

ORDINANCE NO. 2878

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL MONTE REPEALING THE EXISTING ZONING MORATORIUM APPLICABLE TO MASSAGE ESTABLISHMENTS AND AMENDING TITLE 5 (BUSINESS LICENSES AND REGULATIONS) AND TITLE 11 (ZONING) TO ESTABLISH REASONABLE ZONING AND HEALTH AND SAFETY REQUIREMENTS ON MASSAGE ESTABLISHMENTS, IN ACCORDANCE WITH CALIFORNIA ASSEMBLY BILL 1147 (CODE AMENDMENT NO. 746)

WHEREAS, there is substantial research that indicates that the skillful practice of massage can provide many health benefits, including the relief from pain due to disease, injury, and other sources and the contribution of massage to an overall wellness program; and

WHEREAS, pursuant to California Constitution Article XI, Section 7, the City of El Monte (the "City") has the authority to enact local planning and land use regulations to protect the public health, safety, and welfare of their residents through its police power; and

WHEREAS, the City's police power provides the right to adopt and enforce zoning regulations; and

WHEREAS, in 2008, the California Legislature passed Senate Bill 731 ("SB 731"), which added a new Chapter 10.5 to the California Business and Professions Code and provided for the formation of a nonprofit Massage Therapy Organization to oversee a state-sanctioned program of voluntary certification for massage practitioners so that such persons could avoid being required to obtain local massage permits; and

WHEREAS, SB 731 and various amendments thereto stripped the City of its ability to regulate massage establishments, including the City's ability to require conditional use permits for massage establishments; and

WHEREAS, in response to SB 731, the City Council of the City of El Monte (the "City Council"), on October 20, 2009, adopted a 45-day moratorium, under Urgency Ordinance No. 2747, on the approval of any business license, use permit, or any applicable application related to massage establishments, and/or massage practitioners, pursuant to Government Code Section 65858; and

WHEREAS, on November 17, 2009, the City Council adopted Urgency Ordinance No. 2748, to extend such moratorium for an additional ten (10) months and fifteen (15) days, pursuant to Government Code Section 65858; and

WHEREAS, the City Council adopted Urgency Ordinance No. 2761 on October 19, 2010 extending such moratorium for an additional duration of one year, pursuant to Government Code Section 65858; and

WHEREAS, the City Council adopted Ordinance No. 2779 on October 18, 2011 amending Chapter 5.56 of the El Monte Municipal Code to implement changes mandated under SB 731; and

WHEREAS, after the passage of SB 731, the City's number of business establishments ballooned from two (2) in 2008 to twenty-six (26) in 2014; and

WHEREAS, the City experienced a number of negative impacts since the passage of SB 731, including, but not limited to, the proliferation of illicit businesses practices in massage establishments and the inordinate dedication of Police Department and City Attorney resources to addressing issues related to massage establishments as compared to other types of personal service businesses; and

WHEREAS, SB 731 had a sunset date of January 2, 2015; and

WHEREAS, following the criticism of SB 731 and lobbying by the California League of Cities, Governor Brown signed Assembly Bill 1147 ("AB 1147") on September 18, 2014, thereby amending the laws enacted by SB 731 and the various amendments thereto and returning certain additional regulatory authority to regulate massage establishments to cities; and

WHEREAS, AB 1147's author, Assemblywoman Susan Bonilla, described AB 1147 as "the solution which will help eliminate human trafficking and prostitution in California's massage therapy establishments"; and

WHEREAS, the purpose of AB 1147 was to restore much of the local control and land use authority to local governments which had been usurped by SB 731 and the various amendments thereto; and

WHEREAS, pursuant to Government Code Section 65868(a), the, the City Council adopted Interim Urgency Ordinance No. 2850 on February 24, 2015 to establish a temporary moratorium on the establishment of new massage establishments an the expansion and/or relocation of existing massage establishments; and

WHEREAS, pursuant to Government Code Section 65868(a), the, the City Council adopted Interim Urgency Ordinance No. 2853 on April 7, 2015 to extend a temporary moratorium on the establishment of new massage establishments and the expansion and/or relocation of existing massage establishments for a period of 10 months and 15 days; and

WHEREAS, pursuant to Government Code Section 65868(a), the, the City Council adopted Interim Urgency Ordinance No. 2874 on February 2, 2016 to extend a temporary moratorium on the establishment of new massage establishments and the expansion and/or relocation of existing massage establishments for a period of one year; and

WHEREAS, the Planning Commission held a duly noticed public hearing on this Ordinance on January 12, 2016 at which time it recommended that the City Council adopt this Ordinance, as memorialized in Planning Commission Resolution No. 3419; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL MONTE, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The recitals above are true and correct and incorporated herein by reference.

SECTION 2. City Council Urgency Ordinances Nos. 2850, 2853, 2874 are hereby repealed in their entirety.

SECTION 3. Chapter 17.14 (Nonconforming Provisions) of Title 17 (Zoning) of the El Monte Municipal Code is amended by the addition of Section 17.14.090 (Amortization and Discontinuance of Legal Nonconforming Massage Establishments), which shall read as follows:

Section 17.14.090 – Amortization and Discontinuance of Legal Nonconforming Massage Establishments.

- A. All massage establishments which have a valid Massage Establishment Certificate under Chapter 5.56 (Massage Establishments and Massage Practitioners/Therapists) of this Code prior to May 5, 2016 and are located within the C-3 (General Commercial) and C-4 (Heavy Commercial) zone shall obtain a conditional use permit no later than May 5, 2019. Any such massage establishment that does not timely obtain a conditional use permit by May 5, 2019 must cease all operations as of May 6, 2019 and remove

all signs, advertising and displays relating to such business within thirty (30) days thereafter.

- B. No massage establishment may operate in zones other than C-3 and C-4, in accordance with the provision of Subsection A of this Section 17.04.090 as of May 5, 2021 and must remove all signs, advertising and displays relating to such business within thirty (30) days thereafter..
- C. A legal nonconforming massage establishment use shall terminate in accordance with the discontinuance provisions of Section 17.14.050 (Nonconforming Uses) and be subject to the provisions of Chapter 17.14 (Nonconforming Provisions) of this Code.

SECTION 4. Chapter 17.14 (Nonconforming Provisions) of Title 17 (Zoning) of the El Monte Municipal Code is amended by the addition of Section 17.14.100 (Extension of Massage Establishment Amortization Period), which shall read as follows:

Section 17.14.100 – Extension of Massage Establishment Amortization Period.

- A. An application for the extension of an amortization period set forth in Section 17.14.090 shall be made as provided herein.
- B. The owner of the property on which the massage establishment is located, or the owner of the massage establishment, must submit a complete application for approval of an extension not later than six (6) months prior to the expiration of the amortization period, unless the Economic Developer determines that good cause is shown for late filing of the application. Such application shall be made in writing on a form prescribed by the Economic Development Director and shall be accompanied by the filing fee established by resolution of the City Council. The person requesting the extension of the amortization period shall bear the burden of proof in establishing that the amortization period established by Section 17.14.090 is unreasonable, and that the requested extension is a reasonable amortization period under the criteria set forth in Subsection G of this Section 17.14.100. The person applying for the extension shall furthermore be required, in order to meet its burden of proof, to submit the documentation set forth in this Section.
- C. Not later than thirty (30) calendar days after submittal of an application to extend the amortization period, the Economic Development Director shall notify the applicant, in writing, if the application is not complete. The notice shall describe the manner in which the application can be made complete and shall be deemed given upon personal delivery to the applicant or upon deposit in the U.S. mail, first class, postage prepaid, addressed to the applicant at the address shown on the application. If a written determination is not provided to the applicant within thirty (30) calendar days after the application is submitted, the application shall be deemed complete. A complete application shall include:
 - 1. The applicant's name and street address of business;
 - 2. The address to which notice is to be mailed, at the applicant's option, a telephone number and/or email address'
 - 3. The applicant's signature;
 - 4. The term of the requested extension;
 - 5. Documentation relevant to the factors listed in Subsection G of this Section 17.14.100; and

