



AGENDA REPORT

Regular Meeting of the San Marcos Planning Commission

MEETING DATE: May 1, 2017

SUBJECT: Consideration of Existing and Proposed Land Use Regulations Regarding
Massage Businesses Consistent with Assembly Bill 1147
Resolution PC 17-4621, Case No. P17-0022 (Text Amendment TA 17-002,
Title 20 of the San Marcos Municipal Code Amendments)

Recommendation

Approve the attached Resolution recommending that the City Council adopt an ordinance amending Title 20 (Zoning Ordinance) of the San Marcos Municipal Code (SMMC) to regulate massage businesses consistent with the provisions of California Assembly Bill (AB) 1147. It has been determined that the proposed Resolution is exempt from the California Environmental Quality Act (CEQA) per Section 15378 and/or Section 15061(b)(3) of the CEQA Guidelines because there is no potential for the Text Amendment to result in a physical change in the environment, either directly or indirectly and it can be seen with certainty that there is no possibility of a significant effect on the environment.

Introduction

In recent years, any number of jurisdictions throughout the State have reported a substantial increase in the number of massage establishments opening within their respective jurisdictions. Additionally, law enforcement agencies have reported an increase in the number of complaints involving illegal activities occurring at these establishments. The State continues to maintain its authority over the enforcement of regulations governing the practice of massage and the certification of massage professionals. However, with the passage of AB 1147, local government authority was restored to permit local agencies to adopt and enforce ordinances regulating the licensing, zoning and reasonable health and safety requirements of massage businesses within their jurisdictions.

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Currently, the City of San Marcos (City) regulates massage businesses under Title 5 of the SMMC and the Zoning Ordinance. However, some of the City's provisions are outdated and are inconsistent with the City's intent to govern massage businesses in compliance with the authority granted to the City under AB 1147.

The proposed Resolution recommends that the City Council adopt an ordinance amending the Zoning Ordinance to include reasonable land use regulations relating to the business of massage, including, but not limited to, limiting massage as an accessory use and massage establishments to commercial zones and similar zones that function as a commercial land use and are developed as shopping centers; regulating the hours of operation for massage businesses; restricting the location of massage establishments by distance; capping the number of massage establishments permitted in the City; and other appropriate land use regulations. Regulating massage businesses within the City to reflect updated State laws and regulations is necessary to protect and preserve the health, safety and welfare of the community.

Discussion

Since 2010, several jurisdictions throughout the State have reported a substantial increase in the number of massage establishments within their respective jurisdictions, and law enforcement agencies have reported an increase in complaints concerning potential illegal activity occurring at these establishments, such as prostitution and human trafficking.

Just this year, a number of California cities have shut down massage establishments and arrested individuals involved in prostitution and human trafficking at those establishments. For example, in January 2017, a massage establishment had its business license suspended after a therapist was arrested for prostitution in the City of Rohnert Park. That same month, the City of Simi Valley revoked approximately 1/3 of the City's 31 massage establishments for a variety of violations, including massage therapists engaging in sexual conduct. In February 2017, the City of San Francisco filed a lawsuit against a massage establishment for operating as a brothel. In March 2017, the City of Modesto conducted a prostitution sting resulting in several arrests at a massage establishment. Most recently, the City of National City shut down all but 2 of its massage establishments after a police raid found evidence of prostitution and human trafficking, among other violations. One of the human trafficking victims informed authorities that she had been brought to the United States from China to work off a debt.



The City has seen a steady increase in applications for massage establishments and inquiries relating to opening massage establishments over the past year. Currently, the City has 35 active massage establishments and 1 pending application, and approximately 134 massage technicians practicing in the City that possess a CAMTC certificate. Regulating the business of massage is necessary to prevent adverse impacts that such commercial operations may have on nearby properties and residences, while recognizing massage as a legitimate business.

In February 2017, the City conducted routine inspections at approximately 20 existing massage establishments operating within the City to determine whether the businesses were in compliance with building, fire, safety and other applicable SMMC provisions and State law. A number of violations were observed at more than half of the businesses inspected, including, but not limited to, violations of the California Fire and Building Codes, unpermitted or illegal displayed signs, construction performed without a permit, businesses operating without a business license or with an expired business license, technicians operating without a valid CAMTC certificate in violation of the Zoning Ordinance, and other violations.

The City has a compelling interest in regulating these establishments consistent with AB 1147 to protect the health, safety and welfare of its residents and businesses, and to retain land use authority over the licensing and permitting of land uses within its jurisdiction.

Historical State Laws Regulating Massage

The California Legislature has historically restricted the ability of cities to adopt and enforce local ordinances governing the licensing, zoning and reasonable health, safety and welfare requirements of massage establishments through the passage of legislation. In 2008, Senate Bill (SB) 731 was adopted, which created a non-profit organization known as the California Massage Therapy Council (CAMTC) to carry out a voluntary certification process for individuals desiring to practice massage therapy. SB 731 established certain limitations on the power of local jurisdictions to regulate massage professionals, such as by exempting massage therapists certified by CAMTC from any municipal requirements to obtain a license, permit or other authorization to perform massage within that jurisdiction.

In 2011, the State Legislature adopted AB 619, which further limited local control over massage establishments. AB 619 provided that the only manner in which local governments could enforce traditional land use restrictions on an individual with a CAMTC certificate, or an establishment



employing massage therapists certified by CAMTC, was if those same local land use regulations applied to all other individuals and businesses providing professional services.

Recent State Legislation – AB 1147

In September 2014, Governor Brown approved AB 1147, which went into effect on January 1, 2015. AB 1147 re-established CAMTC and the voluntary State certification process so that individuals in possession of a CAMTC certificate may perform massage in any jurisdiction within the State without being required to obtain a local permit. With the passage of AB 1147, the State retains its enforcement powers over regulating the practice of massage and the certification of massage professionals through CAMTC, while granting local agencies the authority to regulate the business of massage by adopting and enforcing local ordinances governing the licensing, zoning and reasonable health and safety requirements of massage businesses.

City's Existing Massage Regulations

Chapter 5.44 of the SMMC regulates massage within the City's jurisdictional limits, as well as certain provisions contained in SMMC Chapter 5.04 and the Zoning Ordinance. Currently, the City's provisions do not reflect updated State laws and regulations consistent with the passage of AB 1147. For example, the City may no longer require massage technician and massage technician trainee permits from massage professionals that possess a certificate issued by CAMTC. The City may also require that only individuals in possession of a CAMTC certificate may perform massage within the City. Chapter 5.44 also includes several outdated provisions relating to the health and safety requirements of operating massage establishments. Additionally, the land use regulations in the Zoning Ordinance are not current and up to date with the City's ability to limit massage establishment to certain zones and implement site specific standards governing those businesses.

Proposed Zoning Ordinance Regulations Governing Massage Businesses

AB 1147 authorizes local agencies to adopt land use regulations governing massage businesses so long as there is a reasonable basis for such regulations. According to AB 1147, it is the intent of the State Legislature that "broad control over land use in regulating massage establishments be vested in local governments so that they may manage those establishments in the best interests of the individual community." (B&P Code § 4600.5(b)).



The proposed Resolution recommends that the City Council adopt an ordinance to amend the City's zoning and land use regulations in compliance with the authority granted to the City under AB 1147. Specifically, the proposed Resolution recommends adopting regulations relating to the business of massage, including, but not limited to, limiting massage establishments to Commercial (C, NC) zones, and in certain Specific Plan Area (SPA) zones and Mixed-Use (MU-1, MU-2) zones that function as a commercial land use and are developed as shopping centers; restricting the location of new massage establishments to no fewer than 1,000 feet from an existing massage establishment; capping the number of massage establishments that are permitted to operate in the City to one per every twenty-five hundred (2,500) inhabitants; regulating the hours of operation from 8:00 a.m. to 10:00 p.m.; classifying existing massage establishments legally operating with a valid and current business license and other appropriate approvals issued by the City, and in compliance with all local, State and Federal laws, ordinances, rules and regulations, as a legal, non-conforming use; and expanding the definition of "massage" and "massage, accessory use".

The proposed Zoning Ordinance limitations, including the zone restrictions, 1,000-foot distance limitation and cap on the number of permitted establishments, would not apply to massage performed as an accessory use or outcall massage services. Additionally, any existing massage establishment legally established prior to the effective date of the proposed ordinance, that operates with a valid and current City business license and all other necessary approvals, and that operates in compliance with all local, State and Federal laws, ordinances, rules and regulations would not be required to relocate to comply with the 1,000-foot distance limitation, so long as the establishment remains in the same location. If the business desires to change locations after the effective date of the ordinance to another location less than 1,000 feet from another massage establishment, the relocation would be subject to all other proposed zoning requirements and a review of the distance limitation would be subject to some level of discretion of the Planning Manager. The other proposed limitations, including the zone restriction and cap on the number of permitted establishments would not apply to existing massage establishments so long as there is no lapse in renewal of a City business license and/or massage establishment license. Existing establishments, massage performed as an accessory use, and outcall massage services would be subject to all other applicable provisions under SMMC Title 5 and the Zoning Ordinance.

Other jurisdictions throughout the State have adopted additional sensitive-receptor limitations, which are not being recommended to the City Council for adoption at this time. These additional restrictions include, but are not limited to, regulating the proximity of massage establishments to



schools and parks and requiring the issuance of conditional use permits. Staff is recommending the establishment of the operational standards (identified above) along with limiting the uses to commercial areas in lieu of a Conditional Use Permit. If the City begins to experience additional or exacerbated problems with massage establishments in the future, the City will need to re-evaluate whether to adopt these and other additional sensitive receptor limitations.

The City has a reasonable basis to adopt an ordinance to amend the Zoning Ordinance to further regulate massage establishments to continue to maintain the character, diversity and vitality of the City's commercial areas and the quality of life of its residents; preserve the aesthetics of surrounding neighborhoods; ensure the proposed uses are compatible with adjacent areas and land uses; minimize nuisances and decrease law enforcement response related to those nuisances; appropriately condition any known or anticipated impacts caused by the land use; prevent the increase or over proliferation and over concentration of massage establishments within certain areas; and decrease the potential for illicit activity to occur at massage establishments.

It is recommended that the Planning Commission approve the attached Resolution recommending that the City Council adopt an ordinance amending the Zoning Ordinance to regulate massage businesses consistent with AB 1147. A draft of the entire ordinance, including proposed provisions regulating massage under Title 5 of the SMMC, is provided to the Planning Commission for background and reference purposes. However, the recommendation that the Planning Commission recommend approval to the City Council of the attached ordinance relates only to the land use regulations under the Zoning Ordinance, over which the Planning Commission has jurisdiction to make recommendations to the City Council.

Environmental Determination

The proposed Resolution has been reviewed for compliance with the California Environmental Quality Act (CEQA), and it has been determined that this is not a project within the meaning of Section 15378 of the CEQA Guidelines because there is no potential for it to result in a physical change in the environment, either directly or indirectly. Even if the proposed Resolution was considered a project subject to CEQA, it would be exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that there is no possibility that the proposed amendment to the Zoning Code would have a significant effect on the environment.



