

ORDINANCE NO. 15-02

AN ORDINANCE REPEALING SECTION 6-10.00 TO SECTION 6-10.27 OF THE CITY OF HAYWARD MUNICIPAL CODE AND ADDING CHAPTER 6, ARTICLE 10 TO THE HAYWARD MUNICIPAL CODE REGARDING MASSAGE ESTABLISHMENTS

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN
AS FOLLOWS:

Section 1. Upon the effective date of this ordinance, Hayward Municipal Code Sections 6-10.00 through 6-10.27 are hereby repealed and Article 10 of Chapter 6 of the Hayward Municipal Code is hereby enacted to read in full as follows:

ARTICLE 10

MESSAGE PERMIT ORDINANCE

Section	Subject Matter
6-10.00	TITLE
6-10.01	FINDINGS AND PURPOSE
6-10.02	DEFINITIONS
6-10.03	PERMIT REQUIREMENT
6-10.04	PERMIT EXEMPTIONS
6-10.05	MESSAGE ESTABLISHMENT PERMIT APPLICATION AND FEE
6-10.06	APPLICATION REVIEW
6-10.07	PERMIT ISSUANCE OR DENIAL
6-10.08	DISQUALIFYING CONDUCT

- 6-10.09 HEARING ON DENIAL OF PERMIT
- 6-10.10 GROUNDS FOR SUSPENSION OR REVOCATION OF PERMIT
- 6-10.11 HEARING ON SUSPENSION OR REVOCATION OF PERMIT
- 6-10.12 BURDEN OF PROOF
- 6-10.13 APPEAL OF SUSPENSION OR REVOCATION OF PERMIT
- 6-10.14 MINIMUM AGE REQUIREMENT
- 6-10.15 PERMITS NONASSIGNABLE
- 6-10.16 CHANGE OF NAME OR LOCATION, EXPANSION OF BUILDING
- 6-10.17 DISPLAY OF PERMIT
- 6-10.18 FACILITIES AND OPERATING REQUIREMENTS
- 6-10.19 RESPONSIBILITY OF EMPLOYER
- 6-10.20 PERMIT DURATION AND RENEWAL
- 6-10.21 APPLICABILITY TO EXISTING BUSINESSES
- 6-10.22 CEASE OF BUSINESS
- 6-10.23 INSPECTION
- 6-10.24 ENFORCEMENT

ARTICLE 10

MASSAGE PERMIT ORDINANCE

SEC. 6-10.00 TITLE. This ordinance shall be known as the Massage Permit Ordinance.

SEC. 6-10.01 FINDINGS AND PURPOSE. The City Council finds and declares as follows:

- a. The City of Hayward is authorized to regulate a lawful massage business pursuant to Government Code section 51030, et seq., Business and Professions Code section 4600, et seq., 37101, section 16000, or section 16100 of the California Business and Professions Code, or by virtue of Section 7 of Article XI of the Constitution of the State of California.
- b. There is significant risk of injury to massage clients by improperly trained and/or uneducated massage therapists and this Article provides reasonable safeguards against injury and economic loss.
- c. There is risk of prostitution and/or sex trafficking and this Article provides safeguards against these practices.
- d. The permit requirements and restrictions imposed by this Article are reasonably necessary to protect the health, safety and welfare of the citizens of the City of Hayward, as well as to ward against illegal sexual commerce.

SEC. 6-10.02 DEFINITIONS. For the purpose of this Article, certain words and phrases shall be construed herein as set forth in this section, unless it is apparent from the context that a different meaning is intended:

- a. 'Acupuncture.' Whereas acupuncture is described as the stimulation of a certain point or points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, for the treatment of certain diseases or dysfunctions of the body and includes the techniques of electro acupuncture, cupping, and moxibustion; 'Acupressure' is based on a theory similar to acupuncture except that it stimulates acupuncture points by the application of pressure rather than needling.

