

**ORDINANCE NO. 1890**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DELETING SAN RAFAEL MUNICIPAL CODE CHAPTER 8.34 AND ADDING NEW CHAPTER 10.90 TO THE SAN RAFAEL MUNICIPAL CODE RELATING TO MASSAGE THERAPY PRACTITIONERS AND ESTABLISHMENTS**

**WHEREAS**, there is substantial research that indicates that the skillful practice of massage can provide many health benefits including relief of pain from disease, injury and other sources, and that massage can be a valuable component of a wellness program; and

**WHEREAS**, in 2008 by Senate Bill 731 (“SB 731”), the Legislature added new Chapter 10.5 (Sections 4600 et seq.) to the California Business and Professions Code, entitled “Massage Therapists,” which provides for the formation of a nonprofit “Massage Therapy Organization” to oversee a state-sanctioned program of certification for massage therapy practitioners; and

**WHEREAS**, the new state law establishes a scheme for a voluntary certification process for persons wishing to practice massage therapy in California, with the intention of enabling persons so certified to practice massage therapy in any city within the State without being required to obtain a local permit to practice; and

**WHEREAS**, state law now provides that it shall be an unfair business practice for any person to hold him- or herself out as certified or licensed by any governmental agency as a massage therapist or massage practitioner, or as being a “certified massage therapist” or “certified massage practitioner,” unless that person has obtained a certification from the Massage Therapy Organization; thus the new laws will assist the public in locating qualified massage therapists and practitioners; and

**WHEREAS**, a Massage Therapy Organization has been formed and designated the “California Massage Therapy Council;” and

**WHEREAS**, the California Massage Therapy Council has begun to issue certifications pursuant to the new laws; and

**WHEREAS**, by San Rafael Municipal Code Chapter 8.34, the City has for many years regulated the practice of massage in the City in the interests of the public health, safety, and welfare, through the issuance of City practitioner permits and business owner permits, with a primary goal of diminishing the ability of persons to provide or engage in unlawful acts of prostitution and pandering in San Rafael under the guise of a legitimate massage therapy practice; and

**WHEREAS**, it is the intention of the City Council by this Ordinance to reduce City involvement in local massage therapy licensing, while still encouraging and facilitating the ethical practice of massage therapy and complying with State law, by relying upon the uniform statewide regulations enacted by SB 731, and by restricting the commercial practice of massage

in the City to those persons duly certified to practice by the California Massage Therapy Council; and

**WHEREAS**, it is the intention of the City Council that the new regulations adopted by this Ordinance shall supersede the regulations set forth in San Rafael Municipal Code Chapter 8.34; and

**WHEREAS**, this ordinance is enacted pursuant to Government Code Sections 51030-51934 and Business and Professions Code Sections 4600 et seq..

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES HEREBY ORDAIN AS FOLLOWS:**

**DIVISION 1:**

New Chapter 10.90 entitled “Massage Therapy” is hereby added to the San Rafael Municipal Code to read in its entirety as follows:

**10.90.010     Purpose and intent.**

It is the purpose and intent of this chapter to provide for the orderly regulation of offices and establishments providing massage therapy services, and to prevent and discourage the misuse of massage therapy as a front for prostitution and related activities in violation of State law, all in the interests of the public health, safety, and welfare, by providing certain minimum building, sanitation, and operation standards for such businesses, and by requiring certain minimum qualifications for the operators and practitioners of such businesses. It is the further intent of this chapter to streamline local massage therapy permitting procedures, while still facilitating and advancing the ethical practice of massage therapy, by relying upon the uniform statewide regulations enacted by the Legislature in 2008 as Business and Professions Code sections 4600 et seq. by Senate Bill 731, and by restricting the commercial practice of massage in the City to those persons duly certified to practice by the California Massage Therapy Council formed pursuant to those statutes.

**10.90.020     Definitions.**

For the purpose of this chapter, unless the context clearly requires a different meaning, the words, terms, and phrases set forth in this section shall have the meanings given them in this section:

A.     “California Massage Therapy Council” means the Massage Therapy Organization formed pursuant to Business and Professions Code section 4600.5.

B.     “Certified Massage Establishment” means a massage establishment, including but not limited to a sole proprietorship, where each massage establishment owner and each person employed or retained to practice massage therapy for compensation as defined in Section 10.90.050(B) is a Certified Massage Practitioner.

C. “Certified Massage Practitioner” means any individual certified by the California Massage Therapy Council as a Certified Massage Practitioner or as a Certified Massage Therapist pursuant to California Business and Professions Code sections 4600 et seq.

D. “Compensation” means the payment, loan, advance, donation, contribution, deposit, exchange, or gift of money or anything of value.

E. “Inspector” means the person or persons designated by the Permit Authority to conduct any inspections required or permitted under this chapter.

F. “Massage,” “massage therapy,” and/or “bodywork” for purposes of this chapter are used interchangeably and shall mean the skillful application of touch, including but not limited to, pressure, stroking, kneading, compression on or movement of the external surfaces of the body by a practitioner to produce increased awareness, relaxation, pain relief, injury rehabilitation, or neuromuscular reeducation.

