

**Council Meeting: January 26, 2010****SUBJECT: Amendment to Sunnyvale Massage Ordinances (Chapter 9.41)
to Comply with Senate Bill 731****REPORT IN BRIEF**

The purpose of this report is to bring the Sunnyvale Municipal Code into compliance with the provisions of Senate Bill 731 ("SB 731") which became effective on September 1, 2009. In essence, the law now allows the massage establishments and practitioners to be licensed either by the California Massage Therapy Council or the local agency.

BACKGROUND

The City of Sunnyvale currently regulates massage therapists and practitioners in Sunnyvale Municipal Code ("SMC") Chapter 9.41, "Massage Establishments and Massage Therapists". On September 1, 2009 Senate Bill 731 became effective, which provides an additional tool for the regulation of massage therapists and practitioners. The regulating agency under the legislation, initially named the Massage Therapy Organization, is now called the California Massage Therapy Council ("CAMTC"). Prior to this legislation there was no state-wide certification of the massage therapy profession. Each jurisdiction had the responsibility of regulating massage therapists and establishments through local ordinances.

EXISTING POLICY

Law Enforcement Sub-Element

4.1A Provide a safe and secure environment for people and property in the community.

DISCUSSION

Government Code section 51030 et. seq. allows local jurisdictions to enact ordinances regulating massage establishments. In 1989, the City enacted SMC Chapter 9.41 pursuant to this authority. The new requirements in SB 731 exist in conjunction with this original grant of authority as well as the City's inherent police power authority.

SB 731, codified as California Business and Professions Code § 4600 *et seq.*, became effective on September 1, 2009. Pursuant to SB 731, massage therapists and practitioners may be certified by the CAMTC, a non-profit

organization that has been given regulatory authority by the state legislature. This is a voluntary state-wide certification and does not supplant local licensing by cities. In essence, a massage therapist or practitioner may choose to be certified either through the statewide CAMTC process or the City's local licensing process.

SB 731 requires applicants for certification to be at least 18 years of age, meet certain educational and professional criteria, and to undergo a criminal history background check as a prerequisite to certification. The legislation also allows the CAMTC to take disciplinary action against the certificate holder if he or she has been arrested for, and charged with, certain sexually related crimes or drug offenses. Finally, SB 731 prohibits a city or county from requiring CAMTC certificate holders to obtain a separate local license to practice massage therapy.

SMC Chapter 9.41, which regulates massage establishments and therapists, has been updated to incorporate the requirements and prohibitions of SB 731. In the updated ordinance, massage therapists and practitioners who are duly certified by the CAMTC are exempt from the City's local licensing requirements pursuant to California Business and Professions Code § 4612(b)(1). Additionally, a section has been added to SMC Chapter 9.41 requiring CAMTC certified massage businesses to provide the Sunnyvale Department of Public Safety with a copy of the CAMTC certificate for each massage therapist or practitioner. Such businesses must maintain on their premises a copy of each CAMTC certificate for review by the Sunnyvale Department of Public Safety.

SB 731 expressly allows certain local regulations for massage establishment business licenses, zoning laws and reasonable health and safety requirements. As a result, certain provisions of SMC Chapter 9.41 have been modified to conform to the new requirements. However, SMC Chapter 9.41 still requires massage establishments to submit a massage establishment business license application (along with the applicable fee), and pay the appropriate business license tax. There will be two types of massage establishment business licenses: (1) one for massage establishments who employ *only* CAMTC certified therapists and practitioners; and (2) one for massage establishments who employ *any* non-CAMTC certified massage therapists (including massage therapist trainees). A separate massage establishment business license application and application fee will be established for each.

These changes bring SMC Chapter 9.41 into compliance with the requirements of SB 731.

FISCAL IMPACT

The City of Sunnyvale currently has nine licensed therapists within the city. The fiscal impact of the new legislation will be negligible since any loss of

revenue if the massage therapists choose the statewide CAMTC certification will be offset by the savings to the department in staff time and resources in administering the program.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

ALTERNATIVES

1. Adopt the Ordinance in Attachment "A" amending SMC Chapter 9.41, "Massage Establishments and Massage Therapists". Adopt the fee resolution in Attachment "B".
2. Adopt the Ordinance in Attachment "A" amending SMC Chapter 9.41, "Massage Establishments and Massage Therapists", with Council modifications. Adopt the fee resolution in Attachment "B" with Council modifications.
3. Other action as determined by Council.

RECOMMENDATION

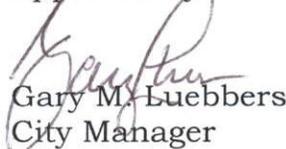
Staff recommends Alternative 1, adopting the ordinance in Attachment "A" and adopting the resolution in Attachment "B".

Reviewed by:



Don Johnson, Director, Public Safety
Prepared by: Jeffrey Hunter, Lieutenant

Approved by:



Gary M. Luebbbers
City Manager

Attachments

- A. Proposed Ordinance Amending Chapter 9.41 of the Sunnyvale Municipal Code
- B. Proposed Resolution Amending the Massage Establishment Application Fees
- C. Senate Bill 731

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE AMENDING CERTAIN SECTIONS OF CHAPTER 9.41 (MASSAGE ESTABLISHMENTS AND MASSAGE THERAPISTS) OF TITLE 9 (PUBLIC PEACE, SAFETY OR WELFARE) OF THE SUNNYVALE MUNICIPAL CODE RELATING TO MASSAGE ESTABLISHMENTS AND MASSAGE THERAPISTS

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

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

Chapter 9.41.

MASSAGE ESTABLISHMENTS AND MASSAGE THERAPISTS

- 9.41.010. Findings.
- 9.41.020. Purpose and intent.
- 9.41.030. Definitions.
- 9.41.040. Massage establishment ~~permit~~license required.
- 9.41.050. Massage establishment ~~permit~~license application fee.
- 9.41.060. Application for a non-CAMTC certified massage establishment ~~permit~~license.
- 9.41.065. Application for a CAMTC massage establishment license.
- 9.41.070. Granting or denial of massage establishment ~~permit~~license.
- 9.41.075. Maintenance of CAMTC Certificates.
- 9.41.080. Massage therapist license required.
- 9.41.090. Application for massage therapist license—Renewals.
- 9.41.100. Massage therapist trainee license required.
- 9.41.110. Appeal of denial of license ~~or permit~~.
- 9.41.120. Provisional massage establishment ~~permit~~license.
- 9.41.130. Facility requirements.
- 9.41.140. Operations requirements.
- 9.41.150. Location.
- 9.41.160. Application to existing establishments.
- 9.41.170. Off-premises massage.
- 9.41.180. Inspection by officials.
- 9.41.190. Issuance of notice of violation.
- 9.41.195. Reporting CAMTC Certification Violations.
- 9.41.200. Business license—Business name.
- 9.41.210. Business location change.
- 9.41.220. Sale or transfer of massage establishment interest.
- 9.41.230. Display of ~~permits and~~ licenses.
- 9.41.240. Exemptions.

- 9.41.250. Massage establishment ~~permit~~license—Suspension or revocation.**
- 9.41.260. Massage therapist or trainee license—Suspension or revocation.**
- 9.41.270. Procedure for revocation or suspension of licenses ~~and permits~~.**
- 9.41.280. Hearing rules.**
- 9.41.290. Reapplication after denial—No refund of fee—Return of license ~~or permit~~.**
- 9.41.300. Violation—Penalty—Time limit on ~~permit~~license reissuance.**

9.41.010. Findings.

The city council finds and declares as follows:

(a) The ~~permit~~license requirements and restrictions imposed by this chapter are reasonably necessary to protect the health, safety and welfare of the citizens of the city.

(b) – (i) [Text unchanged.]

9.41.020. Purpose and intent.

(a) – (b) [Text unchanged.]

(c) It is the intent of this chapter to comply with California Business and Professions Code Section 4600 et seq. (SB 731) effective September 1, 2009, which created a voluntary statewide massage certification program administered by the California Massage Therapy Council. Consistent with state law, the City retains the ability to regulate local massage therapist licensing, massage establishment licenses, health and safety issues and land use and zoning.

9.41.030. 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 given them in this section.