- b. 'Adult-oriented merchandise.' Any sexually-oriented implements, paraphernalia, or novelty items, such as but not limited to: condoms and sexually-oriented items that are designed or marketed primarily for the stimulation of human genital organs.
- c. 'Applicant.' In the case of a massage establishment permit, means an individual, or if not an individual, the general partner, chief executive officer, chief advisor, or other person responsible for the ownership and operation of the massage establishment, who applies to obtain a permit under this Article. In the case of a massage therapist permit, "applicant" means an individual who applies for a permit under this Article.
- d. 'CAMTC.' California Massage Therapy Council
- e. 'Chief of Police.' The Chief of Police of the City of Hayward or his or her designee.
- f. 'Employee.' Includes any owner, partner, operator, manager, supervisor or worker, (whether part-time, full-time, temporary, permanent, or independent contractor) whether paid or not, who renders personal services of any nature in the operation of a massage establishment.
- g. 'Massage.' The scientific manipulation of the soft tissues. For purposes of this definition, the terms "massage", "massage therapy", and "bodywork" shall have the same meaning.
- h. 'Massage establishment.' A fixed location where massage is performed for compensation, excluding those locations where massage is only provided on an out-call basis.
- i. 'Massage therapist.' Any person who provides massage therapy services to another person for compensation. For purposes of this definition, "Massage therapist", "Massage Technician", and "Masseuse" shall have the same meaning.
- j. 'Managing employee.' Any employee of a massage establishment who has been designated by the massage establishment permittee to manage the business.
- k. 'Out-call massage therapy.' A massage therapy performed or administered for money or other consideration by a licensed massage practitioner at a location other than a licensed massage establishment.

- l. 'Permit.' The permit to engage in the business of massage therapy as required by this Article.
- m. 'Permittee.' Any person possessing a permit required and issued under this Article, or any owner or operator of the permitted establishment.
- n. 'Person.' Any individual, co-partnership, firm, association, joint stock company, corporation, joint venture, or combination of individuals of whatever form or character.
- o. 'Sexual or Genital Part.' Sexual and genital parts shall include the genitals, pubic area, anus, perineum of any person and the breasts of any female.

SEC. 6-10.03 PERMIT REQUIREMENT.

- a. **Massage Establishment Permit:**
 - (i) Except as otherwise provided in section 6-10.04, it shall be unlawful for any person to engage in, conduct or carry on, or permit to be engaged in, conducted or carried on, in or upon any premises within the city, the operation of a massage establishment without first having obtained a massage establishment permit issued by the Chief of Police pursuant to this Article. A separate permit shall be obtained for each separate massage establishment and any change in ownership to any establishment.
 - (ii) Prior to commencing operations pursuant to a Massage Establishment Permit issued by the Chief of Police, applicants must also obtain appropriate land use approvals pursuant to the City's Zoning Ordinance.
 - (iii) A permit issued under this Article does not authorize the permittee to practice massage therapy until the permittee has complied with all business license requirements, zoning/planning requirements, and all other applicable federal, state, and City of Hayward laws and regulations.
- b. **Massage Therapist Certification:** Except as otherwise provided in Section 6-10.04, it shall be unlawful for any person to engage in, conduct or carry on the function of a massage therapist without a current, valid certificate from the California Massage Therapy Council ("CAMTC"), or a current, valid license or certificate from the Department of Consumer Affairs to practice massage therapy.
- c. **Persons practicing acupressure under the direction of a licensed State of California acupuncturist shall obtain CAMTC certification as required in this Article.**

SEC. 6-10.04 PERMIT EXEMPTIONS.

- a. The permit requirements of this Article shall not apply to the following persons while engaged in the performance of their duties:
- (1) Physicians, surgeons, chiropractors, osteopaths, nurses, physical therapists, or acupuncturists who are duly licensed to practice their respective professions in the State.
 - (2) Barbers, beauticians, cosmetologists, and estheticians who are duly licensed under the laws of the State while engaging in practices within the scope of their licenses.
 - (3) Hospitals, nursing homes, sanitariums, or any other health facility duly licensed by the State.
 - (4) Accredited high schools, junior colleges, colleges, or universities whose coaches and trainers are acting within the scope of their employment.
 - (5) Accredited colleges or universities that offer massage therapy programs whose instructors and students are acting within the scope of their employments or within the scope of their curriculum.
 - (6) Trainers of amateur, semiprofessional 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 such as road races, track meets, triathlons, biathlons, or similar single occurrence athletic or recreational events.

SEC. 6-10.05 MASSAGE ESTABLISHMENT PERMIT APPLICATION AND FEE.

