

ORDINANCE NO. 09-_____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GOLETA ADOPTING CHAPTER 9.AA OF THE GOLETA MUNICIPAL CODE REGULATING MASSAGE ESTABLISHMENTS, MASSAGE TECHNICIANS, AND THE PRACTICE OF MASSAGE

WHEREAS, historically, the State of California has not provided regulations of massage therapy as they have for other healing arts professionals; and

WHEREAS, local jurisdiction in the State of California have historically provided regulations of massage therapy in recognition of the lack of state regulation and the need to regulate due to the close relationship between therapist and patients and vulnerable position of the patients and the fact that some individuals have used the cover of massage therapist to conduct illegal activity; and

WHEREAS, the City of Goleta currently requires all massage therapists to obtain a license but provides no regulatory activities; and

WHEREAS, the State of California enacted Business and Professions Code sections 4600 et seq, (BPC §§ 4600 et seq) effective September 1, 2009, establishing regulations of massage therapists; and

WHEREAS, BPC §§ 4600 et seq limits the City's ability to require State certified massage technicians to obtain an additional license, permit, or other City authorization; and

WHEREAS, BPC §§ 4600 et seq also limits the City's ability to apply certain regulations to State certified massage technicians and certain massage establishments; and

WHEREAS, the City seeks to adopt and conform its massage regulations to the requirements of BPC §§ 4600 et seq, while exercising the maximum local control allowed by State law;

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

SECTION 1. Recitals

The above recitals are true and correct.

SECTION 2. Adoption of Chapter 9.AA

The following language is adopted and added to the Goleta Municipal Code as Chapter 9.AA:

Sec. 09-AA.01. Applicability of Chapter.

(a) Except as specifically provided in this Section, or where a specific provision within this Chapter indicates an exclusion, this Chapter shall apply to all Massage Establishments and Massage Technicians. Nothing contained in this Chapter shall require any Person with a Massage Technician License to obtain State Certification, and any Massage Technician may renew his or her Massage Technician License in accordance with this Chapter without obtaining State Certification.

(b) The provisions relating to Massage Technician Licenses and Massage Establishment Licenses issued pursuant to Section 09-AA.10 of this Chapter shall not apply to Certified Massage Technicians and Certified Massage Establishments, provided that the Certified Massage Technician or Certified Massage Establishment has registered for exemption pursuant to Section 09-AA.04 of this Chapter.

(c) If a Massage Establishment fails to maintain its status as a Certified Massage Establishment by employing or utilizing a Massage Technician for providing Massage services that does not have a State Certification, the Massage Establishment shall be immediately subject to Section 09-AA.10 of this Chapter.

(d) The provisions of this Chapter shall not apply to any Person who is a state licensed physician, surgeon, osteopath, physical therapist, or occupational therapist, or to any registered nurse working on the premises of and under the direct supervision of a state licensed physician, surgeon, or osteopath.

Sec. 09-AA.02. Definitions.

For the purposes of this Chapter, unless otherwise apparent from the context, certain words and phrases used in this Chapter are defined as follows:

“Applicant” shall mean any Person applying for a license pursuant to this Chapter including all officers, directors, shareholders and partners.

“Certified Massage Establishment” shall mean any Massage Establishment that employs or uses only Certified Massage Technicians to perform Massage services.

“Certified Massage Technician” shall mean any Massage Technician who has a valid, current State Certification to practice massage, and who is practicing consistently with the qualifications established by his or her State Certification.

“Licensee” shall mean any Person holding a license pursuant to this Chapter including all officers, directors, shareholders and partners.

“Massage” shall mean any method of pressure on, or friction against, or stroking, kneading, rubbing, tapping, pounding, or stimulating the external parts of the body with the hands or other parts of the body, with or without the aid of any mechanical or electrical apparatus or appliance, or with or without supplementary aids, such as rubbing alcohol, liniments, antiseptics, oils, powders, creams, lotions, ointments, or other similar preparations commonly used in this practice.

“Massage Establishment” shall mean any location where any individual, firm, association, partnership, corporation, or combination of individuals, engages in, conducts, carries on, or permits to be engaged in or conducted, for money or any other consideration or gratuity, Massage or health treatments involving Massages including, but not limited to, those businesses that provide Massage accessory to their principal permitted use, such as aromatherapy, beauty salon, health club, beach club, skin care salon, acupuncture, chiropractic office or day spa. This includes individuals operating as Sole Proprietorships and Independent Contractors operating either as Sole Proprietorships or within Massage Establishments.