G. “Massage establishment” shall include the term “massage and/or bodywork office or establishment”, and means any business or establishment that offers massage therapy in exchange for compensation, whether at a fixed place of business or at a location designated by the patron. Any business or establishment 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 establishment under this chapter.

H. “Massage establishment owner” or “owner of a massage establishment” shall mean and include 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 a ten (10) percent or greater 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.

I. “Operator Permit” means the permit required by this chapter to operate a massage establishment.

J. “Operator” or “massage establishment operator” means any and all owners of a massage establishment.

K. “Outcall massage service” means the engaging in or carrying on of massage therapy for compensation at a location other than a massage establishment that has been permitted pursuant to this chapter.

L. “Permit authority” means the Chief of Police or his or her designee charged with the administration of this chapter.

M. “Person” means any individual, firm, association, partnership, corporation, joint venture, limited liability company, or combination of individuals.

N. “Reception and waiting area” means an area immediately inside the front door of the massage establishment dedicated to the reception and waiting of patrons of the massage establishment and visitors, and which is not a massage therapy room or otherwise used for the provision of massage therapy services.

O. “Sole proprietorship” for purposes of this chapter shall mean and include 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.

P. “Visitor” means any individual not retained or employed by the massage establishment and not receiving or waiting to receive massage therapy services, but excluding law enforcement personnel or governmental officials performing governmental business.

**10.90.030 Certification by California Massage Therapy Council Required for Practitioners.**

On and after March 1, 2011, it shall be unlawful for any individual to practice massage therapy for compensation within the City unless that individual is a Certified Massage Practitioner as defined in Section 10.90.020.

**10.90.040 Certified Massage Practitioners--City Registration Certificate Required.**

On and after March 1, 2011, any Certified Massage Practitioner practicing massage therapy for compensation within the City shall be required to register with the Permit Authority as provided in this Section. There shall be no fee for the registration application or certificate, or any amendment thereof.

A. The registration application shall include the registrant’s name, residence address and telephone number, employer name, work address and telephone number, and evidence of the registrant’s current certification from the California Massage Therapy Council as either a Certified Massage Practitioner or as a Certified Massage Therapist pursuant to California Business and Professions Code sections 4600 et seq.

B. Upon registration, the Permit Authority shall issue the registrant a City Registration Certificate, valid for one year. Upon application by the registrant, the City Registration Certificate shall be renewed annually so long as the Certified Massage Practitioner is practicing massage therapy for compensation within the City.

C. The Certified Massage Practitioner shall apply to the City to amend the City Registration Certificate within thirty (30) days after any change in the registration information, including, but not limited to, a change in work address.

**10.90.050 Operation of Massage Establishments—Certified Massage Establishment Certificate or Operator Permit Required.**

A. On and after March 1, 2011, it shall be unlawful for any person or persons to operate a massage establishment within the City without first obtaining a Certified Massage Establishment Certificate or an Operator Permit pursuant to the requirements of this Chapter.

B. On and after March 1, 2011, it shall be unlawful for any massage establishment operator within the City to employ or retain any person to practice massage therapy for compensation, or to allow any person to perform massage for compensation on the premises of a massage establishment, unless that person is a Certified Massage Practitioner. For purposes of this chapter, a massage establishment operator “employs or retains” a person to practice massage therapy for compensation when:

1. That person is a directly paid employee of the massage establishment; or
2. That person’s association with a massage establishment is that of an independent contractor who receives compensation for massage therapy provided to patrons of the massage establishment; or
3. That person receives a referral of patrons from the massage establishment and, at any time before or after the referral, arranges in any way for compensation to flow to the massage establishment operator (regardless of whether the parties involved acknowledge that compensation is flowing in exchange for the referral, or whether such parties record such compensation in their financial records).

**10.90.060 Operation of Certified Massage Establishment--Certificate Required.**

On and after March 1, 2011, no Certified Massage Establishment shall operate within the City without first obtaining a Certified Massage Establishment Certificate under this section.

A. Application for Certified Massage Establishment Certificate. All owners of the certified massage establishment, or their duly authorized agent, shall file an application for a Certified Massage Establishment Certificate for the massage establishment, on a form provided by the Permit Authority. For purposes of this section, the “applicant” for the Certified Massage Establishment Certificate shall refer to and include each and every owner of the massage establishment. The application shall include the following information:

1. The name, address, and telephone number of the massage establishment.
2. The name, residence address and telephone number, and business address and telephone number of the massage establishment owner(s) applying for the Certified Massage Establishment Certificate.
3. The form of business under which the applicant will be conducting the massage establishment, i.e., corporation, general or limited partnership, limited liability company, or other form. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the names and residence addresses of each of its officers, directors, and each shareholder holding more than ten percent (10%) of the stock of the corporation. If the applicant is a general or limited partnership, the application shall set forth the name and residence address of each of the partners, including limited partners. If one or more of the partners is a corporation, the provisions of this section pertaining to a corporate applicant shall apply. If the applicant is a limited liability company, the application shall set forth the name and residence address of each of the members. If one or more of the members is a partnership, limited liability company, or corporation, the provisions of this section pertaining to a partnership, limited liability company, or corporate applicant shall apply, as applicable.
4. The name and address of the owner of the real property upon, in, or from which the Certified Massage Establishment is to be operated. In the event the applicant is not the legal owner of the property, the application shall be accompanied by a copy of any written lease between the applicant and the property owner authorizing use of the premises for a massage establishment, or, alternatively, if there is no written lease, then a written, notarized acknowledgment from the property owner that the property owner has been advised that a massage establishment will be operated by the applicant upon, in, or from the property owner's property.
5. A description of the proposed massage establishment, including the type of treatments to be administered.
6. For each person that the massage establishment does or will employ or retain to perform massage therapy for compensation, a copy of that person's current certification from the California Massage Therapy Council as a Certified Massage Practitioner or as a Certified Massage Therapist and a copy of that person's California Massage Therapy Council – issued identification card.
7. For each owner of the Certified Massage Establishment, a copy of that person's current certification from the California Massage Therapy Council as a Certified Massage Practitioner or as a Certified Massage Therapist and a copy of that person's California Massage Therapy Council –issued identification card.

