

ORDINANCE NO.

AN ORDINANCE AMENDING CHAPTER 9, ARTICLE II, OF
THE MOUNTAIN VIEW CITY CODE RELATING TO MASSAGE
ESTABLISHMENTS AND PRACTITIONERS

THE CITY COUNCIL OF THE CITY OF MOUNTAIN VIEW DOES HEREBY
ORDAIN AS FOLLOWS:

Section 1. Chapter 9, Article II, Sections 9.20 through 9.49, of the Mountain View City Code are hereby amended to read as follows:

“SEC. 9.20. Council findings and statement of purpose.

It is the purpose and intent of this chapter to provide for the orderly regulation of massage practitioners and massage establishments as defined in this article in the interest of the public health, safety and welfare. The City of Mountain View wishes both to recognize the practice of massage as a valid professional field and to discourage prostitution, human trafficking, and other unlawful activity which otherwise may become associated with some massage establishments by providing certain minimum standards for the operation of massage establishments. It is further the intent to streamline local massage therapy permitting procedures by relying upon the uniform statewide regulations originally enacted by the State Legislature in 2008, and recently amended in 2014, as the Massage Therapy Act, Business and Professions Code Sections 4600 et seq. and by restricting the commercial practice of massage in the City of Mountain View to those persons duly certified to practice by the California Massage Therapy Council formed pursuant to the Massage Therapy Act.

SEC. 9.21. Definitions.

“California Massage Therapy Council (CAMTC)” means the state organized nonprofit organization created under California Business and Professions Code Sections 4600 et seq.

“California Massage Therapy Council certificate” or “CAMTC certificate” means a current and valid certificate issued by the California Massage Therapy Council to a massage practitioner, pursuant to the Massage Therapy Act.

“City manager” means the city manager of the City of Mountain View or his/her designee.

"Employee" means any person who renders any service to the massage establishment, including, but not limited to, an employee, independent contractor or massage practitioner.

"Home massage establishment" means any massage establishment which meets all of the following requirements:

1. The business is operated by a massage practitioner who lives in the residence at which the business is operated and does not employ other massage practitioners;
2. The business has only one (1) massage table or bed;
3. Massage is provided to only one (1) client at a time; and
4. The business complies with all other requirements of Sec. 36.42.110 of the City Code relating to home occupations.

"Massage" means any method of treating the external parts of the human body by bathing, rubbing, pressing, stroking, kneading, tapping, vibrating, or touching or stimulating with the hands, any part of the body, or any instrument. Massage does not include acupuncture and incidental massage that is part of acupuncture services.

"Massage establishment" means any establishment having a fixed place of business in the city in which massages are given in return for compensation of any type, including but not limited to any hot tub/sauna establishment in which massage services are made available to clients.

"Massage establishment owner," "owner of a massage establishment" or "owner" means any of the following persons:

1. The sole proprietor of a sole proprietorship operating a massage establishment.
2. Any general partner of a general or limited partnership that owns a massage establishment.
3. Any person who has an ownership interest in a corporation that owns a massage establishment.
4. Any person who is a member of a limited liability company that owns a massage establishment.

5. All owners of any other type of business association that owns a massage establishment.

“Massage practitioner” means any person who performs massage in return for compensation of any type and includes both a massage therapist and massage practitioner as set forth in the Massage Therapy Act.

“Massage Therapy Act” means California Business and Professions Code Sections 4600 et seq.

“Outcall massage service” means any business which provides massage services at a location designated by the customer or client or the massage practitioner or outcall massage service, other than at a designated approved massage establishment.

“Person” means any individual, partnership, firm, association, corporation, joint venture or any other combination of individuals for the purpose of doing business.

“Police chief” means the Mountain View police chief or his/her designee.

SEC. 9.22. Exemptions.

