



## Planning & Building Department

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### MESSAGE ESTABLISHMENTS

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#### **4-501 - Findings and purpose.**

- (a) This chapter is based on the following findings:
  - (1) The city wishes to enable customers to identify legitimate massage workers and businesses, and the city recognizes the practice of massage as a valid professional field. This chapter establishes new standards intended to comply with California law while also providing certain minimum health and safety standards for the operation of massage establishments, their managing employees, and massage practitioners.
  - (2) This chapter relies upon California Business and Professions Code §§ 4600 *et seq.* (enacted by SB 731 in 2008 and amended by AB 619 in 2011), which created a statewide permitting process, administered by the California Massage Therapy Council that expressly preempts local permitting systems and limits the sort of regulations the city can impose on massage businesses requirements.
- (b) This chapter will require all massage therapists and massage practitioners operating within the city to be state certified, and that all massage businesses be registered with the city.
- (c) This chapter is not intended to be exclusive and compliance will not excuse noncompliance with any state or local laws or regulations that are uniformly applied to other professional or personal service businesses including, without limitation, all zoning regulations; business license regulations; the city's building, fire, electrical, and plumbing code regulations; and health and safety laws, rules and regulations applicable to professional or personal services businesses in the city.

#### **4-502 - Definitions.**

In this chapter, unless the context otherwise requires, the following definitions shall apply:

- (a) "California massage therapy council or "CAMTC" means the California Massage Therapy Council created pursuant to California Business and Professions Code §4600.5(a).
- (b) "Certificate of registration" means a certificate issued by the Lafayette police department upon submission of satisfactory evidence, as required by the Lafayette police department that a massage business or sole proprietorship employs or uses only massage therapists or practitioners possessing valid and current state certifications, and has satisfied all other requirements of this chapter.
- (c) "Massage business" or "massage establishment" means any business, regardless of the form under which the business operates, including as a sole proprietorship, which offers, engages in or administers massage, whether on-premises or off-premises, in exchange for consideration of any type.
- (d) "Certified massage practitioner" means any person holding a current and valid state certificate issued by the CAMTC pursuant to California Business and Professions Code §§ 4600 *et seq.* as amended, whether as a massage practitioner or massage therapist, as defined therein.
- (e) "Massage" means any method of pressure on, or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating the external parts of the human body with the hands or with the aid of any mechanical or electrical apparatus or other appliances or devices, with or without such supplementary aids as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment or other similar preparations.
- (f) "Owner" or "operator" means any and all owners of a massage business including, without limitation, any of the following persons: a managing officer/employee, a general partner, a

limited partner, a shareholder, a sole proprietor, or any person who has a five percent (5%) or greater ownership interest in a massage business whether as an individual, corporate entity, limited partner, shareholder, sole proprietor or otherwise.

- (g) "Registered certificate holder" means an owner or operator of a massage business who holds the certificate of registration issued by the Lafayette police department.
- (h) "Specified anatomical areas" means and includes any of the following human anatomical areas: genital, pubic region, anus or female breast below a point immediately above the top of the areola.
- (i) "Specified sexual activities" means and includes any of the following: fondling or other erotic touching of specified anatomical areas; sex acts including, without limitation, intercourse, oral copulation, sodomy and masturbation.
- (j) "State certification" or "state certificate" means a valid and current certification properly issued to a certified massage practitioner or a certified massage therapist by CAMTC pursuant to California Business and Professions Code §§ 4600, *et seq.*, as amended.

#### **4-503 - Exemptions.**

The following classes of persons or businesses shall not be considered a massage business for purposes of this chapter:

- (a) Physicians, surgeons, chiropractors, osteopaths, nurses, or any physical therapists, and other persons working under their direction, who are duly licensed to practice their respective professions in the State of California and working within the scope of their licenses.
- (b) Barbers, cosmetologists, estheticians, and manicurists who are duly licensed under the laws of the State of California and engaging in practices within the scope of their licenses, except that this provision shall apply solely to the massaging of the neck, face, hands, and feet, and/or scalp of the customers, and this exceptions shall not apply to full body work or full body massage.
- (c) Hospitals, nursing homes, sanatoriums, or other health facilities duly licensed by the State of California.
- (d) Accredited junior colleges and colleges or universities whose athletic coaches and trainers are acting within the scope of their employment as coaches or trainers.
- (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 such as an outdoor road or bike race.
- (f) Health clubs, health spas, gymnasium or other similar facility designed or intended for general physical exercise or conditioning in which the furnishing of massage or bathing services or facilities is subordinate and incidental, provided that except that any person performing massage services is a certified massage practitioner.