“Massage Technician” shall mean any Person who, for any form of consideration or gratuity whatsoever, gives or administers to another person a Massage.

“Person” shall mean any individual, independent contractor, firm, association, partnership, corporation, joint venture, or combination of individuals.

“Recognized School” shall mean any school or institution of learning which:

(1) Teaches the theory, practice, profession, and work of massage; and

(2) Requires a resident course of study of not less than five hundred (500) hours before the student shall be furnished with a diploma or certificate of graduation from such school or institution of learning; and

(3) Is a school or institution of learning licensed by the State of California and approved by the State Superintendent of Public Instruction pursuant to Education Code section 94311(d) and reviewed by the Superintendent within the preceding twelve-month period, which has for its purpose the teaching of the theory, method, profession, or work of massage.

“Sole Proprietorship” shall mean any business where the owner is the only Person employed by that business to provide Massage services.

“State Certificate” shall mean certification issued pursuant to California Business and Professions Code sections 4600 et seq.

Sec 09-AA.04. Registration and Filing of State Certificates by Certified Massage Establishments and Certified Massage Technicians Required.

(a) Any Certified Massage Establishment seeking exemption from the City’s licensing requirements in Sections 09-AA.10 pursuant to Section 09-AA.01 shall register with the City and shall file copies of all State Certificates held by Persons

providing Massage services at the Massage Establishment. After applying for a business license, all Certified Massage Establishments prior to such person providing massage service at the massage establishment.

(b) Any Certified Massage Technician seeking exemption from the City's licensing requirements in Sections 09-AA.10 pursuant to Section 09-AA.01 shall register with the City and file a copy of their State Certificate with the City.

(c) All certified massage establishments and certified massage technicians registering pursuant to this Section shall comply with the City's registration procedures and pay any required fees as set forth in the adopted fee schedule for processing the registration and filing of State Certificates.

Sec. 09-AA.10. Non-Certified Massage Establishment and Technician Licensing Program.

(a) Massage Establishment License. Unless specifically exempt pursuant to Section 09-AA.01, it shall be unlawful for any Person to engage in, conduct, or carry on, or permit to be engaged in, conducted, or carried on, the operation of any Massage Establishment within the City without first obtaining a valid Massage Establishment License. The license required by this Section shall be in addition to any business license or Massage Technician License required by the City. Any Massage Establishment License issued pursuant to this Section shall be valid only during the calendar year in which it is issued, unless it is suspended or revoked prior to that time. The Applicant for a Massage Establishment License shall comply with the following conditions:

(1) For a Massage Establishment License to issue, each applicant shall make a written application to the City, supply all information requested by the City to conduct a reasonable investigation and pay the application fees as set forth in the adopted fee schedule.

(2) The Applicant shall submit to an independent agency background check through the Goleta Police Department and shall submit to the City proof of application for the background check.

(3) If the Applicant for a Massage Establishment License is a corporation or partnership, the Applicant shall designate one of its officers or general partners to act as its responsible managing officer. Such person shall complete and sign all application forms required of an individual Applicant under this Chapter.

(4) The Applicant shall submit one (1) front-faced photograph of the applicant or responsible managing officer, at least two (2) inches by two (2) inches in size, taken within six (6) months immediately preceding the date of the application.

(5) Applications for renewal of Massage Establishment Licenses shall be filed at least thirty (30) days prior to expiration.

(b) Massage Technician License. Unless specifically exempt pursuant to Section 09-AA.01, it shall be unlawful for any Person to engage in, conduct, or carry on the business of acting as a Massage Technician without first obtaining a valid Massage Technician License. Any Massage Technician License issued pursuant to this Section shall be valid for one (1) year after the date of issuance, unless it is suspended or revoked prior to that time. The Applicant for a Massage Technician License shall comply with the following conditions:

(1) For a Massage Technician License to issue, each applicant shall make a written application to the City, supply all information requested by the City to conduct reasonable investigation and pay the application fees as set forth in the adopted fee schedule.

