

---

## STAFF REPORT

### REGULAR MEETING OF THE SAN MARCOS PLANNING COMMISSION

---

**MEETING DATE:** December 3, 2018

**SUBJECT:** Consideration of Existing and Proposed Land Use Regulations  
Relating to Massage Businesses  
Resolution PC 18-4730, Project TA 18-0001,  
CEQA Exemption 18-032

#### RECOMMENDATION

APPROVE a Resolution recommending that the City Council amend certain provisions of Title 20 of the San Marcos Municipal Code applicable to massage businesses, and that it find the project categorically exempt from the California Environmental Quality Act (CEQA).

#### INTRODUCTION

State legislation relating to the massage industry allows local agencies to retain the authority to regulate the licensing, zoning and reasonable health and safety requirements of massage businesses within their jurisdictions.

The City last updated its regulations governing massage businesses under San Marcos Municipal Code (SMMC) Chapter 5.44 and certain provisions of SMMC Title 20 (Zoning Ordinance) in 2017. Staff is recommending additional amendments to address issues encountered during enforcement efforts involving massage businesses.

The proposed Resolution recommends that the City Council adopt an ordinance amending various provisions of the Zoning Ordinance governing massage businesses within the City, including, but not limited to, Section 20.400.250 (Specific Use Standards for Massage Accessory Use and Massage Establishments), Section 20.600.070 (Definition of Existing Massage Establishment (land use)), and Section 20.600.150 (Definition of Massage Accessory Use (land use)).

## DISCUSSION

While massage as a business is sanctioned by State and local law, regulating massage businesses is necessary to prevent any adverse impacts that such commercial operations may have on patrons, nearby properties and residences. The City has land use authority over the licensing and permitting of land uses within its jurisdiction.

The proposed Ordinance amends and clarifies the following massage regulations contained in the Zoning Ordinance as informed by recent enforcement activity:

- **Section 20.400.250**

- Modifies references to “effective date of this Section” to mean July 13, 2017, so that it is clear any references to the effective date mean the date SMMC section 20.400.250 was initially adopted.
- Provides that, in addition to massage establishments, businesses where massage is performed as massage accessory use are not permitted in any zones other than those specified.
- Provides that, in addition to owners and operators of massage businesses, managers must also comply with all applicable local, State and Federal laws, ordinances, rules and regulations relating to the massage business. As proposed in the amended SMMC section 5.54.010 definition, a manager of a massage business means any person designated by the owner or operator to act as the representative and agent of the owner and operator in managing day-to-day operations of the massage business with the same liabilities and responsibilities as the owner and operator.

- **Section 20.600.070**

- Adds a definition for “Existing Massage Establishment” to mean any existing massage establishment that was legally established as of July 13, 2017 that has continuously operated as a massage establishment since that date 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.

- **Section 20.600.150**

- Provides that businesses where massage is performed as an accessory use are subject to the massage operating requirements outlined in SMMC Chapter 5.44 and the specific use standards under Section 20.400.250. As modified, massage accessory use businesses must comply with the same operating requirements as all other massage businesses in the City.

It is recommended that the Planning Commission approve the attached Resolution recommending that the City Council adopt an ordinance amending certain Zoning Ordinance provisions regulating massage businesses in the interest of continuing to protect and preserve the health, safety and welfare of the community.

A draft of the entire ordinance which will be presented to the City Council, including proposed provisions regulating massage under SMMC Chapter 5.44, is provided to the Planning Commission for background and reference purposes. Changes to the existing SMMC Chapter 5.44 are proposed to require massage businesses to update the City as necessary to keep all information current as to the business and all owners, operators, managers, and persons performing massage at the business; ensure all massage technicians are properly licensed and identified; expressly require businesses performing massage as an accessory use to comply with the same operating requirements as massage establishments; and to generally provide clarification regarding the current regulations.

However, any recommendation by the Planning Commission to the City Council relates only to the land use regulations under Title 20, 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 by the Development Services Department for compliance with CEQA. Staff recommends a finding of no physical effect and/or an exemption under CEQA, as the proposed Text Amendment 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. Additionally, even if the proposed Text Amendment was considered a project subject to CEQA, it would be exempt pursuant to Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that there is no possibility it would have a significant effect on the environment.

