

ORDINANCE NO. 591-C.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF SAN GABRIEL AMENDING CHAPTERS
122 AND 153 OF THE SAN GABRIEL MUNICIPAL
CODE RELATING TO MASSAGE
ESTABLISHMENTS AND SERVICES TO COMPLY
WITH STATE LAW

WHEREAS, in 2008 the California Legislature passed SB 731 which implemented a State certification procedure for massage practitioners and massage therapists; and

WHEREAS, SB 731 contains provisions which preempt local provisions for certified massage practitioners and massage therapists; and

WHEREAS, SB 731 also preempts local provisions for massage businesses when the business only employs state certified individuals; and

WHEREAS, the City desires to require all massage practitioners and massage therapists to be certified by the State rather than create a dual licensing scheme;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN GABRIEL, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Chapter 122 of the San Gabriel Municipal Code is hereby repealed and a new Chapter 122 is added to the San Gabriel Municipal Code to read as follows:

ARTICLE A GENERAL PROVISIONS

122.01 Findings and purpose.

The City Council finds and declares as follows:

A. The permit requirements and restrictions imposed by this chapter are reasonably necessary to protect the health, safety and welfare of the citizens of the City.

B. This Chapter is enacted pursuant to the provisions of the State Constitution, Sections 51030 et seq. of the Government Code, Sections 4600 through 4620 and Section 16000 of the Business and Professions Code, and Section 13 of the Chiropractic Act (initiative measure approved by the electors November 7, 1922, as amended).

C. There is a significant risk of injury to massage clients by persons improperly trained and/or educated in providing massage services, and this chapter provides reasonable safeguards against injury and economic loss.

D. There is opportunity for acts of prostitution, lewdness, and other unlawful sexual activity to occur in massage establishments. Courts have long recognized massage as a pervasively regulated activity and that massage establishments are often brothels in disguise. The establishment of reasonable standards for issuance of permits and restrictions on operations would serve to reduce the risk of illegal activity and would thereby benefit the public health.

E. The provisions of this chapter are intended to enhance the efficient processing of permits for massage establishments, owners and managers and the ongoing regulation of those permittees by the San Gabriel Police Department. The provisions of this chapter in no way limit the authority of the City to inspect massage establishments or conduct investigations to ensure permittees are complying with applicable rules and regulations.

F. The restrictions and requirements contained in this chapter are intended to be in addition to the requirement of a valid business license issued pursuant to Title XI, Chapter 110 of the San Gabriel Municipal Code.

G. The regulations and restrictions contained in this chapter are intended to discourage massage establishments from degenerating into houses of prostitution, and the means utilized in this chapter bear a reasonable and rational relationship to the goals sought to be achieved within the confines allowed by State law.

H. The provisions of this chapter are not intended to be exclusive and compliance therewith shall not excuse noncompliance with any state or local laws or regulations that are uniformly applied to other professional or personal service businesses.

122.02 Definitions.

For the purpose of this chapter, the following words and phrases shall be construed to have the meanings set forth in this section, unless it is apparent from the context that a different meaning is intended:

A. "California Massage Therapy Council" or "CAMTC" means the State nonprofit organization created to regulate and issue massage practitioner and therapist certificates pursuant to Business and Professions Code section 4600 *et seq.*

B. "Certificate of Operation" means the certificate issued by the Finance Director entitling a business to be operated as a massage establishment.

C. "Chief of Police" means the Chief of Police of the City of San Gabriel, or his designee.

D. "City" means the City of San Gabriel.

E. "City Manager" means the City Manager of the City of San Gabriel, or his designee.

F. "Conviction," or "convicted" means a conviction following a guilty plea, nolo contendere plea, or judgment or verdict where the time for appeal has elapsed or conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing the applicant to withdraw his plea of guilty or nolo contendere and to enter a plea of not guilty, or dismissing the accusation or information.

G. "Employee" means any person, other than a massage practitioner, massage therapist, or operator, who renders any service, with or without compensation, to the operator or agent of an operator of a massage establishment relating to the day-to-day operation of the massage establishment whether as an employee or independent contractor.

H. "Exempt massage establishment" means a massage establishment that is a sole proprietorship where the sole proprietor has a State Certificate and massage establishment or business that employs or uses only State Certified persons to provide massage services in accordance with Business and Professions Code section 4612(b)(1).

I. "Finance Director" means the Finance Director of the City of San Gabriel, or his designee.

J. "Manager" means the person(s) designated by the Owner of the massage establishment to act as the representative and agent of the Owner in managing day-to-day operations with corresponding responsibilities. A manager may also be an owner. A manager must have a valid operator permit.

K. "Massage" means any method of treating the external parts of the body for remedial, health, hygienic, or relaxation purpose. "Massage" includes, but is not limited to, treatment by means of manual pressure, acupressure, friction, stroking, kneading, rubbing, tapping, pounding, vibrating, with or without the aid of or by means of any mechanical, electronic, or electrical apparatus or appliance, and with or without rubbing alcohol, liniments, aromatics, antiseptics, oils, powders, creams, lotions, ointments, or other similar preparations. Massage specifically includes the application of any of these methods to the scalp, neck, or

feet of any individual. (Some persons practicing massage may be exempt from all or parts of the permit requirements; please consult Section 122.03.)

L. "Massage establishment" means any enterprise or establishment having a fixed place of business where any person engages in, conducts, carries on, or permits to be engaged in, conducted, or carried on, any of the activities set forth in subsection K of this section.

