



Massage: Eradicating Illicit Conduct Using Revocable Registration

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An Ordinance Approach to Eliminating Illicit “Massage” Businesses

By David A. Silberman, Chief Deputy County Counsel

Use of “massage” establishments as a front for criminal pandering operations is a well-known problem that can often also involve victims of human trafficking. <https://www.pri.org/stories/2018-01-25/across-us-many-illicit-massage-parlors-avoid-police-detection>. Public Radio International reported this year that Praesidium Partners LLC, a Virginia-based anti-trafficking organization, identified 2,311 illicit “massage” businesses in California using the website Rubmaps.com—approximately four times the number located in any other state and more than a quarter listed nationwide.¹

There are traditional abatement tools to address the problem, including the Red-Light Abatement Law [Penal Code Section 11225, et seq.]. However, some have complained that this remedy can be too time-consuming and expensive to be effective at eliminating an entrenched problem.

In 2012, the County of San Mateo pursued a different approach. It adopted an Ordinance requiring every Massage Business operating within the jurisdiction to obtain a Revocable Registration. Some of the key components included requiring all practitioners to be certified by the California Massage Therapy Council (obviating need for background checks); a broad definition of massage; employee lists that need to be regularly updated; and a prohibition on massage establishments at locations where enforcement action has been taken or is pending (to circumvent attempts by criminal enterprises to transfer ownership). A copy of the Ordinance is attached hereto as Exhibit A.

The Ordinance also contains a number of regulatory requirements intended to root out illicit business and protect public health and safety, e.g., requiring practitioners to wear CAMTC certification and owners to post CAMTC certificates on the wall; setting hours of operation prohibiting being in the facility after hours/living in facility; requiring records of services provided; setting basic health and safety protections (towels, instruments, lighting, ventilation); requiring appropriate attire; prohibiting the touching of genitals; requiring unlocked and unobscured lobbies; and prohibition practitioners from using nicknames.

¹ The article does not explore whether Rubmaps may be more likely to serve California.

Most importantly, the Ordinance includes a summary enforcement procedure to revoke a registration with a hearing before a “License Board” to occur within 30 days.

San Mateo County’s experience was extremely positive. In the 3-year period between 2012-2015, San Mateo County shut down 11 of 11 known illicit “massage” businesses located in the unincorporated area. Except for one that opened without a license in 2016 (and was also subsequently closed), no additional illicit “massage” businesses have opened since 2015 and none currently exist in the unincorporated area. It is of note that while a number of “massage” establishments had challenged their revocations, each revocation was affirmed by the License Board and subsequently each “massage” business closed with no further action needed. That indicated, the massage ordinance does make operating without a registration a nuisance per se, which would facilitate a fairly simple nuisance abatement action were one to become necessary.

Chapter 5.44 - MASSAGE BUSINESSES^[1]**Sections:**

5.44.010 - Purpose and intent.

- (a) In enacting this chapter, the Board of Supervisors recognizes that commercial massage therapy is a professional pursuit which can offer the public valuable health and therapeutic services. The Board of Supervisors further recognizes that, unless properly regulated, the practice of massage therapy and the operation of massage businesses may be associated with unlawful activity and pose a threat to the quality of life in the local community. Accordingly, it is the purpose and intent of this chapter to protect the public health, safety, and welfare by providing for the orderly regulation of businesses providing massage therapy services, discouraging prostitution and related illegal activities carried on under the guise of massage therapy, and establishing certain sanitation, health, and operational standards for massage businesses.
- (b) Furthermore, it is the purpose and intent of this chapter to address the negative impacts identified in the Board of Supervisor's findings to reduce or prevent neighborhood blight and to protect and preserve the quality of the County neighborhoods and commercial districts; and to enhance enforcement of criminal statutes relating to the conduct of operators and employees of massage businesses.
- (c) It is the Board's further purpose and intent to rely upon the uniform statewide regulations applicable to massage practitioners and establishments that were enacted by the State Legislature in 2008 as Business and Professions Code sections 4600 et seq. by Senate Bill 731, and amended in 2011 by Assembly Bill 619, to restrict the commercial practice of massage in the unincorporated areas of San Mateo County to those persons duly certified to practice by the California Massage Therapy Council, and to provide for the registration and regulation of massage businesses for health and safety purposes to the extent allowed by law.

(Ord. No. 04601, § 3, 1-31-2012)

5.44.020 - Definitions.

For the purposes of this chapter, unless the particular provision or the context otherwise clearly requires, the definitions in this section shall govern the construction, meaning, and application of words and phrases used in this chapter:

- (a) "Business" includes, but not by way of limitation, everything about which a person can be employed, and means that which occupies the time, attention, and labor of men and women for the purpose of producing a livelihood or profit, and connotes the efforts of men and women by varied and diverse methods of dealing with each other, to improve their individual economic conditions, and for the purposes of this chapter shall include, without limitation, the advertising and soliciting of massages. The term "business" includes, but is not limited to, a massage practitioner who is the sole owner, operator and employee of a massage business operating as a sole proprietorship, as well as a massage establishment which employs massage practitioners.
- (b) "California Massage Therapy Council" or "CAMTC" means the Massage Therapy Organization formed pursuant to Business and Professions Code Section 4600.5.
- (c) "Certified Massage Practitioner" means any individual certified by the California Massage Therapy Council as a Certified Massage Therapist or as a Certified Massage Practitioner pursuant to California Business and Professions Code Sections 4600 et seq.
- (d) "Client" means the customer or patron who pays for or receives massage services.

- (e) "Compensation" means the payment, loan, advance, donation, contribution, deposit, exchange, or gift of money or of value.
- (f) "County Registration Certificate" means a registration certificate issued by the Director of Environmental Health upon submission of satisfactory evidence that a massage business employs or uses only certified massage practitioners pursuant to this chapter.
- (g) "Director of Environmental Health" means the Director of Environmental Health of San Mateo County and his or her authorized representatives or designees.
- (h) "Employee" means any person employed by a massage business who may render any service to the business, and who receives any form of compensation from the business.
- (i) "Health Officer" means the person appointed by the San Mateo County Board of Supervisors pursuant to the California Health and Safety Code or his or her authorized representatives or designees.
- (j) "License Board" means the License Board of the County of San Mateo as it is defined and constituted in Chapter 5.04 of the San Mateo County Code.
- (k) "Massage" or "massage therapy," means and refers to any method of treating the external parts of the body for remedial, health, or hygienic purposes for any form of compensation by means of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, or stimulating the external parts of the body, with or without the aid of any mechanical or electrical apparatus or appliances; or with or without supplementary aids, such as rubbing alcohol, liniments, antiseptics, oils, powders, creams, lotions, ointments, or other similar preparations commonly used in this practice; or by baths, including but not limited to Turkish, Russian, Swedish, Japanese, vapor, shower, electric tub, sponge, mineral, fomentation, or any other type of bath.
- (l) "Massage business" means any business that offers massage therapy in exchange for compensation, whether at a fixed place of business or at a location designated by the customer or client through outcall massage services. Any business that offers any combination of massage therapy and bath facilities - including, but not limited to, showers, baths, wet and dry heat rooms, pools and hot tubs - shall be deemed a massage business under this chapter. The term "massage business" includes a certified massage practitioner who is the sole owner, operator and employee of a massage business operating as a sole proprietorship.
- (m) "Operator" or "massage business operator" means any and all owners of a massage business.
- (n) "Outcall massage" means the engaging in or carrying on of massage therapy for compensation in a location other than the business operations address set forth in the massage business's county registration certificate.
- (o) "Owner" or "massage business owner" means any of the following persons:
 - (1) Any person who is a general partner of a general or limited partnership that owns a massage business.
 - (2) Any person who has a five percent (5%) or greater ownership interest in a corporation that owns a massage business.
 - (3) Any person who is a member of a limited liability company that owns a massage business.
 - (4) Any person who has a five percent (5%) or greater ownership interest in any other type of business association that owns a massage business.
- (p) "Person" means any individual, firm, association, partnership, corporation, joint venture, limited liability company, or combination of individuals.
- (q) "Practitioner" or "massage practitioner" shall be used interchangeably and mean any person who administers massage to another person, for any form of consideration (whether for the massage, as part of other services or a product, or otherwise).
- (r) "Reception and waiting area" means an area immediately inside the front door of the massage business dedicated to the reception and waiting of patrons of the massage business and visitors, and which is not a

massage therapy room or otherwise used for the provision of massage therapy services.

