

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PLEASANT HILL
AMENDING CHAPTER 6.30,
MESSAGE ESTABLISHMENTS AND THERAPISTS

WHEREAS, the City Council adopted an ordinance regulating massage in 1991 and amended it in 1996, 2006 and 2009; and

WHEREAS, in 2008 and in 2011, the State Legislature adopted provisions in the Business and Profession Code to provide for state certification of massage therapists (Bus. & Prof. Code §4600 – 4620). The State law requires that local jurisdictions honor a state-certified massage therapist and a massage establishment where all therapists are state-certified; and

WHEREAS, although the City has recognized both state-certified and City-licensed massage therapists in the past, it now wishes to allow only state-certified massage therapists to practice in the City; and

WHEREAS, the proposed revisions to Chapter 6.30 will allow existing City-licensed massage therapists to continue practicing in the City through December 31, 2012 under their current licenses.

NOW, THEREFORE, the City Council of the City of Pleasant Hill does ordain as follows:

Section 1. Chapter 6.30, Massage Establishments and Massage Therapists, of the Pleasant Hill Municipal Code, is amended to read as set forth in Exhibit A, attached.

Section 2. Notwithstanding the effective date of this ordinance, massage therapists and massage establishments currently licensed with the City are permitted to continue through December 31, 2012, subject to the terms of their existing licenses and the regulations in effect at the time each license was issued.

Section 3. This ordinance shall be effective 30 days after its adoption.

Section 4. Within fifteen days after the passage of this ordinance, the City Clerk shall cause it to be posted in the four places designated by resolution of the City Council.

The foregoing ordinance was introduced at a regular meeting of the City Council of the City of Pleasant Hill held on the _____ day of _____, 2012.

ADOPTED and ordered posted at a meeting of the City Council of the City of Pleasant Hill, held on the _____ day of _____, 2012, by the following vote:

AYES:

NOES:
ABSENT:
ABSTAIN:

JOHN HANECAK, Mayor

ATTEST:

MARTY C. McINTURF, City Clerk

APPROVED AS TO FORM:

DEBRA S. MARGOLIS, City Attorney

DRAFT

Exhibit A to Ordinance No. ____

**“Chapter 6.30
MESSAGE ESTABLISHMENTS AND THERAPISTS**

Sections:

- 6.30.010 Purpose – Authority.
- 6.30.020 Definitions.
- 6.30.030 Requirements.
- 6.30.040 City registration.
- 6.30.050 Record keeping.
- 6.30.060 Facility requirements.
- 6.30.070 Inspections.
- 6.30.080 Hours of operation.
- 6.30.090 Establishment owner background check.
- 6.30.100 Department coordination with CAMTC.
- 6.30.110 Appeals.
- 6.30.120 Property owner responsibility.

6.30.010 Purpose – Authority.

It is the purpose and intent of this chapter to provide for the orderly regulation of massage therapists and massage establishments, in the interest of the public health, safety and welfare. The city wishes both to recognize the practice of massage as a valid professional field and to discourage prostitution and other unlawful activity which otherwise may become associated with some massage establishments.

This chapter relies upon the state certification process of the California Massage Therapy Council under California Business and Professions Code sections 4600 through 4620. In addition, this chapter provides certain minimum standards for the operation of massage establishments, their managing employees, and massage therapists.

This chapter is adopted under the authority of Government Code sections 51030 through 51034, Government Code section 37101, Business and Professions Code section 16000, and California Constitution Article XI, Section 7.

6.30.020 Definitions.

In this chapter:

- A. *California Massage Therapy Council* or *CAMTC* means the California Massage Therapy Council created under Business and Professions Code section 4500.5(a).
- B. *Certified massage practitioner* or *practitioner* means a person who is currently certified as a massage practitioner by the CAMTC, and who administers massage for compensation. A certified massage practitioner who is an independent contractor is one who works at a massage establishment (or has an outcall massage service), but is not a salaried employee and does not share a percentage of therapy proceeds with the establishment.

The following are not considered *massage therapists* under this chapter: a person with a current certificate to practice the healing arts under the laws of the State of California (including, but not limited to, a physician, surgeon, chiropractor, osteopath, nurse, physical therapist, or other health professional), or a person working under the direction of such a person in one of the health facilities set forth in subsection F of this section.

