

**To: City Council**

**From: City Attorney's Office**

**RE: October 27, 2015 City Council Meeting, Agenda Item #4**

**Supplement to RTC 15-0984: Summary of Recommended Supplemental Changes to Massage Ordinance**

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In response to additional concerns raised by the public since the Report to Council was published, particularly comments from sole proprietor outcall-only massage businesses, staff is recommending the changes outlined below to the massage ordinance.

Changes to the ordinance since the first introduction are shown in track changes, and the following additional changes since the RTC for the October 27 meeting was released are shown in track changes and yellow highlights:

**9.41.010:** Add a statement to the purpose and intent section of the ordinance recognizing that massage therapy is a professional pursuit that can provide valuable health and therapeutic services to clarify the tone of the ordinance with respect to legitimacy of the massage profession and value of services.

**9.41.140(b)(5), (c)(1):** Add a statement clarifying that massage may be performed in chairs specifically designed for massage purposes.

**9.41.140(b)(9), (g):** Remove subsection (b)(9) to new subsection (g) to better call out exemptions to the facilities and operations requirements for home occupation and outcall-only massage businesses, and add provisions for businesses engaged in outcall-only massage clarifying that certain requirements applicable to massage performed at fixed business locations do not apply to outcall only businesses.

**9.41.150(a):** Clarify that inspection requirements for establishments where massage is provided on-site do not apply to outcall massage, and that inspection for home-based massage is allowed only to the extent of the portions of the home open to patrons.

No additional ordinance changes are recommended related to the following issues:

- **Grandfathering for non-CAMTC therapists:** One key element of the ordinance was to defer to CAMTC's certification determination for individual therapists and get out of the business of the City determining an individual's qualifications. The grandfathering provision is a one-year exemption designed to respond to specific concerns from a few longstanding Sunnyvale practitioners. Requiring CAMTC certification streamlines the City's review process and ensures consistency with CAMTC.

- **Home occupation requirements:** Staff believes that the existing requirements for home occupations adequately protect the character of neighborhoods and does not recommend changing those requirements for massage-based uses.
- **Couples massage:** No change is required; the proposed ordinance does not prohibit couples massage. Both members of a couple would be considered patrons present for the purpose of receiving massage services.
- **Sufficiency of CAMTC certification:** The ordinance does not require duplicate security checks for those with CAMTC certification (in fact, fees for CAMTC certified owners specifically exclude the cost of fingerprinting, which non-CAMTC owners must pay). Although the CAMTC certification program adds protections, DPS has found that illegitimate establishments generally do have at least a minimum number of CAMTC certified therapists, and that requirement alone is not necessarily sufficient to prevent illegal and/or unsafe practices.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE REPEALING AND REENACTING CHAPTER 9.41 (MASSAGE ESTABLISHMENTS AND MASSAGE THERAPISTS) OF TITLE 9 (PUBLIC PEACE, SAFETY OR WELFARE) AND AMENDING SECTIONS 19.12.140 (DEFINITIONS-“M”), 19.18.030 (TABLE-PERMITTED, CONDITIONALLY PERMITTED AND PROHIBITED USES IN RESIDENTIAL ZONING DISTRICTS), AND 19.60.010 (ADULT BUSINESSES) OF THE SUNNYVALE MUNICIPAL CODE**

WHEREAS, the City of Sunnyvale desires to amend provisions of the Sunnyvale Municipal Code relating to massage establishments and professionals, and on September 29, 2015 introduced an ordinance to make such amendments; and

WHEREAS, the City Council has determined that changes to the introduced ordinance are appropriate, and therefore desires to re-introduce the ordinance as set forth below.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. CHAPTER 9.41 REPEALED AND REENACTED. Chapter 9.41 (Massage Establishments and Massage Therapists) of Title 9 (Public Peace, Safety or Welfare) of the Sunnyvale Municipal Code is hereby repealed and reenacted to read as follows:

**Chapter 9.41**  
**MASSAGE ESTABLISHMENTS AND PROFESSIONALS**

- 9.41.010. Purpose and intent.**
- 9.41.020. Definitions.**
- 9.41.030. Business license required.**
- 9.41.040. Other permits and authorizations required.**
- 9.41.050. Exemptions.**
- 9.41.060. CAMTC certification required.**
- 9.41.070. Limited exception from CAMTC certification requirement.**
- 9.41.080. Massage establishment permit required; prohibited conduct.**
- 9.41.090. Permit application.**
- 9.41.100. Permit issuance.**
- 9.41.110. Permit denial.**
- 9.41.120. Notice of denial-appeal.**
- 9.41.130. Amendments to permit.**
- 9.41.140. Requirements for all massage establishment facilities and operations.**

- 9.41.150. **Massage establishment inspections.**
- 9.41.160. **Violations; moratorium.**
- 9.41.170. **Revocation or suspension.**
- 9.41.180. **Hearing for revocation or suspension.**
- 9.41.190. **Hearing rules.**
- 9.41.200. **Violations a public nuisance; penalties, nuisance abatement, and other remedies.**

**9.41.010. Purpose and intent.**

In enacting this chapter, the City Council recognizes that massage therapy is a professional pursuit which can offer the public valuable health and therapeutic services, but that unless properly regulated, the practice of massage therapy and the operation of massage businesses may be associated with unlawful activity and pose a threat to the quality of life in the local community. It is the purpose and intent of this chapter to provide for the orderly regulation of offices and establishments providing massage therapy services, and to prevent and discourage the misuse of massage therapy as a front for human trafficking, prostitution, and related activities in violation of state law, all in the interests of the public health, safety, and welfare, by providing certain minimum building, sanitation, and operation standards for such businesses, and by requiring certain minimum qualifications for the operators and practitioners of such businesses. It is the further intent of this chapter to streamline local massage therapy permitting procedures, while still facilitating and advancing the ethical practice of massage therapy, by relying upon the uniform statewide regulations enacted by the Legislature in 2008 as Business and Professions Code sections 4600 et seq., known as the Massage Therapy Act, as subsequently amended, and by restricting the commercial practice of massage in the city to those persons duly certified to practice by the California Massage Therapy Council formed pursuant to those statutes.

