

**ORDINANCE NO. 1162**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS BANOS REPEALING AND AMENDING IN ITS ENTIRETY CHAPTER 16 OF TITLE 11 OF THE LOS BANOS MUNICIPAL CODE REGULATION OF MASSAGE ESTABLISHMENTS AND SERVICES**

**WHEREAS**, the California Legislature recently approved Assembly Bill 1147, which amended the California Massage Therapy Act (Cal. Bus. & Prof. Code § 4600 *et seq.*), and which went into effect on January 1, 2015;

**WHEREAS**, this new law authorizes a city, a county, or a city and a county to adopt or enforce local ordinances that govern zoning, business licensing, or reasonable health and safety requirements for establishments or businesses of a certified massage therapist or certified massage practitioner;

**WHEREAS**, the City of Los Banos has experienced an increase in the number of massage establishments over the past several years;

**WHEREAS**, the City of Los Banos desires to regulate massage therapy businesses to balance community needs and to minimize the negative secondary effects associated with such uses; and

**WHEREAS**, these health and safety regulations are not intended to provide the exclusive regulation of massage establishments. Massage establishments must comply with any and all applicable regulations at the state and local level, including the state Massage Therapy Act, and zoning regulations of the Los Banos Municipal Code.

**THE CITY COUNCIL OF THE CITY OF LOS BANOS DOES ORDAIN AS FOLLOWS:**

**Section 1:** Chapter 16 of Title 11 of the Los Banos Municipal Code shall be repealed and amended in its entirety to read as follows:

**Title 11**

**Chapter 16**

**MESSAGE ESTABLISHMENTS AND THERAPISTS**

Sections:

**Article 1. General Provisions.**

**11-16.101 Purpose – Authority.**

**11-16.102 Definitions.**

**11-16.103 Exemptions.**

**Article 2. Massage Therapists.**

**11-16.201 CAMTC Certification Required; Business License.**

**11-16.202 Exemption from CAMTC Certification; City Permitted Massage Therapists.**

**11-16.203 City Permitted Massage Therapist Permit Renewal.**

**11-16.204 City Permitted Massage Therapist; Suspension; Revocation.**

**11-16.205 Registration Requirement.**

**Article 3. Regulation of Massage Establishments.**

- 11-16.301 **Massage Establishment Permit.**
- 11-16.302 **Massage Establishment Permit Application Procedure.**
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- 11-16.304 **Massage Establishment Permit Nontransferable.**
- 11-16.305 **Term of Massage Establishment Permit; Renewal.**
- 11-16.306 **Grounds for Denial of a Massage Establishment Permit.**
- 11-16.307 **Process for Denial of a Massage Establishment Permit.**
- 11-16.308 **Suspension or Revocation of a Permit.**
- 11-16.309 **Process For Revocation or Suspension.**
- 11-16.310 **Record Keeping.**
- 11-16.311 **Operating Requirements.**
- 11-16.312 **Inspections.**
- 11-16.313 **Hours of Operation.**
- 11-16.314 **Department Coordination with CAMTC.**
- 11-16.315 **Property Owner Responsibility.**

**Article 4. Off Premises Massage Regulations.**

- 11-16.401 **Off Premises Massage Regulations.**

**Article 5. Enforcement.**

- 11-16.501 **Violation - Penalties.**
- 11-16.502 **Continuing Violations.**
- 11-16.503 **Enforcement Authority/Entry to Inspect.**

**Article 6. Appeals.**

- 11-16.601 **Appeals.**

**Article 1. General Provisions.**

**Sec. 11-16.101 Purpose – Authority.**

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

This Chapter relies upon the state certification process of the California Massage Therapy Council under California Business and Professions Code Section 4600 *et seq.*

In addition, this Chapter provides certain minimum standards for the operation of massage establishments, their managing employees, and massage therapists and practitioners.

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

**Sec. 11-16.102 Definitions.**

For purposes of this Chapter, unless the context clearly indicates otherwise, certain words and phrases shall have the meaning given to them in this section:

- (a) “Applicant” means any person who applies for a license as required by this Chapter. In the event the applicant is a non-natural person (e.g., a corporation), the term applicant shall also include the responsible person legally authorized to act on behalf of the applicant and, submit an application to the City pursuant to this Chapter.

(b) "California Massage Therapy Council" or "CAMTC" means the California Massage Therapy Council created under Business and Professions Code Section 4602.

(c) "Certified massage practitioner" or "practitioner" means a person who is currently certified as a massage practitioner by the CAMTC pursuant to Business and Professions Code Section 4604.2. A Certified massage practitioner or practitioner shall comply with the requirements of this Chapter, and the provisions of the Massage Therapy Act under California Business and Professions Code Section 4600 *et seq.*

(d) "Certified massage therapist" or "therapist" means a person who is currently certified as a massage therapist by the CAMTC pursuant to Business and Professions Code Section 4604. A Certified massage therapist or therapist shall comply with the requirements of this Chapter, and the provisions of the Massage Therapy Act under California Business and Professions Code Section 4600 *et seq.*

(e) "Director" means the Community and Economic Development Director or any other person the City Manager may designate to administer the Massage permitting program.

(f) "Exempt massage therapist" or "City permitted massage therapist" means a massage therapist who has as of January 1, 2018 a valid City issued massage therapist permit and or valid City issued business license and who on or before June 1, 2018 applied to the City and was granted an exemption to the State certification requirement. An Exempt therapist or City permitted therapist shall comply with the requirements of this Chapter, and the provisions of the Massage Therapy Act under California Business and Professions Code Section 4600 *et seq.*, except for the state certification requirements.

