

ORDINANCE NO. XXX N.S.

**AN ORDINANCE OF THE CITY OF EL PASO DE ROBLES
ADDING CHAPTER 5.38 TO THE MUNICIPAL CODE
REGARDING MASSAGE THERAPY AND MASSAGE ESTABLISHMENTS**

WHEREAS, the City of Paso Robles Municipal Code does not currently address or regulate the operation massage establishments and massage practitioners and therapists; and

WHEREAS, certain businesses in the City purporting to provide massages have instead been engaged in illicit activities that violate subdivisions (a) and/or (b) of Penal Code section 647 and have posed a danger to the public health, safety and welfare of the citizens of Paso Robles; and

WHEREAS, the City also desires to allow certified massage practitioners and massage therapists to practice their profession; and

WHEREAS, the California Legislature adopted SB 731, which added Business and Professions Code Section 4600 *et seq.*, to create a voluntary certification program for the massage therapy profession in order to “enable consumers to easily identify credible certified massage therapists” who have received background checks, been trained at approved schools, passed an examination and received certification from the California Massage Therapy Council (“CAMTC”); and

WHEREAS, SB 731 provides that a city is limited in the manner in which it can regulate certified massage therapists and practitioners, and conversely, that it has greater latitude to regulate those persons who are not certified by CAMTC; and

WHEREAS, the proposed ordinance will enable the City to better control illicit operations and protect and promote the public health safety and welfare by imposing stricter requirements on requests for business licenses by those persons who are not certified by CAMTC;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Title 5 – Business Licenses of the Paso Robles Municipal Code is hereby revised to add new Chapter 5.38 – Massage Therapy and Massage Establishments, in the form set forth in Exhibit A hereto and incorporated herein by reference.

SECTION 2. Severability. Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

SECTION 3. Effective Date. This Ordinance shall take effect thirty (30) days after adoption as provided by Government Code Section 36937.

SECTION 4. Publication. The City Clerk will certify to the passage of this Ordinance by the City Council of the City of El Paso de Robles, California and cause the same to be published once within fifteen (15) days after its passage in a newspaper of general circulation, printed, published and circulated in the City in accordance with Government Code Section 36933.

Introduced at a regular meeting of the City Council held on _____, 2013 and passed and adopted by the City Council of the City of El Paso de Robles on the ___ day of _____, 2013 by the following roll call vote, to wit:

AYES:
NOES:
ABSTAIN:
ABSENT:

Duane Picanco, Mayor

ATTEST:

Dennis Fansler, City Clerk

Exhibit A

CHAPTER 5.38

MASSAGE THERAPY AND MASSAGE ESTABLISHMENTS

5.38.010 – PURPOSE AND INTENT

It is the purpose and intent of the city council that massage therapists and practitioners meet standards and qualifications promulgated by the California Massage Therapy Council and pursuant to the California Massage Therapy Act to perform the massage treatments offered and, to further the public health, safety, and welfare, that massage establishments are operated in a lawful and professional manner.

5.38.020 – DEFINITIONS

Unless the particular provision or the context otherwise requires, the definitions and provisions contained in this section shall govern the construction, meaning, and application of words and phrases used in this chapter.

California Massage Therapy Council (CAMTC) means the nonprofit organization created to regulate the massage industry in California pursuant to Chapter 10.5 of Division 2 of the Business and Professions Code (commencing with section 4600).

CAMTC certificate means a massage practitioner certificate issued by the CAMTC pursuant to Business and Professions Code section 4601(b), or a massage therapist certificate issued by the CAMTC pursuant to Business and Professions Code section 4601(c).

Certified massage practitioner or practitioner means any person to whom the CAMTC has issued a certificate pursuant to Business and Professions Code section 4601(b), and who provides massage services for compensation.

Certified massage therapist or therapist means any person to whom the CAMTC has issued a certificate pursuant to Business and Professions Code section 4601(c), and who provides massage services for compensation.

Chief of police means the Chief of Police of the City of El Paso de Robles.