The provisions of this article shall not apply to:

a. Physicians, surgeons, chiropractors, osteopaths, nurses, physical therapists or other health professionals who are duly licensed to practice their respective professions under the laws of the State of California.

b. Massage practitioners and massage practitioner trainees who are performing massage in the offices of a licensed physician, surgeon, chiropractor, osteopath, physical therapist or other licensed medical professional, or at a hospital, nursing home, convalescent home, hospice or sanitarium when and while under the supervision of a licensed medical professional.

c. Barbers or cosmetologists who are duly licensed under the laws of the State of California while performing massage within the scope of their licenses.

d. Massage practitioners who perform massages which are clearly incidental to other services performed for compensation at a personal fitness training center, gymnasium, athletic facility or health club, and the giving of massage for compensation is not a principal function of such businesses. In determining whether massage constitutes a principal function of personal fitness training centers, gymnasiums, athletic facilities or health clubs, the police chief shall consider the percent of income derived from massages, the amount of floor space devoted to and the number of

employees assigned to massage services, as well as the manner in which the business advertises and holds itself out to the public. Massage which is incidental to other services performed for compensation includes, for example, massage given by a personal trainer to his/her client for a short period of time during the personal training session and as incidental to the personal fitness training which is the primary service performed for compensation. Incidental massage does not include massage administered as a separate and distinct service provided by the personal fitness training center, gymnasium, athletic facility or health club. The decision of the police chief regarding whether a particular business is entitled to exemption may be appealed to the city manager through the procedures set forth in Sec. 9.25(d).

e. Persons administering massages or health treatments involving massage to other persons who are participating in a recreational or special event that has been approved by the city, provided that the following conditions are met:

1. Massage services are made available equally to all participants in the event;
2. The event is open to participation by the general public or a significant segment of the public;
3. The massage services are provided during the event in an open environment at the site of the event;
4. The sponsors of the event have approved the provision of massage services at the event; and
5. The persons providing the massage services are in compliance with all applicable city codes and other laws.

f. Massage practitioners who perform massage in an open and common room without partitions, and the individual in receipt of the massage remains fully clothed and does not disrobe except below the knee.

SEC. 9.23. Permit and certificate requirements for massage establishments and massage practitioners.

a. **Massage establishment permits.** No person shall establish, operate or maintain a massage establishment, including a home massage establishment, within city limits without first obtaining from the police chief, and maintaining in effect, a massage establishment permit. It is unlawful to operate, establish or maintain a massage establishment while the massage establishment permit issued for such business has been suspended or revoked or has expired.

b. **Massage practitioner certificates.** No person shall practice massage in the City of Mountain View, including at a massage establishment or by providing outcall massage services, unless the massage practitioner has a valid CAMTC certificate. It shall be unlawful for a massage establishment to engage as an employee any massage practitioner who does not have a CAMTC certificate. A person who obtains a massage establishment permit and plans to personally give massages at the business shall have a valid CAMTC certificate to practice massage.

SEC. 9.24. Applications for massage establishment permits.

a. **Submittal of application.** Each owner of a massage establishment shall file a written application with the police chief, on a form provided by the city, which contains the following information in order to obtain a massage establishment permit from the City of Mountain View. A permit application is deemed complete once all owners have filed an application. A massage establishment may be issued a permit once an application is complete.

1. The full name, including any nicknames or other names used presently or in the past, and the present address and phone number of the applicant;
2. Any other owners of the massage establishment;
3. The applicant's two (2) most recent addresses, and the dates of residence at each address;
4. Whether the applicant is over eighteen (18) years of age;
5. The applicant's driver's license number and social security number;
6. The applicant's two (2) most recent employers, including their names, addresses and phone numbers, and the position held by the applicant;
7. The names and addresses of any massage establishment or other businesses involving massage by which the applicant has been employed or owned in the past ten (10) years;
8. Any criminal conviction on the part of the applicant for offenses other than traffic violations within the ten (10) years preceding the date of the application;
9. Any criminal charges pending against the applicant at the time of the application, other than traffic citations, the name and location of the court in which the criminal charges are pending and the applicable case numbers;

10. Whether the applicant has ever had a license, certificate or permit related to the practice of massage, or the operation of a massage establishment, or other business involving the practice of massage, suspended or revoked within the ten (10) years preceding the date of the application, the dates and reasons for any such suspensions or revocations, and the name and location of the jurisdiction or public agency which suspended or revoked such license, permit or certificate;