6. The required filing fee.

- D. Within sixty (60) days after a complete application is filed, the Planning Commission shall hear and act on the application and the secretary to the Planning Commission shall give the applicant written notice of the decision and findings made by the Planning Commission. Otherwise, the application shall be deemed granted by operation of law and the business shall be operated as a legal nonconforming use subject to Chapter 17.14 (Nonconforming Provisions). Notice shall be deemed given upon personal delivery to the applicant or upon deposit in the U.S. mail, first class, postage prepaid, addressed to the applicant at the address shown on the application. The secretary shall give the applicant at least ten (10) calendar days' written notice of the time and place at which the application shall be heard by the Planning Commission, in the same manner that notice of the decision is to be given pursuant to this Subsection.
- E. A decision of the Planning Commission to deny the application may be appealed, in whole or in part, by filing a complete notice of appeal with the City Clerk within fifteen (15) days after notice of the decision was given to the applicant pursuant to D of this Section. To be deemed complete, the notice of appeal shall be signed by the appellant, shall state the grounds for disagreement with the decision of the Planning Commission, and shall be accompanied by the filing fee established by resolution of the City Council.
- F. Within forty-five (45) calendar days after the appeal was filed, the City Council shall hear and act on the appeal, and the City Clerk shall give the appellant written notice of the decision and findings made by the City Council. Otherwise, the application shall be deemed granted by operation of law and the business shall be operated in accordance with the provisions of this Chapter. Notice shall be deemed given upon personal delivery to the appellant and applicant upon deposit in the U.S. mail, first class, postage prepaid, addressed to the applicant at the address shown on the application. The notice shall include a written statement verified by oath or affirmation attesting to the date that the decision was mailed to the party by first class mail. The City Clerk shall give the appellant and applicant at least ten (10) calendar days written notice of the time and place at which the appeal shall be heard, de novo, by the City Council, in the same manner that written notice of the decision is to be given pursuant to this Subsection.
- G. In determining whether to grant an extension of the amortization period, and in determining the appropriate length of such an extension, the Planning Commission and, the City Council on appeal, shall consider:
1. The amount of investment in the business;
 2. The present actual and depreciated value of business improvements;
 3. The applicable Internal Revenue Service depreciation schedule or functional non-confidential equivalent;
 4. The remaining useful life of the business improvements;
 5. The remaining lease term;
 6. The ability of the massage establishment and/or land owner to change the use; and
 7. The opportunity for relocation to a legally permissible site and the cost of relocation.

H. The Planning Commission, or the City Council on appeal, shall receive and consider evidence presented by the appellant and any other persons, and shall make findings that the extension to the amortization period it establishes is reasonable in view of the evidence and the criteria set forth in Subsection G. In no event shall the amortization period extension be longer than three (3) years (or by May 5, 2024). The decision of the Planning Commission shall be final and conclusive, unless a timely and complete appeal is filed with the City Clerk pursuant to Subsection E of this Section. The decision of the City Council on appeal shall be final and conclusive, unless timely judicial review is sought pursuant to Code of Civil Procedures Section 1094.6. In the event that a timely action or proceeding is brought pursuant to Code of Civil Procedures Section 1094.6 from the decision to deny the requested extension, in whole or in part, the decision shall be automatically stayed pending a final decision on the merits by the trial court. As used in this Subsection, final decision on the merits does not include rehearing or appellate procedures.

SECTION 5. Section 17.04.020 (Definitions) of Chapter 17.04 (Definitions) of Title 17 (Zoning) of the El Monte Municipal Code is hereby amended so that the definition of "massage establishment" shall read as follows:

Section 17.04.020 – Definitions.

"Massage establishment" means any enterprise or establishment having a fixed place of business where any person engages in, conducts, carries on, or permits to be engaged in, conducted, or carried on, any of the activities set forth in the definition of "massage" in Chapter 5.56 of Title 5 of the El Monte Municipal Code.

SECTION 6. Section 17.50.010 (Uses Permitted) of Chapter 17.50 (C1-Zone) of Title 17 (Zoning) of the El Monte Municipal Code is hereby amended to delete Subsection 27 pertaining to massage establishments so that massage establishments shall no longer be permitted by right in the C1 Zone.

SECTION 7. Section 17.44.010 (Uses Permitted) of Chapter 17.44 (RC-Zone) of Title 17 (Zoning) of the El Monte Municipal Code is hereby amended to delete Subsection 25 pertaining to massage establishments so that massage establishments shall no longer be permitted by right in the RC Zone.

SECTION 8. Section 17.24.040 (Conditionally Permitted Uses in Specified Zones) of Chapter 17.24 (Conditional Use Permits) of Title 17 (Zoning) of the El Monte Municipal Code is hereby amended by the addition of Subsection 63, which shall read as follows:

Section 17.24.040 – Conditionally permitted uses in specified zones.

63. Massage establishments in C-3 or C-4 zones, so long as no new massage establishment is within 1,000 feet of another existing massage establishment. All massage establishments which have a valid Massage Establishment Certificate under Chapter 5.56 (Massage Establishments and Massage Practitioners/Therapists) of this Code prior to May 6, 2016 shall obtain a conditional use permit no later May 6, 2019. Any such massage establishment that does not timely obtain a conditional use permit by May 5, 2019 must cease all operations as of May 6, 2019 and remove all signs, advertising and displays relating to such business within thirty (30) days thereafter.

SECTION 9. Chapter 5.56 (Massage Establishments and Massage Practitioners/Therapists) of Title 5 (Business Licenses and Regulations) of the El Monte Municipal Code is amended in its entirety to read as follows:

Chapter 5.56 Massage Establishments and Services

5.56.010 – Findings and purpose.

5.56.020 – Definitions.

5.56.030 – Exceptions.

5.56.040 – Business license and other permits required.

5.56.050 – Floor plans required.

5.56.060 – CAMTC Certificate required (Massage practitioners and massage therapists).

5.56.070 – Certificate and permit required (Massage establishment certificate and operator permit).

5.56.080 – Operator permit.

5.56.090 – Massage establishment certificate.

5.56.100 – Suspension and revocation of permits and certificates.

5.56.110 – Appeals to city manager.

5.56.120 – Notices.

5.56.130 – Operational requirements.

5.56.140 – Building and facility requirements.

5.56.150 – Inspections.

5.56.160 – Penalties.

5.56.010 Findings and purpose.

The City Council of the City of El Monte finds and declares as follows:

- A. The permit requirements and restrictions imposed by this chapter are reasonably necessary to protect the health, safety and welfare of the citizens of the City, while recognizing massage as a legitimate business interest that provides benefits to its patrons in a therapeutic setting.
- B. This chapter is enacted pursuant to the provisions of the State Constitution, Sections 51030 et seq. of the Government Code, Sections 460, 4600 through 4620 and Section 16000 of the Business and Professions Code, Section 13 of the Chiropractic Act (initiative measure approved by the electors November 7, 1922, as amended), and California Assembly Bill 1147.
- C. There is a significant risk of injury to massage clients by persons improperly trained and/or educated in providing massage services, and this chapter provides reasonable safeguards against injury and economic loss.
- D. There is opportunity for acts of prostitution, lewdness, and other unlawful sexual activity to occur in massage establishments, as well as problems relating to human trafficking in massage establishments. Courts have long recognized massage as a pervasively regulated activity and that massage establishments are often brothels in disguise. The establishment of reasonable standards for issuance of permits and restrictions on operations would serve to reduce the risk of illegal activity and would thereby benefit the public health.