C. *Certified massage therapist or therapist* means a person who is currently certified as a massage therapist by the CAMTC, and who administers massage for compensation. A certified massage therapist who is an independent contractor is one who works at a massage establishment (or has an outcall massage service), but is not a salaried employee and does not share a percentage of therapy proceeds with the establishment.

D. *Chief* means the chief of police or his/her designee.

E. *Massage or bodywork* means the application of various techniques to the muscular structure and soft tissues of the human body. Application of massage and bodywork techniques may include, but is not limited to, stroking, kneading, tapping, compression, vibration, rocking, friction, pressure and similar techniques. Examples of massage include Swedish massage, sports massage, shiatsu, polarity therapy, rolfing, hellerwork and reflexology. *Massage* and *bodywork* have the same meaning.

Massage specifically excludes: diagnosis, prescription, intentional manipulation or adjustments of the skeletal structure, or any other service, procedure or therapy which requires a license to practice (chiropractic, osteopathy, orthopedics, physical therapy, podiatry, or medicine), hypnosis, naturopathic, colonic irrigation, acupuncture, vacuum cupping, nutritional or dietary counseling, detoxification programs, yoga, exercise, spiritual healing, or procedures which penetrate body cavities, either manually or with any other method of intrusion.

F. *Massage establishment* means a studio or place where state certified individuals practice massage. The following are not considered *massage establishments* under this chapter: a hospital, nursing home, sanitarium, physiotherapy establishment, office of a licensed medical professional, or other state-licensed physical or mental health facility; nor a personal fitness training center, gymnasium, athletic facility or health club, when the giving of massage is an incidental function of the business, constituting 10% or less of the business.

G. *Outcall massage service* means a business which provides massage at a location designated by the client or the massage practitioner or therapist, other than at a massage establishment.

6.30.030 Requirements.

A. Massage establishment. No person may own or operate a massage establishment in the city unless:

1. each person administering massage for compensation (whether as an employee or independent contractor) is either a certified massage therapist or a certified massage practitioner; and
2. the owner or operator has a current registration of the massage establishment at the police department.

B. Massage therapist or massage practitioner. No person may practice massage in the city who is not a certified massage therapist or certified massage practitioner.

In addition, a certified massage therapist or certified massage practitioner working in the city must: (1) work at a city-registered massage establishment permit; or (2) work in the therapist's or practitioner's own home with a massage establishment registration and a home occupation permit; or (3) indicate on the registration form that he or she does outcall massage services.

C. Other city permits. Registrants are advised that they must also obtain (1) a city business license, and (2) a home occupation permit if massage is practiced at the therapist's or practitioner's home.

6.30.040 City registration.

A massage establishment must register with the city police department annually, and shall post evidence of city registration whenever massage is practiced. Upon request, the establishment shall provide a copy of the state certification of any therapist or practitioner working at the establishment. The establishment shall notify the department within 30 days of any change in the information provided.

The registration application shall include: name, address and telephone of the establishment; name address and telephone of the owner(s) and manager(s); contact information for the primary person in charge; name, proof of certification of each employee or independent contract who will offer massage at (or through) the establishment. There is no charge for the registration.

If a person owns 5% or more of the massage establishment and is not a certified massage practitioner or certified massage therapist, a background check is required, as set forth in PHMC §6.30.090.

6.30.050 Record keeping.

A. The operator of a massage establishment shall maintain:

1. a register of the certified massage therapists and certified massage practitioners working at the establishment, including state certificate number; and
2. a daily register, approved in form by the chief, of each client, the assigned room (or location of outcall massage service), the massage therapist or practitioner who treated the client, a description of service(s) performed and the time of the appointment. The

daily register shall be completed by the close of business every day, and shall be available for inspection by the city at all times during regular business hours. The register shall be considered confidential, not for public review, and may be inspected by the city only as part of a criminal investigation or during proceedings to investigate compliance with this chapter. These records shall be retained for at least one year.

B. An independent contractor massage therapist or practitioner is responsible for compliance with subsection A.2 of this section.