(g) "Massage" or "Massage Therapy" shall mean any method of treating the external parts of the body for remedial, health, or hygienic purposes for any form of compensation by means of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating, of the external parts of the body with 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, antiseptic, oils, powder, creams, lotions, ointments, or other similar preparations commonly used in this practice; or by baths, including but not limited to Turkish, Russian, Swedish, Japanese, vapor, shower, electric tub, sponge, mineral, mud, fermentation or any other type of bath.

(h) "Massage establishment" means a fixed location where certified massage therapists, certified massage practitioners or exempt therapists practice massage, excluding those locations where massage is performed on an out call basis, as provided in Business and Professions Code Section 4601(f). The following are not considered massage establishments under this chapter: a hospital, nursing home, sanitarium, physiotherapy establishment, office of a licensed medical professional, or other state licensed physical or mental health professional or facility; nor athletic clubs, health club, or fitness facilities, when the giving of massage is an incidental function of the business.

(i) "Outcall massage service" means a business which provides massage at a location designated by the client or the massage therapist, practitioner, or exempt therapist other than at a massage establishment.

(j) "Owner" means an individual natural person, firm, corporation, association, organization, partnership, limited liability company, business trust, corporation or company that owns, has an equity interest in, or shares a percentage of massage therapy proceeds with, a massage establishment.

### **Sec. 11-16.103 Exemptions.**

The provisions of this Chapter shall not apply to the following classes of individuals or businesses while engaged in the performance of their duties:

(a) Physicians, surgeons, nurses, chiropractors, osteopaths, acupuncturists, podiatrists, physical therapists, who are duly licensed to practice their respective professions, in the State of California under the provisions of Division 2 (commencing with Section 500) of the Business and Professions Code.

(b) Persons operating or employed at hospitals, nursing homes, sanitariums, or any other health facility duly licensed by the State of California.

(c) Trainers of any amateur, semi-professional or professional athlete or athletic team, so long as such persons' practice of massage is limited to such athletes and athletic teams.

(d) Persons operating or employed at athletic clubs or fitness facilities, where such facility is designed and equipped for indoor sports, exercise, or physical education, and where massage services are provided at such facilities and incidental to the function of the business; however any person performing massage at such facilities shall be CAMTC certified massage therapist, CAMTC certified massage practitioner, or an Exempt massage therapist or City permitted massage therapist as defined in this Chapter.

(e) Barbers, cosmetologists, or estheticians who are duly licensed under the laws of the State of California, while engaging in practices within the scope of their licenses, so long as the barber, cosmetologist or esthetician limits any massages he/she performs in the course of his/her professional duties to the neck, face and/or scalp, hands or feet of the clients when that massage is accessory to and within the scope of the barber's, cosmetologist's, and esthetician's state license.

(f) Enrolled students of a school of massage when they are performing massage within the City as part of a formal supervised internship or training wherein the student receives school credit, operated by the school, without receiving any form of compensation, including tips, on the premises of a massage establishment duly authorized to operate in the City.

(g) Persons performing a therapeutic modality for which the state does not offer licenses or certification under the provisions of Division 2 (commencing with Section 500) of the Business and Professions Code and the modality is performed with minimal touching and the client remains fully clothed at all times, such as Reiki, Reflexology, Rolfing or the Bowen Technique.

## **Article 2. Massage Therapists.**

### **Sec. 11-16.201 CAMTC Certification Required; Business License.**

(a) Except as otherwise provided in this Chapter, no person may practice or perform massage or massage therapy in the City without having a valid and unexpired CAMTC certification pursuant to Business and Professions Code Section(s) 4604, 4604.1, or 4604.2.

(b) An independent contractor performing massages in the City shall have a valid and current City issued business license.

### **Sec. 11-16.202 Exemption from CAMTC Certification.**

(a) A massage therapist or practitioner who has as of January 1, 2018 a valid City issued massage therapist permit and or valid City issued business license shall be exempt from the State certification requirements of this Chapter, if on or before May 1, 2018 he or she applies with the City and is granted an exemption to the State certification requirement by the Director based upon the following criteria:

(1) The massage therapist or practitioner who as of January 1, 2018 has practiced or performed massage in the City pursuant to a valid City issued massage therapist permit and or valid City issued business license;

(2) The massage therapist or practitioner has completed one of the following requirements:

(A) Five hundred (500) hours of instruction in a massage specialty and therapeutic approach at a recognized school of massage;

(B) Two hundred fifty (250) hours of such instruction and an additional five hundred (500) documented hours of practical experience in a massage specialty and therapeutic approach in one or a combination of the following: (i) a primary office of and under the direct supervision of a medical professional licensed by the State of California; specifically, a physician, surgeon, chiropractor, osteopath, physical therapist, or nurse, while such medical professional is performing activities encompassed by such license and is physically on the premises where the massage therapy is being administered; (ii) continuing education classes or seminars in the field of massage therapy offered by a recognized school of massage; and (iii) as a permitted massage therapist trainee working under direct supervision of a permitted massage therapist; or

(C) Has passed an independently prepared and administered national certification exam which has been recognized by objective standards to fairly evaluate professional level, skill, safety, and competence as determined by the National Commission for Certifying Agencies (NCCA).

