

ORDINANCE NO. 04688

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO,
STATE OF CALIFORNIA

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**ORDINANCE AMENDING SECTIONS 5.44.040, 5.44.050, 5.44.070, 5.44.080,
5.44.100 and 5.44.110 of CHAPTER 5.44 (MESSAGE BUSINESSES) OF TITLE 5
(BUSINESS REGULATIONS) OF THE SAN MATEO COUNTY ORDINANCE CODE,
RELATING TO THE REGULATION OF MESSAGE BUSINESSES**

The Board of Supervisors of the County of San Mateo, State of California,
ORDAINS as follows:

SECTION 1. Section 5.44.040 is hereby amended to read as follows:

5.44.040 MESSAGE BUSINESS REGISTRATION

(a) Application. The registration application for a County Registration

Certificate shall include all of the following:

- (1) Legal name of the massage business.
- (2) Address and telephone number of the massage business.
- (3) Legal names of all owners of the massage business.
- (4) A list of all of the massage business's employees and independent contractors who are performing massage and their CAMTC certification.
- (5) Residence address and telephone number of all owners of the massage business.
- (6) Business address and telephone number of all owners of the massage business.
- (7) The form of business under which the massage business will be

operating (i.e., corporation, general or limited partnership, limited liability company, or other form).

(8) Each owner or operator of the massage business who is not a CAMTC-certified massage practitioner shall submit an application for a background check, including the following: the individual's business, occupation, and employment history for the five (5) years preceding the date of the application; the inclusive dates of such employment history; the name and address of any massage business or similar business owned or operated by the individual whether inside or outside the County.

(9) For all owners, a valid and current driver's license and/or identification issued by a state or federal governmental agency or other photographic identification bearing a bona fide seal by a foreign government.

(10) For all owners, a signed statement that all of the information contained in the application is true and correct; that all owners shall be responsible for the conduct of the business's employees or independent contractors providing massage services; and acknowledging that failure to comply with the California Business and Professions Code sections 4600 *et seq.*, any local, state, or federal law, or the provisions of this Chapter may result in revocation of the business's County registration certificate.

(b) Issuance. Upon provision by the massage business of the foregoing documentation, the Director of Environmental Health shall issue the massage business a County Registration Certificate, which shall be valid for two (2) years from the date of issuance. No reapplication will be accepted within one (1) year after an application or renewal is denied or a certificate is revoked. County Registration Certificates may not

be issued to a Massage Business seeking to operate at a particular location if:

(1) another Massage Business is or was operating at that particular location and that Massage Business is currently serving a suspension or revocation pursuant to Section 5.44.110, during the pendency of the suspension or one year following revocation;

(2) another Massage Business is or was operating at that particular location and that Massage Business has received a Notice of Suspension, Revocation or fine issued pursuant to Sections 5.44.100 and 5.44.110, during the ten day period following receipt of the Notice or while any appeal of a suspension, revocation or fine is pending.

(3) another Massage Business is or was operating at that particular location and that Massage Business has outstanding fines issued pursuant to Section 5.44.100 that have not been paid.

(c) Amendment. A massage business shall apply to the County to amend its County Registration Certificate within thirty (30) days after any change in the registration information, including, but not limited to, the hiring or termination of certified massage practitioners, the change of the business's address, or changes in the owner's addresses and/or telephone numbers.

(d) Renewal. A massage business shall apply to the County to renew its County registration certificate at least thirty (30) days prior to the expiration of said County Registration Certificate. If an application for renewal of a County Registration Certificate and all required information is not timely received and the certificate expires, no right or privilege to provide massage shall exist.

(e) Fees. There shall be no fee for the registration application or certificate, or any amendment or renewal thereof. The provisions of this section shall not prevent the County from establishing fees for health and safety inspections as may be conducted from time to time by the Director of Environmental Health, and for the background checks, fingerprinting, and subsequent arrest notification for owners of a massage business who are not CAMTC-certified and who are subject to such background checks pursuant to this Chapter.