(2) The Applicant shall submit to an independent agency background check through the Goleta Police Department and shall submit to the City proof of application for the background check.

(3) The Applicant shall submit one (1) front-faced photograph of the applicant, at least two (2) inches by two (2) inches in size, taken within six (6) months immediately preceding the date of the application.

(4) The Applicant shall furnish either evidence of current certification from National Certification Board for Therapeutic Massage and Bodywork or a diploma or certification from a Recognized School.

(5) Applications for renewal of Massage Technician licenses shall be filed at least thirty (30) days prior to expiration.

(c) Issuance. After satisfactorily meeting the application requirements for a license pursuant to this Section, the City shall issue the license upon payment of permit issuance fees, as set forth in the adopted fee schedule, unless grounds for denial are found to exist pursuant to Subsection (e) of this Section.

(d) Nontransferability. Any license issued under this Section shall be nontransferable.

(e) Grounds for Denial, Refusal to Renew, Suspension, Revocation, or Restriction. The City may deny, refuse to renew, suspend, revoke, or restrict a Massage Establishment License or Massage Technician License covered by this Chapter if any of the following conditions are found:

(1) The applicant or licensee is under eighteen (18) years of age, or if any Persons under eighteen (18) years of age are employees, independent contractors, unpaid volunteers, or otherwise present within the Massage Establishment.

(2) The applicant or licensee has violated any provision of this Chapter or any rule or regulation adopted pursuant to this Chapter.

(3) The applicant or licensee violated any provision of the Goleta Municipal Code regulating the licensed premises.

(4) The applicant or licensee made any false representation or statement in order to induce or prevent action by the City, including but not limited to providing false information on any application for any license or permit application with the City or any other government application.

(5) The applicant or licensee had a similar license or state certification previously revoked or denied for good cause, unless satisfactory to the discretion of the Chief of Police, the applicant has shown a material change in circumstances since the date of revocation.

(6) The applicant or licensee provided evidence of attendance to a school of Massage pursuant to a Massage Technician License application, and the Chief of Police, in the exercise of his or her discretion for denying any application under this Chapter, determines that the particular school attended does not qualify as an Recognized School based on substantial evidence that the school issues diplomas or certificates of completion fraudulently or otherwise fails to engage in the satisfactory teaching of the theory, method, profession, or work of Massage Technicians.

(7) The applicant or licensee has within the previous five (5) years been convicted of (including pleading nolo contendere), administratively cited for, or found guilty of any of the following:

(i) A violation of any Massage services statute, regulation, or ordinance, or any statute, regulation, or ordinance that relates to the functions of the license;

(ii) A crime involving lewd conduct or acts of moral turpitude, including theft;

(iii) An offense involving the use of force or violence on another, including battery;

(iv) A crime requiring registration under sections 290 et seq. of the California Penal Code;

(v) A violation of sections 266h, 266i, 311 through 311.7, 314, 315, 316, 318, 647(a), 647(b), 647(d), and 11225 through 11235 of the Penal Code;

(vi) A criminal conviction which has been dismissed or expunged under the provisions of section 1203.4 of the Penal Code;

(vii) A violation of Health and Safety Code section 11550; any felony offense involving the sale of controlled substance specified in Health and Safety Code sections 11054, 11055, 11056, 11057, or 11058;

(viii) A lesser offense than those stated above as a result of a plea negotiation in a case where the applicant was originally charged with any of the stated crimes;

(ix) Any offense in any other state which is substantially the equivalent of any of the offenses specified above; or

(x) Any felony offense which relates to the applicants qualifications, functions or duties under this Chapter;

(8) The applicant or licensee has within the previous five (5) years been subject to an injunction related to the maintenance of a nuisance in connection with the same or a similar business operation.

(f) Notice of Decision to Deny, Refuse to Renew, Suspend, Revoke, or Restrict License. Notice of any decision by the City to deny, refuse to renew, suspend, revoke, or restrict any license pursuant to this Section shall be provided in writing to the licensee or applicant and shall be effective ten (10) days after such notice is delivered or mailed to the licensee at their address of record.