B. Application Fee. There shall be no fee to apply for the Certified Massage Establishment Certificate.

C. Massage Establishment Facilities and Operations—Requirements for Certified Massage Establishment. A Certified Massage Establishment shall comply with the requirements of Section 10.90.090, with the following exceptions:

1. Sole Proprietorship. The provisions of Sections 10.90.090(A)(2) and 10.90.090(B)(1-3) shall not apply to a Certified Massage Establishment which is a sole proprietorship, even if that sole proprietorship is located in a suite of offices with other businesses.

2. Home Occupation. Where a Certified Massage Establishment is a home occupation, as defined in Section 14.03.030 of this Code, and the operator has complied with the provisions of Section 14.16.220 of this code pertaining to home occupations, the provisions of Sections 10.90.090(A)(2) and 10.90.090(B)(1-3) and (B)(5) shall not apply, and the portions of the residence subject to the requirements of Section 10.90.090(B) and (C) shall be only those portions that are used at any time by the patron of the massage establishment.

D. Certified Massage Establishment Certificate—Issuance—Notice to Property Owner.

1. The Permit Authority shall grant a Certified Massage Establishment Certificate to an applicant who has satisfied the requirements of this section and all other applicable laws, including, but not limited to, the City’s building, zoning, and health regulations.

2. Where the applicant is not the record owner, as shown on the latest County assessment roll, of the property upon, in, or from which the Certified Massage Establishment is to be operated, then upon issuance of a Certified Massage Establishment Certificate, the Permit Authority may send a written notice to the property owner advising of the issuance of the Certificate and of the regulations applicable to the massage establishment and the property pursuant to this Chapter. Any other notices sent to the applicant pursuant to this Chapter at any time before or after issuance of the Certified Massage Establishment Certificate may also be sent to the property owner.

E. Notice of Denial—Appeal. If an application for a Certified Massage Establishment Certificate is denied, the Permit Authority shall serve on the applicant, in the manner provided in Section 1.08.060 of this code, a written notice of denial which shall specify the grounds for the denial and shall indicate the appeal procedures as set forth in Section 10.90.130(D) of this code.

F. Display of Certificate. Each holder of a Certified Massage Establishment Certificate shall display that Certificate in an open and conspicuous place on the premises visible from the entrance and/or reception and waiting area of the massage establishment.

G. Term. A Certified Massage Establishment Certificate issued pursuant to the terms of this chapter shall be valid for a term of one year from the date of issuance, and, unless suspended or revoked, shall be renewed annually so long as the massage establishment is operating within the City.

H. Requirement to Amend Certified Massage Establishment application. In addition to the requirements of Sections 10.90.100 and 10.90.110, whenever the information provided in the application for Certified Massage Establishment on file with the City changes, for example by a change in employees, the operator shall, within ten (10) business days after such change, file an amendment to the Certified Massage Establishment application with the Permit Authority to reflect such change.

I. Violations -- Operator Responsibility; Suspension or Revocation of Certified Massage Establishment Certificate.

1. For the purpose of enforcing the requirements of this chapter, the massage establishment operator shall be responsible for the conduct of all massage establishment employees, agents, independent contractors, or other representatives while such persons are on the premises of the massage establishment or providing outcall massage services on behalf of the massage establishment.

2. In addition to any other remedy available to the City under this Code or state law, a Certified Massage Establishment Certificate may be suspended or revoked by the Permit Authority as provided in Section 10.90.120. Upon revocation of a Certified Massage Establishment Certificate for a massage establishment, the massage establishment shall immediately cease operation, and, if so ordered by the Permit Authority, no other massage establishment shall be permitted to operate at that location by any person for a period of not less than one year. If the operator is not also the legal owner of the real property on which the massage establishment is situated, notice of such revocation and the one-year prohibition shall be provided by the Permit Authority to the owner of record of the property as shown on the latest County assessment roll.

**10.90.070 Regulations Applicable to Operation of Massage Establishment Other than Certified Massage Establishment --Operator Permit Required.**

On and after March 1, 2011, no massage establishment may operate in the City that does not qualify as a Certified Massage Establishment, unless and until all owners of the massage establishment have applied for and obtained an Operator Permit for the massage establishment from the Permit Authority under this section.