M. "Massage practitioner" means a person who is certified by the CAMTC in accordance with California Business and Professions Code section 4601(b).

N. "Massage therapist" means a person who is certified by the CAMTC in accordance with California Business and Professions Code section 4601(c).

O. "Operator" means all persons who own or manage a massage establishment.

P. "Operator Permit" means the permit issued by Chief of Police allowing a person to own or manage a massage establishment.

Q. "Out-call massage" means any business or enterprise that engages in or performs massage for any form of consideration or in exchange for anything of value whatsoever at a location other than a massage establishment.

R. "Owner" means all of the following:

1. The sole proprietor of a massage establishment, i.e., where the owner is the only person performing massage at that establishment;

2. In the case of a general business, each owner of the business;

3. In the case of a corporation, each stockholder holding more than 10 percent of the corporation and each officer and director of the corporation;

4. In the case of a partnership, each partner, excluding limited partners owning less than 10% of the partnership, and where a partner is a corporation, the provisions pertaining to a corporate applicant in subsection 3 apply.

S. "Patron area" means any area within a massage establishment open to patrons of the establishment or the general public.

T. "Person who has engaged in disqualifying conduct" means a person who:

1. Within ten (10) years preceding the date of filing of the application in question or, in the case of revocation proceedings, within ten (10) years preceding the date of the revocation notice, has been convicted in a court of competent jurisdiction of any of the following:

a. a violation of any provision of law pursuant to which a person is required to register under the provisions of Penal Code Section 290, or

b. conduct in violation of Penal Code Sections 266h, 266i, 314, 315, 316, 318, 653.22, 653.23, or subsections (a), (b) or (d) of Section 647, or

c. an attempt to commit or conspiracy to commit any of the above mentioned offenses, or

d. when the prosecution accepted a plea of guilty or nolo contendere to a charge of a violation of Penal Code Section 415, 602 or any lesser included or related offense, in satisfaction of, or as a substitute for, any of the previously listed crimes, or

e. a violation of Health and Safety Code Section 11550 or any offense involving the illegal sale, distribution or possession of a controlled substance specified in Health and Safety Code Section 11054, 11055, 11056, 11057 or 11058, or

f. any offense under a statute of any state or ordinance of any city or county, which is the equivalent of any of the aforementioned offenses.

2. Within ten (10) years preceding the date of the filing of the application in question or, in the case of revocation proceedings, within ten (10) years preceding the date of the revocation notice, has had any massage establishment, operator, technician, practitioner, therapist or trainee certificate, license or permit issued by any state, local agency or other licensing authority, including the CAMTC: denied, revoked or suspended for any reason other than lack of sufficient education; or has had to surrender such a certificate, license or permit as a result of pending criminal charges or administrative proceedings for suspension or revocation of any such certificate, license or permit; or

3. Within five (5) years preceding the date of filing of the application in question or, in the case of revocation proceedings, within five (5) years preceding the date of the revocation notice, has been convicted in a court of competent jurisdiction of any of the following:

a. any crime, other than an infraction or those listed above, involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

b. any crime, other than an infraction or crimes relating to those offenses listed above, where the crime or act is substantially related to the management or ownership of a massage establishment or the practice of massage; or

4. Has been subjected to a permanent injunction against the conducting or maintaining of a nuisance pursuant to Sections 11225 through 11235 of the Penal Code as the same may be amended from time to time, or any similar provisions of law in a jurisdiction outside the state of California; or

5. Has been found to be maintaining a nuisance in connection with the same or similar type of business.

U. "Proof of bona fide employment" means proof of an employer-employee relationship between the operator of the massage establishment and any person working at the massage establishment. Satisfactory proof of bona fide employment must be shown by written payroll documentation evidencing the employer's compliance with California Employment Development Department (EDD) requirements for the withholding of California income tax, unemployment insurance contributions and disability contributions from the employee and written payroll documentation of the employer's compliance with Internal Revenue Service (IRS) requirements for the withholding of federal income taxes, Social Security (FICA) and Medicare contributions from the employee. Such written documentation can include, but is not limited to, W-2 wage and tax statements.

V. "Residence Address" means the actual physical home address and shall not include a P.O. Box, mailbox service, or other similar location.

W. "Spa" means facilities such as mineral baths, salt rooms, mineral rooms, saunas, steam rooms, whirlpools and other therapeutic baths.

X. "State Certificate" means a massage practitioner or massage therapist certificate issued by the CAMTC.

122.03 Exceptions.

A. Complete Exception. The requirements of this chapter shall have no application and no effect upon and shall not be construed as applying to:

1. Any physician, surgeon, chiropractor, acupuncturist, osteopath, or physical therapist licensed to practice such profession in the State of California;
2. Any registered nurse or licensed vocational nurse, licensed to practice under the laws of the State of California, who is an employee of and working under the on-site direction of a physician, surgeon, chiropractor, acupuncturist, osteopath, or physical therapist, duly licensed to practice their respective professions in this State. Any other person employed by a physician, surgeon, chiropractor, osteopath, acupuncturist, or physical therapist, shall be required to have a valid State Certificate, as well as work under the on-site direction of such person.
3. Any person licensed to practice any healing art under the provisions of Division 2 (commencing with Section 500) of the Business and Professions Code when engaging in such practice within the scope of such license.
4. State-licensed hospitals, nursing homes, sanatoriums, or other health care facilities duly licensed by the State of California, and the employees of such facilities while working on the premises of such State-licensed facilities.
5. Accredited high schools, junior colleges, and colleges or universities whose coaches and trainers are acting within the scope of their employment.
6. Barbers, beauticians, or manicurists who are duly licensed by the State of California pursuant to the Barbering and Cosmetology Act set forth in Business and Professions Code Section 7300 et seq., as the same may be amended from time to time, while engaging in practices within the scope of such license, except that this exemption applies solely for the massaging of the neck, face, and/or scalp of the customer or client of said barber or beautician or, in the case of a licensed manicurist, the massaging of the forearms, hands, calves, and/or feet at a State licensed facility. However, if a State licensed establishment also has a Certificate of Operation from the City to operate as a massage establishment, the business must also comply with all provisions of this Chapter 122.
7. Schools of cosmetology or barbering which comply with the requirements of Business and Professions Code Section 7362 et seq. when instructors are acting within the scope of their employment or when students are working as unpaid externs pursuant to the requirements of Business and Professions Code Section 7395.1.
8. Any other business or professions exempt by State law.

B. Partial Exception.

1. Businesses that offer massage services that are ancillary to the primary business shall only be required to comply with the provisions set forth in Subsection B.2 below. For purposes of this subsection, ancillary massage services shall be those services where less than twenty percent (20%) of the gross floor area of the business is devoted to massage.

2. Massage services provided under subsection B.1 above shall be required to comply with the following:

a. Massage services must be performed by the holder of a valid State Certificate.

b. The business shall comply with the following provisions of this chapter:

1. Section 122.12A.1 relating to hours;
2. Section 122.12 C relating to instruments, equipment and personnel;
3. Section 122.12 D.1 through 3 relating to personnel lists;
4. Section 122.12 E relating to prohibited conduct;
5. Section 122.13 A - F relating to building and facility requirements;
6. Section 122.14 relating to inspections.

C. Any person claiming exception under this section shall furnish satisfactory evidence upon request that he or she is entitled to such exception, including, proof of bona fide employment, or if applicable, a citation to the particular provision of State law upon which that person relies.

122.04 Business License/Other Permits Required

A. Nothing herein relieves an individual or business from obtaining a City business license or other permit if otherwise required by law.

B. Any individual applying for a business license as a massage practitioner or a massage therapist shall provide proof of a current State Certificate before being issued a business license.

ARTICLE B – MASSAGE PRACTITIONERS AND MASSAGE THERAPISTS

122.05 State Certificate Required

A. No person shall provide massage services, including out-call massage services, from any location in the City without having been issued a State Certificate, regardless of whether such person has an operator permit or the business has a certificate of operation.

B. Any person certified by the State who desires to operate a massage establishment, must obtain an operator permit in accordance with Article C of this Chapter.

ARTICLE C – CERTIFICATES OF OPERATION AND OPERATOR PERMITS

122.06 Certificate and Permit Requirement

A. No person shall own or manage any massage establishment in any location within the City without first having obtained an operator permit.

B. No massage establishment shall be allowed to operate within the City unless the business first obtains a certificate of operation.

C. Any person desiring to obtain a certificate of operation and/or an operator permit shall make application in accordance with the provisions of this article, which application shall be accompanied by a nonrefundable fee in an amount established by resolution of the City Council.

D. All applications shall be dated and shall contain the following statements:

1. A certification under penalty of perjury that the information contained in the application is true and correct; and
2. An authorization for the City, its officers, agents and employees, to seek information and conduct an investigation into the truth of the statements set forth in the application and to ensure continual compliance with all applicable provisions of law.

122.07 Operator Permit.

A. Application—Contents. Applicants for operator permits shall submit the following information to the San Gabriel Police Department on a form supplied by the Department:

1. The full true name of the applicant;
2. A complete statement listing and explaining any and all aliases and fictitious names used by the applicant within the ten years immediately preceding the application;
3. The current residence address and business address and current residence and business telephone number of the applicant;
4. A list of all previous residential and business addresses for a minimum of eight years immediately preceding the present address of the applicant and the dates of residence for each address;
5. The applicant's place of birth, and original documentation to verify both the applicant's identity and employment authorization (if applicable), as listed under 8 USC 1324a(b)(1) and 8 CFR 274a.2(b)(1). Documentation to satisfy this requirement may include, but is not limited to, a California driver's license, California identification card, Social Security card, resident alien ("green") card, United States passport (unexpired or expired), unexpired foreign passport that contains a temporary I-551 stamp, or an unexpired employment authorization document issued by the United States Government in compliance with 8 CFR 274a.2(b)(1)(v)(A);
6. The history of the applicant as to any similar business or occupation within ten years immediately preceding the filing of the application. Such information shall include, but not be limited to, the names and addresses of any other massage establishments or similar businesses the applicant has owned, managed, provided massage services at, or worked at, whether the applicant has had a permit or license to operate, manage, provide massage services at, or work at a massage establishment denied, revoked or suspended in any jurisdiction; the reasons for any such denial, revocation or suspension; and the business, activity or occupation the applicant engaged in subsequent to such denial, revocation or suspension;
7. All criminal convictions within the last ten years, excluding minor traffic violations, and the date and place of each such conviction and reason therefor;
8. Such other reasonable identification and information as the Chief of Police may require in order to discover the truth of the matter specified as required to be set forth in the application; and
9. The applicant shall have his picture taken by the San Gabriel Police Department or otherwise supply a photograph as directed by the Department.