(g) Appeal and Hearing of Decision to Deny, Refuse to Renew, Suspend, Revoke, or Restrict License. Any decision by the City to deny, refuse to renew, suspend, revoke, or restrict any license pursuant to this Section may be appealed to the City Manager by filing a written request for hearing within ten (10) days of the issuance of a notice of decision. The City Manager or designee shall set a hearing date and provide the applicant or licensee with at least ten (10) days notice prior to the hearing. The applicant or licensee shall have the right to be present at the hearing, review evidence against them, cross-examine witnesses and present evidence on their behalf. The City Manager or designee shall hold the hearing and issue a decision within thirty (30) days of the filing of the written request for a hearing. The decision of the City Manager or designee shall be final. Any decision to suspend or revoke any license shall be stayed until a decision is issued by the City Manager or designee if timely written request for hearing is filed.

(h) Requirements for Licensees Pursuant to This Section. The following requirements shall apply to all Massage Establishments and Massage Technicians licensed under this Section:

(1) Massage Establishment rooms where Massage services are provided shall be illuminated, at a minimum, by the equivalent of one (1) sixty (60) watt incandescent light bulb.

(2) Massage Establishments shall provide at no extra charge a separate locker that is capable of being locked for each customer receiving massage services.

(3) Massage services shall not be conducted at a hotel or motel except in the following circumstances:

(i) Where such hotel or motel is a licensed massage establishment, or

(ii) Where the services are requested by an provided to a person who is the registered guest in the room where massage is provided.

Sec. 09-AA.20. Operating Requirements for All Massage Establishments and Massage Technicians.

The following operating requirements shall apply to all Massage Establishments and Massage Technicians:

(a) Massage Establishment hours of operation shall be limited to the hours between 7:00 a.m. and 10:00 p.m. This provision shall not allow Massage operations beyond operating hour restrictions contained in a development entitlement.

(b) A list of all services available and the costs of such services shall be posted in an open and conspicuous place on the premises. The services shall be described in a readily understandable manner. No services shall be provided other than those services posted, and no costs shall be charged other than those costs posted.

(c) Licenses, permits, certificates, or other authorizations to practice Massage shall be openly and conspicuously displayed on the premises, as follows:

(1) For Certified Massage Establishments, a copy of the State Certificates for each and every Certified Massage Technician providing massage services at the Massage Establishment shall be displayed.

(2) For all other Massage Establishments, the Massage Establishment License, and a copy of the Massage Technician Licenses of each and every Massage Technician providing massage services at the Massage Establishment shall be displayed.

(d) Changes in employees, Massage Technicians, location of employment, place of business, address, and ownership shall be reported to the City, as follows:

(1) Massage Establishments shall report to the City any changes in employees and Massage Technicians, whether by new or renewed employment, or discharge or termination, within ten (10) days of such change, and shall comply with the registration and licensing requirements in this Chapter, if applicable. Massage Establishment licensee shall report to the City within ten (10) business days all changes of address or ownership interest in the business.

(2) Massage Technicians shall report to the City any changes in their place of business or location of employment within ten (10) days of any such change, and shall comply with the registration and licensing requirements in this Chapter, if applicable.

- (e) A record shall be maintained of the date and hour of each treatment, the name and address of the customer, the name of the Massage Technician administering such treatment, and the type of treatment administered. Such records shall be open to inspection by the City for preventing the spread of communicable and contagious diseases and enforcement of the provisions of this Chapter, and shall be maintained for a period of not less than one (1) year from the treatment date.
- (f) All walls, ceilings, floors, pools, showers, tubs, wet and dry heat rooms, steam and vapor rooms, tables, and all other physical facilities shall be in good repair and maintained in a clean and sanitary condition.
- (g) Clean and sanitary towels, sheets, and linens shall be provided for each customer receiving massage services and shall be replaced with unused towels, sheets, and linens after each use. Heavy white paper may be substituted for sheets provided that such paper is used once for each customer and discarded afterwards.
- (h) Separate closed cabinets or containers shall be provided for the storage of clean and soiled linen and shall be plainly marked, "Clean" and "Soiled."
- (i) Disinfecting agents and sterilizing equipment shall be provided for any instrument used for performing any massage.
- (j) Pads on massage tables shall be covered in a workmanlike manner with durable, washable plastic or other waterproof material.
- (k) Each massage establishment is subject to a minimum of one (1) inspection by the City each calendar year. Additional inspections may be required if violations are noted or complaints are received.
- (l) Massage establishments, including all Massage Establishment business records, shall be subject to reasonable inspection by the City at any time when massage services are being offered or provided to ensure compliance with this Chapter, section 4600 et seq. of the California Business and Professions Code, Goleta Municipal Code, and other applicable fire and health and safety requirements.
- (m) At least one Massage Technician holding a current valid City-issued Massage Technician License or State Certificate shall be on the premises and on duty at all times when the Massage Establishment is open for business.