---

**ATTACHMENT(S)**

- A. Resolution PC 18-4730 Amending SMMC Title 20
- B. City Council Ordinance Amending SMMC Chapter 5.44 and Title 20

Prepared by:

*Wendy L. House*

---

Wendy L. House, Assistant City Attorney

Approved and Submitted by:

---

Karen Brindley, Planning Division Manager



**City of San Marcos**  
1 Civic Center Drive  
San Marcos, CA 92069

**ATTACHMENT A**

**PC RESOLUTION 18-4730**

RESOLUTION PC 18-4730

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN MARCOS RECOMMENDING CITY COUNCIL APPROVAL OF AN ORDINANCE AMENDING TITLE 20 OF THE SAN MARCOS MUNICIPAL CODE RELATING TO MASSAGE BUSINESSES

Project TA 18-0001, CEQA Exemption 18-032  
City of San Marcos

WHEREAS, Chapter 5.44 of the San Marcos Municipal Code (SMMC), as well as certain provisions contained in Title 20 of the SMMC (Zoning Ordinance), regulate massage businesses and massage technicians in the City of San Marcos. The City's regulations were last updated in 2017; and

WHEREAS, the City wishes to update the existing licensing, zoning and reasonable health and safety requirements for regulating the business of massage to address issues encountered during the course of enforcement efforts and for the continued protection and preservation of the health, safety and welfare of the community; and

WHEREAS, the City also wishes to define certain terms used throughout the massage regulations, further clarify existing definitions and provisions, and ensure operating standards and requirements are understandable; and

WHEREAS, the City further wishes to modify the operating requirements to apply to all massage businesses, including massage establishments, outcall massage services and massage accessory use businesses, unless an express exemption applies; and

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

WHEREAS, the required public hearing held on December 3, 2018 was duly advertised and held in the manner prescribed by law; and

WHEREAS, the Planning Commission considered this request as 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 the Zoning Ordinance will not adversely affect the implementation of the San Marcos General Plan in that the Text Amendment does not conflict with any goal, objective, or policy of the General Plan.
2. The proposed Text Amendment to Zoning Ordinance will not be detrimental to the public health, safety, morals, and welfare in that the Text Amendment will address the regulation of massage businesses, in compliance with State law.

NOW, THEREFORE, the Planning Commission resolves as follows:

1. The foregoing recitals are true and correct.
2. The Text Amendment modifying certain provisions contained in the Zoning Ordinance, as specified in redlined, underlined strikeouts, below, is hereby recommended to the City Council for approval.

## **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. Businesses where massage is performed as Massage Accessory Use and 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~~July 13, 2017, 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 ~~e~~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 Existing Massage Establishment as of ~~the effective date of this Section~~July 13, 2017, 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 ~~e~~Existing Massage Establishment desires to change locations after ~~the effective date of this Section~~July 13, 2017 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 ~~s~~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 ~~4~~License is filed. This limitation shall not apply to the following businesses: (i) businesses where massage is performed as ~~Massage~~, Accessory Use, as that term is defined under this Zoning Ordinance; or to (ii) Outcall Massage services, as that term is defined under Chapter 5.44 of this Municipal Code; or (iii) to any ~~e~~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 5.44Title 5 of this Municipal Code.

D. Existing 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~~July 13, 2017 shall be considered a legal, non-conforming use. Such Existing 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.~~

FE. The Owner, ~~or~~ Operator or Manager, as those terms are defined under Chapter 5.44 of this Municipal Code, 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 20.600 DEFINITIONS**

### **Section 20.600.070 “E” Definitions**

**Existing Massage Establishment (land use).** Any existing Massage Establishment legally established in the City of San Marcos as of July 13, 2017, that continuously operates in the City as a Massage Establishment since that date 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.

### **Section 20.600.150 “M” Definitions**

**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 possess a current, valid and authentic certificate issued by the California Massage Therapy Council. Massage, Accessory Use shall not be classified as a Massage Establishment, and shall not be required to obtain a Massage Establishment License under Chapter 5.44 of the this Municipal Code, but shall be subject to the Massage operating requirements under Chapter 5.44 and the specific use standards under Section 20.400.250 of this Municipal Code and all other applicable provisions of Title 5 of this Municipal Code.

