

Draft
April 2000

Disclaimer: This ordinance is intended only for local use in non-regulated states and is not to be used as a model for state law.

A model exemption will be available shortly, which is to be introduced first. It is based on the same standards used in this ordinance. It is simpler to be exempted from adult entertainment laws than to revise an entire ordinance. If that doesn't work, then this model is to be introduced, as is or revised for the particular state and city.

This Model Ordinance was first prepared for the *California Chapter of American Massage Therapy Assn* (CMTA) in 1991, by a group of members and non-members. This most recent revision was prepared with the involvement of the *California Coalition on Somatic Practices* (CCSP), CMTA, and AMTA Governmental Relations Committee. It is being made available to practitioners and city and local officials for use in reforming massage regulations at the city and county levels. It is not a perfect document - in fact, it takes the position that massage should not be regulated locally, other than by existing regulations similar to those for other professions not licensed by the state. As such, it is a compromise document. It is intended to be customized for the needs of the vast diversity of California communities. Although it has been approved for use by the above named organizations, it is neither a formally adopted document, nor a static one, as sections are continually being revised for clarity and simplification.

Although CCSP is made up of members and representatives of many organizations, few of us speak formally for our groups. At this time, CCSP intends to submit this document to the leadership of massage and somatic organizations whose members may be effected by its adoption, for verification that it does not inherently cause harm to them.

Beverly May
Director of Governmental Affairs, AMTA, Calif. Chapter; Chair, CCSP
919 North Rd
Belmont, CA. 94002
(650) 637-1233
<beverlysmay@home.com>

MODEL MASSAGE ORDINANCE

ORDINANCE ANALYSIS

This ordinance is offered as a guideline for issuing licenses in California cities and counties which regulate massage.

This ordinance recognizes that massage therapists are a professional group providing a service to the community while contributing financially to the city and enhancing the local business environment.

Cost and Burdens

Currently most massage ordinances were written to control the use of the massage profession by the adult entertainment industry. There are many problems with this approach. Most notable is the fact that even the most stringent adult entertainment licensing and zoning restrictions rarely prevent criminal activity. Further, they are exceedingly burdensome to massage therapists as well as to public resources. Administrative staff time is wasted assuring that applicants have met any number of requirements for licensing. And every few years both staff and council need again to confront possible revisions to correct the problems of the latest ordinance.

Regulating Therapeutic Massage and Adult Entertainment Massage together is no longer acceptable to therapeutic massage professionals or their clients. To do so results in Adult Entertainment establishments operating openly, while therapeutic massage is often forced into a “grey market” status. Many Massage Therapists do not seek local permits because:

1. They do not feel that regulations designed for Adult Entertainment businesses are appropriate to them.
2. Fees are often prohibitive to the incomes of the massage therapist.
3. Many current ordinances do not recognize chair massage.

Consequently, not only do these legitimate massage therapists not get massage permits, but often don't even get business licenses, resulting in significant loss of revenue for the city as many massage therapists have little choice but to work without licenses, often working quietly in their homes or clients homes.

For the general public, not seeing a clear distinction between Adult Businesses and Therapeutic Massage means an uncertainty about whether the massage will be a psychologically and perhaps physically safe experience. Potential clients have a right to have access to massage that they know is therapeutic and not a front for adult entertainment.

No ordinance, by itself, can control illicit activity. It must be part of an effective enforcement and abatement program. It is the experience of this organization that unless the community is prepared to commit the considerable resources necessary to enforce the state prostitution laws, massage will still be used as a front by the sex industry. Enforcement and abatement curtail illegal activities in massage establishments. Meanwhile the public can still receive massages and massage therapists can work as professionals and contribute to the tax revenues of the city.

Now is the time for a more appropriate response to this issue. Much has changed since the 1960's and 70's when local jurisdictions first began to regulate massage. To continue to assume that most massage is a front for prostitution is out-dated.

According to a 1993 study by Eisenberg et al. at Harvard Medical School and Beth Israel Hospital, over 34% of Americans use alternative or complementary health care, spending about \$10 billion dollars a year out-of-pocket -only \$3 billion less than the sum for all hospitalizations in this country. Massage was the third most commonly used practice. A recent update of this study

revealed even higher figures. The National Institutes of Health Office of Complementary and Alternative Medicine (CAM) issues a significant number of grants for the study of massage. Studies in prestigious facilities such as the Touch Research Institute (TRI) at University of Miami Medical School (funded largely by Johnson & Johnson) have demonstrated the efficacy of massage in addressing a wide range of health and wellness concerns. Clearly, the public is also aware of the legitimacy and benefits of massage, as the profession grows and expands into health clubs and spas, hospitals, hotels and corporations, airports and even downtown “Back Rub” businesses. It was an integrated part of the Healthcare Services at the 1996 Olympics in Atlanta. Massage is offered and credentialed through managed care providers such as Blue Cross and the Blue Shield mylifepath program in California. There are numerous professional associations with membership standards, codes of ethics and grievance procedures to represent and regulate their members. Our industry has a number of professional journals, and state regulation in some 26 states. In this state, the California Coalition on Somatic Practices (CCSP) represents most of the massage and other somatic organizations, assuring a forum to address common issues. CCSP maintains a comparative chart of private certifications in the massage and broader somatics field.

