence of prostitution activity on the massage establishment premises or an immediate threat to public health, safety, or welfare.

(D) Notice of suspension, revocation or non-renewal. A notice of suspension or revocation, or a notice of non-renewal of an Operator Permit, shall contain a statement of the violation(s) which constitutes the basis for the suspension or revocation, notice of the right to appeal to the City Manager in accordance with § 122.34, and notice that a failure

to appeal shall constitute a failure to exhaust administrative remedies. If an alleged violation is capable of correction, the notice shall also advise the permittee to correct the alleged violation(s) within the time to respond.

(E) Unless the notice provides otherwise, the effective date of the suspension or revocation shall be the deadline to file an appeal, or, if an appeal is filed, the date that notice of a decision suspending or revoking a permit is served.

(F) Where all massage activity is required to cease, notice shall also be served on the owner of the property if different from the Operator or certificate holder.

(G) The notice shall include information about the right to appeal.

(H) Surrender of certificate of operation and permits. Any permittee shall immediately surrender his or her permit to the Chief of Police upon the effective date of its suspension or revocation. The Operator shall immediately surrender the certificate of operation upon revocation of an Operator Permit if there is no other permitted Operator for the massage establishment.

§ 122.34 APPEALS TO CITY MANAGER.

(A) *Appeals.*

(1) Appeals from any decision of the Chief of Police or Finance Director under this chapter shall be in writing, shall clearly state the applicable basis for the appeal and shall be filed with the City Clerk no later than ten calendar days following the date of the notice.

(2) The City Clerk shall not accept an appeal, and no hearing shall be held, unless the appellant has paid a filing fee, in an amount set by resolution of the City Council, to defray the cost of such appeal. Any appeal without the timely payment of fees shall be considered to be untimely.

(3) The scope of the appeal hearing pursuant to this section shall be limited to those issues raised by the appellant in the written appeal, as submitted pursuant to division (A)(1) of this section.

(B) *City Manager action.*

(1) Upon receipt of a timely filed appeal, the City Clerk shall set the matter for hearing before the City Manager. The hearing shall be held not fewer than ten calendar days nor more than 45 calendar days from the date of the appeal request. The hearing may be continued from time to time upon the mutual consent of the parties.

(2) The appellant shall be provided with notice of the time and place of the appeal hearing, as well as a copy of all relevant materials at least seven calendar days prior to the hearing.

(3) At the time of such hearing, the City Manager shall review the records and files relating to the decision.

(a) The City Manager shall permit any interested person to present any relevant evidence bearing on the issues involved in the matter.

(b) In conducting the hearing, technical rules relating to evidence and witnesses shall not apply. Any relevant evidence may be admitted if it is material and if it is evidence 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 evidence may be admissible if it is the sort upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The rules of privilege shall be applicable to the extent they are now, or are hereafter permitted in civil actions. Irrelevant, collateral, and repetitious testimony shall be excluded.

(c) In determining whether a person should be disqualified for meeting the definition of **PERSON WHO HAS ENGAGED IN DISQUALIFYING CONDUCT** as set forth in § 122.02, the City Manager may consider: the nature and severity of the act(s) or crime(s); whether there were any additional subsequent act(s) or crime(s); the number of act(s) or crime(s); and how recent the act(s) or crime(s) were.

(4) The appellant shall have the burden of proving that he or she meets the requirements for issuing the permit or certificate in the first instance; the City shall have the burden in proving that grounds exist for suspending, revoking or failing to renew a permit.

(5) Based upon the evidence presented at the hearing, the City Manager shall determine whether the decision should be affirmed, modified, or reversed.

(6) The City Manager shall issue his decision within ten business days after the close of the hearing. The City Manager's decision shall include a statement of the reasons therefor.

(7) The decision of the City Manager shall include notice that the decision is final and conclusive, that judicial review may be sought therefrom pursuant to Cal. Civil Proc. Code § 1094.5, and that any action filed in the superior court shall be filed within 90 days following the City Manager's notice pursuant to Cal. Civil Proc. Code § 1094.6.

