

ORDINANCE NO. _____

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

**AN ORDINANCE AMENDING
CHAPTER 5.44 (MESSAGE ESTABLISHMENTS) OF TITLE 5 (BUSINESS
REGULATIONS) OF THE SAN MATEO COUNTY ORDINANCE CODE,
RELATING TO THE REGULATION OF MASSAGE PARLORS**

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

SECTION 1. Chapter 5.44 (Massage Establishments), of Title 5 (Business
Regulations) of the San Mateo County Ordinance Code, as presently written, is deleted.

SECTION 2. New Chapter 5.44 (Massage Establishments), of Title 5 (Business
Regulations) of the San Mateo County Ordinance Code is adopted, to read as follows:

“Chapter 5.44 MESSAGE ESTABLISHMENTS

5.44.010 PURPOSE AND INTENT.

(a) It is the purpose and intent of the Board of Supervisors that the operation of
massage establishments and the services of massage technicians as defined in this chapter
should be regulated so as to further the public interest, health, safety, and welfare by
providing minimum building, sanitation, and health standards for massage
establishments, and by providing minimum qualifications for massage technicians, to
insure that persons offering massage shall possess the qualifications necessary to safely
and legally perform such services.

Furthermore, it is the purpose and intent of the Board of Supervisors to address
the negative impacts identified in the Board’s findings to reduce or prevent neighborhood

blight; to protect and preserve the quality of the County neighborhoods and commercial districts; to maintain property values; to protect and preserve the quality of urban life; to deter criminal activity; and to enhance enforcement of criminal statutes relating to the conduct of operators and employees of massage establishments.

(b) It is the intent of this chapter to establish reasonable requirements and standards to ensure the protection of the health, safety and welfare of both clients and employees of massage establishments, to reduce the opportunities for acts of prostitution and other illegal activities from occurring in these establishments, to minimize confusion caused by misleading and deceptive advertising, and to provide for effective utilization of public safety resources commensurate with the level of criminal activities.

5.44.020 DEFINITIONS.

Unless the particular provision or the context otherwise requires, the definitions and provisions contained in this section shall govern the construction, meaning, and application of words and phrases used in this chapter:

(a) "Massage" means any method of treating the external parts of the body for remedial, health, or hygienic purposes for any form of consideration (whether for the massage, as part of a membership, as part of other services or a product, or otherwise) 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.

(b) "Massage Establishment" means any establishment having a fixed place of business where any person, firm, association, partnership, or corporation engages in, conducts, or carries on, or permits to be engaged in, conducted or carried on, any massage.

(c) "Massage Technician" means 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). This includes off-premise massage service providers, when actually in contact with clients.

(d) "Employee" means any and all persons, other than a massage technician, employed by the massage establishment who may render any service to the establishment, and who receive any form of compensation from the establishment, and who do not administer massage services to clients.

(e) "Recognized school of massage" means any school or institution of learning which teaches the theory, ethics, practice, profession and work of massage, which school or institution of learning requires a residence course of study of not fewer than two hundred hours of nonrepetitive instruction taken in not more than three calendar months and at least seventy-five hours of demonstration and practice of massage techniques before the student shall be furnished with a diploma or certificate of completion from such school or institution of learning following the successful completion of such course of study or learning. The school must have been approved pursuant to California Education Code and California regulations governing Private Postsecondary and Vocational Institutions, or other applicable state law or regulations or, if the school is not

located in California, must comply with standards commensurate with those required in the California Education Code and California regulations governing Private Postsecondary and Vocational Institutions, and the license applicant must have obtained certification under any similar state certification program, if such exists in that state. Any school or institution of learning offering or allowing correspondence course credit not requiring actual attendance at class, or credit based on work experience outside the school setting, or courses for massage therapist training not approved by the California Department of Education or Department of Consumer Affairs shall not be deemed a "recognized school of massage."

(f) "Off-premise Massage Service" means any business where a function of such business is to engage in or carry on massage, not at a fixed location or at a massage establishment, but at a location designated by the client or massage technician. This includes outcall massage services.

(g) "Applicant" shall mean the license applicant and each of the following persons: the managing responsible officer/employee, a general partner, a limited partner who owns or controls 20% or more of the business, a shareholder who owns or controls 20% or more of the shares.

(h) "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 mean the advertising and soliciting of massages.