**9.41.020. Definitions.**

For the purpose of this chapter, unless the context clearly requires a different meaning, the words, terms, and phrases set forth in this section shall have the meanings that are given them in this section:

(a) "Authorized massage professional" means a massage professional who is identified in a permit issued pursuant to this chapter as a person employed or retained by a massage establishment to practice massage.

(b) "California Massage Therapy Council" or CAMTC means the massage therapy organization formed pursuant to Business and Professions Code section 4600 et seq.

(c) "CAMTC-certified massage professional" means any individual currently certified by the California Massage Therapy Council as a massage therapist or massage practitioner pursuant to Business and Professions Code section 4600 et seq.

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

(e) "Director" means the director of public safety or his or her designee charged with the administration of this chapter.

(f) "Inspector" means the person or persons designated by the city to conduct any inspections required or permitted under this chapter.

(g) "Massage," "massage therapy," and/or "bodywork" for purposes of this chapter mean the skillful application of touch, including but not limited to, pressure, stroking, kneading, compression on or movement of the external surfaces of the body by a practitioner to produce increased awareness, relaxation, pain relief, injury rehabilitation, or neuromuscular reeducation.

(h) "Massage establishment" means any business that offers massage therapy, baths or health treatments including, but not limited to, aromatherapy, vapor, shower, electric tub, sponge, hot towels, mineral fermentation, sauna, steam or any other type of bath, involving massages or baths in exchange for compensation. Home-based massage businesses and businesses that provide outcall massage services are also considered to be massage establishments. For purposes of this chapter, the term "massage establishment" may be applied to include establishments which offer or advertise themselves as providing "relaxation" or "tanning" where the essential nature of the interaction between the employee and the customer involves "massage" as defined herein. The terms, names or phrases listed on business license or fictitious name application forms are not necessarily conclusive as to the nature of the business.

(i) "Owner" or "massage establishment owner" means any of the following persons:

(1) The sole proprietor of a sole proprietorship operating a massage establishment.

(2) Any general partner of a general or limited partnership that owns a massage establishment.

(3) Any person who has a ten (10) percent or greater ownership interest in a corporation that owns a massage establishment.

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

(5) All owners of any other type of business association that owns a massage establishment.

(j) "Operator" or "massage establishment operator" means any person who is an owner or manager of a massage establishment.

(k) "Outcall massage service" means the engaging in or carrying on of massage therapy for compensation at locations other than a massage establishment at a fixed location.

(l) "Patron" means an individual on the premises of a massage establishment for the purpose of receiving massage therapy.

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

(n) "Reception and waiting area" means an area immediately inside the main entry door of the massage establishment dedicated to the reception and waiting of patrons or visitors of the massage establishment and which is not a massage therapy room or otherwise used for the provision of massage therapy services.

(o) "Sole proprietorship" means a massage establishment where the owner owns 100 percent of the business, ~~is the only person who provides massage services for compensation,~~ and has one or no other employees or independent contractors.

(p) "Visitor" means any individual not retained or employed by the massage establishment and not receiving or waiting to receive massage therapy services, but excluding law enforcement personnel or governmental officials performing governmental business.

**9.41.030. Business license required.**

The requirements of this chapter are in addition to any business license and business license tax requirements imposed pursuant to chapter 5.04 of this code.

**9.41.040. Other permits and authorizations required.**

The requirements of this chapter are in addition to any permits or authorizations that may be required under other applicable laws including but not limited to the city's building, fire, zoning, and health regulations.

**9.41.050. Exemptions.**

This chapter shall not apply to the following classes of individuals while engaged in the performance of the duties of their respective professions:

(a) Physicians, surgeons, chiropractors, osteopaths, podiatrists, physical therapists, nurses, acupuncturists or any other person licensed to practice any healing art under the provisions of Division 2 (commencing with Section 500) of the Business and Professions Code when engaging in such practice within the scope of his or her license.

(b) Trainers of any amateur, semi-professional, or professional athlete or athletic team, so long as such persons do not practice massage therapy as their primary occupation at any location where they provide such services in the city.

(c) Barbers, estheticians, and cosmetologists who are duly licensed under the laws of the State of California, while engaging in practices within the scope of their licenses.

(d) Individuals administering massages or health treatments involving massage to persons participating in single-occurrence athletic, recreational, or educational events such as road races, track meets, triathlons, educational events, or conferences, provided that the event is open to the public or to a significant segment of the public such as employees of sponsoring or participating corporations, and the massage services are provided at the site of the event during, immediately preceding, or immediately following the event.

(e) Somatic practitioners who use no physical touch of any kind at any time in their practice.

(f) Enrolled students of a school of massage when they are performing massage within the city as part of a formal supervised internship or training program operated by the school, without compensation other than school credit, on the premises of a massage establishment duly authorized to operate pursuant to the terms of this chapter; and provided that the operator of the massage establishment has first notified the director in writing of the name, residence address, and school of the students and the dates of the trainings.