§ 122.35 NOTICES.

(A) All notices required to be given pursuant to this chapter shall be served on the responsible party (i.e., permittee, applicant, appellant, or a representative thereof) either by personal delivery or by deposit in the United States mail in a sealed envelope postage prepaid addressed to such responsible party as the name and address appear in the most recent application on file with the City. Service by mail shall be deemed to have been completed on the date deposited in the mail. Notices shall include information regarding appeal rights and a statement that the failure to file an appeal shall constitute a failure to exhaust administrative remedies.

(B) In all cases where the certificate holder is not the property owner, notices shall also be sent to the property owner of record where the notice relates to possible closure of the business due to suspension or revocation.

OPERATION AND FACILITY REQUIREMENTS

§ 122.50 OPERATIONAL REQUIREMENTS.

(A) *Hours and conditions of operation.*

(1) No massage establishment shall operate nor shall any massage be administered in any massage establishment between the hours of 10:00 p.m. and 8:00 a.m. A massage begun any time before 10:00 p.m. must nevertheless terminate at 10:00 p.m. The hours of operation must be displayed in a conspicuous public place in the lobby within the massage establishment and in any front window clearly visible from outside of the massage establishment. These hours of operation may be modified pursuant to a conditional use permit.

(2) During hours of operation, no person other than a valid permit holder under this chapter, a massage practitioner, a massage therapist, or a patron shall be allowed beyond the reception area of the massage establishment.

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

(a) Visitors shall only be permitted in the reception area of the massage establishment.

(b) Patrons shall only be permitted in massage treatment areas if at least one massage technician is on the premises.

(4) The massage establishment shall be supervised during all hours of operation by an authorized Operator for the massage establishment.

(a) An Operator may not manage more than one massage establishment at any given time.

(b) The name and photograph (minimum size of four inches by six inches) of the on-duty Operator shall be posted in a conspicuous public place in the lobby of the

massage establishment at all times that the business is open. This provision shall not apply to sole providers. Regardless of the number of Operators that may be approved for the location, only one Operator may be identified as the on-duty Operator at a time.

(5) No massage establishment shall be used for residential purposes. There shall be no massage tables, cots, or beds in the establishment other than as shown on the approved floor plan. Locker facilities shall be provided for all employees and independent contractors and all personal items of the employees and independent contractors shall be kept in the lockers while at the massage establishment.

(B) *Posting requirements.* In addition to any other requirements for posting set forth in this chapter, the following shall also apply:

(1) A recognizable and legible sign complying with the requirements of this code shall be posted at the main entrance identifying the establishment as a massage establishment.

(2) Each service offered, the price thereof, and the minimum length of time such service shall be performed shall be posted in English and such other languages as may be convenient to communicate such service, in a conspicuous public location in each massage establishment. 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.

(3) Any posted signs which are in a language other than English shall also be posted in English.

(C) *Instruments, equipment, and personnel.*

(1) Disinfecting agents and sterilizing equipment shall be provided for any instruments used in performing acts of massage and said instruments shall be disinfected and sterilized after each use.

(2) Unless otherwise approved by a conditional use permit, massages shall be administered only on standard or portable massage tables or chairs which are covered with a durable, washable plastic or other acceptable waterproof material. Beds, mattresses, water beds, futons, sofa beds, any type of portable or convertible beds, and foam pads more than four inches thick or with a width of more than four feet shall not be permitted in the establishment.

(3) No massage technician shall massage the genitals or anal area of any patron nor shall any Operator of a massage establishment allow or permit such a massage to the above-specified areas.

(4) No massage technician shall massage the breasts of a female patron without the written consent of the person receiving the massage and a referral from a licensed California health care provider, nor shall any Operator of a massage establishment allow or permit such a massage to the above-specified area.