- E. The provisions of this chapter are intended to enhance the efficient processing of permits for massage establishments, owners and managers and the ongoing regulation of those permittees and certificate holders by the City of El Monte. The provisions of this chapter in no way limit the authority of the City to inspect massage establishments or conduct investigations to ensure permittees are complying with applicable rules and regulations.
- F. The restrictions and requirements contained in this chapter are intended to stop the practice of massage establishments changing ownership upon the discovery of criminal activity by law enforcement authorities.
- G. The restrictions and requirements contained in this chapter are intended to be in addition to, and not in lieu of, (i) the requirement to obtain a valid business license issued pursuant to Chapters 5.04 (Business Licenses General) and 5.08 (Business License Taxes) of Title 5 (Business Licenses and Regulations) of the El Monte Municipal Code; (ii) where applicable, the requirement to separately apply for and secure any discretionary land use approvals required under Title 17 (Zoning) of the El the El Monte Municipal Code; (iii) the requirement to obtain any and all building permits required under Title 15 (Building and Construction) of the El Monte Municipal Code; (iv) the requirement to obtain any certificate of occupancy or temporary certificate of occupancy required under Chapter 17.16 (Certificate of Occupancy) of Title 17 (Zoning) of the El Monte Municipal Code; or (v) or any other permit, authorization or approval which may be required under the laws of the United States of America, the State of California, the County of Los Angeles, the El Monte Municipal Code or any other public agency or entity with jurisdiction over the applicants profession or business operations.
- H. The regulations and restrictions contained in this chapter are intended to discourage massage establishments from degenerating into houses of prostitution; and the means utilized in this chapter bear a reasonable and rational relationship to the goals sought to be achieved within the confines allowed by state law.
- I. The provisions of this chapter are not intended to be exclusive and compliance therewith shall not excuse noncompliance with any state or local laws or regulations that are uniformly applied to other professional or personal service businesses.
- J. The California Massage Therapy Council ("CAMTC") can better, and more efficiently, regulate massage technicians in order to best protect the public and it is in the public interest that all persons providing massage in the City have a certificate from CAMTC.

5.56.020 Definitions.

For the purpose of this chapter, the following words and phrases shall be construed to have the meanings set forth in this section, unless it is apparent from the context that a different meaning is intended:

"California Massage Therapy Council" or "CAMTC" mean the nonprofit organization created to regulate and issue massage practitioner and therapist certificates pursuant to California Business and Professions Code Section 4600 et seq.

"CAMTC Certificate" means a massage practitioner or massage therapist certificate issued by CAMTC.

"CAMTC Identification Card" means means a massage practitioner or massage therapist identification card issued by CAMTC.

"Chief of Police" means the Chief of Police of the City of El Monte, or his designee.

"City" means the City of El Monte.

"City Manager" means the City Manager of the City of El Monte, or his designee.

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

"Conviction," or "convicted" means a conviction following a guilty plea, nolo contendere plea, or judgment or verdict where the time for appeal has elapsed or conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing the applicant to withdraw his plea of guilty or nolo contendere and to enter a plea of not guilty, or dismissing the accusation or information.

"Employee" means any person, other than a massage practitioner, massage therapist, or operator, who renders any service, with or without compensation, to the operator or agent of an operator of a massage establishment relating to the day-to-day operation of the massage establishment whether as an employee or independent contractor.

"Finance Director" means the Finance Director of the City of El Monte, or his designee.

"Main entry door" means a door from the outside of the establishment leading into the reception area.

"Manager" means the person(s) designated by the Owner of the massage establishment to act as the representative and agent of the Owner in managing day-to-day operations with corresponding responsibilities. Evidence of management includes, but is not limited to, the ability of the individual to direct, hire, and/or dismiss employees, control of hours of operation of the massage establishment, create policies or rules, purchase supplies for the massage establishment, and ensure that the massage establishment complies with the requirements of this code and other laws. A manager may also be an owner. A manager must have a valid Operator Permit.

"Massage" means any method of treating the external parts of the body for remedial, health, hygienic, or relaxation purpose. "Massage" includes, but is not limited to, treatment by means of manual pressure, acupressure, friction, stroking, kneading, rubbing, tapping, pounding, vibrating, with or without the aid of or by means of any mechanical, electronic, or electrical apparatus or appliance, and with or without rubbing alcohol, liniments, aromatics, antiseptics, oils, powders, creams, lotions, ointments, or other similar preparations. Massage specifically includes the application of any of these methods to the scalp, neck, or feet of any individual. (Some persons practicing massage may be exempt all or parts of the permit requirements, please consult Section 5.56.030)

"Massage establishment" means any enterprise or establishment having a fixed place of business where any person engages in, conducts, carries on, or permits to be engaged in, conducted, or carried on, any of the activities set forth in the definition of "massage" in this section.

"Massage Establishment Certificate" means the certificate issued by the Finance Director entitling a business to be operated as a massage establishment.

"Massage practitioner" means a person who is certified as such by CAMTC in accordance with the Massage Therapy Act.

"Massage technician" means a massage practitioner or massage therapist certified by the CAMTAC in accordance with the Massage Therapy Act.

"Massage therapist" means a person who is certified by the CAMTC in accordance with the Massage Therapy Act.

"Massage Therapy Act" means Chapter 406 of the 2013-2014 Legislative Session as the same may be amended from time to time.

"Operator" means all persons who are the owners of a massage establishment as well as all persons who serve as the designated manager(s) of a massage establishment.

"Operator Permit" means the permit issued by Chief of Police allowing a person to own and/or manage a massage establishment.

"Out-call massage" means and refers to massage services performed or otherwise provided for compensation at a location within the City of El Monte other than a massage establishment.

"Owner" means all of the following:

- A. The sole provider or sole proprietor of a massage establishment/business entity, i.e., where the owner is the only person performing massage at that establishment and is also the holder of a State Certificate;
- B. In the case of a general business, each owner of the business entity;
- C. In the case of a business entity that is a corporation, each stockholder holding more than ten percent (10%) of the corporation and each officer and director of the corporation;
- D. In the case of a business entity that is a partnership of any variety, each partner, excluding limited partners owning less than ten percent (10%) of the partnership, and where a partner is a corporation, the provisions pertaining to a corporate applicant in subsection 3 apply.
- E. Any person who is a member of a limited liability company that owns a massage establishment.
- F. All owners/members of any other type of business entity that owns a massage establishment.

"Patron" means an individual on the premises of a massage establishment for the purpose of receiving a massage.

"Permit" means an Operator Permit or Massage Establishment Certificate, unless the context dictates otherwise.

"Permittee" means any person who has obtained an Operator Permit or Massage Establishment Certificate from the City.

"Person or business entity who has engaged in disqualifying conduct" means a person or business entity who:

- A. Within ten (10) years preceding the date of filing of the application in question or, in the case of revocation proceedings, within ten (10) years preceding the date of the revocation notice, has been convicted in a court of competent jurisdiction of any of the following:

1. a violation of any provision of law pursuant to which a person is required to register under the provisions of Penal Code Section 290, or
 2. conduct in violation of Penal Code Sections 266h, 266i, 314, 315, 316, 318, 653.22, 653.23, or subsections (a), (b) or (d) of Section 647, or
 3. an attempt to commit or conspiracy to commit any of the above mentioned offenses, or
 4. when the prosecution accepted a plea of guilty or nolo contendere to a charge of a violation of Penal Code Section 415, 602 or any lesser included or related offense, in satisfaction of, or as a substitute for, any of the previously listed crimes, or
 5. a violation of Health and Safety Code Section 11550 or any offense involving the illegal sale, distribution or possession of a controlled substance specified in Health and Safety Code Section 11054, 11055, 11056, 11057 or 11058, or
 6. any offense under a statute of any state or ordinance of any city or county, which is the equivalent of any of the aforementioned offenses.
- B. Within ten (10) years preceding the date of the filing of the application in question or, in the case of revocation proceedings, within ten (10) years preceding the date of the revocation notice, has had any massage establishment, operator, technician, practitioner, therapist or trainee certificate, license or permit issued by any state, local agency or other licensing authority, including the CAMTC, denied, revoked or suspended for any reason other than lack of sufficient education; or has had to surrender such a certificate, license or permit as a result of pending criminal charges or administrative proceedings for suspension or revocation of any such certificate, license or permit; or
- C. Within five (5) years preceding the date of filing of the application in question or, in the case of revocation proceedings, within five (5) years preceding the date of the revocation notice, has been convicted in a court of competent jurisdiction of any of the following:
1. any crime, other than an infraction or those listed above, involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or another, or substantially injure another; or
 2. any crime, other than an infraction or crimes relating to those offenses listed above, where the crime or act is substantially related to the management or ownership of a massage establishment or the practice of massage; or
- D. Has been subjected to a permanent injunction against the conducting or maintaining of a nuisance pursuant to Sections 11225 through 11235 of the Penal Code as the same may be amended from time to time, or any similar provisions of law in a jurisdiction outside the state of California; or
- E. Has been found to be maintaining a nuisance in connection with the same or similar type of business.