**9.41.060. CAMTC certification required.**

On or after April 30, 2016, it shall be unlawful for any individual to practice massage therapy for compensation within the city unless that individual is a CAMTC-certified massage professional.

**9.41.070. Limited exception from CAMTC certification requirement.**

(a) The city recognizes that some massage therapists and massage practitioners currently practicing in Sunnyvale may not meet the current requirements set forth by the CAMTC due to changes in educational or other requirements, particularly changes in requirements concerning hours of schooling, although the person has been in practice for a significant period. The city will therefore allow individuals who were working in Sunnyvale prior to the passage of this Chapter and meet the requirements of this section to practice massage under this exception without certification from the CAMTC.

(b) Individuals who do not submit an initial application on or before April 30, 2016, for the exception described in this section shall be ineligible to qualify for the exception.

(c) An individual seeking this exception must demonstrate the following to the satisfaction of the city's public safety department:

(1) Evidence that he or she worked as a massage therapist or massage practitioner in the city for a professional listed in section 9.41.050(a)(1) of this ordinance on an ongoing basis for at least five (5) years prior to October 30, 2015, and is currently employed with that professional; and

(2) Evidence that he or she has certification or proof of training in the field of massage from a school or another entity comparable to the CAMTC and has been working as a massage therapist or massage practitioner for a period of at least five (5) years; and

(3) Evidence that he or she attempted to obtain certification from the CAMTC but was denied and the reasons for the denial to show that despite existing training and experience, he or she was not able to qualify for certification from CAMTC; and

(4) Compliance with other terms of this chapter for massage establishment owners that are not certified by the CAMTC, including but not limited to the background check described in section 9.41.090(k) of this ordinance.

(d) An individual granted an exception from the CAMTC certification requirement is required to display, in the same manner this chapter requires the display of CAMTC certification, a statement from the city showing that the person met the requirements of this exception.

(e) This exception must be renewed annually. Failure to submit an application for renewal on or before the annual renewal date shall make the individual ineligible for a continued exception.

(f) Approved exceptions shall apply only to a massage practitioner's ongoing practice with the professional(s) stated in section 9.41.070(c)(1). Approved exceptions shall become invalid and CAMTC certification shall be required pursuant to section 9.41.060 when an individual changes employment and/or accepts employment with new, additional professionals or massage establishments within the city.

(g) The city may establish a non-refundable fee to recover costs associated with initial applications and annual renewals.

(h) This section shall remain in effect only until January 1, 2017. All massage practitioners must comply with section 9.41.060 beginning January 1, 2017.

**9.41.080. Massage establishment permit required; prohibited conduct.**

(a) It is unlawful for any person to operate a massage establishment within the city without first obtaining a massage establishment permit from the Department of Public Safety.

(b) On or after April 30, 2016, it shall be unlawful for a massage establishment operator to employ or retain any person to practice massage therapy for compensation, or to allow any person to perform massage therapy for compensation on the premises of a massage establishment, unless that person is a CAMTC-certified massage professional and unless that person is identified as an authorized massage professional on the permit issued pursuant to this chapter. For purposes of this chapter, a massage establishment operator "employs or retains" a person to practice massage therapy for compensation when:

(1) That person is a directly paid employee of the massage establishment; or

(2) That person's association with a massage establishment is that of an independent contractor who receives compensation for massage therapy provided to patrons of the massage establishment; or

(3) That person receives a referral of patrons from the massage establishment and, at any time before or after the referral, arranges in any way for compensation to flow to the massage establishment operator.

(c) It is unlawful for a massage establishment to operate under any name or conduct business under any designation not specified in the massage establishment permit issued pursuant to this chapter.

(d) It is unlawful for a massage establishment to continue to operate following the sale or transfer of any interest in the massage establishment to a person who was not identified as an owner in the massage establishment permit application.



**9.41.090. Permit application.**

The owners of the massage establishment shall file an application for a permit on a form provided by the director. The application shall be accompanied by the fee established by the city's fee schedule. The application shall include the following information:

(a) The name, address, and telephone number of the massage establishment.

(b) The name, residence address and telephone number, and business address and telephone number of each owner of the massage establishment.

(c) The form of business under which the applicant will be conducting the massage establishment, i.e., corporation, general or limited partnership, limited liability company, or other form. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the names and residence addresses of each of its officers, directors, and each shareholder holding more than ten percent (10%) of the stock of the corporation. If the applicant is a general or limited partnership, the application shall set forth the name and residence address of each of the partners, including limited partners. If one (1) or more of the partners is a corporation, the provisions of this section pertaining to a corporate applicant shall apply. If the applicant is a limited liability company, the application shall set forth the name and residence address of each of the members. If one (1) or more of the members is a partnership, limited liability company, or corporation, the provisions of this section pertaining to a partnership, limited liability company, or corporate applicant shall apply, as applicable.

(d) The name, address, and telephone number of the owner of the real property upon, in, or from which the certified massage establishment is to be operated. In the event the applicant is not the legal owner of the property, the application shall be accompanied by a copy of any written lease between the applicant and the property owner authorizing use of the premises for a massage establishment, or, alternatively, if there is no written lease, then a written, notarized acknowledgment from the property owner that the property owner has been advised that a massage establishment will be operated by the applicant upon, in, or from the property owner's property.

(e) If the massage establishment will be located on a property in a residential or commercial condominium or other common interest development, the applicant shall submit a notarized statement from the homeowner's association or condominium owner's association acknowledging that the association has been advised that a massage establishment will be operated by the applicant and that such use of the property is allowed by the property's covenants, codes, and restrictions.