(5) A massage shall not be given and no patron shall be in the presence of any massage establishment staff unless the patron's genitalia and, if a female patron, the female patron's breasts, are fully covered by a fully opaque, nontransparent covering.

(6) Persons providing services in the massage establishment shall not be dressed in attire that is: transparent, see-through, substantially exposes the massage technician's undergarments, or exposes the massage technician's breasts, buttocks, or genitals; in a manner which has been deemed by CAMTC to constitute unprofessional attire based on the custom and practice of the profession in California; or in swim attire unless such person is providing a water-based massage modality which has been approved by CAMTC.

(7) All massage establishments shall be so equipped, maintained and operated as to effectively control the entrance, harborage, and breeding of vermin, including flies. When flies or other vermin are present effective control measures shall be instituted for their control or elimination.

(8) Clean and sanitary towels, sheets, and linens shall be provided for each patron of the establishment. No common use of towels or linens shall be permitted. Heavy

white paper may be substituted for sheets; provided, that such paper is used once for each person and then discarded into a sanitary receptacle.

(9) All massage tables shall be at least two feet away from all walls at all times.

(D) *Personnel lists.*

(1) Within seven calendar days of receiving a certificate of operation, the Operator shall provide the Police Department with a complete list of all massage technicians who are working or will work, be employed, or provide massage services in the massage establishment along with a copy of their CAMTC certificate and identification card, as well as with the name and residence address of the manager principally in charge of the operation of the massage establishment and of any other manager.

(2) The Operator shall have a continuing obligation to notify the Chief of Police in writing of any changes in massage technicians and managers within seven calendar days of such change.

(3) The Operator shall maintain copies of each massage technician's CAMTC certificate and identification card on file on the premises of the massage establishment which shall be available to any individual upon request, including but not limited to employees of the City. Additionally, the Operator shall be required to file copies of each CAMTC certificate and identification card with the Police Department within seven days of a massage technician beginning to work at the massage establishment. Information required by this section shall be maintained at the massage establishment for a minimum of two years following the date that the person ceases providing services/employment to the massage establishment.

(4) The Operator shall maintain on the premises of the massage establishment a register of all non-state certified persons employed, working or providing other services at the massage establishment. The register shall be maintained for a minimum of two years following the time that the person ceases providing services/employment to the massage establishment. The Operator shall make the register immediately available for inspection upon demand of a representative of the Police Department, any health officer, or any other official charged with enforcement of this chapter. The register shall include but is not limited to the following information:

(a) Name, nicknames, and/or aliases;

(b) Home address and relevant phone number, including but not limited to home, cellular, and pager numbers;

(c) Age, date of birth, gender, height, weight, color of hair and eyes;

(d) The date such person began employment or providing services, and the date such person ended employment or stopped providing services, if any;

(e) The duties of each person; and

(f) In a separate portion of the register, Social Security numbers, which shall only be available for review by the Police Department or other law enforcement personnel, but not health officers or other officials charged with the enforcement of this chapter.

(E) *Prohibited conduct.*

(1) No alcoholic beverages shall be sold, served, or furnished on the premises of any massage establishment without a valid alcoholic beverage license from the state and conditional use permit from the City.

(2) No storage or sale of condoms or spermicides shall be permitted within the massage establishment.

(3) No Operator shall hire, employ, or allow a person to perform massage services unless such person possesses a valid CAMTC certificate. Each Operator of a massage establishment shall verify that all persons hold the appropriate CAMTC certificate required by this chapter. Nothing herein prevents an Operator from hiring, employing, or allowing a person to perform services allowed by such person's

cosmetology or barber license, if the business has a state establishment license in addition to a certificate of operation.

(4) No person shall use or possess, nor shall there be, any storage of, any sexually-oriented implements or paraphernalia which are designed or marketed primarily for the stimulation of human genital organs or sadomasochistic activity.

(5) 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 other sounds in the massage rooms, without the knowledge and written consent of the patron.