(i) "Advertise" includes, but not by way of limitation, the issuance of any card, sign, or device or any person, the causing, permitting, or allowing of any sign or marking on or in any building or structure, or in any newspaper, magazine, or in any directory under a listing of massages or massage establishments.

(j) "Solicit" includes, but not by way of limitation, to request, ask, demand or otherwise arrange for the provision of services.

(k) "Health Officer" means the Health Officer of the County of San Mateo or his or her authorized representative.

(l) "Board," unless otherwise specified, means the County License Board.

(m) "Client" includes the customer or patron who pays for or receives massage services.

**5.44.030 LICENSE REQUIRED -- MASSAGE ESTABLISHMENT;
OFF-PREMISE SERVICE; MASSAGE TECHNICIAN.**

It shall be unlawful for any person, association, partnership or corporation to engage in, conduct or carry on, or permit to be engaged in, conducted or carried on in or upon any premises within the unincorporated area of the County of San Mateo, the operation of a massage establishment or off-premise massage service or the function of a massage technician without first having obtained a license issued by the County of San Mateo pursuant to the provisions hereinafter set forth. It shall be unlawful for any person to solicit within the unincorporated area of the County of San Mateo for the provision of a massage unless such person holds a valid license as required by this ordinance.

A license shall be valid for twelve (12) months from the date of issuance unless revoked or suspended.

5.44.040 BUSINESS LICENSE INVESTIGATION AND FEE REQUIREMENT.

A massage establishment and off-premise service shall pay the required business license fee for such business and occupation, in an amount established by resolution of the Board of Supervisors. Upon receipt of said fee and application, the Tax Collector shall refer the application to the Building Inspector, the appropriate fire protection agency, the Sheriff, Health Officer, and the Planning Commission, each of which within a period of 30 days from the date of filing the application shall inspect the premises proposed to be used as a massage establishment and shall make a written recommendation to the License Board concerning compliance with the respective requirements.

5.44.050 LICENSE NOT REQUIRED.

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, sanatoriums, or other any health facilities duly licensed by the State of California, and employees of these licensed institutions, while

acting in 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 met:

(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.

5.44.060 MASSAGE ESTABLISHMENT, OFF-PREMISE MASSAGE SERVICE LICENSE APPLICATION, AND DECISION ON APPLICATION.

(a) Any person, corporation, or partnership desiring to obtain a license to operate a massage establishment or off-premise massage service shall make application to the Tax Collector on a form provided by that office. Prior to submitting such application, the applicant shall pay a non-refundable fee in an amount to be established by a resolution of the Board of Supervisors for each massage technician working at the establishment to defray the cost of the investigation and report required by this chapter. A copy of the receipt for payment of fee(s) shall accompany the application.

(b) The application and fee required under this section shall be in addition to any license, permit or fee required under any other chapter or section of this Code.

(c) The application for license does not authorize a massage establishment or off-premise service to operate until such license has been granted.

(d) Each applicant for a license shall submit the following information 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, and other names that the applicant has used or by which the applicant has been known, date of birth, California drivers license number or California identification number, social security number (unless prohibited by law), present residence address and telephone number. If the applicant has used more than one drivers license number, California identification number, or social security number, that fact shall be disclosed in the application. The applicant shall accurately

provide his or her sex, height, weight, color of hair, and color of eyes.

(4) The previous three (3) residences of the applicant, and all residences for the past five (5) years if the applicant has had more than three (3) residences during that time, and the inclusive dates at each address.

(5) The applicant's business, occupation, and employment history for five (5) years preceding the date of application, and the inclusive dates of same.

(6) The license history of the applicant: whether such person has ever had any permit or license issued by any agency, board, city, County, territory, or state; the nature of the permit or license and the date of issuance of such a permit or license, whether the permit or license was revoked or suspended, and the reason therefor.

(7) All arrests or convictions, for other than misdemeanor traffic offenses, and all arrests or convictions for any crime involving conduct which requires registration under California Penal Code Section 290, or convictions of California Penal Code Sections 314, 415, 316, 318, 647(a), (b), (as now written or as amended), or arrests or convictions of crimes designated in Government Code Section 51032(b), or for any crime involving dishonesty, fraud, deceit, force or violence, or moral turpitude. All injunctions for nuisances under Penal Code Section 11225 or similar laws, and all prior violations of municipal or county ordinances or codes other than other than misdemeanor traffic offenses shall be reported. Arrests or convictions under the laws of other states or countries which proscribe the same conduct or similar conduct as the afore-designated California crimes shall be provided. Convictions that have been expunged must be reported, if the crime falls within the provisions of this paragraph.