3. The project exemption (EX 18-032) 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.

PASSED AND ADOPTED by the Planning Commission of the City of San Marcos, at a regular meeting held on this 3rd day of December, 2018, by the following roll call vote:

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

APPROVED:

---

Kevin Norris, Chairman  
SAN MARCOS CITY PLANNING COMMISSION

ATTEST:

---

Gina Henderson, Senior Office Specialist  
SAN MARCOS CITY PLANNING COMMISSION



**City of San Marcos**  
1 Civic Center Drive  
San Marcos, CA 92069

**ATTACHMENT B**

**DRAFT CITY COUNCIL ORDINANCE**

ORDINANCE NO. 2019-\_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, CALIFORNIA, AMENDING CHAPTER 5.44 AND TITLE 20 OF THE SAN MARCOS MUNICIPAL CODE RELATING TO MASSAGE BUSINESSES AND MASSAGE TECHNICIANS

WHEREAS, Chapter 5.44 of the San Marcos Municipal Code (SMMC), as well as certain provisions contained in Title 20 of the SMMC (Zoning Ordinance), regulate massage businesses and massage technicians in the City of San Marcos. The City's regulations were last updated in 2017; and

WHEREAS, the City wishes to update the existing licensing, zoning and reasonable health and safety requirements for regulating the business of massage to address issues encountered during the course of enforcement efforts and for the continued protection and preservation of the health, safety and welfare of the community; and

WHEREAS, the City also wishes to define certain terms used throughout the massage regulations, further clarify existing definitions and provisions, and ensure operating standards and requirements are understandable; and

WHEREAS, the City further wishes to modify the massage operating requirements to apply to all massage businesses, including massage establishments, outcall massage services and massage accessory use businesses, unless an express exemption applies; and

WHEREAS, on December 3, 2018, the San Marcos Planning Commission held a duly noticed public hearing to consider and adopt a resolution recommending that the City Council amend certain provisions of the Zoning Ordinance applicable to massage businesses; and

WHEREAS, the Planning Commission did find 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.

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. The foregoing recitals are true and correct.

Section 2. The existing San Marcos Municipal Code Chapter 5.44 and Sections 20.400.250, 20.600.070 and 20.600.150 of the Zoning Ordinance are hereby amended to read

as shown in the redlined (Exhibit "A") and clean (Exhibit "B") versions, attached hereto and incorporated by reference.

Section 3. 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 4. 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 5. This Ordinance shall be effective thirty (30) days following its adoption. 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 8th day of January, 2019; 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 \_\_\_\_\_, 2019, by the following roll call vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

APPROVED:

---

Mayor  
City of San Marcos

ATTEST:

---

Phillip Scollick, City Clerk  
City of San Marcos

APPROVED AS TO FORM:

---

Helen Holmes Peak, City Attorney  
City of San Marcos

ATTACHMENTS:

Exhibit A – Amended SMMC Chapter 5.44 and Sections 20.400.250, 20.600.070 and 20.600.150 (Redlined)

Exhibit B – Amended SMMC Chapter 5.44 and Sections 20.400.250, 20.600.070 and 20.600.150 (Clean)

## EXHIBIT A

### CHAPTER 5.44

#### MASSAGE ESTABLISHMENTS AND MASSAGE 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 **Massage Establishment License, Outcall Massage License**
- 5.44.070 **Massage Accessory Use Establishment—Operating Requirements**
- 5.44.080 Outcall Massage License**
- 5.44.090080 Outcall—Massage—Operating Requirements**
- 5.44.100090 Advertising**
- 5.44.110100 Inspection by Officials**
- 5.44.120110 Violation and Penalty**
- 5.44.130120 Public Nuisance**
- 5.44.140130 Suspension or Revocation of Massage Establishment Licenses**
- 5.44.150140 Applicability of Regulations to Existing Massage Businesses**
- 5.44.160150 Exemptions**
- 5.44.170160 Severability**
- 5.44.180170 Fee Modification and Allocation**

**5.44.010 Citation of Chapter.** This Chapter may be cited as the City of 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 and massage technicians within the City of San Marcos 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 ~~m~~Massage ~~t~~Technician.

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

(d) **Existing Massage Business** shall mean any existing Massage Business, including any Massage Establishment, Outcall Massage service, or Massage Accessory Use business, as those terms are defined by this Chapter, legally established in the City of San Marcos as of July 13, 2017, that continuously operates in the City as a Massage Business since that date 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.

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

(e)(f) **Inspector** shall mean anyone employed with the Building Division, ~~the Fire Department~~, the City Attorney's office and/or law enforcement, who may conduct an inspection of a Massage Business pursuant to this Chapter required by the City's regulatory requirements.

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

(h) **Manager** shall mean any Person(s) designated by the Owner or Operator of the Massage Business to act as the representative and agent of the Owner and Operator in managing day-to-day operations of the Massage Business with the same liabilities and responsibilities as the Owner and Operator.