(3) The massage therapist or practitioner has not been convicted of committing any act punishable as a sexually related crime or being required to register pursuant to the Sex Offender Registration Act (Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1 of the Penal Code); or is not required to register as a sex offender in another state; or has not been convicted of violating subdivision (b) of section 647 of the Penal Code.

(4) That the massage therapist or practitioner has not violated any provision of this Chapter or any similar ordinance, law, rule, or regulation of another public agency which regulates the operation of massage establishments or massage therapists or practitioners.

(5) Certificate from a physician licensed to practice in the State of California stating that the massage therapist or practitioner has tested negative for tuberculosis. If the massage therapist or practitioner has tested positive, the therapist or practitioner must submit documentation from a physician licensed to practice in the State of California that the tuberculosis is not in an active state and the massage therapist or practitioner is asymptomatic.

(b) A massage therapist or practitioner who qualifies and receives an exemption from the State certification requirement shall obtain a City issued massage therapist permit pursuant to this Chapter and shall comply with the applicable requirements of this Chapter.

(c) The Director shall make a determination to approve, conditionally approve or deny the exemption within a reasonable period of time after submittal of a complete application. Upon the approval of an application for an exemption from the State certification requirement, the Director shall issue a massage therapist permit to the applicant within ten (10) business days of approval.

(d) The Director may issue a City issued massage therapist permit upon such conditions he or she deems necessary to adequately protect members of the public in their patronage or dealings with the Exempt massage therapist or to reduce the incidence, detect the commission, or identify perpetrators of crime. Such conditions may be imposed at the time a City issued massage therapist permit is initially issued, upon renewal of the permit, or at any time during the term of the permit.

(e) On determining that grounds for denial of an initial application exist, the Director shall furnish written notice of the proposed denial to the applicant stating the reasons therefor, and serving the notice and a copy of this Chapter or any otherwise applicable code sections, upon the applicant, in person or by regular mail. The applicant shall be given an opportunity to appear and meet with the Director contest the proposed decision to deny the application and to show cause why the application should not be denied.

(f) After holding the meeting described in subsection (e) herein, or if the applicant does not request a meeting, upon determining that there are sufficient grounds, the Director shall:

- (1) Approve the application;
- (2) Conditionally approve the application;
- (3) Deny the application.

(g) The decision of the Director shall become effective fourteen (14) days following the date of service (either by regular mail or personally) upon the applicant of the notice of decision.

#### **Sec. 11-16.203 City Permitted Massage Therapist Permit Renewal.**

(a) A City permitted massage therapist who qualifies and receives an exemption under Section 11-16.202 shall file an annual renewal application on the required form provided by the Director for a City issued massage therapist permit. Failure to annually renew the massage therapist permit shall invalidate the exemption to the State certification requirement for the City permitted massage therapist. The Director shall make a determination to approve, conditionally approve or deny the renewal application.

(d) The Director may deny the renewal application for a City issued massage therapist permit for any of the following reasons:

(1) If the City permitted massage therapist made a material misstatement or omission in the application or in a previous application. If the Director finds substantial evidence that an application contains a knowing or intentional material misstatement or omission;

(2) The City permitted massage therapist violated any provision of this Chapter and the permit was previously suspended or revoked for any violation of this Chapter;

(3) The City permitted massage therapist violated any provision of this Chapter on more than one occasion; provided, that the City permitted massage therapist received timely notice of each violation;

(4) The City permitted massage therapist has been convicted of or pled guilty or no contest to committing any act punishable as a sexually related crime or being required to register pursuant to the Sex Offender Registration Act (Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1 of the Penal Code); or is required to register as a sex offender in another state; or has been convicted of violating subdivision (b) of section 647 of the Penal Code.

(5) The City permitted massage therapist has committed any of the acts described in subdivision (a) of section 4609 of the Business and Professions Code.

(d) On determining that grounds for denial of a renewal application exist, the Director shall furnish written notice of the proposed denial to the applicant stating the reasons therefor, and serving the notice and a copy of this Chapter or any otherwise applicable code sections, upon the applicant, in person or by regular mail. The applicant shall be given an opportunity to appear and meet with the Director contest the

proposed decision to deny the application and to show cause why the application should not be denied.

(f) After holding the meeting described in subsection (d) herein, or if the applicant does not request a meeting, upon determining that there are sufficient grounds, the Director shall:

- (1) Approve the application;
- (2) Conditionally approve the application;
- (3) Deny the application.

(g) The decision of the Director shall become effective fourteen (14) days following the date of service (by mail or personally) upon the applicant of the notice of decision.

**Sec. 11-16.204 City Permitted Massage Therapist; Suspension; Revocation.**

(a) The Director may suspend or revoke a City issued massage therapist permit for any of the following reasons:

(1) The City permitted massage therapist consumed non prescribed controlled substances in a massage establishment;

(2) Any of the grounds for denial of the City issued massage therapist permit would apply;

(3) The City permitted massage therapist performed, solicited or in any way made available any service that is not a legitimate, recognized massage service;

(4) The City permitted massage therapist provided and/or continues to provide massage in a manner that poses a danger to the health and safety of clients or the public; or

(5) The City permitted massage therapist failed to correct a violation of this Chapter after notification from the Director.