11. Whether the applicant, including applicant as a member of a corporation or partnership, has ever operated or been employed at any business which has been the subject of an abatement proceeding under the California Red Light Abatement Act (California Penal Code Sections 11225 through 11325) or any similar laws in other jurisdictions. If the applicant has previously worked at such a business, he/she should state on the application the name and address of the business, the dates on which the applicant was employed at such business, the name and location of the court in which the abatement action occurred, the applicable case number and the outcome of the abatement action;

12. Whether the applicant is a massage practitioner and will practice massage under a CAMTC certificate at the establishment (the applicant must provide their CAMTC certificate number); if the applicant does not practice massage, the applicant shall file a statement under penalty of perjury that he/she will not personally give massages at the massage establishment);

13. Whether the applicant has previously applied to the City of Mountain View for a massage establishment permit (or under the City's previous code provisions for a home establishment permit, therapeutic massage establishment permit, managing employee permit, massage practitioner certificate or therapeutic massage practitioner certificate), the date of the application and any other name(s) under which the application was made;

14. The proposed name and address of the massage establishment, together with the name and address of any other massage business operated or managed by the applicant, within the ten (10) years preceding the date of the application;

15. A list of all employees who will practice massage at the establishment or provide outcall massage services. This list shall include the full name and CAMTC certificate number for each massage practitioner. As set forth in Section 9.27(a), the massage establishment owner is responsible to timely update this list.

16. An acknowledgement that by applying for an establishment permit, the applicant understands they are responsible for the conduct of all employees and any city code violations that may occur at the massage establishment, or while providing

outcall massage services on behalf of the massage establishment, and any such violation is grounds for revocation of the establishment permit as set forth in Section 9.33.

17. A statement under penalty of perjury that the applicant has not knowingly and with the intent to deceive made any false, misleading or fraudulent statements or omissions of fact in his/her application or any other documents required by the city to be submitted with the application.

b. **Other required information.** Applicants for massage establishment permits shall also submit other related information requested by the police chief in order to evaluate the background and qualifications of the applicant for the permit .

c. **Payment of permit fees.** At the time of filing an application for a massage establishment permit, the applicant shall pay a massage establishment permit fee in an amount established by council resolution. .

d. **Processing of application; investigation.** Upon receipt of an application for a massage establishment permit, the police chief shall review the application and supplementary material. If it is clear from the face of the application and supplementary materials that the applicant is not qualified for a permit, the application may be denied without further investigation. If it appears from the face of the application and supplementary material that the applicant may be eligible for the permit sought, the police chief shall verify the information submitted by the applicant and shall further investigate the qualifications of the applicant as follows:

1. **Photographs/fingerprints/review of criminal history.** The police chief shall photograph the applicant and take a full set of the applicant's fingerprints and shall submit the fingerprints to the Department of Justice and the Federal Bureau of Investigation (FBI) for evaluation. Upon receipt of the report from the Department of Justice and the Federal Bureau of Investigation (FBI), the police chief shall review the criminal history (if any) of the applicant. Applicants who are massage practitioners and have been issued a CAMTC certificate are exempt from this requirement.

2. **Investigation of location and premises of massage establishment.** Upon receipt of an application for a massage establishment permit, the police chief shall refer the application to the city's community development department, who shall refer the application to the appropriate city departments and divisions to review the project for compliance with the city's zoning code, building code, fire safety standards, and any other applicable city codes.

3. **Additional investigation.** The police chief may conduct additional investigation in a manner authorized by law when necessary to determine whether the applicant meets the qualifications for a permit pursuant to this article.

SEC. 9.25. Grant or denial of application for massage establishment permit.

a. **Time for grant or denial of applications.** The police chief shall grant or deny the application for a massage establishment permit within sixty (60) calendar days of the applicant's submission of the application and all required supplementary material. When necessary to conduct a complete investigation of an application, the police chief may extend this time to ninety (90) calendar days.

b. **Grounds for denial of massage establishment permit.** The police chief shall deny an application for a massage establishment if any of the following circumstances exist:

1. The application is incomplete and/or required supplementary materials are not submitted on a timely basis;

2. The applicant has previously had a massage establishment permit (or, under the preexisting city code requirements, a home massage establishment permit, therapeutic massage establishment permit, managing employee permit, massage practitioner certificate or therapeutic massage practitioner certificate) or similar license, certificate or permit revoked by the City of Mountain View or any other public agency;