- a. Each applicant for a massage establishment permit shall file a written application with the Chief of Police on a form provided by the Police Department. The application shall be forwarded to the Planning Director to determine if the use is allowed in the zoning district where the massage establishment is proposed to be located. A massage establishment permit does not authorize the permittee to provide massage therapy services, and it is unlawful to do so without valid CAMTC certification.
- b. Each application shall be accompanied by a nonrefundable fee, in an amount established by resolution of the City Council. The application fee shall be used to defray, in part, the costs of the investigation and report, and is not made in lieu of

any other fees or taxes required under this Code. Applicants are required to make payment to the Department of Justice for fingerprinting services as required by this Article. A copy of the receipt for the nonrefundable fee shall accompany the application. Separate checks are not required to pay the required fees as outlined in this Article.

- c. Each applicant shall submit the following information in the application under penalty of perjury:
- (1) The full, true name under which the business will be conducted.
 - (2) The present or proposed address where the business is to be conducted.
 - (3) The applicant's full, true name, including all other names used presently or in the past, date of birth, valid California driver's license number or identification number, Social Security number, present residence address and telephone number, gender, height, weight, color of hair, and color of eyes.
 - (4) The names and addresses of all persons financially interested in the business.
 - (5) The applicant's two most recent street addresses and the dates of residence at each address.
 - (6) The name, street address, and telephone number of other businesses in which the applicant has owned or been employed within the past seven years. This shall include the dates of employment, positions held by the applicant, and a contact person at each location. Applicant shall disclose or declare that within the seven years preceding submission of the application, the owner, operator, manager, and/or responsible managing officer/employee has not:
 - (i) Had a massage establishment, massage therapist, or other similar permit or license denied, suspended, or revoked by the city, or any other federal, state or local agency;
 - (ii) Engaged in conduct or operated a massage therapy or similar establishment in a manner that would be grounds for denial, suspension, or revocation of a permit under this Article; or Chapter 10.5 (commencing with section 4600) of Division 2 of the Business and Professions Code.

- (iii) Owned or managed a massage establishment or similar establishment where persons required to be licensed were allowed to work without the required license or permit.
- (7) A statement of the permit history of the applicant which identifies whether or not such person has ever held a professional or vocational license or permit, other than as required under this Article, issued by any agency, board, city, county, territory, or state; the date of issuance of such permit or license; whether or not the permit or license is still in effect; if the permit or license is no longer in effect, whether or not it was revoked or suspended, and if so, the reason(s) therefore. The name and location of the jurisdiction or agency, which suspended or revoked such license, certificate, permit, or other authorization shall also be included.
 - (8) The name and street address of any other massage business operated or managed by the applicant during the last seven years.
 - (9) A statement whether the applicant intends to personally provide massage therapy services at the business. The applicant for a massage establishment permit is required to obtain a certificate from CAMTC if that person intends to provide massage therapy services.
 - (10) Written proof of the applicant's current, valid certification by CAMTC, and proof of certification for any employees or independent contractors who will perform massage services at the applicant's massage establishment.
 - (11) Applicant's criminal convictions in California or any other jurisdiction for offenses other than traffic violations within ten years before the date of the application. For the purposes of this subsection, the term 'applicant' shall apply to:
 - (i) an individual if the applicant is an individual;
 - (ii) any officers, directors, stockholders holding more than 5 percent of the stock of the corporation, or the managing responsible officer, if the applicant is a corporation; and
 - (iii) a partner or the managing responsible officer, if the applicant is a partnership.

- (12) The name, street address, telephone number, and date of birth of each massage therapist or employee who is or will be employed at the massage establishment, regardless of the nature of the employment.
- (13) The name, street address, and telephone number of any massage business or other like establishment owned or operated by any person whose name is required to be given pursuant to this section.
- (14) Documentation to prove that the applicant has a lawful right to work in the United States, to include but not limited to: Department of Justice Immigration and Naturalization Service Employment Authorization Document.
- (15) If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation or charter, together with the state and date of incorporation and the name, residence address, and telephone number of each of its current officers, directors, along with the amount of stock held.
- (16) If the applicant is a partnership, the application shall set forth the name, residence street address, and telephone number of each of the partners. If the applicant is a limited partnership, it shall furnish a copy of its certificate of limited partnership as filed with the County Clerk. If one or more of the partners is a corporation, the provisions of this subsection pertaining to corporate applicants shall apply to the corporate partner. The applicant, if a corporation or partnership, shall designate one of its officers or general partners to act as its responsible managing officer/employee. Such person shall complete and sign all application forms required of an individual applicant under this Article and shall, at all times, meet all of the requirements set for permittees by this Article or the permit shall be suspended until a responsible managing officer who meets such requirements are designated. If no such person is found within 90 calendar days after the permit's suspension, the corporation or partnership's permit is deemed canceled. If the corporation or partnership wishes to reapply for a permit, a new application shall be filed.
- (17) Two recent, identical, passport-size, color photographs of the applicant and any employees or independent contractors who will be performing massage services at the applicant's massage establishment.