Attachment(s)

PC RESOLUTION 16-4621; RECOMMENDING CITY COUNCIL APPROVAL OF AN ORDINANCE TO AMEND TABLES 20.220-2 AND 20.225-5, AND SECTIONS 20.405.070, 20.600.150 AND 20.600.180, AND ADDING SECTION 20.400.250 TO TITLE 20 OF THE SAN MARCOS MUNICIPAL CODE TO REGULATE MASSAGE BUSINESSES CONSISTENT WITH THE PROVISIONS OF ASSEMBLY BILL 1147

A -AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, CALIFORNIA, REPEALING AND REPLACING CHAPTER 5.44, AND AMENDING SECTION 5.04.010 AND TITLE 20 OF THE SAN MARCOS MUNICIPAL CODE TO REGULATE MASSAGE BUSINESSES CONSISTENT WITH THE PROVISIONS OF ASSEMBLY BILL 1147

B- GEOGRAPHIC INFORMATION SYSTEMS (GIS) MAP DEPICTING THE LOCATIONS OF EXISTING MASSAGE BUSINESSES OPERATING IN THE CITY OF SAN MARCOS AS OF APRIL 5, 2017 AND COMMERCIAL PARCELS LOCATED AT LEAST 1,000 FEET FROM THOSE EXISTING BUSINESSES THAT MAY BE USED AS THE SITE OF FUTURE MASSAGE BUSINESSES

Prepared by:

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Approved by:

K.

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Submitted by:

D.

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RESOLUTION PC 17-4621

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN MARCOS RECOMMENDING CITY COUNCIL APPROVAL OF AN ORDINANCE TO AMEND TABLES 20.220-2 AND 20.225-5, AND SECTIONS 20.405.070, 20.600.150 AND 20.600.180, AND ADDING SECTION 20.400.250 TO TITLE 20 OF THE SAN MARCOS MUNICIPAL CODE TO REGULATE MASSAGE BUSINESSES CONSISTENT WITH THE PROVISIONS OF ASSEMBLY BILL 1147

Case No. P17-0022

TA 17-002

City of San Marcos

WHEREAS, in September 2014, the Governor of California approved Assembly Bill (AB) 1147, which went into effect on January 1, 2015. With the passage of AB 1147, the State retains its enforcement powers over regulating the practice of massage and the voluntary certification of massage professionals through a non-profit organization called the California Massage Therapy Council (CAMTC). Individuals who satisfy the requirements of the Massage Therapy Act and possess a valid CAMTC certificate are permitted to perform massage in any jurisdiction within the State without being required to obtain a local license, permit or other authorization to perform massage; and

WHEREAS, AB 1147 also restored local government authority to regulate the business of massage, which was previously restricted by the adoption of Senate Bill (SB) 731 in 2008 and AB 619 in 2011. Specifically, AB 1147 expressly allows cities and counties to adopt and enforce local ordinances governing the licensing, zoning, and reasonable health and safety requirements of massage businesses; and

WHEREAS, the City desires to accommodate existing massage technicians and massage establishments within the City that are legally operating with a valid and current business license and other appropriate approvals issued by the City as of the effective date of this Ordinance, while regulating the business of massage in compliance with AB 1147; and

WHEREAS, since 2010, many jurisdictions throughout the State have reported a substantial increase in the number of massage establishments within their respective jurisdictions, and law enforcement agencies have reported an increase in complaints concerning potential illegal activity occurring at these establishments, including prostitution and human trafficking; and

WHEREAS, the City has seen a steady increase in massage establishments and inquiries relating to opening massage establishments over the past years. Currently, the City has 35 active

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massage establishments and 1 pending application, and approximately 134 massage technicians practicing in the City that possess a certificated issued by CAMTC; and

WHEREAS, imposing reasonable land use regulations on the business of massage is necessary to protect and preserve the health, safety and welfare of the community; to maintain character, diversity and vitality of the City's commercial areas and the quality of life of its residents; preserve the aesthetics of surrounding neighborhoods; ensure the proposed uses are compatible with adjacent areas and land uses; minimize nuisances and decrease law enforcement response related to those nuisances; appropriately condition any known or anticipated impacts caused by the land use; prevent the increase or over proliferation and over concentration of massage establishments within certain areas; and decrease the potential for illicit activity to occur at these businesses; and

WHEREAS, the City currently regulates massage under Chapter 5.44 of the San Marcos Municipal Code (SMMC), as well as under certain provisions contained in SMMC Section 5.04.010 and Title 20 of the SMMC (Zoning Ordinance). These provisions are outdated and do not reflect current State laws and requirements consistent with the adoption of AB 1147; and

WHEREAS, the City desires to eliminate the City's involvement in licensing massage technicians by requiring all persons who perform massage within the City's jurisdiction to possess a valid and current certificate issued by CAMTC; and

WHEREAS, the City further desires to encourage the ethical practice of massage therapy and the operation of massage establishments by adopting local licensing, zoning and reasonable health and safety requirements to regulate the business of massage in compliance with State law. Regulating massage establishments consistent with the provisions of AB 1147 is necessary to protect the health, safety and welfare of the community, prevent adverse impacts that these businesses may have on nearby properties and residents, and retain land use authority over the licensing and permitting of land uses within its jurisdiction, while recognizing massage therapy as a legitimate business; and

WHEREAS, pursuant to California Government Code sections 51030-51034 and California Business and Professions Code sections 4600 et seq. (Massage Therapy Act), the City desires to amend Tables 20.220-2 and 20.225-6 and Sections 20.405.070, 20.600.150 and 20.600.180 of the Zoning Ordinance; and add Section 20.400.250 to the Zoning Ordinance to reflect updated State laws and regulations relating to the business of massage; and

WHEREAS, the Development Services Department did study said request and recommends approval of said request; and

WHEREAS, on March 30, 2017, the City held two public workshops to provide information and receive input from local residents and businesses concerning the proposed massage regulations. During and following the public meeting, City staff received helpful feedback from several owners of existing massage businesses operating in the City, as well as words of gratitude from a number of individuals regarding the City's desire to enact additional regulations to protect and preserve the community and legally-operated businesses. City staff considered the public input it received in drafting the provisions of this Ordinance in an effort to acknowledge and respond to the needs of the City's existing massage businesses while addressing the City's concerns about regulating massage businesses in an ethical manner and in compliance with State law; and

WHEREAS, the required public hearing held on May 1, 2017 was duly advertised and held in the manner prescribed by law; and

WHEREAS, the Planning Commission did consider this request is exempt from the California Environmental Quality Act (CEQA) because this is not a project within the meaning of Section 15378 of the CEQA Guidelines because there is no potential for it to result in a physical change in the environment, either directly or indirectly. In the event this Resolution is found to be subject to CEQA, it is exempt from CEQA pursuant to the exemption contained in CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility of a significant effect on the environment; and

WHEREAS, the Planning Commission's decision is based on the following findings and determinations:

1. The proposed Text Amendment to Title 20 (Zoning Ordinance) of the San Marcos Municipal Code will not adversely affect the implementation of the General Plan in that it does not conflict with any goal, objective, or policy of the General Plan.
2. The proposed Text Amendment to Title 20 (Zoning Ordinance) of the San Marcos Municipal Code will not be detrimental to the public health, safety, morals, and welfare

in that the Text Amendment will establish standards and requirements to regulate the business of massage in compliance with State law.

NOW, THEREFORE, the Planning Commission resolves as follows:

1. The foregoing recitals are true and correct.
2. This project exemption (EX 17-012) from CEQA pursuant to Section 15378 of the CEQA Guidelines and/or Section 15061(b)(3) is hereby recommended to the City Council for approval.
3. This Text Amendment to the Zoning Ordinance (Title 20 of the San Marcos Municipal Code) as specified in blacklined, underlined additions and strikeouts below, is hereby recommended to the City Council for approval.

CHAPTER 20.220 COMMERCIAL ZONES

Table 20.220-2 Commercial Zone Permitted Uses

Land Use	C	NC	OP	SR	Additional Use Regulations
Service Uses⁽²⁾					
Massage, Accessory Use	P	P	P ---	A ---	Note 4; <u>20.400.250</u>
Massage Establishment	P	P	P ---	A ---	Note 4; <u>20.400.250</u>

Notes:

1.
2.
3.

4. Businesses where massage is performed as Massage, Accessory Use and ~~Massage eEstablishments~~ are permitted by right when all ~~therapists or~~ persons performing massage services possess a current, valid and authentic certificate issued by the California Massage Therapy Council. ~~are fully licensed by the state; if all therapists or persons performing massage services are not fully licensed,~~ the land use shall require a CUP. Unless otherwise expressly exempt, all businesses where massage is performed as Massage, Accessory Use and ~~Massage eEstablishments~~ shall be subject to Chapter 5.44 and Title 5 of this Municipal Code.

Table 20.225-5 MU-1 and MU-2 Zone Permitted Uses

Land Use	Ground Floor Uses	MU-1 / MU-2	Additional Use Regulations
Service Uses⁽²⁾			
<u>Massage, Accessory Use</u>	<u>P</u>	---	<u>Note 4; 20.400.250</u>
<u>Massage Establishment</u>	<u>P</u>	---	<u>Note 4; 20.400.250</u>

Notes:

1.
2.
3.
4. Businesses where massage is performed as Massage, Accessory Use and Massage Establishments are permitted in legal, non-conforming commercial shopping centers when all persons performing massage services possess a current, valid and authentic certificate issued by the California Massage Therapy Council. Unless otherwise expressly exempt, all businesses where massage is performed as Massage, Accessory Use and Massage Establishments shall be subject to Chapter 5.44 and Title 5 of this Municipal Code.

CHAPTER 20.400 SPECIFIC USE STANDARDS

Section 20.400.250 Massage, Accessory Use and Massage Establishments

Businesses where massage is performed as Massage, Accessory Use and Massage Establishments shall be subject to the following, in addition to all other requirements contained in Chapter 5.44 and Title 5 of this Municipal Code and by law:

- A. Businesses where massage is performed as Massage, Accessory Use and Massage Establishments shall only be permitted in Commercial (C, NC) Zones, and in certain Specific Plan Area (SPA) Zones (such as San Marcos Creek Specific Plan Area, Nordahl Marketplace Specific Plan Area, and commercial centers located on San Marcos Boulevard) or certain Mixed-Use (MU-1, MU-2) Zones that function as a commercial land use and are developed as shopping centers, subject to the regulations, site specific standards and provisions of this Zoning Ordinance. The shopping centers must possess commercial land use controls, in

the form of common leases, common area maintenance agreements for landscaping and parking areas, reciprocal easement agreements for ingress, egress and parking of vehicles, recorded declarations of covenants, conditions and restrictions defining the responsibility of landlord and tenant concerning the standards for the operation and maintenance of the center, or similar rules and regulations intended to preserve the integrity of such a center. Massage Establishments shall not be permitted in any other zones within the jurisdiction of the City.

B. A Massage Establishment shall be located no fewer than 1,000 feet from another Massage Establishment existing as of the effective date of this Section, as measured in a straight line, without regard to intervening structures, from the property line of one Massage Establishment to the property line of the other Massage Establishment. Any existing Massage Establishment legally established prior to the adoption of this Section, that operates with a valid and current business license issued by the City and all other necessary approvals, and that operates in compliance with all local, State and Federal laws, ordinances, rules and regulations, which is located within 1,000 feet of another Massage Establishment as of the effective date of this Section, is not required to relocate but is subject to all other provisions of this Ordinance for the continued operation and/or transfer of ownership of the Massage Establishment. If any existing Massage Establishment desires to change locations after the effective date of this Section to another location less than 1,000 feet from another Massage Establishment, the relocation shall be subject to all other zoning requirements under this Zoning Ordinance, and compliance with this distance limitation is subject to some level of discretion of the Planning Manager. This limitation shall not apply to businesses where massage is performed as Massage, Accessory Use as that term is defined under this Zoning Ordinance, or to Outcall Massage services, as that term is defined under Chapter 5.44 of this Municipal Code.