(g)(i) **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" or any other terms used within the Massage industry 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 ~~s~~pecified ~~a~~Anatomical ~~a~~Areas, as defined by and prohibited under this Chapter.

(i) **Massage Accessory Use** shall mean any establishment having a fixed place of business where Massage 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 Massage shall possess a current, valid and authentic certificate issued by the California Massage Therapy Council. Massage Accessory Use shall not be classified as a Massage Establishment and shall not be required to obtain a Massage Establishment License under this Chapter, but shall be subject to all other applicable provisions of this Chapter and Title 20 of this Municipal Code.

(k) **Massage Business** shall mean any Massage business, including any Massage Establishment, Outcall Massage service, or Massage Accessory Use business, as those terms are defined by this Chapter.

(h)(l) **Massage Establishment** shall mean any establishment having a fixed place of business where any Person ~~p~~erforms Massage. For purposes of this definition, any establishment that performs ~~any combination of~~ Massage and which operates as a 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.

(m) **Massage Establishment License** shall mean a license issued by the City to operate a Massage Establishment as required by this Chapter.

(i)(n) **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.

(i)(o) **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)(p) **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.

(i)(q) **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~~Business.

(m)(r) **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.

(s) **Outcall Massage License** shall mean a license issued by the City to Perform Outcall Massage as required by this Chapter.

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

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

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

(3) Any Person who has five (5) percent or greater ownership interest in a corporation that owns a ~~Massage Establishment~~Business;

(4) Any Person who is a member of a limited liability company that owns a Massage ~~EstablishmentBusiness~~;

(5) All owners of any other type of business entity that owns a Massage ~~EstablishmentBusiness~~; or

(6) Any Person identified as an owner on ~~the a~~ Massage Establishment ~~ILicense~~, ~~Massage Outcall License or any other license, permit or entitlement issued by the City to operate a Massage Business.~~

**(e)(u) 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, ~~whether as full-time, part-time or temporary status~~, as an employee, sole practitioner, or independent contractor of a Massage ~~Establishment, or as an Outcall Massage serviceBusiness~~, or in any other capacity within the jurisdiction of the City, unless that Person possesses a current, valid and authentic CAMTC Certificate.

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

#### **5.44.060 Massage Establishment License, Outcall Massage License.** ~~This Section shall apply to the issuance or renewal of a Massage Establishment License or Outcall Massage License. This Section shall not apply to Massage Accessory Use businesses.~~

(a) **Uniform Licensing Procedure.** Except as otherwise provided in this Chapter, the procedure to follow to obtain a ~~license to operate a~~ Massage Establishment ~~License or Outcall Massage License~~ 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 ~~License or Outcall Massage License~~ shall be filed on a form provided by the City, ~~and~~ shall be signed and submitted under penalty of perjury. ~~and A~~ ~~Massage Establishment License or Outcall Massage License application~~ shall include the following information, ~~which must be updated when there is any personnel change to ensure that the City has current information on file at all times relating to the Massage Business, the Owners, Operators and Managers, and all Massage Technicians who Perform Massage or who will Perform Massage at the Massage Business, as applicable:~~

(1) Legal name of the Massage ~~EstablishmentBusiness~~.

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

(3) Address of the Massage Establishment. This subdivision shall not apply to Outcall Massage businesses.

(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. This subdivision shall not apply to Outcall Massage businesses.

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

(6) Legal name of all Massage Technicians who will Perform Massage at the Massage EstablishmentBusiness, and a copy of their current, valid and authentic CAMTC Certificate. The legal name of any Massage Technician hired after the submittal of an application must be reported to the City prior to the Massage Technician Performing any Massage.

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

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

(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 and Managers of the Massage EstablishmentBusiness.