- (18) Fingerprints taken by a representative of the Hayward Police Department and submitted to the Department of Justice for processing pursuant to this Article.
- (19) Written authorization for the city, its agents, and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and into the background of the applicant and the responsible managing officer/employee of the massage establishment.
- (20) Such other identification and information shall be provided as required by the Chief of Police, necessary to discover the truth of the matters specified and required in the application.

SEC. 6-10.06 APPLICATION REVIEW. The application and supplementary material shall be reviewed by the Chief of Police. If it is clear from the face of the application and supplementary material that the applicant is not qualified for the Massage Establishment Permit, or if the required fee has not been paid, the application may be denied without further investigation. If it appears from the face of the application and supplementary material that the applicant may be eligible for the Massage Establishment Permit, the Chief of Police shall verify the information submitted by the applicant and shall further investigate the qualifications of the applicant as follows:

- a. The Hayward Police Department shall take a full set of the applicant's fingerprints, and shall submit the fingerprints to the Department of Justice for evaluation. Upon receipt of the report from the Department of Justice, the Chief of Police shall review the criminal history (if any) of the applicant;
- b. The Chief of Police may conduct additional investigations in a manner authorized by law when necessary to determine if the applicant meets the qualifications for a permit pursuant to this Article; and
- c. Upon receipt of an application for a massage establishment permit, the Chief of Police shall refer the application to other City of Hayward departments, as appropriate, for review of the application and inspection of the premises to ensure compliance with applicable local, state and federal laws and regulations, including, but not limited to, building, health, and fire safety regulations.

SEC. 6-10.07 PERMIT ISSUANCE OR DENIAL.

- a. The Chief of Police shall issue or deny the application for a Massage Establishment Permit within 60 calendar days of a completed application. When necessary, the Chief of Police may extend the time to issue or deny the permit.
- b. The Chief of Police shall deny a permit if any of the following circumstances exist:
 - (1) The application is incomplete and/or required supplementary material is not submitted within 30 calendar days of the date the material is requested;
 - (2) The applicant does not have sufficient proof of the required CAMTC certification requirements pursuant to section 6-10.05 of this Article;
 - (3) The operation as proposed by the applicant would not comply with all applicable ordinances and laws, including, but not limited to, the city's building, health, and fire safety ordinances;
 - (4) The applicant has previously had a massage establishment permit, massage therapist permit, or any similar license, certificate, or permit revoked by the city or any public agency;
 - (5) The applicant is found to have made a material misstatement or omission in the application or in a previous application.
 - (6) The applicant has been successfully prosecuted under the Red Light Abatement Act (California Penal Code section 11225 et seq.) or any similar law in another jurisdiction; or
 - (7) The applicant has been convicted of any of the following offenses during the seven years preceding the date of the application:
 - (i) Conduct which requires registration under California Penal Code section 290.
 - (ii) Conduct which is in violation of California Penal Code sections 220, 245.3, 245.5, 261, 264.1, 266(h), 266(i), 266(j), 286, 288, 314, 315, 316, 318, 647(a), 647(b), or 647(d).
 - (iii) Crimes that are designated in California Government Code section 51032(b).