(a) “Conviction” or “convicted” means a plea or verdict of guilty or a conviction following a plea of nolo contendere or no contest.

(b) “CAMTC certificate” means a valid certificate issued by the California Massage Therapy Council to a massage therapist or practitioner.

(c) “CAMTC certificate holder” or “CAMTC certified” means a massage therapist or practitioner who has obtained a CAMTC certificate.

(d) “CAMTC ~~massage~~ establishment” means, as defined in Business and Professions Code Section 4612(b)(1), either a sole proprietorship, where the sole proprietor is CAMTC certified, or an establishment that employs only CAMTC certified persons to provide massage services.

~~(be)~~ “Customer area” means areas open to customers of the establishment.

~~(ef)~~ “Director of public safety” means the director of the Sunnyvale department of public safety or his or her designee.

~~(eg)~~ “Direct supervision” means supervision by a person such as a licensed medical professional who is present on the premises at all times the person being supervised is working. “Direct supervision” does not necessarily mean that the supervisor must be present in the same room as the employee being supervised, but must be on the premises and able to make a determination whether or not the

employee being supervised is complying with the supervisor's instructions, required procedures and applicable standards.

(eh) "Disqualifying conduct" means conduct by any person who:

(1) [Text unchanged.]

(2) Within five years immediately preceding the date of the filing of the application in question or, in the case of revocation or suspension proceedings, within five years of the date of notice of revocation or suspension hearing, whichever is applicable, has had any massage establishment, operator, therapist or trainee license ~~or permit~~, which was issued by the state of California, or by any county or municipality, revoked; or

(3) - (5) [Text unchanged.]

~~(6) Has engaged in conduct which would constitute an offense as described in subdivisions (1) or (3) of this subsection, within five years immediately prior to the filing of any application, or within five years of the date of notice of revocation or suspension, whichever is applicable.~~

(f) – (g) [Renumbered (i) through (j), consecutively; text unchanged.]

(hk) "Massage therapist" or "massage therapist trainee" means any person who administers massages, baths or health treatments involving massages or baths as the principal functions to another person for any direct or indirect consideration whatsoever. The terms "massage technician" and "massage practitioner" are included within the definition of "massage therapist" or "massage therapist trainee," as appropriate, for purposes of this chapter. A CAMTC certificate holder is also included within the definition of "massage therapist".

(il) "Massage therapist license" or "massage therapist trainee license" means a written document issued by the department of public safety authorizing the holder to engage in the activities of a massage therapist or massage therapist trainee, as appropriate, as defined by this chapter and pursuant to the regulations, requirements and standards set forth in this chapter.

(jm) "Off-premises massage" means the engaging in or carrying on of massage for consideration at a location other than a duly ~~permitted~~licensed massage establishment.

(k) – (o) [Renumbered (n) through (r), consecutively; text unchanged.]

9.41.040. Massage establishment ~~permit~~license required.

It shall be unlawful for any person to establish, operate, conduct or maintain, in or upon any premises within the city, a massage establishment without the ~~permit~~license obtained from the director of public safety as required by this chapter. This provision applies to all massage establishments, including CAMTC 4612(b)(1) establishments. A separate ~~permit~~license shall be obtained for each separate massage establishment operated by such person. Upon payment of the appropriate ~~permit~~license application fee, a massage establishment ~~permit~~license shall be issued to any person who has complied with the requirements of this chapter and all other applicable provisions of this code, unless grounds for denial of such ~~permit~~license are found to exist. Only one ~~permit~~license (including a ~~permit~~license which has been suspended, revoked, or is in the appeals process) shall be issued to a business location. No additional applications for ~~permits~~licenses will be accepted for locations which are in the appeals process, until the existing ~~permit~~license has expired, been revoked, or been surrendered by the applicant.

9.41.050. Massage establishment ~~permit~~license application fee.

Any application for a massage establishment ~~permit~~license, or for renewal thereof, shall be accompanied by a nonrefundable fee, in an amount established by resolution of the city council. The application fee shall be used to defray, in part, the costs of investigation and report, and is not made in lieu of any other fees or taxes required under this code, including a business license required pursuant to Chapter 5.04. A ~~permit~~license to operate a massage establishment shall be renewed annually. The ~~permitee~~licensee shall pay a renewal fee for such renewal, in an amount established by resolution of the city council. A separate application fee and renewal fee shall be established for CAMTC 4612(b)(1) establishments. The establishment license application fee does not eliminate the payment of the City's business license tax pursuant to Chapter 5.04.

9.41.060. Application for a non-CAMTC certified massage establishment ~~permit~~license.

(a) ~~Any~~If a massage establishment will employ any non-CAMTC certified therapist or practitioner, any application for a massage establishment ~~permit~~license shall be made with the ~~director~~ department of public safety.

(b) The application shall set forth the exact nature of the massage, bath or health treatments to be administered, the proposed place of business and facilities therefor, and the name and address of the applicant. The applicant may be required to furnish fingerprints for purposes of establishing identification. The applicant shall also furnish the following information:

(1) - (8) [Text unchanged.]

(9) The names and residence addresses of all persons currently employed or intended to be employed in the massage establishment, regardless of the nature of the employment, including the names and addresses of any person licensed pursuant to Sections 9.41.080 through 9.41.100 or any person who possesses a valid CAMTC certificate, along with the proposed or actual nature of the work performed or to be performed, and recent passport-size photographs, suitable to the public safety officer processing the application, of each such employee. ~~The~~Unless CAMTC certified, the director of public safety may require such employee to allow fingerprints to be taken for the purpose of identification. Any applicant or ~~permitee~~licensee shall notify the city in writing of the names, addresses and nature of the work, of any new employees, within five days of such employment, and supply the photographs described in this subsection. ~~Such~~Unless CAMTC certified, such new employees shall allow fingerprints to be taken for the purpose of identification upon request. "Employee" includes every owner, partner, manager, supervisor and worker, whether paid or not, who renders personal services of any nature in the operation of a massage establishment;

(10) – (11) [Text unchanged.]

(12) Authorization for the city, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the ~~permit~~license.

9.41.065. Application for CAMTC massage establishment license.

(a) If a massage establishment employs only CAMTC certified therapists or practitioners, a CAMTC massage establishment license application shall be made with the department of public safety.

(b) The application shall specify the nature of the massage therapy or bodywork service available, the hours of operation, the name and address of the establishment.

(c) The application shall state the name and address of the owner(s) and operator(s) of the establishment and the name and mailing address of the applicant.

(d) The application shall also include a copy of a valid CAMTC certificate held by each person who is employed by the establishment to provide massage therapy services.

(e) The application shall include such other information as may be deemed necessary by the director of public safety.

(f) The application shall allow authorization for the city, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the license.

(g) The application shall include a signed and dated statement by the applicant that he or she certifies under penalty of perjury that the foregoing information contained in the application is true and correct.

9.41.070. Granting or denial of massage establishment permitlicense.

(a) Upon receipt of a completed, written application for a massage establishment permitlicense, the director of public safety shall conduct an investigation to ascertain whether such permitlicense should be issued, and within sixty days of receipt, shall approve, conditionally approve, or deny the application in writing. If the application is denied, the director shall provide a written statement of the reasons for denial. The director may extend the sixty day period for up thirty additional days.

(b) The director shall deny a permitlicense to the applicant where the director makes any of the following findings:

(1) The applicant has made one or more material misstatements in the application for a permitlicense; or

(2) The applicant, if an individual; or the stockholders holding more than five percent of the stock of the corporation, the officers and directors, and each of them, if the applicant be a corporation; or the partners, including limited partners, and each of them, if the applicant be a partnership; and the manager or other person principally in charge of the operation of the business, or any such individuals, is a person who has engaged in disqualifying conduct, in the past five years, as described in Section 9.41.030(e); or

(3) The massage establishment, as proposed by the permitlicense applicant, if permitted, would not comply with all the applicable laws, including, but not limited to, all the city's building, fire, zoning, and health regulations; or

(4) – (7) [Text unchanged.]

9.41.075 Maintenance of CAMTC Certificates

Every massage establishment that employs CAMTC certified persons shall provide the Sunnyvale Department of Public Safety with a copy or other evidence of the CAMTC certificate of every person who is employed or retained by the establishment to provide massage therapy within thirty (30) calendar days of the commencement of such person's period of employment.