B. Once the information required by subsection B is submitted, the applicant shall have his fingerprints taken for a criminal history background (Livescan) check in the manner directed by the San Gabriel Police Department.

C. The Chief of Police shall issue the operator permit, unless after investigation he or she makes any of the following findings:

1. The applicant has failed to provide information, documentation and assurances required by this chapter or by the Chief of Police; has failed to reveal any fact material to qualification; or has supplied information that is untrue or misleading as to a material fact pertaining to the qualification criteria; or

2. The applicant is a person who has engaged in disqualifying conduct; or

3. There is substantial evidence that the applicant has engaged in disqualifying conduct, even if there is no conviction for such conduct; or

4. The applicant has violated any provision of this chapter, or any similar ordinance, law, rule, or regulation of any other public agency which regulates the operation of massage establishments; or

5. The applicant is not at least eighteen years of age; or

6. The applicant is delinquent in paying City fees or penalties owed in relation to any permit issued pursuant to this chapter.

D. Permits issued pursuant to this section shall remain in effect, unless revoked, for a period of three years. Applications for the renewal of a permit shall be filed on a form supplied by the City with the Chief of Police at least sixty calendar days before the expiration of the then current permit to be renewed. Temporary permits shall not be issued. Renewal applications shall be signed under penalty of perjury and shall be accompanied by a nonrefundable filing fee established by resolution of the City Council. A permittee shall be required to update the information contained in his original permit application and provide any new and/or additional information as may be reasonably required by the Chief of Police in order to determine whether said permit should be renewed, including all information required by subsection A of this section. Failure to provide this documentation shall be grounds for nonrenewal of the permit.

E. If the criminal history background check report demonstrates that the applicant has made any false, misleading or fraudulent statement of material fact in the permit application or in any report or record required to be filed therewith, or discloses any disqualifying conduct, the permit shall be subject to denial.

F. Automatic Issuance and Renewal for State Certificate Holders.

1. Any person who holds a valid State Certificate shall only be required to provide the following information on a form that includes the statements set forth in Section 122.06D:

- a. The full true name of the applicant; and
- b. The current residence and business address and current residence and business telephone number of the applicant.

2. A copy of the applicant's State Certificate and identification shall be provided with the application, along with a fee in an amount set by resolution of the City Council.

3. The applicant shall be required to have his picture taken as specified above.

4. The operator permit shall automatically be issued upon completion of the form and verification of the validity of the State Certificate by the Police Department. No background check shall be required.

5. Renewals shall be required in accordance with Section D above, but such renewals shall be automatic as long as the permittee maintains and provides a copy of his valid State Certificate.

G. Every person to whom a permit has been granted pursuant to this chapter shall be issued an identification badge by the San Gabriel Police Department which shall contain the person's name, photograph, expiration date and any other information deemed necessary by the Chief of Police. The badge shall be worn so as to be readily visible at all times while on the premises of the massage establishment.

H. Permits issued pursuant to this chapter may not be assigned or transferred.

I. It is the duty of each operator to notify the Chief of Police whenever there is a change in information which was required to be submitted in the application for the operator permit in the first instance. Such notification shall be in writing and made within ten business days of the change on a form provided by the Police Department.

122.08 Certificate of Operation.

A. Applications for a certificate of operation shall be filed with the Finance Department and shall include the information set forth below :

- 1. The full name of the applicant;

2. The name under which the business is to be conducted, which name must match the name of the business under which the corresponding business tax certificate is issued under Chapter 110. No massage establishment business shall operate under any business name or conduct business under any designation not specified in the certificate of operation. If the applicant is a corporation, the name shall be exactly as shown on the articles of incorporation or on a valid DBA ("doing business as");

3. The address of the proposed massage establishment, a site plan indicating how the use is proposed to be conducted within the premises, and a description of any other business operated on the same premises; and

4. The full name of each operator of the massage establishment.

B. The Finance Director shall issue a certificate of operation upon verification of the following:

1. The massage establishment will comply with all applicable laws, including, but not limited to building, fire, zoning, health and safety regulations, as well as any conditions which have been imposed to comply with such laws; and

2. Each person identified as an Operator has obtained an operator permit.

C. Every massage establishment for which a certificate of operation has been granted pursuant to this chapter shall display the certificate in a conspicuous place so it may be readily seen by persons entering the premises.

D. A certificate of operation is not transferable to a separate location of the same business.

E. It is the duty of each operator to notify the Finance Department whenever there is a change in information which was required to be submitted in the application for the certificate of operation in the first instance. Any sale or transfer of any reportable interest of an owner in a massage establishment, which interest would be required to be reported under subsection A of this section in the first instance, shall render the certificate of operation temporarily suspended and subject to revocation in accordance with the provisions of this Chapter unless prior to the effective date of such sale or transfer, the new owner applies for and obtains an operator permit.

122.09 Revocation of Permits and Certificates.

A. Subject to the procedures set forth in this section, the Chief of Police may revoke an operator permit or a certificate of operation issued pursuant to this chapter whenever it is determined that any of the following has occurred:

1. The permittee is conducting operations in a manner contrary to the provisions of this code;
2. The permittee is conducting operations in a manner which constitutes a public nuisance;
3. The permittee is conducting operations in a manner which is detrimental to the health, safety or welfare of the City or its inhabitants;
4. A finding is made that would have justified denying the application in the first instance.