- (iv) Any other crime involving dishonesty, fraud, deceit, violence, or moral turpitude.
 - (v) Conspiracy or attempt to commit any of the aforementioned designated offenses.
 - (vi) Convictions to a charge of a violation of California Penal Code sections 415 and 602, or any lesser included or related offense, in satisfaction of, or as a substitute for, any of the previously listed crimes, or any crime committed while engaged in the ownership of a massage establishment or the practice of massage therapy.
 - (vii) Convictions that have been expunged and convictions under the laws of other jurisdictions which proscribe the same or similar conduct as therefore designated crimes shall be reported.
 - (viii) Been convicted of a Health and Safety Code section 11550 or any offense involving the illegal sale, distribution or possession of a controlled substance specified in Health and Safety Code sections 11054, 11055, 11056, 11057 or 11058.
 - (ix) Whether the applicant has been subjected to a permanent injunction against the conducting or maintaining of a nuisance pursuant to California Penal code sections 11225 et seq. or any similar provisions of law in a jurisdiction outside the state.
- c. If prosecution is pending against the applicant either for conduct listed in section 6-10.08 or for conduct violating this Article's provisions, the Chief of Police may postpone decision on the application until the final resolution of the prosecution. As used in this subsection, prosecution means charges filed by the district attorney, administrative proceedings brought by a local government or agency, or a civil or administrative action maintained by any city, county, state, or government.
- d. The Chief of Police may postpone decision on a license or permit application until the City of Hayward receives the applicant's fingerprint review results from the California Department of Justice.
- e. The Chief of Police shall give written notice of the grounds for denial to the applicant personally or by first class mail, postage prepaid, at the address

provided in the application. The notice shall advise the applicant of the right to appeal the decision.

SEC. 6-10.08 DISQUALIFYING CONDUCT.

- a. Conviction of, or entry of a plea of guilty or no contest to, an offense that requires registration under California Penal Code section 290, or which is a violation of sections 266(i), 314, 315, 316, 318 or 647(b) or the sections in Part 1, Title 9, Chapters 7.5 or 7.6 of the Penal Code or equivalent offenses under the laws of another jurisdiction, or any offense involving sexual misconduct with children or adults, even if expunged pursuant to Penal Code section 1203.4;
- b. Conviction of, or entry of a plea of guilty or no contest to, an offense involving the sale of a controlled substance specified in sections 11054, 11055, 11056, 11057, 11058, 11351, 11352, 11358 through 11363 or 11378 through 11380 of the California Health and Safety Code, or equivalent offenses under the laws of another jurisdiction, even if expunged pursuant to Penal Code section 1203.4;
- c. Conviction of, or entry of a plea of guilty or no contest to, a violation of Penal Code Section 415 as a result of an arrest for violation of Penal Code section 647(b).
- d. Any conduct presented in Section 6-10.10, or any prohibited activity or violation of any relevant California and Federal statute, including but not limited to, Business and Professions Code sections 4600, et seq.

SEC. 6-10.09 HEARING ON DENIAL OF PERMIT. If a permit for a massage establishment is denied, an applicant may, within seven calendar days after such action is taken, request a hearing before the City Manager or her/his designee, at which time evidence will be received for the purpose of determining whether the action of the Chief of Police in denying the issuance of an annual permit should be sustained or reversed. The City Manager or her/his designee shall render her/his decision, in writing, within seven calendar days after the hearing has been concluded.

SEC. 6-10.10 GROUND FOR SUSPENSION OR REVOCATION OF PERMIT. The Chief of Police may revoke or suspend any permit granted under this Article if any of the following are found:

- a. The permittee does not possess the qualifications for the permit as required by this Article;
- b. The permittee has been found to be in violation of any provision of this Article;

- c. The permittee has engaged in conduct or operated a massage establishment or has engaged in conduct as a massage therapist in a manner which violates this Article, any conditions of the permit, or any of the laws which would have been grounds for denial of the permit;
- d. There is fraud, material misrepresentation, false statement, or omission of a material fact in any application for a permit or in any supplementary material;
- e. An activity authorized in the permit has been conducted in an unlawful manner or in such a manner as to constitute a menace to the health, safety, or general welfare of the public;
- f. Upon a recommendation from the city and/or county officials which states that such business is being managed, conducted, or maintained without regard for public safety or public health;
- g. Out-Call services not authorized by the Chief of Police, and/or out-call services not in accordance with any provision within this Ordinance, or Chief of Police out-call policy described in the massage establishment permit application, or applicable State or Federal statute, rule, or regulation; or
- h. Any prohibited activity or violation of any relevant California and Federal statute, including but not limited to, Business and Professions Code sections 4600, et seq.

SEC. 6-10.11 HEARING ON SUSPENSION OR REVOCATION OF PERMIT. Prior to the suspension or revocation of any permit issued pursuant to this Article, a hearing as provided in section 6-10.09 of this Article, shall be held by the Chief of Police, at which time evidence will be received for the purpose of determining whether or not such permit shall be suspended or revoked, or whether the permit may be retained. The Chief of Police shall render her/his decision within seven calendar days after the hearing has been concluded.