6.30.060 Facility requirements.

The operator of a massage establishment shall maintain and operate the establishment in a safe and sanitary manner, and shall:

A. Comply with all applicable building, fire, safety, health, electrical, plumbing, mechanical, heating and ventilating, sanitation, and other laws applicable to the premises;

B. Provide for the regular removal of garbage and refuse, and the safe storage or removal of flammable materials;

C. Maintain all equipment used to perform massage services in a safe and sanitary condition, including the regular application of cleansers and bacterial cleaning agents;

D. Launder all materials furnished for the personal use of the client, such as towels and linens, before each use;

E. Maintain all bathroom and plumbing fixtures in a sanitary condition, provide hot and cold running water, and comply with sanitation requirements of the county health department;

F. Provide a wash basin for therapists and employees, located within or as close as practicable to the area devoted to the massage therapy services. Each wash basin shall be equipped with hot and cold running water, soap in a dispenser and sanitary towels. In the case of a massage establishment located in a home, existence of a bathroom meeting this requirement is sufficient;

G. Provide either a separate room or dressing and locker facilities for each client. However, dressing and undressing may occur in the same room as massage therapy if the client is alone in the room with the door(s) closed and opaque coverings are present on any windows while undressing or dressing. The massage therapist or other clients may not be present in the same room when the client is undressing;

H. In each room or cubicle where massage is administered, have lighting whenever the area is occupied equivalent to a minimum of an incandescent 25-watt clear-glass light bulb;

I. For a massage establishment in which the therapist or practitioner is an employee, all massage services shall be paid for in the reception area, and all tips, if any, shall be paid in the reception area. For a massage establishment at which a therapist or practitioner is an independent

contractor, all massage services and all tips, if any, may be paid in the same room where the massage occurred, provided the door to the room is fully open. A massage establishment which is located in a home is exempt from this subsection because by the nature of the site it does not include a reception area.

6.30.070 Inspections.

The chief may inspect the premises at the time of registering a massage establishment, and may make periodic, reasonable inspections of the establishment during normal business hours to assure compliance with CAMTC requirements, this chapter and applicable fire, health and safety requirements. (Hlth. & Saf. Code §4612 (c)(1).) If any violations are found, the chief shall notify the establishment in writing. The chief may give the establishment 10 days to correct the violation(s), or, if the violation(s) presents a danger to public health or safety, close the establishment until the violation(s) is corrected.

6.30.080 Hours of operation.

No massage establishment and no massage therapist or practitioner may provide massage service between the hours of 10:00 p.m. and 7:00 a.m. Clients and visitors shall be excluded from a massage establishment during those hours.

6.30.090 Establishment owner background check.

A. General requirement. A person who will own 5% or more of a massage establishment, and who is not a certified massage therapist or practitioner, must apply to the police department for an annual investigation of the applicant's background and history.

B. Application for background check. Each applicant shall submit the following:

1. information related to the applicant's business, occupation and employment history as set forth in Health and Safety Code section 4612(e).
2. other information as the department may reasonably require.
3. fingerprints when needed for the purpose of verification.
4. an application fee in the amount established by resolution of the city council.

C. Background clearance. The city will issue background clearance within 30 days if: (1) the application information is complete; (2) the applicant has not made a material false statement; (3) the applicant (or officers or directors holding 5% or more interest) have not committed a violation of any element of Health and Safety Code section 4603.

6.30.150 Department coordination with CAMTC.

The chief of police shall designate a person in the police department to coordinate with CAMTC, including maintaining a list of certified therapists and practitioners practicing in the city, maintaining a list of massage establishments operating in the city, receiving notices and information from CAMTC, and notifying CAMTC of any arrest or conviction of Penal Code section 647 of other act punishable as a sexually related crime. (Hlth. & Saf. Code §§4602(c), 4602.5.)

6.30.160 Appeals.

A person may appeal a decision of the chief in accordance with PHMC Chapter 1.10, except that the decision of the city manager or his or her designee is final and may not be appealed to the city council.

6.30.180 Property owner responsibility.

Any place where lewdness, assignation or prostitution occurs is a public nuisance which may be abated and permanently enjoined, and for which the city may recover damages from the property owner, as well as from the person conducting or maintaining the nuisance. (Cal. Penal Code §§ 11225 and 11226.)”

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