9.41.080. Massage therapist license required.

(a) It shall be unlawful for any person to act as a massage therapist or a massage therapist trainee unless such person holds a valid license issued by the director of public safety or a valid CAMTC certificate. Any director of public safety-issued license ~~issued to a massage therapist~~ is not transferable.

(b) A massage therapist license shall be issued to any person who has fulfilled the requirements of Section 9.41.090, and all other applicable provisions of this code, unless grounds for denial of such ~~permit~~license are found to exist. The director of public safety may deny a license to the license applicant if:

(1) - (4) [Text unchanged.]

9.41.090. Application for massage therapist license—Renewals.

(a) Any application for a massage therapist license shall be made with the director of public safety and shall be accompanied by a nonrefundable fee as established by resolution of the city council.

(b) Any person who is not CAMTC certified, applies for a massage establishment ~~permit~~license, and ~~who~~ desires to act as a massage therapist within said establishment shall be required to pay the fee required by this section and shall be required to apply for, obtain and maintain in full force and effect a massage therapist license.

[Remainder of Text Unchanged.]

9.41.100. Massage therapist trainee license required.

(a) – (d) [Text unchanged.]

(e) Except as provided in subsection (f) of this section, a massage therapist trainee ~~permit~~license shall be issued to any applicant who has fulfilled the requirements of subsection (d) of this section.

(f) [Text unchanged.]

(g) The trainee license shall allow the student to work in a massage establishment under the direct supervision and direction of and in the immediate presence of a massage therapist who has received and holds a current and valid license issued pursuant to the provisions of this chapter; provided, however, that no licensed massage therapist shall be permitted to supervise more than two persons who have been issued a trainee license. The trainee license shall expire ninety days from the date of issuance and shall not be renewed except as follows:

(1) [Text unchanged.]

(2) Where the applicant for such renewal has completed not less than one hundred hours of instruction from a recognized school of massage during the effective period of the original trainee ~~permit~~license and desires to complete additional hours of instruction to enable the applicant to obtain a diploma or certificate of graduation from such school. Only one such renewal shall be granted pursuant to this subdivision.

(h) [Text unchanged.]

(i) Any massage therapist trainee who, during the life of the trainee ~~permit~~license, completes the instruction required of a massage therapist and satisfies all other applicable requirements shall be issued a massage therapist ~~permit~~license upon payment of the massage therapist application fee.

9.41.110. Appeal of denial of license ~~or permit~~.

(a) The director of public safety shall give written notice to the applicant of a denial of an application for a massage establishment ~~permit~~license, or a denial of an application for a massage therapist or massage therapist trainee license. The 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 last known address.

(b) – (c) [Text Unchanged.]

(d) After the hearing on the appeal, the city manager may refer the matter back to the director of public safety for a new investigation and decision, may affirm the decision of the director of public safety, or may decide to direct the director of public safety to issue the license ~~or permit~~. The decision of the city manager upon such appeal shall be final.

9.41.120. Provisional massage establishment ~~permit~~license.

The director of public safety may, at his or her discretion, issue a provisional ~~permit~~license to any massage establishment, for a period not to exceed six months, where the applicant is able to show that substantial compliance with the requirements of this chapter has been met and that remaining compliance can be achieved within the period of the provisional ~~permit~~license. Such a provisional ~~permit~~license cannot be renewed beyond six months from the date of the initial application.

9.41.130. Facility requirements.

(a) Code Requirements. Each massage establishment shall comply with all applicable provisions of this code and any codes adopted by reference herein, including, but not limited to, the Uniform Building Code, the Fire Code, the Electrical Code, and the Plumbing Code. Each application shall be accompanied by three copies of a scaled, detailed floor plan, and any modification or alteration without appropriate permits shall be deemed grounds for revocation of the ~~permit~~license or other enforcement remedy.

(b) Signs. Each massage establishment shall comply with the requirements of the city sign regulations, ~~and any external sign shall identify the business as a massage establishment.~~

(c) Lighting. Each room within a massage establishment where massage will be performed shall be provided with sufficient lighting and ventilation in compliance with the Uniform Building Code. ~~The lighting in each massage room or enclosure shall include at least one sixty watt white light bulb and shall be activated at all times while the patron is in such room or enclosure. No strobe, flashing or colored lights shall be used nor shall any coverings be used which change the color of the primary light source.~~

~~(d) Bath, Toilet and Shower Facilities. A minimum of one toilet and one separate wash basin shall be provided for patrons in each massage establishment, which basin shall provide soap or detergent and hot running water at all times and~~

~~shall be located within close proximity to the area devoted to the performing of massage services. A permanently installed soap dispenser, filled with soap, and a single service towel dispenser shall be provided at the restroom wash basin or sink. No bar soap shall be used. A trash receptacle shall be provided in each toilet room. Showers may be provided at the option of the owner/operator~~

(e) – (h) [Renumbered (d) – (g), consecutively; text unchanged.]

9.41.140. Operations requirements.

(a) [Text unchanged.]

(b) Inspections. As a condition of the massage establishment **permitlicense**, the owner, operator and/or on-duty manager agrees and consents to inspections by city building and public safety department personnel for the purpose of determining compliance with the provisions of this chapter and other applicable regulations, ordinances and laws. The city's building and public safety departments may, from time to time, inspect each massage establishment during the regular business hours of the massage establishment. Public safety personnel may inspect the occupied massage rooms, and may verify the identity of all on-duty employees.

(c) – (d) [Text unchanged.]

(e) Alcoholic Beverages and Controlled Substances. No person shall enter, be in, or remain in, any part of a massage establishment **permittedlicensed** under this chapter while in possession of, consuming, using or under the influence of any alcoholic beverage or controlled substance. The owner, operator and manager shall be responsible to ensure that no such person shall enter or remain upon the massage establishment. Service of alcoholic beverages shall not be permitted.

(f) – (i) [Text unchanged.]

(j) Hours of Operation. The owner shall advise the city, in writing, at the time of the application for a **permitlicense** of the business hours and any subsequent changes in these hours. No person shall operate a massage establishment or administer a massage in any massage establishment between the hours of ten p.m. and eight a.m. the following morning. A massage begun any time before ten p.m. shall nevertheless terminate at ten p.m. All customers, patrons and visitors shall be advised of these hours and shall be excluded from the massage establishment during these hours. The hours of operation shall be displayed in a conspicuous public place in the lobby within the massage establishment and in the front window clearly visible from the outside.

(k) Advertising. No massage establishment granted a **permitlicense** under this chapter shall place, publish or distribute or cause to be placed, published or distributed any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective customers or clients that any service is available other than those services authorized by this chapter, nor shall any massage establishment employ language in the text of such advertising that would reasonably suggest to a prospective patron that any service is available other than those services authorized by this chapter.

(l) Insurance. No person shall engage in, conduct or carry on the business of a massage establishment unless there is on file with the director of public safety, and maintained in full force and effect at all times, documents issued by an insurance company authorized to do business in the state of California evidencing that the **permitlicensee** is insured under a general liability insurance policy

providing minimum coverage of one million dollars for injury or death to any person arising out of the operation of any massage establishment subject to the provisions of this chapter and the administration of a massage.

(m) – (n) [Text unchanged.]

(o) Doors. ~~All front, reception, hallway or front exterior doors (except back or rear exterior doors used for employee entrance to and exit from the massage establishment) shall be unlocked during business hours, unless some other arrangement related to safety has been made with the department of public safety. No massage may be given within any cubicle, room, booth or any area within a massage establishment which is fitted with a door capable of being locked, unless the only door is an exterior door. All doors shall comply with building requirements.~~

(p) Access. No person(s) other than valid licensees ~~or permittees~~ issued pursuant to this chapter, and customers or patrons of the establishment, shall be allowed beyond the front lobby, located directly inside the front door entrance during hours of operation. Any other person(s) found beyond the first interior door leading to the inside of the business including, but not limited to, hallways, massage rooms, reception/business offices or lounge area will be in violation of this section. Entry doors to any room shall not be obstructed by any means.

(q) – (s) [Text unchanged.]