SEC. 6-10.12 BURDEN OF PROOF. Unless otherwise specifically prohibited by law, the burden of proof is on the applicant or permittee in any hearing or other matter under this Article.

SEC. 6-10.13 APPEAL OF SUSPENSION OR REVOCATION OF PERMIT. Appeal from the decision of the Chief of Police to suspend or revoke a permit pursuant to section 6-10.11 may be appealed to the City Manager within seven calendar days of the decision of the Chief of Police.

SEC. 6-10.14 MINIMUM AGE REQUIREMENT.

- a. No person shall be employed in a massage establishment or perform massage therapy or manage or hold an ownership interest in a massage establishment who is not at least 18 years of age.
- b. It is unlawful for the owner, proprietor, managing employee, or any other person in charge of any massage establishment to employ any person under eighteen (18) years of age.

SEC. 6-10.15 PERMITS NONASSIGNABLE. No permit shall be sold, transferred, or assigned by the permittee or by operation of law, to any other person. Any such sale, transfer, assignment, attempted sale, attempted transfer or attempted assignment shall constitute an immediate revocation of the permit and the permit shall thereafter be null and void. A new owner of a massage therapy establishment must submit a new application for a massage establishment permit in accordance with this Article.

SEC. 6-10.16 CHANGE OF NAME OR LOCATION, EXPANSION OF BUILDING.

- a. No permittee shall operate under any name or conduct any massage establishment under any designation or location not specified in the permit.
- b. In the case of any proposed change of name, notification thereof shall be made to the Chief of Police at least 30 calendar days prior to the change. Any proposed change of name is subject to the approval of the Chief of Police.
- c. Any proposed change of location of a massage establishment is subject to the approval of the Chief of Police, in addition to compliance with all city ordinances and regulations.
- d. Any application for an expansion of a building of a massage establishment shall require compliance with this Article and all other applicable laws.

SEC. 6-10.17 DISPLAY OF PERMIT.

- a. The massage establishment permit and a copy of the CAMTC certification of each and every massage therapist employed in the establishment shall be displayed in an open and conspicuous place on the premises.
- b. Each massage therapist shall be issued a photograph identification badge from the Police Department. When visiting a location other than a massage establishment in order to give a massage, each massage therapist shall display the badge.

SEC. 6-10.18 FACILITIES AND OPERATING REQUIREMENTS.

- a. Every massage establishment and every massage therapist shall comply with standards established by the Alameda County Health Services for such businesses and practitioners and the following facilities and operations requirements:
- (1) The massage establishment's premises and facilities shall meet and be maintained in a condition to comply with all applicable code requirements of the city, county, and state, including, but not limited to, those related to the safety of structures, adequacy of the plumbing, lighting, heating, ventilation, waterproofing of rooms in which showers, water or steam baths are used, and the health and cleanliness of the facility.
 - (2) Massage establishments and massage therapists shall at all times have an adequate supply of clean sanitary towels, coverings, and linens. Towels, non-disposable coverings, and linens shall not be used on more than one client, unless they have first been laundered and disinfected. Disposable towels and disposable coverings shall not be used on more than one client. Soiled linens and paper towels shall be deposited in separate receptacles.
 - (3) In the massage establishment, wet and dry heat rooms, steam or vapor rooms or cabinets, toilet rooms, shower and bathrooms, tanning booths, whirlpool baths, and pools shall be thoroughly cleaned and disinfected as needed, and at least once each day when the premises are open, with a disinfectant. Bathtubs shall be thoroughly cleaned with a disinfectant after each use. All walls, ceilings, floors, and other physical facilities for the establishment shall be in good repair, and maintained in a clean and sanitary condition.
 - (4) All equipment used in the massage therapy operation shall be maintained in a clean and sanitary condition. Instruments utilized in performing massage therapy shall not be used on more than one client unless they have been sterilized, using standard sterilization methods.
 - (5) If separate dressing rooms are offered, they may be occupied by no more than one person at a time. Dressing rooms need not be separate from the room in which the massage therapy is being performed.

