

ORDINANCE NO. 2016-13

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA CRUZ ADDING
CHAPTER 5.78 "MASSAGE" OF TITLE 5 "BUSINESS LICENSES AND REGULATIONS"
OF THE SANTA CRUZ MUNICIPAL CODE

WHEREAS, in enacting these regulations the City Council recognizes that massage is a viable professional field offering the public valuable health and therapeutic services; and

WHEREAS, the City Council of the City of Santa Cruz hereby finds and declares that:

1. The registration and health and safety requirements imposed by this chapter are reasonably necessary to protect the health, safety and welfare of the citizens of the City; and
2. Massage businesses have been found to present opportunities for acts of prostitution and other unlawful activity, and officers have made arrests for prostitution in massage businesses located within the City and it has been reported that instances of acts of prostitution have occurred in massage businesses located in unincorporated areas of Santa Cruz County; and
3. The California legislature and the courts have long recognized the necessity of imposing reasonable regulations and standards for the operation of massage businesses, including but not limited to, minimum educational and experience requirements, passage of a practical examination of competence, sanitary conditions, hours of operation, and other operational regulations designed to minimize opportunities for illegal activities and to ensure the protection of the health, safety and welfare of citizens; and
4. There is significant risk of injury to clients of massage businesses by improperly trained massage practitioners; and
5. The presence of businesses known or reputed to be places of prostitution or other illegal activity can have an adverse impact on surrounding properties and result in blight, foster further illegal activities, and generally become a public nuisance;

NOW, THEREFORE, BE IT ORDAINED that:

Section 1. Chapter 5.78, "Massage" of Title 5, "Business Licenses and Regulations" of the Santa Cruz Municipal Code is hereby added to read as follows:

"Chapter 5.78

MASSAGE

5.78.010 Purpose and Intent.

- (a) In enacting this chapter, the city council recognizes that commercial massage therapy is a professional pursuit which can offer the public valuable health and therapeutic services. The city council further recognizes that, unless properly regulated, the practice of massage therapy and the operation of massage businesses may be associated with unlawful activity and pose a threat to the quality of life in the local community. Accordingly, it is the purpose and intent of this chapter to protect the public health, safety, and welfare by providing for the orderly regulation of businesses providing massage therapy services, discouraging prostitution and related illegal activities carried on under the guise of massage therapy, and establishing certain sanitation, health, and operational standards for massage businesses.

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(b) Furthermore, it is the purpose and intent of this chapter to address the negative impacts identified in the city council's findings to reduce or prevent neighborhood blight and to protect and preserve the quality of city neighborhoods and commercial districts; and to enhance enforcement of criminal statutes relating to the conduct of operators and employees of massage businesses.

(c) It is the Council's further purpose and intent to rely upon the uniform statewide regulations applicable to massage practitioners and establishments that were enacted by the State Legislature in 2008 as Business and Professions Code sections 4600 et seq. by Senate Bill 731, and amended in 2011 by Assembly Bill 619 and in 2014 by Assembly Bill 1147, to restrict the commercial practice of massage in the city to those persons duly certified to practice by the California Massage Therapy Council and to provide for the registration and regulation of massage businesses for health and safety purposes to the extent allowed by law.

5.78.020 Definitions.

For the purposes of this chapter, unless the particular provision or the context otherwise clearly requires, the definitions in this section shall govern the construction, meaning, and application of words and phrases used in this chapter.

(a) "Business" includes, but not by way of limitation, everything about which a person can be employed, and means that which occupies the time, attention, and labor of men and women for the purpose of producing a livelihood or profit, and connotes the efforts of men and women by varied and diverse methods of dealing with each other, to improve their individual economic conditions, and for the purposes of this chapter shall include, without limitation, the advertising and soliciting of massages. The term "business" includes, but is not limited to, a massage practitioner who is the sole owner, operator and employee of a massage business operating as a sole proprietorship, as well as a massage establishment which employs massage practitioners and therapists.

(b) "California Massage Therapy Council" or "CAMTC" means the massage therapy organization formed pursuant to Business and Professions Code section 4600.5.