The position taken by this ordinance is that massage therapists should be treated as self-regulating professionals and need not be saddled with additional zoning, building or health and safety requirements other than those generally applicable to other professionals. Fees should bear a reasonable relationship to the costs of issuance, with enforcement costs being borne by violators. Educational standards are flexible both to allow graduates of state approved or nationally accredited schools to enter the profession, and to meet the needs of diverse communities within this state. We have tried to accommodate the variety of levels and types of training which applicants obtain which prepare them to practice their specialty. Please keep in mind that currently the California Bureau of Private Post-Secondary Education approves massage programs of as little as 100 hours of training. It is common for practitioners to enter the profession with the minimum training, and continue their education as needed. Additionally, non-massage somatic practitioners whose work may involve touch but is very different from what is considered to be massage, have at times found themselves needing to complete massage training or take an exam which is irrelevant to their work. In many cases, these professions are self regulated and have educational requirements exceeding those of many massage therapists.

Professional standards should not be established by city councils - rather they are set by professional associations, schools and testing agencies, and/or state law. In California, state licensing law is unlikely in the near future for a number of reasons. Meanwhile, reasonable standards already exist in the private sector which should be recognized and adapted for local use.

Regulation of massage as a vice issue is inappropriate and unfair to both massage professionals and the public. If massage regulation is deemed necessary, it should merely provide a simple means of obtaining a permit, and a legally sound, streamlined process for revoking permits of violators.

This ordinance provides the tools necessary to support such a program. Most of its provisions have been drafted from ordinances existing in California, and in some cases, from state laws where such exists.

This model ordinance can be customized for the needs of particular communities. Your comments and suggestions are welcomed.

Please send your comments or suggestions to

Beverly May
<beverlysmay@home.com>

*******MODEL ORDINANCE*******
*******REGULATING*******
*******MASSAGE THERAPISTS*******

- 1.0 Purpose and Intent
- 2.0 Definitions
- 3.0 Massage Permit Required
- 4.0 Permit Applications and Fees
- 5.0 Requirements for Issuance of Permit
- 6.0 Appeal of Denial of Permit
- 7.0 Revocation or Suspension of Permits; Appeal
- 8.0 Existing Massage Practitioner Permits
- 9.0 Exemptions
- 10.0 (Reserved)

1.0 Purpose and Intent

The purpose and intent of this Ordinance is to recognize massage as a business occupation and health enhancement service and provide a means for issuing appropriate permits.

2.0 Definitions

For the purposes 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 given them in this section.

2.1 "Permit" means the permit to engage in the activities of a massage therapist as required by this chapter.

2.2 "Permit Administrator" means the city official responsible for issuing, revoking and otherwise administering the permit program.

2.3 "Massage" or "massage therapy" mean the skillful application of touch to enhance health and well being, in which soft tissue manipulation is primary.

2.4 "Massage therapist" or "massage professional" means a health care practitioner who offers services to the public for compensation, using a massage specialty in caring for clients, and has obtained a permit as required by this Chapter.

2.6 A person who has engaged in "disqualifying conduct" means a person who:

2.6.1 Within five years immediately preceding the date of filing of the application for a issuance of a permit under this Chapter has been convicted in a court of competent jurisdiction of:

2.6.1.1 Any misdemeanor or felony offense which relates directly to the practice of massage therapy, whether as a massage business owner or operator, or as a massage technician or professional; or,

2.6.1.2 Any felony the commission of which occurred on the premises of a massage establishment; or

2.6.1.3 Within five years immediately preceding the date of the filing of the application for a permit under this Chapter has had any massage establishment, operator, technician or trainee license or permit, which was issued by the State of California, or by any county or municipality, revoked; or

2.6.1.4 Within five years immediately preceding the date of the filing of the application for a permit under this Chapter has been convicted in a court of competent jurisdiction of:

(i) Any violation of Section 266h, 266i, 315, 316, 318, or subdivision (b) of Section 647 of the California Penal Code; or

(ii) Any offense in a jurisdiction outside the State of California which is the equivalent of any of the aforesaid offenses.