(6) No Operator of a massage establishment shall place, publish, or distribute or allow or cause to be placed, published or distributed any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective patrons or clients that any service is available other than those services described in this chapter and posted on the premises as required in this chapter, nor shall any massage establishment employ language in the text of any advertising that would reasonably suggest to a prospective patron that any service is available other than those services described in this chapter and posted on the premises as required by this chapter.

§ 122.51 BUILDING AND FACILITY REQUIREMENTS.

(A) The building, or unit within the building where the massage establishment is located, shall comply with all applicable building code requirements.

(B) All massage rooms and dressing rooms shall be screened off by hinged doors that can open inward. Swinging doors that can open inward, draw drapes, curtain enclosures, or accordion-pleated closures in lieu of doors are acceptable on all inner dressing rooms and massage therapy rooms or cubicles. Except for bathroom doors, interior doors may not have locks on them.

(C) In addition to the minimum lighting required by the provisions of Chapter 150 of the San Gabriel Municipal Code, all rooms in which massages are being provided shall be lit with a minimum of one light fixture emitting at least 210 lumens for every 150 square feet of space during the administration of such services, with the light fixtures being spread throughout the space. No dimmer switches, strobe lights, flashing lights, colored light, or any coverings or other apparatus, other than a lampshade, which changes or darkens the color of the primary light source shall be used in any room in which massage services are being provided.

(D) Any locker facilities provided for the use of patrons shall be fully secured for the protection of the patron's valuables and the patron shall be given control of the key or other means of access.

(E) The walls in all rooms where water or steam baths are given shall have a washable mold-resistant surface.

(F) All walls, ceilings, floors, pools, showers, bathtubs, steam rooms, and all other physical facilities for the 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.

(G) One main entry that enters into the reception area shall be provided for patron use. All patrons, and any persons other than those providing services at the massage establishment, shall be required to enter and exit through the front door of the establishment.

(H) All exterior doors (except rear exterior doors used only for employee entrance to and exit from the massage establishment) shall remain unlocked during business hours, and the establishment shall comply with the provisions of the San Gabriel Municipal Code pertaining to the posting of signs stating that doors shall remain unlocked during business hours. Exits for fire safety purposes may be allowed where deemed necessary by the appropriate public safety agency. Notwithstanding the above, the front door may be locked if there is no staff available to assure security for the clients and massage staff

who are behind closed doors, provided that the massage establishment is owned by one individual with one or no employees or independent contractors.

(I) There shall be no buzzer, alarm, or intercom system.

(J) No massage business located in a building or structure with exterior windows fronting a public street, highway, walkway, or parking area shall block visibility into the interior reception and waiting area through the use of curtains, closed blinds, tints, or any other material that obstructs or darkens the view into the premises or by signs that cover more than 25% of any windowpane. The interior of the business shall be plainly visible from the exterior of the business by passing vehicles and pedestrians.

§ 122.52 INSPECTIONS.

(A) Representatives of the City's Police Department, Fire Department, Community Development Department, and Finance Department, and agents for the City from the County Health Department and representatives of any state or local agencies with regulatory authority over massage establishments shall have the right to enter massage establishments, from time to time, during regular business hours, or at any time that the massage establishment is occupied or open for business, to verify the massage establishment is in compliance with all applicable laws without the need for an inspection or abatement warrant.

(B) Posting of Notices.

(1) The Operator shall cause to be conspicuously posted so that the same may be readily visible to persons in the reception area of the massage establishment, in letters that are a minimum of one inch in height, a notice in English which provides substantially as follows:

THIS MASSAGE ESTABLISHMENT AND THE MASSAGE ROOMS DO NOT PROVIDE COMPLETE PRIVACY AND ARE SUBJECT TO INSPECTION BY CITY AND HEALTH OFFICIALS WITHOUT PRIOR NOTICE

(2) In addition, Operators are encouraged to post this notice in language(s) that are best understood by the customers of the massage establishment.