(c) "Certified massage practitioner" means any individual certified by the California Massage Therapy Council as a certified massage therapist or as a certified massage practitioner pursuant to California Business and Professions Code sections 4600 et seq.

(d) "Chief of Police" shall mean the chief of police, or his or her designee.

(e) "City Manager" shall mean the City Manager, or his or her designee.

(f) "Client" means the customer or patron who pays for or receives massage services.

(g) "Compensation" means the payment, loan, advance, donation, contribution, deposit, exchange, or gift of money or anything of value.

(h) "City Registration Certificate" means a registration certificate issued by the chief of police upon submission of satisfactory evidence that a massage business employs or uses only certified massage practitioners pursuant to this chapter.

(i) "Employee" means any person employed by a massage business who may render any service to the business, and who receives any form of compensation from the business.

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- (j) “Exempt therapist” means a massage therapist who has been granted an exemption to the state certification requirement by the chief of police in accordance with subsection (c) of Section 5.78.030. A person who is an exempt therapist shall comply with all requirements of this chapter, except for the state certification requirements.
- (k) “Health Officer” means the person appointed by the city of Santa Cruz pursuant to the California Health and Safety Code or his or her authorized representatives or designees.
- (l) “Massage” or “massage therapy,” means and refers to any method of treating the external parts of the body for remedial, health, or hygienic purposes for any form of compensation by means of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, or stimulating the external parts of the body, with or without the aid of any mechanical or electrical apparatus or appliances; 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.
- (m) “Massage business” means any business that offers massage therapy in exchange for compensation, whether at a fixed place of business or at a location designated by the customer or client through outcall massage services. Any business that offers any combination of massage therapy and bath facilities—including, but not limited to, showers, baths, wet and dry heat rooms, pools and hot tubs—shall be deemed a massage business under this chapter. The term “massage business” includes a certified massage practitioner who is the sole owner, operator and employee of a massage business operating as a sole proprietorship.
- (n) “Operator” or “massage business operator” means any and all owners of a massage business.
- (o) “Outcall massage” means the engaging in or carrying on of massage therapy for compensation in a location other than the business operations address set forth in the massage business’s city registration certificate.
- (p) “Owner” or “massage business owner” means any of the following persons:
- (1) Any person who is a general partner of a general or limited partnership that owns a massage business.
 - (2) Any person who has five percent (5%) or greater ownership interest in a corporation that owns a massage business.
 - (3) Any person who is a member of a limited liability company that owns a massage business.
 - (4) Any person who has a five percent (5%) or greater ownership interest in any other type of business association that owns a massage business.
- (q) “Person” means any individual, firm, association, partnership, corporation, joint venture, limited liability company, or combination of individuals.
- (r) “Practitioner” or “massage practitioner” shall be used interchangeably and mean any person who administers massage to another person, for any form of consideration (whether for the massage, as part of other services or a product, or otherwise).

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(s) "Reception and waiting area" means an area immediately inside the front door of the massage business dedicated to the reception and waiting of patrons of the massage business and visitors, and which is not a massage therapy room or otherwise used for the provision of massage therapy services.

(t) "Registration" means the registration required by this chapter to operate a massage business.

(u) "School of massage" means any school or institution of learning that is recognized by the Bureau of Private Postsecondary Education (BPPE.ca.gov) or the California Massage Therapy Council (CAMTC). Any suspensions or removal of accreditation of a school may deem the school as not an approved recognized school.

(v) "Sole proprietorship" means and includes any legal form of business organization where the business owner (sometimes referred to as the "sole proprietor") is the only person employed by that business to provide massage services.

(w) "Solicit" means to request, ask, demand or otherwise arrange for the provision of services.

5.78.030 CAMTC Certification and Local Registration Required.

(a) Individuals. It shall be unlawful for any individual to practice massage therapy for compensation as a sole proprietorship or employee of a massage business or in any other capacity with the city of Santa Cruz unless that individual has received a registration certificate from the Chief of Police and is a certified massage practitioner or an exempt therapist.