2.7 "Recognized school of massage" means any school or institution of learning which:

2.7.1 teaches the theory, ethics, practice, profession and work of massage therapy;

2.7.2 requires a residence course of study before the student shall be furnished with a diploma or certificate of completion; and,

2.7.3 has been approved pursuant to California Education Code Section 94300, or, if said school is not located in California, has complied with standards commensurate with those required in said Section 94300 and has obtained certification under any similar state approval program, if such exists.

2.7.4 Transcripts from more than one recognized school can be combined to meet the educational standards required in Section 5.0.

2.8 "State or national professional massage therapy organization or association devoted to the massage specialty and health enhancement approach" means an organization or association that has been determined by the Permit Administrator to meet each of the following requirements:

2.8.1 Requires that its members meet minimum educational requirements appropriate to the nature of their work;

2.8.2 Offers and encourages participation in continuing education programs;

2.8.3 Has an established code of ethics and has enforcement procedures for the suspension and revocation of membership of persons violating the code of ethics.

2.8.4 The organization does not discriminate on the basis of race, sex, creed, color, age or sexual orientation.

3.0 Massage Therapist Permit Required.

3.1 It shall be unlawful for any person to act as a massage therapist unless such person holds a valid permit issued by the Permit Administrator.

3.2 A massage therapist permit shall be issued to any person who has fulfilled the requirements of this Chapter, unless grounds for denial of such permit are found to exist. The Permit Administrator may deny a permit to the permit applicant if:

(1) The applicant made a material misstatement in the application for a permit, or;

(2) The applicant is a person who has engaged in other, stated disqualifying conduct, as described under this Chapter.

(3) All fees have been paid.

4.0 Applications, Fees, and Renewals of Permits.

4.1 The Permit Administrator shall provide each applicant with an application form, requesting the information needed to determine whether the applicant meets the requirements for issuance of a permit pursuant to this Chapter.

4.2 All fees shall be in the amount as established by city council resolution. Fees shall reflect actual costs of investigation and issuance of massage permits.

4.3 Within sixty (60) working days following receipt of a completed application, the permit administrator shall either issue the permit, or mail a written statement of his or her reasons for denial thereof. If the administrator takes neither action, the permit shall be deemed to be issued. The applicant shall furnish the following information:

(1) Name, residence address and telephone number; the previous addresses of applicant, if any, for a period of three years immediately prior to the date of the application and the dates of residence at each;

(2) Social security number and driver's license number, if any;

(3) Applicant's weight, height, color of hair and eyes;

(4) Two prints of a recent passport-size photograph of applicant;

(5) Written evidence that the applicant is at least eighteen years of age;

(6) Business, occupation or employment of the applicant for the three years immediately preceding the date of application. This information shall include, but not be limited to, a statement as to whether or not the applicant, in working as a massage or bodywork technician or similar occupation under a permit or license, has had such permit or license revoked or suspended, and the reasons therefor.

(7) The name and address of the recognized school attended, the dates attended, and a copy of the diploma or certificate of completion awarded the applicant. All applicants may be required to furnish additional evidence of enrollment and attendance of the required class hours or if such evidence is not available are subject to an oral interview by the permit administrator or his or her appointee to establish the bona fide completion of educational requirements.

(8) Such other identification and information as the city may require in order to discover the truth of the matters required to be set forth in the application.

4.4 Temporary Permit: Massage therapists may request a sixty day temporary permit upon payment of all fees for the first year. A temporary permit will be issued for use during the interim period. However, the temporary permit may be revoked at any time upon failure to meet the requirements for a permanent permit, or upon violation of other provisions of this ordinance.

4.5 The massage permit shall have a number assigned by the city for the purposes of identification.

5.0 Requirements for Issuance of Massage Therapist Permit

No permit will be issued unless the applicant meets the following two criteria.