#### **4-504 - Authority.**

The police chief or designated representative shall have the power and authority to promulgate rules, regulations, and requirements consistent with provisions of this chapter and other law in connection with the issuance of a certificate of registration or exemption. The police chief may designate an employee of his or her department to make decisions and investigations and take actions under this chapter.

**4-505 - State certification and city registration required.**

- (a) It is unlawful for any individual to administer massage in exchange for compensation or consideration of any type within the city unless that individual is a certified massage practitioner.
- (b) It is unlawful for any massage business within the city to provide or allow any form of massage to be administered unless all individuals employed by the massage business to administer massage, whether as an employee or independent contractor, are certified massage practitioners.
- (c) It is 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 city, the operation of a massage establishment or to allow any person to administer massage or function as a certified massage practitioner, unless a current and valid certificate of registration has been issued for that massage business pursuant to this chapter.

**4-506 - Certificate of registration for massage establishments; application and issuance; expiration.**

- (a) In order to lawfully operate in the city, a massage establishment must obtain a certificate of registration from the Lafayette police department annually, and shall post the certificate of registration in a visible location in the massage establishment. Where a massage establishment provides only off-premises massage services and has no principal location from which massage is administered, the massage practitioner shall carry a copy of the certificate of registration with the practitioner at all times while administering massage and shall display the certificate upon request by a representative of the Lafayette police department.
- (b) The application for a certificate of registration shall include:
  - (1) The name, address and telephone number of the massage establishment where massage will be provided, or, where the massage establishment provides only off-premises massage, the principal address from which the business will be administered.
  - (2) The name address and telephone of the owner(s) and manager(s) of the massage establishment.
  - (3) Contact information for the primary person in charge of the massage establishment, if different from (b)(2) above.
  - (4) The name(s) and copies of the state certification for each employee or independent contractor who will offer massage at (or through) the massage establishment, a description of the services to be performed by that person, and a recent passport size photo of that person.
  - (5) A statement certifying that the operation of the massage establishment as proposed by the applicant complies with all applicable state and local laws, rules and regulations, including, but not limited to all county health regulations applicable to massage services and the city's building, health, and fire safety ordinances.
- (c) If an applicant owner or operator of a massage establishment is a certified massage practitioner, he or she must provide his or her state certification at the time of obtaining the certificate of registration.
- (d) If an applicant owner or operator of a massage establishment is not a certified massage practitioner, he or she must apply to the Lafayette police department for a background check,

and submit the following additional items to the Lafayette police department in order to obtain a certificate of registration:

- (1) The applicant's current occupation and employment history; the name and address of any massage business or other like establishment owned, operated or worked in by the applicant and the person who will be in charge of or manage the proposed massage establishment in the City of Lafayette, including but not limited to the name and address of the massage business and the dates of issuance, denial, restriction, revocation or suspension, and the reasons therefor, of any individual or business permits issued to that massage business.
  - (2) A statement as to whether the applicant or any owner or operator of the massage establishment has had a massage establishment or similar business permit revoked or suspended (and the reasons), or been convicted of a crime (including a plea of nolo contendere), and the nature of the offense and the penalty imposed for it.
  - (3) Fingerprints of the applicant and the person who will be in charge of or manage the massage establishment and a current photograph of each.
  - (4) An application fee in the amount established by resolution of the city council.
  - (5) Any other information deemed necessary by the Lafayette police department to conduct a complete background check and investigation relevant to the proposed massage establishment.
- (e) The Lafayette police department shall issue a certificate of registration to a massage establishment that is to be owned or operated by a certified massage practitioner as soon as reasonably practicable but no later than fifteen (15) days of the submission of a complete application if the police department finds that the applicant has not made a material false statement in the application. There shall be no fee for a certificate of registration issued to a massage establishment that is owned and operated by a certified massage practitioner.
- (f) The Lafayette police department shall issue a certificate of registration to a massage establishment that is to be owned or operated by any person other than a certified massage practitioner within thirty (30) days of the submission of a complete application unless it finds that: (1) the applicant has made a material false statement in the application; (2) the applicant (or an officer or director holding five percent (5%) or more interest in the massage establishment) has committed a violation of any provision of California Business and Professions Code Section 4603; or (3) the applicant has previously had a massage establishment permit, massage technician permit, or any similar license, certificate, or permit revoked by the city or any public agency during five (5) years preceding the date of the application.
- (g) A certificate of registration shall be valid for one year. The holder of a certificate of registration shall apply to the police department to renew the certificate of registration, and shall provide the police department with any information requested for the police department to process the renewal, no later than thirty (30) days prior to the expiration date of the certificate of registration.