(f) Transfer. A County Registration Certificate shall not be transferred except with the prior written approval of the Director of Environmental Health. A written request for such transfer shall contain the same information for the new ownership as is required for applications for registration pursuant to this section. In the event of denial, notification of the denial and reasons therefore shall be provided in writing and shall be provided to the applicant by personal delivery or by registered or certified mail. A County Registration Certificate may not be transferred during any period of suspension or one year following revocation pursuant to Section 5.44.110, during the ten day period following a Massage Businesses' receipt of a Notice of Suspension, Revocation or fine issued pursuant to Sections 5.44.100 and 5.44.110 or while any appeal of a suspension, revocation or fine is pending. Further, a County Registration Certificate may not be transferred until all outstanding fines issued pursuant to Section 5.44.100 have been paid.

SECTION 2. Section 5.44.050 is hereby amended to read as follows:

5.44.050 OPERATING REQUIREMENTS.

On or after July 1, 2012, no person shall engage in, conduct, carry on, or permit any

massage within the unincorporated areas of the County of San Mateo unless all of the following requirements are met:

(a) CAMTC-certification shall be worn by and clearly visible on the massage practitioner's person during working hours and at all times when the massage practitioner is inside a massage business or providing outcall massage.

(b) Massage shall be provided or given only between the hours of 7:00 a.m. and 9:00 p.m. No massage business shall be open and no massage shall be provided between 9:00 p.m. and 7:00 a.m. A massage commenced prior to 9:00 p.m. shall nevertheless terminate at 9:00 p.m., and, in the case of a massage business, all clients shall exit the premises at that time. It is the obligation of the massage business, to inform clients of the requirement that services must cease at 9:00 p.m.

(c) A list of the services available and the cost of such services shall be posted in the reception area within the massage premises, and shall be described in readily understandable language. Outcall service providers shall provide such a list to clients in advance of performing any service. No owner, manager, operator, or responsible managing employee shall permit, and no massage practitioner shall offer or perform, any service other than those posted or listed as required herein, nor shall an operator or a massage practitioner request or charge a fee for any service other than those on the list of services available and posted in the reception area or provided to the client in advance of any outcall services.

(d) A copy of the CAMTC certificate of each and every massage practitioner employed in the business shall be displayed in the reception area or similar open public place on the premises. CAMTC certificates of former employees and/or contractors

shall be removed as soon as those massage practitioners are no longer employed by or offering services through the massage business.

(e) For each massage service provided, every massage business shall keep a complete and legible written record of the following information: the date and hour that service was provided; the service received; the name or initials of the employee entering the information; and the name of the massage practitioner administering the service. Such records shall be open to inspection and copying by the Sheriff, or other County officials charged with enforcement of this chapter. These records may not be used by any massage practitioner or operator for any purpose other than as records of service provided and may not be provided to other parties by the massage practitioner or operator unless otherwise required by law. Such records shall be retained on the premises of the massage business for a period of two (2) years and be immediately available for inspection during business hours.

(f) Massage businesses shall at all times be equipped with an adequate supply of clean sanitary towels, coverings, and linens. Clean towels, coverings, and linens shall be stored in enclosed cabinets. Towels and linens shall not be used on more than one (1) client, unless they have first been laundered and disinfected. Disposable towels and coverings shall not be used on more than one (1) client. Soiled linens and paper towels shall be deposited in separate, approved receptacles.

(g) Wet and dry heat rooms, steam or vapor rooms or cabinets, toilet rooms, shower and bath rooms, tanning booths, whirlpool baths and pools shall be thoroughly cleaned and disinfected as needed, and at least once each day the premises are open, with a disinfectant approved by the Health Officer. Bathtubs shall be thoroughly

cleaned after each use with a disinfectant approved by the Health Officer of the County of San Mateo. All walls, ceilings, floors, and other physical facilities for the business must be in good repair, and maintained in a clean and sanitary condition.

(h) Instruments utilized in performing massage shall not be used on more than one (1) client unless they have been sterilized, using approved sterilization methods.

(i) All massage business operators and their employees, including massage practitioners, shall wear clean, non-transparent outer garments. Said garments shall not expose their genitals, pubic areas, buttocks, or chest, and shall not be worn in such manner as to expose the genitals, pubic areas, buttocks, or chest. For the purposes of this section, outer-garments means a garment worn over other garments and does not include garments like underwear, bras, lingerie or swimsuits.