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

(11) Signed statement by each Owner and Operator and Manager of the Massage Establishment 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 Massage Establishment License or Outcall Massage License application as applicable; (iii) the inclusive dates of such employment history; (iv) the name and address of any Massage business or similar business owned or operated or managed 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 and Manager of the Massage Establishment Business acknowledging the following: (i) all of the information contained in the Massage Establishment License application or Outcall Massage License is true and correct; (ii) all Owners, Operators and Managers are familiar with the requirements of this Chapter and all

applicable requirements of Title 20 of this Municipal Code, and shall communicate those requirements to employees and patrons of the Massage Business; (iii) all Owners, and Operators and on-duty Managers are responsible for the Massage Establishment Business and the conduct of all Persons who Perform Massage at the Massage EstablishmentBusiness, and ensuring compliance with this Chapter and all applicable requirements of Title 20 of this Municipal Code; (iv) any act or omission of any employee of the Massage Business constituting a violation of any provision of this Chapter shall be deemed to be an act or omission of the Owner, Operator and on-duty Manager for purposes of determining whether to suspend or revoke or deny the renewal of a Massage Establishment License or Outcall Massage License, as applicable, and/or City business license; and (vii) 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 License or Outcall Massage License, as applicable, 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)(y) or 5.44.160150 of this Municipal Code, or some other applicable City or Health Department exemption. This subdivision shall not apply to Outcall Massage businesses.

(c) Renewal Application. An annual renewal application shall be required for Massage Establishment Licenses and Outcall Massage Licenses. Renewal applications shall be filed on a form provided by the City, shall be signed and submitted under penalty of perjury, and shall include updated information to the information required under subdivision (b) of this Section when there is any personnel change to ensure that the City has current information on file at all times relating to the Massage Business, the Owners, Operators and Managers, and all Massage Technicians who Perform Massage or who will Perform Massage at the Massage Business.

(ed) License Application Fee, Renewal Application Fee. The nonrefundable Massage Establishment License or Outcall Massage License application fee to operate a Massage Establishment, and the nonrefundable Massage Establishment License or Outcall Massage License 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 or Outcall Massage License application, or renewal application, as applicable, to defray in part the reasonable costs of administration, inspection, investigation and enforcement of this Chapter.

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

(1) The Massage EstablishmentBusiness, the Owners, Operators and Managers, and all Massage Technicians who Perform Massage or who will Perform Massage at the Massage Business, as applicable, 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 Business employs or uses only Massage Technicians to Perform Massage who possess a current and valid CAMTC Certificate.

(3) The Owners, Operators and Managers of the Massage ~~Establishment~~Business 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, Operators and Managers authorized by this Chapter shows that such Owners, 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, certificate~~ 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 ~~License or Outcall Massage License or renewal application, as applicable~~, within the jurisdiction of the City to any Massage ~~Establishment~~Business that fails to demonstrate the foregoing requirements and/or for any reason specified under Section 5.04.090 of this Municipal Code.

(ef) Transfer of License. A Massage Establishment ~~License or 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 Massage Establishment ~~License or Outcall Massage License~~ issued under this Chapter. No Massage Establishment ~~License, Outcall Massage License or City business license, as applicable~~, that is revoked or suspended by the City ~~pursuant to this Chapter or any other provision of this Municipal Code~~ 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, Outcall Massage License or City business license, as applicable~~, 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. This subdivision shall not apply to Outcall Massage businesses.

**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 listed on the Massage Establishment License application and approved by the City pursuant to Section 5.44.070 of this Chapter 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.
- (e) 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.

#### **5.44.070      Massage Accessory Use.**

(a) Information Provided to City. In addition to all other requirements for obtaining a City business license, Massage Accessory Use businesses must provide the following information to the City, signed and submitted under penalty of perjury, which must be updated when there is any personnel change to ensure the City has current information on file at all times relating to the Massage Accessory Use business, the Owners, Operators and Managers, and all Massage Technicians who Perform Massage or who will Perform Massage at the Massage Accessory Use business:

- (1) Signed statement by each Owner, Operator and Manager of the Massage Accessory Use 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 past five (5) years; (iii) the inclusive dates of such employment history; (iv) the name and address of any Massage business or similar business owned, operated or managed 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.

(2) Signed statement by each Owner, Operator and Manager of the Massage Accessory Use business acknowledging the following: (i) all of the information contained in the application is true and correct; (ii) all Owners, Operators and Managers are familiar with the requirements of this Chapter and all applicable requirements of Title 20 of this Municipal Code, and shall communicate those requirements to employees and patrons of the Massage Establishment; (iii) all Owners, Operators and on-duty Managers are responsible for the Massage Accessory Use business and the conduct of all Persons who Perform Massage at the Massage Accessory Use business, and ensuring compliance with this Chapter and all applicable requirements of Title 20 of this Municipal Code; (iv) any act or omission of any employee of the Massage Accessory Use business constituting a violation of any provision of this Chapter shall be deemed to be an act or omission of the Owner, Operator and on-duty Manager for purposes of determining whether to suspend or revoke or deny the renewal of a City business license; and (v) 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.