(8) A complete description of all services to be provided by the

establishment or off-premise service provider.

(9) The name, address, and date of birth of each massage technician or employee who is or will be employed in the massage establishment or off-premise service.

(10) The name and address 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.

(11) Acceptable written proof that the applicant is at least eighteen (18) years of age.

(12) If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation or charter together with the state and date of incorporation and the names and residence addresses of each of its current officers and directors, and of each stockholder holding more than five (5%) percent of the stock of that corporation. The corporation shall designate the name and address of an officer who is authorized to accept the service of legal process.

(13) If the applicant is a partnership, the application shall set forth the names and residence address of each of the partners, including limited partners. If the applicant is a limited partnership, it shall furnish a copy of its certificate of limited partnership as filed with the 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.

(14) The applicant, 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 chapter. The corporation's or partnership's responsible managing officer must, at all times, meet all of the requirements set for licensee by this chapter or the corporation or partnership license shall be suspended until a responsible managing officer who meets such requirements is designated. If no such person is found within ninety (90) days, the corporation or partnership license is deemed canceled and a new application for license must be filed.

(15) The Tax Collector, License Board, or County officials may require the applicant to furnish fingerprints when needed for the purpose of establishing identification. Fingerprinting will be taken at a place designated by the License Board. Any required fingerprinting fee will be the responsibility of the applicant.

(16) Two (2) portrait photographs at least 2 by 2 inches of the applicant and managing responsible officer taken within 60 days of the application. Additional photographs may be required by or taken by the License Board.

(17) A description of any other business to be operated on the same premises, or on adjoining premises, owned or controlled by the applicant.

(18) The name and address of the owner and lessor of the real property upon or in which the business is to be conducted. In the event the applicant is not the legal owner of the property, the application must be accompanied by a copy of the lease and a notarized acknowledgement from the owner of the property that a massage establishment will be located on his/her property.

(19) Authorization for the County of San Mateo, 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.

(20) Proof of massage malpractice insurance shall be obtained in the sum of not less than \$100,000 per massage technician licensed, or to be licensed, at a massage establishment or licensed as an off-premise service; this requirement can be satisfied by malpractice insurance being provided in the name of individual massage technicians. Proof of such insurance shall be filed with the License Board.

(21) The applicant shall submit to the License Board any change of address or disclose any change of fact pertinent to the application which may occur during the procedure of applying for a massage establishment permit.

(22) A certificate of compliance from the County Of San Mateo Sheriff, The Health Officer For The County Of San Mateo, County Planning/Zoning, And Fire Protection Code Enforcement Officers which certifies that the premises of the massage establishment meets all applicable codes and regulations must be submitted prior to application approval. Any required inspection fees shall be the responsibility of the applicant.

(23) Such other reasonable identification and information as may be required by the Tax Collector necessary to discover the truth of the matters hereinbefore specified, and authorization for the Board and County employees to investigate and verify all submitted information.

(e) The License Board shall have up to sixty (60) days after submission of all required information, including the required certificates of compliance, to investigate the facts stated in the application and the background of the applicant. Upon the completion

of the investigation, the Tax Collector shall grant the license, with or without conditions, if the License Board approves the application and finds, in the exercise of discretion, all of the following:

- (1) The required fee has been paid.
- (2) The application conforms in all respects to the provisions of this chapter and to other laws.
- (3) The applicant has not made a material misrepresentation or omission in the application, or in statements to County personnel investigating matters material to the application, or investigating compliance with applicable statutes and ordinances, or in testimony before the Board.
- (4) The applicant, whether an individual, or any of the stockholders of the corporation, or any officer or director, if the applicant is a corporation, or a partner if the applicant is a partnership, or the managing responsible officer has not been convicted within ten (10) years preceding application in a court of competent jurisdiction of an offense involving conduct which requires registration under California Penal Code Section 290, or of conduct which is a violation of the provisions of California Penal Code Sections 311 through 311.7 314, 315, 316, 318, 647(a), (b), (d) (as now written or as amended), or of crimes that are designated in Government Code Section 51032(b), or any other crime involving dishonesty, fraud, deceit, violence or moral turpitude; or that an injunction has not been issued against such person or entity under Penal Code Section 11225. Convictions under the laws of other states or countries which proscribe the same or similar conduct as the afore-designated California crimes shall be considered.
- (5) Within ten (10) years preceding application, the applicant or managing

responsible officer/employee has not had a massage establishment, off-premise service, massage technician, or other similar permit or license revoked, or suspended by the County of San Mateo, or any other state or local agency; or engaged in conduct or operated a massage or similar establishment in a manner that would be a grounds for revocation of a license under this chapter; or owned or managed a massage or similar establishment where persons required to be licensed were allowed to work without the required licenses.