B. If, in the discretion of the Chief of Police, the violation is capable of correction, then prior to revocation a written notice shall be given to the permittee of the violation(s) involved to allow a period of time to correct the violation(s), which period shall not exceed five business days, at the end of which period, the Police Department shall conduct an inspection to determine whether the violation(s) has been corrected. If the Chief of Police determines that the violation is not capable of correction or finds that the violation(s) continues without correction, then the Chief of Police may issue a notice of revocation. Examples of a violation which will be determined by the Chief of Police to be not capable of correction include but are not limited to substantial evidence of prostitution activity on the massage establishment's premises or an immediate threat to health, safety or welfare.

C. Notice of Revocation. Notice of revocation shall contain a statement of the violation(s) which constitute the basis for the revocation. The Chief of Police shall serve the notice of revocation on the permittee, as well as any other interested person requesting a copy of the same. All massage activity at the massage establishment shall cease following issuance of the notice of revocation and no activity for which the permit is required shall be conducted while any appeal of the revocation may be pending. The notice shall include information about the right to appeal and the necessity of an appeal as a prerequisite to litigation.

D. Surrender of Permit. Any permittee shall immediately surrender his Operator's Permit to the Chief of Police upon its revocation. The Operator shall immediately surrender the Certificate of Operation upon revocation.

122.10 Appeals.

A. Appeals.

1. Appeals from any decision of the Chief of Police or Finance Director under this Chapter shall be in writing, shall clearly state the applicable basis for the appeal, and shall be filed with the City Clerk not later than fifteen calendar days following the date of notice of the decision.

2. The City Clerk shall not accept an appeal, and no hearing shall be held, unless the appellant has paid a filing fee, in an amount set by resolution of the City Council, to defray the cost of such appeal. Any appeal without the timely payment of fees shall be considered to be untimely.

3. The scope of the appeal hearing pursuant to this section shall be limited to those issues raised by the appellant in the written appeal, as submitted pursuant to subsection A.1 of this section.

B. City Manager Action.

1. Upon receipt of a timely filed appeal, the City Clerk shall set the matter for hearing before the City Manager. The hearing shall be held not fewer than ten calendar days nor more than thirty calendar days from the date of the appeal request. The hearing may be continued from time to time upon the mutual consent of the parties.

2. The appellant shall be provided with notice of the time and place of the appeal hearing, as well as a copy of all relevant materials at least seven calendar days prior to the hearing.

3. At the time of such hearing, the City Manager shall review the records and files relating to the decision.

a. The City Manager shall permit any interested person to present any relevant evidence bearing on the issues involved in the matter.

b. In conducting the hearing, technical rules relating to evidence and witnesses shall not apply. Any relevant evidence may be admitted if it is material and if it is evidence customarily relied upon by responsible persons in the conduct of their affairs regardless of the existence of any common law or statutory rule which might make admission of such evidence improper over objection in civil actions. Hearsay evidence may be admissible if it is the sort upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The rules of privilege shall be applicable to the extent they are permitted in civil actions. Irrelevant, collateral, and repetitious testimony shall be excluded.

c. In determining whether a person should be disqualified for meeting the definition of 122.02 T.3, the City Manager may consider: the nature and severity of the act(s) or crime(s); whether there were any additional subsequent act(s) or crime(s); the number of act(s) or crime(s); and how recent the act(s) or crime(s) were.

4. The appellant shall have the burden of proving that he or she meets the requirements for issuing the permit or certificate in the first instance; the City shall have the burden in proving that grounds exist for revoking or failing to renew a permit.

5. Based upon the evidence presented at the hearing, the City Manager shall determine whether the decision should be affirmed, modified or reversed.

6. The City Manager's decision shall be communicated in writing to the appellant within seven calendar days after the close of the hearing and submission of the matter to the City Manager for decision. The City Manager's decision shall state whether the decision is affirmed, modified or reversed and shall state the reasons therefor.

7. The decision of the City Manager shall include notice that the decision is final and conclusive, that judicial review may be sought therefrom pursuant to Code of Civil Procedure Section 1094.5, and that any action filed in the superior court shall be filed within ninety days following the City Manager's notice pursuant to Code of Civil Procedure Section 1094.6.

122.11 Notices.

All notices required to be given pursuant to this chapter shall be served on the responsible party (i.e., permittee, applicant, appellant, or a representative thereof) either by personal delivery or by deposit in the United States mail in a sealed envelope postage prepaid addressed to such responsible party as the name and address appear in the most recent application on file with the City. Service by mail shall be deemed to have been completed on the date deposited in the mail. Notices shall include information regarding appeal rights and a statement that the failure to file an appeal shall constitute a failure to exhaust administrative remedies.

ARTICLE D. OPERATION AND FACILITY REQUIREMENTS

122.12 Operational Requirements.

A. Hours and Conditions of Operation.

1. No massage establishment shall operate nor shall any massage be administered in any massage establishment between the hours of 11:00 p.m. and 8:00 a.m. A massage begun any time before 11:00 p.m. must nevertheless terminate at 11:00 p.m. The hours of operation must be displayed in a conspicuous public place in the lobby within the massage establishment and in any front window clearly visible from outside of the massage establishment.

2. During hours of operation, no person other than a valid permit holder under this chapter, a massage practitioner, a massage therapist, or a patron shall be allowed beyond the front lobby of the massage establishment.