(f) A description of the proposed massage establishment, including the type of treatments to be administered.

(g) The name of each individual who the massage establishment employs or retains to perform massage therapy for compensation, whether on or off the massage establishment premises.

(h) The name of each individual who is regularly employed or retained by the massage establishment to perform services on the premises other than massage therapy, and the nature of their services.

(i) For each individual who the massage establishment does or will employ or retain to perform massage therapy for compensation, whether on or off the massage establishment premises, a copy of that individual's current certification from the CAMTC as a certified massage practitioner or certified massage therapist, and a copy of his or her current CAMTC-issued identification card.

(j) For each owner of the massage establishment who is a CAMTC-certified massage professional, a copy of his or her current certification from the CAMTC as a certified massage practitioner or as a certified massage therapist and a copy of his or her current CAMTC-issued identification card.

(k) For each owner of the massage establishment who is not a CAMTC-certified massage professional, the following information:

(1) Whether any owner of the massage establishment has within the five (5) years immediately preceding the date of application been convicted of any felony in any state.

(2) Whether any owner of the massage establishment is currently required to register under the provisions of Section 290 of the California Penal Code.

(3) The business, occupation, and employment history of each owner of the massage establishment for five (5) years preceding the date of application, and the inclusive dates of same.

(4) One (1) set of fingerprints to be taken at the permit authority, and any required fee for such fingerprinting shall be paid by the applicant.

(l) Whether any license or permit has ever been issued to the applicant by any jurisdiction under the provisions of any ordinance or statute governing massage or somatic practice, and as to any such license or permit, the name and address of the issuing authority, the effective dates of such license or permit, whether such license or permit was ever suspended, revoked, withdrawn, or denied; and copies of any documentary materials relating to such suspension, revocation, withdrawal, or denial.

(m) Such other information as may be required by the permit authority to determine compliance with any other eligibility requirements for issuance of the permit as specified by federal, state, or local law.

#### **9.41.100. Permit issuance.**

(a) The director shall issue a massage establishment permit if the applicant meets the requirements of this chapter and no grounds for denial exist under section 9.41.110. The director may impose conditions on the permit consistent with this chapter and applicable law.

(b) Notice to property owner. If the applicant is not the record owner of the property where the massage establishment is located, the director may send a written notice to the property owner advising of the issuance of the permit and

of the regulations applicable to the massage establishment. The director may also provide the property owner with copies of any other notices or communications with the applicant sent at any time before or after issuance of the permit.

(c) Term. A massage establishment permit issued pursuant to the terms of this chapter shall be valid for a term of one (1) year from the date of issuance, and, unless suspended or revoked, must be renewed by the massage establishment operator annually so long as the massage establishment is operating within the city.

#### **9.41.110. Permit denial.**

The director may deny an application for a massage establishment permit on any of the following grounds:

(a) The massage establishment, as proposed by the applicant, would not comply with the requirements of this chapter.

(b) The massage establishment, as proposed by the applicant, would not comply with any applicable law, including, but not limited to the city's building, fire, zoning, and health regulations.

(c) The applicant has knowingly made any false, misleading or fraudulent statement of material fact in the application for a massage establishment permit.

(d) Any owner of the massage establishment, within five (5) years immediately preceding the date of filing of the application, has been convicted in a court of competent jurisdiction of any offense that relates directly to the operation of a massage establishment whether as a massage establishment owner or operator or as a person practicing massage for compensation, or as an employee of either; or has at any time been convicted in a court of competent jurisdiction of any felony the commission of which occurred on the premises of a massage establishment.

(e) Any owner of the massage establishment is currently required to register under the provisions of Section 290 of the California Penal Code.

(f) Any owner of the massage establishment, within five (5) years of the date of application, has been convicted in a court of competent jurisdiction of any violation of Sections 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), or 653.22 of the California Penal Code, or conspiracy or attempt to commit any such offense, or any offense in a jurisdiction outside of the State of California that is the equivalent of any of the aforesaid offenses.

(g) Any owner of the massage establishment has been subjected to a permanent injunction against the conducting or maintaining of a nuisance pursuant to Section 11225 through 11235 of the California Penal Code, or any similar provision of law in a jurisdiction outside the State of California.

(h) Any owner of the massage establishment, within five (5) years of the date of application, and as established by clear and convincing evidence, has engaged in acts prohibited under California Penal Code Sections 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), or 653.22.

(i) Any owner of the massage establishment who is an individual has not attained the age of eighteen (18) years.

(j) Any owner of the massage establishment, within five (5) years immediately preceding the date of filing of the application, has had a permit or license to practice massage for compensation or to own and/or operate a massage establishment revoked or denied in any jurisdiction.

(k) Any owner of the massage establishment currently owns or operates a massage establishment in the city of Sunnyvale that is not in good standing due to the existence of uncorrected violations or unpaid fines or fees.

**9.41.120. Notice of denial – appeal.**

(a) If an application for a massage establishment permit is denied, the director shall give written notice to the applicant specifying the grounds for denial.

(b) The applicant may appeal the decision to deny a massage establishment permit by filing a written notice of appeal with the city manager or designee within fifteen days after deposit of the decision in the mail, specifying in detail the grounds for such appeal.

(c) The city manager or designee shall set a time and place for the hearing on the appeal not less than fifteen days after the date the appeal was received by the city manager, and shall give written notice by mail to the applicant of the date, time, and place for the hearing. The hearing shall be conducted in accordance with section 9.41.180.