(3) Copy of a current and valid public health permit to operate a Massage Accessory Use establishment issued by the Health Department, unless deemed to be exempt from this requirement pursuant to Sections 5.44.070(y) or 5.44.150 of this Municipal Code, or some other applicable City or Health Department exemption.

(b) Transfer of City Business License. No City business license issued to a Massage Accessory Use business that is revoked or suspended by the City pursuant to this Chapter or any other provision of this Municipal Code shall be transferred to any other Person or entity 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 City business 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.

**5.44.080 Massage Operating Requirements.** No Person shall engage in, conduct, carry on or Perform, or permit to be engaged in, conducted, carried on or Performed, Massage within the jurisdiction of the City unless all of the following requirements are met and the Person is in compliance with all applicable provisions of Title 20 of this Municipal Code:

(a) CAMTC Certificate to City. No Owner, Operator or Manager shall operate a Massage Business unless a copy of a current and valid CAMTC Certificate is provided to the City for each Massage Technician employed or utilized to Perform Massage at the Massage Business, prior to Performing any Massage.

(b) CAMTC Certificate Posted in Public View. No Owner, Operator or Manager shall operate a Massage Business unless an original CAMTC Certificate for each Massage Technician employed or utilized to Perform Massage at the Massage Business is posted in public view.

(c) CAMTC Identification Card Worn at All Times. No Owner, Operator or Manager shall operate a Massage Business unless an original CAMTC-issued identification card is worn and clearly visible on each Massage Technician employed or utilized to Perform Massage, at all times while on-site at the Massage Business, whether or not the Massage Technician is Performing Massage.

(d) Hours of Operation. Massage shall be Performed only between the hours of 8:00 a.m. and 10:00 p.m. No Massage shall be Performed between the hours of 10:00 p.m. and 8:00 a.m.

(e) Prohibited Locations. No Massage shall be Performed in a hotel or motel room, or in the private residence of the Massage Technician Performing Massage.

(f) List of Services. A list of the services available and the costs of such services shall be posted in an open and conspicuous public place on the premises of a Massage Business. The services shall be described in English. No Owner, Operator or Manager shall permit to be offered or performed, and no Massage Technician shall offer or perform, any service other than those posted on the list of available services, nor shall any Owner, Operator, Manager, or Massage Technician request or charge a fee for any service other than those included on the list of available services.

(g) Massage Log. For each Massage Performed, a Massage Business shall keep a complete and legible written record of the following information stated in English on a form provided by the City, as may be updated from time to time by the City, and available on the City's website under the "Massage Businesses" page, or by some other method that provides substantially the same information as required by this subdivision: (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 retained on the premises of a Massage Business for not less than a period of two (2) years and shall be immediately available for inspection and copying by an Inspector during business hours.

(h) Signage. 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. This subdivision shall not apply to Massage Accessory Use or Outcall Massage businesses.

(i) Lighting. 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.

(j) Dressing Rooms, Lockers, Secured Area to Deposit Valuables. Dressing rooms, lockers and a secured facility for the protection of valuables shall be provided for patrons. This subdivision shall not apply to Outcall Massage businesses.

(k) Lavatories, Bathing Facilities, Saunas, Steam/Heat/Vapor Rooms. This subdivision shall not apply to Outcall Massage businesses.

(1) Lavatories shall be provided for patrons with hot and cold running water, soap and single service towels in wall-mounted dispensers.

(2) All walls, floors and ceilings in lavatories, bathing facilities, saunas, steam/heat/vapor rooms, and all other physical facilities must be in good repair and maintained in

a clean and sanitary condition. Steam/heat/vapor rooms shall be thoroughly cleaned and disinfected with a disinfectant approved by the Health Department each day that the Massage Business is in operation.

(3) Walls in lavatories, bathing facilities, saunas, and steam/heat/vapor rooms shall be smooth, waterproof and kept in good repair.

(4) Floors in lavatories, bathing facilities, saunas and steam/heat/vapor rooms shall have a waterproof covering that extends up the walls at least six (6) inches and shall be covered at the floor-wall juncture with at least a three-eighths (3/8) inch radius.

(5) Separate bathing facilities, saunas and steam/heat/vapor rooms shall be provided for male and female patrons if male and female patrons are to be served simultaneously.

(l) Wash Basins for Employee Use. A minimum of one (1) separate wash basin provided shall be provided for employees with hot and cold running water, soap and single service towels in a wall-mounted dispenser. Wash basins for employee use shall be separate from any wash basins located in lavatories. This subdivision shall not apply to Outcall Massage businesses.