"Proof of bona fide employment" means proof of an employer-employee relationship between the operator of the massage establishment and any person working at the massage establishment. Satisfactory proof of bona fide employment must be shown by written payroll documentation evidencing the

employer's compliance with California Employment Development Department (EDD) requirements for the withholding of California income tax, unemployment insurance contributions and disability contributions from the employee and written payroll documentation of the employer's compliance with Internal Revenue Service (IRS) requirements for the withholding of federal income taxes, Social Security (FICA) and Medicare contributions from the employee. Such written documentation can include, but is not limited to, W-2 wage and tax statements.

"Reception area" means an area immediately inside the main entry door of the massage establishment dedicated to the reception and waiting of patrons and visitors of the massage establishment and which is not a massage room or otherwise used for the provision of massage services.

"Residence Address" means the actual physical home address and shall not include a P.O. Box, mailbox service, or other similar location.

"Sexually-Oriented Material" means any element of sexually-oriented merchandise or any books, periodicals, magazine, photographs, drawings, sculptures, motion pictures, videos, slides, films, or other written, oral or visual representations which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical parts.

"Sole provider" means a massage business where the owner owns one hundred percent (100%) of the business, is the only person who provides massage services for compensation for that business pursuant to a valid and active CAMTC Certificate, and has no other employees or independent contractors.

"Spa" means facilities such as mineral baths, salt rooms, mineral rooms, saunas, steam rooms, whirlpools and other therapeutic baths.

"Specified anatomical areas" mean any of the following human anatomical areas: genitals, pubic area, buttocks, anus, female breasts below a point immediately above the top of the areolae, without a health care referral and written consent of the patron.

"Visitor" means a nonemployee who has entered the massage establishment for purposes other than receiving services.

5.56.030 Exceptions.

A. Complete Exception. The requirements of this chapter shall have no application and no effect upon and shall not be construed as applying to:

1. Any physician, surgeon, chiropractor, acupuncturist, osteopath, or physical therapist licensed to practice such profession in the State of California, within the scope of their license; or
2. Any registered nurse or licensed vocational nurse, licensed to practice under the laws of the State of California, who is an employee of and working under the on-site direction of a physician, surgeon, chiropractor, osteopath, or physical therapist, duly licensed to practice their respective professions in this State.
 - a. Any other person providing massage services that is employed by a physical surgeon, chiropractor, osteopath, or physical therapist shall be required to have a valid CAMTC Certificate, as well as work under the on-site direction of such physician, surgeon, chiropractor, osteopath, or physical therapist.

- b. If a duly licensed acupuncturist wishes to provide massage therapy to his or her clients by an individual(s) other than his- or her- self, said individuals(s) must have a valid CAMTC Certificate and the office of the acupuncturist shall be subject to all the provisions of this chapter, as well as any other applicable provisions of this code.
3. Any person licensed to practice any healing art under the provisions of California Business and Professions Code Division 2, commencing with Section 500, when engaging in such practice within the scope of such license.
4. State-licensed hospitals, nursing homes, sanatoriums, or other health care facilities duly licensed by the State of California, and the employees of such facilities while working on the premises of such state-licensed facilities.
5. Accredited high schools, junior colleges, and colleges or universities whose coaches and trainers are acting within the scope of their employment.
6. Barbers, beauticians, or manicurists who are duly licensed by the State of California pursuant to the Barbering and Cosmetology Act set forth in Business and Professions Code Section 7300 et seq., as the same may be amended from time to time, while engaging in practices within the scope of such license, except that this exemption applies solely for the massaging of the neck, face, and/or scalp of the customer or client of said barber or beautician or, in the case of a licensed manicurist, the massaging of the forearms, hands, calves, and/or feet at a State licensed facility. However, if a State licensed establishment also has a Massage Establishment Certificate from the City to operate as a massage establishment, the business must also comply with all provisions of this chapter.
7. Schools of cosmetology or barbering which comply with the requirements of Business and Professions Code Section 7362 et seq. when instructors are acting within the scope of their employment or when students are working as unpaid externs pursuant to the requirements of Business and Professions Code Section 7395.1.
8. Any other business or professions exempt by state law.

B. Partial exemption.

1. Businesses that offer massage services that are ancillary to the primary business shall only be required to comply with the provisions set forth subsection (B)(2) of this section. Ancillary massage services shall be those services where less than twenty percent (20%) of the gross floor area of the business is devoted to massage
2. Massage services provided under (B)(1) of this section shall be required to comply with the following:
 - c. Massage services must be performed by the holder of a valid CAMTC Certificate.
 - d. The business shall comply with the following provisions of this chapter:
 - 1) Section 5.56.130(A) relating to hours;

- 2) Section 5.56.130(C) relating to instruments, equipment, and personnel;
- 3) Section 5.56.130(D) relating to personnel lists;
- 4) Section 5.56.130(E) relating to prohibited conduct;
- 5) Section 5.56.140 relating to building and facility requirements; and
- 6) Section 5.56.150 relating to inspections.

C. Evidence of Exception. Any person claiming exception under this section shall furnish satisfactory evidence upon request that he or she is entitled to such exception, including, proof of bona fide employment, or if applicable, a citation to the particular provision of State law upon which that person relies.

5.56.040 Business license and other permits required.

- A. No permit or other authorization granted pursuant to this chapter shall in any way relieve any person or business entity from the separate obligation to: (i) obtain a valid business license issued pursuant to Chapters 5.04 (Business Licenses General) and 5.08 (Business License Taxes) of Title 5 (Business Licenses and Regulations) of the El Monte Municipal Code; and (ii) as appropriate, the obligation to apply for and secure any discretionary land use approvals required under Title 17 (Zoning) of the El the El Monte Municipal Code; any and all building permits required under Title 15 (Building and Construction) of the El Monte Municipal Code; any certificate of occupancy or temporary certificate of occupancy required under Chapter 17.16 (Certificate of Occupancy) of Title 17 (Zoning) of the El Monte Municipal Code; or any other permit, authorization or approval which may be required under the laws of the United States of America, the State of California, the County of Los Angeles, the El Monte Municipal Code or any other public agency or entity with jurisdiction over the applicants profession or operations.
- B. Any person applying for a business license as a massage practitioner or a massage therapist shall provide proof of a current CAMTC Certificate before being issued a business license.

5.56.050 Floor plans required.

- A. All massage establishments shall be required to submit a scaled floor plan as part of their application for a Massage Establishment Certificate.
- B. All businesses that claim a partial exemption from this chapter pursuant to Section 5.56.030(B) shall be required to submit scaled floor plans in order to verify the applicability of the exemption.
- C. Once the floor plan has been approved, no changes can be made without written approval from the City.

5.56.060 CAMTC Certificate required (Massage practitioners and massage therapists).

- A. No person shall perform or provide the services of massage for compensation, including out-call massage, from any location in the City without having been issued a CAMTC Certificate, regardless of whether such person is the holder of an Operator Permit or the massage establishment where the person provides such massage services possesses a valid Massage Establishment Certificate.
- B. Any holder of a CAMTC Certificate who desires to own, operate and/or manage a massage establishment, must obtain an Operator Permit in accordance with this chapter.

- C. No massage establishment shall hire as an employee or utilize as an independent contractor any person to perform massage unless such person has been issued a massage certificate.