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

a. Visitors shall only be permitted in the lobby area of the massage establishment.

b. Patrons shall only be permitted in massage treatment areas if at least one massage practitioner or massage therapist is on the premises.

4. The massage establishment shall be supervised during all hours of operation by an Operator specified in the permit application.

B. Posting Requirements. In addition to any other requirements for posting set forth in this chapter, the following shall also apply:

1. A recognizable and legible sign complying with the requirements of this code shall be posted at the main entrance identifying the establishment as a massage establishment.

2. Each service offered, the price thereof, and the minimum length of time such service shall be performed shall be posted in English and such other languages as may be convenient to communicate such service, in a conspicuous public location in each massage establishment. No services shall be performed and no sums shall be charged for such services other than those posted. Nothing herein prohibits a voluntary tip from being paid by the patron.

3. Any posted signs which are in a language other than English shall also be posted in English.

C. Instruments, Equipment, and Personnel.

1. Disinfecting agents and sterilizing equipment shall be provided for any instruments used in performing acts of massage and said instruments shall be disinfected and sterilized after each use.

2. Massages shall be administered only on standard or portable massage tables or chairs which are covered with a durable, washable plastic or other acceptable waterproof material. Beds, mattresses, water beds, futons, sofa beds, any type of portable or convertible beds, and foam pads more than four inches thick or with a width of more than four feet shall not be permitted in the establishment.

3. Except to the extent required, in writing by a state-licensed medical practitioner, no massage practitioner or massage therapist shall massage the genitals, gluteal fold, or anal area of any patron, or the breasts of any female patron, nor shall any operator of a massage establishment allow or permit such a massage to the above-specified areas.

4. A massage shall not be given and no patron shall be in the presence of any massage establishment staff unless the patron's genitals, gluteal fold, anus, and, if a female patron, the female patron's breasts, are fully covered by a fully opaque, nontransparent covering.

5. All persons providing services in the massage establishment shall be fully clothed at all times. Clothing shall be of a fully opaque, nontransparent material and shall provide complete covering from no higher than mid-thigh to no lower than three inches below the collarbone.

6. All massage establishments shall be so equipped, maintained and operated as to effectively control the entrance, harborage, and breeding of vermin, including flies. When flies or other vermin are present effective control measures shall be instituted for their control or elimination.

7. Clean and sanitary towels, sheets and linens shall be provided for each patron of the establishment. No common use of towels or linens shall be permitted. Heavy white paper may be substituted for sheets; provided, that such paper is used once for each person and then discarded into a sanitary receptacle.

D. Personnel Lists.

1. Within seven calendar days of receiving a Certificate of Operation, the Operator shall provide the Police Department with a complete list of all massage practitioners and massage therapists who are working or will work, be employed, or provide massage services in the massage establishment and the name and residence address of the manager principally in charge of the operation of the massage establishment and of any other manager.

2. The Operator shall have a continuing obligation to notify the Chief of Police in writing of any changes in massage practitioners, massage therapists, and managers within seven calendar days of such change.

3. The Operator shall maintain copies of each massage practitioner's and massage therapist's State Certificate on file on the premises of the massage establishment which shall be available to any individual upon request, including but not limited to employees of the City. Additionally, the Operator shall be required to file copies of each State Certificate with the Police Department within seven days of a massage practitioner or massage therapist beginning to work at the massage establishment. Information required by this section shall be maintained at the massage establishment for a minimum of two years following the date that the person ceases providing services/employment to the massage establishment.

4. The Operator shall maintain on the premises of the massage establishment a register of all non-state certified persons employed, working or providing other services at the massage establishment. The register shall be maintained for a minimum of two years following the time that the person ceases providing services/employment to the massage establishment. The Operator shall make the register immediately available for inspection upon demand of a representative of the Police Department, any health officer, or any other official charged with enforcement of this chapter. The register shall include but is not limited to the following information:

- a. Name, nicknames and/or aliases;
- b. Home address and relevant phone number, including but not limited to home, cellular and pager numbers;
- c. Age, date of birth, gender, height, weight, color of hair and eyes;
- d. The date of employment, and termination, if any;
- e. The duties of each person; and
- f. In a separate portion of the register, Social Security numbers, which shall only be available for review by the San Gabriel Police Department or other law enforcement personnel, but not health officers or other officials charged with the enforcement of this chapter.

E. Prohibited Conduct.

1. No alcoholic beverages shall be sold, served, or furnished on the premises of any massage establishment without a valid alcoholic beverage license from the State and conditional use permit from the City.

2. No storage or sale of condoms shall be permitted within the massage establishment.

3. No operator shall hire, employ or allow a person to perform massage services unless such person possesses a valid State Certificate. Each operator of a massage establishment shall verify that all persons hold the appropriate State Certificate required by this chapter. Nothing herein prevents an Operator from hiring, employing, or allowing a person to perform services allowed by such person's cosmetology or barber license, if the business has a State establishment license in addition to a Certificate of Operation.

4. No person shall use or possess any sexually-oriented merchandise, as defined in Section 121.01, in any part of a massage establishment.

5. No electrical, mechanical or artificial device shall be used by any massage establishment staff for audio and/or video recording or for monitoring the performance of a massage, of the conversation or other sounds in the massage rooms, without the knowledge and written consent of the patron.

6. No massage establishment 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 patrons or clients that any service is available other than those services described in this chapter and posted on the premises as required in this chapter, nor shall any massage establishment employ language in the text of any advertising that would reasonably suggest to a prospective patron that any service is available other than those services described in this chapter and posted on the premises as required by this chapter.

