



**DATE:** November 10, 2015

**CATEGORY:** Public Hearing

**DEPT.:** Police

**TITLE:** **Amend Chapter 9, Article II, of the Mountain View City Code Relating to Massage Establishments and Practitioners**

### **RECOMMENDATION**

1. Introduce an Ordinance Amending Chapter 9, Article II, of the Mountain View City Code Relating to Massage Establishments and Practitioners, to be read in title only, further reading waived, and set a second reading for December 8, 2015 (Attachment 1 to the Council report).
2. Adopt a Resolution Amending the City of Mountain View Master Fee Schedule to Modify Massage Fees, to be read in title only, further reading waived (Attachment 2 to the Council report).

### **BACKGROUND**

In 2009, the State Legislature enacted Senate Bill 731, known as the Massage Therapy Act, which provided for Statewide massage practitioner certification as an alternative to the City's certification in addition to limiting a city's ability to regulate State-certified massage practitioners and required specified operational standards. In 2010, the City adopted significant changes to Chapter 9, Article II, of the Mountain View City Code governing massage establishments and massage practitioners, to comply with State law. The 2010 ordinance incorporated uniform Statewide regulations enacted by the Massage Therapy Act; established a noncertified massage and establishment permit for individuals administering common area massage when specified conditions were met; and established new procedures in recognition of the State-created California Massage Therapy Council (CAMTC) certification which authorized practitioners to practice massage Statewide in lieu of having to obtain a city-issued certification.

In September 2014, revisions to the Massage Therapy Act (pursuant to Assembly Bill 1147) were signed into law and became effective in January 2015. Among other revisions, this legislation returned land use authority to local control and lessened

restrictions under the 2010 legislation. The proposed ordinance contains several changes to the City's regulation of massage in order to be consistent with State law.

## ANALYSIS

### Massage Practitioner Certificates

Staff believes the current City Code provisions as they apply to massage practitioners are too complex and often confusing. Therefore, staff recommends revisions to the City Code to simplify the process. The proposed ordinance includes a streamlined permitting process requiring all massage practitioners/therapists be certified by the CAMTC and eliminates the City-issued certification of practitioners/ therapists. The proposed revisions eliminate the provisions related to the City-issued massage practitioner application process and requirements. Under both previous law and the new Massage Therapy Act, cities have the authority to pass ordinances requiring all those who provide massage services in their jurisdiction be CAMTC certified. Ordinances requiring CAMTC certification for those providing massage services do not interfere with the voluntary nature of certification, because massage providers are still free to choose to either be certified or work in another jurisdiction.

Requiring CAMTC certification streamlines the City process by relieving staff of the responsibility of conducting background checks, reviewing testing and educational requirements and documentation, and processing applications and fingerprint requests, thus freeing up resources for other activities. Seventy-three (73) permitted massage practitioners are practicing in Mountain View, 71 of which are CAMTC certified (therefore, only two practitioners have been issued a City-issued massage practitioner certification).

The proposed ordinance authorizes existing massage practitioners to continue to practice massage until their certificate expires (all City-issued practitioner certificates have a one-year duration). The ordinance provides a 60-day grace period upon expiration of a City-issued massage practitioner certificate to allow the practitioner to obtain a CAMTC certificate. Massage establishments may continue to employ practitioners during this grace period. The grace period is to allow sufficient time for a practitioner to obtain a CAMTC certificate after the expiration of their City-issued certificate.

### Massage Establishment and Managing Employee Permits

The proposed ordinance includes the consolidation of “home massage establishments” as “massage establishments” for purposes of permitting, thus eliminating a distinct permit for home massage establishments while maintaining separate criteria to qualify as a home massage establishment. The proposed ordinance also eliminates a distinction of a therapeutic massage establishment permit. All establishments must obtain a massage establishment permit. Home massage establishments are subject to many of the same operating requirements as other massage establishments, but there are some differences under the current code which remain under the proposed ordinance. Mountain View currently has 17 permitted massage establishments, one of which is a home massage establishment. Massage establishments will continue to be subject to the same permitting requirements. The proposed ordinance also requires all owners of a massage establishment to complete an application for an establishment permit. For example, if an establishment is owned by two owners, each must complete an application and background check (assuming they are not certified massage practitioners under the CAMTC). Only one establishment permit will be issued and one fee charged upon submission of a complete application for the permit.