3. The applicant has made a false, misleading or fraudulent statement or omission of fact in his/her application or other materials submitted with the application;

4. The applicant, including applicant as a corporation or partnership, or former employer of the applicant while the applicant was so employed, has been successfully prosecuted in an abatement proceeding under the California Red Light Abatement Act (Penal Code Sections 11225 through 11325) or any other similar laws in another jurisdiction;

5. The applicant has been convicted of:

(a) An offense which requires registration pursuant to California Penal Code Section 290, or a violation of Sections 266(i), 311 through 311.7, 314, 315, 316, 318 or 647(b) or (d) of the California Penal Code, or equivalent offenses under the laws of another jurisdiction;

(b) A prior offense which involves violation of California Health and Safety Code Sections 11351 through 11354, 11358 through 11363, 11378 through 11380, or the sale of controlled substances specified in California Health and Safety Code

Sections 11054, 11056, 11057 or 11058, or equivalent offenses under the laws of another jurisdiction;

(c) Any offense involving the use of force or violence upon another person;

(d) Any offense involving sexual misconduct with children.

6. The operation of the massage establishment at the proposed site would violate the city's zoning, building or fire regulations, or other provisions of the city code.

c. **Notice to applicant of grant or denial of application.** The police chief shall give written notice to the applicant of the grant or denial of the application for a permit by certified mail or in-person delivery. If the application is denied, the notice shall advise the applicant of the reasons for the denial and of his/her right to appeal the decision to the city manager through the procedures set forth in subsection (d) below.

d. **Appeal of denial of massage establishment permit to city manager.** Upon the denial of an application for a massage establishment permit by the police chief, the applicant may appeal to the city manager through the following procedures:

1. **Request for appeal hearing.** The applicant shall file a written request for an appeal hearing, which states the specific grounds on which the decision of the police chief to deny the permit or certificate is contested, with the city manager's office within five (5) business days of the in-person delivery of the police chief's decision to the applicant at the most recent home or business address on file with the police department or within ten (10) business days of service of the police chief's decision in the United States mail by certified mail.

2. **Notice of time and place of hearing.** Upon receipt of a timely request for an appeal hearing, the city manager's office shall notify the applicant in writing of the date, time and place of the hearing before the city manager, which shall not be less than five (5) business days after the service of such written notice on the applicant by in-person delivery at the most recent home or business address on file with the city or ten (10) business days after the deposit of the notice in an envelope addressed to the applicant in the United States mail by certified mail.

3. **Hearing before city manager.** At the hearing, both the applicant and the police chief shall have the right to appear and be represented by counsel, and to present evidence and arguments relevant to the grounds on which the decision to deny the application is appealed. The burden of proof shall be on the applicant to show that

he/she meets the qualifications for a massage establishment permit and is entitled to the issuance of such permit.

4. **Decision of city manager.** Within ten (10) business days of the hearing, the city manager shall issue a written decision which states whether the decision of the police chief to deny the application is upheld or reversed, and the reasons for this determination. The decision shall be served upon the applicant by in-person delivery or by certified mail. The decision of the city manager shall be final.

SEC. 9.26. Business license.

It is unlawful for any person to open or operate a massage establishment without obtaining and maintaining in effect a city business license.

SEC. 9.27. Operating requirements for massage establishments.

Unless otherwise specified herein, all massage establishments shall comply with the following operating requirements. Persons operating home massage establishments shall be exempted from the requirements of subsections (a), (b) and (e) of this section.

a. **List of Current Practitioners.** A massage establishment must maintain a current list of massage practitioners who practice at the establishment with the police department on a form supplied by the city, including the full name of each massage practitioner, a copy of his/her government-issued photo identification card and his/her CAMTC certificate number. The massage establishment owner is responsible for updating this list within seven (7) calendar days of a change to the list of massage practitioners practicing at the massage establishment or providing outcall services (such changes include, but are not limited to, hiring, commencement of services or termination of services). The owner of a massage establishment is responsible for verifying all massage practitioners hold the appropriate CAMTC certificate as required by this chapter.