5.1 Holds and maintains a current National Certification of the type described in Section 5.2.5, or

5.2 Is a member in good standing in a state or national professional association as defined in Section 2.8, and satisfies ONE of the following conditions;

;

5.2.1 Has completed five hundred hours of instruction in the massage specialty and health enhancement approach from an approved school as defined in Section 2.7 or classes in massage therapy and related topics offered through State approved colleges and universities;

or,

5.2.2. Has completed two hundred fifty hours of such instruction and, in addition, two hundred fifty hours of practical experience in the massage specialty and health enhancement approach in the form of paid employment as documented by IRS tax returns or other affidavit. Proof of practical experience may include, but is not limited to, 1040 tax returns or W-2 tax forms provided to the applicant and certified by the employing professional and documentation of hours;

or,

5.2.3. Has completed a minimum of 100 hours of such training from an approved school, and proof of 400 hours additional training in:

(a) Continuing educational classes in the massage field and related classes offered by a recognized school of massage or bodywork as defined in section 2.7; or

(b) Classes and workshops as in section (a) approved by the Board of Registered Nurses for nursing CE credit or approved in Category A by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB); or

(c) Programs as in section (a) approved and certified by qualifying professional organizations as defined by Section 2.8; or,

(d) Adult education classes in massage and related topics offered through State approved colleges and universities;
or,

5.2.4 Has completed a minimum of 100 hours of such training from an approved school, and proof of 150 hours additional training as in Section 5.2.3 a-d, and in addition, two hundred fifty hours of practical experience as in Section 5.1.1.2;

5.2.5 Has passed an independently prepared and administered National Certification exam which has been recognized by objective standards to fairly evaluate professional levels of skill, safety and competence, as determined by the National Commission for Certifying Agencies (NCCA) or a similar certifying body. To meet the requirements of 5.2, the practitioner need not maintain active certification after passing the exam.

6.0 Appeal of denial of massage therapist permit.

6.1 The Permit Administrator shall give written notice to the applicant of a denial of an application for a massage therapist permit. Said notice shall set forth the grounds for the denial of the license or permit, and shall be mailed to the applicant at the applicant's address.

6.2 Within 30 days from the date of receipt of the notice of denial in the mail, the applicant may appeal the decision in writing to the Permit Administrator, setting forth in detail the ground or grounds for the appeal.

6.3 Upon receipt of a notice of appeal, the Permit Administrator shall designate a person to conduct a hearing in accordance with the City's hearing procedures. Such hearing shall be not less than 30 days from the date the appeal was received by the Permit Administrator. Written notice shall be given by mail to the applicant of the date, time, place for the hearing.

7.0 Revocation or suspension of Permits; Appeal

7.1 The Permit Administrator may suspend or revoke any permit issued pursuant to this Chapter in the event that he or she determines:

7.1.1 The permittee has violated any provisions of this Chapter;

7.1.2 The permittee has engaged in disqualifying conduct, as described in this Chapter; or,

7.1.3 The permittee has made a material misstatement in the application for a permit.

7.2 A person may appeal from the suspension or revocation of his or her permit pursuant to the procedure set forth in section 6.0 of this Chapter.

8.0 Existing Massage Practitioner Permits. All persons currently authorized by the city to practice massage holding existing massage permits who desire to continue practice shall be granted two (2) years from the effective date to comply with all requirements of this chapter.

9.0 Exemptions.

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

9.1.1 Any person holding an unrevoked license by the State of California while performing activities encompassed by the legal scope of practice of such professional license,

9.1.2. Practitioners who work on fully clothed clients using one of the following systems while in the course of providing work under this system:

a. Reflexology practitioners providing massage exclusively to the feet and/or hands

and/or ears.

b. Practitioners of educational systems in which touch is incidental and in which touch and words are used to deepen awareness of existing patterns of movement in the human body as well as to suggest new possibilities of movement.

c. Practitioners using a non-touch contact to affect the energy systems of the body.

d. Chair massage (also called on-site or seated massage) practitioners working on clients seated upright in a chair.

9.1.3 The Permit Administrator may exempt from the requirements of this section practitioners of recognized proprietary somatic modalities which are not "massage" as commonly understood but which may fall within the definition of massage herein because of touching or other contact, if said practitioners are certified to practice by that modality's guild or other professional organization.

9.2 This chapter shall not apply to individuals administering massages or health treatment involving massage to persons participating in road races, track meets, triathalons, educational events or conferences and similar single occurrence athletic or recreational or educational events; provided that all of the following conditions are met:

9.2.1 The massage services are made equally available to all participants in the event.

9.2.2 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.

9.2.3 The massage services are provided at the site of the event in a public setting and either during, immediately preceding or immediately following the event.

9.2.4 The sponsors of the event have been advised of and have approved the provision of massage services and the qualifications required of those performing such services.

9.3 Out of State Visitors

9.3.1 This chapter shall not apply to individuals in the city or state temporarily for educational events or disaster relief.

9.4 Exemptions from Zoning Restrictions

9.4.1 Those massage businesses in which all persons engaging in activities which require them to obtain a permit under this chapter possess the qualifications of, and have obtained valid permits as massage therapists shall be zoned as business, professional or commercial, and shall be permitted in any neighborhood that allows for home occupations or in areas where home occupations are not excluded.