(d) After the hearing on the appeal, the city manager or designee may refer the matter back to the director for a new investigation and decision, may affirm the decision of the director, or may direct the director to issue the license. The decision of the city manager or designee upon such appeal shall be final and shall be subject to judicial review according to the provisions and time limits set forth in Code of Civil Procedure Section 1094.6.

**9.41.130. Amendments to permit.**

(a) Whenever the information provided in the application for a certified massage establishment on file with the city changes, the operator shall file an application, provided by the director, to amend the permit to reflect such change. An application to amend a massage establishment permit shall be made by submitting an application on a form provided by the director. The application shall be accompanied by the fee established by the city's fee schedule.

(b) The application shall not be approved unless the director determines that the terms of the amended permit comply with all requirements of this chapter and all other local, state, and federal laws, and the massage establishment has no outstanding violations or unpaid citations or fees. Inspection of the massage establishment may be required prior to approval of the amendment.

(c) An amendment shall not be used to change the location or owners of a massage establishment. Instead, a new permit application is required.

(d) A denial of an application to amend a massage establishment permit may be appealed in the same manner as a denial of an application for a permit under section 9.41.120.

**9.41.140. Requirements for all massage establishment facilities and operations.**

(a) Operational requirements. Except as otherwise specifically provided in this chapter, the following operational requirements shall be applicable to all massage establishments located within the city:

(1) No massage establishment shall be kept open for business between the hours of ten p.m. (10:00 p.m.) of one (1) day and eight a.m. (8:00 a.m.) of the following day. A massage begun any time before ten p.m. (10:00 p.m.) must nevertheless terminate at ten p.m. (10:00 p.m.).

(2) The hours of operation of the massage establishment shall be displayed in a conspicuous public place in the reception and waiting area and in any front window clearly visible from outside of the massage establishment.

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

(4) During the hours of operation, patrons shall be permitted in massage therapy rooms only if at least one (1) duly authorized certified massage professional is present on the premises of the massage establishment. Patrons shall not be permitted in any employee break room on the premises.

(5) During the hours of operation, visitors shall not be permitted in massage therapy rooms except as follows:

(A) the parents or guardian of a patron who is a minor child may be present in the massage therapy room with that minor child;

(B) the minor child of a patron may be present in the massage therapy room with the patron when necessary for the supervision of the child; or

(C) the conservator, aid, or other caretaker of a patron who is elderly or disabled may be present in the massage therapy room with that elderly or disabled person.

(6) During the hours of operation, except as otherwise provided herein, no visitors shall be permitted in massage therapy rooms, break rooms, dressing rooms, showers, or any other room or part of the massage establishment premises other than the reception and waiting area or toilet rooms.

(7) Except for a patron who is inside a massage therapy room for the purpose of receiving a massage, no patrons or visitors shall be permitted in or on the massage establishment premises at any time who are less than fully clothed in outer garments of nontransparent material, or who display or expose themselves in underclothing or similar intimate apparel.

(8) A list of services available and the cost of such services shall be posted in an open and conspicuous public place on the premises. The services shall be described in English and may also be described in such other languages as may be convenient. No massage establishment operator shall permit, and no person employed or retained by the massage establishment shall offer to perform any services or request or demand fees other than those posted.

(9) The massage establishment shall keep on the premises a complete and current roster of all owners, operators, and managing employees of

the massage establishment and all massage professionals and other persons employed or retained by the massage establishment. The roster shall include the name, residence address, and phone number of each individual. The roster shall be available for inspection by city officials charged with the enforcement of this chapter.

(b) Physical facility and building and fire code requirements. Except as otherwise specifically provided in this chapter, the following physical facility and building code requirements shall be applicable to all massage establishments located within the city:

(1) Main entry door and reception and waiting area required. One (1) main entry door shall be provided for patron entry to the massage establishment, which shall open to an interior patron reception and waiting area immediately. All patrons and any persons other than individuals employed or retained by the massage establishment shall be required to enter and exit through the main entry door. Unless the massage establishment is a sole proprietorship or a home occupation with one or no other employees, the main entry door shall be unlocked at all times during business hours.

(2) No massage establishment located in a building or structure with exterior windows fronting a public street, highway, walkway, or parking area shall block visibility into the interior reception and waiting area through the use of curtains, closed blinds, tints, or any other material that obstructs, blurs, or unreasonably darkens the view into the premises.

(3) All interior doors, including massage therapy rooms or cubicles, but excluding individual dressing rooms, showers, and toilet rooms, shall be incapable of being locked and shall not be blocked to prevent opening. Draw drapes, curtain enclosures, or accordion-pleated closures in lieu of doors are acceptable on all inner massage therapy rooms or cubicles.

(4) Minimum lighting equivalent to at least one (1) 40-watt light shall be provided in each massage therapy room or cubicle.

(5) A massage table or professional massage chair specifically designed for seated massage shall be used for all massage therapy, with the exception of "Thai," "Shiatsu," and similar forms of massage therapy, which may be provided on a padded mat on the floor, provided the patron is fully attired in loose clothing, pajamas, scrubs, or similar style of garment. Massage tables shall have a minimum height of eighteen (18) inches.

(6) Beds, floor mattresses, and waterbeds are not permitted on the premises of the massage establishment, and no massage establishment shall be used for residential or sleeping purposes, which may be shown by circumstantial evidence such as the presence of bedding, pillows, sleeping bags, suitcases, clothing, toiletries or other personal belongings, cooking appliances, utensils or food in excess of a business establishment's normal requirements.

(7) All locker facilities that are provided for the use of patrons shall be fully secured for the protection of the patrons' valuables, and each patron shall be given control of the key or other means of access.