(6) The applicant is at least eighteen (18) years of age.

(7) The license, as requested by the applicant, would comply with all applicable laws, including, but not limited to, health, zoning, and fire and safety requirements and standards.

(f) If the License Board, following investigation of the applicant, in the exercise of its discretion, fails to make the findings stated in (e), the Board shall deny said application by written notice to the applicant.

(g) Additional grounds for denial of license.

The License Board shall deny any application for a license if it finds:

(1) That the business, occupation or activity sought to be licensed, or the conduct of any licensee, is or has been either:

(A) Prohibited by any local ordinance or by any State or Federal law, rule or regulation; or

(B) Maintained as a public nuisance (as defined by either the California Civil Code or Penal Code);

(2) That such applicant, or any agent or employee of the applicant who

acted under the direction and control, or with the knowledge and consent, of such applicant, has done one or more of the following:

(A) Has previously obtained a license by fraud or misrepresentation;

(B) Has been guilty of fraud, false advertising, or other misrepresentation or misleading statements, or dishonesty;

(C) Has knowingly made a false statement in a material matter in its application, or in statements to County personnel investigating matters material to the application, or investigating compliance with applicable statutes and ordinances, or in testimony before the Board.

5.44.070 MASSAGE ESTABLISHMENT AND OFF-PREMISE OPERATING REQUIREMENTS.

No person shall engage in, conduct, carry on, or permit to be engaged in, conducted, or carried on, any massage establishment or off-premise service, unless all of the following requirements are met:

(a) Each person employed or acting as a massage technician shall have a valid license. A license badge issued by the Tax Collector shall be worn by and clearly visible on the massage technician's person during working hours and at all times when the massage technician is inside the massage establishment. It shall be unlawful for any owner, manager, operator, responsible managing officer/employee, or licensee to employ or permit a person to act as a massage technician who is not in possession of, and displaying, a valid, unrevoked massage technician license badge issued pursuant to this chapter.

(b) The possession of a valid massage establishment or off-premise massage

license does not authorize the possessor or any other person to perform work for which a massage technician license is required.

(c) Massage shall be provided or given only between the hours of 7:00 a.m. and 9:00 p.m. No massage establishment shall be open and no client shall be in the establishment between 9:00 p.m. and 7:00 a.m. No off-premise massage shall be provided or given before 7:00 a.m. or after 9:00 p.m. A massage begun any time before 9:00 p.m. shall nevertheless terminate at 9:00 p.m., and, in the case of a massage establishment, all clients shall exit the establishment at that time. It is the obligation of the licensee, to inform clients of the requirement that services must cease at 9:00 p.m.

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

(e) The massage establishment license, and a copy of the license of each and every massage technician employed in the establishment, shall be displayed in the reception area or similar open public place on the premises.

(f) For each massage service provided, every massage establishment and off-premise massage service shall keep a complete and legible written record of the following information: the date and hour that service was provided; the full name and residence address of the person receiving the service; the type of identification examined

to verify this information; the service received; the name or initials of the employee entering the information; and the name of the massage technician administering the service. Such records shall be open to inspection and copying by County officials, including the Sheriff's Office, charged with enforcement of this chapter. These records may not be used by any licensee for any purpose other than as records of service provided and may not be provided to other parties by the massage establishment or service. Such records shall be retained on the premises of the massage establishment for a period of two (2) years.

(g) Massage establishments 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.

(h) 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 of the County of San Mateo. Bathtubs shall be thoroughly cleaned with a disinfectant approved by the health department after each use. All walls, ceilings, floors, and other physical facilities for the establishment must be in good repair, and maintained in a clean and sanitary condition.

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

methods.

(j) All licensees and their employees, including massage technicians, 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.

(k) No person shall enter, be, or remain in any part of a massage establishment 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, manager, or licensee shall not permit any such person to enter or remain upon such premises.