(b) Businesses. It shall be unlawful for any business to provide massage for compensation within the city of Santa Cruz unless all individuals employed by the massage business to perform massage, whether as employee, independent contractor, or sole proprietorship, are certified massage practitioners or exempt therapists and said business has obtained a valid city registration certificate as provided in this chapter.

(c) Exempt therapists. A massage therapist who is not CAMTC certified can receive a registration certificate from the chief of police and be granted an exemption. In considering whether to grant an exemption, the following may be considered:

(1) Existing Massage therapists: An existing massage therapist is one who has practiced massage in the city continuously for at least two years prior to the effective date of the ordinance enacting this Chapter. In considering whether to grant an exemption, the following may be considered:

(i) Confirmation of continuous two-year history through city business license records, personal tax records, W-2's, 1099's and other tax and bank records;

(ii) The results of a criminal background check;

(iii) Whether the applicant has otherwise obtained any and all necessary training and certifications to practice as a massage therapist from a recognized school of massage; and

(iv) Whether there have been any past violations of city regulations.

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(v) Exemptions for existing massage therapists will only be issued until June 1st, 2018. Renewals may be issued after this point but not new exemption permits as an existing massage therapist.

(2) New Massage therapists—any massage therapist who has never worked within the city of Santa Cruz, has not received a prior permit or exemption, and due to language barriers or other circumstances beyond their control cannot obtain CAMTC certification. In considering whether to grant an exemption, the following may be considered:

(i) The results of a criminal background check;

(ii) Whether the applicant has otherwise obtained all necessary training as outlined in California Business & Professions Code Section 4604 (a) and has received certifications to practice as a massage therapist from a recognized school;

(iii) Whether the applicant has any past violations in other jurisdictions as determined by CAMTC;

(iv) Whether there have been any past violations of city regulations;

(v) Whether the applicant, or a former employer of the applicant while so employed, or a building in which the applicant was so employed, was ever subjected to an abatement proceeding due to criminal or administrative proceedings within another jurisdiction in the State of California;

(vi) Whether any permit to engage in the practice of massage as a massage professional or otherwise has previously been denied applicant or revoked, and, if so, the circumstances of the denial or revocation.

(3) A massage therapist trainee employed by massage business that is registered and in good standing with the Chief of Police at the time that an application for certification is filed, provided that all of the following shall apply:

(i) The massage business was an existing licensed and permitted massage business on the effective date of the ordinance enacting this Chapter;

(ii) The massage business or its employees have not been the subject of any previous criminal proceedings or municipal code enforcement action within the five year period preceding the effective date of the ordinance enacting this Chapter;

(iii) A massage therapist trainee exemption granted pursuant to this provision will be automatically suspended in the event that its massage business employer or an employee thereof is cited for any sex related crime; and

(iv) A massage therapist trainee exemption shall be valid for no more than two years from the date of issuance, after which the massage therapist trainee must qualify as a certified massage therapist or an exempt therapist pursuant to Subsection (c)(2), above.

(d) Registration certificate applications shall be submitted using forms provided by the police department and shall be accompanied by all of the following:

(1) The applicant's full name, all other names the applicant uses or has used, the applicant's residential address, and residence telephone number;

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- (2) The name and address of the massage establishment where the applicant is to be employed and the name of the massage establishment owner;
- (3) The names and addresses of any and all previous establishments where the applicant has been employed as a massage professional for the past two years;
- (4) Two passport-size photographs taken within the past three months of the applicant depicting front and side views;
- (5) A live scan or other background check as determined by the police department, to be submitted in person by the applicant;
- (6) A copy of a diploma, certificate of graduation or transcripts of course work from an approved school showing satisfactory completion of 500 hundred hours or more of non-repetitive curriculum, with a passing grade or better in health theory, health care, anatomy, physiology, psychology, biomechanics, or kinesiology or similar curriculum; unless applicant is applying as massage therapist trainee;
- (7) A statement signed by the owner or operator of a massage establishment indicating an intent to employ the applicant as a massage professional (unless the applicant is the massage establishment owner or operator); or that the massage owner is employing them as a massage therapist trainee;

5.78.040 Massage Business Registration.

(a) Application. The registration application for a city 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 or certificate of exemption.
- (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 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 of Santa Cruz and its incorporated cities.