(8) The massage establishment shall comply with all applicable state and local building and fire codes as adopted in Title 16 of this code.

~~(9) — Home occupation exemptions. Where a certified massage establishment is a home occupation, and the operator has complied with the provisions of section 19.42.010 of this code pertaining to home occupations, the provisions of subsections 9.41.140(a)(2) and 9.41.140(b)(1) (3) and (b)(6) shall not apply, and the portions of the residence subject to the requirements of subsections 9.41.140(b) and (c) shall be only those portions that are used at any time by the patron of the massage establishment.~~

(c) Health and safety requirements. Except as otherwise specifically provided in this chapter, the following health and safety requirements shall be applicable to all massage establishments located within the city:

(1) The massage establishment shall at all times be equipped with an adequate supply of clean sanitary towels, coverings, and linens, and all massage tables or chairs shall be covered with a clean sheet or other clean covering appropriate to the equipment for each patron. After a towel, covering, or linen has been used once, it shall be deposited in a closed receptacle and not used again until properly laundered and sanitized. Towels, coverings, and linens shall be laundered either by regular commercial laundering, or by a noncommercial laundering process that includes immersion in water at least one hundred forty (140) degrees Fahrenheit for not less than fifteen (15) minutes during the washing or rinsing operation. Clean towels, coverings, and linens shall be stored in closed, clean cabinets when not in use. A certified massage professional engaged in the practice of outcall massage shall carry a sufficient quantity of clean and sanitary towels, sheets, and linens to comply with the requirements.

(2) All massage therapy rooms or cubicles, wet and dry heat rooms, toilet rooms, shower compartments, hot tubs, and pools shall be thoroughly cleaned and disinfected as needed, and at least once each business day when the premises has been or will be open and such facilities in use. All bathtubs shall be thoroughly cleaned and disinfected after each use.

(3) All liquids, creams, or other preparations used on or made available to patrons shall be kept in clean and closed containers. Powders may be kept in clean shakers. All bottles and containers shall be distinctly and correctly labeled to disclose their contents. When only a portion of a liquid, cream, or other preparation is to be used on or made available to a patron, it shall be removed from the container in such a way as not to contaminate the remaining portion.

(4) No invasive procedures shall be performed on any patron. Invasive procedures include, but are not limited to:

- (A) Application of electricity that contracts the muscle;
- (B) Penetration of the skin by metal needles;
- (C) Abrasion of the skin below the nonliving, epidermal layers;
- (D) Removal of skin by means of any razor-edged instrument or other device or tool;
- (E) Use of any needle-like instrument for the purpose of extracting skin blemishes; and
- (F) Other similar procedures.

(5) All bathrobes, bathing suits, and/or other garments that are provided for the use of patrons shall be either fully disposable and not used by more than one (1) patron, or shall be laundered after each use pursuant to subsection (C)(1) of this section.

(6) All combs, brushes, and/or other personal items of grooming or hygiene that are provided for the use of patrons shall be either fully disposable and not used by more than one (1) patron, or shall be fully disinfected after each use.

(7) No patrons shall be allowed to use any shower facilities of the massage establishment unless such patrons are wearing slip-resistant sandals or flip-flops while in the shower compartment. All footwear such as sandals or flip-flops that are provided for the use of patrons either shall be fully disposable and not used by more than one (1) patron, or shall be fully disinfected after each use.

(8) ~~P~~The patron's genitals, pubic area, anus, and areola and female patron's breasts must be fully draped at all times while any individual employed or retained by the massage establishment is in the massage room or cubicle with the patron. No massage shall be provided to a patron that results in intentional contact, or occasional and repetitive contact, with the genitals or anal region, pubic area, anus, or areola of a patron, or of a female patron's breasts without the written consent of the person receiving the massage and a referral from a licensed California health care provider.

(9) No alcoholic beverages shall be sold, served, or furnished to any patron; nor shall any alcoholic beverages be kept or possessed on the premises of a massage establishment.

(d) Attire and physical hygiene requirements. The following attire and physical hygiene requirements shall be applicable to all employees and any other persons who work permanently or temporarily on the premises of a massage establishment within the city, including, but not limited to, all persons who are employed or retained to practice massage for the massage establishment:

(1) No person shall dress in:

(A) attire that is transparent, see-through, or substantially exposes the person's undergarments;

(B) swim attire, unless providing a water-based massage modality approved by the CAMTC;

(C) a manner that exposes the person's chest, breasts, buttocks, or genitals;

(D) a manner that constitutes a violation of Section 314 of the California Penal Code.

(2) No massage establishment operator, employee, or visitor shall, while on the premises of a massage establishment or while performing any outcall massage service, and while in the presence of any patron, customer, employee or visitor, expose his or her chest, breast, buttocks, or genitals.

(3) All persons shall thoroughly wash their hands with soap and water or any equally effective cleansing agent immediately before providing massage to a patron. No massage shall be provided upon a surface of the skin or



scalp of a patron where such skin is inflamed, broken (e.g., abraded or cut), or where a skin infection or eruption is present.

(e) Display of permit and certifications.

(1) The massage establishment permit shall be displayed in an open and conspicuous place on the premises visible from the main entry door and/or reception and waiting area of the massage establishment.

(2) Each person employed or retained by a massage establishment to perform massage in or on the premises or through an outcall massage service shall display on his or her person the valid current photograph-bearing identification card issued to that employee by the CAMTC. A copy of each such identification card and the person's original CAMTC certificate shall also be displayed in an open and conspicuous place visible from the main entry door and/or reception and waiting area of the massage establishment. The home address of any employee need not be displayed.