- (6) Toilet facilities shall be provided in convenient locations within the massage establishment and shall consist of at least one unisex toilet with lavatories or wash basins provided with soap and both hot and cold running water either in the toilet room or vestibule.
- (7) A minimum of one 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 therapy services. Soap and sanitary towels shall also be provided at each basin.
- (8) Massage therapy shall be provided or given only between the hours of 7:00 a.m. and 10:00 p.m. No massage establishment shall be open and no client shall be in the establishment between 10:00 p.m. and 7:00 a.m.
- (9) No alcoholic beverages shall be sold, served, furnished, kept, consumed, or possessed on the premises of any massage establishment.
- (10) Controlled substances must not be consumed in a massage establishment unless the person has a prescription for the substance.
- (11) No owner, manager, operator, responsible managing employee, or permittee shall permit, and no massage therapist contractor shall offer or perform, any service other than those permitted under this Article.
- (12) No permittee or employee of a massage establishment shall:
 - (a) Expose the sexual or genital part of the permittee or employee in the course of a massage therapy; or
 - (b) Touch or expose the sexual or genital part of any other person in the course of a massage therapy.
 - (c) Perform massage therapy on a patron with the intent or purpose of arousing, appealing to, or gratifying the sexual desires of said patron.

- (d) Perform any task or service associated with the massage establishment while nude, semi-nude, or dressed in lingerie, see-through or transparent attire.
- (13) No permittee or employee of a massage establishment 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 customers that any service is available that is prohibited under this Article nor shall any massage establishment employ language in any advertising text or business name that would reasonably suggest to a prospective client that any service is available that is prohibited under this Article.
- (14) The use or possession of adult-oriented merchandise in or on any part of a massage establishment is expressly prohibited.
- (15) Condoms must not be kept or used for any purpose in the massage establishment.
- (16) Recordings.
 - (a) No electrical, mechanical or artificial device shall be used by the operator and/or manager, massage therapist or any employee of the massage establishment for audio and/or video recording or for monitoring the performance of a massage therapy, or the conversation or other sounds in the massage rooms without the knowledge and written consent of the patron.
 - (b) No surveillance cameras, or video recording devices of any type, may be installed on the exterior of the massage establishment. Other surveillance cameras must not be maintained or operated so as to provide surveillance of the exterior of a massage establishment or the surrounding area. No video recording devices may be installed into rooms in which massage services will be rendered.

- (17) Locks prohibited.
 - (a) No massage therapy shall be conducted within any cubicle, room, booth or treatment room on the premises of a massage therapy business which is fitted with a lock.
 - (b) All entrance and exit doors on the premises of a massage establishment shall remain unlocked during business hours unless the massage establishment is a business entity owned by one individual with one or fewer employees or independent contractors.
- (18) All massage services shall be paid for in the reception area. Massage establishments may utilize a system where tip envelopes are provided in the treatment rooms to be utilized and deposited by the client in the reception area.
- (19) A massage establishment must not be used for residential or sleeping purposes unless the massage establishment is properly zoned and has all necessary use permits, and the massage establishment is owned by one individual with one or fewer employees or independent contractors.
- (20) No person other than the client and the client's immediate family or guardian is allowed in the massage room while the client is dressing or undressing.
- (21) No person other than the client, the massage therapist assigned to the client, and the client's immediate family or guardian are allowed in the massage room if any door into the massage room is closed. Others may be in the massage room so long as all doors to the room are fully open.
- (22) Massage establishment personnel or any massage therapist must not inquire as to whether any client is a peace officer.

SEC. 6-10.19 RESPONSIBILITY OF EMPLOYER. It shall be the responsibility of the massage establishment permittee who employs or allows any person acting or purporting to act as a massage therapist, or the employer of any person acting or purporting to act as a massage therapist, to ensure that such person complies with the requirements of this Article and all laws.

The massage establishment permittee shall be held responsible for the conduct of all persons on the premises who engage in providing the service of massage therapy. Any act or omission of any person giving massage therapy, or any service of massage therapy, shall be deemed the act or omission of the holder of the massage establishment permit for the purposes of determining

whether the permit may be revoked, suspended, or denied. Proof of knowledge of any violation of this section shall not be required for purposes of suspension, revocation, or denial of a massage establishment permit.

SEC. 6-10.20 PERMIT DURATION AND RENEWAL.