**4-507 - Notification of changes in certificate of registration; transfer of certificate of registration.**

- (a) If there are:
- (1) any changes in the ownership of a massage establishment or the information that was provided in the application for a certificate of registration; or

- (2) the occurrence of any circumstance or event that would be grounds for suspension or revocation of the certificate of registration under this chapter, the registered certificate holder must notify the city within ten (10) days of such change or event.
- (b) Certificates of registration are non-transferable, unless the chief of police or his designee gives prior written consent for such transfer. Transfers made without the advance written consent of the police chief or his designee shall be void, of no force and effect and shall constitute a violation of this chapter.

**4-508 - Display of state certification.**

- (a) Any owner of a massage establishment where massage is provided on-premises must display the state certificates for all massage practitioners prominently in a conspicuous place, capable of being viewed by customers or city representatives, at every location where massage is administered.
- (b) Where a massage establishment provides only off-premises massage services and has no principal location from which massage is administered, the massage practitioner shall carry his or her state certificate at all times while administering massage and shall display the certificate upon request by a representative of the Lafayette police department.

**4-509 - Facilities and operations.**

- (a) Massage establishment owners and massage establishments shall comply with all applicable state and local laws, rules and regulations, including, without limitation, all health, building, fire, electrical, plumbing and zoning regulations and all applicable health and safety requirements.
- (b) It is unlawful for any massage business or any certified massage practitioner to offer, allow or provide a massage between 10:00 p.m. and 7:00 a.m.
- (c) Disinfection of Instruments. Instruments used for massage must be disinfected before each use. Where instruments for massage are employed, adequate quantities of supplies for disinfection must be available during all hours of operation.
- (d) All massage establishments where massage is provided on-premises shall comply with the following minimum requirements:
- (1) Signs. A clear, legible sign must be posted at the main entrance to the massage establishment, or in the room or suite in which massage services are provided if the massage establishment is located in a room or suite of a larger commercial building, identifying the establishment as a massage establishment, provided, however, that all such signs must otherwise comply with the signs requirements of this code.
  - (2) List of services. A list of services available and the cost of such services shall be posted in an open and conspicuous public place on the premises of the massage establishment. The services shall be described in English and may also be described in such other languages as the business chooses. No massage operator shall permit, and no person employed or retained by a massage business shall offer to perform, any services or fees other than those posted.
  - (3) Water. Hot and cold running water must be available at all times.
  - (4) Linen storage. Closed cabinets must be utilized for the storage of clean towels and linen. After use, towels and linens must be removed and stored in a separate container until laundered.

- (5) Hours of operation. The hours of operation shall be displayed in a conspicuous place in the reception area of the massage business and in any front window of the massage business that is clearly visible from outside of the massage business. Patrons and visitors shall be permitted in the massage establishment only during hours of operation.

**4-510 - Record keeping.**

The operator of a massage establishment shall maintain:

- (a) A register of the certified massage practitioners working for the massage establishment, including state certificate number; and
- (b) A daily register of each client, the certified massage practitioner who treated the client, a description of service(s) performed and the time of the appointment. The daily register shall be completed by the close of business every day, and shall be available for inspection by the city at all times during regular business hours. The register shall be considered confidential, not for public review, and may be inspected by the city only as part of a criminal investigation or during proceedings to investigate compliance with this chapter. These records shall be retained for at least two years.

**4-511 - Inspection.**

- (a) Massage establishments shall be subject to periodic inspection by county and city officials for compliance with health, safety, and building standards.
- (b) In addition to the foregoing, the investigating officials of the city shall have the right to enter the premises of any massage establishment that provides massage services on-premises from time to time during regular business hours for the purpose of making reasonable inspections to enforce compliance with this chapter. If any violations are found, the official shall notify the massage establishment in writing. The official may give the establishment a defined period of time to correct the violation(s), or, if the violation(s) presents a danger to public health or safety, close the establishment until the violation(s) is corrected. In the event a certificate of registration has been issued, it may be revoked or suspended in the event of a violation as set forth in this chapter.