(f) Display of human trafficking notices.

(1) The massage establishment shall comply with the requirements in California Civil Code Section 52.6 related to the posting of information for victims of human trafficking.

(g) Home occupation and outcall-only businesses--exemptions.

(1) Where a certified massage establishment is a home occupation, and the operator has complied with the provisions of section 19.42.010 of this code pertaining to home occupations, the provisions of subsections 9.41.140(a)(2) and 9.41.140(b)(1)-(3) and (b)(6) shall not apply, and the portions of the residence subject to the requirements of subsections 9.41.140(b) and (c) shall be only those portions that are used at any time by the patron of the massage establishment.

(2) For massage establishments that provide outcall-only services and have no fixed location for performing massage, provisions of section 9.41.140 related to businesses with fixed locations shall not apply. Specifically, the provisions of subsections 9.41.140(a)(2)-(9) and 9.41.140(b)(1)-(4), (b)(6)-(8), 9.41.140(c)(2), 9.41.140(c)(7) 9.41.140(e)(1), and 9.41.140(f) shall not apply to outcall-only establishments.

#### **9.41.150. Massage establishment inspections.**

(a) The inspector shall have the right to enter any massage establishment, other than an establishment providing outcall-only services, during regular business hours, without a search or inspection warrant, to make reasonable inspection to ascertain whether there is compliance with the provisions of this chapter. For home occupations, reasonable inspection shall be limited to the portions of the residence open to patrons.

(b) The massage establishment operator shall take immediate action to correct each violation noted by the inspector. A reinspection will be performed to ensure that each violation noted by the inspector has been corrected.

#### **9.41.160. Violations; moratorium.**

(a) For the purpose of enforcing the requirements of this chapter, all owners and operators of the massage establishment shall be jointly and severally

responsible for the conduct of all massage establishment employees, agents, independent contractors, or other representatives while such persons are on the premises of the massage establishment or providing outcall massage services on behalf of the massage establishment.

(b) In addition to any other remedy available to the city under applicable law, a massage establishment permit may be suspended or revoked as provided in Sections 9.41.170 and 9.41.180. Upon issuance of a final order by the director or city manager to revoke the massage permit, the massage establishment shall immediately cease operation, and, if so ordered by the hearing officer, no other massage establishment shall be permitted to operate at that location by any person for a period of not less than five (5) years (“the moratorium period”). If the operator is not also the legal owner of the real property on which the massage establishment is situated, notice of such revocation and the five-year prohibition shall be provided by the permit authority to the owner of record of the property as shown on the latest county assessment roll.

(c) In addition to any other remedy available to the city under applicable law, a massage establishment permit may not be renewed or amended unless and until all due and unpaid citations issued pursuant to this chapter are paid in full, and all outstanding violations have been corrected.

(d) Notwithstanding any other provision of this chapter, where a Notice of Revocation or Suspension has been issued to the operator of a massage establishment pursuant to Section 9.41.180 of this chapter, the director shall not process or grant an application for a massage establishment permit for a new massage establishment at the same premises unless and until such Notice of Revocation or Suspension is dismissed; or a final determination is made pursuant to that section that the current operator’s massage establishment permit is not or should not be revoked; or any moratorium period imposed pursuant to this chapter has expired.

**9.41.170. Revocation or suspension.**

All massage establishment operators shall be deemed to know and understand the requirements and prohibitions of this chapter. Any massage establishment permit issued pursuant to this chapter may be suspended or revoked by the director after a hearing, where the director finds that any of the following have occurred on even a single occasion:

(a) The permittee or any person employed or retained by the massage establishment has violated any provision of this chapter.

(b) The permittee or any person employed or retained by the massage establishment has been convicted in a court of competent jurisdiction of having violated, or has engaged in conduct constituting a violation of, any of the following: California Penal Code Sections 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), or 653.22, or conspiracy or attempt to commit any such offense, or any offense in a jurisdiction outside of the State of California that is the equivalent of any of the aforesaid offenses.

(c) The permittee or any person employed or retained by the massage establishment is required to register under Section 290 of the California Penal Code.

(d) The permittee has been subject to a permanent injunction against the conducting or maintaining of a nuisance pursuant to this code, or Section 11225 through 11235 of the California Penal Code, or any similar provision of law in any jurisdiction outside the State of California.

(e) The permittee or any person employed or retained by the massage establishment has engaged in fraud or misrepresentation or has knowingly made a misstatement of material fact while working in or for the massage establishment.

(f) The permittee has continued to operate the massage establishment after the massage establishment permit has been suspended.

(g) Massage has been performed on the premises of the massage establishment, with or without the permittee's actual knowledge, by any person who is not a duly authorized CAMTC-certified massage professional.

(h) A person who is not a duly authorized CAMTC-certified massage professional has provided outcall massage services through or on behalf of the massage establishment.

(i) There have been one (1) or more acts prohibited under California Penal Code Sections 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), or 653.22 taking place on the premises of the massage establishment, whether or not any criminal prosecution has been pursued or conviction obtained for such acts, and whether or not they occurred with or without the actual knowledge of the permittee.

(j) The permittee or any person employed or retained by the massage establishment or any other person on the premises of the massage establishment has engaged in conduct or committed acts that a reasonable person in the patron's position would understand as an offer to perform on or engage in with the patron acts that are sexual in nature or that involve touching of the patron's genitals, ~~pubic area, anus, and areola~~ or anal region.