(b) On determining that grounds for revocation or suspension exist, the Director shall furnish written notice of the proposed revocation or suspension to the permittee stating the reasons therefor, and serving the notice and a copy of this Chapter or any otherwise applicable code sections, upon the permittee, in person or by regular mail. The permittee shall be given an opportunity to appear and meet with the Director contest the proposed decision to suspend or revoke the permit and to show cause why the permit should not be suspended or revoked.

(c) After holding the meeting described in subsection (b) herein, or if the applicant does not request a meeting, upon determining that there are sufficient grounds, the Director shall:

- (1) Issue a warning;
- (2) Impose reasonable conditions on the permit;
- (3) Suspend the permit for a specified period not to exceed six (6) months;
- (4) Revoke the permit.

(d) The decision of the Director shall become effective fourteen (14) days following the date of service (either by regular mail or personally) upon the applicant of the notice of decision.

**Sec. 11-16.205 Registration Requirement.**

(a) On or before May 1, 2018, a massage therapist, practitioner, or a City permitted massage therapist shall, prior to performing massage in the City, and annually thereafter, register with the Community and Economic Development Department prior to providing massage services. The registration application shall include, at a minimum, the following information: name, address, telephone number(s), place(s) of employment, whether the applicant intends to engage in "out call massage" and evidence of certification from the CAMTC or a City issued therapist permit. The massage therapist, practitioner, or a City permitted massage therapist shall notify the Community and Economic Development Department within ten (10) days of any change in the information provided, except a Certified massage therapist or Certified massage practitioner shall immediately notify the Community and Economic Development Department if CAMTC suspends or revokes the registrant's certification or takes other disciplinary action against the massage therapist or practitioner.

(b) Prior to any new employee or independent contractor performing massage at a massage establishment, a massage establishment shall provide the Director with an updated list stating the number of massage therapists or practitioners or Exempt therapists, performing massage at the establishment, the full name, date of birth, current address, and telephone number of each person who performs or will perform massage at the establishment, the identification number and expiration date of each therapist's CAMTC certificate or City issued massage therapists permit.

**Article 3. Regulation of Massage Establishments.**

**Sec. 11-16.301 Massage Establishment Permit.**

(a) Except as otherwise provided in this Chapter, no person may own or operate a massage establishment in the City unless the owner obtains, and continues to maintain, a current and valid massage establishment permit issued by the City.

(b) Any owner operating a massage establishment as of the effective date of this ordinance shall apply for a massage establishment permit on or before May 1, 2018, and may temporarily continue to operate subject to the provisions of this Chapter until a massage establishment permit is either issued or denied by the City.

**Sec. 11-16.302 Massage Establishment Permit Application Procedure.**

(a) The owner of a proposed massage establishment shall be the only person eligible to obtain a massage establishment permit for such business. The owner shall not be eligible to obtain a massage establishment permit unless the owner is at least eighteen (18) years of age. A separate permit is required for each massage establishment location.

(b) The following shall be submitted to the Community and Economic Development Department at the time of application for a massage establishment permit:

(1) A completed application form signed by: (i) the applicant; and (ii) either the record owner of the property or the lessor of the premises (if the business premises are leased to the applicant business) where the massage establishment is to be conducted. The application shall include the applicant's full legal name and contact information, the address where the applicant desires to do business, and such other information as the Community and Economic Development Department may reasonably require.

(2) Background check. Each applicant shall submit the following:

(A) Information related to the applicant's business, occupation and employment history for the ten (10) years preceding the date of application, and the inclusive dates of same.

(B) The name and address of any massage business or other like establishment owned or operated by the applicant, the name of all partners and co-owners in each business, and a detailed description of any discipline, suspension or revocation for each such business.

(C) A description of any other business located in the City of Los Banos even if not massage related, that is owned or operated by the applicant.

(D) A description regarding any felony or misdemeanor convictions of the applicant and all owners within the last five (5) years, any outstanding warrants for arrest and any pending criminal case.

(E) The applicant's fingerprints on a form provided by the Police Department. Any fees for the fingerprints and livescan shall be paid by the applicant.

(3) Two (2) color photographs, taken within six (6) months prior to the date of the application, that clearly show the applicant's face. Any fees for the photographs shall be paid by the applicant.

(4) A written description of the proposed massage establishment and how it will satisfy the requirements of this Chapter.

(5) The register of massage therapists and practitioners required by Section 11-16.310 herein.

(6) A statement signed by the applicant certifying under penalty of perjury that all of the information submitted in connection with the application is true and correct.

(7) A nonrefundable application fee in an amount set by resolution of the City Council.

(c) The Director may request such other additional information and/or documentation as deemed necessary to determine whether the proposed business operations and premises comply with applicable local, state or federal laws.

(d) Upon submittal of a complete application and payment of all applicable fees, the massage establishment permit application shall be reviewed by the Director and may be reviewed by any City department or any governmental agency deemed necessary by the Director, to determine if the business operations and premises to be occupied meet the requirements of federal, state, or local laws. The Director may also refer to any governmental agency any information submitted by persons subject to the provisions of this Chapter in connection with the conduct of a business regulated, or supervised, or otherwise the concern of any such agency, including agencies concerned with health regulations, zoning conformance, fire safety, police considerations or any other safeguard of the public interest. City personnel may investigate and inspect the premises of the business for the purpose of assuring that the premises comply with all applicable local and state laws.

(e) The Director shall make a determination to approve, conditionally approve or deny the massage establishment permit within a reasonable period of time after submittal of a complete application.