(l) No massage establishment or off-premise massage service shall operate as a school of massage, or use the same facilities as that of a school of massage.

(m) No massage establishment or off-premise massage service granted a license under the provisions of this chapter 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 described in section 5.44.020, and listed as an available service pursuant to sections 5.44.060 and 5.44.070 of this chapter, nor shall any massage establishment or off-premise massage service 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.

(n) No massage may be carried on within any cubicle, room, booth or any area

within a massage establishment which is fitted with a door capable of being locked. All doors to dressing rooms and treatment rooms shall open inward, and shall not be in any way obstructed or secured as to prevent ready entry or exit. Non-locking draw drapes, curtain enclosures, or accordion-pleated closures are acceptable on all inner dressing and treatment rooms in lieu of doors.

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

(p) No massage establishment shall be open for business without at least one massage technician on the premises at all times who is in possession of a current, unrevoked license.

(q) A massage table shall be used for massage, unless the form of massage requires that a yoga-type floor mat be used.

(r) No condoms shall be kept in the establishment unless they are the personal property of persons on-site and for the individual's personal use. Condoms shall not be offered to, sold, or furnished to any client.

(s) All massage services provided in a massage establishment shall be paid for in advance in the reception area, and all tips, if any, shall be given in the reception area.

(t) The entry to the reception area of the massage establishment shall remain unlocked during business hours when the establishment is open for business or when clients are present.

(u) Any off-premise massage technician who provides massage at any hotel or motel, shall first notify the owner, manager, or person in charge thereof that such

licensee intends to provide massage to a person or persons registered at the hotel or motel and shall display for inspection his or her license to such owner, manager, or person in charge.

5.44.080 MASSAGE ESTABLISHMENT FACILITIES REGULATIONS.

Every massage establishment shall maintain facilities meeting the following requirements:

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

(b) Minimum lighting consisting of at least one 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.

(c) Minimum ventilation shall be provided in accordance with applicable building codes and regulations.

(d) Adequate equipment for disinfecting and sterilizing instruments used in performing the acts of massage shall be provided.

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

(f) Closed cabinets shall be provided for storage of clean linens.

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

(h) 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 services. Sanitary towels shall also be provided at each basin.

(i) Pads used on massage tables shall be covered with material acceptable to the

Health Officer of the County of San Mateo.

(j) Handicapped Areas. All massage establishments shall comply with all state and federal laws and regulations for handicapped clients.

(k) There shall be a designated reception area separate from the area where massages are administered.

(l) Proof of compliance with all applicable provisions of the County of San Mateo Ordinance Code shall be provided prior to the issuance of any license.

5.44.090 INSPECTION BY OFFICIALS.

The investigating and enforcing officials of the County of San Mateo, including but not limited to the Sheriff and Health Officer 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.

5.44.100 LICENSES NON-ASSIGNABLE.

No massage establishment or off-premise massage service license may be sold, transferred or assigned by the licensee, or by operation of law, to any other person, group of persons, or entity; any such sale, transfer or assignment, or attempted sale, transfer or assignment, shall be deemed to constitute a voluntary surrender of such license and such license shall thereafter be deemed terminated and void; provided and excepting, however, that if the licensee is a partnership and one or more of the partners should die, one or more of the surviving partners may acquire, by purchase or otherwise, the interest of the deceased partner or partners without affecting a surrender or termination of such license,

and in each case the licensee shall thereafter be deemed to be the surviving partner(s). If the license is issued to a corporation, stock may be sold, transferred, issued, or assigned to stockholders who have been named on the application. If any stock is sold, transferred, issued, or assigned to a person not listed on the application as a stockholder, the license shall be deemed terminated and void unless the new stockholders are identified within 10 days of transfer and they meet all requirements under this chapter for stockholders.

5.44.110 CHANGE OF LOCATION OR NAME.

(a) A licensee seeking a change of location or name of a massage establishment shall make application for such change to the License Board. Such application may be approved at the discretion of the License Board, provided all ordinances and regulations of the County of San Mateo are complied with.

(b) No licensee shall operate under any name or conduct any massage establishment or off-premise service under any designation not specified in the approved license.

(c) Any application for an expansion of a building or other place of business of a massage establishment shall require compliance with this chapter; no expansion of a non-conforming location shall be permitted.