(m) Linens. Towels, sheets, and linens of all types and items for personal use of Massage Technicians shall be clean and freshly laundered. Towels, clothes, and sheets shall not be used by more than one (1) Person unless the same has first been laundered. Heavy white paper may be substituted for sheets provided that such paper shall not be used by more than one (1) Person and must be discarded into a sanitary receptacle after such use.

(n) Storage Cabinets, Containers for Linens. Cabinets shall be provided for the storage of clean linens. Containers approved by the Health Department shall be provided for the storage of all soiled linens. This subdivision shall not apply to Outcall Massage businesses.

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

(p) Sterilized Instruments. Disinfecting agents and sterilizing equipment approved by the Health Department shall be provided for any instruments used in Perform Massage.

(q) Ventilation. Minimum ventilation shall be provided in accordance with the building code of the City. This subdivision shall not apply to Outcall Massage businesses.

(r) Plumbing and Electrical. All plumbing and electrical installations shall be installed under permit in accordance with current local, state and federal laws and regulations, and subject to inspection by the Inspector. This subdivision shall not apply to Outcall Massage businesses.

(s) Unlocked Exterior Doors. No exterior door which is regularly used by the public for ingress or egress shall be locked during business hours, unless the Massage Business is owned by only one (1) individual with one (1) or no employees or independent contractors, provided that any such exterior door is equipped with panic hardware or other similar equipment that would provide an accessible form of egress in the event of an emergency. This subdivision shall not apply to Outcall Massage businesses.

(t) Inspection of Unoccupied Rooms and Areas. All unoccupied rooms and areas shall be subject to reasonable inspection during business hours. This subdivision shall not apply to Outcall Massage businesses.

(u) Specified Anatomical Areas.

(1) No Owner, Operator, Manager or Massage Technician shall Perform Massage on or intentionally touch, or permit the Performance of Massage on or intentional touching of, the Specified Anatomical Areas of another Person, regardless of whether the contact is over or under the patron's clothing.

(2) No Owner, Operator, Manager or Massage Technician shall enter any area which is used by the patrons, unless the patron's Specified Anatomical Areas are fully covered, except to use the lavatory or dressing room.

(v) Professional Attire. No Owner, Operator or Manager shall permit any Massage Technician to be on the premises of a Massage Business during business hours to Perform Massage or be 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 while Performing a water-based Massage modality approved by CAMTC.

(w) No Residential/Sleeping Use. No Massage Business shall be used for residential or sleeping purposes. No Owner, Operator or Manager shall permit any Person, including but not limited to any Owner, Operator, Manager, or Massage Technician to live on the premises of a Massage business.

(x) Owner, Operator or Manager On-Site. An Owner, Operator or Manager approved by the City must be on the premises of a Massage Business at all times during business hours.

(y) Health Department Exemptions for Existing Massage Businesses. Any Existing Massage Business that 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 Business, shall not be required to comply with subsections (k)(3)-(4) and (l) under this Section or Section 5.44.060(b)(13) of this Municipal Code during the period of time that the Massage Business operates in its current location. This exemption shall no longer apply once the Massage Business moves to any other location within the City. The exemption under this subdivision shall not exempt the Massage Business from compliance 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. This subdivision shall not apply to Outcall Massage businesses.

(z) Independent Contractors. Any independent contractor(s) utilized by the Massage Business to Perform Massage must obtain a City business license and provide a current and valid CAMTC certificate to the City prior to Performing Massage.

**5.44.100090 Advertising.**

- (a) All advertising to Perform Massage ~~within the jurisdiction of the City~~ by any Massage Technician within the jurisdiction of the City 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 ~~m~~Massage ~~Business~~ ~~Establishment~~ or as an ~~Outcall~~ ~~Massage~~ ~~service~~ within the jurisdiction of the City shall include the name of the ~~Massage~~ ~~Establishment~~ or ~~Outcall~~ ~~Massage~~ ~~b~~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~~ ~~Business~~ shall engage in sexually suggestive advertising, including sexually suggestive photographs and language, related to Massage services.
- (d) No Person, Massage Technician or ~~Massage~~ ~~Establishment~~ ~~Business~~ 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.

**5.44.110100 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~~ ~~Business~~ 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.