b. **Exterior signs.** A recognizable and legible sign should be posted at the main entrance identifying the business as a massage establishment.

c. **Posting of massage establishment permit.** A copy of the massage establishment permit shall be posted in a conspicuous place in such a manner that it can easily be seen by persons entering the establishment.

d. **Display of massage practitioner CAMTC certificate.** Every massage practitioner at the massage establishment shall display his/her CAMTC certificate in a conspicuous place on the premises.

e. **Payment/tips.** All massage services shall be paid for in advance in the reception area, and all tips, if any, shall be paid for in the reception area.

f. **Alcohol prohibited.** No alcoholic beverages may be possessed or consumed on the premises of the massage establishment or the portion of a residence used as a home massage establishment.

g. **Doors to massage rooms/dressing rooms to be unlocked.** The doors to all dressing rooms shall be kept unlocked at all times. There shall be no locking devices on the doors to rooms in which massages are given. All exterior doors (except rear exterior doors used only for employee entrance to and exit from the massage establishment) shall be kept unlocked unless no staff member is present to assure security for clients and massage staff who are behind closed doors.

h. **Standard of dress for massage establishment and home massage establishment employees.** The holder of the massage establishment permit, massage practitioners and all other employees of the massage business shall remain fully clothed at all times while on the premises of the massage establishment or the portion of a residence being used as a home massage establishment. At a minimum, such clothing shall be made of a nontransparent material and shall not expose the buttocks, genital area or breasts of any employee or the holder of the permit. Swim attire is only permitted when providing a water-based massage modality approved by the CAMTC and consistent with the Massage Therapy Act. Massage practitioners must dress in a manner constituting professional attire based on the custom and practice of the profession in California, consistent with the Massage Therapy Act.

i. **Operating hours.** All massage establishments, including home massage establishments, shall be closed for business by no later than 11:00 p.m. and shall open for business no earlier than 7:00 a.m. These hours of operation may be modified by a conditional use permit. It shall be unlawful for any massage practitioner or other employee of a massage establishment to give or practice massage during the hours when the massage business is required to be closed.

j. **Reasonable inspections.** Duly authorized city officials may conduct reasonable inspections of massage establishments to ensure compliance with state and local law, including, but not limited to, annual inspections.

SEC. 9.28. Sanitation requirements/condition of premises.

The following requirements apply to massage establishments:

a. **Required maintenance of massage establishment.** All premises and facilities of the massage establishment shall be maintained in a clean and sanitary

condition and shall be thoroughly cleaned after each day of operation. The premises and facilities shall meet applicable code requirements of the city, including, but not limited to, those related to the safety of the structure, adequacy of the plumbing, heating, ventilating and waterproofing of rooms in which showers, water or steam baths are used.

b. **Linens.** All massage establishments shall provide clean, laundered sheets, towels, and other linens in sufficient quantity for use by their clients. Such linens shall be laundered after each use and stored in a sanitary manner. No common use of linens or towels shall be permitted. Heavy white paper may be substituted for sheets on massage tables, so long as such paper is used only once for each client and is then discarded into a sanitary receptacle. Sanitary receptacles shall be provided for the storage of all soiled linens.

c. **Privacy standards for massage rooms, dressing rooms and rest rooms.** Dressing rooms and rest rooms may only be used by clients of the same sex at the same time. The massage establishment shall provide doors on all of its dressing rooms and massage rooms. Draw drapes, curtain enclosures or accordion-pleated enclosures are acceptable in lieu of doors for dressing and massage rooms.

SEC. 9.29. Prohibited acts.

a. **Touching of sexual and genital parts of client during massage.** No holder of a massage establishment permit, massage practitioner or any other employee of a massage business shall place either his/her hand or hands upon, or touch with any part of his/her body, a sexual or genital part of any other person in the course of a massage, or massage a sexual or genital part of any other person. Sexual and genital parts shall include the genitals, pubic area, anus or perineum of any person or the vulva of a female. Massage of the female breasts is not permitted except as authorized in the Massage Therapy Act.

b. **Uncovering and exposure of sexual and genital parts before, during or after massage.** No holder of a massage establishment permit, massage practitioner or other employee of a massage establishment shall uncover and expose the sexual or genital parts, as defined in subsection (a) above, of a client or themselves in the course of giving a massage, or before or after a massage. This subsection does not prohibit a client from turning over in the course of a massage, so long as the massage practitioner holds a towel, sheet, blanket or other drape over the client to protect his/her genital and sexual parts from exposure.