(j) No person shall enter, be, or remain in any part of a massage business while in possession of an open container of alcohol, or consuming or using any alcoholic beverage or drugs except pursuant to a prescription for such drugs. The owner, operator, responsible managing employee, or manager shall not permit any such person to enter or remain upon such premises.

(k) No massage business shall operate as a school of massage, or use the same facilities as that of a school of massage.

(l) No massage business 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 clients that any service is available other than those services listed as an available service pursuant to section

5.44.050(c), nor shall any massage business employ language in the text of such advertising that would reasonably suggest to a prospective client that any service is available other than those services as described in compliance with the provisions of this chapter.

(m) No massage shall be given unless the client's genitals are, at all times, fully covered. A practitioner shall not, in the course of administering any massage, make physical contact with the genitals or private parts of any other person regardless whether the contact is over or under the persons clothing.

(n) Where the business has staff available to assure security for clients and massage staff are behind closed doors, the entry to the reception area of the massage business shall remain unlocked during business hours when the business is open for business or when clients are present.

(o) No massage business located in a building or structure with exterior windows fronting a public street, highway, walkway, or parking area shall, during business hours, block visibility into the interior reception and waiting area through the use of curtains, closed blinds, tints, or any other material that obstructs, blurs, or unreasonably darkens the view into the premises. For the purpose of this sub-section, there is an irrebuttable presumption that the visibility is impermissibly blocked if more than 10 percent of the interior reception and waiting area is not visible from the exterior window.

(p) All signs shall be in conformance with the current ordinances of the County of San Mateo.

(q) Minimum lighting consisting of at least one (1) artificial light of not less

than forty (40) watts shall be provided and shall be operating in each room or enclosure where massage services are being performed on clients, and in all areas where clients are present.

(r) Ventilation shall be provided in accordance with applicable building codes and regulations.

(s) Hot and cold running water shall be provided at all times.

(t) Adequate dressing, locker and toilet facilities shall be provided for clients.

(u) A minimum of one (1) wash basin for employees shall be provided at all times. The basin shall be located within or as close as practicable to the area devoted to performing of massage services. Sanitary towels shall also be provided at each basin.

(v) Pads used on massage tables shall be covered with material acceptable to the Health Officer of the County of San Mateo.

(w) All massage businesses shall comply with all state and federal laws and regulations for handicapped clients.

(x) A massage practitioner shall operate only under the name specified in his or her CAMTC certificate. A massage business shall operate only under the name specified in its County Registration Certificate.

(y) No massage business shall allow any person to reside within the massage business or in attached structures owned, leased or controlled by the massage business.

(z) Other than custodial or maintenance staff, no persons shall be permitted within the premises of a massage business between the hours of 11:00 p.m. and 6:00

a.m.

SECTION 3. Section 5.44.070 is hereby amended to read as follows:

5.44.070 NOTIFICATIONS.

(a) A massage business shall notify the Director of Environmental Health, or his or her designee, of any changes described in Section 5.44.040 pursuant to the timelines specified therein.

(b) A registrant shall report to the Director of Environmental Health any of the following within 96 hours of the occurrence:

(1) arrests of any employees or owners of the registrant's massage business for an offense other than a misdemeanor traffic offense;

(2) resignations, terminations, or transfers of practitioners employed by the registrant's massage business;

(3) any event involving the registrant's massage business or the massage practitioners employed therein that constitutes a violation of this ordinance or state or federal law.

c) This provision requires reporting to the Director of Environmental Health even if the massage business believes that the Director of Environmental Health has or will receive the information from another source.

SECTION 4. Section 5.44.080 is hereby amended to read as follows:

5.44.080 EXEMPTIONS.

(a) The provisions of this chapter shall not apply to the following classes of individuals or businesses while engaged in the performance of their duties:

(1) Physicians, surgeons, chiropractors, osteopaths, nurses or any physical therapists who are duly licensed to practice their respective professions in the State of California and persons working directly under the supervision of or at the direction of such licensed persons, working at the same location as the licensed person, and administering massage services subject to review or oversight by the licensed person.

(2) Barbers and beauticians who are duly licensed under the laws of the State of California while engaging in practices within the scope of their licenses, except that this provision shall apply solely to the massaging of the neck, face and/or scalp, hands or feet of the clients.