- (s) "Registration" means the registration required by this Chapter to operate a massage business.
- (t) "School of massage" means any school or institution of learning that is recognized as an approved school pursuant to Business and Professions Code Division 2, Chapter 10.5, as currently drafted or as may be amended.
- (u) "Sheriff" means the Sheriff of San Mateo County and his or her authorized representatives or designees.
- (v) "Sole proprietorship" means and includes any legal form of business organization where the business owner (sometimes referred to as the "sole proprietor") is the only person employed by that business to provide massage services.
- (w) "Solicit" means to request, ask, demand or otherwise arrange for the provision of services.

(Ord. No. 04601, § 3, 1-31-2012)

5.44.030 - CAMTC certification and local registration required.

- (a) Individuals. On and after July 1, 2012, it shall be unlawful for any individual to practice massage therapy for compensation as a sole proprietorship or employee of a massage business or in any other capacity within the unincorporated areas of San Mateo County unless that individual is a certified massage practitioner.
- (b) Businesses. On and after July 1, 2012, it shall be unlawful for any business to provide massage for compensation within the unincorporated areas of San Mateo County unless all individuals employed by the massage business to perform massage, whether as an employee, independent contractor, or sole proprietorship, are certified massage practitioners and said business has obtained a valid county registration certificate as provided in this chapter.

(Ord. No. 04601, § 3, 1-31-2012)

5.44.040 - Massage business registration.

- (a) Application. The registration application for a County Registration Certificate shall include all of the following:
 - (1) Legal name of the massage business.
 - (2) Address and telephone number of the massage business.
 - (3) Legal names of all owners of the massage business.
 - (4) A list of all of the massage business's employees and independent contractors who are performing massage and their CAMTC certification.
 - (5) Residence address and telephone number of all owners of the massage business.
 - (6) Business address and telephone number of all owners of the massage business.
 - (7) The form of business under which the massage business will be operating (i.e., corporation, general or limited partnership, limited liability company, or other form).
 - (8) Each owner or operator of the massage business who is not a CAMTC-certified massage practitioner shall submit an application for a background check, including the following: the individual's business, occupation, and employment history for the five (5) years preceding the date of the application; the inclusive dates of such employment history; the name and address of any massage business or similar business owned or operated by the individual whether inside or outside the County.
 - (9) For all owners, a valid and current driver's license and/or identification issued by a state or federal governmental agency or other photographic identification bearing a bona fide seal by a foreign government.

- (10) For all owners, a signed statement that all of the information contained in the application is true and correct and that the applicant shall be responsible for the conduct of the business's employees or independent contractors providing massage services and acknowledging that failure to comply with the California Business and Professions Code sections 4600 through 4609, state, or federal law, or the provisions of this chapter may result in revocation of the business's County registration certificate.
- (b) Issuance. Upon provision by the massage business of the foregoing documentation, the Director of Environmental Health shall issue the massage business a County Registration Certificate, which shall be valid for two (2) years from the date of issuance. No reapplication will be accepted within one (1) year after an application or renewal is denied or a certificate is revoked. County Registration Certificates may not be issued to a massage business seeking to operate at a particular location if:
- (1) Another massage business is or was operating at that particular location and that massage business is currently serving a suspension or revocation pursuant to section 5.44.110, during the pendency of the suspension or one year following revocation;
 - (2) Another massage business is or was operating at that particular location and that massage business has received a Notice of Suspension, Revocation or fine issued pursuant to sections 5.44.100 and 5.44.110, during the ten day period following receipt of the Notice or while any appeal of a suspension, revocation or fine is pending.
 - (3) Another massage business is or was operating at that particular location and that massage business has outstanding fines issued pursuant to section 5.44.100 that have not been paid.
- (c) Amendment. A massage business shall apply to the County to amend its County Registration Certificate within thirty (30) days after any change in the registration information, including, but not limited to, the hiring or termination of certified massage practitioners, the change of the business's address, or changes in the owner's addresses and/or telephone numbers.
- (d) Renewal. A massage business shall apply to the County to renew its County registration certificate at least thirty (30) days prior to the expiration of said County Registration Certificate. If an application for renewal of a County Registration Certificate and all required information is not timely received and the certificate expires, no right or privilege to provide massage shall exist.
- (e) Fees. There shall be no fee for the registration application or certificate, or any amendment or renewal thereof. The provisions of this section shall not prevent the County from establishing fees for health and safety inspections as may be conducted from time to time by the Director of Environmental Health, and for the background checks, fingerprinting, and subsequent arrest notification for owners of a massage business who are not CAMTC-certified and who are subject to such background checks pursuant to this chapter.
- (f) Transfer. A County Registration Certificate shall not be transferred except with the prior written approval of the Director of Environmental Health. A written request for such transfer shall contain the same information for the new ownership as is required for applications for registration pursuant to this section. In the event of denial, notification of the denial and reasons therefore shall be provided in writing and shall be provided to the applicant by personal delivery or by registered or certified mail. A County Registration Certificate may not be transferred during any period of suspension or one year following revocation pursuant to section 5.44.110, during the ten-day period following a massage businesses' receipt of a Notice of Suspension, Revocation or fine issued pursuant to sections 5.44.100 and 5.44.110 or while any appeal of a suspension, revocation or fine is pending. Further, a County Registration Certificate may not be transferred until all outstanding fines issued pursuant to section 5.44.100 have been paid.

5.44.050 - Operating requirements.

On or after July 1, 2012, no person shall engage in, conduct, carry on, or permit any massage within the unincorporated areas of the County of San Mateo unless all of the following requirements are met:

- (a) CAMTC-certification shall be worn by and clearly visible on the massage practitioner's person during working hours and at all times when the massage practitioner is inside a massage business or providing outcall massage.
- (b) Massage shall be provided or given only between the hours of 7:00 a.m. and 9:00 p.m. No massage business shall be open and no massage shall be provided between 9:00 p.m. and 7:00 a.m. A massage commenced prior to 9:00 p.m. shall nevertheless terminate at 9:00 p.m., and, in the case of a massage business, all clients shall exit the premises at that time. It is the obligation of the massage business, to inform clients of the requirement that services must cease at 9:00 p.m.
- (c) A list of the services available and the cost of such services shall be posted in the reception area within the massage premises, and shall be described in readily understandable language. Outcall service providers shall provide such a list to clients in advance of performing any service. No owner, manager, operator, or responsible managing employee shall permit, and no massage practitioner shall offer or perform, any service other than those posted or listed as required herein, nor shall an operator or a massage practitioner request or charge a fee for any service other than those on the list of services available and posted in the reception area or provided to the client in advance of any outcall services.
- (d) A copy of the CAMTC certificate of each and every massage practitioner employed in the business shall be displayed in the reception area or similar open public place on the premises. CAMTC certificates of former employees and/or contractors shall be removed as soon as those massage practitioners are no longer employed by or offering services through the massage business.
- (e) For each massage service provided, every massage business shall keep a complete and legible written record of the following information: the date and hour that service was provided; the service received; the name or initials of the employee entering the information; and the name of the massage practitioner administering the service. Such records shall be open to inspection and copying by the Sheriff, or other County officials charged with enforcement of this chapter. These records may not be used by any massage practitioner or operator for any purpose other than as records of service provided and may not be provided to other parties by the massage practitioner or operator unless otherwise required by law. Such records shall be retained on the premises of the massage business for a period of two (2) years and be immediately available for inspection during business hours.
- (f) Massage businesses shall at all times be equipped with an adequate supply of clean sanitary towels, coverings, and linens. Clean towels, coverings, and linens shall be stored in enclosed cabinets. Towels and linens shall not be used on more than one (1) client, unless they have first been laundered and disinfected. Disposable towels and coverings shall not be used on more than one (1) client. Soiled linens and paper towels shall be deposited in separate, approved receptacles.
- (g) Wet and dry heat rooms, steam or vapor rooms or cabinets, toilet rooms, shower and bath rooms, tanning booths, whirlpool baths and pools shall be thoroughly cleaned and disinfected as needed, and at least once each day the premises are open, with a disinfectant approved by the Health Officer. Bathtubs shall be thoroughly cleaned after each use with a disinfectant approved by the Health Officer of the County of San Mateo. All walls, ceilings, floors, and other physical facilities for the business must be in good repair, and maintained in a clean and sanitary condition.
- (h) Instruments utilized in performing massage shall not be used on more than one (1) client unless they

have been sterilized, using approved sterilization methods.