C. The maximum number of Massage Establishments within the jurisdiction of the City of San Marcos shall not exceed one (1) Massage Establishment per every twenty-five hundred (2,500) inhabitants of the City. For purposes of this section, the total number of inhabitants of the City shall be determined by the most current published data available from the California State Department of

Finance, as of the date an application for a Massage Establishment license is filed. This limitation shall not apply to businesses where massage is performed as Massage, Accessory Use or to Outcall Massage services, or to any existing Massage Establishment legally established prior to the adoption of this Section, that operates with a valid and current business license issued by the City and all other necessary approvals, and that operates in compliance with all local, State and Federal laws, ordinances, rules and regulations is included, so long as ~~the existing Massage Establishment does not transfer ownership of the Massage Establishment to another person or entity, does not allow for any~~there is no lapse in ~~the timely~~ renewal of a City business license and/or ~~Massage Establishment, and does not fail to timely renew a City business license and/or~~ Massage Establishment license as required under Chapter 5.44 of this Municipal Code.

D. Massage Establishments legally established prior to the adoption of this Section and operating with a valid and current business license issued by the City of San Marcos and other appropriate approvals, and in compliance with all local, State and Federal laws, ordinances, rules and regulations that do not comply with the zoning limitations imposed upon new Massage Establishments under paragraphs (A), (B) and (C) of this Section as of the effective date of this Section shall be considered a legal, non-conforming use. Such Massage Establishments shall be required to comply with all other applicable local, State and Federal laws, ordinances, rules and regulations, including, but not limited to, Chapter 5.44 of this Municipal Code and this Zoning Ordinance.

E. Massage shall be performed only between the hours of 8:00 a.m. and 10:00 p.m. No massage shall be performed at any business where massage is performed as Massage, Accessory Use or at a Massage Establishment between the hours of 10:00 p.m. and 8:00 a.m.

F. The Owner or Operator of any Massage Establishment or business where massage is performed as Massage, Accessory Use shall also comply with all applicable local, State and Federal laws, ordinances, rules and regulations as they may be amended from time to time, including, but not limited to, California Business and Professions Code Sections 4600 et seq. (Massage Therapy Act),

California Government Code Sections 51030 et seq., this Zoning Ordinance and Title 5 of this Municipal Code.

CHAPTER 20.405 ADULT ENTERTAINMENT ESTABLISHMENTS

Section 20.405.070 Definitions

17. **Sexual Encounter Establishment.** An establishment, other than a hotel, motel, or similar establishment offering public accommodations, that, for any form of consideration or gratuity, provides a place where two (2) or more persons may congregate, assemble, or associate for the purpose of engaging in "specified sexual activities" or exposing "specified anatomical areas." This definition does not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the State of California engages in sexual therapy or a massage technician meeting all criteria of ~~section 5.44.120~~ Chapter 5.44 of this Municipal Code. For purposes of this section, "sexual encounter establishment" shall exclude ~~"massage parlor" or other similar~~ Massage eEstablishments.

CHAPTER 20.600 DEFINITIONS

Section 20.600.150 "M" Definitions

Massage Establishments (land use). Any premises, place of business or membership club having a fixed place of business where the primary use is providing or giving for a fee or other form of consideration a massage, ~~fomentation, bath, manipulation of the body, electric or magnetic treatment, alcohol rub~~ including, but not limited to, Swedish massage, sports massage, shiatsu, polarity therapy, rolfing, heller work, reiki, reflexology or other similar massage service or procedure. Any establishment that performs any combination of massage and bathhouse facilities, as that term is defined in Chapter 5.46 of the Municipal Code, including, but not limited to, wet and dry heat rooms, pools, and hot tubs, shall be deemed to be a Massage Establishment. A use where ~~accessory~~ massage occurs as Massage, Accessory Use, shall not be classified as a ~~m~~Massage eEstablishment.

The following professions and services shall not be classified as a ~~an~~Massage Establishment:

Physicians, surgeons, chiropractors, osteopaths, physical therapists, occupational therapists, exercise physiologists, and acupuncturists who are duly licensed to practice their respective professions in the State of California.

Registered Nurses, Practical Nurses and Licensed Vocational Nurses who are licensed to practice under the laws of this State.

Hospitals, nursing homes, mental health facilities, or any other health facility duly licensed by the State of California.

Trainers of any amateur, semiprofessional or professional athletes or athletic teams, or athletic trainers hired by a local, State or Federal government agency, while engaging in their training responsibilities for and with athletes; and trainers working in conjunction with a specific athletic event, such as track meets triathlons, or similar single occurrence athletic or recreational events.

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

Any educational institution regulated by the State of California, including any portion of the institution providing Massage services, such as student clinics and work study programs, regulated under such State license.

Any other business or profession exempt from the provisions of Chapter 5.44 of the Municipal Code by State law.

~~Any duly licensed medical physician, doctors, surgeon, osteopath, chiropractor, acupuncturist, registered nurse, practical nurse, licensed vocational nurse, or to other persons licensed by the State while engaging in practices as part of their license.~~

~~Any barber, beautician, manicurist, cosmetologist, and esthetician who are licensed under the laws of the State of California while engaging in practices as part of their license. This exemption shall include hospitals, nursing homes, sanitariums, or any other health facility duly licensed by the State of California or to accredited high schools, junior colleges, or universities whose coaches and trainers are acting within the scope of their employment.~~

~~Shall not apply to physical therapist, exercise physiologist, and trainers of amateur, semiprofessional, or professional athletes or athletic teams while engaging in their training responsibilities for and with athletes.~~

~~Any massage technicians offering massage services at a temporary event only for the duration of the temporary event to a fully clothed client in public common areas where the primary use is not a massage establishment (i.e., chair massage services in a supermarket, massage services in the courtyard of an outdoor or indoor shopping center). These massage technicians shall comply with the permit requirements of Title 5 of this Code.~~

Massage, Accessory Use (land use). A use where massages occurs either permanently or temporarily in conjunction with a primary permitted land use, and the area where the massage occurs covers less than twenty percent (20%) of the gross floor of the principal use. All persons performing massages shall ~~be state-licensed~~ possess a current, valid and authentic certificate issued by the California Massage Therapy Council, ~~and~~ Massage, Accessory Use shall not classified as a Massage Establishment, and shall not be required to obtain a Massage Establishment License under Chapter 5.44 of the Municipal Code, but shall be subject to the all other provisions of Title 5 of this Municipal Code.

Section 20.600.180 "P" Definitions

Personal Services (land use). Any place of business providing services and accessory retail sales of products related to the services provided, categorized by the following programmatic elements:

1. General. An establishment providing non-medical services to individuals as a primary use, including the following service types.

- Barber shops
- Beauty salons
- Bridal salon/clothing rental
- Ear piercing services as ancillary use
- Hair salons
- Home electronics and small appliance repair
- ~~Massage accessory use (see definition in this chapter)~~
- Nail salons
- Seamstress/tailors tanning salons
- Permanent makeup services as an ancillary use to a beauty, hair, or nail salon. To qualify as an ancillary use, permanent makeup services cannot be provided in conjunction with any Tattoo and/or Body Art Facility. Said facilities are considered a Tattoo and/or Body Art Facility land use, subject to Section 20.400.200 (Tattoo and/or Body Art Facility)
- Shoe repair shops

2. Fitness/Health Facility. Any place of business or membership club providing facilities devoted especially to health, beauty, and relaxation that deals with the cosmetic, therapeutic, and/or holistic treatments, where people visit for professionally administered personal care treatments, including health or physical fitness clubs. Massage accessory use(s) may be permitted. A medical spa shall be classified as a Medical Office land use.

3. Instructional. Any place of business that is intended for group or individual instruction including art, dance, gymnastics/gymnasium, indoor batting cages, martial arts of any form, mediation, modeling agencies, pilates, pottery, rock climbing, tutoring, volleyball club/organizations, yoga, weight control clinics. Massage shall not be regulated under this land use.

PASSED AND ADOPTED by the Planning Commission of the City of San Marcos, at a regular meeting held on this 1st day of May, 2017, by the following roll call vote:

AYES: COMMISSIONERS:
NOES: COMMISSIONERS:
ABSENT: COMMISSIONERS:
ABSTAIN: COMMISSIONERS:

APPROVED:

Eric Flodine, Chairman

ATTEST:

Lisa Kiss, Office Specialist III



ATTACHMENT A

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, CALIFORNIA, REPEALING AND REPLACING CHAPTER 5.44, AND AMENDING SECTION 5.04.010 AND TITLE 20 OF THE SAN MARCOS MUNICIPAL CODE TO REGULATE MASSAGE ESTABLISHMENTS CONSISTENT WITH THE PROVISIONS OF ASSEMBLY BILL 1147

AGENDA ITEM
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ORDINANCE NO. 2017-_____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, CALIFORNIA, REPEALING AND REPLACING CHAPTER 5.44, AND AMENDING SECTION 5.04.010 AND TITLE 20 OF THE SAN MARCOS MUNICIPAL CODE TO REGULATE MASSAGE BUSINESSES CONSISTENT WITH THE PROVISIONS OF ASSEMBLY BILL 1147

WHEREAS, in September 2014, the Governor of California approved Assembly Bill (AB) 1147, which went into effect on January 1, 2015. With the passage of AB 1147, the State retains its enforcement powers over regulating the practice of massage and the voluntary certification of massage professionals through a non-profit organization called the California Massage Therapy Council (CAMTC). Individuals who satisfy the requirements of the Massage Therapy Act and possess a valid CAMTC certificate are permitted to perform massage in any jurisdiction within the State without being required to obtain a local license, permit or other authorization to perform massage; and

WHEREAS, AB 1147 also restored local government authority to regulate the business of massage, which was previously restricted by the adoption of Senate Bill (SB) 731 in 2008 and AB 619 in 2011. Specifically, AB 1147 expressly allows cities and counties to adopt and enforce local ordinances governing the licensing, zoning, and reasonable health and safety requirements of massage businesses; and

WHEREAS, the City desires to accommodate existing massage technicians and massage establishments within the City that are legally operating with a valid and current business license and other appropriate approvals issued by the City as of the effective date of this Ordinance, while regulating the business of massage in compliance with AB 1147; and

WHEREAS, since 2010, many jurisdictions throughout the State have reported a substantial increase in the number of massage establishments within their respective jurisdictions, and law enforcement agencies have reported an increase in complaints concerning potential illegal activity occurring at these establishments, including prostitution and human trafficking; and

WHEREAS, the City has seen a steady increase in massage establishments and inquiries relating to opening massage establishments over the past years. Currently, the City has 35 active massage establishments and 1 pending application. There are approximately 134 massage technicians practicing in the City that possess a certificate issued by CAMTC, and 4 massage technicians practicing as either an exempt holistic health practitioner or under a massage technician permit that do not possess a certificate issued by CAMTC; and

WHEREAS, imposing reasonable regulations on the business of massage is necessary to protect and preserve the health, safety and welfare of the community; maintain character, diversity and vitality of the City's commercial areas and the quality of life of its residents; preserve the aesthetics of surrounding neighborhoods; ensure the proposed uses are compatible with adjacent areas and land uses; minimize nuisances and decrease law

enforcement response related to those nuisances; appropriately condition any known or anticipated impacts caused by the land use; prevent the increase or over proliferation and over concentration of massage establishments within certain areas; and decrease the potential for illicit activity to occur at these businesses; and

WHEREAS, the City currently regulates massage under Chapter 5.44 of the San Marcos Municipal Code (SMMC), as well as under certain provisions contained in SMMC section 5.04.010 and Title 20 of the SMMC (Zoning Ordinance). These provisions are outdated and do not reflect current State laws and requirements consistent with the adoption of AB 1147; and

WHEREAS, the City desires to eliminate the City's involvement in licensing massage technicians by requiring all persons who perform massage within the City's jurisdiction to possess a valid and current certificate issued by CAMTC; and

WHEREAS, the City further desires to encourage the ethical practice of massage therapy and the operation of massage establishments by adopting local licensing, zoning and reasonable health and safety requirements to regulate the business of massage in compliance with State law. Regulating massage establishments consistent with the provisions of AB 1147 is necessary to protect the health, safety and welfare of the community, prevent adverse impacts that these businesses may have on nearby properties and residents, and retain land use authority over the licensing and permitting of land uses within its jurisdiction, while recognizing massage therapy as a legitimate business; and

WHEREAS, pursuant to California Government Code sections 51030-51034 and California Business and Professions Code sections 4600 et seq. (Massage Therapy Act), the City desires to repeal and replace Chapter 5.44 of the SMMC, and amend Section 5.04.010 of the SMMC, and certain regulations under the Zoning Ordinance to reflect updated State laws and regulations relating to the business of massage; and

WHEREAS, on March 30, 2017, the City held a public meeting to provide information to and receive input from local residents and businesses concerning the proposed massage regulations. During and following the public meeting, City staff received helpful feedback from several owners of existing massage businesses operating in the City, as well as words of gratitude from a number of individuals regarding the City's desire to enact additional regulations to protect and preserve the community and legally-operated businesses. City staff considered the public input it received in drafting the provisions of this Ordinance in an effort to acknowledge and respond to the needs of the City's existing massage businesses while addressing the City's concerns about regulating massage businesses in an ethical manner and in compliance with State law; and

WHEREAS, on May 1, 2017, the Planning Commission held a duly-noticed public hearing concerning the proposed land use regulations governing massage establishments, and [unanimously] recommended approval of those regulations to the City Council.

NOW, THEREFORE, the City Council of the City of San Marcos, California, in accordance with the freedom afforded to charter cities generally, and by the Charter of the City of San Marcos specifically, does ordain as follows:

Section 1. Recitals. The foregoing recitals are true and correct.

Section 2. Amending SMMC Chapter 5.04. Existing Section 5.04.010 of the Municipal Code is hereby amended to read as shown in blacklined strikeouts, as follows:

CHAPTER 5.04

UNIFORM LICENSING PROCEDURES

SECTIONS:

5.04.010	License—Required
5.04.020	Issuing Officer
5.04.030	Licensing procedure--Application
5.04.040	License--Not transferable
5.04.050	License--Fee
5.04.060	License--Renewal
5.04.070	License--Posting
5.04.080	Application--Investigation
5.04.090	Application--Denial
5.04.100	License suspension or revocation
5.04.110	Hearings--Issuing Officer
5.04.120	Stay of suspension or revocation
5.04.130	Exception to hearing procedure
5.04.140	Appeal
5.04.150	Evidence

5.04.010 License--Required. It is unlawful for any person, firm, or corporation to engage in, conduct, manage or carry on any of the following businesses, practices, professions, or occupations within the City without first having obtained a license therefore in accordance with the uniform licensing procedure:

- (a) Amusement devices and establishments;
- (b) Aircraft ticket brokers;
- (c) Bingo;
- (d) Carnivals and go-cart centers;
- (e) Coupon books, distribution of;
- (f) Dances and dance halls;
- (g) Dances, teenage;

- (h) Entertainment;
- (i) Junk, automotive wrecking, non-operating vehicle storage yards;
- (j) Kennels;
- (k) Massage establishments;
- ~~(l) — Massage technician;~~
- ~~(m) — Massage technician trainee;~~
- (l) Secondhand dealers;
- (m) Solicitors:
 - (1) License;
 - (2) Identification card.

Section 3. Repealing and Replacing SMMC Chapter 5.44. Existing Chapter 5.44 of the Municipal Code is hereby repealed in its entirety and replaced with the following:

CHAPTER 5.44

MESSAGE ESTABLISHMENTS AND MESSAGE TECHNICIANS

SECTIONS:

5.44.010	Citation of Chapter
5.44.020	Purpose and Intent
5.44.030	Rules of Construction
5.44.040	Definitions
5.44.050	CAMTC Certificate Required
5.44.060	Message Establishment License
5.44.070	Message Establishment – Operating Requirements
5.44.080	Outcall Message License
5.44.090	Outcall Message – Operating Requirements
5.44.100	Advertising
5.44.110	Inspection by Officials
5.44.120	Violation and Penalty
5.44.130	Public Nuisance
5.44.140	Suspension or Revocation of Message Establishment License
5.44.150	Applicability of Regulations to Existing Businesses
5.44.160	Exemptions
5.44.170	Severability
5.44.180	Fee Modification and Allocation

5.44.010 Citation of Chapter. This Chapter may be cited as the San Marcos Massage Establishments and Massage Technicians Ordinance.

5.44.020 Purpose and Intent. It is the purpose and intent of this Chapter to provide for the orderly regulation of massage businesses within the City in the interest of the public health, safety and welfare. This Chapter relies upon the State of California certification process of massage professionals through the California Massage Therapy Council pursuant to California Business and Professions Code Sections 4600 et seq. This Chapter is adopted under the authority of California Government Code Sections 37101 and 51030 through 51034; California Business and Professions Code Sections 460(c) and 16000; and the California Constitution Article XI, Section 7.

5.44.030 Rules of Construction. This Ordinance shall not be construed in a manner that is inconsistent with any State law governing the practice of massage.

5.44.040 Definitions. Whenever the following words or phrases are used in this Chapter, they shall mean:

(a) **California Massage Therapy Council or CAMTC** shall mean the non-profit organization created by the State of California pursuant to California Business and Professions Code Sections 4600, et seq., to regulate the massage industry.

(b) **CAMTC Certificate** shall mean a current, valid and authentic certificate issued by the California Massage Therapy Council to a Massage Technician.

(c) **City** shall mean the City of San Marcos.

(d) **Health Department** shall mean the Departments of Environmental Health and Health and Human Services Agency of the County of San Diego.

(e) **Inspector** shall mean anyone employed with the Building Division, the City Attorney's office and/or law enforcement, who may conduct an inspection required by the City's regulatory requirements.

(f) **Issuing Officer** shall mean the Finance Director, or his or her designee.

(g) **Massage** shall mean any method of pressure on, friction against, channeling energy through, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external parts of the body, or other methods designed to create similar effects, to produce increased awareness, relaxation, pain relief, injury rehabilitation, or neuromuscular re-education. Regulations under this Chapter apply to all forms of massage, whether or not it is called massage and whether or not the massage is performed with the patron fully clothed, with or without the hands or other parts of the body, with or without the aid of any mechanical or electrical apparatus or appliances, or with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments, or other similar preparations commonly used in this practice. For purposes of this definition, the terms "massage," "massage therapy," and "bodywork" shall have the same meaning.

Examples of Massage include, but are not limited to, Swedish massage, sports massage, shiatsu, polarity therapy, rolfing, heller work, reiki, and reflexology. Massage does not include contact with Specified Anatomical Areas, as defined by and prohibited under this Chapter.

(h) **Massage Establishment** shall mean any establishment having a fixed place of business where any Person performs Massage. For purposes of this definition, any establishment that performs any combination of Massage and bathhouse facilities as that term is defined in Chapter 5.46 of this Municipal Code, including but not limited to wet and dry heat rooms, pools, and hot tubs, shall be deemed a Massage Establishment.

(i) **Massage Technician** shall mean any Person who performs Massage, as defined by this Chapter, on another Person for any form of consideration whatsoever. For purposes of this definition, the terms "massage therapist," "massage practitioner" or any other terms used within the Massage industry shall have the same meaning.

(j) **Person** shall mean any natural person, firm, association, business, trust, organization, partnership, corporation, company, joint venture, or any other entity or combination of individuals of whatever form or character.

(k) **Perform Massage** shall mean the act of performing, providing, offering, delivering, dispensing, engaging in, or carrying on, or permitting to be performed, provided, offered, delivered, dispensed, engaged in, or carried on Massage for any form of consideration whatsoever.

(l) **Operator** shall mean any Person who supervises, manages, directs, organizes, controls, or in any other way is responsible for or in charge of the daily operations, conduct or activities of a Massage Establishment.

(m) **Outcall Massage** shall mean the act of Performing Massage at any location other than a fixed place of business operating as a Massage Establishment. For purposes of this definition, the terms "off-premises massage" or any other terms used with the Massage industry shall have the same meaning.

(n) **Owner** shall mean any of the following:

(1) The sole practitioner of a sole proprietorship that owns a Massage Establishment;

(2) Any general partner of a general or limited partnership that owns a Massage Establishment;

(3) Any Person who has five (5) 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 entity that owns a Massage Establishment; or

(6) Any Person identified as an owner on the Massage Establishment license.

(o) ***Specified Anatomical Area*** shall mean any of the following areas of the human body: pubic region, human genitals, perineum, anal region and the areas of the female breast that includes the areola and the nipple.

5.44.050 CAMTC Certificate Required.

(a) Persons. Except as otherwise provided in this Chapter, it shall be unlawful for any Person to Perform Massage as an employee, sole practitioner, or independent contractor of a Massage Establishment, or as an Outcall Massage service, or in any other capacity within the jurisdiction of the City, unless that Person possesses a current, valid and authentic CAMTC Certificate.

(b) Establishments. Except as otherwise provided in this Chapter, it shall be unlawful for any Massage Establishment to operate within the jurisdiction of the City, unless all Persons utilized by the Massage Establishment to Perform Massage, whether as an employee, sole practitioner, independent contractor, or otherwise, possess a current, valid and authentic CAMTC Certificate.

5.44.060 Massage Establishment License.

(a) Uniform Licensing Procedure. Except as otherwise provided in this Chapter, the procedure to follow to obtain a license to operate a Massage Establishment within the jurisdiction of the City is that set forth in the Uniform Licensing Procedure under Chapter 5.04 of this Municipal Code.

(b) License Application. An application for a license to operate a Massage Establishment shall be filed on a form provided by the City, shall be signed and submitted under penalty of perjury, and shall include the following information:

(1) Legal name of the Massage Establishment.

(2) Form of business under which the Massage Establishment will operate (i.e. corporation, limited liability company, general or limited partnership, sole proprietorship, or any other form).

(3) Address of the Massage Establishment.

(4) Legal name, address and telephone number of the real property owner of the premises at which the Massage Establishment will operate, and an executed copy of the lease or rental agreement for the premises.

(5) Complete description of all services to be provided at the Massage Establishment.

(6) Legal name of all Massage Technicians who will Perform Massage at the Massage Establishment and a copy of their current, valid and authentic CAMTC Certificate.

(7) Legal name of all Owners and Operators of the Massage Establishment.

(8) Current residential address and telephone number, previous two residential addresses, and current business address and telephone number of all Owners and Operators of the Massage Establishment.

(9) Current, valid and authentic driver's license and/or photo identification card issued by a State or Federal government agency, or other photographic identification bearing a bona fide seal by a foreign government, of all Owners and Operators of the Massage Establishment.

