

CITY COUNCIL OF THE CITY OF NOVATO

ORDINANCE NO. 1544

AN ORDINANCE OF THE NOVATO CITY COUNCIL, OF
THE CITY OF NOVATO AMENDING CHAPTER 8.4 OF THE
NOVATO MUNICIPAL CODE REGULATING MASSAGE
ESTABLISHMENTS

THE CITY COUNCIL OF THE CITY OF NOVATO DOES ORDAIN AS FOLLOWS:

SECTION 1:

Section 8-4.1 of the Novato Municipal Code is hereby amended to add the following:

- k. “*State Massage Law*” shall mean Chapter 10.5 of the California Business and Professions Code (Section 4200 et.seq.) as the same may be amended from time to time.
- l. “*State Massage Certificate*” shall mean a valid certification as a massage practitioner issued to an individual pursuant to state massage law.

SECTION 1. Section 8-4.2 of the Novato Municipal Code is hereby amended to read as follows:

8-4.2 *Permit Required for Massage Establishment or out call Massage Service.* Unless exempt pursuant to Section 8-4.9, it shall be unlawful for any person as owner or operator to engage in, conduct, or carry on, or to permit to be engaged in, conducted, or carried on in the City, the operation of a massage establishment or out-call massage service without holding a valid current massage establishment permit from the chief of police.

SECTION 2. Section 8-4.5 of the Novato Municipal Code is hereby amended to read as follows:

8-4.5 *Permit Required for Massage Technicians.* Unless exempt pursuant to Section 8-4.9, it shall be unlawful for any person to physically administer massages for any consideration whatsoever without holding a valid current massage technician permit issued by the chief of police.

SECTION 3. Section 8-4.9 of the Novato Municipal Code is hereby amended to read as follows:

8-4.9 *Individuals and Establishments Exempted From this Section.*

- a. Individual Exceptions. The provision of this section shall not apply to the following classes of individuals, and no massage technician permit shall be required of such persons while engaged in the performance of the duties of their respective professions.

1. Currently licensed physicians, surgeons, chiropractors, osteopaths, physical therapists, nurses or any other person licensed to practice any healing art under the provisions of the California Business and Profession Code when engaging in such practice within the scope of the license, or by an individual acting under the direction and control of any of the aforelisted licensed professionals on the premises of the medical establishment.
 2. Barbers and cosmetologists who are currently licensed to practice their profession under the laws of the State of California provided that such massage is limited to the head, neck and scalp.
 3. Trainers of any amateur or professional athlete or athletic team when such practice of massage is limited to such athlete or team.
 4. School athletic trainers and coaches while acting within the scope of their employment.
 5. An individual who has been issued a state massage certificate and who is administering massage consistent with the qualifications established by his or her certification. Individuals claiming an exemption pursuant to this subsection a.5 shall submit to the chief of police a certified copy of such state massage certificate prior to performing any services as a massage technician within the city.
- b. *Establishment Exemptions.* No massage establishment permit is required for the operation of any of the following classes of establishments.
1. A medical establishment including professional offices where massage is administered by any of the licensed professionals listed in paragraph a.1 above, or by an individual acting under the direction and control of any of the aforelisted licensed professionals on the premises of the medical establishment.
 2. Hospitals, medical clinics, nursing homes, mental health facilities, sanitariums, and other health care facilities duly licensed by the State of California.
 3. Barbershops or beauty salons where massage is limited to the head, neck and scalp, and is administered by barbers or cosmetologists who are currently licensed under the laws of the State of California.
 4. Schools providing a course of study approved by the California Department of Education or Superintendent of Public Instruction in which massage is administered or taught to students by authorized school employees in conjunction with sports and athletic programs, training in the healing arts or other school courses.

5. Massage establishments that are sole proprietorships where the sole proprietor holds a state massage certificate. Massage establishments claiming an exemption pursuant to this subsection b.5 shall submit to the chief of police a certified copy of such state massage certificate and proof of sole proprietorship of the business prior to any person performing any services as a massage technician within the massage establishment.
 6. Massage establishments that employ or use only persons holding a state massage certificate. Massage establishments claiming an exemption pursuant to this subsection b.6 shall submit to the chief of police a list of each massage technician and a certified copy of the state massage certificate for each such massage technician prior to any such massage technician performing any massage.
- c. Notwithstanding the exemptions set forth in sections a.5 and b. 5 and 6 above, massage establishments and massage technicians otherwise exempt pursuant to state massage law, shall comply with the facility, health and safety and other requirements set forth in Sections 8-4.12 through 8-4.15.

SECTION 4. Section 8-4.12 of the Novato Municipal Code is hereby amended to read as follows:

8-4.12 *Massage Establishment Facilities.* Every massage establishment shall maintain facilities meeting the following requirements:

- a. *Sign.* Subject to applicable ordinances, a recognizable and legible sign shall be posted at the main entrance identifying the establishment as a massage establishment. This requirement shall not apply to any athletic club, health club, country club, gymnasium, reducing salon, beauty salon, or similar establishment, where massage is offered as an incidental or accessory service to its primary program of sports, exercise, athletic training, weight reduction, or beauty care. Incidental or accessory service shall mean that no more than 15 percent of its total floor area is used for the provision of facilities/services to patrons for the provision of massage services.
- b. *Lighting.* Minimum lighting shall be provided in accordance with the Uniform Building Code.
- c. *Ventilation.* Minimum ventilation shall be provided in accordance with the Uniform Building Code.
- d. *Equipment.* Adequate equipment for disinfecting and sterilizing instruments used in administering massage shall be provided.
- e. *Water.* Hot and cold running water shall be provided at all times to all wash basins, bathtubs, showers and similar equipment present on the premises.

- f. *Linen Storage.* Closed cabinets shall be provided for storage of clean linens. Nonabsorbent containers or laundry bags shall be provided for damp or soiled linen, and linen shall be kept therein until removed for laundering.
- g. *Toilet Facilities.* A minimum of one toilet facility shall be provided on the premises of the massage establishment. When five or more employees and patrons of different sexes are on the premises at the same time, separate toilet facilities shall be provided. A single water closet per sex shall be provided for each 15 or more employees or patrons of that sex on the premises at any one time. Urinals may be substituted for water closets after one water closet has been provided. All toilet rooms shall be equipped with self-closing doors opening in the direction of ingress to the toilet rooms.
- h. *Wash Basins.* Lavatories or wash basins shall be installed in each toilet facility. Each wash basin shall be provided with soap or detergent, and sanitary towels placed in permanently installed dispensers.
- i. Construction of rooms for toilets, tubs, steam baths, and showers shall be made waterproof with approved waterproofed materials and shall be installed in accordance with the Uniform Plumbing Code:
 - 1. For toilet rooms, toilet room vestibules and rooms containing bathtubs, there shall be a waterproof floor covering which will be carried up all walls to a height of at least six inches. The walls of all toilet rooms and rooms containing bathtubs shall be finished to a height of six feet with a smooth, nonabsorbent finish surface of Keene cement, tile, or similar material.
 - 2. Steam rooms and shower compartments shall have waterproof floors, walls and ceilings approved by the city's chief building official.
 - 3. Floors of wet and dry heat rooms shall be adequately pitched to one or more floor drains properly connected to the sewer (Exception: dry heat rooms with wooden floors need not be provided with pitched floors and floor drains).
 - 4. A source of hot water must be available within the immediate vicinity for dry and wet heat rooms to facilitate cleaning.
- j. All electrical equipment shall be installed in accordance with the requirements of the National Electrical Code.

SECTION 5. Section 8-4.13 of the Novato Municipal Code is hereby amended to read as follows:

8-4.13 Massage Establishment and Out-Call Massage Service Operation.

- a. Every massage establishment shall comply with the following operating requirements:

1. Every person employed or acting as a massage technician shall have a valid permit massage technician permit issued by the city or a state massage certificate and it shall be unlawful for any massage establishment permittee or his responsible managing employees in charge or in control of the establishment to employ or permit a person to act as a massage technician as defined in this section who is not in possession of a valid unrevoked massage technician permit or state massage certificate.
2. Massage operations shall be carried on and the premises shall be open only between the hours of 7:00 a.m. and 12:00 midnight.
3. A list of services available and the costs of such services shall be posted in a conspicuous public place on the premises, and shall be described in readily understandable language. No massage establishment permittee, managing employee, or massage technician shall offer to perform or charge for any service not posted.
4. The massage establishment permit, and a copy of the permit of each and every massage technician employed in the establishment, shall be displayed in an open and conspicuous place on the premises.
5. No massage technician shall, in the course of administering any massage, intentionally make physical contact with the pubic regions, human genitals, perineum, anal region, and the area of the female breast that includes the areola and the nipple.
6. Clean and sanitary towels and sheets shall be provided for each patron receiving a massage. No common use of towels or sheets shall be permitted and reuse is prohibited unless they have been first laundered. Heavy white paper may be substituted for sheets provided that such paper is used once for each person, then discarded into a sanitary receptacle.
7. All walls, ceilings, floors, pools, showers, bathtubs, wet and dry heat rooms, steam rooms, tables and all other physical facilities shall be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms, showers and toilet rooms shall be thoroughly cleaned at least once each day the massage establishment is in operation. Bathtubs shall be thoroughly cleaned after each use.
8. Instruments utilized in performing massage shall not be used on more than one patron unless they have been sterilized by disinfecting agents and/or sterilizing equipment sufficient to assure the cleanliness and sterility of the instruments.
9. Massages shall not be given unless patrons are wearing clothing fully covering their genitals and female patrons are in addition wearing clothing fully covering their breasts. Where such clothing is furnished to patrons by the

establishment, it shall not be used by more than one patron unless it has first been laundered and disinfected. Massage technicians shall be fully clothed from the top of the knee to the neck in clean, opaque, light-colored clothing.

10. No alcoholic beverages shall be sold, served, furnished, kept or possessed on the premises of a massage establishment. No person shall enter, be or remain, in any part of a massage establishment while in the possession of, consuming, or using any alcoholic beverage or drugs except pursuant to a prescription for such drugs. The massage establishment permittee, responsible managing employee, or massage technician shall not permit any such person to enter or remain upon such premises. This requirement shall not apply to any athletic clubs, health club, country club, or similar establishment where massage is offered as an incidental or accessory service to its primary program of sports, exercise, athletic training, or exhibit reduction. Incidentals or accessory service shall mean that no more than 15 percent of its total floor area is used for the provision of facilities/services to patrons for the provision of massage.
 11. It shall be unlawful for a person under 18 years to enter and remain in a massage establishment without the express written permission from the minor's parent or guardian. It shall be unlawful for any massage establishment permittee, responsible managing employee or massage technician to allow a person under the age of 18 years to enter and remain in a massage establishment, or to administer a massage to any person under the age of 18 years, without express written permission from the minor's parent or guardian. This requirement shall not apply to any athletic club, health club, country club, gymnasium, reducing salon, beauty salon, or similar establishment, where massage is offered as an incidental or accessory service to its primary program of sports, exercise, athletic training, weight reduction, or beauty care. Incidental or accessory service shall mean that no more than 15 percent of its total floor area is used for the provision of facilities/services to patrons for the provision of massage services.
- b. Every out-call massage service shall comply with the following operating requirements:
1. Every person employed or acting as a massage technician shall have a valid permit massage technician permit issued by the city or a state massage certificate and it shall be unlawful for any out-call massage service permittee or his responsible managing employee to employ or permit a person to act as a massage technician as defined in section 8-4 who is not in possession of a valid unrevoked massage technician's permit or state massage certificate.
 2. Every person employed as a massage technician by an out-call massage service permittee shall comply with the requirements of subsections 8-4.13a.5, a.6, a.8 and a.9. It is unlawful for an out-call massage service permittee or his responsible managing employee to knowingly permit any massage technician who is employed by the out-call massage service to violate any of the afore-cited provisions of section 8-4.

3. Any massage technician who provides a massage at any hotel or motel must first notify the owner, manager, or person in charge of the hotel or motel that the massage technician intends to provide a massage service to a person registered at the hotel or motel. The massage technician shall provide his name and the registration number of his massage technician's permit.
4. A copy of a current out-call massage service permit and a copy of the permit of each massage technician employed by the out-call massage service shall be retained and be available for city inspection at the business location designated in the permittee's out-call massage service's permit application.
5. Every out-call massage service shall establish a written list of massage services provided and the costs thereof. A copy of the list shall be provided by a massage technician to the patron prior to administering a massage. It shall be unlawful for the massage technician to perform or charge the patron for any service not listed.

SECTION 6: Severability:

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of the ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unconstitutional on their face or as applied.

SECTION 7: Publication and Effective Date:

This ordinance shall be published in accordance with applicable provisions of law, by either:

publishing the entire ordinance once in the *Novato Advance*, a newspaper of general circulation, published in the City of Novato, within fifteen (15) days after its passage and adoption, or

publishing the title or appropriate summary in the *Novato Advance* at least five (5) days prior to adoption, and a second time within fifteen (15) days after its passage and adoption with the names of those City Councilmembers voting for and against the ordinance, and

This ordinance shall go into effect thirty (30) days after the date of its passage and adoption.

* * * * *

THE FOREGOING ORDINANCE was first read at a regular meeting of the Novato City Council on the 13th day of October, 2009, and was passed and adopted at a regular meeting of the Novato City Council on the 27th day of October, 2009.

AYES: Councilmembers Dillon-Knutson, Eklund, Kellner, MacLeamy, Leland

NOES: Councilmembers None

ABSTAIN: Councilmembers None

ABSENT: Councilmembers None

/Jim Leland/
Mayor of the City of Novato

Attest:

/Shirley Gremmels/
City Clerk of the City of Novato

Approved as to form:

/Jeffrey A. Walter/
City Attorney of the City of Novato