(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., and local, state, or federal law, or the provisions of this chapter may result in revocation of the business's city registration certificate.

(b) Issuance. Upon provision by the massage business of the foregoing documentation, the chief of police shall issue the massage business a city 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. City registration certificates shall 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 5.78.110, 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 5.78.100 and 5.78.110, 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 5.78.100 that have not been paid.

(c) Amendment. A massage business shall apply to the city to amend its city 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 city to renew its city registration certificate at least thirty (30) days prior to the expiration of said city registration certificate. If an application for renewal of a city 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. Any application for a city registration certificate, or renewal thereof, shall be accompanied by a nonrefundable fee in the amount established by resolution of the city council. All CAMTC certified therapists or business owners shall be exempt from paying a certificate fee. The fee shall be used to defray the costs of the administration and enforcement of this chapter. The provisions of this section shall not prevent the city from establishing additional fees for safety inspections as may be conducted from time to time by the chief of police, 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. There are certain fees for appeals as described below.

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(f) Transfer. A city registration certificate shall not be transferred except with the prior written approval of the chief of police. 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 city registration certificate may not be transferred during any period of suspension or one year following revocation pursuant to Section 5.78.110, during the ten-day period following a massage business's receipt of a notice of suspension, revocation or fine issued pursuant to Sections 5.78.100 and 5.78.110 or while any appeal of a suspension, revocation or fine is pending. Further, a city registration certificate may not be transferred until all outstanding fines issued pursuant to Section 5.78.100 have been paid.

5.78.050 Operating Requirements.

No person shall engage in, conduct, carry on, or permit any massage within the city of Santa Cruz unless all of the following requirements are met:

- (a) CAMTC-certification or city issued certificate shall be prominently displayed during working hours at a practitioner's business and carried on the massage practitioner's person at all times when the massage practitioner is providing outcall massage.
- (b) Massage shall be provided or given only between the hours of 7:00 a.m. and 10:00 p.m. No massage business shall be open and no massage shall be provided between 10:00 p.m. and 7:00 a.m. A massage commenced prior to 9:00 p.m. shall nevertheless terminate at 10:00 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 10:00 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, no 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, other than an exempt therapist, 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 police officers, or 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

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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. 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 reasonable suggest to prospective clients that any service is available other than those services listed as an available service pursuant to section 5.78.050(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 massage 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 person's 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

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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 city of Santa Cruz.
- (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) All massage businesses shall comply with all state and federal laws and regulations for handicapped clients.
- (w) 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 city registration certificate.
- (x) 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.
- (y) 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.

5.78.060 Inspection by Officials.

The investigating and enforcing officials of the city of Santa Cruz, including but not limited to the police, health officer and Director of Building and Planning, or their designees, shall have the right to enter the premises from time to time during regular business hours for the purpose of making reasonable inspections to observe and enforce compliance with building, fire, electrical, plumbing or health regulations, and to enforce compliance with applicable regulations, laws, and statutes, and with the provisions of this chapter. The massage business may be charged a fee for any safety inspections.

5.78.070 Notifications.

- (a) A massage business shall notify the chief of police of any changes described in Section 5.78.040 pursuant to the timelines specified therein.
- (b) A registrant shall report to chief of police 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 chapter or state or federal law.
- (c) This provision requires reporting to the chief of police even if the massage business believes that the chief of police has or will receive the information from another source.

5.78.080 Exemptions.

- (a) The provisions of this chapter shall not apply to the following classes of individuals or businesses while engaged in the performance of massage therapy:
 - (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 cosmetologists 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 exemption 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:

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- (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.

5.78.090 Unlawful Business Practices May Be Enjoined; Remedies Cumulative.

Any massage business operated, conducted or maintained contrary to the provisions of this chapter shall constitute an unlawful business practice pursuant to Business & Professions Code Section 17200 et seq., and the city attorney or district attorney may, in the exercise of discretion, in addition to or in lieu of taking any other action permitted by this chapter, commence an action or actions, proceeding or proceedings in the Superior Court of Santa Cruz County, seeking an injunction prohibiting the unlawful business practice and/or any other remedy available at law, including but not limited to fines, attorneys fees and costs. All remedies provided for in this chapter are cumulative.