5.44.120 MASSAGE TECHNICIAN -- LICENSE REQUIRED.

No person shall engage in the business of massage or act as a massage technician unless such person holds a valid massage technician's license issued by the County of San Mateo. Each massage technician license holder shall be issued a photo identification badge which will also serve as a massage technician license. The massage technician

license holder shall display the massage technician license on his/her person during business hours, and the outcall massage technician shall display such license while in contact with clients, and when providing massage.

5.44.130 MASSAGE TECHNICIAN LICENSE APPLICATION.

(a) Each applicant for a massage technician license shall make application to the County Tax Collector, on a form provided by that office. Prior to submitting an application, an applicant shall pay a non-refundable fee in an amount to be established by a resolution of the Board of Supervisors to help defray the costs of the license application processing and investigation required by this chapter. A copy of the cashier's receipt shall accompany the application.

(b) License fees required under this section shall be in addition to any license, permit or fee requirements under any other section or ordinance of this Code.

(c) The application for license does not authorize the applicant to provide massage until such license has been granted.

(d) Each applicant for a massage technician license shall submit the following information under penalty of perjury:

(1) The name, telephone number, and address of the massage establishment employing or offering employment to the applicant, or, in the case of off-premise service, a general description of area where applicant intends to carry on business and general description of method of doing business.

(2) All information required by Section 5.44.060(d)(3) through (8), (11), and (21).

(3) A diploma or certificate of completion from a 200-hour resident

course of instruction from a recognized school of massage as defined in Section 5.44.020(e) of this chapter.

(4) In the event the applicant seeks to conduct off-premise massage services, an additional application must be submitted pursuant to section 5.44.060.

(5) Such other identification and information as the Tax Collector or License Board may require in order to fully investigate the matters as required to be set forth in the application.

(6) Two (2) photographs of the applicant to be taken by the License Board. Nothing contained herein shall be construed to deny the right of the License Board to confirm the height and weight of the applicant, or to take additional photographs.

(7) The License Board may require the applicant to furnish fingerprints when needed for the purpose of establishing identification. Any required fingerprinting fees will be the responsibility of the applicant. Fingerprinting shall be taken at a time and place designated by the Board.

(8) A certificate from a medical doctor licensed to practice in the State of California stating that the applicant has within thirty (30) days immediately preceding the date of application been examined and found to be free of any contagious or communicable disease. Pursuant to Health and Safety Code Section 199.20, and unless otherwise required by state or federal law, nothing in this chapter shall require testing or disclosure as to whether an applicant is infected with the human immunodeficiency virus (HIV).

(9) Authorization for the County of San Mateo, its agents and employees,

to seek information and to investigate the truth of the statements set forth in the application and to investigate the background of the applicant.

(10) Each applicant shall successfully complete both a written test and practical performance examination as developed by the license Board in consultation with the massage industry, administered through the County of San Mateo, wherein the applicant has been required to demonstrate a basic knowledge of anatomy, physiology, hygiene, and massage; the massage technician applicant shall be required to pass the examination. No applicant may take the test more than two times in a 12-month period. Any cost for this test and practical performance examination shall be borne by the applicant. An applicant who has passed a national certification exam for therapeutic massage and bodywork that is approved by the National Commission on Certifying Agencies shall be exempt from this requirement.

(e) The License Board, shall have up to 60 days after the submission of all required information to complete its investigation. Upon completion of its investigation, the Board shall grant the license, with or without conditions, if in the exercise of its discretion, it finds to be true those matters designated in Section 5.44.060(e), and in the exercise of his discretion further finds:

(1) The applicant has furnished an acceptable diploma or certificate of completion from a recognized school.

(2) The applicant has furnished written proof from a recognized school that the minimum number of hours of instruction have been completed.

(3) The applicant has either passed or is exempt from the test required by subsection 5.44.130(d)(10).

(4) The applicant has provided the certificate required by Section 5.44.130(d)(8).

(f) If the License Board, following investigation of the applicant, in the exercise of its discretion, does not make affirmative findings as set forth in (e) above, the Board shall deny said application by dated, written notice.

5.44.140 NEW MASSAGE TECHNICIANS -- NOTIFICATION.

The holder of the massage establishment or off-premise service license shall notify the License Board, in writing, of the name and address of each person employed as a massage technician at such establishment or off-premise service within two (2) days of that person's being employed. The requirements of this section are in addition to the other provisions of this chapter; and nothing contained herein shall relieve the licensee of the responsibility of ascertaining, prior to employment, that said person has a current unrevoked massage technician's license.