(10) Date of birth, gender, height, weight, color of hair, and color of eyes of all Owners and Operators of the Massage Establishment.

(11) Signed statement by each Owner and Operator of the Massage Establishment who does not possess a current, valid and authentic CAMTC Certificate, authorizing law enforcement to conduct a background check of that individual, and including the following: (i) any and all aliases and fictitious names used by the individual within the last five (5) years; (ii) the individual's business, occupation and employment history for the five (5) years preceding the date of the Massage Establishment license application; (iii) the inclusive dates of such employment history; (iv) the name and address of any Massage business or similar business owned or operated by the individual; and (v) any other information as may be reasonably required by an Inspector to identify the individual and to ensure compliance with all applicable laws, rules and regulations.

(12) Signed statement by each Owner and Operator of the Massage Establishment acknowledging the following: (i) all of the information contained in the Massage Establishment license application is true and correct; (ii) all Owners and Operators are responsible for the Massage Establishment and the conduct of all Persons who Perform Massage at the Massage Establishment; and (iii) failure to comply with the California Business and Professions Code Sections 4600 et seq., or with any local, State or Federal laws, rules or regulations, and/or the provisions of this Chapter may result in revocation of the Massage Establishment and/or City business license.

(13) Copy of a current and valid public health permit to operate a Massage Establishment issued by the Health Department, unless deemed to be exempt from this requirement pursuant to Sections 5.44.070(z) or 5.44.160 of this Municipal Code, or some other applicable City or Health Department exemption.

(c) License Application Fee. The nonrefundable license application fee to operate a Massage Establishment, and the nonrefundable annual license renewal fee, shall be set by resolution adopted by the City Council. The appropriate fee shall accompany the submission of each Massage Establishment license

application to defray in part the reasonable costs of inspection, investigation and enforcement of this Chapter.

(d) Approval or Denial of License. The Issuing Officer shall issue a license to operate a Massage Establishment within the jurisdiction of the City to any Massage Establishment that demonstrates the following:

(1) The Massage Establishment would comply with all applicable laws, including but not limited to, the City's building, zoning, land use approvals, business license regulations; applicable Health Department regulations; and all other applicable local, State and Federal laws, rules and regulations.

(2) The Massage Establishment employs or uses only Massage Technicians to Perform Massage who possess a current and valid CAMTC Certificate.

(3) The Owners and Operators of the Massage Establishment have provided all information, documentation, and assurances required by this Chapter to the City; have not failed to reveal any fact material to qualification; and have not supplied information that is untrue or misleading as to a material fact pertaining to the qualification criteria.

(4) The background check for any Owners and Operators authorized by this Chapter shows that such Owners and Operators have not been required to register under the provisions of Penal Code Section 290 (sex offender registration); has not been convicted of a violation of Penal Code Section 266(h) (pimping), 266(i) (pandering), 314 (indecent exposure), 315 (keeping or residing in a house of ill-fame for the purposes of prostitution or lewdness), 316 (keeping a disorderly house, disturbing the peace for the purposes of assignation or prostitution), 318 (prevailing upon any Person to visit a place for prostitution), 647(a) (soliciting or engaging in lewd or dissolute conduct in a public place), 647(b) (soliciting or engaging in prostitution), 653.22 (loitering with intent to commit prostitution), 653.23 (supervision of prostitute), or has not pled nolo contendere or has not been convicted of a violation of any lesser related offense, including, but not limited to, Penal Code Section 415, in satisfaction of, or as a substitute for, any of the aforementioned offenses; has not been convicted of any felony drug-related offense involving the controlled substance specified in Health and Safety Code 11054, 11055, 11056, 11057 or 11058; has not been convicted of any act involving theft, dishonesty, fraud, deceit or moral turpitude; has not been convicted in any other state of any offense which, if committed or attempted in this state, would have been punishable as one or more of the aforementioned offenses; has not had an individual or business permit or license with any agency, board, city, county, territory or state denied, revoked, restricted, or suspended within the last ten (10) years; and has not been subject to an injunction for nuisance under Penal Code Sections 11225 through 11235 (red light abatement) within the last ten (10) years.

The Issuing Officer may deny an application for a license to operate a Massage Establishment within the jurisdiction of the City to any Massage Establishment that fails to demonstrate the foregoing requirements and/or for any reason specified under Section 5.04.090 of this Municipal Code.

(e) Transfer of License. A Massage Establishment license issued by the City pursuant to this Chapter shall not be transferred, sold, or assigned to any other Person or entity, except with the prior written approval of the City. A written request for such transfer shall contain the same information for the new ownership as is required on any application for a new Massage Establishment license issued under this Chapter. No Massage Establishment license that is revoked or suspended by the City shall be transferred to any other Person or entity at that location for a period of five (5) years from the date of such revocation or suspension. Any such transfer, sale, or assignment, or attempted transfer, sale or assignment of a Massage Establishment license in violation of this Chapter is hereby declared invalid and the license shall become void effective on the date of such transfer, sale, or assignment, or attempted transfer, sale or assignment.

(f) Change of Location. A change of location of a licensed Massage Establishment shall be approved by the City and law enforcement provided the Massage Establishment is in compliance with all applicable provisions of this Chapter and all local laws, rules and regulations, and subject to all applicable provisions of Title 20 of this Municipal Code.

5.44.070 Massage Establishment – Operating Requirements. No Person shall engage in, conduct, carry on or perform, or permit to be engaged in, conducted, carried on or performed Massage at any Massage Establishment within the jurisdiction of the City unless the Inspector and the Health Department determine that all of the following requirements are met:

(a) It is unlawful for an Owner or Operator to operate a Massage Establishment unless the original CAMTC Certificate for each Person employed or utilized to Perform Massage is posted in public view, and a CAMTC identification card is worn and clearly visible on any Massage Technician performing Massage at a Massage Establishment.

(b) Massage shall be performed only between the hours of 8:00 a.m. and 10:00 p.m. No Massage shall be performed at any Massage Establishment between the hours of 10:00 p.m. and 8:00 a.m.

(c) A list of the services available and the costs of such services shall be posted in an open and conspicuous public place on the Massage Establishment premises. The services shall be described in readily understandable language. No Owner or Operator shall permit, and no Massage Technician or Person shall offer or perform any service other than those posted, nor shall any Owner, Operator, Massage Technician or Person request or charge a fee for any service other than those included on the list of available services.

(d) For each Massage performed, the Massage Establishment shall keep a complete and legible written record of the following information: (i) the date and hour the Massage was performed; (ii) the service received; (iii) the name or initials of the employee entering the information; and (iv) the name of the Massage Technician performing the Massage. Such records shall be open to inspection and copying by an Inspector. Such records shall be retained on the premises of the Massage Establishment for a period of two (2) years and shall be immediately available for inspection during business hours.

(e) A recognizable and legible sign complying with the sign regulations of this Municipal Code shall be posted at the main entrance of each Massage Establishment identifying the premises as a Massage Establishment.

(f) A minimum light level of no less than five-foot candles at any point within the room shall be maintained in each room or enclosure where Massage is performed.

(g) Adequate dressing, locker and toilet facilities shall be provided for patrons, and shall meet the following health, safety and sanitation requirements:

(1) In steam rooms, a waterproof floor covering shall be provided which extends up the walls at least six inches and shall be covered at the floor-wall juncture with at least a three-eighths inch (3/8) radius. Toilet room shall be of similar construction; and

(2) Walls of toilet and bathing facilities shall be smooth, waterproof and kept in good repair.

(h) Cabinets shall be provided for the storage of clean linen. Approved containers shall be provided for the storage of all soiled linen.

(i) Minimum ventilation shall be provided in accordance with the building code of the City.

(j) A minimum of one separate wash basin provided with hot and cold running water, soap and individual towels in a dispenser shall be provided for use by employees. This wash basin shall be separate from wash basins located in toilet rooms.

(k) All plumbing and electrical installations shall be installed under permit and inspection of the Inspector and such installations shall be installed in accordance with the Uniform Building Code and Uniform Plumbing Code.

(l) All walls, ceilings, floors, steam rooms, and all other physical facilities must be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms, shall be thoroughly cleaned and disinfected with a disinfectant approved by the Health Department each day the business is in operation.

(m) Towels, sheets, and linens of all types and items for personal use of operators and patrons shall be clean and freshly laundered. Towels, clothes, and sheets shall not be used for more than one (1) Person. Reuse of such linen is prohibited unless the same has been first laundered. Common use of towels or linens is prohibited. Heavy white paper may be substituted for sheets, provided, that such paper is used once for each Person and then discarded into a sanitary receptacle.

- (n) All lavatories or washbasins at all Massage Establishments shall be provided with hot and cold running water, soap and single service towels in wall-mounted dispensers.
- (o) Security deposit facilities for the protection of the valuables of the patrons shall be available.
- (p) Disinfecting agents and sterilizing equipment approved by the Health Department shall be provided for any instruments used in performing Massage.
- (q) Pads used on Massage tables shall be covered in a workmanlike manner with durable washable plastic or other acceptable waterproof material by all Massage Technicians.
- (r) No exterior entrance which is regularly used by the public for ingress or egress shall be locked during business hours, unless the Massage Establishment is a business entity owned by one individual with one or no employees or independent contractors, provided that any such exterior entrance is equipped with panic hardware or other similar equipment that would provide an accessible form of egress in the event of an emergency.
- (s) All unoccupied rooms and areas shall be subject to reasonable inspection during hours of the business operation.
- (t) In those establishments where bathhouses, steam rooms or sauna baths are provided, if male and female patrons are to be served simultaneously, separate bathhouses, steam rooms or sauna rooms shall be provided for male and female patrons.
- (u) With the exception of bathrooms and dressing rooms, no Owner or Operator in charge of or in control of a Massage Establishment may enter any such area which is used by the patrons, unless the patron's Specified Anatomical Areas are fully covered.
- (v) No Owner or Operator in charge of or in control of a Massage Establishment shall permit any Massage Technician to Perform Massage on, or intentionally touch, the Specified Anatomical Areas of another Person, regardless of whether the contact is over or under the patron's clothing.
- (w) No Owner or Operator in charge of or in control of a Massage Establishment shall permit any Massage Technician to be on the premises of a Massage Establishment during its hours of operation while performing or available to Perform Massage, unless the Massage Technician is dressed in professional attire based on the custom and practice of the Massage profession in California. The uniform shall be made of non-transparent material and may not expose any Specified Anatomical Area. Swim attire, lingerie and undergarments may not be used as a uniform or displayed as part of a uniform. Appropriate swim attire may be worn by a Massage Technician while performing a water-based Massage modality approved by CAMTC.

(x) No Massage Establishment shall be used for residential or sleeping purposes. No Owner or Operator in charge of or in control of a Massage Establishment shall permit any Person, including but not limited to the Owner or Operator in charge of or in control of the Massage Establishment or any Massage Technician, to live on the premises of the Massage Establishment.

(y) An Owner or Operator must be on the premises of a Massage Establishment at all times during its hours of operation.

(z) Any existing Massage Establishment legally established prior to the adoption of this Chapter that operates with a valid and current business license issued by the City and all other necessary approvals, and that operates in compliance with all local, State and Federal laws, ordinances, rules and regulations, which was previously determined by the City and/or the Health Department to be exempt from the requirement to obtain a public health permit issued by the Health Department to operate a Massage Establishment, shall not be required to comply with subsections (j) and (g) under this Section or Section 5.44.060(b)(13) of this Municipal Code during the period of time that the Massage Establishment operates in its current location. This exemption shall no longer apply once the Massage Establishment moves to any other location within the City. The Massage Establishment shall be required to comply with all other applicable local, State and Federal laws, ordinances, rules and regulations, including, but not limited to, the provisions of this Municipal Code and the Zoning Ordinance.

5.44.080 Outcall Massage License.

(a) Uniform Licensing Procedure. Except as otherwise provided in this Chapter, the procedure to follow to obtain a license to provide Outcall Massage within the jurisdiction of the City is that set forth in the Uniform Licensing Procedure under Chapter 5.04 of this Municipal Code.

(b) License Application. An application for a license to provide Outcall Massage shall be filed on a form provided by the City, shall be signed and submitted under penalty of perjury, and shall include the following information:

(1) Legal name of the Outcall Massage service.

(2) Form of business under which the Outcall Massage service will operate (i.e. corporation, limited liability company, general or limited partnership, sole proprietorship, or any other form).

(3) Complete description of all services to be provided as part of the Outcall Massage service.

(4) Legal name of all Massage Technicians who will perform Outcall Massage and a copy of their current, valid and authentic CAMTC Certificate.

(5) Legal name of all Owners and Operators of the Outcall Massage business, if applicable.

(6) Current residential address and telephone number, and previous two residential addresses of the Massage Technician who will perform Outcall Massage, and of all Owners and Operators of the Outcall Massage business.

(7) Current, valid and authentic driver's license and/or photo identification card issued by a State or Federal government agency, or other photographic identification bearing a bona fide seal by a foreign government, of the Massage Technician who will perform Outcall Massage, and of all Owners and Operators of the Outcall Massage business.

(8) Date of birth, gender, height, weight, color of hair, and color of eyes of the Massage Technician who will perform Outcall Massage, and of all Owners and Operators of the Outcall Massage business.

(9) Signed statement by each Owner and Operator of the Outcall Massage business who does not possess a current, valid and authentic CAMTC Certificate, authorizing law enforcement to conduct a background check of that individual, and including the following: (i) any and all aliases and fictitious names used by the individual within the last five (5) years; (ii) the individual's business, occupation and employment history for the five (5) years preceding the date of the Outcall Massage license application; (iii) the inclusive dates of such employment history; (iv) the name and address of any Massage business or similar business owned or operated by the individual; and (v) any other information as may be reasonably required by an Inspector to identify the individual and to ensure compliance with all applicable laws, rules and regulations.

(10) Signed statement of the Massage Technician who will perform Outcall Massage, and of all Owners and Operators of the Outcall Massage business, acknowledging the following: (i) all of the information contained in the Outcall Massage license application is true and correct; and (ii) failure to comply with the California Business and Professions Code Sections 4600 et seq., or with any local, State or Federal laws, rules or regulations, and/or the provisions of this Chapter may result in revocation of the City business license and/or the Outcall Massage license.

(c) License Application Fee. The nonrefundable license application fee to provide Outcall Massage, and the nonrefundable annual license renewal fee, shall be set by resolution adopted by the City Council. The appropriate fee shall accompany the submission of each Outcall Massage license application to defray in part the reasonable costs of inspection, investigation and enforcement of this Chapter.

(d) Approval or Denial of License. The Issuing Officer shall issue a license to provide Outcall Massage within the jurisdiction of the City to any Outcall Massage service that demonstrates the following:

(1) The Outcall Massage business and the Massage Technician who will perform Outcall Massage would comply with all applicable laws, including but not limited to, the City's business license regulations; applicable Health Department regulations; and all other applicable local, State and Federal laws, rules and regulations.

(2) The Outcall Massage business and the Massage Technician who will perform Outcall Massage possesses a current and valid CAMTC Certificate.

(3) The Owners and Operators of the Outcall Massage business and the Massage Technician who will perform Outcall Massage have provided all information, documentation, and assurances required by this Chapter to the City; have not failed to reveal any fact material to qualification; and have not supplied information that is untrue or misleading as to a material fact pertaining to the qualification criteria.

(4) The Owners and Operators of the Outcall Massage business must comply with section 5.44.060(d)(4) of this Municipal Code if the Owners and Operators of the Outcall Massage business do not possess a current, valid and authentic CAMTC Certificate.

The Issuing Officer may deny an application for a license to provide Outcall Massage within the jurisdiction of the City to any Massage Technician who will perform Outcall Massage that fails to demonstrate the foregoing requirements and/or for any reason specified under Section 5.04.090 of this Municipal Code.

(e) Transfer of License. An Outcall Massage license issued by the City pursuant to this Chapter shall not be transferred, sold, or assigned to any other Person or entity, except with the prior written approval of the City. A written request for such transfer shall contain the same information for the new ownership as is required on any application for a new Outcall Massage license issued under this Chapter. Any such transfer, sale, or assignment, or attempted transfer, sale or assignment of an Outcall Massage license in violation of this Chapter is hereby declared invalid and the license shall become void effective on the date of such transfer, sale, or assignment, or attempted transfer, sale or assignment.

5.44.090 Outcall Massage – Operating Requirements. No Person shall engage in, conduct, carry on, or perform Outcall Massage within the jurisdiction of the City unless all of the following requirements are met:

(a) A CAMTC identification card must be worn and clearly visible on any Massage Technician performing Outcall Massage.

(b) No Outcall Massage shall be performed in a hotel or motel room, or in the private residence of the Massage Technician performing Outcall Massage.

(c) Outcall Massage shall be performed only between the hours of 8:00 a.m. and 10:00 p.m. No Outcall Massage shall be performed between the hours of 10:00 p.m. and 8:00 a.m.

(d) A list of the services available and the costs of such services shall be provided to each patron prior to performing Outcall Massage. The services shall be described in readily understandable language. No Massage Technician performing Outcall Massage shall offer or perform any service other than those included on the list of services.

(e) For each Outcall Massage performed, the Massage Technician shall keep a complete and legible written record of the following information: (i) the date and hour the Outcall Massage was performed; and (ii) the service received. Such records shall be open to inspection and copying by an Inspector. Such records shall be retained by the Massage Technician performing the Outcall Massage for a period of two (2) years and shall be immediately available for inspection during business hours.

(f) Towels, sheets, and linens of all types and items for personal use of Owners, Operators and patrons shall be clean and freshly laundered. Towels, clothes, and sheets shall not be used for more than one (1) Person by any Massage Technician performing Outcall Massage. Reuse of such linen is prohibited unless the same has been first laundered. Common use of towels or linens is prohibited. Heavy white paper may be substituted for sheets, provided, that such paper is used once for each Person and then discarded into a sanitary receptacle.

(g) Disinfecting agents and sterilizing equipment approved by the Health Department shall be provided for any instruments used in performing Outcall Massage.

(h) Pads used on Massage tables shall be covered in a workmanlike manner with durable washable plastic or other acceptable waterproof material.

(i) No Outcall Massage shall be performed on, or involve the intentional touching of, the Specified Anatomical Areas of another Person, regardless of whether the contact is over or under the patron's clothing.

(j) No Outcall Massage shall be performed unless the Massage Technician is dressed in professional attire based on the custom and practice of the Massage profession in California. The uniform shall be made of non-transparent material and may not expose any Specified Anatomical Area. Swim attire, lingerie and undergarments may not be used as a uniform or displayed as part of a uniform. Appropriate swim attire may be worn by a Massage Technician while performing a water-based Massage modality approved by CAMTC.

5.44.100 Advertising.

(a) All advertising to Perform Massage within the jurisdiction of the City by any Massage Technician shall include the name under which the Massage Technician is certified by CAMTC and their CAMTC Certificate number. This requirement shall apply to any and all types of advertising, including, but not limited to, business cards, written pamphlets, social media, and Internet websites, including online bulletin boards.

(b) All advertising to Perform Massage at any massage Establishment or as an Outcall Massage service within the jurisdiction of the City shall include the name of the Massage Establishment or Outcall Massage business and the City business license number. This requirement shall apply to any and all types of advertising, including, but not limited to, business cards, written pamphlets, social media, and Internet websites, including online bulletin boards.

(c) No Person, Massage Technician or Massage Establishment shall engage in sexually suggestive advertising related to Massage services.

(d) No Person, Massage Technician or Massage Establishment shall place, publish or distribute, or cause to be placed, published or distributed, any advertising matter related to performing any service prohibited under this Chapter.

5.44.110 Inspections by Officials. The investigating and enforcing officials, including, but not limited to, any Inspector and the Health Department, shall have the right to enter the premises of any Massage Establishment from time to time during regular business hours for the purpose of making a reasonable inspection to observe and enforce compliance with the provisions of this Chapter and all other applicable local, State and Federal laws, rules or regulations.

5.44.120 Violation and Penalty. Every Person, except those Persons who are specifically exempt from this Chapter, whether acting as an individual, employee, independent contractor, Owner, employee or independent contractor of the Owner, Operator, employee or independent contractor of the Operator, or acting in any other role for the individual, employee, independent contractor Owner or Operator, who violates any provision of this Chapter shall be guilty of a misdemeanor. Upon a conviction under this subsection, the Court shall, in addition to any other punishments it imposes, impose a fine of \$100.00, no part of which shall be suspended.

5.44.130 Public Nuisance. It shall be unlawful and a public nuisance for any Person to operate, conduct or maintain a Massage Establishment or Outcall Massage service contrary to the provisions of this Chapter. The City may, in addition to, or in lieu of, prosecuting a criminal action hereunder, commence proceedings for the abatement, removal and/or injunction thereof in any manner provided by law.

5.44.140 Suspension or Revocation of License.

(a) **Grounds for Suspension or Revocation.** In addition to the grounds for suspension or revocation imposed under Chapter 5.04 of this Municipal Code, a Massage Establishment license or Outcall Massage license issued under this Chapter may be suspended or revoked upon any of the following grounds:

(1) An Owner or Operator of the Massage Establishment is required to register under the provisions of Penal Code Section 290 (sex offender registration); is convicted of a violation of Penal Code Section 266(i) (pandering), 314 (indecent exposure), 315 (keeping or residing in a house of ill-fame), 316 (keeping a disorderly house, disturbing the peace), 318 (prevailing upon Person to visit a place for prostitution), 647(a) (soliciting or engaging in lewd or dissolute conduct in a public place), 647(b) (soliciting or engaging in prostitution), 653.22 (loitering with intent to commit prostitution), 653.23 (supervision of prostitute); or has pled nolo contendere or has been convicted of a violation of any lesser related offense, including, but not limited to, Penal Code Section 415, in satisfaction of, or as a substitute for, any of the aforementioned offenses; has been convicted of any felony drug-related offense involving the controlled substance specified in Health

and Safety Code Section 11054, 11055, 11056, 11057 or 11058; has been convicted of any act involving theft, dishonesty, fraud, deceit or moral turpitude; has a business permit or license denied, revoked, restricted, or suspended by any agency, board, city, county, territory, or state; is subject to an injunction for nuisance pursuant to Penal Code Sections 11225 through 11235 (red light abatement); or is convicted in another state of any offense which, if committed or attempted in this state, would have been punishable as one or more of the aforementioned offenses.

(2) A material misrepresentation was included on the application for a Massage Establishment license or Outcall Massage license, renewal or transfer.

(3) Violations of California Business and Professions Code Sections 4600 et seq., any local, State or Federal laws, rules or regulations, and/or the provisions of this Chapter have occurred on the premises of the Massage Establishment.

(4) An Owner or Operator has failed to comply with one or more of the Massage Establishment or Outcall Massage operating requirements.

(5) A Massage Technician, Owner or Operator has failed to comply with the Massage advertising requirements under this Chapter and/or State law.

(6) Any repeat violations or any arrests that result in criminal charges shall provide a prima facie basis for revocation.

(7) A Massage Establishment license or Outcall Massage license that is not renewed within 30 days after the expiration date shall be automatically suspended. If not renewed, a license shall be automatically revoked six months after the expiration date. Additionally, civil, criminal and/or administrative citations may be issued during this interim period for failure to maintain the appropriate Massage Establishment license or Outcall Massage license. To reinstate the paid status of a Massage Establishment license or Outcall Massage license that has been suspended due to the failure to timely pay the renewal fee, the Owner or Operator must submit the Massage Establishment license or Outcall Massage license renewal fee plus a reinstatement fee of ten percent (10%) of the Massage Establishment license or Outcall Massage license renewal fee.

(b) Appeal of Suspension or Revocation. The appeal procedures for the suspension or revocation of a Massage Establishment license or Outcall Massage license shall be those set forth in Chapter 5.04 of this Municipal Code.

5.44.150 Applicability of Regulations to Existing Massage Businesses.

Unless expressly exempted by this Chapter, the provisions of this Chapter shall be applicable to all Massage Technicians and Massage Establishments described herein, whether the activities herein described were established before or after the effective date of this Chapter. Any existing Massage Technician who performs Massage and any Massage Establishment that employs or utilizes Persons to Perform Massage within the jurisdiction of the City, that operates with a valid and current business license issued by the City and all other necessary approvals issued prior to the effective date of this Chapter, and that operates in compliance

with all local, State and Federal laws, ordinances, rules and regulations, must be in full compliance with Section 5.44.050 of this Chapter no later than one (1) year following the effective date of this Chapter, and must be in full compliance with all other requirements of this Chapter and Title 20 of this Municipal Code no later than thirty (30) days following the effective date of this Chapter.

5.44.160 Exemptions. This Chapter shall not apply to the following classes of Persons, and no Massage Establishment license or Outcall Massage license shall be required to Perform Massage by or under the control and direction of the following Persons or entities:

(a) Physicians, surgeons, chiropractors, osteopaths, physical therapists, occupational therapists, exercise physiologists, and acupuncturists who are duly licensed to practice their respective professions in the State of California.

(b) Registered Nurses, Practical Nurses and Licensed Vocational Nurses who are licensed to practice under the laws of this State.

(c) Hospitals, nursing homes, mental health facilities, or any other health facility duly licensed by the State of California.

(d) Trainers of any amateur, semiprofessional or professional athletes or athletic teams, or athletic trainers hired by a local, State or Federal government agency, while engaging in their training responsibilities for and with athletes; and trainers working in conjunction with a specific athletic event, such as track meets triathlons, or similar single occurrence athletic or recreational events.

(e) Barbers, beauticians, cosmetologists, aestheticians and manicurists who are duly licensed under the laws of the State of California while engaging in practices within the scope of their licenses.

(f) Any educational institution regulated by the State of California, including any portion of the institution providing Massage services, such as student clinics and work study programs, regulated under such State license.

(g) Any other business or profession exempt from the provisions of this Chapter by State law.

Any Person who performs Massage by or under the control and direction of the Persons or entities listed in this Section shall possess a current, valid and authentic CAMTC Certificate.

5.44.170 Severability. If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have adopted the Chapter and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause or phrase is declared invalid.

5.44.180 Fee Modification and Allocation.

(a) All fees established by this Chapter shall be reviewed annually and adjusted, as necessary, by the City Manager, or his designated representative, to determine whether such fees are adequate to cover the cost of implementing the provisions of this Chapter.

(b) All fees established by this Chapter shall be paid to the City for deposit in general fund revenue to be allocated as determined by the City to defray the cost in enforcing the provisions of this Chapter. (Ord. No. _____, repeals Ord. No. 88-784, 5-24-88)

Section 4. Amending SMMC Title 20. Existing Tables 20.220-2 and 20.225-6 and Sections 20.405.070, 20.600.150 and 20.600.180 of the Zoning Ordinance are hereby amended, and Section 20.400.250 is hereby added to read as shown in blacklined, underlined additions and strikeouts, as follows:

CHAPTER 20.220 COMMERCIAL ZONES

Table 20.220-2 Commercial Zone Permitted Uses

Land Use	C	NC	OP	SR	Additional Use Regulations
Service Uses⁽²⁾					
Massage, Accessory Use	P	P	P ---	A ---	Note 4; <u>20.400.250</u>
Massage Establishment	P	P	P ---	A ---	Note 4; <u>20.400.250</u>

Notes:

1.
2.
3.

4. Businesses where massage is performed as Massage, Accessory Use and Massage eEstablishments are permitted by right when all ~~therapists or~~ persons performing massage services possess a current, valid and authentic certificate issued by the California Massage Therapy Council. ~~are fully licensed by the state; if all therapists or persons performing massage services are not fully licensed, the land use shall require a CUP. Unless otherwise expressly exempt,~~ all businesses where massage is performed as Massage, Accessory Use and mMassage eEstablishments shall be subject to Chapter 5.44 and Title 5 of this Municipal Code.

Table 20.225-5 MU-1 and MU-2 Zone Permitted Uses

Land Use	Ground Floor Uses	MU-1 / MU-2	Additional Use Regulations
Service Uses⁽²⁾			
<u>Massage, Accessory Use</u>	<u>P</u>	---	<u>Note 4; 20.400.250</u>
<u>Massage Establishment</u>	<u>P</u>	---	<u>Note 4; 20.400.250</u>

Notes:

1.
2.
3.
4. Businesses where massage is performed as Massage, Accessory Use and Massage Establishments are permitted in legal, non-conforming commercial shopping centers when all persons performing massage services possess a current, valid and authentic certificate issued by the California Massage Therapy Council. Unless otherwise expressly exempt, all businesses where massage is performed as Massage, Accessory Use and Massage Establishments shall be subject to Chapter 5.44 and Title 5 of this Municipal Code.

CHAPTER 20.400 SPECIFIC USE STANDARDS

Section 20.400.250 Massage, Accessory Use and Massage Establishments

Businesses where massage is performed as Massage, Accessory Use and Massage Establishments shall be subject to the following, in addition to all other requirements contained in Chapter 5.44 and Title 5 of this Municipal Code and by law:

A. Businesses where massage is performed as Massage, Accessory Use and Massage Establishments shall only be permitted in Commercial (C, NC) Zones, and in certain Specific Plan Area (SPA) Zones (such as San Marcos Creek Specific Plan Area, Nordahl Marketplace Specific Plan Area, and commercial centers located on San Marcos Boulevard) or certain Mixed-Use (MU-1, MU-2) Zones that function as a commercial land use and are developed as shopping centers, subject to the regulations, site specific standards and provisions of this Zoning Ordinance. The shopping centers must possess commercial land use controls, in the form of common leases, common area maintenance agreements for landscaping and parking areas, reciprocal easement agreements for ingress, egress and parking of vehicles, recorded declarations of covenants, conditions and restrictions defining the responsibility of landlord and tenant concerning the standards for the operation and maintenance of the center, or similar rules and regulations intended to preserve

the integrity of such a center. Massage Establishments shall not be permitted in any other zones within the jurisdiction of the City.

B. A Massage Establishment shall be located no fewer than 1,000 feet from another Massage Establishment existing as of the effective date of this Section, as measured in a straight line, without regard to intervening structures, from the property line of one Massage Establishment to the property line of the other Massage Establishment. Any existing Massage Establishment legally established prior to the adoption of this Section, that operates with a valid and current business license issued by the City and all other necessary approvals, and that operates in compliance with all local, State and Federal laws, ordinances, rules and regulations, which is located within 1,000 feet of another Massage Establishment as of the effective date of this Section, is not required to relocate but is subject to all other provisions of this Ordinance for the continued operation and/or transfer of ownership of the Massage Establishment. If any existing Massage Establishment desires to change locations after the effective date of this Section to another location less than 1,000 feet from another Massage Establishment, the relocation shall be subject to all other zoning requirements under this Zoning Ordinance, and compliance with this distance limitation is subject to some level of discretion of the Planning Manager. This limitation shall not apply to businesses where massage is performed as Massage, Accessory Use as that term is defined under this Zoning Ordinance, or to Outcall Massage services, as that term is defined under Chapter 5.44 of this Municipal Code.

C. The maximum number of Massage Establishments within the jurisdiction of the City of San Marcos shall not exceed one (1) Massage Establishment per every twenty-five hundred (2,500) inhabitants of the City. For purposes of this section, the total number of inhabitants of the City shall be determined by the most current published data available from the California State Department of Finance, as of the date an application for a Massage Establishment license is filed. This limitation shall not apply to businesses where massage is performed as Massage, Accessory Use or to Outcall Massage services, or to any existing Massage Establishment legally established prior to the adoption of this Section, that operates with a valid and current business license issued by the City and all other necessary approvals, and that operates in compliance with all local, State and Federal laws, ordinances, rules and regulations is included, so long as there is no lapse in the timely renewal of a City business license and/or Massage Establishment license as required under Chapter 5.44 of this Municipal Code.

D. Massage Establishments legally established prior to the adoption of this Section and operating with a valid and current business license issued by the City of San Marcos and other appropriate approvals, and in compliance with all local, State and Federal laws, ordinances, rules and regulations that do not

comply with the zoning limitations imposed upon new Massage Establishments under paragraphs (A), (B) and (C) of this Section as of the effective date of this Section shall be considered a legal, non-conforming use. Such Massage Establishments shall be required to comply with all other applicable local, State and Federal laws, ordinances, rules and regulations, including, but not limited to, Chapter 5.44 of this Municipal Code and this Zoning Ordinance.

E. Massage shall be performed only between the hours of 8:00 a.m. and 10:00 p.m. No massage shall be performed at any business where massage is performed as Massage, Accessory Use or at a Massage Establishment between the hours of 10:00 p.m. and 8:00 a.m.

F. The Owner or Operator of any Massage Establishment or business where massage is performed as Massage, Accessory Use shall also comply with all applicable local, State and Federal laws, ordinances, rules and regulations as they may be amended from time to time, including, but not limited to, California Business and Professions Code Sections 4600 et seq. (Massage Therapy Act), California Government Code Sections 51030 et seq., this Zoning Ordinance and Title 5 of this Municipal Code.

CHAPTER 20.405 ADULT ENTERTAINMENT ESTABLISHMENTS

Section 20.405.070 Definitions

17. Sexual Encounter Establishment. An establishment, other than a hotel, motel, or similar establishment offering public accommodations, that, for any form of consideration or gratuity, provides a place where two (2) or more persons may congregate, assemble, or associate for the purpose of engaging in "specified sexual activities" or exposing "specified anatomical areas." This definition does not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the State of California engages in sexual therapy or a massage technician meeting all criteria of ~~section 5.44.120~~ Chapter 5.44 of this Municipal Code. For purposes of this section, "sexual encounter establishment" shall exclude "massage parlor" or other similar Massage eEstablishments.