9.41.150. Location. [Text unchanged.]

9.41.160. Application to existing establishments.

Each owner or operator of a massage establishment and each licensed massage therapist legally doing business on the effective date of this chapter shall comply with all new requirements which are prerequisites for issuance of a ~~permit or~~ license and all new operational requirements by July 1, 2000. [The voluntary CAMTC certification is effective September 1, 2009.](#)

9.41.170. Off-premises massage.

(a) ~~No person shall~~ [Any person licensed by the City of Sunnyvale as a massage therapist pursuant to this chapter shall not](#) conduct, participate or engage in any massage in any public place, with or without consideration, ~~unless such person is licensed as a massage therapist pursuant to this chapter.~~

(b) – (e) [Text unchanged.]

~~(f) This section shall not apply to CAMTC certified massage therapists or practitioners.~~

9.41.180. Inspection by officials. [Text unchanged.]

9.41.190. Issuance of notice of violation.

Whenever the director of public safety, makes an inspection of a massage establishment and finds that any [applicable](#) provision of this chapter has been violated, the director shall give notice of such violation by means of an inspection report or other written notice. In any such notification, the director of public safety shall:

(a) Set forth the specific violation or violations found;

(b) Establish a specific and reasonable period of time for the correction of the violation or violations. If the director of public safety determines that the violation or violations are minor in nature, the director of public safety may issue a warning to the licensee ~~or permittee~~; that any further violation of this chapter may result in the filing of a complaint for revocation or suspension of the license ~~or permit~~;

(c) State that failure to comply with any notice issued in accordance with the provisions of this chapter may result in the director of public safety filing a complaint for revocation or suspension of the license ~~or permit~~.

9.41.195 Reporting CAMTC Certification Violations.

Whenever the director of public safety, makes an inspection of a massage establishment with CAMTC certified persons and finds that a provision of Business and Professions Code Sections 4600 et seq. may have been violated, the director shall give the CAMTC appropriate notice.

9.41.200. Business license—Business name.

In addition to any ~~other permits and licenses~~ license required by this chapter, every massage establishment shall obtain and maintain in force and effect a business license and pay the business license tax pursuant to Chapter 5.04. No more than one business license shall be issued for any single address or premises subject to the provisions of this chapter. The person whose name appears on the business license application shall be deemed to be the owner of the massage establishment for purposes of this chapter. No person shall operate a massage establishment under any name or conduct business under any designation not specified in the ~~permit~~license.

9.41.210. Business location change. [Text unchanged.]

9.41.220. Sale or transfer of massage establishment interest.

A sale or transfer of any interest in a massage establishment, which interest would be reported as required in this chapter upon application for a massage establishment ~~permit~~license, shall be reported to the director of public safety within ten days of such sale or transfer. The director of public safety shall investigate any person receiving any interest in a massage establishment as a result of such sale or transfer, and if such person satisfies the requirements relating to massage establishment ~~permit~~license applicants, the existing ~~permit~~license shall be endorsed to include such person. A fee established by resolution of the city council shall be paid to the city for the investigation by the director of public safety necessitated by each such sale or transfer.

9.41.230. Display of ~~permits and licenses~~ and certifications.

The owner or operator of a massage establishment shall display the massage establishment ~~permit~~license and the license or CAMTC certification of each and every massage therapist or massage therapist trainee employed in the establishment in an open and conspicuous place on the premises. Passport-size photographs of the licensees ~~and permittees~~ shall be affixed to the respective license(s) ~~and permit(s)~~ on display pursuant to this section. Home addresses of massage therapists and massage therapist trainees need not be displayed.

9.41.240. Exemptions. [Text unchanged.]**9.41.250. Massage establishment ~~permit~~license—Suspension or revocation.**

Any ~~permit~~license issued for a massage establishment may be revoked or suspended by the director of public safety pursuant to Section 9.41.270 where it is found that:

(a) The ~~permitee~~licensee has violated any applicable provisions of this chapter; or

(b) The licensee is CAMTC certified and has violated a provision of the Business and Professions Code Sections 4600 et seq.; or

(bc) The ~~permitee~~licensee is a person who has engaged in disqualifying conduct, as described in Section 9.41.030(e); or

(ed) The ~~permitee~~licensee has failed to comply with one or more of the facilities and operations requirements of Sections 9.41.130 and 9.41.140; or

(de) The ~~permitee~~licensee has engaged in fraud, misrepresentation or false statement in conducting the massage establishment; or

(ef) The ~~permitee~~licensee has continued to operate the massage establishment after the ~~permitee~~licensee has been suspended; or

(fg) The ~~permitee~~licensee has allowed a person to work as a massage therapist or trainee who:

(1) Does not have a valid license; or

(2) Has engaged in conduct or has been convicted of an offense described in Section 9.41.030(e) where the ~~permitee~~licensee has actual or constructive knowledge of such conduct or conviction.

9.41.260. Massage therapist or trainee license—Suspension or revocation.

Any massage therapist or trainee license may be revoked or suspended by the director of public safety, pursuant to Section 9.41.260 where it is found that:

(a) – (c) [Text unchanged.]

(d) The licensee has made a material misstatement in the application for a ~~permit~~license.

9.41.270. Procedure for revocation or suspension of licenses ~~and permits~~.

(a) The director of public safety shall give prior written notice of a hearing for the revocation or suspension of any license ~~or permit~~ granted pursuant to this chapter to the holder of the license ~~or permit~~. 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 ~~permitee or~~ licensee at the last known address of the ~~permitee or~~ licensee, or it shall be delivered to the ~~permitee or~~ licensee personally, at least ten days prior to the hearing date.

(b) Within ten days of the hearing the director of public safety shall render his or her opinion in writing, stating his or her findings and the action taken, if any. The decision shall be mailed, postage prepaid, to the ~~permitee or~~ licensee at the last known address of the licensee, or delivered to the ~~permitee or~~ licensee personally.

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

(d) The city manager shall set a time and place for the hearing on the appeal not less than ten days from the date the appeal was received by the city manager. The hearing shall be conducted in accordance with the provisions of this chapter.

(e) After the hearing on the appeal, the city manager may refer the matter back to the director of public safety for a new investigation and decision, may affirm the decision of the director of public safety, may dismiss the disciplinary action, or may revoke or suspend the ~~permit or~~ license. The decision of the city manager upon such appeal shall be final.

9.41.280. Hearing rules. [Text unchanged.]

9.41.290. Reapplication after denial—No refund of fee—Return of license ~~or permit~~.

(a) An applicant for ~~either~~ a license ~~or a permit~~ under this chapter whose application for such license ~~or permit~~ has been denied may not reapply for such license until after a period of not less than one year has elapsed from the date such notice of denial was deposited in the mail or received by the applicant, whichever occurs first; provided, however, that an earlier reapplication may be made if accompanied by evidence that the ground or grounds for denial of the application no longer exist.

(b) No refund or rebate of a license ~~or permit~~ fee shall be allowed by the reason of the fact that the licensee ~~or permittee~~ discontinues an activity for which a license or permit is required pursuant to this chapter, or that the license ~~or permit~~ is suspended or revoked.

(c) In the event that a license ~~or permit~~ is canceled, suspended, revoked, or invalidated, the licensee ~~or permittee~~ shall forward it to the officer who issued it not later than the end of the third business day after notification of the cancellation, suspension, revocation, or invalidation.

9.41.300. Violation—Penalty—Time limit on permitlicense reissuance.

(a) In addition to the penalties specified in this chapter, including revocation of a permitlicense, any person found to be in violation of any provision of this chapter shall be subject to the enforcement remedies set forth in Title 1, at the discretion of the city, including, but not limited to, prosecution as a misdemeanor violation punishable as set forth in Chapter 1.04;

(b) Each violation of this chapter and each day of violation of this chapter shall be considered as separate and distinct violations thereof and the imposition of a penalty shall be as set forth in subsection (a) of this section for each and every separate violation and each and every day of violation.

(c) In the event that the massage establishment permitlicense is revoked pursuant to Section 9.41.270 above, no massage establishment permitlicense shall issue to that premises, address or location, or to that permiteelicensee, for a period of five years from the date of revocation of the massage establishment permitlicense.