- (i) All massage business operators and their employees, including massage practitioners, shall wear clean, non-transparent outer garments. Said garments shall not expose their genitals, pubic areas, buttocks, or chest, and shall not be worn in such manner as to expose the genitals, pubic areas, buttocks, or chest. For the purposes of this section, outer-garments means a garment worn over other garments and does not include garments like underwear, bras, lingerie or swimsuits.
- (j) No person shall enter, be, or remain in any part of a massage business while in possession of an open container of alcohol, or consuming or using any alcoholic beverage or drugs except pursuant to a prescription for such drugs. The owner, operator, responsible managing employee, or manager shall not permit any such person to enter or remain upon such premises.
- (k) No massage business shall operate as a school of massage, or use the same facilities as that of a school of massage.
- (l) No massage business shall place, publish or distribute, 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 clients that any service is available other than those services listed as an available service pursuant to section 5.44.050(c), nor shall any massage business employ language in the text of such advertising that would reasonably suggest to a prospective client that any service is available other than those services as described in compliance with the provisions of this chapter.
- (m) No massage shall be given unless the client's genitals are, at all times, fully covered. A practitioner shall not, in the course of administering any massage, make physical contact with the genitals or private parts of any other person regardless whether the contact is over or under the persons clothing.
- (n) Where the business has staff available to assure security for clients and massage staff are behind closed doors, the entry to the reception area of the massage business shall remain unlocked during business hours when the business is open for business or when clients are present.
- (o) No massage business 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, tints, or any other material that obstructs, blurs, or unreasonably darkens the view into the premises. For the purpose of this subsection, there is an irrebuttable presumption that the visibility is impermissibly blocked if more than 10 percent of the interior reception and waiting area is not visible from the exterior window.
- (p) All signs shall be in conformance with the current ordinances of the County of San Mateo.
- (q) Minimum lighting consisting of at least one (1) artificial light of not less than forty (40) watts shall be provided and shall be operating in each room or enclosure where massage services are being performed on clients, and in all areas where clients are present.
- (r) Ventilation shall be provided in accordance with applicable building codes and regulations.
- (s) Hot and cold running water shall be provided at all times.
- (t) Adequate dressing, locker and toilet facilities shall be provided for clients.
- (u) A minimum of one (1) wash basin for employees shall be provided at all times. The basin shall be located within or as close as practicable to the area devoted to performing of massage services. Sanitary towels shall also be provided at each basin.
- (v) Pads used on massage tables shall be covered with material acceptable to the Health Officer of the County of San Mateo.
- (w) All massage businesses shall comply with all state and federal laws and regulations for handicapped

clients.

- (x) A massage practitioner shall operate only under the name specified in his or her CAMTC certificate. A massage business shall operate only under the name specified in its County Registration Certificate.
- (y) No massage business shall allow any person to reside within the massage business or in attached structures owned, leased or controlled by the massage business.
- (z) Other than custodial or maintenance staff, no persons shall be permitted within the premises of a massage business between the hours of 11:00 p.m. and 6:00 a.m.

(Ord. No. 04601, § 3, 1-31-2012; Ord. No. 04688, § 2, 2-25-2014)

5.44.060 - Inspection by officials.

The investigating and enforcing officials of the County of San Mateo, including but not limited to the Sheriff, Health Officer, Director of Environmental Health, and Director of Building and Planning for the County of San Mateo, or their designees, shall have the right to enter the premises from time to time during regular business hours for the purpose of making reasonable inspections to observe and enforce compliance with building, fire, electrical, plumbing or health regulations, and to enforce compliance with applicable regulations, laws, and statutes, and with the provisions of this chapter. The Environmental Health Services Division may charge a fee for any health and safety inspections, as provided in Chapter 5.64 of the Ordinance Code.

(Ord. No. 04601, § 3, 1-31-2012)

5.44.070 - Notifications.

- (a) A massage business shall notify the Director of Environmental Health, or his or her designee, of any changes described in section 5.44.040 pursuant to the timelines specified therein.
- (b) A registrant shall report to the Director of Environmental Health any of the following within 96 hours of the occurrence:
 - (1) Arrests of any employees or owners of the registrant's massage business for an offense other than a misdemeanor traffic offense;
 - (2) Resignations, terminations, or transfers of practitioners employed by the registrant's massage business;
 - (3) Any event involving the registrant's massage business or the massage practitioners employed therein that constitutes a violation of this ordinance or state or federal law.
- (c) This provision requires reporting to the Director of Environmental Health even if the massage business believes that the Director of Environmental Health has or will receive the information from another source.

(Ord. No. 04601, § 3, 1-31-2012; Ord. No. 04688, § 3, 2-25-2014)

5.44.080 - Exemptions.

- (a) The provisions of this chapter shall not apply to the following classes of individuals or businesses while engaged in the performance of their duties:
 - (1) Physicians, surgeons, chiropractors, osteopaths, nurses or any physical therapists who are duly licensed to practice their respective professions in the State of California and persons working directly under the supervision of or at the direction of such licensed persons, working at the same location as the licensed person, and administering massage services subject to review or oversight by the licensed person.
 - (2) Barbers and beauticians who are duly licensed under the laws of the State of California while engaging in

practices within the scope of their licenses, except that this provision shall apply solely to the massaging of the neck, face and/or scalp, hands or feet of the clients.

- (3) Hospitals, nursing homes, mental health facilities, or any other health facilities duly licensed by the State of California, and employees of these licensed institutions, while acting within the scope of their employment.
- (4) Accredited high schools, junior colleges, and colleges or universities whose coaches and trainers are acting within the scope of their employment.
- (5) Trainers of amateur, semi-professional or professional athletes or athletic teams while engaging in their training responsibilities for and with athletes; and trainers working in conjunction with a specific athletic event.
- (6) Individuals administering massages or health treatment involving massage to persons participating in single-occurrence athletic, recreational or festival events, such as health fairs, road races, track meets, triathlons and other similar events; provided, that all of the following conditions are satisfied:
 - (A) The massage services are made equally available to all participants in the event;
 - (B) The event is open to participation by the general public or a significant segment of the public such as employees of sponsoring or participating corporations;
 - (C) The massage services are provided at the site of the event and either during, immediately preceding or immediately following the event;
 - (D) The sponsors of the event have been advised of and have approved the provisions of massage services;
 - (E) The persons providing the massage services are not the primary sponsors of the event.
- (b) Massage Businesses operating on the premises of the San Francisco International Airport are exempt from the operating time limitations contained in Section 5.44.050(b). All other provisions of this chapter apply to such businesses.

(Ord. No. 04601, § 3, 1-31-2012; Ord. No. 04688, § 4, 2-25-2014)

5.44.090 - Unlawful business practices may be enjoined; remedies cumulative.

Any massage business operated, conducted, or maintained contrary to the provisions of this chapter shall constitute an unlawful business practice pursuant to Business and Professions Code Section 17200 et seq., and the County Counsel or District Attorney may, in the exercise of discretion, in addition to or in lieu of taking any other action permitted by this chapter, commence an action or actions, proceeding or proceedings in the Superior Court of San Mateo County, seeking an injunction prohibiting the unlawful business practice and/or any other remedy available at law, including but not limited to fines, attorneys' fees and costs. All remedies provided for in this chapter are cumulative.

(Ord. No. 04601, § 3, 1-31-2012)

5.44.100 - Administrative fines.

- (a) Violations. Upon a finding by the Sheriff that a business has violated any provision of this chapter, the Sheriff may issue an administrative fine of up to five hundred dollars (\$500).
- (b) Separate Violations. Each violation of any provision of this chapter shall constitute a separate violation. Each client to whom massage is provided or offered in violation of this chapter shall also constitute a separate violation. Each day upon which a massage business remains open for business in violation of this chapter shall also constitute a separate violation.