**5.44.120110 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, ~~Manager, employee or independent contractor of the Manager~~, or acting in any other role for the individual, employee, independent contractor, Owner, ~~or~~ Operator or ~~Manager~~, 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.

**5.44.130120 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~~ ~~Business~~ 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 enjoinder thereof in any manner provided by law.

**5.44.140130 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 ~~City business license~~, ~~Massage~~ ~~Establishment~~ ~~license~~ ~~and/or~~ ~~Outcall~~ ~~Massage~~ ~~license~~ issued under this Chapter may be suspended or revoked upon any of the following grounds:

(1) An Owner, ~~or~~ Operator or Manager of the Massage ~~Establishment~~Business 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 City business license, Massage Establishment ~~L~~icense or Outcall Massage ~~L~~icense, 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~~Business.

(4) An Owner, ~~or~~ Operator or Manager has failed to comply with one or more of the Massage ~~Establishment or Outcall Massage~~ operating requirements under this Chapter.

(5) A Massage Technician, Owner, ~~or~~ Operator or Manager 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 ~~L~~icense or Outcall Massage ~~L~~icense that is not renewed within 30 days after the expiration date shall be automatically suspended. If not renewed, a ~~L~~icense 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 ~~L~~icense or Outcall Massage ~~L~~icense. To reinstate the paid status of a Massage Establishment ~~L~~icense or Outcall Massage ~~L~~icense that has been suspended due to the failure to timely pay the renewal fee, the Owner or Operator must submit the Massage Establishment ~~L~~icense or Outcall Massage ~~L~~icense renewal fee plus a reinstatement fee of ten percent (10%) of the Massage Establishment ~~L~~icense or Outcall Massage ~~L~~icense renewal fee, contingent on City approval and subject to all applicable provisions of Title 20 of this Municipal Code.

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

(c) Prohibited Operations. Upon revocation of a City business license, Massage Establishment License and/or Outcall Massage License, the licensee shall not operate a Massage Business within the jurisdiction of the City for a period of five (5) years from the date of such revocation.

**5.44.150140 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 Businesses~~ described herein, whether the activities herein described were established before or after ~~the effective date of this Chapter~~July 13, 2017. Any existing Massage Technician who ~~p~~Performs Massage and any Existing Massage ~~Establishment Business~~ 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~~as of July 13, 2017, 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~~July 13, 2018 if the Massage Technician or Existing Massage Business was previously exempt by the City from the requirement to obtain a CAMTC Certificate, 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~~August 13, 2017.

**5.44.160150 Exemptions.** This Chapter shall not apply to the following classes of Persons, and no Massage Establishment ~~L~~icense or Outcall Massage ~~L~~icense 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 ~~p~~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.

| **5.44.170160 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.

| **5.44.180170 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.

## 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. ~~Businesses where massage is performed as Massage Accessory Use and~~ ~~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~~July 13, 2017, 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 ~~e~~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 Existing ~~Massage Establishment~~ as of ~~the effective date of this Section~~July 13, 2017, 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 ~~e~~Existing ~~Massage Establishment~~ desires to change locations after ~~the effective date of this Section~~July 13, 2017 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 ~~s~~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 ~~h~~ license is filed. This limitation shall not apply to the following businesses: (i) businesses where massage is performed as Massage, Accessory Use, as that term is defined under this Zoning Ordinance; or to (ii) Outcall Massage services, as that term is defined under Chapter 5.44 of this Municipal Code; or (iii) to any ~~e~~ 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 Title 5 of this Municipal Code.

D. Existing 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 July 13, 2017 shall be considered a legal, non-conforming use. Such Existing 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.~~

FE. The Owner, or Operator or Manager, as those terms are defined under Chapter 5.44 of this Municipal Code, 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 20.600 DEFINITIONS

### Section 20.600.070 "E" Definitions

**Existing Massage Establishment (land use).** Any existing Massage Establishment legally established in the City of San Marcos as of July 13, 2017, that continuously operates in the City as a Massage Establishment since that date 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.

### **Section 20.600.150 "M" Definitions**

**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 possess a current, valid and authentic certificate issued by the California Massage Therapy Council. ~~Massage,~~ Accessory Use shall not be classified as a Massage Establishment, and shall not be required to obtain a Massage Establishment License under Chapter 5.44 of ~~the this~~ Municipal Code, but shall be subject to the Massage operating requirements under Chapter 5.44 and the specific use standards under Section 20.400.250 of this Municipal Code and all other applicable provisions of ~~Title 5 of~~ this Municipal Code.