SECTION 2. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision 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 3. 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. The Council therefore directs that the Planning Division may file a Notice of Exemption with the Santa Clara County Clerk in accordance with the Sunnyvale Guidelines for the implementation of CEQA adopted by Resolution No. 118-04.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 5. 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 newspaper for 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 _____, 2010, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, 2010, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

City Clerk
Date of Attestation: _____

Mayor

(SEAL)

APPROVED AS TO FORM AND LEGALITY:

David E. Kahn, City Attorney

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE AMENDING RESOLUTION NO. 390-09, THE CITY'S FEES, RATES AND CHARGES RESOLUTION, PERTAINING TO MASSAGE ESTABLISHMENT LICENSE FEES

WHEREAS, on June 23, 2009, the City Council adopted Resolution No. 390-09 fixing and establishing fees, rates, and charges for goods and services provided by the City of Sunnyvale; and

WHEREAS, On September 1, 2009, Senate Bill No. 731 (codified as California Business and Professions Code § 4600 *et seq.*) became effective and provides for the regulation of massage therapists and practitioners, including expressly allowing certain local regulations for massage establishment business licenses;

WHEREAS, there will be two types of massage establishment business licenses: (1) one for massage establishments who employ *only* certified therapists and practitioners certified by the California Massage Therapy Council (CAMTC); and (2) one for massage establishments who employ *any* non-CAMTC certified massage therapists (including massage therapist trainees), with a separate massage establishment business license application and application fee being established for each (calculated as set forth in Exhibit "B"); and

WHEREAS, the City Council is empowered to impose reasonable fees, rates, and charges to offset the costs for municipal services;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYVALE THAT:

1. Section 7.06 of the Master Fee Schedule, entitled "Adult Entertainment and Massage Establishments" is hereby amended to add subsection E, entitled "CAMTC Massage Establishment Business License" to establish the application and annual renewal fees as set forth in Exhibit "A", attached hereto and incorporated herein;
2. The cost breakdown for the application fee (new and renewal) is attached hereto as Exhibit "B";
3. All other provisions of Resolution No. 390-09 shall remain in effect; and
4. This resolution shall take effect upon adoption.

Adopted by the City Council at a regular meeting held on _____, 2010, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

City Clerk
(SEAL)

Mayor

APPROVED AS TO FORM AND LEGALITY:

David E. Kahn, City Attorney

EXHIBIT "A"

	Fiscal Year <u>2009/2010</u>	Charge <u>Code</u>	Object Level <u>3 & 4</u>	Title <u>(Obj. Lvl. 3)</u>
<u>SECTION 7.06</u> ADULT ENTERTAINMENT AND MASSAGE ESTABLISHMENTS (SMC Ch. 9.40 and Ch. 9.41)				
A. <u>Adult Establishment License</u>				
Application (includes background for first owner)	<u>\$3,494.00</u>	799583	1373	Adult Entertainment Permits
Annual Renewal (includes background for first owner)	<u>\$3,427.00</u>	799583	1373	Adult Entertainment Permits
B. <u>Massage Establishment License</u>				
Application (includes background for first owner)	<u>\$808.00</u>	799583	1371	Misc. DPS Permits & Services
Annual Renewal (includes background for first owner)	<u>\$741.00</u>	799583	1371	Misc. DPS Permits & Services
C. <u>Massage Therapist Permit (includes background)</u>	<u>\$223.00</u>	799583	1371	Misc. DPS Permits & Services
D. <u>Background Check Fee</u>				
Background check for each additional massage or adult entertainment establishment owner	<u>\$814.00</u>	799538	1371	Misc. DPS Permits & Services
E. <u>CAMTC Massage Establishments</u>				
Business License – New Application	<u>\$333.16</u>	799538	1371	Misc. DPS Permits & Services
Business License – Renewal	<u>\$333.16</u>	799538	1371	Misc. DPS Permits & Services

Exhibit "B" - CAMTC Massage Estab. - New

DIRECT COSTS

<u>Personnel Costs</u>	<u>Rate</u>	<u>Hours</u>	<u>Specialty Pay</u>	<u>Total</u>
PSO II ¹	123.68	1.00	\$22.88	\$146.56
Senior Office Asst.	49.72	0.75		\$37.29
Director of DPS	212.42	0.25		\$53.11
		2.00		
 <u>Miscellaneous Costs</u>				
Finance/Banking				\$4.00

<u>INDIRECT COSTS</u>	<u>Budget</u>	<u>Amount Applicable</u>	
Program 488 Products Goods & Services	103,811.00	0.00202%	\$2.10
Program 488 ISC	4,224.00	0.00202%	\$0.09
 Program 485 Products Goods & Services	 62,930.00	 0.00750%	 \$4.72
Program 485 ISC	162,306.00	0.00750%	\$12.17
 DPS Administration	 2,326,285.00	 0.00082%	 \$18.99
Dept-wide Internal Services	2,922,424.00	0.00082%	\$23.85

Citywide overhead	Permit Fee \$302.87
	10%
	Permit Fee \$333.16

Notes:

Department Hours	585,594.00
Program 485 Hours	53,333.00
Program 488 Hours	38,627.00

¹ Two inspections w/1 officer at 1/2 hour each

Exhibit "B" - CAMTC Massage Estab. - Renewal

DIRECT COSTS

<u>Personnel Costs</u>	<u>Rate</u>	<u>Hours</u>	<u>Specialty Pay</u>	<u>Total</u>
PSO II ¹	123.68	1.00	\$22.88	\$146.56
Senior Office Asst.	49.72	0.75		\$37.29
Director of DPS	212.42	0.25		\$53.11
		2.00		

Miscellaneous Costs

Finance/Banking				\$4.00
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<u>INDIRECT COSTS</u>	<u>Budget</u>	<u>Amount Applicable</u>	
Program 488 Products Goods & Services	103,811.00	0.00202%	\$2.10
Program 488 ISC	4,224.00	0.00202%	\$0.09
Program 485 Products Goods & Services	62,930.00	0.00750%	\$4.72
Program 485 ISC	162,306.00	0.00750%	\$12.17
DPS Administration	2,326,285.00	0.00082%	\$18.99
Dept-wide Internal Services	2,922,424.00	0.00082%	\$23.85

Citywide overhead	Permit Fee	\$302.87
		10%
	Permit Fee	\$333.16

Notes:

Department Hours	585,594.00
Program 485 Hours	53,333.00
Program 488 Hours	38,627.00

¹ Two inspections w/1 officer at 1/2 hour each

Senate Bill No. 731

CHAPTER 384

An act to add and repeal Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code, relating to massage therapy.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

SB 731, Oropeza. Massage therapy.

Existing law provides for the regulation of various healing arts professionals, including physicians and surgeons, chiropractors, physical therapists, and acupuncturists. Existing law authorizes the legislative body of a city or county to enact ordinances providing for the licensing and regulation of the business of massage when carried on within the city or county.

This bill would, commencing September 1, 2009, provide for the certification of massage practitioners and massage therapists by the Massage Therapy Organization, which would be a nonprofit organization meeting specified requirements, and would impose certain duties on the organization. The bill would require applicants for certification to be 18 years of age or older, to meet specified educational criteria, to provide to the organization and update certain information, to provide fingerprints for submission to the Department of Justice for a criminal background check, and to pay fees required by the organization. The bill would require the Department of Justice to review specified information and to provide to the organization fitness determinations and certain other information. The bill would allow the organization to take certain disciplinary action against certificate holders and would require the organization to take certain action with regard to suspending or revoking a certificate if the certificate holder has been arrested for, and charged with, specified crimes. The bill would make it an unfair business practice for a person to state, advertise, or represent that he or she is certified or licensed by a governmental agency as a massage therapist or practitioner, or to make other false representations, as specified. The bill would prohibit a city, county, or city and county from enacting certain ordinances regulating the practice of massage by a certificate holder, as specified. The bill would make its provisions subject to review by the Joint Committee on Boards, Commissions, and Consumer Protection. The bill would repeal these provisions on January 1, 2016.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of this act to create a voluntary certification for the massage therapy profession that will enable consumers to easily identify credible certified massage therapists; assure that certified massage therapists have completed sufficient training at approved schools; phase in increased education and training standards consistent with other states; assure that massage therapy can no longer be used as a subterfuge to violate subdivision (a) or (b) of Section 647 of the Penal Code; and to provide a self-funded nonprofit oversight body to approve certification and education requirements for massage therapists.