- (c) Fine Procedures. Notice of the fine shall be served by certified mail with the legal violation and supporting facts. The notice shall contain an advisement of the right to file an appeal with the Director of the Environmental Health Division or his or her designee contesting the imposition of the fine.
- (d) Appeals. Appeals must be requested in writing, and shall provide facts disputing the violation and may be accompanied by declarations and exhibits. Appeals must be addressed to the Director of Environmental Health, and must be received within ten (10) days of the date appearing on the notice of the fine and a copy of the appeal and any supporting materials must be sent to the Sheriff's Office. The Sheriff's Office may respond to the appeal in writing within ten (10) days of receipt of the appeal and may provide additional evidence in support of the fine. The Director of Environmental Health may request, in writing, additional evidence from either the Appellant or the Sheriff's Office. The decision of the Director of Environmental Health shall be based solely on the materials submitted by the Appellant and the Sheriff's Office and be provided by certified mail. The Director of Environmental Health may sustain the fine, overrule the fine or decrease the amount of the fine. However the total fine shall not be reduced below \$500. The decision will constitute a final administrative order with no additional administrative right of appeal.
- (e) Failure to Pay Fine. If said fine is not paid within thirty (30) days from the date appearing on the notice of the fine or of the notice of determination from the Director of Environmental Health after the decision, the fine may be referred to a collection agency within or external to the County. In addition, any outstanding fines must be paid prior to the issuance or renewal of any registration.

(Ord. No. 04601, § 3, 1-31-2012; Ord. No. 04688, § 5, 2-25-2014)

5.44.110 - Suspension and revocation of County Registration Certificates.

- (a) Reasons. Certificates of registration may be suspended or revoked upon any of the following grounds:
 - (1) A practitioner is no longer in possession of current and valid CAMTC-certification. This subsection shall apply to a sole proprietor or a person employed or used by a massage business to provide massage.
 - (2) An owner or sole proprietor: Is required to register under the provisions of California Penal Code section 290 (sex offender registration); is convicted of California Penal Code sections 266i (pandering), 315 (keeping or residing in a house of ill-fame), 316 (keeping disorderly house), 318 (prevailing upon person to visit a place for prostitution), 647(b) (engaging in or soliciting prostitution), 653.22 (loitering with intent to commit prostitution), 653.23 (supervision of prostitute); has a business permit or license denied, revoked, restricted, or suspended by any agency, board, city, county, territory, or state; is subject to an injunction for nuisance pursuant to California Penal Code sections 11225—11235 (red light abatement); is convicted of a felony offense involving the sale of a controlled substance; is convicted of any crime involving dishonesty, fraud, deceit, violence, or moral turpitude; or is convicted in any other state of an offense which, if committed in this state, would have been punishable as one or more referenced offenses in this subdivision.
 - (3) The county determines that a material misrepresentation was included on the application for a certificate of registration or renewal.
 - (4) Violations of any of the following occurred on the premises of a massage business or were committed by a practitioner: California Business and Professions Code section 4600 et seq.; any local, state, or federal law; or the provisions of this chapter.
- (b) Procedures. Written notice of the suspension or revocation shall be served on the sole proprietor or owners by certified mail with the legal violation and supporting facts. The notice shall contain an advisement of the right to request an appeal hearing before the License Board.

- (c) Time Period of Suspension of Permit. The Sheriff may suspend a registration for a period between five (5) days ar of the license term, at his or her discretion.
- (d) Effective Date of Suspension or Revocation. Suspension or revocation issued pursuant to subsection (b) will be effective ten (10) days from the date appearing on the order, unless a timely appeal is filed in accordance with subsection (e).
- (e) Appeal.
 - (1) The decision of the Sheriff is appealable to the License Board.
 - (2) An appeal must be in writing, and be hand-delivered or mailed to the License Board.
 - (3) An appeal must be received by the License Board on or before the effective date of suspension or revocation provided by subsection (d).
 - (4) The filing of a timely appeal will stay a suspension or revocation pending a decision on the appeal by the License Board.
 - (5) A hearing shall be scheduled before the License Board within thirty (30) days. Either the Appellant or the Sheriff's Office may request, in writing directed to the Chair of the License Board, a continuance of the hearing. Such requests must be supported by good cause. The decision whether to grant a continuance is at the discretion of the Chair of the License Board, who shall consider whether granting the continuance poses a threat to public health or safety in light of the severity of the violations alleged.
 - (6) The decision of the License Board shall be a final administrative order, with no further administrative right of appeal or reconsideration. The License Board may sustain a suspension or revocation, overrule a suspension or revocation, reduce a revocation to a suspension and/or reduce the length of a suspension. However no revocation or suspension shall be reduced to a length of less than a five-day suspension. Further the License Board may stay the effective date of any suspension for a reasonable time following a hearing.
- (f) Reapplication. No reapplication will be accepted within one (1) year after a certificate is revoked.
- (g) Evidence. The following rules shall apply to any hearing required by this section. All parties involved shall have the right to offer testimonial, documentary, and tangible evidence bearing on the issues, to be represented by counsel, and to confront and cross-examine witnesses. Any relevant evidence may be admitted if it is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Formal rules of evidence and discovery do not apply to proceedings governed by this chapter. Unless otherwise specifically prohibited by law, the burden of proof is on the registrant in any hearing or other matter under this chapter.

(Ord. No. 04601, § 3, 1-31-2012; Ord. No. 04688, § 6, 2-25-2014)

5.44.120 - Public nuisance.

It shall be unlawful and a public nuisance for a massage business to be operated, conducted, or maintained contrary to the provisions of this chapter. The county may exercise its discretion, in addition to or in lieu of prosecuting a criminal action, to commence proceedings for the abatement, removal, and enjoinder of that business in any manner provided by law.

(Ord. No. 04601, § 3, 1-31-2012)



COUNTY OF SAN MATEO
Inter-Departmental Correspondence
SHERIFF



DATE: January 9, 2012
BOARD MEETING DATE: January 24, 2012
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority

TO: Honorable Board of Supervisors

FROM: Greg Munks, Sheriff
Jean S. Fraser, Chief, Health System

SUBJECT: Ordinance repealing and replacing Chapter 5.44 of the San Mateo County Ordinance Code, relating to massage businesses and amending Chapter 5.64 relating to inspection fees

RECOMMENDATION:

Adopt an ordinance repealing and replacing Chapter 5.44 (Massage Establishments) of Title 5 (Business Regulations) of the San Mateo County Ordinance Code, relating to the Regulation of massage businesses and amending Chapter 5.64 (Fees for Inspection of State Public Health Laws) relating to inspection fees.

BACKGROUND:

The current massage ordinance was adopted in 1973, with minor revisions adopted in 1987 and 1991. Although massage is a viable professional field offering the public valuable health and therapeutic services, massage businesses can create opportunities for prostitution, drug dealing, human trafficking and other harmful secondary effects upon the public health and safety. The unincorporated areas of San Mateo County contain at least twenty-two massage establishments, for which the Sheriff's Department received approximately seven complaints in 2011 and arrested four individuals for charges of possessing controlled substances and keeping or residing in a house of ill-fame for the purpose of prostitution.

The Governor signed SB 731 on September 27, 2008, and AB 619 on August 4, 2011, which respectively adopted and amended Section 4600 *et seq.* of the California Business and Professions Code. Such legislation was intended to protect individuals who receive massage, protect communities from prostitution and illicit activity, and also facilitate legitimate massage by creating centralized regulation of education, background, and permitting. Pursuant to the legislation, massage providers may voluntarily apply for and receive a certificate from the state's California Massage Therapy Council (CAMTC). Once an individual obtains a CAMTC certificate, he or she is able to practice in any city or county without being required to obtain a local license or permit. Similarly, a massage business that uses only CAMTC-certified massage

practitioners is not required to obtain a separate local license or permit. The County retains the ability to require health and safety regulations, however, and to require that practitioners and businesses register with the County. The County also retains the ability to require zoning restrictions, building regulations, and business licensing, as long as those regulations also affect other “professional or personal service businesses” (defined to include dentistry, medicine, chiropractors, dietitians, optometrists, acupuncture, accounting, architecture, attorneys, engineers, geologists, funeral directors, land surveyors, real estate brokers, etc.).