A. Application for Operator Permit. All owners of the massage establishment, or their duly authorized agent, shall file an application for an Operator Permit for the massage establishment on a form provided by the Permit Authority. For purposes of this section, the “applicant” for the Operator Permit shall refer to and include each and every owner of the massage establishment. The application shall include the following information:

1. Name, address, and telephone number of the massage establishment.
2. The name, residence address and telephone number, and business address and telephone number of the massage establishment owner(s) applying for the Operator Permit.

3. The form of business under which the applicant will be conducting the massage establishment, i.e., corporation, general or limited partnership, limited liability company, or other form. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the names and residence addresses of each of its officers, directors, and each shareholder holding more than ten percent (10%) of the stock of the corporation. If the applicant is a general or limited partnership, the application shall set forth the name and residence address of each of the partners, including limited partners. If one or more of the partners is a corporation, the provisions of this section pertaining to a corporate applicant shall apply. If the applicant is a limited liability company, the application shall set forth the name and residence address of each of the members. If one or more of the members is a partnership, limited liability company, or corporation, the provisions of this section pertaining to a partnership, limited liability company, or corporate applicant shall apply, as applicable.

4. The name and address of the owner of the real property upon, in, or from which the massage establishment is to be operated. In the event the applicant is not the legal owner of the property, the application shall be accompanied by a copy of any written lease between the applicant and the property owner authorizing use of the premises for a massage establishment, or, alternatively, if there is no written lease, then a written, notarized acknowledgment from the property owner that the property owner has been advised that a massage establishment will be operated by the applicant upon, in, or from the property owner's property.

5. A description of the proposed massage establishment, including the type of treatments to be administered.

6. The name, residence address and telephone number, and work address and telephone number of each person that the massage establishment employs or retains to perform massage therapy for compensation.

7. For each person that the massage establishment employs or retains to perform massage therapy for compensation, a copy of that person's current certification from the California Massage Therapy Council as a Certified Massage Practitioner or as a Certified Massage Therapist, and a copy of that person's California Massage Therapy Council-issued identification card.

8. Whether any license or permit has ever been issued to the applicant by any jurisdiction under the provisions of any ordinance or statute governing massage or somatic practice, and as to any such license or permit, the name and address of the issuing authority, the effective dates of such license or permit, whether such license or permit was ever suspended, revoked, withdrawn, or denied; and copies of any documentary materials relating to such suspension, revocation, withdrawal, or denial.

9. Whether the applicant has within the five (5) years immediately preceding the date of application been convicted in any state of any felony.

10. Whether the applicant is currently required to register under the provisions of Section 290 of the California Penal Code.

11. The applicant's business, occupation, and employment history for five (5) years preceding the date of application, and the inclusive dates of same.

12. One set of fingerprints for each applicant in a form satisfactory to the Permit Authority. The fingerprints shall be taken at a place designated by the Permit Authority, and any required fee for such fingerprinting shall be paid by the applicant.

13. Such other information as may be required by the Permit Authority to determine compliance with any other eligibility requirements for issuance of the permit as specified by federal, state, or local law. The Permit Authority may waive any of the requirements of this section for an owner who is also a Certified Massage Practitioner.

B. Application Fee. Any application for an Operator Permit under this chapter shall be accompanied by a nonrefundable application fee in an amount established by resolution of the City Council.

C. Operator Permit--Criteria for Granting or Denying. The Permit Authority shall grant an Operator Permit for the massage establishment if the massage establishment owners have satisfied the requirements of this section and all other applicable laws including, but not limited to, the City's building, zoning, and health regulations, unless the Permit Authority determines any or more of the following to be true:

1. The applicant, or any shareholder, partner, or member of the applicant, within five (5) years immediately preceding the date of filing of the application, has been convicted in a court of competent jurisdiction of any offense that relates directly to the operation of a massage establishment whether as a massage establishment owner or operator or as a person practicing massage for compensation, or as an employee of either; or has at any time been convicted in a court of competent jurisdiction of any felony the commission of which occurred on the premises of a massage establishment; or

2. The applicant is currently required to register under the provisions of Section 290 of the California Penal Code; or

3. The applicant, or any shareholder, partner, or member of the applicant, within five (5) years of the date of application, has been convicted in a court of competent jurisdiction of any violation of Section 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), 653.22 of the California Penal Code, or conspiracy or attempt to commit any such offense, or any offense in a jurisdiction outside of the state of California that is the equivalent of any of the aforesaid offenses; or

4. The applicant, or any shareholder, partner, or member of the applicant, has been subjected to a permanent injunction against the conducting or maintaining of a nuisance pursuant to Section 11225 through 11235 of the California Penal Code, or any similar provision of law in a jurisdiction outside the State of California; or

5. The applicant, or any shareholder, partner, or member of the applicant, has knowingly made a false statement or omission of a material fact in the application for the permit; or

6. The applicant, if an individual, has not attained the age of eighteen (18) years; or

7. The applicant, or any shareholder, partner, or member of the applicant, within five (5) years of the date of application, and as established by clear and convincing evidence, has engaged in acts prohibited under California Penal Code Sections 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), or 653.22; or

8. The applicant, or any shareholder, partner, or member of the applicant, within five (5) years immediately preceding the date of filing of the application, has had a permit or license to practice massage for compensation or to own and/or operate a massage establishment revoked or denied in any jurisdiction.