5.56.070 Certificate and permit required (Massage establishment certificate and operator permit).

- A. No person shall own, operate or manage a massage establishment in any location within the City without first having obtained an Operator Permit. No business entity shall own, operate or manage a massage establishment unless the persons whose names must be included in any application submitted on behalf of a business entity each obtain an Operator Permit as required under Section 5.56.080, below.
- B. No massage establishment shall be allowed to operate within the City unless the business first obtains a Massage Establishment Certificate. No massage establishment shall be allowed to operate unless the establishment has identified and designated all person(s) who shall act as the operator(s) and/or manager(s) of the massage establishment and such operator(s) and/or manager(s) each become the holders of an Operator Permit as required under Section 5.56.080, below.
- C. Any person or business entity desiring to obtain a Massage Establishment Certificate and/or an Operator Permit shall make application in accordance with the provisions of this Chapter, which application shall be accompanied by a nonrefundable fee in an amount established by resolution of the City Council.
- D. All applications shall be dated and shall contain the following statements:
1. A certification under penalty of perjury that the information contained in the application is true and correct; and
 2. An authorization for the City, its officers, agents and employees, to seek information and conduct an investigation into the truth of the statements set forth in the application and to ensure continual compliance with all applicable provisions of law.
 3. The provisions of Sections 5.56.050, 5.56.130, 5.56.140, 5.56.150, and 5.56.160 shall apply to any business that operates as a massage establishment, even if such business fails to obtain a Massage Establishment Certificate or an Operator Permit. The City may immediately order any business that fails to have a Massage Establishment Certificate or an Operator Permit to cease operation.
 4. Within thirty (30) business days following the receipt of a completed application the Finance Director shall either issue the Massage Establishment Certificate and the Chief of Police shall issue an Operator Permit or mail a written statement for denial thereof. Notwithstanding the above, failure of the City to act upon a completed application within the time frame set forth above shall not be deemed approval of the application pursuant to this chapter. Any Massage Establishment Certificate or Operator Permit issued pursuant to this subsection shall be deemed conditional pending the City's receipt of the California Department of Justice report on the relevant applicant's fingerprints. If the fingerprint report demonstrates that the applicant has made any false, misleading, or fraudulent statement of material fact in the Permit application or in any report or record required to be filed therewith, or discloses any

disqualifying conduct, the Permit shall be subject to denial or revocation pursuant to this chapter.

5.56.080 Operator permit.

- A. Application—Contents. Applicants for Operator Permits shall submit the following information to the El Monte Police Department on a form supplied by the Department:
1. The full true name of the applicant;
 2. A complete statement listing and explaining any and all aliases and fictitious names used by the applicant within the ten (10) years immediately preceding the application;
 3. The current residence address and business address and current residence and business telephone number of the applicant;
 4. A list of all previous residential and business addresses for a minimum of eight (8) years immediately preceding the present address of the applicant and the dates of residence for each address;
 5. The applicant's place of birth, and original documentation to verify both the applicant's identity and employment authorization (if applicable), as listed under 8 USC 1324a(b)(1) and 8 CFR 274a.2(b)(1). Documentation to satisfy this requirement may include, but is not limited to, a California driver's license, California identification card, Social Security card, resident alien ("green") card, United States passport (unexpired), unexpired foreign passport that contains a temporary I-551 stamp, or an unexpired employment authorization document issued by the United States Government in compliance with 8 CFR 274a.2(b)(1)(v)(A);
 6. The history of the applicant as to any similar business or occupation within ten (10) years immediately preceding the filing of the application. Such information shall include, but not be limited to, the names and addresses of any other massage establishments or similar businesses the applicant has owned, managed, provided massage services at, or worked at, whether the applicant has had a Permit or license to operate, manage, provide massage services at, or work at a massage establishment denied, revoked or suspended in any jurisdiction; the reasons for any such denial, revocation or suspension; and the business, activity or occupation the applicant engaged in subsequent to such denial, revocation or suspension;
 7. All criminal convictions within the last ten (10) years and the date and place of each such conviction and reason therefor, excluding minor traffic violations;
 8. Such other reasonable identification and information as the Chief of Police may require in order to discover the truth of the matter specified as required to be set forth in the application; and
 9. The applicant shall have his or her picture taken by the El Monte Police Department or otherwise supply a recent photograph of the applicable as directed by the Department; and
 10. An acknowledgment that, by applying for an Operator Permit, the applicant understands that they are responsible for all violations of employees or independent contractors that may take place in the massage establishment which they own or manage, and that such violations are grounds for revocation of the Operator Permit.

- B. Once the information required by subsection A is submitted, the applicant shall have his/her fingerprints taken for a criminal history background (Livescan) check in the manner directed by the El Monte Department.
- C. The Chief of Police shall issue the Operator Permit, unless after investigation he or she makes any of the following findings:
1. The applicant has failed to provide any or all information, documentation and assurances required by this chapter or by the Chief of Police; has failed to reveal any fact material to qualification; or has supplied information that is untrue or misleading as to a material fact pertaining to the qualification criteria; or
 2. The applicant is a person or business entity who has engaged in disqualifying conduct; or
 3. There is substantial evidence that the applicant has engaged in disqualifying conduct, even if there is no conviction for such conduct; or
 4. The applicant has violated any provision of this chapter, or any similar ordinance, law, rule, or regulation of any other public agency which regulates the operation of massage establishments; or
 5. The applicant is not at least eighteen years of age; or
 6. The applicant is delinquent in paying City fees or penalties owed in relation to any Permit issued pursuant to this chapter.
- D. Permits issued pursuant to this section shall remain in effect, unless revoked, for a period of one (1) year. Applications for the renewal of a Permit shall be filed on a form supplied by the City with the Chief of Police. Temporary permits shall not be issued and expired Permits are not valid unless the permittee has a written receipt showing that the renewal application was filed at least thirty (30) days prior to expiration. Renewal applications shall be signed under penalty of perjury and shall be accompanied by a nonrefundable filing fee established by resolution of the City Council. A permittee shall be required to update the information contained in his or her original Permit application and provide any new and/or additional information as may be reasonably required by the Chief of Police in order to determine whether said Permit should be renewed, including all information required by subsection A of this section. Failure to provide this documentation shall be grounds for nonrenewal of the Permit.
- E. If the criminal history background check report demonstrates that the applicant has made any false, misleading or fraudulent statement of material fact in the Permit application or in any report or record required to be filed therewith, or discloses any disqualifying conduct, the Permit shall be subject to denial.
- F. Automatic issuance and renewal for CAMTC Certificate holders.
1. Any person who holds a valid CAMTC Certificate shall only be required to provide the following information on a form that also includes the statements set forth in Section 5.56.070(D).
 - a. The full true name of the applicant;
 - b. The current residence and business address and current residence and business telephone of the applicant; and
 - c. The name and address of the massage establishment for which the Operator Permit is being sought.

2. A copy of the applicant's CAMTC Certificate and CAMTC identification Card shall be provided with the application, along with a fee in an amount set by resolution of the City Council.
 3. The applicant shall be required to have his or her picture taken as specified above.
 4. The Operator Permit shall automatically be issued upon completion of the form and verification of the validity of the CAMTC Certificate by the Police department. No background check shall be required.
 5. Renewals shall be required in accordance with subsection D of this section, but such renewals shall be automatic so long as the Permittee maintains and provides a copy of his or her valid CAMTC Certificate.
- G. Every person to whom an Operator Permit has been granted pursuant to this chapter shall be issued an identification certificate/badge by the El Monte Police Department which shall contain the person's name, photograph, expiration date and any other information deemed necessary by the Chief of Police. The identification certificate/badge shall be worn so as to be readily visible at all times while on the premises of the massage establishment.
- H. Permits issued pursuant to this chapter may not be assigned or transferred.
- I. It is the duty of each operator or manager to notify the Chief of Police and Finance Department whenever there is a change in information which was required to be submitted in the application for the Operator Permit in the first instance. Such notification shall be in writing and made within ten (10) business days of the change on a form provided by the City.
- J. Each operator of a massage establishment shall be responsible for the conduct of all employees and independent contractors working on the premises of the business. Failure of the employees or independent contractors to comply with this Chapter may result in the revocation of the Operator's Permit.
- K. The operator of the massage establishment is responsible for verifying that all persons hold the appropriate CAMTC Certificate as required by this Chapter.
- L. Any requirements of this Chapter applying to an operator of a massage establishment shall apply to each and every operator of such massage establishment.