122.13 Building and Facility Requirements.

A. The building, or unit within the building where the exempt massage establishment is located, shall comply with all applicable building code requirements;

B. All massage rooms and dressing rooms shall be screened off by swinging doors that can open inward and are self-closing. Draw drapes, curtain enclosures, or accordion-pleated closures in lieu of doors are acceptable on all inner dressing rooms and massage therapy rooms or cubicles.

C. In addition to the minimum lighting required by the provisions of Chapter 150 of the San Gabriel Municipal Code, at least one artificial light of not fewer than forty watts shall be provided and turned on in each room or enclosure where massage services are to be administered during the administration of such services.

D. Any locker facilities provided for the use of patrons shall be fully secured for the protection of the patron's valuables and the patron shall be given control of the key or other means of access.

E. The walls in all rooms where water or steam baths are given shall have a washable mold-resistant surface.

F. All walls, ceilings, floors, pools, showers, bathtubs, steam rooms and all other physical facilities for the establishment must be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms, or steam or vapor cabinets, shower compartments, and toilet rooms shall be thoroughly cleaned and disinfected each day the business is in operation. Bathtubs shall be thoroughly cleaned and disinfected after each use.

G. One front door that enters into the front lobby shall be provided for patron use. All patrons, and any persons other than those providing services at the massage establishment, shall be required to enter and exit through the front door of the establishment.

H. All exterior doors (except rear exterior doors used only for employee entrance to and exit from the massage establishment) shall remain unlocked during business hours, and the establishment shall comply with the provisions of the San Gabriel Municipal Code pertaining to the posting of signs stating that doors shall remain unlocked during business hours. Exits for fire safety purposes may be allowed where deemed necessary by the appropriate public safety agency. Notwithstanding the above, the front door may be locked if there is no staff available to assure security for the clients and massage staff who are behind closed doors, provided that the massage establishment is an Exempt Massage Establishment as defined in Section 122.02.

122.14 Inspections.

A. Representatives of the City's Police Department, Fire Department, Community Development Department, and Finance Department, and agents for the City from the County Health Department and representatives of any state or local agencies with regulatory authority over massage establishments shall have the right to enter massage establishments, from time to time, during regular business hours, or at any time that the massage establishment is occupied or open for business, to verify the massage establishment is in compliance with all applicable laws.

B. The Operator shall cause to be conspicuously posted so that the same may be readily visible to persons in the front lobby of the massage establishment, in letters that are a minimum of one inch in height, a notice in English which provides substantially as follows:

THIS MESSAGE ESTABLISHMENT AND THE
MESSAGE ROOMS DO NOT PROVIDE COMPLETE
PRIVACY AND ARE SUBJECT TO INSPECTION BY
CITY AND HEALTH OFFICIALS WITHOUT PRIOR
NOTICE

In addition, Operators are encouraged to post this notice in language(s) that are best understood by the customers of the message establishment.

C. No person shall refuse to permit, cause delay of, or interfere with, a lawful inspection or compliance check of the premises by the officials listed in subsection A of this section at any time.

122.15 Violation—Nuisance/remedy.

A. It is unlawful for any person to engage in conduct that violates any provision of this chapter, to engage in conduct which fails to meet the standards set forth in this chapter, or to own, manage, or operate a message establishment that is not fully in compliance with the operational standards set forth in this chapter.

B. Any violation of this chapter shall be a misdemeanor unless, in the sole discretion of the City Prosecutor, it is charged as, or reduced to, an infraction. Citations and warning notices may be utilized as determined appropriate to the circumstances by the enforcing personnel.

C. In addition to the above, any message establishment operated, conducted or maintained contrary to the provisions of this chapter shall be and is declared to be unlawful and a public nuisance and the City may, in addition to or in lieu of prosecuting a criminal action under this chapter, commence an action or actions, proceeding or proceedings, for the abatement, removal and enjoinder thereof, in the manner provided by law, including any code enforcement procedures established pursuant to the laws of the State of California or the City of San Gabriel; and may take such other steps and may apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such message establishments and restrain and enjoin any person from operating, conducting or maintaining a message establishment contrary to the provisions of this chapter. If an injunction is sought, attorney's fees and costs will be assessed at the discretion of the court against the party subject to said injunction.

D. Any violation of the provisions of this chapter shall constitute a separate offense for each and every day during which such violation is committed or continued.

SECTION 2. Chapter 153 of the San Gabriel Municipal Code is hereby amended as follows:

A. The Table set forth in section 153.151D is amended by deleting the reference to Acupressure under "Offices Uses" and adding "Massage Establishments" under Personal Service Uses:

<i>Type of Use</i>	<i>Commercial</i>		<i>Light Manufacturing</i>	<i>Notes</i>
<i>Office Uses</i>				
Acupressure	€	€	✕	
<i>Personal Service Uses</i>				
Massage Establishments	P	P	X	Must comply with Chapter 122

B. Section 153.165 of the San Gabriel Municipal Code is hereby amended to read as follows:

In addition to the requirements contained in this subchapter, the following additional requirements of this code shall apply to the development and use of any property in the C-1, C-3, and M-1 zone districts:

§ 153.003 Definitions

§§ 153.220 - 153.227 Off-Street Parking

§§ 153.320 - 153.333 Signs

§§ 153.280 - 153.286 Planned Development Overlay Zone

§§ 153.380 - 153.383 Commercially-Utilized Condominiums

§§ 153.400 - 153.404 Trip Reduction and Travel Demand Measures

Chapter 121 Adult-Oriented Businesses

Chapter 110 Business Licenses

§ 116.010 - 116.029 Amusement Machines

Chapter 118 Fortune Telling

§§ 116.055 - 116.065 Poolrooms and Billiard Rooms

Chapter 122 Massage Establishments and Services

SECTION 3. Applicability to Existing Persons and Businesses.