DISCUSSION:

Local governments throughout California are adopting massage ordinances with the intent of regulating the practice of massage and protecting the public health and safety in accordance with the above-referenced revisions to state law. The proposed ordinance was presented to the Board’s Housing, Health and Human Services Standing Committee (the “HHH Committee”) on November 14, 2011. Since that time, the Sheriff’s Office, Environmental Health Division, and the County Counsel’s office have revised the proposed ordinance based on the HHH Committee’s comments as well as comments from representatives of the massage industry.

The proposed ordinance effectively allows the County to maintain the ability to regulate, inspect, and monitor the practice of massage while shifting much of the administrative work and background checks to the state CAMTC. Key provisions of the proposed ordinance include CAMTC certification, County registration, and requirements that businesses must comply with a variety of health and safety regulations, including: posting of a list of available services; keeping linens clean; requiring practitioner to work under the name certified with the CAMTC; and limiting the hours of operation.

There will be no fee for County registration, however the Environmental Health Division will collect fees for inspections of businesses, and the County will also collect fees for background checks of business owners who are not certified by the CAMTC. Pursuant to state law, the County’s administrative fine amounts per violation may not exceed the punitive fine for an injunction or misdemeanor, which amount is \$500 in San Mateo County. The proposed ordinance provides, however, that the administrative fine shall be \$500 for each violation as well as for as each day that a business remains open in violation of the ordinance. County registration may be revoked or suspended for material misrepresentations or a conviction of certain crimes. The registration and operating requirements will be effective commencing July 1, 2012. This provides several months for practitioners and businesses to become certified, register with the County, and ensure the massage facilities comply with the ordinance.

Adoption of this ordinance will contribute to the Shared Vision 2025 outcome of a Collaborative Community by conforming the county’s regulations with the applicable state statutes.

County Counsel has reviewed and approved the proposed Ordinance.

FISCAL IMPACT:

Some staff time and resources will be required for the Environmental Health Division to issue County registration certificates, as well as for the Sheriff to undertake monitoring and enforcement efforts. The Environmental Health Division will collect cost recovery fees for inspections of businesses, and fees will be collected for background checks of business owners who are not certified by the CAMTC. There should be no impact on the County's General Fund.

ORDINANCE NO. _____

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF
CALIFORNIA

* * * * *

**AN ORDINANCE REPEALING AND REPLACING
CHAPTER 5.44 (MASSAGE ESTABLISHMENTS) OF TITLE 5 (BUSINESS
REGULATIONS) OF THE SAN MATEO COUNTY ORDINANCE CODE,
RELATING TO THE REGULATION OF MASSAGE BUSINESSES AND
AMENDING CHAPTER 5.64 (FEES FOR INSPECTION OF STATE PUBLIC
HEALTH LAWS) RELATING TO INSPECTION FEES**

The Board of Supervisors of the County of San Mateo, State of California,
ORDAINS as follows:

SECTION 1. FINDINGS. In enacting these regulations the Board of
Supervisors recognizes that massage is a viable professional field offering the
public valuable health and therapeutic services. The Board of Supervisors finds
and declares as follows:

(a) The registration and health and safety requirements imposed
by this chapter are reasonably necessary to protect the health, safety and
welfare of the citizens of the County.

(b) Massage businesses have been found to present
opportunities for acts of prostitution and other unlawful activity, and, in fact,
officers have made arrests for prostitution in massage businesses located within
the unincorporated areas of the County. Municipalities within the County have
also reported instances where acts of prostitution have occurred in massage
businesses.

(c) The California legislature and the courts have long

recognized the necessity of imposing reasonable regulations and standards for the operation of massage businesses, including but not limited to minimum educational and experience requirements, passage of a practical examination of competence, sanitary conditions, hours of operation, and other operational regulations designed to minimize opportunities for illegal activities and to ensure the protection of the health, safety and welfare of citizens.

(d) There is a significant risk of injury to clients of massage businesses by improperly trained or poorly educated massage practitioners.

(e) The presence of businesses known or reputed to be places of prostitution or other illegal activity can have an adverse impact on surrounding properties and result in blight, foster further illegal activities, and generally become a public nuisance.

SECTION 2. Chapter 5.44 (Massage Establishments) of Title 5 (Business Regulations) of the San Mateo County Ordinance Code, as presently written, is hereby repealed.

SECTION 3. New Chapter 5.44 (Massage Businesses) of Title 5 (Business Regulations) of the San Mateo County Ordinance Code is adopted, to read as follows: "Chapter 5.44 MASSAGE BUSINESSES

5.44.010 PURPOSE AND INTENT.

(a) In enacting this chapter, the Board of Supervisors recognizes that commercial massage therapy is a professional pursuit which can offer the public valuable health and therapeutic services. The Board of Supervisors further recognizes that, unless properly regulated, the practice of massage therapy and

the operation of massage businesses may be associated with unlawful activity and pose a threat to the quality of life in the local community. Accordingly, it is the purpose and intent of this chapter to protect the public health, safety, and welfare by providing for the orderly regulation of businesses providing massage therapy services, discouraging prostitution and related illegal activities carried on under the guise of massage therapy, and establishing certain sanitation, health, and operational standards for massage businesses.

(b) Furthermore, it is the purpose and intent of this chapter to address the negative impacts identified in the Board of Supervisor's findings to reduce or prevent neighborhood blight and to protect and preserve the quality of the County neighborhoods and commercial districts; and to enhance enforcement of criminal statutes relating to the conduct of operators and employees of massage businesses.

(c) It is the Board's further purpose and intent to rely upon the uniform statewide regulations applicable to massage practitioners and establishments that were enacted by the State Legislature in 2008 as Business and Professions Code sections 4600 *et seq.* by Senate Bill 731, and amended in 2011 by Assembly Bill 619, to restrict the commercial practice of massage in the unincorporated areas of San Mateo County to those persons duly certified to practice by the California Massage Therapy Council, and to provide for the registration and regulation of massage businesses for health and safety purposes to the extent allowed by law.

5.44.020 DEFINITIONS.

For the purposes of this chapter, unless the particular provision or the context otherwise clearly requires, the definitions in this section shall govern the construction, meaning, and application of words and phrases used in this chapter:

(a) “Business” includes, but not by way of limitation, everything about which a person can be employed, and means that which occupies the time, attention, and labor of men and women for the purpose of producing a livelihood or profit, and connotes the efforts of men and women by varied and diverse methods of dealing with each other, to improve their individual economic conditions, and for the purposes of this chapter shall include, without limitation, the advertising and soliciting of massages. The term “business” includes, but is not limited to, a massage practitioner who is the sole owner, operator and employee of a massage business operating as a sole proprietorship, as well as a massage establishment which employs massage practitioners.

(b) “California Massage Therapy Council” or “CAMTC” means the Massage Therapy Organization formed pursuant to Business and Professions Code section 4600.5.

(c) “Certified Massage Practitioner” means any individual certified by the California Massage Therapy Council as a Certified Massage Therapist or as a Certified Massage Practitioner pursuant to California Business and Professions Code sections 4600 *et seq.*

(d) “Client” means the customer or patron who pays for or receives massage services.

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

(f) “County Registration Certificate” means a registration certificate issued by the Director of Environmental Health upon submission of satisfactory evidence that a massage business employs or uses only certified massage practitioners pursuant to this Chapter.

(g) “Director of Environmental Health” means the Director of Environmental Health of San Mateo County and his or her authorized representatives or designees.

(h) “Employee” means any person employed by a massage business who may render any service to the business, and who receives any form of compensation from the business.

(i) “Health Officer” means the person appointed by the San Mateo County Board of Supervisors pursuant to the California Health and Safety Code or his or her authorized representatives or designees.

(j) “License Board” means the License Board of the County of San Mateo as it is defined and constituted in Chapter 5.04 of the San Mateo County Code.