5.56.090 Massage establishment certificate.

- A. Applications for a Massage Establishment Certificate shall be filed with the Finance Department and shall include the information set forth below:
1. The full name of the applicant;
 2. The name under which the business is to be conducted, which name must match the name of the business under which the corresponding business license is issued under Chapter 5.04 of the El Monte Municipal Code. No massage establishment business shall operate under any business name or conduct business under any designation not specified in the Massage Establishment Certificate. If the applicant is a corporation, the name shall be exactly as shown on the articles of incorporation or on a valid DBA ("doing business as");
 3. The address of the proposed massage establishment, a detailed floor plan indicating how the use is proposed to be conducted within the premises, and a description of any other business operated on the same premises; and

4. The full name of each manager and operator of the massage establishment.
 5. A detailed floor plan drawn to scale showing entrances, exits, windows, interior doors, restrooms, all other separately enclosed rooms with dimensions, including, but not limited to closets, storerooms, break rooms, and changing rooms; location of massage tables and chairs.
 6. The full name, address, and phone number of the legal owner of the property, if other than the applicant, on which the massage establishment is to be located; and
 7. The hours and days of operation.
- B. The Finance Director Shall issue a massage establishment certificate upon verification of the following:
1. The massage establishment complies with all applicable laws, including, but not limited to building, fire, zoning, health and safety regulations, as well as any conditions which have been imposed to comply with such laws; and
 2. Each person identified and designated as an operator or manager has obtained an Operator Permit.
- C. Every massage establishment for which a Massage Establishment Certificate has been granted pursuant to this chapter shall display the certificate in a conspicuous place so it may be readily seen by persons entering the premises.
- D. A massage establishment certificate is not transferable to a separate location of the same business, to a different business at the same location, or to the same business under different ownership at the same location.
- E. It is the duty of each owner, manager and/or operator of a massage establishment to notify the Finance Department whenever there is a change in information which was required to be submitted in the application for the Massage Establishment Certificate in the first instance. Any sale or transfer of any reportable interest of an owner in a massage establishment, which interest would be required to be reported under subsection A of this section in the first instance, shall render the Massage Establishment Certificate temporarily suspended and subject to revocation in accordance with the provisions of this chapter unless, prior to the effective date of such sale or transfer, the new owner applies for and obtains an Operator Permit.
- F. Notwithstanding any other provision(s) of this code to the contrary, where a Notice of Intent to suspend or revoke, or a notice of suspension or revocation has been issued regarding a massage establishment, or the business has otherwise been required to close because of suspension or revocation proceedings against the operator, the Finance Department shall not process or issue a new application for a massage establishment certificate for said location unless or until the revocation or suspension proceedings are dismissed or a final determination is made that the current massage establishment certificate should not be suspended or revoked, or a two (2) year period has passed since the occurrence of the activity which gave rise to the suspension or revocation proceedings or other criminal actions.
- G. Notwithstanding any other provision(s) of this code to the contrary, when a massage establishment has been closed due to criminal activity and such decision is final, no new massage establishment may open in such location and no massage establishment certificate shall be issued for such location for a period of two (2) years from the date of such final determination. For purposes of this section, closure due to criminal activity includes voluntary closure of the business after there have been arrests at the location or other

notices relating to criminal activity or notices relating to suspension or revocation proceedings.

- H. Where the applicant for the massage establishment certificate is not the record owner, as shown on the latest county assessment roll, then upon issuance of the massage establishment certificate, the City shall send written notice to the property owner advising of the issuance of the certificate and a copy of this chapter in order to advise of the regulations applicable to the message establishment and the property.

5.56.100 Suspension and revocation of permits and certificates.

- A. Subject to the procedures set forth in this section, the Chief of Police may suspend or revoke a Permit or certificate issued pursuant to this chapter whenever the Chief of Police determines that any of the following has occurred:
1. The Permittee, employee, or independent contractor working on the premises is conducting operations in a manner contrary to the provisions of this code;
 2. The Permittee, employee, or independent contractor working on the premises is conducting operations in a manner which constitutes a public nuisance;
 3. The Permittee, employee, or independent contractor working on the premises is conducting operations in a manner which is detrimental to the health, safety, and/or welfare of the City or its inhabitants;
 4. There is substantial evidence of prostitution;
 5. The Permittee, employee, or independent contractor working on the premises is a person who has engaged in disqualifying conduct, as defined in Section 5.56.020; or
 6. The Chief of Police makes any of the findings that would have justified denying the application in the first instance.
- B. If, in the discretion of the Chief of Police, an alleged violation is minor and capable of correction, then prior to suspension or revocation, a written notice shall be given to the Permittee of the alleged violations involved to allow a period of time to correct the alleged violation(s), which period shall not exceed five (5) business days, at the end of which period an inspection shall be conducted to determine whether the alleged violation(s) has been corrected. For purposes of this section, written notice shall include either a notice violation or an administrative citation.
- C. If the Chief of Police determines that an alleged violation is not minor or capable of correction, that an alleged violation(s) continues without correction, or that there have been previous violations of this chapter, even if for difference reasons, then the Chief of Police may issue a Notice of Intent to suspend or revoke, along with an administrative or criminal citation. Examples of a violation which will be determined by the Chief of Police to be not capable of correction include, but are not limited to, substantial evidence of prostitution activity on the premises of the massage establishment or an immediate threat to the public health, safety, or welfare.
- D. Notice of Intent to Suspend or Revoke. A Notice Of Intent to Suspend or Revoke shall contain a statement of an alleged violation(s) which constitutes the basis for the suspension or revocation, notice of the right of the Permittee to respond to the charges, either orally or in writing to the Chief of Police for a pre-appeal determination, notice of the right to appeal to the City Manager, and notice that a failure to respond in the time specified shall constitute a waiver of the right to responded, but not the right to appeal. If an alleged

violation is capable of correction, the notice shall also advise the Permittee to correct the alleged violation(s) within the time to respond.

E. Response to Notice of Intent/Pre-appeal Determination

1. The time to respond and request a pre-appeal determination shall be five (5) business days from the date of service of the notice, regardless of whether the materials upon which the Notice of Intent is based are provided to the Permittee at that time.
2. If there is no response, the Permit shall be considered suspended or revoked upon the expiration of time in which to respond request a pre-appeal hearing.
3. If there is a response, the Permit shall remain in effect until a determination is made by the Chief of Police. In no event shall the Chief hold a hearing until at least five (5) business days have passed from the time the City provides the materials upon which the Notice of intent is issued to the Permittee.

F. Suspension or Revocation

1. If, after consideration of the Permittee's response, the Chief of Police determines that the Notice of Intent to Suspend or Revoke should be upheld, then the Chief of Police shall issue a Notice of Suspension or Revocation and serve it upon the Permittee as well as any other interested person requesting a copy of the same. Where all massage activity is required to cease, notice shall also be served on the owner of the property if different from the Operator or Certificate holder. The notice shall include information about the right of appeal.
 - a. Upon issuance of a Notice of Suspension or Revocation of a Massage Establishment Certificate, all massage activity at the relevant massage establishment shall cease and no activity for which the Massage Establishment Certificate is required shall be conducted while any appeal may be pending.
 - b. Upon issuance of a Notice of Suspension or Revocation of an Operator Permit, the Operator must cease all work at the relevant massage establishment. If there is no other person who has an Operator Permit which is not the subject of a suspension or revocation proceeding, then all massage activity at the massage establishment shall also cease and no massage activity shall be conducted while any appeal may be pending.

G. Surrender of Massage Establishment Certificate and Permits. Any Permittee shall immediately surrender his or her Permit or certificate to the Chief of Police upon its suspension or revocation.

5.56.110 Appeals to city manager.

A. Appeals

1. Appeals shall be in writing and filed with the Clerk within the following time frames:
 - a. Appeals from any decision of the Chief of Police or Finance Director to deny a Permit shall be in writing, shall clearly state the applicable basis for the appeal, and shall be filed with the City Clerk not later than ten (10) calendar days following the giving of a notice of denial.

- b. Appeals from a Notice of Intent to Suspend or Revoke a Permit where no response is filed in accordance with Section 5.56.100(E) above shall be filed not later than ten (10) calendar days following the expiration of the response period.
 - c. Appeals from a Notice of Suspension or Revocation issued after a response is filed in accordance with Section 5.56.100(E) above shall be filed not later than ten (10) calendar days following the giving of the Notice of Suspension or Revocation.
2. The City Clerk shall not accept an appeal pursuant to this section unless the appellant has paid a filing fee, in an amount set by resolution of the City Council, to defray the cost of such appeal. Any appeal without timely payment of fees shall be considered to be untimely.
 3. The scope of the appeal hearing pursuant to this section shall be limited to those issues raised by the written appeal, as submitted pursuant to subsection (A)(1) of this section.