Violations of subsections (a) and (b) above shall be grounds for the suspension or revocation of a massage establishment permit by the city, but shall not constitute criminal offenses under this code.

SEC. 9.30. Outcall massage services.

CAMTC certificate required. All massage practitioners who perform outcall massage services within the city limits shall have a CAMTC certificate. Outcall massage practitioners shall maintain their certificates upon their persons or within their immediate reach at all times while performing massage in the City of Mountain View and shall display these upon the request of any city police officer.

a. **Massage establishment permit required for outcall massage services with massage facility or principal place of business located within city limits.** It is unlawful to establish or operate an outcall massage service which maintains or operates a facility at which massages are given or are made available to clients within city limits, or whose principal place of business is located within city limits, without obtaining and maintaining in effect a massage establishment permit from the police chief. Such outcall massage services must comply with all provisions of this article applicable to massage establishments.

b. **Out-of-town outcall massage services dispatched into city limits.** Any massage practitioners dispatched to give massages at locations within city limits from an outcall massage service located within or outside of city limits shall have a CAMTC certificate and must comply with all applicable provisions of this article. The provisions of Sec. 9.27, except for subsections (h) and (i), and Sec. 9.28 shall not apply to such outcall massage practitioners.

c. **Special procedures for massage practitioners dispatched to hotels or motels in city limits by outcall massage service.** Any massage practitioner dispatched to a hotel or motel in city limits by any outcall massage service shall first notify the owner, manager or person in charge of the hotel or motel that he/she intends to provide a massage to a person(s) registered at the hotel or motel, and must show his/her CAMTC certificate.

d. **Operating hours.** The operating hours and requirements set forth in Section 9.27(i) shall apply to all outcall massage services.

e. **Standard of dress.** The standard of dress set forth in Section 9.27(h) shall apply to all outcall massage services.

f. All outcall massage services shall comply with Section 9.29 in its entirety.

SEC. 9.31. Transfer of massage establishment permit.

No massage establishment permit issued pursuant to this article shall be transferred or assigned in any manner, whether by operation of law or otherwise, from location to location or from person to person. Home massage establishments shall be able to change their business addresses upon moving to new residences in the city without obtaining new permits, so long as the establishment permit holder notifies the police chief within five (5) business days of a change in his/her address and that he/she intends to continue to practice massage at the new location.

SEC. 9.32. Expiration and renewal of massage establishment permits, payment of renewal fee.

All massage establishment permits shall expire one (1) year after the date of their issuance, unless revoked sooner by the police chief. Applications for renewal of a permit must be submitted to the police chief by no later than sixty (60) calendar days before the expiration of such permit on a form provided by the police department, which shall require the applicant for renewal to update the information contained in his/her original application. The applicant must pay the city a nonrefundable renewal fee, in the amount established by council resolution, at the time of filing his/her application for renewal. After investigating the application for renewal, the police chief may renew the massage establishment permit, if the applicant continues to meet the standards for the issuance of a permit, and none of the grounds for denial of a permit or certificate set forth in Sec. 9.25(b) exist.

The police chief shall give the applicant for renewal written notice of his/her decision within sixty (60) calendar days of the submittal of the application for renewal to the police department by in-person delivery of the decision to the applicant at his/her most recent home or business address on file with the police department or deposit of the decision in the United States mail by certified mail. If the application is denied, the notice shall state the specific grounds for the denial and that the applicant may appeal to the city manager through the procedures set forth in Sec. 9.25(d).

If the holder of a massage establishment permit does not file a timely application for renewal (sixty (60) calendar days before expiration of the permit or certificate), he/she shall be required to file an application and satisfy the additional requirements for a new permit pursuant to Sec. 9.24 and pay the applicable fees.