D. Notice to Property Owner. Where the applicant is not the record owner, as shown on the latest County assessment roll, of the property upon, in, or from which the massage establishment is to be operated, then upon issuance of an Operator Permit, the Permit Authority may send a written notice to the property owner advising of the issuance of the Permit and of the regulations applicable to the massage establishment and the property pursuant to this Chapter. Any other notices sent to the applicant pursuant to this Chapter at any time before or after issuance of the Operator Permit may also be sent to the property owner.

E. Notice of Denial—Appeal. If an Operator Permit is denied, the Permit Authority shall serve on the applicant, in the manner provided in Section 1.08.060 of this code, a written notice of denial that shall specify the grounds for the denial and shall indicate the appeal procedures as set forth in Section 10.90.130(D) of this code.

F. Display of Permit. Each holder of an Operator Permit shall display that permit in an open and conspicuous place on the premises visible from the entrance and/or reception and waiting area of the massage establishment.

G. Term. An Operator Permit issued pursuant to the terms of this chapter shall be valid for a term of one year from the date of issuance. A permit that has not expired and has not been suspended or revoked may be renewed for another one-year period, on submittal of a written application and payment of a renewal application fee to be established by resolution of the City Council.

H. Requirement to Amend Operator Permit application. In addition to the requirements of Sections 10.90.100 and 10.90.110, whenever the information provided in the application for Operator Permit on file with the City changes, for example by a change in employees, the operator shall, within ten (10) business days after such change, file an amendment to the Operator Permit application with the Permit Authority.

I. Violations -- Operator Responsibility; Suspension or Revocation of Operator Permit.

1. For the purpose of enforcing the requirements of this chapter, the massage establishment operator shall be responsible for the conduct of all massage establishment employees, agents, independent contractors, and other representatives, while on the premises of the business or establishment or providing outcall massage services on behalf of the massage establishment.

2. In addition to any other remedy available to the City under this Code or state law, an Operator Permit may be suspended or revoked by the Permit Authority as provided in Section 10.90.120. Upon revocation of an Operator Permit for a massage establishment, the massage establishment shall immediately cease operation, and no other massage establishment shall be permitted to operate at that location by any person for a period of not less than one year. If the operator is not also the legal owner of the real property on which the massage establishment is situated, notice of such revocation and the one-year prohibition shall be provided by the Permit Authority to the owner of record of the property as shown on the latest County assessment roll.

**10.90.080 Massage Establishment Inspection.**

A. The Inspector shall have the right to enter any massage establishment during regular business hours, without a search or inspection warrant, to make reasonable inspection to ascertain whether there is compliance with the provisions of this chapter.

B. The massage establishment operator shall take immediate action to correct each violation noted by the Inspector. A re-inspection will be performed within thirty (30) days to ensure that each violation noted by the Inspector has been corrected.

**10.90.090 Requirements for all Massage Establishment Facilities and Operations.**

A. Operational Requirements. Except as otherwise specifically provided in this Chapter, on and after March 1, 2011, the following operational requirements shall be applicable to all massage establishments located within the City:

1. No massage establishment shall be kept open for business between the hours of ten p.m. (10:00 p.m.) of one day and seven a.m. (7:00 a.m.) of the following day. A massage begun any time before 10:00 p.m. must nevertheless terminate at 10:00 p.m. The hours of operation of the massage establishment shall be displayed in a conspicuous public place in the

reception area and in any front window clearly visible from outside of the massage establishment.

2. Patrons and visitors shall be permitted in the massage establishment only during the hours of operation.

3. Except for a patron who is inside a massage therapy room for the purpose of receiving a massage, no patrons or visitors shall be permitted in or on the massage establishment premises at any time who are less than fully clothed in outer garments of nontransparent material, or who display or expose themselves in underclothing or similar intimate apparel.

4. During the hours of operation, visitors shall not be permitted in massage therapy rooms except as follows: a) the parents or guardian of a patron who is a minor child may be present in the massage therapy room with that minor child; b) the minor child of a patron may be present in the massage therapy room with the patron when necessary for the supervision of the child; and c) the conservator, aid, or other caretaker of a patron who is elderly or disabled may be present in the massage therapy room with that elderly or disabled person.

5. During the hours of operation, patrons shall be permitted in massage therapy rooms only if at least one duly authorized Certified Massage Practitioner is present on the premises of the massage establishment.

6. A list of services available and the cost of such services shall be posted in an open and conspicuous public place on the premises, or provided to patrons before services are rendered. The services shall be described in English and may also be described in such other languages as may be convenient. No massage establishment operator shall permit, and no person employed or retained by the massage establishment shall offer to perform, any services or fees other than those posted.

B. Physical Facility and Building and Fire Code Requirements. Except as otherwise specifically provided in this Chapter, on and after March 1, 2011, the following physical facility and building code requirements shall be applicable to all massage establishments located within the City:

1. Front Door and Reception/Waiting Area Required. One front door shall be provided for patron entry to the massage establishment, which shall open to an interior patron reception and waiting area immediately inside the front door. All patrons and any persons other than individuals employed or retained by the massage establishment shall be required to enter and exit through the front door of the establishment.