B. City Manager Action

1. Upon receipt of a timely filed appeal, the City Clerk shall set the matter for hearing before the City Manager. The hearing shall be held not fewer than ten (10) calendar days nor more than (30) calendar days from the date of the appeal request. The hearing may be continued from time to time upon the mutual consent of the parties. For the purposes of this section, "City Manager" may include a hearing officer appointed by the City Manager to act in his or her place.
2. The appellant shall be provided with notice of the time and place of the appeal hearing, as well as a copy of all relevant materials at least seven (7) calendar days prior to the hearing.
3. At the time of such hearing, the City Manager shall review the records and files related to the decision.
 - a. The City Manager shall permit any interested person to present any relevant evidence bearing upon the issues involved in the matter.
 - b. In conducting the hearing, technical rules relating to evidence and witnesses shall not apply. Any relevant evidence may be admitted if it is material and if it is evidence customarily relied upon by responsible persons in the conduct of their affairs regardless of the existence of any common law or statutory rule which might make admission of such evidence improper over objection in civil actions. Hearsay evidence may be admissible if it is the sort upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The rules of privilege shall be applicable to the extent they are now, or are hereafter permitted in civil actions. Irrelevant, collateral, and repetitious testimony shall be excluded.
 - c. In determining whether a person should be disqualified for meeting the definition of a "person who has engaged in disqualifying conduct," as defined in Section 5.56.020, the City Manager may consider the nature and severity of the act(s) or crime(s), whether there were any additional subsequent act(s) or crime(s), and/or the number of act(s) or crime(s), and how recent the act(s) or crime(s) occurred.

4. The appellant shall have the burden of proving that he or she meets the requirements for issuing the Permit or certificate in the first instance. The City shall have the burden in proving that grounds exist for revoking or failing to renew a permit.
5. Based upon the evidence presented at the hearing, the City Manager shall determine whether the decision should be affirmed, modified, or reversed.
6. The City Manager's decision shall be communicated in writing to the appellant within ten (10) working days after the close of the hearing and submission of the matter to the City Manager for decision. The City Manager's decision shall state whether the decision is affirmed, modified, or reversed and the reasons therefore.
7. The City Manager's decision shall include notice that the decision is final and conclusive and judicial review may be sought by writ of mandate.

5.56.120 Notices.

- A. All notices required to be given pursuant to this chapter shall be served on the responsible party (i.e. Permittee, applicant, appellant, or representative thereof) either by personal delivery or by deposit in the United States Mail in a sealed envelope postage prepaid addressed to such responsible party as the name and address appear in the most recent application on file with the City. Service by mail shall be deemed to have been completed on the date deposited in the mail. Notices shall include information regarding appeal rights and a statement that the failure to file an appeal shall constitute a failure to exhaust administrative remedies.
- B. In all cases where the Permit or certificate holder is not the property owner, notices shall also be sent to the property owner of record where the notice relates to possible closure of the business due to suspension or revocation.

5.56.130 Operational requirements.

A. Hours and conditions of operation

1. No massage establishment shall operate nor shall any massage be administered in any massage establishment between the hours of 11:00 p.m. and 7:00 a.m. A massage begun any time before 11:00 p.m. must nevertheless terminate at 11:00 p.m. The hours of operation must be displayed in a conspicuous public place in the lobby within the massage establishment and in any front window clearly visible from outside of the massage establishment. These hours of operation may be modified pursuant to a conditional use permit.
2. During hours of operation, no person other than the holder of a valid Permit or patron shall be allowed beyond the front lobby of the massage establishment.
3. Patrons and visitors shall only be permitted in the massage establishment during the hours of operation.
 - a. Visitors shall only be permitted in the reception area of the massage establishment.
 - b. Patrons shall only be permitted in massage treatment areas if at least one massage technician is on the premises.

4. The massage establishment shall be supervised during all hours of operation by a manager who is one of the operators specified in the applicable Permit application. The name and photograph (minimum size of four inches (4") by six inches (6")) of the on-duty manager shall be posted in a conspicuous public place in the lobby of the massage establishment at all times that the business is open. This provision shall not apply to Sole Providers.
 5. No massage establishment shall be used for residential purposes. There shall be no massage tables, cots, or beds in the establishment other than shown on the approved floor plan. Locker facilities shall be provided for all employees and independent contractors and all personal items of the employees independent contractors shall be kept in the lockers while at the massage establishment.
- B. Posting requirements. In addition to any other requirements for posting set forth in this chapter, the following shall also apply:
1. A recognizable and legible sign complying with the requirements of this Chapter shall be posted at the main entrance identifying the establishment as a massage establishment.
 2. A list of each service offered, the price thereof, and the minimum length of time such service shall be performed shall be posted in English and such other languages as may be convenient to communicate such service, in a conspicuous public location in each massage establishment. No services shall be performed and no sums shall be charged for such services other than those posted. Nothing herein prohibits a voluntary tip from being paid by the patron.
 3. Any posted signs which are in a language other than English shall also be posted in English. Any brochures, cards, flyers or other similar hand-out materials distributed to patrons on site which are in a language other than English shall also contain a translation in English.
- C. Instruments, equipment, and personnel.
1. Disinfecting agents and sterilizing equipment shall be provided for any instruments used in performing acts of massage and said instruments shall be disinfected and sterilized after each use.
 2. Massages shall be administered only on standard or portable massage tables or chairs which are covered with a durable, washable plastic or other acceptable waterproof material. Beds, mattresses, water beds, futons, sofa beds, any type of portable or convertible beds, and foam pads more than four inches thick or with a width of more than four feet shall not be permitted in the establishment.
 3. No massage technician shall massage the genitals or any anal area of any patron, nor shall any operator of a massage establishment allow or permit such massage to the above-specified areas.
 4. No massage technician shall massage the breasts of a female patron without the written consent of the person receiving the massage and a referral from a licensed California health care provider, nor shall any operator of a massage establishment allow or permit such a massage to the above-specified area.
 5. A massage shall not be given and no patron shall be in the presence of any massage establishment staff unless the patron's genitalia, and, if a female patron, the female patron's breasts, are fully covered by a fully opaque, nontransparent covering.

6. Massage technicians shall not be dressed: in attire that is transparent, see-through, substantially exposes undergarments, or exposes the masseuse's breasts, buttocks, or genitals; in a manner which has been deemed by CAMTC to constitute unprofessional attire based on the custom and practice of the profession in California; or in swim attire unless such person is providing CAMTC approved water-based massage modality.
7. All massage establishments shall be so equipped, maintained and operated as to effectively control the entrance, harborage, and breeding of vermin, including flies. When flies or other vermin are present effective control measures shall be instituted for their control or elimination.
8. Clean and sanitary towels, sheets and linens shall be provided for each patron of the establishment. No common use of towels or linens shall be permitted. 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.
9. All massage tables must be at least two (2) feet away from walls at all times.

D. Personnel lists

1. Within seven (7) calendar days of receiving a Massage Establishment Certificate, the Operator shall provide the Police Department with: a complete list of all massage technicians who are working or will work, be employed, or provide massage services in the massage establishment; a copy of the CAMTC Certificate and CAMTC Identification Card for each such massage technician; and the name and residence address of the manager principally in charge of the operation of the massage establishment and of any other manager.
2. The operator shall have a continuing obligation to notify the Chief of Police in writing of any change to the list provided pursuant to subsection (D)(1) of this section within seven (7) calendar days of such change, including but not limited to, changes in massage technicians and managers.
3. The operator shall maintain copies of each massage technician's CAMTAC Certificate and CAMTC Identification Card on file on the premises of the massage establishment which shall be available to any individual upon request. Additionally, the Operator shall be required to file copies of each such CAMTC Certificate and CAMTC Identification Card with the Police Department within seven (7) days of a massage technician beginning to work at the massage establishment. Information required by this section shall be maintained at the massage establishment for a minimum of two (2) years following the date that the person ceases providing services/employment to the massage establishment.
4. The Operator shall maintain on the premises of the massage establishment a register of all non-state certified persons employed, working or providing other services at the massage establishment. The register shall be maintained for a minimum of two (2) years following the time that the person ceases providing services/employment to the massage establishment. The Operator shall make the register immediately available for inspection upon demand of a representative of the Police Department, the Neighborhood Services Division, or any other official charged with enforcement of this Chapter. The register shall include but is not limited to the following information:

- a. Name, nicknames and/or aliases;
- b. Home address and relevant phone number, including but not limited to home, cellular and pager numbers;
- c. Age, date of birth, gender, height, weight, color of hair and eyes;
- d. The date of employment, and termination, if any;
- e. The duties of each person; and
- f. In a separate portion of the register, Social Security numbers, which shall only be available for review by the El Monte Police Department or other law enforcement personnel, but not health officers or other officials charged with the enforcement of this Chapter.