A. Notwithstanding section 153.421 of the San Gabriel Municipal Code, the provisions of this Ordinance, including the time limitations set forth in Section 122.12, shall apply to all existing massage establishments in the City, regardless of whether such establishments have previously been granted a conditional use permit or whether such establishments were previously classified as an acupuncture establishment, six months after the effective date of this Ordinance and such businesses must obtain a certificate of operation after such time. Additionally, after such six-month time, all owners and managers of a massage establishment shall be required to obtain an operator's permit from the San Gabriel Police Department.

B. Notwithstanding section 122.05A, any person who has been issued a permit to provide massage services under the previous provisions of Chapter 122, shall be allowed to continue to provide such services for six months after the effective date of this Ordinance. Unless an extension is granted in accordance with subsection C below, after the expiration of such six month time period, all previously issued permits shall be considered null and void and any permittee must possess a State Certificate in order to provide massage services in the City.

C. An application may be filed with the Finance Department for an extension of the six month time period in which to obtain a State Certificate set forth in subsection B above. The application must be filed no later than sixty (60) days before the expiration of the six month period and shall be accompanied by a fee in an amount set by resolution of the City Council.

1. Upon receipt of an application for an extension, the Finance Department shall set the matter for hearing for no less than fifteen (15) days and no more than sixty (60) days from the filing of the application. The hearing shall be conducted by the Finance Director. Said hearing may be continued from time to time.

2. The burden of proof shall be on the applicant to demonstrate the following:

a. That the applicant has initiated the process to obtain his State Certificate; and

b. That such use does not and will not during the extension period requested:

i. Adversely affect the health, peace or welfare of persons residing in the surrounding area; or

ii. Be materially detrimental to the use, enjoyment or valuation of the property or other persons located in the surrounding area; or

iii. Jeopardize, endanger or otherwise constitute a menace to the public health, safety or general welfare.

3. The applicant shall have the right to present evidence and cross-examine witnesses.

4. The Finance Director, or his designee, shall issue his decision within ten (10) days of the close of the hearing and shall make written findings. The decision shall specify the length of the extension, which shall not exceed six months. If an extension is granted, the applicant may apply for one additional extension prior to the expiration of the original extension, which also shall not exceed six months. In considering the length of the extension(s), and whether an additional extension should be granted, the Finance Director may consider what efforts the applicant has made toward obtaining a State Certificate.

5. The Finance Director shall not approve an application for which the applicant has failed to meet the burden of proof required above, and any such approval may be conditioned to ensure that the approval will be in accord with the findings. The Finance Department shall send written notice of the decision to the applicant within three (3) working days of such decision. The notice shall specify that the applicant has the right to appeal the decision in accordance with Section 122.10 of this Code and that failure to appeal the decision shall constitute a failure to exhaust the applicant's administrative remedies.

D. Upon adoption of this Ordinance staff shall send notices to all affected persons providing massage services in the City and all massage and acupressure businesses in the City, including those with conditional use permits, informing them of the requirements of this Ordinance.

SECTION 4. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or any part thereof is for any

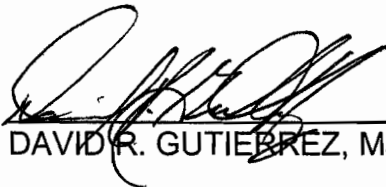
reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase be declared unconstitutional.

SECTION 5. Certification. The City Clerk shall certify the passage of this ordinance and shall cause the same to be entered in the book of original ordinances of said City; shall make a minute passage and adoption thereof in the records of the meeting at which time the same is passed and adopted; and shall, within fifteen (15) days after the passage and adoption thereof, cause the same to be posted as required by law.

SECTION 6. Effective Date. This ordinance shall not become effective or be in force until thirty days from and after the date of its adoption.

SECTION 7. Effect on Moratorium. Upon the effective date of this Ordinance, Ordinance No. 586-C.S. establishing a moratorium on massage services is hereby repealed.

Passed, approved, and adopted this 20th day of September, 2011.



DAVID R. GUTIERREZ, Mayor

ATTEST:



NINA CASTRUITA, Deputy City Clerk

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I, Nina Castruita, Deputy City Clerk of the City of San Gabriel, California, do hereby certify that the foregoing ordinance was adopted by the City Council of the City of San Gabriel at a regular meeting held thereof on the 20th day of September, 2011 by the following vote, to wit:

Ayes: Costanzo, De La Torre, Gutierrez, Sawkins
Noes: Harrington
Abstain: None
Absent: None

Nina Castruita

Nina Castruita, CMC, Deputy City Clerk
City of San Gabriel, California

I hereby certify that the foregoing document is a full true and correct copy of Ordinance 591-C.S.

on file in the office of the City Clerk of the City of San Gabriel, California.

Christine D... 9/21/11
Office of the City Clerk Date
City of San Gabriel