5.78.100 Violations.

- (a) Violations. Any violation of this chapter by any person or business governed by this chapter, shall constitute an infraction for which a fine of \$500 shall be assessed by the court.
- (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.

5.78.110 Suspension and Revocation of City Registration Certificates.

- (a) Reasons. Certificates of Registration may be suspended or revoked by the chief of police upon finding any of the following grounds:
 - (1) A massage 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 fails 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 subsection.

(3) The city 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 massage 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 personal service or 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 chief of police.

(c) Time Period of Suspension of Permit. The chief of police 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).

5.78.120 Appeals.

(a) A decision of the chief of police to suspend or revoke a massage business certificate or a massage therapist license pursuant to section 5.78.110 may be appealed to the city manager or his or her designee in accordance with this section, in accordance with the following:

(1) An appeal must be in writing, and be hand-delivered or mailed to the city manager's office.

(2) An appeal must be received by the city manager on or before the effective date of suspension or revocation provided by subsection (d) of section 5.78.110.

(3) The filing of a timely appeal will stay a suspension or revocation pending a decision on the appeal by the city manager.

(4) A hearing shall be scheduled before the city manager within thirty (30) days. Either the appellant or the chief of police may request, in writing directed to the city manager, 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 city manager, who shall consider whether granting the continuance poses a threat to public health or safety in light of the severity of the violations alleged.

(5) The decision of the city manager shall be final, with no further administrative right of appeal or reconsideration. The city manager may sustain a suspension or revocation, overrule a suspension or revocation, reduce a revocation to a suspension

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and/or reduce the length of a suspension. Further, the city manager may stay the effective date of any suspension for a reasonable time following a hearing.

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

(c) 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 discover 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.

5.78.130 Public Nuisance.

It shall be unlawful and a public nuisance for a massage business to be operated, conducted, or maintained contrary to the provisions of this chapter. The city may exercise its discretion, in addition to or in lieu of prosecuting a criminal action, to commence proceedings for the abatement, removal, and enjoinder of that business in any manner provided by law.

Section 2. Severability. If any part or provision of this ordinance, or the application thereof to any person or circumstance, is held to be invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this ordinance are severable.

Section 3. This ordinance shall take effect and be in force thirty (30) days after final adoption.

PASSED FOR PUBLICATION this 25th day of October, 2016, by the following vote:

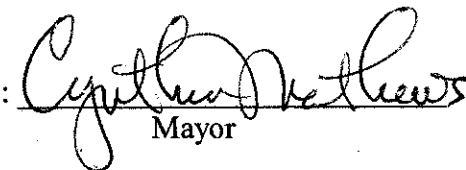
AYES: Councilmembers Noroyan, Lane, Terrazas, Posner, Comstock; Vice Mayor Chase; Mayor Mathews.

NOES: None.

ABSENT: None.

DISQUALIFIED: None.

ATTEST: 
City Clerk Administrator

APPROVED: 
Mayor

ORDINANCE NO. 2016-13

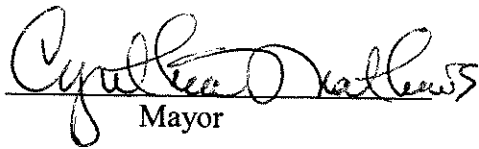
PASSED FOR FINAL ADOPTION this 22nd day of November, 2016 by the following vote:

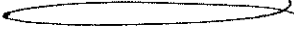
AYES: Councilmembers Noroyan, Lane, Terrazas, Posner, Comstock; Vice Mayor Chase; Mayor Mathews.

NOES: None.

ABSENT: None.

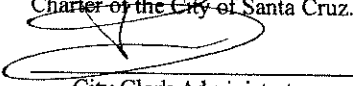
DISQUALIFIED: None.

APPROVED: 
Mayor

ATTEST: 

City Clerk Administrator

This is to certify that the above and foregoing document is the original of Ordinance No. 2016-13 and that it has been published or posted in accordance with the Charter of the City of Santa Cruz.



City Clerk Administrator