SEC. 9.33. Suspension and revocation of massage establishment permits.

a. **Owner responsibility.** An owner of the massage establishment shall be responsible for the conduct of all employees while on the premises of the business or

establishment or providing outcall massage services on behalf of the massage establishment.

b. Grounds for suspension or revocation of massage establishment permit.

The police chief may suspend for a period of up to nine (9) months or revoke a massage establishment permit, according to procedures set forth in subsection (c) below, if there is probable cause to believe that:

1. Massage is performed at the establishment or during outcall massage services on behalf of the establishment by a massage practitioner who does not have a CAMTC certificate.
2. The permit holder has operated or managed the massage establishment, or any massage practitioner or employee at the establishment has acted in a manner which violates any provision of this article, or other applicable city code provisions, state or federal law;
3. The permit holder or any massage practitioner or employee has committed any offense involving lewdness, indecent exposure or prostitution, or any other offense which would be grounds for denial of an application for a massage establishment permit pursuant to Sec. 9.25(b), or employees of the business have committed such offenses in the course of their employment;
4. Has made a materially false or misleading statement or omission of fact on his/her application for a massage establishment permit or for renewal of the permit, or in any supplementary materials submitted with the application;
5. Is operating or managing the massage establishment in a manner which poses a danger to the health and safety of clients and/or the public, or without due regard for proper sanitation or hygiene.

c. Procedure for revocation or suspension of massage establishment permit.

1. **Suspension of permit pending hearing.** Whenever the police chief has probable cause to believe that grounds under Subsection 9.33(b)(5) or any offense set forth in 9.25(b)(5) giving rise to grounds under Subsection 9.33(b)(3) for the suspension or revocation of a massage establishment permit exist, he/she may immediately suspend the massage establishment permit by written notice pending the hearing process set forth in this subsection. If a massage establishment permit is immediately suspended, the police chief shall give written notice of the hearing date, time and place to the permit holder within three (3) business days of the suspension and as set forth in Subsection 2 below. A hearing shall be scheduled in accordance with Subsection 3 below and shall be held within thirty (30) calendar days of delivery of the hearing

notice. All other subsections in 9.33(c) shall apply unless where expressly stated otherwise.

2. **Notice to permit holder.** Whenever the police chief has probable cause to believe that grounds for the suspension or revocation of a massage establishment permit exist, he/she shall give the permit holder written notice of the date, time and place of a hearing to be held before the police chief on whether the permit should be suspended or revoked. The notice shall state the alleged grounds for the proposed revocation or suspension of the permit, and the notice shall be served on the permit holder in person at the most recent home or business address on file with the police department or by deposit of the notice in the United States mail by certified mail.

3. **Hearing before police chief.** The hearing on the revocation or suspension of the permit shall be held before the police chief no less than five (5) business days after the in-person delivery of the notice to the permit holder at the most recent home or business address on file with the police department, or no less than ten (10) business days after deposit of the notice, addressed to the permit holder, in the United States mail by certified mail.

At the hearing, the permit holder and a representative of the city shall have the right to appear and to be represented by counsel, and to present evidence and arguments which are relevant to a determination of whether grounds for suspension or revocation of the permit exist.

4. **Decision of police chief.** Within ten (10) business days after the hearing, the police chief shall issue a written decision which states whether the permit is suspended or revoked, the length of any suspension, and the factual basis for the decision, and that the permit holder may appeal any suspension or revocation to the city manager through the procedures set forth in paragraph 4, below. The decision of the police chief shall be served on the permit holder by in-person delivery at the most recent home or business address on file with the police department or deposit of the notice, addressed to the permit holder, in the United States mail by certified mail.

5. **Request for appeal hearing before city manager.** The permit holder may appeal the decision of the police chief by filing a written request for an appeal hearing, which states the specific grounds on which the decision of the police chief is contested, with the city manager's office within five (5) business days of the in-person delivery to the permit holder of the police chief's decision at the most recent home or business address on file with the police department, or within ten (10) business days of service of the decision by deposit of the notice, addressed to the permit holder, in the United States mail by certified mail.