(C) No person shall refuse to permit, cause delay of, or interfere with, a lawful inspection or compliance check of the premises by the officials listed in division (A) of this section at any time.

§ 122.99 PENALTY.

(A) It is unlawful for any person to engage in conduct that violates any provision of this chapter, to engage in conduct which fails to meet the standards set forth in this chapter, or to own, manage, or operate a massage establishment that is not fully in compliance with the operational standards set forth in this chapter.

(B) Any violation of this chapter shall be a misdemeanor unless, in the sole discretion of the City Prosecutor, it is charged as, or reduced to, an infraction. Citations and warning notices may be utilized as determined appropriate to the circumstances by the enforcing personnel.

(C) In addition to the above, any massage establishment operated, conducted, or maintained contrary to the provisions of this chapter shall be and is declared to be unlawful and a public nuisance and the City may, in addition to or in lieu of prosecuting a criminal action under this chapter, commence an action or actions, proceeding or proceedings, for the abatement, removal, and enjoinder thereof, in the manner provided by law, including any code enforcement procedures established pursuant to the laws of the State of California or the City of San Gabriel; and may take such other steps and may apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such massage establishments and restrain and enjoin any person from operating, conducting or maintaining a massage establishment contrary to the provisions of this chapter. If an injunction is sought, attorney's fees and costs will be assessed at the discretion of the court against the party subject to said injunction.

(D) Any violation of the provisions of this chapter shall constitute a separate offense for each and every day during which such violation is committed or continued.

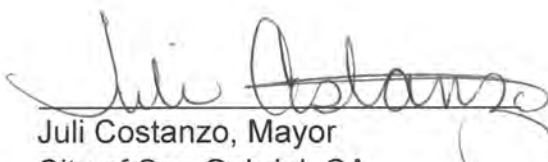
SECTION 3. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase be declared unconstitutional.

SECTION 4. Certification. The City Clerk shall certify the passage of this ordinance and shall cause the same to be processed as required by law.

SECTION 5. This Ordinance is exempt from CEQA pursuant to section 15061(b)(3) under the general rule that CEQA does not apply to activities which can be seen with certainty to have no effect on the environment. Changing the regulations relating to Massage Establishments will not create any environmental impacts. Additionally, as a separate and independent ground, the Ordinance is further exempt from CEQA pursuant to section 15305 as a minor alteration to land use limitations: there is no area in which massage establishments are allowed which has a slope greater than 20% and the distance requirements for massage establishments do not result in any changes to land use or density.

SECTION 6. Effective Date. This ordinance shall become effective immediately in order to protect the public health, safety and welfare.

PASSED, APPROVED, and ADOPTED this 18TH day of 2017 by the City Council of the City of San Gabriel, California.


Juli Costanzo, Mayor
City of San Gabriel, CA

ATTEST:


Julie Nguyen, City Clerk
City of San Gabriel, CA

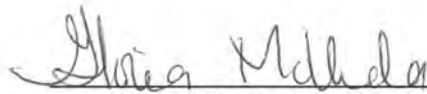
STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)
CITY OF SAN GABRIEL)

I, Gloria Molleda, Chief City Clerk of the City of San Gabriel DO HEREBY CERTIFY that foregoing Urgency Ordinance No. 633-C.S was duly passed and adopted by the City Council of the City of San Gabriel at their regular meeting held on April 18, 2017 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS LIAO, MENCHACA, PU, MAYOR COSTANZO

NOES: NONE

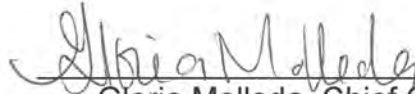
ABSENT: VICE MAYOR HARRINGTON



Gloria Molleda, Chief City Clerk

(SEAL)

The foregoing is the original of Urgency Ordinance No. 633-C.S. duly passed and adopted by the San Gabriel City Council at their regular meeting held on April 18, 2017.



Gloria Molleda, Chief City Clerk

(SEAL)