(3) Hospitals, nursing homes, mental health facilities, or any other health facilities duly licensed by the State of California, and employees of these licensed institutions, while acting within the scope of their employment.

(4) Accredited high schools, junior colleges, and colleges or universities whose coaches and trainers are acting within the scope of their employment.

(5) Trainers of amateur, semi-professional or professional athletes or athletic teams while engaging in their training responsibilities for and with athletes; and trainers working in conjunction with a specific athletic event.

(6) Individuals administering massages or health treatment involving massage to persons participating in single-occurrence athletic, recreational or festival events, such as health fairs, road races, track meets, triathlons and other similar events; provided, that all of the following conditions are satisfied:

(A) The massage services are made equally available to all participants in the event;

(B) The event is open to participation by the general public or a significant segment of the public such as employees of sponsoring or participating corporations;

(C) The massage services are provided at the site of the event and either during, immediately preceding or immediately following the event;

(D) The sponsors of the event have been advised of and have approved the provisions of massage services;

(E) The persons providing the massage services are not the primary sponsors of the event.

(b) Massage Businesses operating on the premises of the San Francisco International Airport are exempt from the operating time limitations contained in Section 5.44.050(b). All other provisions of this chapter apply to such businesses.

SECTION 5. Section 5.44.100 is hereby amended to read as follows:

5.44.100 ADMINISTRATIVE FINES.

(a) Violations. Upon a finding by the Sheriff that a business has violated any provision of this chapter, the Sheriff may issue an administrative fine of up to five hundred dollars (\$500).

(b) Separate Violations. Each violation of any provision of this Chapter shall constitute a separate violation. Each client to whom massage is provided or offered in violation of this chapter shall also constitute a separate violation. Each day upon which a massage business remains open for business in violation of this chapter shall also constitute a separate violation.

(c) Fine Procedures. Notice of the fine shall be served by certified mail with the legal violation and supporting facts. The notice shall contain an advisement of the right to file an appeal with the Director of the Environmental Health Division or his or her designee contesting the imposition of the fine.

(d) Appeals. Appeals must be requested in writing, and shall provide facts disputing the violation and may be accompanied by declarations and exhibits. Appeals must be addressed to the Director of Environmental Health, and must be received within ten (10) days of the date appearing on the notice of the fine and a copy of the appeal and any supporting materials must be sent to the Sheriff's Office. The Sheriff's Office may respond to the appeal in writing within ten (10) days of receipt of the appeal and may provide additional evidence in support of the fine. The Director of Environmental Health may request, in writing, additional evidence from either the Appellant or the Sheriff's Office. The decision of the Director of Environmental Health shall be based solely on the materials submitted by the Appellant and the Sheriff's Office and be provided by certified mail. The Director of Environmental Health may sustain the fine, overrule the fine or decrease the amount of the fine. However the total fine shall not be reduced below \$500. The decision will constitute a final administrative order with no additional administrative right of appeal.

(e) Failure to Pay Fine. If said fine is not paid within thirty (30) days from the date appearing on the notice of the fine or of the notice of determination from the Director of Environmental Health after the decision, the fine may be referred to a collection agency within or external to the County. In addition, any outstanding fines must be paid prior to the

issuance or renewal of any registration.

SECTION 6. Section 5.44.110 is hereby amended to read as follows:

5.44.110 SUSPENSION AND REVOCATION OF COUNTY REGISTRATION
CERTIFICATES

(a) Reasons. Certificates of registration may be suspended or revoked upon any of the following grounds:

(1) A practitioner is no longer in possession of current and valid CAMTC-certification. This subsection shall apply to a sole proprietor or a person employed or used by a massage business to provide massage.

(2) An owner or sole proprietor: is required to register under the provisions of California Penal Code section 290 (sex offender registration); is convicted of California Penal Code sections 266i (pandering), 315 (keeping or residing in a house of ill-fame), 316 (keeping disorderly house), 318 (prevailing upon person to visit a place for prostitution), 647(b) (engaging in or soliciting prostitution), 653.22 (loitering with intent to commit prostitution), 653.23 (supervision of prostitute); has a business permit or license denied, revoked, restricted, or suspended by any agency, board, city, county, territory, or state; is subject to an injunction for nuisance pursuant to California Penal Code sections 11225-11235 (red light abatement); is convicted of a felony offense involving the sale of a controlled substance; is convicted of any crime involving dishonesty, fraud, deceit, violence, or moral turpitude; or is convicted in any other state of an offense which, if committed in this state, would have been punishable as one or more referenced offenses in this subdivision.