2. No massage establishment located in a building or structure with exterior windows fronting a public street, highway, walkway, or parking area shall 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.

3. All interior doors, including massage therapy rooms or cubicles, but excluding individual dressing rooms and toilet rooms, shall be incapable of being locked and shall not be blocked to prevent opening. Draw drapes, curtain enclosures, or accordion-pleated closures in lieu of doors are acceptable on all inner massage therapy rooms or cubicles.

4. Minimum lighting equivalent to at least one 40-watt light shall be provided in each massage therapy room or cubicle.

5. A massage table shall be used for all massage therapy, with the exception of “Thai,” “Shiatsu,” and similar forms of massage therapy, which may be provided on a padded mat on the floor, provided the patron is fully attired in loose clothing, pajamas, scrubs, or similar style of garment. Massage tables shall have a minimum height of 18 inches. Beds, floor mattresses, and waterbeds are not permitted on the premises of the massage establishment, and no massage establishment shall be used for residential or sleeping purposes.

6. All locker facilities that are provided for the use of patrons shall be fully secured for the protection of the patrons’ valuables, and each patron shall be given control of the key or other means of access.

7. The massage establishment shall comply with all applicable State and local building standards (as adopted in Title 12 of this Code) and the fire code (as adopted in Title 4 of this Code).

C. Health and safety requirements. Except as otherwise specifically provided in this Chapter, on and after March 1, 2011, the following health and safety requirements shall be applicable to all massage establishments located within the City:

1. The massage establishment shall at all times be equipped with an adequate supply of clean sanitary towels, coverings, and linens, and all massage tables shall be covered with a clean sheet or other clean covering for each patron. After a towel, covering, or linen has been used once, it shall be deposited in a closed receptacle and not used again until properly laundered and sanitized. Towels, coverings, and linens shall be laundered either by regular commercial laundering, or by a noncommercial laundering process that includes immersion in water at least 140 degrees Fahrenheit for not less than 15 minutes during the washing or rinsing operation. Clean towels, coverings, and linens shall be stored in closed, clean cabinets when not in use.

2. All massage therapy rooms or cubicles, wet and dry heat rooms, toilet rooms, shower compartments, hot tubs, and pools shall be thoroughly cleaned and disinfected as needed, and at least once each business day when the premises are open and such facilities are in use. All bathtubs shall be thoroughly cleaned and disinfected after each use.

3. All liquids, creams, or other preparations used on or made available to patrons shall be kept in clean and closed containers. Powders may be kept in clean shakers. All bottles and containers shall be distinctly and correctly labeled to disclose their contents. When only a portion of a liquid, cream, or other preparation is to be used on or made available to a

patron, it shall be removed from the container in such a way as not to contaminate the remaining portion.

4. No invasive procedures shall be performed on any patron. Invasive procedures include, but are not limited to: (a) application of electricity that contracts the muscle; (b) penetration of the skin by metal needles; (c) abrasion of the skin below the nonliving, epidermal layers; (d) removal of skin by means of any razor-edged instrument or other device or tool; and (e) use of any needle-like instrument for the purpose of extracting skin blemishes; and (f) other similar procedures.

5. All bathrobes, bathing suits, and/or other garments that are provided for the use of patrons shall be either fully disposable and not used by more than one patron, or shall be laundered after each use pursuant to subsection 1 of this section.

6. All combs, brushes, and/or other personal items of grooming or hygiene that are provided for the use of patrons shall be either fully disposable and not used by more than one patron, or shall be fully disinfected after each use.

7. No patrons shall be allowed to use any shower facilities of the massage establishment unless such patrons are wearing slip-resistant sandals or flip-flops while in the shower compartment. All footwear such as sandals or flip-flops that are provided for the use of patrons either shall be fully disposable and not used by more than one patron, or shall be fully disinfected after each use.

8. The patron's genitals, pubic area, anus, and areola must be fully draped at all times while any individual employed or retained by the massage establishment to practice massage for compensation, or any other employee or operator of the massage establishment, is in the massage therapy room or cubicle with the patron. No massage therapy shall be provided to a patron that results in intentional contact, or occasional and repetitive contact, with the genitals, pubic area, anus, or areola of a patron.

9. No alcoholic beverages shall be sold, served, or furnished to any patron; nor shall any alcoholic beverages be kept or possessed on the premises of a massage establishment.

D. Attire and physical hygiene requirements. On and after March 1, 2011, the following attire and physical hygiene requirements shall be applicable to all employees, and any other persons who work permanently or temporarily on the premises, of a massage establishment within the City, including, but not limited to, all persons who are employed or retained to practice massage or bodywork for the massage establishment:

1. All persons shall wear clean and sanitary outer garments at all times. All outer garments shall be of a fully opaque, nontransparent material and provide complete covering from at least the mid-thigh to two inches below the collarbone. The midriff may not be exposed.

2. No massage establishment operator, employee, or visitor shall, while on the premises of a massage establishment or while performing any outcall massage service, and while in the presence of any patron, customer, employee or visitor, expose his or her genitals, buttocks, or chest.

3. All persons shall thoroughly wash their hands with soap and water or any equally effective cleansing agent immediately before providing massage therapy to a patron. No massage therapy shall be provided upon a surface of the skin or scalp of a patron where such skin is inflamed, broken (e.g., abraded or cut), or where a skin infection or eruption is present.