CHAPTER 20.600 DEFINITIONS

Section 20.600.150 "M" Definitions

Massage Establishments (land use). Any premises, place of business or membership club having a fixed place of business where the primary use is providing or giving for a fee or other form of consideration a massage, ~~fomentation, bath, manipulation of the body, electric or magnetic treatment, alcohol rub~~ including, but not limited to, Swedish massage, sports massage,

shiatsu, polarity therapy, rolfing, heller work, reiki, reflexology or other similar massage service or procedure. Any establishment that performs any combination of massage and bathhouse facilities, as that term is defined in Chapter 5.46 of the Municipal Code, including, but not limited to, wet and dry heat rooms, pools, and hot tubs, shall be deemed to be a Massage Establishment. A use where accessory massage occurs as Massage, Accessory Use, shall not be classified as a ~~m~~Massage ~~e~~Establishment.

The following professions and services shall not be classified as a ~~m~~Massage ~~e~~Establishment:

Physicians, surgeons, chiropractors, osteopaths, physical therapists, occupational therapists, exercise physiologists, and acupuncturists who are duly licensed to practice their respective professions in the State of California.

Registered Nurses, Practical Nurses and Licensed Vocational Nurses who are licensed to practice under the laws of this State.

Hospitals, nursing homes, mental health facilities, or any other health facility duly licensed by the State of California.

Trainers of any amateur, semiprofessional or professional athletes or athletic teams, or athletic trainers hired by a local, State or Federal government agency, while engaging in their training responsibilities for and with athletes; and trainers working in conjunction with a specific athletic event, such as track meets triathlons, or similar single occurrence athletic or recreational events.

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

Any educational institution regulated by the State of California, including any portion of the institution providing Massage services, such as student clinics and work study programs, regulated under such State license.

Any other business or profession exempt from the provisions of Chapter 5.44 of the Municipal Code by State law.

Any duly licensed medical physician, doctors, surgeon, osteopath, chiropractor, acupuncturist, registered nurse, practical nurse, licensed vocational nurse, or to other persons licensed by the State while engaging in practices as part of their license.

~~Any barber, beautician, manicurist, cosmetologist, and esthetician who are licensed under the laws of the State of California while engaging in practices as part of their license. This exemption shall include hospitals, nursing homes, sanitariums, or any other health facility duly licensed by the State of California or to accredited high schools, junior colleges, or universities whose coaches and trainers are acting within the scope of their employment.~~

~~Shall not apply to physical therapist, exercise physiologist, and trainers of amateur, semiprofessional, or professional athletes or athletic teams while engaging in their training responsibilities for and with athletes.~~

~~Any massage technicians offering massage services at a temporary event only for the duration of the temporary event to a fully clothed client in public common areas where the primary use is not a massage establishment (i.e., chair massage services in a supermarket, massage services in the courtyard of an outdoor or indoor shopping center). These massage technicians shall comply with the permit requirements of Title 5 of this Code.~~

Massage, Accessory Use (land use). A use where massages occurs either permanently or temporarily in conjunction with a primary permitted land use, and the area where the massage occurs covers less than twenty percent (20%) of the gross floor of the principal use. All persons performing massages shall ~~be state licensed~~ possess a current, valid and authentic certificate issued by the California Massage Therapy Council, ~~and~~ Massage, Accessory Use shall not classified as a Massage Establishment, and shall not be required to obtain a Massage Establishment License under Chapter 5.44 of the Municipal Code, but shall be subject to the all other provisions of Title 5 of this Municipal Code.

Section 20.600.180 "P" Definitions

Personal Services (land use). Any place of business providing services and accessory retail sales of products related to the services provided, categorized by the following programmatic elements:

1. General. An establishment providing non-medical services to individuals as a primary use, including the following service types.

- Barber shops
- Beauty salons
- Bridal salon/clothing rental
- Ear piercing services as ancillary use
- Hair salons
- Home electronics and small appliance repair
- Permanent makeup services as an ancillary use to a beauty, hair, or nail salon. To qualify as an ancillary use, permanent makeup services cannot be provided in conjunction with any Tattoo and/or Body Art Facility. Said facilities are considered a Tattoo and/or Body

- ~~Massage accessory use (see definition in this chapter)~~ Art Facility land use, subject to Section 20.400.200 (Tattoo and/or Body Art Facility)
- Nail salons
- Seamstress/tailors tanning salons • Shoe repair shops

2. Fitness/Health Facility. Any place of business or membership club providing facilities devoted especially to health, beauty, and relaxation that deals with the cosmetic, therapeutic, and/or holistic treatments, where people visit for professionally administered personal care treatments, including health or physical fitness clubs. Massage accessory use(s) may be permitted. A medical spa shall be classified as a Medical Office land use.

3. Instructional. Any place of business that is intended for group or individual instruction including art, dance, gymnastics/gymnasium, indoor batting cages, martial arts of any form, mediation, modeling agencies, pilates, pottery, rock climbing, tutoring, volleyball club/organizations, yoga, weight control clinics. Massage shall not be regulated under this land use.

Section 5. CEQA Exemption. This is not a project within the meaning of Section 15378 of the California Environmental Quality Act (CEQA) Guidelines because there is no potential for it to result in a physical change in the environment, either directly or indirectly. In the event this Ordinance is found to be subject to CEQA, it is exempt from CEQA pursuant to the exemption contained in CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility of a significant effect on the environment.

Section 6. Severability. If any section, sentence, clause or phrase of this Ordinance is determined to be invalid, illegal or unconstitutional by a decision or order of any court or agency of competent jurisdiction, then such decision or order will not affect the validity and enforceability of the remaining portions of this Ordinance. The City Council declares that it would have passed and adopted the Ordinance, and each section, sentence, clause or phrase thereof, regardless of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

Section 7. Effective Date. This Ordinance shall be effective thirty (30) days following its adoption.

Section 8. Publication. Within fifteen (15) days following its adoption, the City Clerk shall certify to the passage of this Ordinance and cause the same to be published, or the title thereof as a summary, in accordance with the provisions of State law in a newspaper of general circulation designated for legal notices publication in the City of San Marcos.

INTRODUCED at a regular meeting of the City Council of the City of San Marcos, California, held on the 23rd day of May, 2017; and

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of San Marcos, California, held on the _____ day of _____, 2017, by the following roll call vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

APPROVED:

James M. Desmond, Mayor
City of San Marcos

ATTEST:

APPROVED AS TO FORM:

Phillip Scollick, City Clerk
City of San Marcos

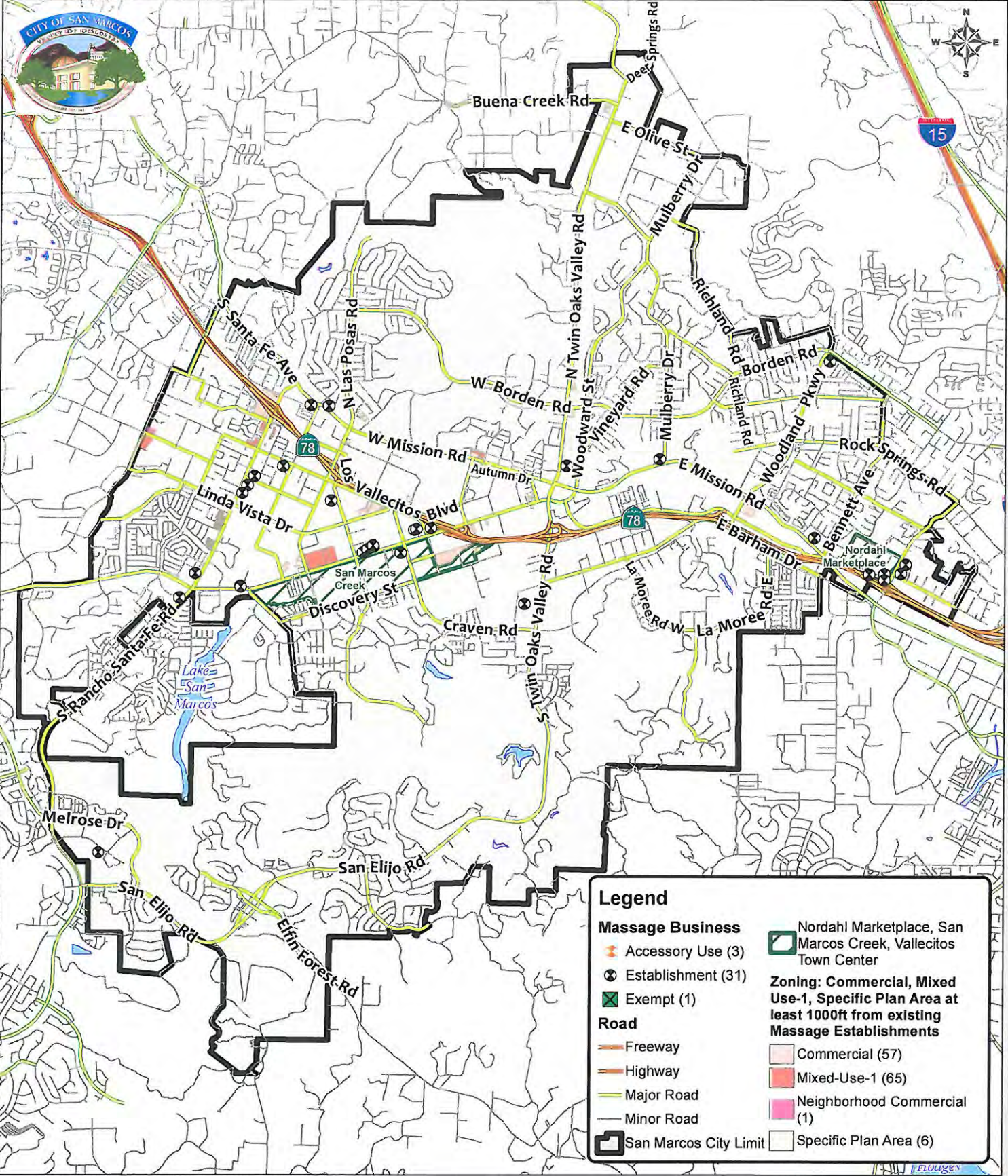
Helen Holmes Peak, City Attorney
City of San Marcos



ATTACHMENT B

GEOGRAPHIC INFORMATION SYSTEMS (GIS) MAP DEPICTING THE LOCATIONS OF EXISTING MASSAGE BUSINESSES OPERATING IN THE CITY OF SAN MARCOS AS OF APRIL 5, 2017 AND COMMERCIAL PARCELS LOCATED AT LEAST 1,000 FEET FROM THOSE EXISTING BUSINESSES THAT MAY BE USED AS THE SITE OF FUTURE MASSAGE BUSINESSES

AGENDA ITEM
2



Legend

Massage Business

- Accessory Use (3)
- Establishment (31)
- Exempt (1)

Road

- Freeway
- Highway
- Major Road
- Minor Road
- San Marcos City Limit

Zoning: Commercial, Mixed Use-1, Specific Plan Area at least 1000ft from existing Massage Establishments

- Commercial (57)
- Mixed-Use-1 (65)
- Neighborhood Commercial (1)
- Specific Plan Area (6)

Landmarks

- Nordahl Marketplace, San Marcos Creek, Vallecitos Town Center

Every effort has been made to assure the accuracy of the maps and data provided; however, some information may not be accurate or current. The City of San Marcos assumes no responsibility arising from use of this information and incorporates by reference its disclaimer regarding the lack of any warranties, whether expressed or implied, concerning the use of the same. For additional information see the Disclaimer on the City's website.

Commercial Parcels at least 1000-ft from Existing Massage Establishments (as of 04/05/2017)

02,5005,00010,000

Feet

1 inch = 5,000 feet

CREATED BY: City of San Marcos GIS

DATA SOURCES: SanGIS

City of San Marcos (04/2017)