The proposed ordinance eliminates the current requirement that CAMTC certificate holders must register with the Police Department and obtain a registration notice, issued at no charge. Instead, the proposed ordinance requires the massage establishment to provide a list of all massage practitioners. The establishment owner is responsible to update the list within seven calendar days of a change to the list. This revision is to comply with State law.

The existing City Code requires establishments to designate a Managing Employee and requires this person to obtain a permit from the City. Staff believes this specific classification was created to ensure a responsible party was present at an establishment for contact as necessary by the Police Department. This classification has proven unnecessary and contact with the owner of the establishment can be facilitated through on-site staffing. For these reasons, staff recommends the elimination of the Managing Employee classification and permit in the proposed ordinance. The proposed ordinance also includes language to make clear owners of the establishment are responsible for the conduct of all employees and any violations occurring at the establishment. In addition, a basis to suspend or revoke an establishment permit includes the practice of massage at an establishment by a practitioner without a valid CAMTC certificate.

### Open and Common Room Massage

The Massage Therapy Act does not govern foot massage or other massages provided in open areas where the recipient remains clothed, and it is the experience of Police Department staff that these types of businesses generally are not involved in prostitution, human trafficking, or other illegal activity. Therefore, the proposed ordinance eliminates the “noncertified massage practitioner certificate” and “noncertified establishment permit” category of practitioners and establishments.

### Operating Requirement Revisions

The City Code currently authorizes reasonable inspections. Clarifying language is proposed to specifically address the inclusion of annual inspections. Clarifying language was also added to make clear the operating requirements that apply to outcall massage services.

In addition, and in compliance with State law, doors (including dressing room and massage room doors) must remain unlocked at all times with the exception of exterior doors. Rear exterior doors used only for employee entrance to and exit from the establishment may be locked. Other exterior doors must remain unlocked unless there is no available staff member present to ensure security for clients and staff who are behind closed doors. Minimum clothing requirements for employees are included in the City’s existing code. An amendment is included to authorize swim attire under certain circumstances and eliminate some garment requirements consistent with State law.

### Suspension of Permit Pending Hearing

The proposed ordinance grants the Police Chief the authority to immediately suspend a massage establishment permit pending a hearing by written notice when he/she has probable cause to believe the establishment is operating in a manner which poses a danger to the health and safety of clients or the public or a permit holder/practitioner/employee commits specified offenses, including the sale of controlled substances, use of force or violence upon another person, indecent exposure, prostitution, or any offense involving sexual misconduct with children. The immediate suspension of a permit in writing will be followed by written notice of a hearing date, time, and place to the permit holder within three (3) business days of the suspension and a hearing scheduled within thirty (30) days of delivery of the hearing notice.

## **FISCAL IMPACT**

A review of the massage establishment permitting process was conducted considering changes proposed in the ordinance and the permitting process. Fees are proposed as follows:

1. Massage Establishment: \$159.00
2. Massage Establishment Renewal: \$159.00

Adoption of the proposed ordinance would eliminate the need for all other massage-related fees, which range from \$87.00 to \$900.00, as detailed in Exhibit A to the resolution. As discussed earlier in the report, the proposed ordinance includes a streamlined permitting process requiring all massage practitioners/therapists be certified by the CAMTC and eliminates the City-issued certification of practitioners/therapists. Any loss of revenue would be offset by savings in staff time and resources.

## **ALTERNATIVES**

1. Amend the City Code to reflect the changes to the Massage Therapy Act and continue to offer multiple massage practitioner classifications.
2. Do not exempt common-area massage from the CAMTC requirements and the City Code.
3. Provide a longer grace period for City-issued certificate holders to obtain a CAMTC certificate.
4. Provide other direction.

**PUBLIC NOTICING**

Agenda posting, individual notice to all existing massage establishments and each certificate holder by mail, and the Mountain View Police Department website posting.

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City Manager

GO/3/CAM  
307-11-10-15CR-E

Attachments: 1. Ordinance Relating to Massage Establishments and Practitioners  
2. Resolution Amending the City of Mountain View Master Fee  
Schedule to Modify Massage Fees