**4-512 - Prohibited conduct.**

It is unlawful for owners of massage establishments or certified massage practitioners to conduct or allow any of the following activities to be conducted by a massage establishment:

- (a) Engagement in any specified sexual activities in the course of administering massage.
- (b) The exposure of specified anatomical areas in the presence of any patron, customer or guest.
- (c) Intentional physical contact with the specified anatomical areas of any customer, patron, or guest in the course of administering a massage.
- (d) Any violation of state law, including without limitation, engaging in conduct prohibited by Penal Code Section 647(b) or Business and Profession Code Section 4603.

**4-513 - Revocation or suspension of certificate of registration.**

- (a) Certificates of registration issued to a massage business may be suspended or revoked by the Lafayette police department upon any of the following grounds:
  - (1) The registered certificate holder has engaged in fraud, false statements, or misrepresentation in maintaining or obtaining the certificate of registration.

- (2) The registered certificate holder has failed to comply with any law, rule or regulation applicable to the massage establishment or registered certificate holder pursuant to this chapter or state law.
  - (3) The registered certificate holder employs or uses any person other than a certified massage practitioner to administer massage.
  - (4) An owner or operator has been convicted of a crime that would have been grounds for denial of the certificate of registration, or has violated any part of this chapter or other applicable law, rule or regulation.
  - (5) An owner or operator no longer maintains a current and valid state certification and has not applied to the city for a certificate of registration as required by Section 4-506(d).
- (b) Prior to the suspension or revocation of any permit issued pursuant to this chapter, the permittee shall be provided with written notice of the grounds for the suspension or revocation, and may request a hearing on the revocation with the police chief no later than fifteen (15) calendar days following the date of the notice.

If the hearing is requested, notice of the hearing, as well as its time and place, shall be sent by certified mail to the address shown on the application or by hand delivery to the permittee at least fourteen (14) calendar days prior to said hearing, unless a shorter time period is agreed to by the permittee. Written notice of the police chief's decision shall be mailed to the permittee within fourteen (14) calendar days following the hearing.

No privilege to provide massage services shall exist from the time written notice is served pending decision by the police chief, if a hearing is requested. Notwithstanding the foregoing, the police chief may immediately suspend a permit without a prior hearing if he or she determines that the continued provision of massage services pursuant to the permit constitutes an immediate and significant threat to the public health, safety or welfare. In such a case, the police chief shall conduct the foregoing hearing following the suspension.

#### **4-514 - Appeal from denial, suspension, or revocation of certificate of registration.**

No later than fifteen (15) calendar days after service of notice of revocation, suspension, or denial of an application, or renewal, the permittee may appeal that decision to the city manager. If an appeal hearing is requested, notice of the hearing, as well as its time and place, shall be sent by certified mail to the address shown on the application or by hand delivery to the permittee at least fourteen (14) calendar days prior to said hearing, unless a shorter time period is agreed to by the permittee. Written notice of the city manager's decision shall be mailed to the permittee within fourteen (14) calendar days following the hearing. The decision of the city manager shall be final.

#### **4-515 - Reapplication after denial.**

No application for a certificate of registration will be accepted within one year after an application or renewal for the same massage establishment, or submitted by or on behalf of the same owner or operator, has been denied or a certificate of registration held by the same massage establishment, or by or on behalf of the same owner or operator, has been revoked or suspended, unless the reason for the denial, suspension, or revocation was that a massage practitioner requiring state certification did not have that certification, in which case reapplication may occur once the massage practitioner obtains state certification.



**4-516 - Violation and enforcement.**

- (a) Any person who violates any provision of this chapter shall be deemed guilty of a misdemeanor or an infraction.
  - (1) If charged as an infraction, the penalty upon conviction of such person shall be a fine as set forth in chapter 1-3 of this code.
  - (2) If charged as a misdemeanor, the penalty upon conviction of such person shall be imprisonment in the county jail for a period not to exceed six months, or by a fine not exceeding \$1,000, or by both such fine and imprisonment.
- (b) In addition to the foregoing, any violation of this chapter is a public nuisance which may be subject to an administrative citation pursuant to chapter 1-9 of this code, or abated and permanently enjoined pursuant to chapter 8-21 of this code, and for which the city may recover damages from the property owner, as well as from the person conducting or maintaining the nuisance.

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