City manager means the city manager of the City of El Paso de Robles or his or her designated representative.

Massage includes methods that are undertaken to promote wellness, relaxation, stress reduction, pain relief and postural improvement, or provide general or specific therapeutic benefits, including, but not limited to massaging, stroking, friction, kneading, rolling, vibrating, cupping, petrissage, rubbing, effleurage, tapotement and any other non-incident touching, with the hands or other parts of the body, with or without the aid of any mechanical or electrical device or appliance, and with or without supplementary aids such as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments, or other similar preparations commonly used in this practice. Massage services include, but are not limited to, hydrotherapy, and therapeutic application of wraps, oils, alcohol rubs, skin brushing, salt glows and similar applications of products to the skin.

Massage establishment means any business where any person engages in, conducts, carries on, or permits to be engaged in or conducted, for money or any other consideration, massage services or health treatments involving massage including, but not limited to, those businesses that provide massage services accessory to their principal permitted use, such as aromatherapy, beauty salon, health club, beach club, skin care salon, and day spa.

Massage Therapy Act means those provisions in Chapter 10.5 of Division 2 of the California Business and Professions Code commencing with section 4600.

Operator means any person who supervises, manages, directs, organizes, controls or in any other way is responsible for or in charge of the overall operation, conduct or activities of a massage business or establishment.

Owner means any of the following:

- (a) The sole proprietor of a massage business or establishment. As used in this chapter, the term “sole proprietor” shall mean a massage business or establishment where the owner is the only person employed by that business or establishment to provide massage therapy;
- (b) Any general partner of a partnership that owns and operates a massage business or establishment; or
- (c) Any person who has an ownership interest in a corporation that owns and operates a massage

business or establishment.

5.38.030 – PERMIT REQUIRED

It is unlawful for any person to perform or engage in the practice of massage for compensation within the city without possessing a valid CAMTC certificate obtained and maintained in compliance with the Massage Therapy Act. All persons certified by the CAMTC shall have the right to perform or engage in the practice of massage consistent with the Massage Therapy Act, the qualifications established by his or her certification, and the provisions of this chapter.

5.38.040 – DEADLINE FOR COMPLIANCE

(a) Any person holding a valid permit or license issued by the city to perform or engage in the practice of massage for compensation within the city may continue to provide such massage services under that permit or license until that permit or license expires, but shall otherwise comply with the requirements of this chapter upon this chapter's effective date. Upon expiration of the permit or license issued by the city, any person who desires to continue to provide massage services for compensation within the city shall first obtain a CAMTC certificate.

(b) Any massage business or establishment legally in business prior to the effective date of this chapter may continue to operate as a massage establishment until its permit or license expires, provided that all of the massage establishment's employees, agents, independent contractors, or other persons providing massage services, possess either a valid city-issued permit or license to practice massage or a valid CAMTC certificate. Upon expiration of the massage establishment's permit or license to operate, any massage business or establishment that desires to continue to operate as such shall comply with the requirements of this chapter.

(c) All massage establishments, including its owners, operators, and employees, and all persons engaged in the practice of massage for compensation within the city, shall comply with all health and safety requirements set forth in this chapter once this chapter becomes effective.

5.38.050 – CITY BUSINESS LICENSE REQUIRED

(a) It shall be unlawful for any massage establishment to operate, or any independently employed certified massage practitioner or therapist to perform or engage in the practice of massage for compensation within the city, without first obtaining a city business license.

(b) In applying for a city business license, a massage establishment owner shall fill out an application and shall file along with the completed application a copy of the current and valid CAMTC certificate possessed by every person who will be performing or engaging in the practice of massage at the massage establishment. In addition, massage establishment owners who do not possess a CAMTC certificate, and who own five percent or more of the massage establishment, are subject to a background check pursuant to section 5.38.080, prior to the issuance of a city business license. Massage establishment operators who do not possess a CAMTC certificate shall also be subject to a background check pursuant to section 5.38.080.

(c) In applying for a city business license, a certified massage practitioner or therapist who will be independently employed shall fill out an application and shall file along with the completed application a copy of his or her current and valid CAMTC certificate.

(d) Prior to the issuance of a city business license to any massage establishment or any independently employed certified massage practitioner or certified massage therapist, the police department shall make a reasonable investigation into the information provided in the application, and shall contact the CAMTC to verify the status of the CAMTC certificate(s) filed by the business license applicant.

(e) No city business license shall be issued to a massage establishment that will employ or contract with one or more persons to perform or engage in the practice of massage without that person or persons possessing a current and valid CAMTC certificate.

(f) No city business license shall be issued to a person who wishes to perform or engage in the practice of massage for compensation within the city and who does not possess a current and valid CAMTC certificate.

(g) The city may deny a business license to any applicant who has provided materially false information in applying for a business license.

(h) The chief of police may order that a business license required by this chapter be revoked pursuant to the procedures set forth in section 5.38.200.

5.38.060 – EXCHANGE OF INFORMATION

The chief of police may request information from the CAMTC pertaining to any individual who possesses a CAMTC certificate and who is engaging in the practice of massage in the city. The

requested information may include, but need not be limited to, the current status of the individual's CAMTC certificate, any history of disciplinary action(s) taken against the individual, the home and work addresses of the CAMTC certificate holder, and any other information that may be necessary to verify facts relevant to administering the provisions of this chapter.

5.38.070 – REGULATION OF MASSAGE ESTABLISHMENT

(a) It shall be unlawful for any massage establishment or its owner(s) or operator(s) to hire or employ any person for the purpose of performing or engaging in the practice of massage without requiring that person to possess a valid CAMTC certificate.

(b) It shall be unlawful for any massage establishment or its owner(s) or operator(s) to allow an independent contractor to perform or engage in the practice of massage at the massage establishment if that independent contractor does not possess a valid CAMTC certificate.

5.38.080 – MASSAGE ESTABLISHMENT OWNERS AND OPERATORS

(a) Massage establishment owners who do not possess a current and valid CAMTC certificate, and who own five percent or more of the massage establishment, are subject to a background check prior to the city's issuance of a business license. If a massage establishment has multiple owners with a five percent or greater ownership interest in the business, each of those owners shall be subject to a background check and each owner shall be considered an "applicant" for purposes of applying for a business license.

(b) Massage establishment operators who do not possess a current and valid CAMTC certificate are subject to a background check.

(c) Massage establishment owners and operators who are subject to a background check shall complete an application that requests information regarding topics including, but not limited to, the applicant's business, occupation, employment history for the five years preceding the date of the application, and the name and address of any massage business or like establishment owned or operated by the applicant.

(d) All massage establishment owners and operators who are subject to this section shall personally appear at the police department to be fingerprinted. The police department shall conduct, or shall cause to be conducted on its behalf, a background investigation of the applicant.

(e) At the time of fingerprinting, the applicant shall pay to the police department a fingerprinting fee, and the cost of obtaining criminal history information and conducting a background investigation. Fees are set forth in the city's fee schedule in amounts established by resolution of the city council.

(f) With respect to massage establishment owners who are subject to a background check, the chief of police shall determine, based on the background investigation and the information submitted with the application, whether a business license to operate a massage establishment in the city shall be issued. If the chief of police determines that the applicant is not qualified to operate a massage establishment, the chief of police shall inform the applicant in writing and specify the reasons for the denial. The City may deny a business license to a massage establishment owner for the following reasons:

- (1) The applicant has provided materially false information in applying for a business license.
- (2) Within five (5) years immediately preceding the date of the filing of the application, the applicant has been convicted of, or pled guilty to, any of the following offenses: violation of Penal Code sections 243.4, 261, 266a through 266j, inclusive, 267, 288, 314 to 316, inclusive, 318, 647(a), 647(b), 647(d), 647(i), or 647(j); any offense requiring registration under Penal Code section 290 or Health & Safety Code section 11590; any felony offense involving the possession, possession for sale, sale, transportation, furnishing, or giving away of a controlled substance specified in Health & Safety Code sections 11054 to 11058, inclusive, as amended; any offense in another state which, if committed in California, would have been punishable as one or more of the offenses mentioned here; any offense involving the use of force or violence upon the person of another; or any offense involving theft, embezzlement, or moral turpitude.
- (3) The applicant has had a massage technician, massage establishment, or similar permit or license suspended within one year or revoked within three years immediately preceding the date of the filing of the application, unless the applicant can show a material change in circumstances or that mitigating circumstances exist since the revocation or suspension.

(g) Any person aggrieved by the decision of the chief of police may appeal that decision to the city manager or designee by filing a notice of appeal within ten (10) days of being notified of the

decision. The notice of appeal shall explain the reason(s) for the appeal. As soon as practicable after receiving the notice, the city manager's office shall set a date for the city manager to hear the appeal. The city manager shall render his or her decision within thirty (30) days of the conclusion of the hearing, unless the parties agree otherwise. The city manager shall notify the appellant in writing of the decision within ten (10) days of that decision being made. The city manager's decision shall be final.

(h) The massage establishment owner shall be responsible for notifying the city when it hires a new operator for the massage establishment. Such notification shall be in writing and provided to the city within five (5) business days of the commencement of the new operator's employment. If the new operator is subject to a background check pursuant to this section, he or she shall have thirty (30) days from date of hire to submit the application required by this section, to personally appear at the police department for fingerprinting, and to pay all applicable fees.

5.38.090 – RESPONSIBILITIES OF MESSAGE ESTABLISHMENT

(a) For the purpose of enforcing the requirements of this chapter and of the Massage Therapy Act, the owner(s) and operator(s) of a massage establishment within the city shall be responsible for the conduct of all employees and independent contractors working at the massage establishment while those persons are on the premises of the massage establishment or providing massage services.

(b) If the owner(s) or operator(s) of a massage establishment violates any provision of the city's municipal code, including but not limited to the provisions of this chapter, or of any state or federal law, including but not limited to the Massage Therapy Act, the massage establishment's license to conduct business within the city may be revoked pursuant to the procedures set forth in section 5.38.200. In addition, the city shall report all violations to the CAMTC.

(c) If any employee or independent contractor working at a massage establishment violates any provision of the city's municipal code, including but not limited to the provisions of this chapter, or of any state or federal law, including but not limited to the Massage Therapy Act, the massage establishment's license to conduct business within the city may be revoked pursuant to the procedures set forth in section 5.38.200. In addition, the city shall report all violations to the CAMTC.

5.38.100 – RESPONSIBILITIES OF PRACTITIONERS AND THERAPISTS

(a) If an independently employed certified massage practitioner or certified massage therapist violates any provision of the city's municipal code, including but not limited to the provisions of this chapter, or of any state or federal law, including but not limited to the Massage Therapy Act, his or her license to conduct business within the city may be revoked pursuant to the procedures set forth in section 5.38.200. In addition, the city shall report all violations to the CAMTC.

(b) No certified massage practitioner or certified massage therapist shall engage in the practice of massage for compensation within the city under any name other than the name reflected on his or her CAMTC certificate.

5.38.110 – CHANGES REGARDING MASSAGE ESTABLISHMENT

The owner or operator of a massage establishment must notify the city's finance department of any intention to rename, change management, or convey the massage establishment to another person.

5.38.120 – INSPECTION OF MASSAGE ESTABLISHMENT

(a) The city has the right to conduct reasonable inspections of any massage establishment during regular business hours to ensure compliance with the Massage Therapy Act, this chapter, and other applicable fire and health and safety requirements.

(b) It is a violation of this chapter for a massage establishment owner, operator, employee, or representative to prohibit or interfere with any lawful inspection of the premises.

(c) Nothing in this chapter shall prohibit the city from pursuing any and all available legal remedies to secure entry into and inspection of the premises if such entry is refused.

5.38.130 – PROOF OF CERTIFICATION

(a) Every massage establishment shall maintain on its premises evidence for review by city authorities that demonstrates that all persons providing massage services at the business establishment, whether such persons are employees or independent contractors, are certified by the CAMTC.

(b) Every certified massage practitioner and certified massage therapist shall display his or her

CAMTC certificate at his or her place of business.

5.38.140 – MASSAGE ESTABLISHMENT FACILITY REQUIREMENTS

All massage establishments within the city must comply with the following facility requirements:

- (a) Every massage establishment shall comply with all applicable city code and state law requirements and standards, including, but not limited to, those related to health, zoning, fire, and safety;
- (b) All exterior doors shall remain unlocked from the interior during business hours;
- (c) No room in a massage establishment shall be equipped with tinted or “one-way” glass;
- (d) Minimum lighting shall be provided in accordance with Article 220 of the National Electrical Code, and in addition, at least one artificial light of not less than 40 watts shall be provided in each room where massage services are performed; and
- (e) All massage establishments must comply with all state and federal laws and regulations pertaining to disabled clients.

5.38.150 – MASSAGE ESTABLISHMENT HEALTH AND SAFETY REQUIREMENTS

All massage establishment owners, operators, and employees, and all practitioners and therapists working within the city, must comply with all of the following health and safety requirements:

- (a) All persons shall be fully clothed at all times in clean and professional attire;
- (b) Each practitioner and therapist shall display his or her original CAMTC certificate in an open and conspicuous place in his or her place of business;
- (c) Each practitioner and therapist shall have his or her CAMTC-issued identification card in his or her possession while providing massage services;
- (d) It shall be unlawful for any individual to enter, or remain in, any part of a massage establishment while intoxicated or under the influence of any controlled substance. The owner or operator shall be responsible to ensure that no such person shall enter or remain in the massage establishment. Service of alcoholic beverages in a massage establishment shall be permitted only if the establishment is licensed to serve such alcohol. Alcohol consumption shall not be permitted

in any room where massage services are being performed;

(e) It shall be unlawful for any certified massage practitioner or certified massage therapist to administer massage services while in the possession of, consuming, using or under the influence of, any alcoholic beverage or controlled substance;

(f) It shall be unlawful for an individual to employ any electrical, mechanical or artificial device in the massage establishment for audio and/or video recording or for monitoring the performance of massage services, or conversation or other sounds in rooms without the knowledge and consent of the affected client(s);

(g) No client of the massage establishment shall receive, and no certified massage practitioner or certified massage therapist shall administer, massage services unless the client is properly draped and covered;

(h) The client's genitals, pubic area, anus, and female breasts must be fully draped by an opaque material at all times while an employee of the massage establishment is in the room with the client. No massage shall be provided to a client for sexual gratification by intentional contact, or occasional and repetitive contact, with the client's genitals, pubic area, anus, or female breasts;

(i) No individual shall give, or assist in the giving, of any massage service to any person under the age of eighteen (18) years, unless the parent or guardian of such minor has consented to such massage service in writing.

5.38.160 – ADVERTISING

(a) All independently employed certified massage practitioners and certified massage therapists shall include in any advertising for massage services the name under which he or she is certified and his or her CAMTC certificate number.

(b) It shall be unlawful for any massage establishment or business or any independently employed certified massage practitioner or certified massage therapist to place, publish or distribute, or cause to be placed, published or distributed, any advertising matter that would reasonably suggest to prospective clients that any massage service of any type or any other service or activity is offered or available for purposes intended to arouse, appeal to, or gratify a prurient interest, lust, sexual, or passionate desire.

(c) It shall be unlawful for any massage establishment or business or any independently employed certified massage practitioner or certified massage therapist to advertise through any media that is classified for “adults only” or other similar classification.

(d) It shall be unlawful for any person who does not possess a valid and current CAMTC certificate to do any of the following within the city:

(1) Advertise or represent to the public in any manner that he or she is certified, registered, or licensed by a government agency as a massage practitioner or massage therapist; or

(2) Hold himself or herself out as, or use the title of, “certified massage practitioner” or “certified massage therapist” or any other term such as “licensed” or “registered” that implies or suggests that he or she possesses a current and valid CAMTC certificate.

5.38.170 – EXCEPTIONS

The provisions of this chapter shall not apply, except as noted, to the following classes of individuals or businesses while engaged in the performance of their duties provided sufficient documentation verifying exempt status is furnished to the police department:

(a) Employees of state-licensed hospitals, nursing homes, and other state-permitted health care facilities while working in those facilities;

(b) Individuals holding a valid permit to practice the healing arts under the laws of the State of California, including but not limited to holders of medical degrees such as physicians, surgeons or chiropractors, osteopaths, naturopaths, podiatrists, acupuncturists, physical therapists, registered nurses and licensed vocational nurses;

(c) Barbers and cosmetologists who are licensed under the laws of the State of California while providing massage therapy within the scope of such licenses, provided that the massage therapy is limited to the neck, face, scalp, feet, and lower limbs up to the knees, hands and arms of clients; and

(d) Recognized schools of massage and their students in training provided the students administer massage therapy only under the direct personal supervision of an instructor.

5.38.180 – APPLICABILITY OF OTHER ORDINANCES

Nothing contained in this chapter shall be construed to exempt any person from complying with the provisions of any other applicable ordinance, rule, or regulation, or to exempt a massage establishment or independently employed certified massage practitioner or certified massage therapist from the provisions of any zoning, licensing, taxing, or other building ordinance, rule, or regulation.

5.38.190 – PUBLIC NUISANCE

Any massage establishment operated, conducted or maintained contrary to the provisions of this chapter is unlawful and a public nuisance, and the city attorney may, in addition to or in lieu of prosecuting a criminal action, commence an action or proceeding for the abatement, removal or enjoinder thereof, in the manner provided by law, and shall take such other steps and shall apply to such court(s) as may have jurisdiction to grant such relief as will abate or remove such businesses and restrain and enjoin any person from operating, conducting or maintaining a massage establishment contrary to the provisions of this chapter.

5.38.200 – BUSINESS LICENSE REVOCATION

(a) The city manager may revoke approvals issued under this chapter for one or more of the following reasons:

- (1) The applicant practiced fraud or deceit in obtaining an approval under this chapter.
- (2) The massage establishment owner, operator, employee, or any person performing or engaging in the practice of massage, violated a provision or provisions of this chapter or of the Massage Therapy Act.
- (3) The facilities and operations of the massage establishment are not maintained in compliance with the provisions of this chapter, and the owner or operator has failed to promptly remedy any deficiency for which they have received notice. For purposes of this provision, “notice” means notice given personally to an owner or operator of the massage establishment; notice delivered to the massage establishment premises; or notice mailed to an address provided in the business license application.
- (4) The massage establishment has employed, allowed, or permitted a person who was not

certified by the CAMTC to perform massage services at the massage establishment.

(5) An independently employed certified massage practitioner or therapist is no longer in possession of a current and valid CAMTC certificate.

(6) The approval was issued in error.

(b) The chief of police shall cause a notice of revocation to be mailed by first class, postage prepaid, to the address provided in the business license application.

(c) A person who received notice of business license revocation may request a public hearing on the issue by submitting a written request for such hearing to the city clerk within ten (10) days of receipt of the notice. As soon as practicable after receiving the hearing request, the city manager's office shall set a date for the hearing. At such hearing, all persons interested shall be given an opportunity to be heard. The public hearing shall take place before the city manager or his or her designated representative, who shall hear all facts and testimony he or she deems pertinent. The city manager shall not be limited by the technical rules of evidence.

(d) Following the revocation hearing, the city manager or his or her designated representative may find that the facts do or do not support a revocation of a business license and may order that a business license be revoked if the facts justify such determination. The city manager shall render his or her decision within fifteen (15) days of the conclusion of the hearing, unless the parties agree otherwise. The city manager shall notify the licensee in writing of the decision. The decision of the city manager or designee shall be final.