(f) Upon the approval of an application for a massage establishment permit and payment of the required fees, the Director shall issue a massage establishment permit to the applicant within ten (10) business days of approval.

### **Sec. 11-16.303 Massage Establishment Permit Conditions of Approval.**

(a) The Director may issue a massage establishment permit upon such conditions relating to the method or manner of operation of the business as he or she deems necessary to adequately protect members of the public in their patronage or dealings with the business or to reduce the incidence, detect the commission, or identify

perpetrators of crime. Such conditions may be imposed at the time a massage establishment permit is initially issued, upon renewal of the permit, or at any time during the term of the permit. The conditions may include, but are not limited to, the following:

(1) No permittee, or any employee or independent contractor of a massage establishment, shall engage in, or allow, any of the acts prohibited by California Business and Professions Code Section 4609. A violation of that section shall be considered a violation of this Chapter. A violation by an employee or independent contractor shall be deemed a violation by the massage establishment.

(2) Every massage establishment shall display at all times during business hours the permit issued pursuant to the provisions of this Chapter for such business. The permit shall be displayed in a conspicuous place so that it may be readily seen by all persons entering the massage establishment.

(3) If an individual's CAMTC certification or City issued permit is suspended or revoked or if the individual is not CAMTC certified (excepting an Exempt therapist), the massage establishment may not allow that person to provide massage services, including outcall massage services, at or through the massage establishment business.

(4) The massage establishment must notify the City immediately upon the establishment's notice of any disciplinary action taken by the CAMTC regarding one of the establishment's Certified massage therapists or massage practitioners and submit a copy of any notice or order.

(5) Any act or omission of anyone providing massage at the establishment's location, whether as an employee or an independent contractor, which constitutes a violation of this Chapter shall also be deemed to be an act or omission of the massage establishment.

(6) Compliance with all federal, state and local laws, and the requirements of this Chapter.

(7) The permittee shall have a valid and current City issued business license.

#### **Sec. 11-16.304 Massage Establishment Permit Nontransferable.**

(a) No person shall operate a massage establishment under the authority of a massage establishment permit at any place other than the address of the massage establishment stated in the application for the permit. The Director may approve a change of location, provided the massage establishment complies with all ordinances and regulations of the City.

(b) No massage establishment permit issued pursuant to this Chapter shall be transferable to any other person or entity.

(c) Any attempt to transfer a massage establishment permit is hereby declared invalid and the permit shall automatically become void effective the date of such attempted transfer.

(d) Nothing in this Section shall prevent the Director from approving a second massage establishment permit for a single location provided that the holder of the massage establishment permit previously approved for such location consents in writing to the automatic expiration of such previously approved permit upon the effective date of such second permit.

#### **Sec. 11-16.305 Term of Massage Establishment Permit; Renewal.**

(a) A massage establishment permit issued under this Chapter shall be valid for one (1) year from the date of issuance unless suspended or revoked.

(b) A holder of a massage establishment permit issued under this Chapter shall submit an application for renewal no later than thirty (30) calendar days prior to the expiration of the permit issued for such establishment. The renewal application shall be submitted together with a nonrefundable renewal fee in an amount established by resolution of the City Council. Applications for renewal of a massage establishment permit shall be processed in accordance with the procedures governing initial applications.

**Sec. 11-16.306 Grounds for Denial of a Massage Establishment Permit.**

(a) The Director shall deny an initial application for a massage establishment permit or an application for renewal of a massage establishment permit on any of the following grounds:

(1) That the applicant, massage establishment, permittee, responsible person and/or owners of the massage business, have engaged in unlawful activity, or been convicted of any of the following offenses or convicted of an offense outside the state that would have constituted any of the following offenses if committed within the state:

(A) Penal Code §§ 266i, 315, 316, 318 or 647(b) of the state or that the massage personnel or the owners of a massage establishment are required to register under Penal Code § 290;

(B) Any felony offense involving the sale of a controlled substance specified in the Health and Safety Code §§ 11054, 11055, 11056, 11057 or 11058;

(C) Any crime or unlawful activity, on the basis of which the Chief of Police reasonably concludes that by reason of the nature of the crime or activity, the applicant's operation of a massage establishment would pose a risk of harm to the public;

(2) That the applicant/responsible person, owners and/or employees of the massage business have engaged in unprofessional conduct, including but not limited to, personal conduct or operation of a business resulting in denial of a license or permit, revocation, suspension, restriction, or any other disciplinary action taken against an applicant, permittee, licensee, responsible person, owner and/or employee by the City, by the state, by any other governmental agency, or by CAMTC;

(3) That the massage establishment is not operated in a manner, or housed within a building, which complies with all city, state, federal or otherwise applicable, codes, rules, regulations or laws, or CAMTC rules or regulations;

(4) That the applicant failed to provide information in connection with the application requested by the City, preventing the Director or the Chief of Police from making his or her determination as to suitability to conduct work at the business;

(5) That the applicant does not meet the qualifications necessary for issuance of a massage establishment license as required by this Code;

(6) That statements made in the application or any information submitted supplementary to the application are incorrect or untrue;

(7) That the responsible person is under the age of 18 years of age;

(8) That, based on specific facts identified by the Director, the Director reasonably concludes that the operation of the proposed massage establishment would pose a risk to the public, that the applicant would not conduct the business in a law abiding or professional manner, and/or that the operation of the proposed business would subject patrons of the business to a risk of harm or criminal, deceitful or otherwise unethical practices;