SEC. 2. Chapter 10.5 (commencing with Section 4600) is added to Division 2 of the Business and Professions Code, to read:

CHAPTER 10.5. MASSAGE THERAPISTS

4600. As used in this chapter, the following terms shall have the following meanings:

(a) “Approved school” or “approved massage school” means a facility that meets minimum standards for training and curriculum in massage and related subjects and that is approved by any of the following:

(1) The Bureau for Private Postsecondary and Vocational Education pursuant to former Section 94739 of the Education Code prior to July 1, 2007, and as of the date on which an applicant met the requirements of paragraph (2) of subdivision (b) or subparagraph (A) of paragraph (2) of subdivision (c) of Section 4601.

(2) The Department of Consumer Affairs.

(3) An institution accredited by the Accrediting Commission for Senior Colleges and Universities or the Accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges and that is one of the following:

(A) A public institution.

(B) An institution incorporated and lawfully operating as a nonprofit public benefit corporation pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code, and that is not managed by any entity for profit.

(C) A for-profit institution.

(D) An institution that does not meet all of the criteria in subparagraph (B) that is incorporated and lawfully operating as a nonprofit public benefit corporation pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code, that has been in continuous operation since April 15, 1997, and that is not managed by any entity for profit.

(4) A college or university of the state higher education system, as defined in Section 100850 of the Education Code.

(5) A school of equal or greater training that is approved by the corresponding agency in another state or accredited by an agency recognized by the United States Department of Education.

(b) “Compensation” means the payment, loan, advance, donation, contribution, deposit, or gift of money or anything of value.

(c) “Massage therapist,” “bodyworker,” “bodywork therapist,” or “massage and bodywork therapist” means a person who is certified by the Massage Therapy Organization under subdivision (c) of Section 4601 and who administers massage for compensation.

(d) “Massage practitioner,” “bodywork practitioner,” or “massage and bodywork practitioner” means a person who is certified by the Massage Therapy Organization under subdivision (b) of Section 4601 and who administers massage for compensation.

(e) “Organization” means the Massage Therapy Organization created pursuant to this chapter, which shall be a nonprofit organization exempt from taxation under Section 501(c)(3) of Title 26 of the United States Code. The organization may commence activities as authorized by this section once it has submitted a request to the Internal Revenue Service seeking this exemption.

(f) “Registered school” means a facility that meets minimum standards for training and curriculum in massage and related subjects and that either was recognized by the Bureau for Private Postsecondary and Vocational Education pursuant to Section 94931 of the Education Code prior to July 1, 2007, and as of the date on which an applicant met the requirements of paragraph (2) of subdivision (b) or subparagraph (A) of paragraph (2) of subdivision (c) of Section 4601, or is recognized by the Department of Consumer Affairs, by an institution accredited by the senior commission or the junior commission of the Western Association of Schools and Colleges as defined in paragraph (2) of subdivision (a) of Section 4600, by a college or university of the state higher education system as defined in Section 100850 of the Education Code, or by a school of equal or greater training that is approved by the corresponding agency in another state.

(g) For purposes of this chapter, the terms “massage” and “bodywork” shall have the same meaning.

4600.5. (a) A Massage Therapy Organization, as defined in subdivision (e) of Section 4600, shall be created and shall have the responsibilities and duties set forth in this chapter. The organization may take any reasonable actions to carry out the responsibilities and duties set forth in this chapter, including, but not limited to, hiring staff and entering into contracts.

(b) (1) The organization shall be governed by a board of directors made up of two representatives selected by each professional society, association, or other entity, whose membership is comprised of massage therapists and that chooses to participate in the organization. To qualify, a professional society, association, or other entity shall have a dues-paying membership in California of at least 1,000 individuals for the last three years, and shall have bylaws that require its members to comply with a code of ethics. The board of directors shall also include each of the following persons:

(A) One member selected by each statewide association of private postsecondary schools incorporated on or before January 1, 2010, whose member schools have together had at least 1,000 graduates in each of the previous three years from massage therapy programs meeting the approval standards set forth in subdivision (a) of Section 4600, except from those qualifying associations that choose not to exercise this right of selection.

(B) One member selected by the League of California Cities, unless that entity chooses not to exercise this right of selection.

(C) One member selected by the California State Association of Counties, unless that entity chooses not to exercise this right of selection.

(D) One member selected by the Director of Consumer Affairs, unless that entity chooses not to exercise this right of selection.

(E) One member appointed by the California Community College Chancellor's Office, unless that entity chooses not to exercise this right of selection. The person appointed, if any, shall not be part of any massage therapy certificate or degree program.

The organization's bylaws shall establish a process for appointing other professional directors as determined by the board.

(2) The initial board of directors shall establish the organization, initiate the request for tax-exempt status from the Internal Revenue Service, and solicit input from the massage community concerning the operations of the organization. The initial board of directors, in its discretion, may immediately undertake to issue the certificates authorized by this chapter after adopting the necessary bylaws or other rules, or may establish by adoption of bylaws the permanent governing structure prior to issuing certificates.

(c) The board of directors shall establish fees reasonably related to the cost of providing services and carrying out its ongoing responsibilities and duties. Initial and renewal fees shall be established by the board of directors annually.

(d) The meetings of the organization shall be subject to the rules of the Bagley-Keene Open Meetings Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

4601. (a) The organization shall issue a certificate under this chapter to an applicant who satisfies the requirements of this chapter.

(b) (1) In order to obtain certification as a massage practitioner, an applicant shall submit a written application and provide the organization with satisfactory evidence that he or she meets all of the following requirements:

(A) The applicant is 18 years of age or older.

(B) The applicant has successfully completed, at a single approved school, curricula in massage and related subjects totaling a minimum of 250 hours that incorporates appropriate school assessment of student knowledge and skills. Included in the hours shall be instruction addressing anatomy and physiology, contraindications, health and hygiene, and business and ethics, with at least 100 hours of the required minimum 250 hours devoted to these curriculum areas.

(C) All fees required by the organization have been paid.

(2) New certificates shall not be issued pursuant to this subdivision after December 31, 2015. Certificates issued pursuant to this section or subdivision (a) or (c) of Section 4604 on or before December 31, 2015, shall, after December 31, 2015, be renewed without any additional educational requirements, provided that the certificate holder continues to be qualified pursuant to this chapter.

(c) In order to obtain certification as a massage therapist, an applicant shall submit a written application and provide the organization with satisfactory evidence that he or she meets all of the following requirements:

(1) The applicant is 18 years of age or older.

(2) The applicant satisfies at least one of the following requirements:

(A) He or she has successfully completed the curricula in massage and related subjects totaling a minimum of 500 hours. Of this 500 hours, a minimum of 250 hours shall be from approved schools. The remaining 250 hours required may be secured either from approved or registered schools, or from continuing education providers approved by, or registered with, the organization or the Department of Consumer Affairs. After December 31, 2015, applicants may only satisfy the curricula in massage and related subjects from approved schools.

(B) The applicant has passed a massage and bodywork competency assessment examination that meets generally recognized psychometric principles and standards, and that is approved by the board. The successful completion of this examination may have been accomplished before the date the organization is authorized by this chapter to begin issuing certificates.

(3) All fees required by the organization have been paid.

(d) The organization shall issue a certificate to an applicant who meets the other qualifications of this chapter and holds a current and valid registration, certification, or license from any other state whose licensure requirements meet or exceed those defined within this chapter. The organization shall have discretion to give credit for comparable academic work completed by an applicant in a program outside of California.

(e) An applicant applying for a massage therapist or massage practitioner certificate shall file with the organization a written application provided by the organization, showing to the satisfaction of the organization that he or she meets all of the requirements of this chapter.

(f) Any certification issued under this chapter shall be subject to renewal every two years in a manner prescribed by the organization, and shall expire unless renewed in that manner. The organization may provide for the late renewal of a license.