E. Display of permit and certifications. Each person employed or retained by a massage establishment to perform massage therapy in or on the premises or through an outcall massage service shall display on his or her person a copy of the valid photograph-bearing identification card issued to that employee by the California Massage Therapy Council pursuant to Business and Professions Code sections 4600 et seq. A copy of each such identification card shall also be displayed in an open and conspicuous place visible from the entrance and/or reception and waiting area of the massage establishment. The home address of any employee need not be displayed.

**10.90.100 Change of Business name or location.**

No person permitted to operate a massage establishment under this chapter shall operate under any name or conduct business under any designation not specified in the Certified Massage Establishment Certificate or Operator Permit and City business license. Upon a change of location of a massage establishment where there is no change of massage establishment owner(s), an application for an amended Certified Massage Establishment Certificate or Operator Permit shall be made to the Permit Authority, and such application shall be granted, provided all applicable provisions of this code are complied with as to the new location.

**10.90.110 Sale or transfer of massage establishment or ownership interest therein.**

Upon a sale or transfer of any massage establishment, or upon the sale or transfer of some or all of the interest of any massage establishment owner to a person who is not already an owner of the massage establishment, a new Certified Massage Establishment Certificate or Operator Permit shall be required.

**10.90.120 Grounds for Revocation or Suspension of Operator Permit or Certified Massage Establishment Certificate.**

Any Operator Permit or Certified Massage Establishment Certificate issued pursuant to this chapter may be suspended or revoked by the Permit Authority after a hearing, where it is found by clear and convincing evidence that any of the following have occurred:

A. The person(s) to whom the Operator Permit or Certified Massage Establishment Certificate has been issued, or any person employed or retained by the massage establishment, has been found to have violated any provision of this chapter; or

B. Any owner of a massage establishment which is operating pursuant to a Certified Massage Establishment Certificate is no longer qualified as a Certified Massage Practitioner for any reason; or

C. The permittee/certificate holder or any person employed or retained by the massage establishment has been convicted in a court of competent jurisdiction of having violated, or has engaged in conduct constituting a violation of, any of the following: California Penal Code Sections 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), or 653.22, or conspiracy or attempt to commit any such offense, or any offense in a jurisdiction outside of the state of California that is the equivalent of any of the aforesaid offenses; or

D. The permittee/certificate holder or any person employed or retained by the massage establishment is required to register under Section 290 of the California Penal Code; or

E. The permittee/certificate holder has been subject to a permanent injunction against the conducting or maintaining of a nuisance pursuant to this code, or Section 11225 through 11235 of the California Penal Code, or any similar provision of law in any jurisdiction outside the state of California; or

F. The permittee/certificate holder or any employee of the massage establishment has engaged in fraud or misrepresentation or has knowingly made a misstatement of material fact while working in or for the massage establishment; or

G. The permittee/certificate holder has continued to operate the massage establishment after the Operator Permit or Certified Massage Establishment Certificate has been suspended; or

H. Massage treatments are or have been performed on the premises of the massage establishment, with or without the permittee's/certificate holder's actual knowledge, by any person who is not a duly authorized Certified Massage Practitioner; or

I. There have been one or more acts prohibited under California Penal Code Sections 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), or 653.22 taking place on the premises of the massage establishment, whether or not any criminal prosecution has been pursued or conviction obtained for such acts, and whether or not they occurred with or without the actual knowledge of the permittee/certificate holder; or

J. The permittee/certificate holder or any person employed or retained by the massage establishment or any other person on the premises of the massage establishment has engaged in conduct or committed acts that a reasonable person in the patron's position would understand as an offer to perform on or engage in with the patron acts that are sexual in nature or that involve touching of the patron's genitals, pubic area, anus, and areola.

**10.90.130      Hearing by Permit Authority for Revocation or Suspension.**

A.     Written Notice Required. The Permit Authority, before revoking or suspending any Operator Permit or Certified Massage Establishment Certificate, shall give the permittee/certificate holder at least ten (10) days' written notice of the alleged grounds for revocation or suspension and shall conduct a hearing in the matter of whether the permit shall be revoked or suspended. The hearing shall be conducted at least ten (10) days from the date of written notice which shall be provided in the manner set forth in Section 1.08.060 of this Code.

B.     Hearing. The Permit Authority shall consider all evidence at the hearing. The hearing may, after being commenced within the time specified pursuant to subsection (A) of this section, be continued for good cause by the Permit Authority from time to time. The Permit Authority shall, at the conclusion of the hearing, make findings of fact based upon the evidence submitted and shall decide whether or not the permit/certificate shall be revoked or suspended.

C.     Notice of Decision. The Permit Authority's written notice of decision shall be served on the permittee/certificate holder, within thirty (30) days of the conclusion of the hearing, in the manner provided in Section 1.08.060 of this code, and, in the case of a revocation or suspension, such Notice of Decision shall indicate the appeal procedures as set forth hereinafter.