5.44.150 RENEWAL OF LICENSES -- MASSAGE ESTABLISHMENT, OFF-PREMISE MASSAGE SERVICE, MASSAGE TECHNICIAN.

Massage establishment, off-premise service, and massage technician licenses shall expire on the two-year anniversary date of its issuance unless sooner suspended or revoked.

Licensees shall have seventy-five (75) days prior to expiration to apply for renewal. If, upon the expiration of the license, an application for renewal has not been received, the license shall be deemed suspended until such time as the renewal application has been received. If a renewal application and all required information for the renewal is not received within 30 days after expiration, the license shall be deemed expired. No privilege to provide massage shall exist while a license is suspended, expired, or revoked.

If, since the initial application for a license under section 5.44.060 (Massage

Establishment, Off-Premise Massage Service License Application, And Decision On Application) or under section 5.44.130 (Massage Technician License Application), or since the last application for license renewal under section 5.44.150, there has been a change of circumstance relevant to any of the criteria in section 5.44.060 or section 5.44.130, that change shall be disclosed on the application for renewal. Massage technicians shall submit a new certificate with each application for renewal, as required by Section 5.44.130(d)(8). A renewal fee shall be paid prior to submitting the renewal application.

The License Board shall have up to sixty (60) days from the date of receipt of the application for renewal to investigate and verify the licensee's continuing eligibility and to issue the renewal. If the investigation is not completed before the license expires, the license shall be deemed suspended until the investigation is complete, at which time the license may be renewed, or the request for renewal may be denied.

In the event proceedings for revocation of a renewal applicant's license are filed or pending, no renewal of a license shall be granted during the pendency of said proceedings. If, upon the conclusion of proceedings before the License Board, it is decided not to revoke such license, or if such proceedings are dismissed, then licensee may obtain a renewal of said license in the manner provided in this chapter.

5.44.160 APPLICATION OF REGULATIONS TO EXISTING MASSAGE ESTABLISHMENTS, OFF-PREMISE SERVICES, AND MASSAGE TECHNICIANS.

The provisions of this chapter shall be applicable to all persons and businesses whether the business was established before or after the effective date of this chapter, except that massage establishments, and off-premise services legally in business prior to the effective date hereof, shall have sixty (60) days to comply with the provisions of this chapter.

Massage technicians who have valid massage technician licenses for not less than ninety (90) calendar days prior to the effective date of this chapter shall have until the expiration of their current license to apply for a massage technician license to meet the educational requirements of this chapter but shall otherwise comply with the regulations set forth herein within sixty (60) days. Upon written application demonstrating good cause, the license board, in its discretion, may grant an extension of time for a licensee to meet the deadlines established by this section.

5.44.170 PROHIBITED CONDUCT.

(a) It shall be unlawful for any massage technician or other person to massage the genital area of any client or for any operator of a massage establishment to allow or permit such massage.

(b) It shall be unlawful for any massage technician to be other than fully clothed in non-transparent clothing at all times that, both by design and the manner in which it is worn, shall not expose their genitals, pubic area, buttocks or chest, or for any operator of a massage establishment to allow or permit any massage technician clothed in violation of this section.

(c) It shall be unlawful for a massage technician to perform any massage services at any location other than that location specified on the technician's license. If off-premise massage services are to be performed, then the massage technician's license must indicate approval for off-premise massage services, and such services shall not be provided in a massage establishment.

(d) It shall be unlawful for any massage establishment, off-premise massage service, or massage technician to provide or continue a massage between 9:01 p.m. and

6:59 a.m.

(e) It shall be unlawful for any massage establishment or off-premise massage service, or any licensee, owner, operator, or responsible managing officer/employee, to violate any of the mandatory requirements of this chapter applicable to massage establishments or off-premise massage services.

(f) It shall be unlawful for any massage technician to violate any of the mandatory requirements of this chapter applicable to massage technicians.

(g) It shall be unlawful for any massage establishment or off-premise massage service, or any licensee, owner, operator, or responsible managing officer/employee, to offer, provide, or permit any massage therapist or employee to offer or provide any service not described in the complete description of all services to be provided by the establishment as required by this chapter.