(k) The permittee or any person employed or retained by the massage establishment has engaged in sexually suggestive advertising related to massage services on the premises of the massage establishment, including but not limited to displaying photographs of individuals clothed in swim attire, or attire that is transparent, see-through or substantially exposes the individual's undergarments, breasts, buttocks, or genitals, describing massage services as "erotic," "sensual" or similarly sexual in nature, listing advertisements in adult media, or describing the appearance or age of massage providers.

#### **9.41.180. Hearing for revocation or suspension.**

(a) The director shall give written notice of a hearing for the revocation or suspension of any permit granted pursuant to this chapter to the permittee. The notice shall set forth the time and place of the hearing, the ground or grounds upon which the hearing is based, the pertinent code sections, and a brief statement of the factual issues in support thereof. The notice shall be mailed, postage prepaid, addressed to the permittee at the last known address of the

permittee, or it shall be delivered to the permittee personally, at least ten days prior to the hearing date.

(b) Within ten days of the hearing the director shall render his or her decision in writing, stating his or her findings and the action taken, if any. The decision letter shall be mailed, postage prepaid, addressed to the permittee at the last known address of the permittee, or it shall be delivered to the permittee personally.

(c) Within ten days from the deposit of the decision letter in the mail or its receipt by the permittee, whichever occurs first, the permittee may appeal the decision in writing to the city manager or designee, setting forth with particularity the ground or grounds for the appeal.

(d) The city manager or designee shall give written notice of the hearing on the appeal not less than ten days from the date the appeal was received by the city manager or designee. The hearing shall be conducted in accordance with section 9.41.190.

(e) After the hearing on the appeal, the city manager or designee may refer the matter back to the director for a new investigation and decision, may affirm the decision of the director, may dismiss the disciplinary action, or may revoke or suspend the permit. The decision of the city manager or designee upon such appeal shall be final and shall be subject to judicial review according to the provisions and time limits set forth in Code of Civil Procedure Section 1094.6.

(f) The notices provided to the massage establishment pursuant to this section may also be sent to the owner of the premises where the massage establishment is located. However, failure to provide notice to the property owner shall not invalidate any actions taken by the city.

**9.41.190. Hearing rules.**

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. Any hearing under this chapter may be continued for a reasonable time for the convenience of a party or witness.

**9.41.200. Violations a public nuisance; penalties, nuisance abatement, and other remedies.**

Any massage establishment operated, conducted, or maintained contrary to the provisions of this chapter shall be, and the same is hereby declared to be, unlawful and a public nuisance, and the city attorney may, 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 the manner provided by law. Such remedies shall be in addition to any other judicial and administrative penalties and remedies available to the city under this code or under state law.

SECTION 2. CHAPTER 19.12, SECTION 19.12.140 AMENDED. Section 19.12.140 of the Sunnyvale Municipal Code is hereby amended to read as follows:

**19.12.140. “M”**

- (1) [Text unchanged]
- (2) “Massage establishment” means any business that offers massage therapy, baths, or health treatments involving massages or baths in exchange for compensation, as defined in chapter 9.41 of this code.
- (3) “Massage establishment office or clinic” means any massage establishment other than a permitted home occupation pursuant to section 19.42.010.
- (4)-(10) [Renumbered; text unchanged]

SECTION 3. CHAPTER 19.18, TABLE 19.18.030 AMENDED. Table 19.18.030 in Section 19.18.030 of the Sunnyvale Municipal Code is hereby amended to read as follows:

**TABLE 19.18.030**

**Permitted, Conditionally Permitted and Prohibited Uses in Residential Zoning Districts**

<b>Residential Zoning Districts</b>	<b>R-0/R-1</b>	<b>R-1.5</b>	<b>R-1.7/PD</b>	<b>R-2</b>	<b>R-3</b>	<b>R-4</b>	<b>R-5</b>	<b>R-MH</b>
<b>1.-6.</b>	[Text unchanged]							
<b>7. Other uses</b>								
<b>7A.-7D.</b>	[Text unchanged]							
<b>7E. Massage establishment office or clinic</b>	N	N	N	N	N	N	N	N
<b>7F.-7O</b>	[Text unchanged]							

SECTION 4. TITLE OF CHAPTER 19.60 AMENDED. The title of Chapter 19.60 is hereby amended to read as follows:

**Chapter 19.60. ADULT BUSINESSES**

SECTION 5. SECTION 19.60.010 AMENDED. Section 19.60.010 of the Sunnyvale Municipal Code is hereby amended to read as follows:

**19.60.010. Permitted uses—Zoning districts—M-S and M-3.**

- (a) Adult business establishments, as defined in Chapter 9.40, shall be allowed in addition to other uses permitted in the M-S and M-3 zoning districts, subject to the requirements of this chapter.
- (b) Adult business establishments are prohibited uses in all other zoning districts.

(c) For purposes of this chapter, unless the context clearly requires a different meaning, the words, terms and phrases set forth in this chapter shall have the same meanings given them in Chapters 9.40 and 9.41 of this code.

SECTION 6. CEQA - EXEMPTION. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a project which has the potential for causing a significant effect on the environment.

SECTION 7. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision or decisions shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 8. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 9. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in The Sun, the official publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on September 29, 2015, and because of substantial changes reintroduced at a regular meeting of the City Council held on \_\_\_\_\_, 2015, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on \_\_\_\_\_, 2015, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:  
RECUSAL:

ATTEST:

APPROVED:

\_\_\_\_\_  
City Clerk  
Date of Attestation: \_\_\_\_\_

\_\_\_\_\_  
Mayor

(SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney