

ORDINANCE 1197

AN ORDINANCE OF THE CITY OF TRACY AMENDING CHAPTER 4.20,
REGULATION OF MASSAGE, OF THE TRACY MUNICIPAL CODE, IN ITS ENTIRETY,
BY ADOPTING A NEW CHAPTER 4.20

WHEREAS, the City adopted massage regulations in 2005, and amended them in 2009 and 2011; and

WHEREAS, State regulations authorizing the State certification of massage therapists and the local regulation of massage establishments were first adopted in 2009 (the California Massage Therapy Act), and were amended in 2011, 2012 and 2014; and

WHEREAS, the City wishes to amend its ordinance to: (1) update the ordinance; (2) conform its ordinance to State law; and (3) require that all massage therapists operating in the City be State-certified.

The Tracy City Council hereby ordains as follows:

SECTION 1: Chapter 4.20 of the Tracy Municipal Code, Regulation of Massage, is amended in its entirety to read as set forth in Exhibit A, attached.

SECTION 2: The City will not issue any new massage practitioner or massage technician permits after the effective date of this ordinance. However, the City wishes to give existing practitioners and technicians one year to obtain State-certification. Although this ordinance takes effect in 30 days after its adoption, any massage therapist with a current City massage practitioner or massage technician permit may continue to practice massage in the City for up to one year from the effective date of this ordinance, as long as he or she renews that permit on a timely basis. The Police Department may extend this one-year period by an additional six months for a massage therapist who has submitted a complete application to CAMTC within the one-year period, while the therapist is waiting for final approval.

SECTION 3: This Ordinance shall take effect 30 days after its adoption.

SECTION 4: This Ordinance shall be published once in the Tri-Valley Times, a newspaper of general circulation, within 15 days after its adoption.

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The foregoing Ordinance 1197 was introduced at a regular meeting of the Tracy City Council on the 2nd day of June, 2015, and finally adopted on the 16th day of June, 2015, by the following vote:

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| AYES: | COUNCIL MEMBERS: MITRACOS, RICKMAN, VARGAS, YOUNG, MACIEL |
| NOES: | COUNCIL MEMBERS: NONE |
| ABSENT: | COUNCIL MEMBERS: NONE |
| ABSTAIN: | COUNCIL MEMBERS: NONE |

Signed: Michael Maciel, Mayor

Attest: Nora Pimentel, City Clerk

Exhibit A to Ordinance 1197
Chapter 4.20
MASSAGE ESTABLISHMENTS AND THERAPISTS

Sections:

- 4.20.010 Purpose – Authority.
- 4.20.020 Definitions.
- 4.20.030 Requirements.
- 4.20.040 City registration.
- 4.20.050 Posting and record keeping.
- 4.20.060 Facility requirements.
- 4.20.070 Inspections.
- 4.20.080 Hours of operation.
- 4.20.090 Department coordination with CAMTC.
- 4.20.100 Appeals.
- 4.20.110 Property owner responsibility.

4.20.010 Purpose – Authority.

It is the purpose and intent of this chapter to provide for the orderly regulation of massage therapists and massage establishments, in the interest of the public health, safety and welfare. The city wishes both to recognize the practice of massage as a valid professional field and to discourage prostitution and other unlawful activity which otherwise may become associated with some massage establishments.

This chapter relies upon the state certification process of the California Massage Therapy Council under the Massage Therapy Act (California Business and Professions Code sections 4600 through 4620). In addition, this chapter provides certain minimum standards for the operation of massage establishments, their managing employees, and massage therapists.

This chapter is adopted under the authority of Government Code sections 51030 through 51034, Government Code section 37101, Business and Professions Code section 16000, and California Constitution Article XI, Section 7.

4.20.020 Definitions.

In this chapter:

- A. *California Massage Therapy Council* or *CAMTC* means the California Massage Therapy Council established under Business and Professions Code section 4500.5(a).
- B. *Certified massage therapist* or *therapist* means a person who is currently certified as a massage therapist by the CAMTC, and who administers massage for compensation. A certified massage therapist who is an independent contractor is one who works at a massage establishment (or has an outcall massage service), but is not a salaried employee and does not share a percentage of therapy proceeds with the establishment. (Included within this definition through December 31, 2016 is a certified massage practitioner, a person who is currently certified as a massage practitioner by the CAMTC.)
- C. *Chief* means the chief of police or his/her designee. The chief's designees may include the City's code enforcement officers.

D. *Massage or bodywork* means the application of various techniques to the muscular structure and soft tissues of the human body. Application of massage and bodywork techniques may include, but is not limited to, stroking, kneading, tapping, compression, vibration, rocking, friction, pressure and similar techniques. Examples of massage include Swedish massage, sports massage, shiatsu, polarity therapy, rolfing, reiki, hellerwork and reflexology. Massage and bodywork have the same meaning.

Massage specifically excludes: diagnosis, prescription, intentional manipulation or adjustments of the skeletal structure, or any other service, procedure or therapy which requires a license to practice (chiropractic, osteopathy, orthopedics, physical therapy, podiatry, or medicine), hypnosis, naturopathic, colonic irrigation, acupuncture, vacuum cupping, nutritional or dietary counseling, detoxification programs, yoga, exercise, spiritual healing, or procedures which penetrate body cavities, either manually or with any other method of intrusion. Massage also excludes: an athletic team trainer who administers massage in the course of training duties; a state-licensed barber, beautician, cosmetologist, esthetician or manicurist who administers massage in the normal course of duties; individuals administering massage to participants in road races, track meets and similar single-occurrence events if approved by the event sponsors and provided only at the site of the event.

E. *Massage establishment* means a fixed location where (only) state-certified therapists practice massage for compensation. The following are not considered massage establishments under this chapter: a hospital, nursing home, sanitarium, physiotherapy establishment, office of a licensed medical professional, or other state-licensed physical or mental health facility; nor a personal fitness training center, gymnasium, athletic facility or health club, when the giving of massage is an incidental function of the business, constituting 10% or less of the business.

F. *Outcall massage service* means a business that provides massage at a location designated by the client or the massage therapist, other than at a massage establishment.

4.20.030 Requirements.

A. Massage establishment. No person may own or operate a massage establishment (or outcall massage service) in the city unless:

1. Each person administering massage for compensation (whether as an employee or independent contractor) is a certified massage therapist; and

The owner or operator has a current registration on file at the police department.
(See Section 4.20.040.)

B. Massage therapist. No person may practice massage in the city who is not a certified massage therapist. A certified massage therapist working in the city must either:

1. work at a city-permitted massage establishment; or
as an independent contractor not affiliated with a massage establishment, provide outcall massage services only if he or she first registers with the city as a massage establishment, and indicates on the registration form that he or she does outcall massage services.

C. Other city permits. Establishments are advised that they must also obtain a city business license.

4.20.040 City registration.

A massage establishment must register with the city police department annually, and shall post evidence of city registration wherever massage is practiced. There is no charge for the registration. The establishment shall notify the department within 30 days of any change in the information provided. The registration is not transferrable to another owner or manager; any such change requires re-registration.

The registration application shall include:

1. name, address and telephone of the establishment, and the hours of operation;

name, address and telephone of the owner(s) and manager(s). (If the applicant is a corporation, the name of the corporation shall be set forth as shown in its articles of incorporation or charter, together with the State and date of incorporation and the name, residence address, and telephone number of each of the officers and directors of the corporation. If the applicant is a partnership, the name, residence address, and telephone number of each of the partners. If the applicant is a limited partnership or limited liability company, it shall furnish a copy of its certificate of limited partnership or limited liability company as filed with the Secretary of State.);
3. contact information for the primary person in charge; and
4. name, address, state certification number and expiration date of each employee or independent contractor who will offer massage at (or through) the establishment. The massage establishment shall provide a copy of the state certification of any therapist upon request.

4.20.050 Posting and record keeping.

A. The operator of a massage establishment shall:

1. post in a conspicuous place within the massage establishment the photograph and a copy of the state certification of each massage therapist working at or through the establishment; and
2. maintain a daily register of each client, the assigned room (or location of outcall massage service), the massage therapist who treated the client, a description of service(s) performed and the time of the appointment. The daily register shall be completed by the close of business every day, and shall be available for inspection by the city during regular business hours. The register shall be considered confidential, not for public review, and may be inspected by the city only as part of a criminal investigation or during proceedings to investigate compliance with this chapter. These records shall be retained for at least one year.

B. An independent contractor massage therapist (including a therapist providing outcall massage services) is responsible for compliance with subsection A.2 of this section.

4.20.060 Facility requirements.

The operator of a massage establishment shall maintain and operate the establishment in a safe and sanitary manner, and shall:

A. Comply with all applicable building, fire, safety, health, electrical, plumbing, mechanical, heating and ventilating, sanitation, and other laws applicable to the premises;

B. Maintain all equipment used to perform massage services in a safe and sanitary condition, including the regular application of cleansers and bacterial cleaning agents, and launder all materials furnished for the personal use of the client, such as towels and linens, before each use;

C. Maintain all bathroom and plumbing fixtures in a sanitary condition, provide hot and cold running water, and comply with sanitation requirements of the county health department;

D. Provide either a separate room or dressing and locker facilities for each client. Dressing and undressing may occur in the same room as massage therapy if the client is alone in the room with the door(s) closed and opaque coverings are present on any windows while undressing or dressing. The massage therapist or other clients may not be present in the same room when the client is undressing;

E. For a massage establishment in which the therapist is an employee, all massage services shall be paid for in the reception area, and all tips, if any, shall be paid in the reception area. For a massage establishment at which a therapist is an independent contractor, all massage services and all tips, if any, may be paid in the same room where the massage occurred, provided the door to the room is fully open. A massage establishment located in a home is exempt from this subsection.

4.20.070 Inspections.

The chief may inspect the premises at the time of registering a massage establishment, and may make periodic, reasonable inspections of the establishment during normal business hours to assure compliance with CAMTC requirements, this chapter (including record-keeping as required by Section 4.20.050) and applicable fire, health and safety requirements. (Health & Saf. Code § 4612(c)(1).) If any violations are found, the chief shall notify the establishment in writing. The chief may give the establishment 10 days to correct the violation(s), or, if the violation(s) presents a danger to public health or safety, close the establishment until the violation(s) is corrected.

4.20.080 Hours of operation.

No massage establishment and no massage therapist may provide massage service between the hours of 10:00 p.m. and 6:00 a.m. Clients and visitors shall be excluded from a massage establishment during those hours.

4.20.090 Department coordination with CAMTC.

The chief shall designate a person in the police department or code enforcement division to coordinate with CAMTC, including maintaining a list of certified therapists practicing in the city, maintaining a list of massage establishments operating in the city, receiving notices and information from CAMTC, and notifying CAMTC of any arrest or conviction of Penal Code section 647 or other act punishable as a sexually related crime. (Health & Saf. Code §§ 4602(c), 4602.5.)

4.20.100 Appeals.

A person may appeal a decision of the chief in accordance with TMC Section 1.12.010. The decision of the city manager or designee is final and may not be appealed to the city council.

4.20.110 Property owner responsibility.

Any place where lewdness, assignation or prostitution occurs is a public nuisance which may be abated and permanently enjoined, and for which the city may recover damages from the property owner, as well as from the person conducting or maintaining the nuisance. (Penal Code §§ 11225 and 11226.)"