D.     Appeal. Any applicant for or holder of an Operator Permit or Certified Massage Establishment Certificate shall have the right to appeal from a decision by the Permit Authority to deny a permit/certificate application or renewal application, or to approve such an application with conditions, or to suspend or revoke an Operator Permit or Certified Massage Establishment Certificate, by filing with the City Clerk a written notice of appeal, specifying the grounds for such appeal, within fifteen (15) days after the decision has been served on the applicant or permittee/certificate holder. Such appeal shall be heard by an administrative hearing officer appointed by the City Manager or his designee, upon not less than fifteen (15) days written notice to the appellant. The designated administrative hearing officer shall consider all relevant evidence at the hearing, may continue the hearing for good cause, and shall require such legal briefing as may be required to address any issues raised by the appeal. Within a reasonable time, but not more than thirty (30) days following the conclusion of the hearing, the administrative hearing officer shall issue a written decision affirming, denying, or modifying the decision from which the appeal was taken, supported by factual findings and determinations referenced by supporting evidence. The written decision shall be served on the appellant as provided in Code of Civil Procedure Section 1094.6(b), with a copy submitted to the City Clerk and the City Attorney. The written decision of the administrative hearing officer shall be final and shall be subject to judicial review according to the provisions and time limits set forth in Code of Civil Procedure Section 1094.6.

**10.90.140      Business License Required.**

The requirements of this Chapter shall be in addition to any business license and business license tax requirements imposed pursuant to Chapter 10.04 of this Code for operation of a massage establishment.

**10.90.150     Exemptions.**

This Chapter shall not apply to the following classes of individuals while engaged in the performance of the duties of their respective professions:

A.     Physicians, surgeons, chiropractors, osteopaths, podiatrists, physical therapists, nurses, or any other person licensed to practice any healing art under the provisions of Division 2 (commencing with Section 500) of the Business and Professions Code when engaging in such practice within the scope of his or her license.

B.     Trainers of any amateur, semi-professional, or professional athlete or athletic team, so long as such persons do not practice massage therapy as their primary occupation at any location where they provide such services in the City.

C.     Barbers, estheticians and cosmetologists who are duly licensed under the laws of the State of California, while engaging in practices within the scope of their licenses.

D.     Individuals in the City temporarily for educational events or disaster relief.

E.     Individuals administering massages or health treatments involving massage to persons participating in road races, track meets, triathlons, educational events, conferences or similar single-occurrence athletic, recreational, or educational events.

F.     Somatic practitioners who use no physical touch of any kind at any time in their practice.

G.     Enrolled students of a school of massage when they are performing massage within the City as part of a formal supervised internship or training program operated by the school, without compensation other than school credit, on the premises of a massage establishment duly authorized to operate pursuant to the terms of this chapter; and provided that the operator of the massage establishment has first notified the Permit Authority in writing of the name, residence address, and school of the students and the dates of the trainings.

**10.90.160     Violations a public nuisance; penalties, nuisance abatement, and other remedies.**

Any massage establishment operated, conducted, or maintained contrary to the provisions of this chapter shall be, and the same is hereby declared to be, unlawful and a public nuisance, and the City Attorney may, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings, for the abatement, removal and enjoinder thereof, in the manner provided by law. Such remedies shall be in addition to any other judicial and administrative penalties and remedies available to the City under Chapters 1.40, 1.42, 1.44, or 1.46 of this code, or under State law.

**DIVISION 2:**

Chapter 8.34 of the San Rafael Municipal Code entitled “Regulations for Massage and/or Bodywork Offices and Establishments, Owners, and Practitioners” shall be and is hereby deleted effective March 1, 2011.

**DIVISION 3:**

This Ordinance is exempt from the California Environmental Quality Act (“CEQA”) pursuant to the State CEQA Guidelines, since it can be seen with certainty that there is no possibility that this Ordinance or its implementation would have a significant effect on the environment (14 Cal. Code Regs. Section 15061(b)(3)).

**DIVISION 4:**

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have adopted the 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 invalid.

**DIVISION 5:**

A summary of this Ordinance shall be published and a certified copy of the full text of this Ordinance shall be posted in the office of the City Clerk at least five (5) days prior to the Council meeting at which it is adopted.

This Ordinance shall be in full force and effect thirty (30) days after its final passage, and the summary of this Ordinance shall be published within fifteen (15) days after the adoption, together with the names of the Councilmembers voting for or against same, in the Marin Independent Journal, a newspaper of general circulation published and circulated in the City of San Rafael, County of Marin, State of California.

Within fifteen (15) days after adoption, the City Clerk shall also post in the office of the City Clerk, a certified copy of the full text of this Ordinance along with the names of those Councilmembers voting for and against the Ordinance.

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ALBERT J. BORO, Mayor

ATTEST:

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ESTHER C. BEIRNE, City Clerk

The foregoing Ordinance No. 1890 was read and introduced at a regular meeting of the City Council of the City of San Rafael on the 1st day of November, 2010, and was ordered passed to print by the following vote, to wit:

AYES: Councilmembers: Brockbank, Connolly, Heller, Levine & Mayor Boro

NOES: Councilmembers: None

ABSENT: Councilmembers: None

and will come up for adoption as an Ordinance of the City of San Rafael at a Regular Meeting of the Council to be held on the 15th day of November, 2010.

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ESTHER C. BEIRNE, City Clerk