(9) That another massage establishment is or was operating at that same location and any of the following are true:

(A) The other business's massage establishment permit is suspended or was revoked or denied renewal for cause within the previous five (5) years;

(B) The Director has served a notice of suspension, revocation, or denial of renewal regarding the other business's massage establishment license within the previous 15 days; or

(C) An appeal from a notice of suspension, revocation, or denial of renewal is pending;

(10) The applicant is found to have committed a crime involving moral turpitude that is substantially related to the business activity for which the massage establishment permit is being sought;

(11) The business or the activities or conduct of the business at the proposed fixed location is prohibited by any provision of this Code or any local, state or federal law, statute, rule or regulation;

(12) The applicant has been convicted of or pled guilty or no contest to committing any act punishable as a sexually related crime or being required to register pursuant to the Sex Offender Registration Act (Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1 of the Penal Code); or is required to register as a sex offender in another state; or has been convicted of violating subdivision (b) of section 647 of the Penal Code; or

(13) The prescribed fees for the application or renewal have not been paid.

#### **Sec. 11-16.307 Process for Denial of a Massage Establishment Permit.**

(a) On determining that grounds for denial of an initial application or a renewal exist, the Director shall furnish written notice of the proposed denial to the applicant stating the reasons therefor, and serving the notice and a copy of this Chapter or any otherwise applicable code sections, upon the applicant, in person or by regular mail. The applicant shall be given an opportunity to appear and meet with the Director contest the proposed decision to deny the application for the massage establishment permit and to show cause why the application for the massage establishment permit should not be denied.

(b) After holding the meeting described in subsection (a) herein, or if the applicant does not request a meeting, upon determining that there are sufficient grounds, the Director shall:

- (1) Approve the application;
- (2) Conditionally approve the application;
- (3) Deny the application.

(c) The decision of the Director shall become effective fourteen (14) days following the date of service (either by regular mail or personally) upon the applicant of the notice of decision. If the applicant files an appeal within the time and manner prescribed, the permit (in the case of a renewal) shall remain in effect until the appeal is finally determined.

(d) After an establishment permit has been denied, no re-application for an establishment permit will be accepted within one (1) year of the date of final determination from any person, applicant, owner, operator, manager, massage therapist, or any other person or persons, partnership, or corporation who was listed

on an establishment permit or application unless the Director determines that the reason for denial has been cured and no longer exists.

**Sec. 11-16.308 Suspension or Revocation of a Permit.**

The Director may revoke or suspend a massage establishment permit on any of the following grounds:

(a) That pursuant to Section 11-16.306, grounds for denial of an initial application for a massage establishment permit exist, including but not limited to, untrue statements made in the application or conviction of a crime that would inhibit the person's ability to conduct the business in a law abiding manner; or

(b) The business has operated in a manner, or is housed on premises or within a building which violates or is in violation of any city, state, federal, or otherwise applicable codes, rules, regulations or laws, or CAMTC rules or regulations, including, but not limited to, violations by the responsible person or employees; or

(c) The permittee has violated one or more conditions imposed upon the permit.

**Sec. 11-16.309 Process for Revocation or Suspension.**

(a) On determining that grounds for permit suspension or revocation exist, the Director shall furnish written notice of the proposed suspension or revocation to the permittee stating the reasons therefor, and serving the notice and a copy of this Chapter or any otherwise applicable code sections, upon the holder of the permit, in person or by regular mail. The permittee shall be given an opportunity to appear and meet with the Director contest the proposed decision to suspend or revoke the massage establishment permit and to show cause why the massage establishment permit should not be revoked or denied.

(b) After holding the meeting described in subsection (a) herein, or if the applicant does not request a meeting, upon determining that there are sufficient grounds, the Director shall:

- (1) Issue a warning;
- (2) Impose reasonable conditions on the permit;
- (3) Suspend the permit for a specified period not to exceed six (6) months;
- (4) Revoke the permit.

(c) The decision of the Director shall become effective fourteen (14) days following the date of service (either by regular mail or personally) upon the permittee of the notice of decision. If the permittee files an appeal within the time and manner prescribed, the permit shall remain in effect until the appeal is finally determined. If the Director finds that it is necessary in order to protect against a serious and immediate threat to the health, safety or welfare of the public caused by exercise of the permit the revocation or suspension shall take effect immediately upon service of the notice.

(d) After an establishment permit has been revoked, no re-application for an establishment permit will be accepted within one (1) year of the date of final determination from any person, applicant, owner, operator, manager, massage therapist, or any other person or persons, partnership, or corporation who was listed on an establishment permit or application unless the Director determines that the reason for revocation has been cured and no longer exists.

**Sec. 11-16.310 Record Keeping.**

The holder of a massage establishment permit shall maintain a register of all certified massage therapists, certified massage practitioners and exempt therapists

providing massage at the establishment, including independent contractors, and each such person's state certificate number, home address, date of hiring, and whether the massage therapist or massage practitioner will be performing outcall massages. An amended copy of the register shall be provided to the Director within five (5) days of the date of hiring, commencement of services, or termination of services by each massage therapist or massage practitioner or exempt therapist at the establishment. Such filings shall be accompanied by a statement, signed by the owner, that all of the information in the register is true and correct.