(3) The county determines that a material misrepresentation was

included on the application for a certificate of registration or renewal.

(4) Violations of any of the following occurred on the premises of a massage business or were committed by a practitioner: California Business and Professions Code sections 4600 *et seq.*; any local, state, or federal law; or the provisions of this chapter.

(b) Procedures. Written notice of the suspension or revocation shall be served on the sole proprietor or owners by certified mail with the legal violation and supporting facts. The notice shall contain an advisement of the right to request an appeal hearing before the License Board.

(c) Time Period of Suspension of Permit. The Sheriff may suspend a registration for a period between five (5) days and the end of the license term, at his or her discretion.

(d) Effective Date of Suspension or Revocation. Suspension or revocation issued pursuant to subsection (b) will be effective ten (10) days from the date appearing on the order, unless a timely appeal is filed in accordance with subsection (e).

(e) Appeal.

(1) The decision of the Sheriff is appealable to the License Board.

(2) An appeal must be in writing, and be hand-delivered or mailed to the License Board.

(3) An appeal must be received by the License Board on or before the effective date of suspension or revocation provided by subsection (d).

(4) The filing of a timely appeal will stay a suspension or revocation pending a decision on the appeal by the License Board.

(5) A hearing shall be scheduled before the License Board within thirty (30) days. Either the Appellant or the Sheriff's Office may request, in writing directed to the Chair of the License Board, a continuance of the hearing. Such requests must be supported by good cause. The decision whether to grant a continuance is at the discretion of the Chair of the License Board, who shall consider whether granting the continuance poses a threat to public health or safety in light of the severity of the violations alleged.

(6) The decision of the License Board shall be a final administrative order, with no further administrative right of appeal or reconsideration. The License Board may sustain a suspension or revocation, overrule a suspension or revocation, reduce a revocation to a suspension and/or reduce the length of a suspension. However no revocation or suspension shall be reduced to a length of less than a five day suspension. Further the License Board may stay the effective date of any suspension for a reasonable time following a hearing.

(f) Reapplication. No reapplication will be accepted within one (1) year after a certificate is revoked.

(g) Evidence. The following rules shall apply to any hearing required by this section. All parties involved shall have the right to offer testimonial, documentary, and tangible evidence bearing on the issues, to be represented by counsel, and to confront and cross-examine witnesses. Any relevant evidence may be admitted if it is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Formal rules of evidence and discovery do not apply to proceedings governed by this chapter. Unless otherwise specifically prohibited by law, the burden of

proof is on the registrant in any hearing or other matter under this chapter.

SECTION 7. SEVERABILITY. If any provision(s) of this ordinance is declared invalid by a court of competent jurisdiction, it is the intent of the Board of Supervisors that such invalid provision(s) be severed from the remaining provisions of the ordinance so that regulation and control of massage may remain in place.

SECTION 8. This ordinance shall be effective thirty (30) days from the date of passage thereof.

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Regularly passed and adopted this 25th day of February 2014.

AYES and in favor of said ordinance:

Supervisors:

DAVE PINE

CAROLE GROOM

DON HORSLEY

WARREN SLOCUM

ADRIENNE J. TISSIER

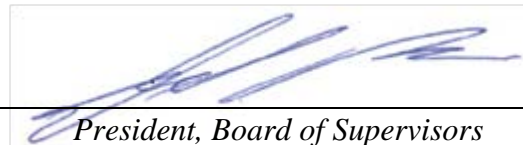
NOES and against said ordinance:

Supervisors:

NONE

Absent Supervisors:

NONE



*President, Board of Supervisors
County of San Mateo
State of California*

Certificate of Delivery

I certify that a copy of the original ordinance filed in the Office of the Clerk of the Board of Supervisors of San Mateo County has been delivered to the President of the Board of Supervisors.



*Rebecca Romero, Deputy
Clerk of the Board of Supervisors*