5.44.180 DENIAL, SUSPENSION, OR REVOCATION HEARING.

The License Board may deny, revoke or suspend any license issued pursuant to this chapter if it is found that the licensee: lacks the qualifications for the license as required by this chapter; has been convicted of any violation of the provisions of this chapter or any lesser included offense; has engaged in conduct or operated the massage establishment, off-premise service, or as a massage technician in a manner which violates any of the mandatory provisions of this chapter, any conditions of the license, or any of the laws which would have been grounds for denial of the license; or has, within ten (10) years preceding application, had a massage establishment, off-premise service, massage technician, or other similar permit or license revoked or suspended by the County of San Mateo, or by any other state or local agency; or engaged in conduct or operated a

massage or similar establishment in a manner that would be a grounds for revocation of a license under this chapter; or owned or managed a massage or similar establishment where persons required to be licensed were allowed to work without the required licenses; or that such applicant, or any agent or employee of the applicant who acted under the direction and control, or with the knowledge and consent, of such applicant, has done one or more of the following:

(a) obtained a license by fraud or misrepresentation;

(b) committed fraud, false advertising, or other misrepresentation, uttering misleading statements, or dishonesty;

(c) knowingly made a misrepresentation or omission on the license application or renewal in a material matter either in the license application, or in statements to County personnel investigating compliance with applicable statutes and ordinances, or in testimony before the Board.

The License Board may also revoke or suspend a license if it finds that the business, occupation or activity sought to be licensed is or has been either: prohibited by any local ordinance or by any State or Federal law, rule or regulation; or maintained as a public nuisance (as defined by either the California Civil Code or Penal Code).

For purposes of this section, a licensee shall include the managing responsible officer or employee. Further, the licensee shall be responsible for those acts of its employees and massage technicians which are done in the course and scope of their employment by the licensee.

When the License Board revokes, suspends, or denies an application for a license, the License Board shall notify the applicant in writing of the Board's action and the

reasons therefor, and the applicant may make a written request for a hearing before the License Board within five (5) calendar days after receipt of such notice. If applicant requests such hearing, the License Board shall conduct a public hearing not less than five (5) business days after request for hearing is filed. Notice shall be given by personal service or certified mail to the address shown on the last application or renewal. If reasonable attempts to otherwise serve are not successful, service may be provided by first class mail. Service shall be deemed complete when personal service is made, when the certified letter is delivered, or when the notice is mailed by first class mail.

The decision of the license board shall be final. Notice of the License Board's decision shall be given in the same manner as for the hearing. If the license is suspended or revoked, the license shall be surrendered.

5.44.190 EVIDENCE AND BURDEN OF PROOF.

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. A hearing may be continued for a brief but reasonable time for the convenience of a party or witness.

Unless otherwise specifically prohibited by law, the burden of proof is on the licensee/applicant in any hearing or other matter under this chapter.

5.44.200 PUBLIC NUISANCE.

Any massage establishment operated, conducted, or maintained contrary to the provisions of this chapter shall be unlawful and a public nuisance, and the County Counsel Or District Attorney may, in the exercise of discretion, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings, for the abatement, removal and enjoinder thereof, in a manner provided by law.

5.44.210 NOTIFICATION OF CHANGE OF CIRCUMSTANCE OR VIOLATION.

Every massage establishment owner or operator and off-premise operator shall report immediately to the License Board any arrests of a licensee for an offense other than a misdemeanor traffic offense, resignations, terminations, or transfers of massage technicians employed in the business or practice, as well as the occurrence of any event involving the massage establishment, off-premise service, or massage technicians employed therein that constitutes a violation of this ordinance or state or federal law.

5.44.220 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 3. 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 license requirements and restrictions imposed by this chapter are

reasonably necessary to protect the health, safety and welfare of the citizens of the County.

(b) Massage establishments 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 establishments located within the unincorporated areas of the County. Municipalities within the County have also reported instances where acts of prostitution have been occurred in massage establishments.

(c) The California legislature and the courts have long recognized the necessity of imposing reasonable regulations and standards for the operation of massage establishments, 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 establishments by improperly trained or poorly educated massage therapists.

(e) The presence of establishments 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.

(f) Effective investigation, enforcement and prosecution of prostitution and other illegal activities in or at massage establishments often require a disproportionate diversion of public safety and law enforcement resources not only from within the County, but also from other jurisdictions.

SECTION 4. This ordinance shall be effective thirty (30) days from the date of passage thereof.

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