### **Sec. 11-16.311 Operating Requirements.**

A massage establishment, the owner and operator of a massage establishment, registered massage therapist, or practitioner, and City permitted therapist shall conduct the massage establishment business in a safe and sanitary manner, and shall comply with the following requirements:

(a) Compliance with codes. Comply with all applicable building, fire, safety, health, electrical, plumbing, mechanical, heating and ventilating, sanitation, and other laws applicable to the premises;

(b) Maintenance of permits. A copy of the establishment permit and each Exempt massage therapist's permit or CAMTC certificate shall be posted in a conspicuous place on the establishment premises in such a manner that can be easily seen by persons entering the establishment. A passport-size photograph of the permittee or certificate holder shall be affixed to each massage therapist's permit or certificate.

(c) Posting of services offered. A list of all services available, the price thereof, and the length of time of each service shall be posted or available in a conspicuous place in such a manner that it can be easily viewed by persons entering the massage establishment. No services, other than those set forth on the list, shall be provided.

(d) Payment. All payments for massage services, including gratuities or tips, shall be made at a designated reception area exclusively. At least one sign, with lettering not less than one-half inch (1/2") in height, shall be posted in a conspicuous place in such a manner that it can be easily seen by persons entering the establishment stating, "All payments for massage services, including gratuities or tips, shall be made in the designated reception area exclusively." This provision shall not apply to one-room massage establishments that do not have a reception area.

(e) Alcohol and marijuana prohibited. No alcoholic beverages or marijuana shall be sold, served, furnished, kept, or possessed in any part of a massage establishment. The owner, operator, and managing employee shall be responsible to ensure that no person possesses alcoholic beverages or marijuana inside the massage establishment.

(f) Payroll and other written records. Every massage establishment shall maintain payroll and written records of all business transactions. The written records shall include at a minimum the type of service provided, the date and hour the service is provided, and the name of the massage therapist administering the service. These records shall be kept on the premises and shall be open to inspection by officials charged with enforcement of this Chapter, including the Director or his or her designee. These records shall be retained for a period of at least two (2) years.

(g) Advertising. No services shall be offered in signs, posters, flyers, newspapers or other printed advertisements, or in verbal or recorded announcements or messages, other than those lawfully permitted and posted as required in subsection (b) of this section. Photographs, drawings, written or verbal statements used in any advertising shall not explicitly or implicitly communicate that services offered are for the purpose of sexual stimulation or gratification.

(h) Compliance with SB 577. Massage establishments and massage therapists shall comply with the requirements of Business and Professions Code Sections 2053.5 and 2053.6 pertaining to disclosure and acknowledgment that massage services are not

being provided by a licensed physician, are not licensed services by the State, the qualifications of the person providing the massage services, and those other matters as set forth in the statutes.

(i) Compliance with AB 1147. Massage establishments and massage therapists shall comply with the requirements of the Massage Therapy Act, Chapter 10.5 (commencing with Section 4600) of Division 2 of the California Business and Professions Code.

(j) Prohibition Against Residence; Sleeping Quarters. No person(s) shall reside either on a temporary or permanent basis on or within the premises of a massage establishment. Sleeping quarters shall not be provided on the premises to any person, owner, employee, and or independent contractor.

#### **Sec. 11-16.312 Inspections.**

The City may inspect the premises at the time of permitting a massage establishment, and may make periodic, reasonable inspections of the establishment during normal business hours to assure compliance with CAMTC requirements, this Chapter and applicable fire, health and safety requirements. If any violations are found, the City shall notify the holder of the massage establishment permit in writing. The City may give the establishment ten (10) days to correct the violation(s), or, if the violation(s) presents a danger to public health or safety, close the establishment until the violation(s) is corrected.

#### **Sec. 11-16.313 Hours of Operation.**

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

#### **Sec. 11-16.314 Department Coordination with CAMTC.**

The Community and Economic Development Department shall coordinate with CAMTC, including maintaining a list of certified therapists and practitioners practicing in the City, maintaining a list of massage establishments operating in the City, receiving notices and information from CAMTC, and notifying CAMTC of any arrest or conviction of Penal Code section 647 or other act punishable as a sexually related crime.

#### **Sec. 11-16.315 Property Owner Responsibility.**

Any place where lewdness, or prostitution occurs is a public nuisance which may be abated and permanently enjoined, and for which the City may recover damages from the property owner, as well as from the person conducting or maintaining the nuisance.

### **Article 4. Out Call; Off Premise; Mobile Massage**

#### **Sec. 11-16.401 Out Call; Off Premises Requirements.**

(a) All massage therapists, practitioners, or exempt therapists who perform outcall massage services within the city limits shall have a CAMTC certificate, or a City issued massage therapist permit. Outcall massage therapists shall maintain their certificates or permits upon their persons or within their immediate reach at all times while performing massage in the City and shall display these upon the request of any City official.

(b) Out call massage services shall not be provided at any location owned, leased, rented or under the control of the massage therapist, practitioner, exempt massage therapist including residential dwellings and business offices, unless that location is licensed as a massage establishment or is otherwise exempted as provided in this Chapter.

(c) No out call massage shall be performed in a hotel or motel room or facility designed and operated primarily for transient occupancy or in the private residence of the massage therapist, practitioner, or exempt therapist. A massage therapist, practitioner, or exempt therapist is permitted to provide outcall massage services at a private residence only between the hours of eight a.m. and ten p.m.

(d) All massage therapists, practitioners, exempt therapists who perform outcall massage services within the city limits shall have a CAMTC certificate, or a City issued therapist permit. Outcall massage therapists, practitioners, or exempt therapists shall maintain their certificates or permits upon their persons or within their immediate reach at all times while performing massage in the City and shall display these upon the request of any City official.

(e) No person shall establish or operate an outcall massage service which maintains or operates a facility at which massages are given or are made available to clients within city limits, or whose principal place of business is located within city limits, without obtaining and maintaining in effect a massage establishment permit.

(f) The owner and/or operator of a business at which off-premises massage therapy is conducted is not required to obtain a massage establishment license pursuant to this Chapter, as long as the primary purpose of the business is not massage therapy. The business shall not be required to remain closed during the particular hours provided in this Chapter; however, massage therapy shall only occur during the regular business hours of that business.

(g) The Director, with input from any other department of the city, or any other appropriate agency or entity, shall be vested with discretion in determining the primary purpose of the business. If the Director determines a business is operating as a massage establishment, notice of such determination and notice of the requirement to obtain a massage establishment license shall be sent to the business.

(h) Massage therapists, practitioners, exempt therapists may volunteer their massage services at special events, charitable events, or non-profit events that have obtained required permits from the City.

## **Article 5. Enforcement and Remedies**

### **Sec. 11-16.501 Violation - Penalties.**

(a) It is unlawful and a public nuisance to intentionally violate any of the provisions of this Chapter. Violation of this Chapter may be charged as either an infraction or a misdemeanor. Upon conviction of a misdemeanor, a person shall be subject to payment of a fine, or imprisonment, or both, not to exceed the limits set forth in California Government Code Section 36901.

(b) In addition to any other remedy or penalty set forth in this Chapter or this Code, administrative penalties may be imposed pursuant to applicable provisions of Chapter 11 Title 4 of this Code against any responsible party, in violation of any of the provisions of this Chapter. Imposition, enforcement, collection and administrative review of administrative penalties imposed shall be conducted pursuant to Chapter 11 Title 4 of this Code.

(c) Remedies under this Chapter are in addition to, and do not supersede or limit, any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive.

### **Sec. 11-16.502 Continuing Violations.**

Each and every day, or fractional part of a day, shall constitute a separate violation of the provisions of this Chapter.

**Sec. 11-16.503 Enforcement authority/entry to inspect.**

(a) The Director shall have authority to enforce each of the provisions of this Chapter. The Los Banos Police Department-Code Enforcement Division and other city departments shall render assistance in the enforcement of this Chapter as may be necessary. The city attorney is authorized to file a complaint against any persons found in violation of this Chapter.

(b) The Director, code enforcement officer, fire inspector, and other city officers empowered to enforce the provision of this Chapter, shall have the power and authority to enter into a massage establishment, at any reasonable time, during normal business hours to assure compliance with CAMTC requirements, this Chapter and applicable fire, health and safety requirements.

**Article 6. Appeals**

**Sec. 11-16.601 Appeals.**

(a) Except where an appeals or hearing procedure is otherwise set forth in this Chapter, a decision or action of the Director may be appealed by filing a written notice of appeal with the City Clerk, setting forth the specific grounds thereof.

(b) Notice of such appeal shall be filed with the City Clerk within fourteen (14) calendar days after the date written notice of such action appealed from was mailed or personally delivered to the appellant.

(c) The City Clerk shall forthwith set a date for hearing before City Manager or City Manager's designee and shall give the appellant at least five (5) calendar days' notice of the time and place of said hearing.

(d) At such hearing the appellant shall show cause on the grounds specified in the notice of appeal why the action excepted to should not be approved. The City Manager or City Manager's designee, may continue the hearing from time to time. The findings on the appeal shall be final and conclusive in the matter.

**Section 3.** Ordinances 1159 and 1160 are hereby repealed in their entirety.

**Section 4.** To the extent that the terms and provisions of this Ordinance may be inconsistent or in conflict with the terms or conditions of any prior City ordinance, motion, resolution, rule or regulation governing the same subject, the terms of this Ordinance shall prevail with respect to the subject matter thereof and such inconsistent or conflicting provisions of prior ordinances, motions, resolutions, rules or regulations are hereby repealed.

**Section 5.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase added by this Ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses or phrases are declared unconstitutional, invalid or ineffective.

**Section 6.** The proposed amendments to the Los Banos Municipal Code do not propose any changes to City policies or regulations that would result in a direct or indirect physical environmental impact; therefore it has been determined that this ordinance amendment is covered by the general rule that the California Environmental Quality Act applies only to projects which have the potential for causing a significant effect on the environment pursuant to CEQA guidelines section 15601(b)(3) and is not subject to environmental review.

**Section 7.** This Ordinance shall go into effect and be in full force and operation thirty (30) days after its final passage and adoption. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted and published once within fifteen days after passage and adoption as may be required by law; or, in the alternative the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the Office of the City Clerk five days prior to the date of adoption of this Ordinance; and, within fifteen days after adoption, the City Clerk shall cause to be published, the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

Introduced by Council Member Silveira and seconded by Council Member Faria on the 17<sup>th</sup> day of January, 2018.

Passed on the 7th day of February, 2018 by the following vote:

AYES: Council Members Faria, Johnson-Santos, Lewis, Silveira,  
Mayor Villalta  
NOES: None  
ABSENT: None

APPROVED:



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Michael Villalta, Mayor

ATTEST:



Lucille L. Mallonee, City Clerk