E. Prohibited conduct

1. No alcoholic beverages shall be sold, served, or furnished on the premises of any massage establishment without a valid alcoholic beverage license from the State of California and a conditional use permit from the City.
2. No storage or sale of condoms or spermicides shall be permitted within the massage establishment.
3. No operator shall hire, employ or allow a person to perform massage services unless such person possesses a valid CAMTC Certificate. Each operator of a massage establishment shall verify that all persons hold the appropriate CAMTC Certificate required by this Chapter. Nothing herein prevents an operator from hiring, employing, or allowing a person to perform services allowed by such person's cosmetology or barber license, if the business has a state establishment license in addition to a Massage Establishment Certificate.
4. No person shall use or possess, nor shall there be any storage of any sexually-oriented implements or paraphernalia designed or marketed primarily for the stimulation of human genital organs or sadomasochistic activity.
5. No electrical, mechanical or artificial device shall be used by any massage establishment staff for audio and/or video recording or for monitoring the performance of a massage, of the conversation or other sounds in the massage rooms, without the knowledge and written consent of the patron.
6. No massage establishment shall place, publish or distribute or cause to be placed, published or distributed any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective patrons or clients that any service is available other than those services described in this chapter and posted on the premises as required in this chapter, nor shall any massage establishment employ language in the text of any advertising that would reasonably suggest to a prospective patron that any service is available other than those services described in this chapter and posted on the premises as required by this Chapter.

5.56.140 Building and facility requirements.

- A. The building or unit within the building where the massage establishment is located shall comply with all applicable building code requirements.

- B. All massage rooms and dressing rooms shall be screened off by hinged doors that can open inward. Swinging doors that open inward, draw drapes, curtain enclosures, or accordion-pleated closures in lieu of doors are acceptable on all inner dressing rooms and massage therapy rooms or cubicles. Except for bathroom doors, interior doors may not have locks on them.
- C. In addition to the minimum lighting required by applicable provisions of the El Monte Municipal Code, at least one artificial light equivalent to a minimum of forty (40) incandescent watts shall be provided and turned on in each room or enclosure where massage services are to be administered during the administration of such services. No dimmer switches shall be allowed in massage rooms. No strobe or flashing lights shall be used. No colors lights shall be used nor shall any coverings or other apparatus be used which changes the color of the light source.
- D. Any locker facilities provided for the use of patrons shall be fully secured for the protection of the patron's valuables and the patron shall be given control of the key or other means of access.
- E. The walls in all rooms where water or steam baths are given shall have a washable mold-resistant surface.
- F. All walls, ceilings, floors, pools, showers, bathtubs, steam rooms, and all other physical facilities for the establishment must be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms, or steam or vapor cabinets, shower compartments, and toilet rooms shall be thoroughly cleaned and disinfected each day the business in operation. Bathtubs shall be thoroughly cleaned and disinfected after each use.
- G. One main entry that enters into the reception area shall be provided for patron use. All patrons and any persons other than those providing services at the massage establishment shall be required to enter and exit through the front door of the establishment.
- H. All exterior doors (except rear exterior doors used only for employee entrance to and exit from the massage establishment) shall remain unlocked during business hours, and the establishment shall comply with the provisions of the El Monte Municipal Code pertaining to the posting of signs stating that doors shall remain unlocked during business hours. Exits for fire safety purposes may be allowed where deemed necessary by the appropriate public safety agency. The foregoing notwithstanding, the front door may be locked if there is no staff available to assure security for the clients and massage establishment staff who are behind closed doors, provided that the massage establishment is owned by one individual with no more than one employee or independent contractor.
- I. There shall be no buzzer alarm or intercom system.
- J. No massage business located in a building or structure with exterior windows fronting a public street, highway, walkway, or parking area shall block visibility into the interior reception and waiting area through the use of curtains, closed blinds, tints, or any other material that obstructs or darkens the view into the premises or by signs that cover more than twenty-five percent (25%) of any windowpane. The interior business shall be plainly visible from the exterior of the business by passing vehicles and pedestrians.

5.56.150 Inspections.

- A. Representatives of the City's Police Department, the Los Angeles County Fire Department, the El Monte Code Enforcement Division, Community Development Department, and Finance Department, and agents for the Los Angeles County Department of Public Health and representatives of any state or local agencies with regulatory authority over massage establishments shall have the right to enter massage establishments, from time to time and without prior notice, during regular business hours, or at any time that the massage

establishment is occupied or open for business, to verify the massage establishment is being operated in compliance with all applicable laws. Should the owner or operator of a massage establishment refuse such an inspection the local and/or state representatives shall secure an inspection or abatement warrant.

- B. The operator shall cause to be conspicuously posted so that the same may be readily visible to persons in the reception area of the massage establishment, in letters that are a minimum of one inch (1"), a notice in English which provides substantially as follows:

THIS MASSAGE ESTBLISHMENT AND THE MASSAGE ROOMS DO NOT PROVIDE COMPLETE PRIVACY AND ARE SUBJECT TO INSPECTION BY CITY AND HEALTH OFICIALS

In addition, operators are encouraged to post this notice in language(s) that are best understood by the customers of the massage establishment.

- C. No person shall refuse to permit, cause delay of, or interfere with a lawful inspection or compliance check of the premises by the officials listed in subsection A of this section at any time.

5.56.160 Penalties.

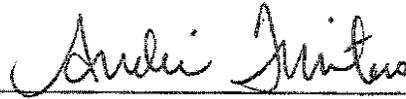
- A. It is unlawful for any person to engage in conduct that violates any provision of this chapter, to engage in conduct which fails to meet the standards set forth in this chapter, or to own, manage, or operate a massage establishment that is not fully in compliance with the operational standards set forth in this Chapter.
- B. Any violation of this chapter shall be a misdemeanor unless, in the sole discretion of the City Prosecutor, it is charged as, or reduced to, an infraction. Citations and warning notices may be utilized as determined appropriate to the circumstances by the enforcing personnel.
- C. In addition to the above, any massage establishment operated, conducted or maintained contrary to the provisions of this chapter shall be and is declared to be unlawful and a public nuisance and the City may, in addition to or in lieu of prosecuting a criminal action under this chapter, commence an action or actions, proceeding or proceedings, for the abatement, removal and enjoinder thereof, in the manner provided by law, including any code enforcement procedures established pursuant to the laws of the State of California or the City of El Monte; and may take such other steps and may apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such massage establishments and restrain and enjoin any person from operating, conducting or maintaining a massage establishment contrary to the provisions of this chapter. If an injunction is sought, attorneys' fees and costs will be assessed at the discretion of the court against the party subject to said injunction.
- D. Any violation of the provisions of this chapter shall constitute a separate offense for each and every day during which such violation is committed or continued.

SECTION 10. Inconsistent Provisions. Any provision of the El Monte Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to implement the provisions of this Ordinance.

SECTION 11. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity 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 section, subsection, subdivision, paragraph, sentence, clause or phrase would be subsequently declared invalid or unconstitutional.

SECTION 12. Publication and Effective Date. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in a newspaper of general circulation within fifteen (15) days after its adoption. This Ordinance shall become effective thirty (30) days after adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of El Monte at the regular meeting of this 5th day of April, 2016.



Andre Quintero, Mayor
City of El Monte

ATTEST:



Jonathan Hawes, City Clerk
City of El Monte

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)
CITY OF EL MONTE) SS:

I, Jonathan Hawes, City Clerk of the City of El Monte, hereby certify that the foregoing Ordinance No. 2878 was introduced for a first reading on the 15th day of March, 2016 and approved for a second reading and adopted by said Council at its regular meeting held on the 5th day of April, 2016 by the following vote, to-wit:

AYES: Mayor Quintero, Mayor Pro Tem Martinez, Councilmembers Gomez,
 Macias and Velasco

NOES: None

ABSTAIN: None

ABSENT: None



Jonathan Hawes, City Clerk
City of El Monte