(k) “Massage” or “massage therapy,” means and refers to any method of treating the external parts of the body for remedial, health, or hygienic purposes for any form of compensation by means of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, or stimulating the external parts of the body, with or without the aid of any mechanical or electrical

apparatus or appliances; or with or without supplementary aids, such as rubbing alcohol, liniments, antiseptics, oils, powders, creams, lotions, ointments, or other similar preparations commonly used in this practice; or by baths, including but not limited to Turkish, Russian, Swedish, Japanese, vapor, shower, electric tub, sponge, mineral, fomentation, or any other type of bath.

(l) “Massage business” means any business that offers massage therapy in exchange for compensation, whether at a fixed place of business or at a location designated by the customer or client through outcall massage services. Any business that offers any combination of massage therapy and bath facilities – including, but not limited to, showers, baths, wet and dry heat rooms, pools and hot tubs – shall be deemed a massage business under this chapter. The term “massage business” includes a certified massage practitioner who is the sole owner, operator and employee of a massage business operating as a sole proprietorship.

(m) “Operator” or “massage business operator” means any and all owners of a massage business.

(n) “Outcall massage” means the engaging in or carrying on of massage therapy for compensation in a location other than the business operations address set forth in the massage business’s county registration certificate.

(o) “Owner” or “Massage business owner” means any of the following persons:

(1) Any person who is a general partner of a general or limited

partnership that owns a massage business.

(2) Any person who has a five percent (5%) or greater ownership interest in a corporation that owns a massage business.

(3) Any person who is a member of a limited liability company that owns a massage business.

(4) Any person who has a five percent (5%) or greater ownership interest in any other type of business association that owns a massage business.

(p) “Person” means any individual, firm, association, partnership, corporation, joint venture, limited liability company, or combination of individuals.

(q) “Practitioner” or “Massage Practitioner” shall be used interchangeably and mean any person who administers massage to another person, for any form of consideration (whether for the massage, as part of other services or a product, or otherwise).

(r) “Reception and waiting area” means an area immediately inside the front door of the massage business dedicated to the reception and waiting of patrons of the massage business and visitors, and which is not a massage therapy room or otherwise used for the provision of massage therapy services.

(s) “Registration” means the registration required by this Chapter to operate a massage business.

(t) “School of massage” means any school or institution of learning that is recognized as an approved school pursuant to Business and Professions Code Division 2, Chapter 10.5, as currently drafted or as may be amended.

(u) “Sheriff” means the Sheriff of San Mateo County and his or her authorized representatives or designees.

(v) “Sole proprietorship” means and includes any legal form of business organization where the business owner (sometimes referred to as the “sole proprietor”) is the only person employed by that business to provide massage services.

(w) “Solicit” means to request, ask, demand or otherwise arrange for the provision of services.

5.44.030 CAMTC CERTIFICATION AND LOCAL REGISTRATION REQUIRED

(a) Individuals. On and after July 1, 2012, it shall be unlawful for any individual to practice massage therapy for compensation as a sole proprietorship or employee of a massage business or in any other capacity within the unincorporated areas of San Mateo County unless that individual is a certified massage practitioner.

(b) Businesses. On and after July 1, 2012, it shall be unlawful for any business to provide massage for compensation within the unincorporated areas of San Mateo County unless all individuals employed by the massage business to perform massage, whether as an employee, independent contractor, or sole proprietorship, are certified massage practitioners and said business has obtained a valid county registration certificate as provided in this Chapter.

5.44.040 MESSAGE BUSINESS REGISTRATION

(a) Application. The registration application for a County Registration Certificate shall include all of the following:

- (1) Legal name of the massage business.
- (2) Address and telephone number of the massage business.
- (3) Legal names of all owners of the massage business.
- (4) A list of all of the massage business's employees and independent contractors who are performing massage and their CAMTC certification.
- (5) Residence address and telephone number of all owners of the massage business.
- (6) Business address and telephone number of all owners of the massage business.
- (7) The form of business under which the massage business will be operating (*i.e.*, corporation, general or limited partnership, limited liability company, or other form).
- (8) Each owner or operator of the massage business who is not a CAMTC-certified massage practitioner shall submit an application for a background check, including the following: the individual's business, occupation, and employment history for the five (5) years preceding the date of the application; the inclusive dates of such employment history; the name and address of any massage business or similar business owned or operated by the individual whether inside or outside the County.
- (9) For all owners, a valid and current driver's license and/or identification issued by a state or federal governmental agency or other photographic identification bearing a bona fide seal by a foreign government.

(10) For all owners, a signed statement that all of the information contained in the application is true and correct; that all owners shall be responsible for the conduct of the business's employees or independent contractors providing massage services; and acknowledging that failure to comply with the California Business and Professions Code section 4600 *et seq.*, any local, state, or federal law, or the provisions of this Chapter may result in revocation of the business's County registration certificate.

(b) Issuance. Upon provision by the massage business of the foregoing documentation, the Director of Environmental Health shall issue the massage business a County Registration Certificate, which shall be valid for two (2) years from the date of issuance. No reapplication will be accepted within one (1) year after an application or renewal is denied or a certificate is revoked.

(c) Amendment. A massage business shall apply to the county to amend its county registration certificate within thirty (30) days after any change in the registration information, including, but not limited to, the hiring or termination of certified massage practitioners or the change of the business's address.

(d) Renewal. A massage business shall apply to the County to renew its County registration certificate at least thirty (30) days prior to the expiration of said County registration certificate. If an application for renewal of a County registration certificate and all required information is not timely received and the certificate expires, no right or privilege to provide massage shall exist.

(e) Fees. There shall be no fee for the registration application or certificate, or any amendment or renewal thereof. The provisions of this section

shall not prevent the County from establishing fees for health and safety inspections as may be conducted from time to time by the Director of Environmental Health, and for the background checks, fingerprinting, and subsequent arrest notification for owners of a massage businesses who are not CAMTC-certified and who are subject to such background checks pursuant to this Chapter.

(f) Transfer. A County Registration Certificate shall not be transferred except with the prior written approval of the Director of Environmental Health. A written request for such transfer shall contain the same information for the new ownership as is required for applications for registration pursuant to this section. In the event of denial, notification of the denial and reasons therefore shall be provided in writing and shall be provided to the applicant by personal delivery or by registered or certified mail.

5.44.050 OPERATING REQUIREMENTS.

On or after July 1, 2012, no person shall engage in, conduct, carry on, or permit any massage within the unincorporated areas of the County of San Mateo unless all of the following requirements are met:

(a) CAMTC-certification shall be worn by and clearly visible on the massage practitioner's person during working hours and at all times when the massage practitioner is inside a massage business or providing outcall massage.

(b) Massage shall be provided or given only between the hours of 7:00 a.m. and 9:00 p.m. No massage business shall be open and no massage shall be provided between 9:00 p.m. and 7:00 a.m. A massage commenced prior to

9:00 p.m. shall nevertheless terminate at 9:00 p.m., and, in the case of a massage business, all clients shall exit the premises at that time. It is the obligation of the massage business, to inform clients of the requirement that services must cease at 9:00 p.m.

(c) A list of the services available and the cost of such services shall be posted in the reception area within the massage premises, and shall be described in readily understandable language. Outcall service providers shall provide such a list to clients in advance of performing any service. No owner, manager, operator, or responsible managing employee shall permit, and no massage practitioner shall offer or perform, any service other than those posted or listed as required herein, nor shall an operator or a massage practitioner request or charge a fee for service other than that on the list of services.

(d) A copy of the CAMTC certificate of each and every massage practitioner employed in the business shall be displayed in the reception area or similar open public place on the premises.

(e) For each massage service provided, every massage business shall keep a complete and legible written record of the following information: the date and hour that service was provided; the service received; the name or initials of the employee entering the information; and the name of the massage practitioner administering the service. Such records shall be open to inspection and copying by the Sheriff, or other County officials charged with enforcement of this chapter. These records may not be used by any massage practitioner or operator for any purpose other than as records of service provided and may not be provided to

other parties by the massage practitioner or operator unless otherwise required by law. Such records shall be retained on the premises of the massage business for a period of two (2) years.

(f) Massage businesses shall at all times be equipped with an adequate supply of clean sanitary towels, coverings, and linens. Clean towels, coverings, and linens shall be stored in enclosed cabinets. Towels and linens shall not be used on more than one (1) client, unless they have first been laundered and disinfected. Disposable towels and coverings shall not be used on more than one (1) client. Soiled linens and paper towels shall be deposited in separate, approved receptacles.