(g) (1) The organization shall have the responsibility to determine that the school or schools from which an applicant has obtained the education required by this chapter meet the requirements of this chapter. If the organization has any reason to question whether or not the applicant received the education that is required by this chapter from the school or schools that the applicant is claiming, the organization shall investigate the facts to

determine that the applicant received the required education prior to issuing a certificate.

(2) For purposes of paragraph (1) and any other provision of this chapter for which the organization is authorized to receive factual information as a condition of taking any action, the organization shall have the authority to conduct oral interviews of the applicant and others or to make any investigation deemed necessary to establish that the information received is accurate and satisfies any criteria established by this chapter.

4601.2. No certificates shall be issued by the organization pursuant to this chapter prior to September 1, 2009.

4601.3. (a) Prior to issuing a certificate to the applicant or designating a custodian of records, the organization shall require the applicant or the custodian of records candidate to submit fingerprint images in a form consistent with the requirements of this section. The organization shall submit the fingerprint images and related information to the Department of Justice for the purpose of obtaining information as to the existence and nature of a record of state and federal level convictions and of state and federal level arrests for which the Department of Justice establishes that the applicant or candidate was released on bail or on his or her own recognizance pending trial. Requests for federal level criminal offender record information received by the Department of Justice pursuant to this section shall be forwarded to the Federal Bureau of Investigation by the Department of Justice. The Department of Justice shall review the information returned from the Federal Bureau of Investigation, and shall compile and disseminate a fitness determination regarding the applicant or candidate to the organization.

(b) The Department of Justice shall provide information to the organization pursuant to subdivision (p) of Section 11105 of the Penal Code.

(c) The Department of Justice and the organization shall charge a fee sufficient to cover the cost of processing the request for state and federal level criminal offender record information.

(d) The organization shall request subsequent arrest notification service from the Department of Justice, as provided under Section 11105.2 of the Penal Code, for all applicants for licensure or custodian of records candidates for whom fingerprint images and related information are submitted to conduct a search for state and federal level criminal offender record information.

(e) This section shall become operative September 1, 2009.

4601.4. Organization directors, employees, or volunteer individuals may undergo the background investigation process delineated in Section 4601.3.

4602. (a) The organization may discipline a certificate holder by any, or a combination, of the following methods:

(1) Placing the certificate holder on probation.

(2) Suspending the certificate and the rights conferred by this chapter on a certificate holder for a period not to exceed one year.

(3) Revoking the certificate.

(4) Suspending or staying the disciplinary order, or portions of it, with or without conditions.

(5) Taking other action as the organization, as authorized by this chapter or its bylaws, deems proper.

(b) The organization may issue an initial certificate on probation, with specific terms and conditions, to any applicant.

(c) (1) Notwithstanding any other provision of law, if the organization receives notice that a certificate holder has been arrested and charges have been filed by the appropriate prosecuting agency against the certificate holder alleging a violation of subdivision (b) of Section 647 of the Penal Code or any other offense described in subdivision (h) of Section 4603, the organization shall take all of the following actions:

(A) Immediately suspend, on an interim basis, the certificate of that certificate holder.

(B) Notify the certificate holder within 10 days at the address last filed with the organization that the certificate has been suspended, and the reason for the suspension.

(C) Notify any business within 10 days that the organization has in its records as employing the certificate holder that the certificate has been suspended.

(2) Upon notice to the organization that the charges described in paragraph (1) have resulted in a conviction, the suspended certificate shall become subject to permanent revocation. The organization shall provide notice to the certificate holder within 10 days that it has evidence of a valid record of conviction and that the certificate will be revoked unless the certificate holder provides evidence within 15 days that the conviction is either invalid or that the information is otherwise erroneous.

(3) Upon notice that the charges have resulted in an acquittal, or have otherwise been dismissed prior to conviction, the certificate shall be immediately reinstated and the certificate holder and any business that received notice pursuant to subparagraph (C) of paragraph (1) shall be notified of the reinstatement within 10 days.

4602.5. (a) Upon the request of any law enforcement agency or any other representative of a local government agency with responsibility for regulating, or administering a local ordinance relating to, massage or massage businesses, the organization shall provide information concerning a certificate holder, including, but not limited to, the current status of the certificate, any history of disciplinary actions taken against the certificate holder, the home and work addresses of the certificate holder, and any other information in the organization's possession that is necessary to verify facts relevant to administering the local ordinance.

(b) The organization shall accept information provided by any law enforcement agency or any other representative of a local government agency with responsibility for regulating, or administering a local ordinance relating to, massage or massage businesses. The organization shall have the responsibility to review any information received and to take any actions authorized by this chapter that are warranted by that information.

4603. It is a violation of this chapter for a certificate holder to commit, and the organization may deny an application for a certificate or discipline a certificate holder for, any of the following:

(a) Unprofessional conduct, including, but not limited to, denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a certificate holder by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision, order, or judgment shall be conclusive evidence of these actions.

(b) Procuring a certificate by fraud, misrepresentation, or mistake.

(c) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision or term of this chapter or any rule or bylaw adopted by the organization.

(d) Conviction of any felony, or conviction of a misdemeanor that is substantially related to the qualifications or duties of a certificate holder, in which event the record of the conviction shall be conclusive evidence of the crime.

(e) Impersonating an applicant or acting as a proxy for an applicant in any examination referred to under this chapter for the issuance of a certificate.

(f) Impersonating a certified practitioner or therapist, or permitting or allowing an uncertified person to use a certificate.

(g) Committing any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications or duties of a certificate holder.

(h) Committing any act punishable as a sexually related crime.

4603.1. (a) No certificate holder or certificate applicant may be disciplined or denied a certificate pursuant to Section 4603 except according to procedures satisfying the requirements of this section. A denial or discipline not in accord with this section or subdivision (c) of Section 4602 shall be void and without effect.

(b) Any certificate applicant denial or certificate holder discipline shall be done in good faith and in a fair and reasonable manner. Any procedure that conforms to the requirements of subdivision (c) is fair and reasonable, but a court may also find other procedures to be fair and reasonable when the full circumstances of the certificate denial or certificate holder discipline are considered.

(c) A procedure is fair and reasonable when the procedures in subdivision

(c) of Section 4602 are followed, or if all of the following apply:

(1) The provisions of the procedure have been set forth in the articles or bylaws, or copies of those provisions are sent annually to all the members as required by the articles or bylaws.

(2) It provides the giving of 15 days prior notice of the certificate denial or certificate holder discipline and the reasons therefor.

(3) It provides an opportunity for the certificate applicant or certificate holder to be heard, orally or in writing, not less than five days before the effective date of the certificate denial or certificate holder discipline by a

person or body authorized to decide that the proposed certificate denial or certificate holder discipline not take place.

(d) Any notice required under this section may be given by any method reasonably calculated to provide actual notice. Any notice given by mail must be given by first-class or certified mail sent to the last address of the certificate applicant or certificate holder shown on the organization's records.

(e) Any action challenging a certificate denial or certificate holder discipline, including any claim alleging defective notice, shall be commenced within one year after the date of the certificate denial or certificate holder discipline. If the action is successful, the court may order any relief, including reinstatement, that it finds equitable under the circumstances.

(f) This section governs only the procedures for certificate denial or certificate holder discipline and not the substantive grounds therefor. A certificate denial or certificate holder discipline based upon substantive grounds that violates contractual or other rights of the member or is otherwise unlawful is not made valid by compliance with this section.

(g) A certificate applicant or certificate holder who is denied or disciplined shall be liable for any charges incurred, services or benefits actually rendered, dues, assessments, or fees incurred before the certificate denial or certificate holder discipline or arising from contract or otherwise.

4603.5. It shall be the responsibility of any certificate holder to notify the organization of his or her home address, as well as the address of any business establishment where he or she regularly works as a massage therapist or massage practitioner, whether as an employee or as an independent contractor. A certificate holder shall notify the organization within 30 days of changing either his or her home address or the address of the business establishment where he or she regularly works as a massage therapist or massage practitioner.

4604. (a) Notwithstanding Section 4601, the organization may grant a massage practitioner certificate to any person who applies on or before January 1, 2012, with one of the following:

(1) A current valid massage permit or license from a California city, county, or city and county and documentation evidencing that the person has completed at least a 100-hour course in massage at a state-approved or registered school, or out-of-state school recognized by the organization as providing comparable education, has been practicing for at least three years, and has provided at least 1,000 hours of massage to members of the public for compensation.