6. **Appeal hearing before city manager.** Upon receipt of a timely request for an appeal hearing, the city manager's office shall notify the permit holder in writing of the date, time and place of the hearing before the city manager, which shall not be less than five (5) business days after service of such written notice on the permit holder by in-person delivery at the most recent home or business address on file with the police department, or ten (10) business days after service of the notice by deposit of the notice, addressed to the permit holder, in the United States mail by certified mail.

At the hearing, both the permit holder and the police chief shall have the right to appear and be represented by counsel and to present evidence and arguments which are relevant to the grounds for the appeal, as stated in the request for an appeal hearing. Within ten (10) days of the hearing, the city manager shall issue a written decision which states whether the decision of the police chief is upheld, modified or reversed, and the length of any suspension. The decision shall be served on the permit holder by in-person delivery or by certified mail. The decision of the city manager shall be final.

7. **Effective date of revocation or suspension.** Except when a permit is suspended pending a hearing, any suspension or revocation of a permit shall become effective immediately upon the in-person delivery of the written decision of the police chief, or, in the event of an appeal, the city manager, to the permit holder at the most recent home or business address on file with the city, or within five (5) business days of the deposit of such decision addressed to the permit holder into the United States mail by certified mail.

8. **Surrender of suspended or revoked massage establishment permit to police chief.** Upon a written decision by the police chief, or in the event of an appeal, by the city manager, which suspends or revokes a massage establishment permit the permit shall immediately be surrendered to the police chief. In the case of a suspension, the police chief shall return the permit after the period of suspension has ended.

SEC. 9.34. Criminal penalties.

Except as specified in Sec. 9.29, a violation of any provision of this article is a misdemeanor and may be prosecuted in the name of the people of the State of California. The maximum fine or penalty for any violation of this article shall be five hundred dollars (\$500), or a term of imprisonment in the county jail for a period not exceeding six (6) months, or both such fine and imprisonment.

SEC. 9.35. Message establishment operated in violation of this article deemed a public nuisance.

Any massage establishment which is opened, operated or maintained contrary to the provisions of this article shall be deemed a public nuisance. In addition to or in lieu of any other available legal remedies, the city attorney or district attorney of Santa Clara County may commence a civil legal action or actions in a court of competent jurisdiction to abate such nuisance and to enjoin the continued operation and maintenance of the establishment in a manner prohibited by this article.

SEC. 9.36. Application of this article to preexisting massage establishments and persons holding valid city-issued massage practitioner and therapeutic massage practitioner certificates before effective date of this articles.

Except as otherwise provided herein, the provisions of this article shall become applicable to massage establishments which lawfully existed in the city prior to the effective date of this article, and to persons who held valid massage practitioner certificates issued by the city or CAMTC certificates prior to the effective date of this article. Massage establishments may employ persons who hold valid massage practitioner or therapeutic massage practitioner certificates issued by the city, and persons who held said certificates issued by the city may continue to practice massage, until expiration of the city-issued certificate. Upon the expiration of such preexisting city-issued massage practitioner or therapeutic massage practitioner certificates, massage practitioners who wish to continue to practice massage in the City of Mountain View must obtain a CAMTC certificate within sixty (60) calendar days of the expiration of a preexisting city-issued massage practitioner or therapeutic massage practitioner certificate. Massage establishments may employ massage practitioners without a CAMTC certificate upon expiration of a preexisting city-issued massage practitioner or therapeutic massage practitioner certificate consistent with this limited exemption. Home massage establishment permits shall be valid until expiration, at which time a massage establishment permit must be obtained.

SEC. 9.37. through SEC. 9.49. (Reserved for future use.)"

Section 2. The provisions of this ordinance shall be effective thirty (30) days from and after the date of its adoption.

Section 3. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the other remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or

phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

Section 4. Pursuant to Section 522 of the Mountain View City Charter, it is ordered that copies of the foregoing proposed ordinance be posted at least two (2) days prior to its adoption in three (3) prominent places in the City and that a single publication be made to the official newspaper of the City of a notice setting forth the title of the ordinance, the date of its introduction, and a list of the places where copies of the proposed ordinance are posted.

Section 5. This ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) (the activity will not result in a direct or reasonable foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378 of the CEQA Guidelines because it has no potential for resulting in physical change to the environment, directly or indirectly).

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