(g) Wet and dry heat rooms, steam or vapor rooms or cabinets, toilet rooms, shower and bath rooms, tanning booths, whirlpool baths and pools shall be thoroughly cleaned and disinfected as needed, and at least once each day the premises are open, with a disinfectant approved by the Health Officer. Bathtubs shall be thoroughly cleaned after each use with a disinfectant approved by the Health Officer of the County of San Mateo. All walls, ceilings, floors, and other physical facilities for the business must be in good repair, and maintained in a clean and sanitary condition.

(h) Instruments utilized in performing massage shall not be used on more than one (1) client unless they have been sterilized, using approved sterilization methods.

(i) All massage business operators and their employees, including massage practitioners, shall wear clean, non-transparent outer garments. Said

garments shall not expose their genitals, pubic areas, buttocks, or chest, and shall not be worn in such manner as to expose the genitals, pubic areas, buttocks, or chest.

(j) No person shall enter, be, or remain in any part of a massage business while in possession of an open container of alcohol, or consuming or using any alcoholic beverage or drugs except pursuant to a prescription for such drugs. The owner, operator, responsible managing employee, or manager shall not permit any such person to enter or remain upon such premises.

(k) No massage business shall operate as a school of massage, or use the same facilities as that of a school of massage.

(l) No massage business shall place, publish or distribute, 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 clients that any service is available other than those services listed as an available service pursuant to section 5.44.050(c), nor shall any massage business employ language in the text of such advertising that would reasonably suggest to a prospective client that any service is available other than those services as described in compliance with the provisions of this chapter.

(m) No massage shall be given unless the client's genitals are, at all times, fully covered. A practitioner shall not, in the course of administering any massage, make physical contact with the genitals or private parts of any other person.

(n) Where the business has staff available to assure security for clients

and massage staff behind closed doors, the entry to the reception area of the massage business shall remain unlocked during business hours when the business is open for business or when clients are present.

(o) 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, blurs, or unreasonably darkens the view into the premises.

(p) All signs shall be in conformance with the current ordinances of the County of San Mateo.

(q) Minimum lighting consisting of at least one (1) artificial light of not less than forty (40) watts shall be provided and shall be operating in each room or enclosure where massage services are being performed on clients, and in all areas where clients are present.

(r) Ventilation shall be provided in accordance with applicable building codes and regulations.

(s) Hot and cold running water shall be provided at all times.

(t) Adequate dressing, locker and toilet facilities shall be provided for clients.

(u) A minimum of one (1) wash basin for employees shall be provided at all times. The basin shall be located within or as close as practicable to the area devoted to performing of massage services. Sanitary towels shall also be provided at each basin.

(v) Pads used on massage tables shall be covered with material acceptable to the Health Officer of the County of San Mateo.

(w) All massage businesses shall comply with all state and federal laws and regulations for handicapped clients.

(x) A massage practitioner shall operate only under the name specified in his or her CAMTC certificate. A massage business shall operate only under the name specified in its county registration certificate.

5.44.060 INSPECTION BY OFFICIALS.

The investigating and enforcing officials of the County of San Mateo, including but not limited to the Sheriff, Health Officer, Director of Environmental Health, and Director of Building and Planning for the County of San Mateo, or their designees, shall have the right to enter the premises from time to time during regular business hours for the purpose of making reasonable inspections to observe and enforce compliance with building, fire, electrical, plumbing or health regulations, and to enforce compliance with applicable regulations, laws, and statutes, and with the provisions of this chapter. The Environmental Health Services Division may charge a fee for any health and safety inspections, as provided in Chapter 5.64 of the Ordinance Code.

5.44.070 NOTIFICATIONS.

(a) A massage business shall notify the Director of Environmental Health, or his or her designee, of any changes described in Section 5.44.040 pursuant to the timelines specified therein.

(b) A registrant shall immediately report to the Director of

Environmental Health any of the following:

- (1) arrests of any employees or owners of the registrant's massage business for an offense other than a misdemeanor traffic offense;
- (2) resignations, terminations, or transfers of practitioners employed by the registrant's massage business;
- (3) the occurrence of any event involving the registrant's massage business or the massage practitioners employed therein that constitutes a violation of this ordinance or state or federal law.

5.44.080 EXEMPTIONS.

The provisions of this chapter shall not apply to the following classes of individuals or businesses while engaged in the performance of their duties:

- (a) Physicians, surgeons, chiropractors, osteopaths, nurses or any physical therapists who are duly licensed to practice their respective professions in the State of California and persons working directly under the supervision of or at the direction of such licensed persons, working at the same location as the licensed person, and administering massage services subject to review or oversight by the licensed person.
- (b) Barbers and beauticians who are duly licensed under the laws of the State of California while engaging in practices within the scope of their licenses, except that this provision shall apply solely to the massaging of the neck, face and/or scalp, hands or feet of the clients.
- (c) Hospitals, nursing homes, mental health facilities, or any other health facilities duly licensed by the State of California, and employees of these

licensed institutions, while acting within the scope of their employment.

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

(e) Trainers of amateur, semi-professional or professional athletes or athletic teams while engaging in their training responsibilities for and with athletes; and trainers working in conjunction with a specific athletic event.

(f) Individuals administering massages or health treatment involving massage to persons participating in single-occurrence athletic, recreational or festival events, such as health fairs, road races, track meets, triathlons and other similar events; provided, that all of the following conditions are satisfied:

(1) The massage services are made equally available to all participants in the event;

(2) The event is open to participation by the general public or a significant segment of the public such as employees of sponsoring or participating corporations;

(3) The massage services are provided at the site of the event and either during, immediately preceding or immediately following the event;

(4) The sponsors of the event have been advised of and have approved the provisions of massage services;

(5) The persons providing the massage services are not the primary sponsors of the event.

5.44.090 UNLAWFUL BUSINESS PRACTICES MAY BE ENJOINED;
REMEDIES CUMULATIVE.

Any massage business operated, conducted, or maintained contrary to the provisions of this chapter shall constitute an unlawful business practice pursuant to Business & Professions Code Section 17200 *et seq.*, and the County Counsel or District Attorney may, in the exercise of discretion, in addition to or in lieu of taking any other action permitted by this chapter, commence an action or actions, proceeding or proceedings in the Superior Court of San Mateo County, seeking an injunction prohibiting the unlawful business practice and/or any other remedy available at law, including but not limited to fines, attorneys' fees and costs. All remedies provided for in this chapter are cumulative.

5.44.100 ADMINISTRATIVE FINES.

(a) Violations. Upon a finding by the Sheriff that a business has violated any provision of this chapter, the Sheriff may issue an administrative fine of up to five hundred dollars (\$500).

(b) Separate Violations. Each client to whom massage is provided or offered in violation of this chapter shall constitute a separate violation. Each day upon which a massage business remains open for business in violation of this chapter shall also constitute a separate violation.

(c) Fine Procedures. Notice of the fine shall be served by certified mail with the legal violation and supporting facts. The notice shall contain an advisement of the right to request a hearing before the Director of the Environmental Health Division or his or her designee contesting the imposition of the fine.

(d) Appeals. Appeals must be requested in writing, and shall provide

facts disputing the violation. Appeals must be addressed to the Director of Environmental Health, and must be received within ten (10) days of the date appearing on the notice of the fine. The decision of the Director of Environmental Health shall be provided by certified mail. The decision will constitute a final administrative order with no additional administrative right of appeal.

(e) Failure to Pay Fine. If said fine is not paid within thirty (30) days from the date appearing on the notice of the fine or of the notice of determination from the Director of Environmental Health after the appeal hearing, the fine may be referred to a collection agency within or external to the County. In addition, any outstanding fines must be paid prior to the issuance or renewal of any registration.

5.44.110 SUSPENSION AND REVOCATION OF COUNTY REGISTRATION CERTIFICATES

(a) Reasons. Certificates of registration may be suspended or revoked upon any of the following grounds:

(1) A practitioner is no longer in possession of current and valid CAMTC-certification. This subsection shall apply to a sole proprietor or a person employed or used by a massage business to provide massage.