(2) Documentation evidencing that the person has completed at least a 100-hour course in massage at a state-approved or registered school, or out-of-state school recognized by the organization as providing comparable education, has been practicing for at least three years, and has provided at least 1,750 hours of massage to members of the public for compensation. For purposes of this subdivision, evidence of practice shall include either of the following:

(A) A W-2 form or employer's affidavit containing the dates of the applicant's employment.

(B) Tax returns indicating self-employment as a massage practitioner or massage therapist or any other title that may demonstrate experience in the field of massage.

(3) Documentation evidencing that the person holds a current valid certificate of authorization as an instructor at an approved massage school, or holds the position of a massage instructor at a school accredited by an agency recognized by the United States Department of Education, or colleges and universities of the state higher education system, as defined in Section 100850 of the Education Code.

(b) (1) After reviewing the information submitted under subdivision (a), the organization may require additional information necessary to enable it to determine whether to issue a certificate.

(2) If an applicant under paragraph (1) of subdivision (a) or paragraph (1) of subdivision (c) has not complied with Section 4601.3, or its equivalent, when obtaining a license or permit from the city, county, or city and county, the organization shall require the applicant to comply with Section 4601.3 prior to issuing a certificate pursuant to this section.

(c) (1) A person applying for a massage practitioner certificate on or before January 1, 2012, who meets the educational requirements of either paragraph (1) or (2) of subdivision (a), but who has not completed the required number of practice hours prior to submitting an application pursuant to this section, may apply for a conditional certificate.

(2) An applicant for a conditional certificate shall, within five years of being issued the conditional certificate, be required to complete at least 30 hours of additional education per year from schools or courses described in paragraph (5) until he or she has completed a total of at least 250 hours of education, which may include massage education hours previously completed in a massage course described in either paragraph (1) or (2) of subdivision (a).

(3) Upon successful completion of the requirements of this subdivision, the organization shall issue a certificate to the person that is not conditional.

(4) The organization shall immediately revoke the conditional certificate issued to any person pursuant to this subdivision if the time period specified in paragraph (2) expires without proof of completion of the requirements having been filed with the organization.

(5) Any additional education required by this section may be completed through courses provided by any of the following:

(A) An approved school.

(B) A registered school.

(C) A provider approved by, or registered with, the organization or the Department of Consumer Affairs.

(D) A provider that establishes to the satisfaction of the organization that its course or courses are appropriate educational programs for this purpose.

(d) Nothing in this section shall preclude the organization from exercising any power or authority conferred by this chapter with respect to a conditional certificate holder.

4605. It is an unfair business practice for any person to state or advertise or put out any sign or card or other device, or to represent to the public through any print or electronic media, that he or she is certified, registered, or licensed by a governmental agency as a massage therapist or massage practitioner.

4606. It is an unfair business practice for any person to hold oneself out or use the title of “certified massage therapist” or “certified massage practitioner” or any other term, such as “licensed,” “registered,” or “CMT,” that implies or suggests that the person is certified as a massage therapist or practitioner without meeting the requirements of Section 4601 or 4604.

4607. The superior court in and for the county in which any person acts as a massage practitioner or massage therapist in violation of the provisions of this chapter, may, upon a petition by any person, issue an injunction or other appropriate order restraining the conduct. The proceedings under this paragraph shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

4608. Nothing in this chapter is intended to limit or prohibit a person who obtains a certification pursuant to this chapter from providing services pursuant to, and in compliance with, Sections 2053.5 and 2053.6.

4612. (a) (1) The holder of a certificate issued pursuant to this chapter shall have the right to practice massage, consistent with this chapter and the qualifications established by his or her certification, in any city, county, or city and county in this state and shall not be required to obtain any other license, permit, or other authorization, except as provided in this section, to engage in that practice.

(2) Notwithstanding any other provision of law, a city, county, or city and county shall not enact an ordinance that requires a license, permit, or other authorization to practice massage by an individual who is certified pursuant to this chapter and who is practicing consistent with the qualifications established by his or her certification. No provision of any ordinance enacted by a city, county, or city and county that is in effect before the effective date of this chapter, and that requires a license, permit, or other authorization to practice massage, may be enforced against an individual who is certified pursuant to this chapter.

(3) Except as provided in subdivision (b), nothing in this section shall be interpreted to prevent a city, county, or city and county from adopting or enforcing any local ordinance governing zoning, business licensing, and reasonable health and safety requirements for massage establishments or businesses. Subdivision (b) shall not apply to any massage establishment or business that employs or uses persons to provide massage services who are not certified pursuant to this chapter.

(b) (1) This subdivision shall apply only to massage establishments or businesses that are sole proprietorships, where the sole proprietor is certified pursuant to this chapter, and to massage establishments or businesses that employ or use only persons certified pursuant to this chapter to provide massage services. For purposes of this subdivision, a sole proprietorship is

a business where the owner is the only person employed by that business to provide massage services.

(2) (A) Any massage establishment or business described in paragraph (1) shall maintain on its premises evidence for review by local authorities that demonstrates that all persons providing massage services are certified.

(B) Nothing in this section shall preclude a city, county, or city and county from including in a local ordinance a provision that requires a business described in paragraph (1) to file copies or provide other evidence of the certificates held by the persons who are providing massage services at the business.

(3) A city, county, or city and county may charge a massage business or establishment a business licensing fee sufficient to cover the costs of the business licensing activities established by a local ordinance described in this section.

(4) Nothing in this section shall prohibit a city, county, or city and county from adopting land use and zoning requirements applicable to massage establishments or businesses, provided that these requirements shall be no different than the requirements that are uniformly applied to other professional or personal services businesses.

(5) Local building code or physical facility requirements applicable to massage establishments or businesses shall not require additional restroom, shower, or other facilities that are not uniformly applicable to other professional or personal service businesses, nor shall building or facility requirements be adopted that (A) require unlocked doors when there is no staff available to assure security for clients and massage staff who are behind closed doors, or (B) require windows that provide a view into massage rooms that interfere with the privacy of clients of the massage business.

(6) A city, county, or city and county may adopt reasonable health and safety requirements with respect to massage establishments or businesses, including, but not limited to, requirements for cleanliness of massage rooms, towels and linens, and reasonable attire and personal hygiene requirements for persons providing massage services, provided that nothing in this paragraph shall be interpreted to authorize adoption of local ordinances that impose additional qualifications, such as medical examinations, background checks, or other criteria, upon any person certified pursuant to this chapter.

(7) Nothing in this section shall preclude a city, county, or city and county from doing any of the following:

(A) Requiring an applicant for a business license to operate a massage business or establishment to fill out an application that requests the applicant to provide relevant information.

(B) Making reasonable investigations into the information so provided.

(C) Denying or restricting a business license if the applicant has provided materially false information.

(c) An owner or operator of a massage business or establishment subject to subdivision (b) shall be responsible for the conduct of all employees or independent contractors working on the premises of the business. Nothing in this section shall preclude a local ordinance from authorizing suspension,

revocation, or other restriction of a license or permit issued to a massage establishment or business if violations of this chapter, or of the local ordinance, occur on the business premises.

(d) Nothing in this section shall preclude a city, county, or city and county from adopting a local ordinance that is applicable to massage businesses or establishments described in paragraph (1) of subdivision (b) and that does either of the following:

(1) Provides that duly authorized officials of the city, county, or city and county have the right to conduct reasonable inspections, during regular business hours, to ensure compliance with this chapter, the local ordinance, or other applicable fire and health and safety requirements.

(2) Requires an owner or operator to notify the city, county, or city and county of any intention to rename, change management, or convey the business to another person.

4613. (a) Nothing in this chapter shall restrict or limit in any way the authority of a city, county, or city and county to adopt a local ordinance governing any person who is not certified pursuant to this chapter.

(b) Nothing in this chapter is intended to affect the practice rights of any person licensed by the state to practice or perform any functions or services pursuant to that license.

4615. This chapter shall be subject to the review required by Division 1.2 (commencing with Section 473).

4620. This chapter shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.