Sec. 09-AA.21. Prohibited Conduct for All Massage Establishments and Massage Technicians.

The following prohibitions shall apply to all Massage Establishments and Massage Technicians:

- (a) It shall be unlawful for any person required to register under the provisions of California Penal Code section 290 et seq., with or without pay, to operate,

manage, or work in or about a Massage Establishment as owner, proprietor, operator, manager, employee or in any other capacity.

(b) It shall be unlawful for any licensee, manager or on-site Person in charge of, or in control of, a Massage Establishment to allow or permit any person required to register under the provisions of California Penal Code section 290 et seq., with or without pay, to operate, manage, or work in or about a Massage Establishment as an owner, proprietor, operator, manager, employee or any other capacity.

(c) It shall be unlawful for any Massage Technician to massage the genital or anus area of any customer or the breasts of any female customer.

(d) It shall be unlawful for any licensee, manager or on-site Person in charge of, or in control of, a Massage Establishment to allow or permit any Massage Technician to massage the genital or anus area of any customer or the breasts of any female customer in the Massage Establishment.

(e) It shall be unlawful for any Massage Technician to perform any massage service with his or her breasts or genital or anus area exposed to the customer.

(f) It shall be unlawful for any licensee, manager or on-site Person in charge of, or in control of, a Massage Establishment to allow or permit any Massage Technician to perform any massage service with his or her breasts or genital or anus area exposed to the customer in the Massage Establishment.

(g) It shall be unlawful for any licensee, manager, or on-site Person in charge of, or in control of, a Massage Establishment to employ or permit a Person to act as a Massage Technician as defined in this Chapter, who is not in possession of a valid Massage Technician license or who is not a Certified Massage Technician that has complied with the registration and filing requirements in Section 09-AA.04.

(h) It shall be unlawful for any Massage Establishment to employ or retain on a paid or non-paid basis any Person who is under the age of 18 years to provide any Massage service.

(i) It shall be unlawful for any person under the age of 18 years to be present within any Massage Establishment, unless the parent or other Person in lawful custody of that person has specifically requested for the Massage Establishment to provide Massage services to that person under the age of 18 years.

Sec. 09-AA.22. Abatement of Nuisance.

Any Massage Establishment operated, conducted, or maintained contrary to the provisions of this Chapter shall be, and the same is hereby declared to be, unlawful and a public nuisance, and the City Attorney, in addition to or in lieu of prosecuting a criminal action hereunder, may commence an action or proceeding for the abatement thereof.

Sec. 09-AA.30. Fees.

The City Council shall establish, and from time to time amend by resolution, fees for the administration and enforcement of this Chapter.

Sec. 09-AA.31. Severability.

If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid, preempted, or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions. The City Council hereby declares that it would have passed this ordinance, and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid, preempted, or unconstitutional.

SECTION 3. Effective Date

This Ordinance shall take effect on the 31st day following the date of its final adoption.

SECTION 4. Publication

The City Clerk shall certify to the passage of this Ordinance and cause the same to be published and posted in the manner prescribed by California law.

INTRODUCED ON the 15th day of September, 2009.

PASSED, APPROVED, AND ADOPTED this _____ day of _____, 2009.

ROGER S. ACEVES, MAYOR

ATTEST:

APPROVED AS TO FORM:

DEBORAH CONSTANTINO
CITY CLERK

TIM W. GILES
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SANTA BARBARA) ss.
CITY OF GOLETA)

I, DEBORAH CONSTANTINO, City Clerk of the City of Goleta, California, DO HEREBY CERTIFY that the foregoing Ordinance No. 08-__ was duly adopted by the City Council of the City of Goleta at a meeting held on the __ day of _____, 2008, by the following vote of the Council:

AYES:

NOES:

ABSENT:

ABSTAIN:

(SEAL)

DEBORAH CONSTANTINO
CITY CLERK