(2) An owner or sole proprietor: is required to register under the provisions of California Penal Code section 290 (sex offender registration); is convicted of California Penal Code section 266i (pandering), 315 (keeping or residing in a house of ill-fame), 316 (keeping disorderly house), 318 (prevailing upon person to visit a place for prostitution), 647(b) (engaging in or soliciting prostitution), 653.22 (loitering with intent to commit prostitution), 653.23

(supervision of prostitute); has a business permit or license denied, revoked, restricted, or suspended by any agency, board, city, county, territory, or state; is subject to an injunction for nuisance pursuant to California Penal Code sections 11225-11235 (red light abatement); is convicted of a felony offense involving the sale of a controlled substance; is convicted of any crime involving dishonesty, fraud, deceit, violence, or moral turpitude; or is convicted in any other state of an offense which, if committed in this state, would have been punishable as one or more referenced offenses in this subdivision.

(3) The county determines that a material misrepresentation was included on the application for a certificate of registration or renewal.

(4) Violations of any of the following occurred on the premises of a massage business or were committed by a practitioner: California Business and Professions Code section 4600 *et seq.*; any local, state, or federal law; or the provisions of this chapter.

(b) Procedures. Written notice of the suspension or revocation shall be served on the sole proprietor or owners by certified mail with the legal violation and supporting facts. The notice shall contain an advisement of the right to request an appeal hearing before the License Board.

(c) Time Period of Suspension of Permit. The Sheriff may suspend a registration for a period between five (5) days and the end of the license term, at his or her discretion.

(d) Effective Date of Suspension or Revocation. Suspension or revocation issued pursuant to subsection (b) will be effective ten (10) days from

the date appearing on the order, unless a timely appeal is filed in accordance with subsection (e).

(e) Appeal.

(1) The decision of the Sheriff is appealable to the License Board.

(2) An appeal must be in writing, and be hand-delivered or mailed to the License Board.

(3) An appeal must be received by the License Board on or before the effective date of suspension or revocation provided by subsection (d).

(4) The filing of a timely appeal will stay a suspension or revocation pending a decision on the appeal by the License Board.

(5) A hearing shall be scheduled within thirty (30) days unless an extension is authorized by the appellant.

(6) The decision of the License Board shall be a final administrative order, with no further administrative right of appeal.

(f) Reapplication. No reapplication will be accepted within one (1) year after a certificate is revoked.

(g) Evidence. The following rules shall apply to any hearing required by this chapter. All parties involved shall have the right to offer testimonial, documentary, and tangible evidence bearing on the issues, to be represented by counsel, and to confront and cross-examine witnesses. Any relevant evidence may be admitted if it is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Formal rules of discovery do not apply to proceedings governed by this chapter. Unless otherwise specifically

prohibited by law, the burden of proof is on the registrant in any hearing or other matter under this chapter.

5.44.120 PUBLIC NUISANCE

It shall be unlawful and a public nuisance for a massage business to be operated, conducted, or maintained contrary to the provisions of this chapter.

The county may exercise its discretion, in addition to or in lieu of prosecuting a criminal action, to commence proceedings for the abatement, removal, and enjoinder of that business in any manner provided by law.

SECTION 4. Sections 5.64.050 of Chapter 5.64 (Fees for Enforcement of State Public Health Laws) of Title 5 (Business Regulations) of the San Mateo County Ordinance Code is hereby amended to add the following definition: "The term 'massage business' shall include the businesses defined in Section 5.44.020."

SECTION 5. Sections 5.64.070 of Chapter 5.64 (Fees for Enforcement of State Public Health Laws) of Title 5 (Business Regulations) of the San Mateo County Ordinance Code is hereby amended by adding the following line item fee under the heading "Solid/Medical Waste Programs": "Massage Business \$420"

SECTION 6. SEVERABILITY. If any provision(s) of this ordinance is declared invalid by a court of competent jurisdiction, it is the intent of the Board of Supervisors that such invalid provision(s) be severed from the remaining provisions of the ordinance so that regulation and control of massage may remain in place.

SECTION 7. This ordinance shall be effective thirty (30) days from the date of passage thereof.

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COUNTY OF SAN MATEO
Inter-Departmental Correspondence
Health System



Date: January 6, 2014
Board Meeting Date: February 25, 2014
Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors

From: Greg Munks, Sheriff
Jean S. Fraser, Chief, Health System

Subject: Massage Businesses Ordinance

RECOMMENDATION:

Adoption of an ordinance amending Sections 5.44.040, 5.44.050, 5.44.070, 5.44.080, 5.44.100 and 5.44.110 of Chapter 5.44 (Massage Businesses) of Title 5 (Business Regulations) of the San Mateo County Ordinance Code, relating to the regulation of massage businesses, previously introduced on February 11, 2014 and waiver of reading the ordinance in its entirety.

BACKGROUND:

The Governor signed SB 731 on September 27, 2008, and AB 619 on August 4, 2011, which respectively adopted and amended Section 4600 et seq. of the California Business and Professions Code. The legislation was intended to protect individuals who receive massages, protect communities from prostitution and illicit activities, and facilitate legitimate massage by centralizing regulation and permitting.

Pursuant to the legislation, massage providers may voluntarily apply for and receive a certificate from the State's California Massage Therapy Council (CAMTC). Once an individual obtains a CAMTC certificate, he or she is able to practice in any city or county without being required to obtain a local license or permit. Similarly, a massage business that uses only CAMTC-certified massage practitioners is not required to obtain a separate local license or permit.

The County retains oversight of health and safety regulations by requiring registration by practitioners and businesses with the County. The County also retains the ability to require zoning restrictions, building regulations, and business licensing, as long as those regulations also affect other "professional or personal service businesses" (defined to include dentistry, medicine, chiropractors, dietitians, optometrists,

acupuncture, accounting, architecture, attorneys, engineers, geologists, funeral directors, land surveyors, real estate brokers, etc.).

In 2012 your Board adopted an amendment to the San Mateo County Massage Businesses Ordinance, which was established in response to this new legislation. The intent of this 2012 amendment was to maintain oversight over massage businesses to protect communities from prostitution and illicit activities while facilitating legitimate massage.

Having enforced the Ordinance for the past 18 months, the Sheriff's Office, the Planning and Building Department and the Health System's Environmental Health Services division have identified areas where an additional amendment to the Ordinance would further your Board's original intentions.

These revisions are not intended to address consideration of zoning changes that would possibly restrict where massage businesses can be located within the unincorporated area of the County. Staff is currently looking at the zoning issue, separate from this ordinance.

DISCUSSION:

The proposed amendment to the existing Massage Businesses Ordinance achieves the following:

- Mandates the availability of complete written service records for inspection during regular business hours.
- Clarifies the type of outer garments that must be worn.
- Clarifies lobby visibility requirements.
- Clarifies the rules governing continuances of hearings and the License Board's authority to reduce suspensions and revocations.
- Clarifies the duty to report violations of the Ordinance to the Environmental Health Director.
- Requires that appeals of fines may be resolved in writing without adversarial hearing.
- Requires that massage businesses serving or appealing a suspension, revocation and/or a fine are prevented from selling or transferring their business without first serving the suspension or revocation and/or paying the fine.
- Prohibits individuals from residing in a massage business or being unnecessarily present in the business outside of business hours.
- Exempts the San Francisco International Airport (Airport) from the Ordinance's operating time limitations, in recognition of the Airport's 24/7 operation and its minimal risk of prostitution and other related activity.

The Ordinance has been reviewed and approved by County Counsel as to form.

Adoption of this Ordinance amendment will contribute to the Shared Vision 2025 outcome of an Environmentally Conscious Community by aligning the County's

regulations with applicable State's statutes, in order to contribute to safer neighborhoods and businesses providing beneficial services to all residents. It is anticipated that the percent of massage businesses providing full access to complete written service records for inspection will increase to 100%.

PERFORMANCE MEASURE(S):

Measure	FY 2012-13 Actual	FY 2013-14 Projected
Percent of massage businesses providing full access to complete written service records for inspection	75%	100%

FISCAL IMPACT:

There is no Net County Cost associated with this Ordinance.