- a. A permit shall be valid for two years from the date of issuance unless revoked or suspended.
- b. A permittee may apply for a renewal of a permit 30 calendar days prior to the expiration of the permit. If, upon the 31st day after the expiration of a permit, an application of renewal has not been received, the permit shall be deemed expired. Any permit issued under this Article shall be returned to the Chief of Police within 48 hours of its expiration. No privilege to provide massage therapy shall exist until an application for renewal has been granted. After a permit expires, a new application may be filed.
- c. Permits may be renewed by filing an application for renewal under penalty of perjury updating information in the original application provided to the Chief of Police.
- d. Verification of continued certification, in good standing, from CAMTC, of all massage therapists shall accompany the application for renewal. Verification of CAMTC certification of all new massage therapists hired by a massage therapy establishment shall be submitted to the Chief of Police within 30 days of hiring a new massage therapist.
- e. To renew a permit under this Article, the permittee shall pay the city a nonrefundable fee in an amount set forth by resolution of the City Council. A copy of the receipt for the nonrefundable fee shall accompany the application for renewal.
- f. After investigating the application for renewal, the Chief of Police shall renew the permit if the permittee continues to meet the requirements for the issuance of a permit, and none of the grounds for denial of a permit set forth in this Article exist. The Chief of Police shall renew the permit within 30 calendar days of such request if the information upon which the original application was granted remains unchanged and no violations of this Article have been committed.

- g. The permittee must update the Chief of Police of any violation of this Article, violation of Business and Professions Code section 4609, or any change in the status of the CAMTC certification of any employee or independent contractor within 30 calendar days of the violation or change in certification status.

SEC. 6-10.21 APPLICABILITY TO EXISTING BUSINESSES.

- a. All persons currently holding a valid massage establishment permit shall have six months following the enactment of this Ordinance in which to comply with the requirements of this Article. Except as provided in section 6-10.24b., if a permittee does not attain compliance with this Article within the prescribed time limits, the Chief of Police shall immediately suspend or revoke the permittee's permit(s).
- b. The Chief of Police may issue a provisional permit to any massage establishment, for a period not to exceed six months, if the applicant is able to show that substantial compliance with the requirements of this Article has been met and that the remaining compliance can be achieved within the period of the provisional permit. This six-month provisional permit shall not be renewed.
- c. Any business that holds itself out as a massage establishment in any way will be subject to the provisions of this Ordinance.

SEC. 6-10.22 CEASE OF BUSINESS. If at any time during the duration of a permit issued under this Article a permittee ceases to do business as a massage establishment, the permittee shall:

- a. Return any permit issued under this Article to the Chief of Police within five business days; and
- b. Notify the Revenue Division of the Finance Department.

SEC. 6-10.23 INSPECTION. The Police Department shall, from time to time and during any hour in which a massage establishment is open for business, make an administrative inspection of each massage establishment for the purpose of determining compliance with this Article.

SEC. 6-10.24 ENFORCEMENT.

- a. It is the duty of the Chief of Police to enforce rules and regulations in accordance with this Article.

- b. Pursuant to the City's prosecutorial discretion, the city may enforce violations of the provisions of this Article as criminal, civil and/or administrative actions.
- c. If a person falsely states or advertises or puts out any sign or card or other device, or falsely represents to the public through any print or electronic media, that he or she or any other individual is licensed, certified, or registered by a governmental agency as a massage therapist or massage practitioner, that person shall be subject to a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, to be assessed and collected in a civil action brought by the City Attorney, District Attorney, or Attorney General.

Section 2. Severance. Should any part of this ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 3. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective 30 days from and after the date of its adoption.

Section 4. This ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) of the CEQA Guidelines (Title 14, Chapter 3, of the California Code of Regulations) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) of the CEQA Guidelines (because it has no potential for resulting in physical change to the environment, directly or indirectly).

INTRODUCED at a special meeting of the City Council of the City of Hayward, held on the 13th day of January, 2015, by Council Member Mendall.

ADOPTED at a regular meeting of the City Council of the City of Hayward held the 20th day of January, 2015, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS: Zermeño, Mendall, Jones, Peixoto, Lamnin, Márquez
MAYOR: Halliday

NOES: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

APPROVED: Benton Halliday
Mayor of the City of Hayward

DATE: January 27, 2015

ATTEST: William J. Jans
City Clerk of the City of Hayward

APPROVED AS TO FORM:

Russell S. Jovan
City Attorney of the City of Hayward