

**ORDINANCE NO. \_\_\_\_ (N.C.S.)**

**AN ORDINANCE REPEALING AND REPLACING SALINAS CITY CODE CHAPTER 16A, REGULATION OF MASSAGE BUSINESSES AND TECHNICIANS**

WHEREAS, the City of Salinas is authorized by the California Constitution and Government Code sections 51030 *et seq.*, to regulate the business of massage when carried on within the City;

WHEREAS, the California Legislature recently approved Assembly Bill 1147, the Massage Therapy Act, which added California Business and Professions Code section 4600 *et seq.*, effective January 1, 2015;

WHEREAS, this new law authorizes a city to adopt or enforce local ordinances that govern the business of massage and authorizes the California Massage Therapy Council to certify massage therapists;

WHEREAS, the City of Salinas desires to regulate the business of massage to protect the community against risks to health and safety; and

NOW, THEREFORE, the City Council of the City of Salinas does ordain as follows:

Chapter 16A of the Salinas City Code shall be amended to read:

**CHAPTER 16A. - REGULATION OF MASSAGE BUSINESSES AND TECHNICIANS.**

**Sections:**

**Sec. 16A-1. - Purpose and intent.**

It is the purpose and the intent of this chapter to regulate persons and establishments engaged in the practice of massage therapy in order to protect and to promote the public health, safety, and welfare. This chapter is intended to be consistent with the Massage Therapy Act (California Business and Professions Code sections 4600 *et seq.*) and statewide certification of massage therapists by the California Massage Therapy Council ("CMTC"). It is the intent of this chapter to be consistent with the uniform statewide regulations that will enable consumers to easily identify credible certified massage therapists and to assure that massage therapy cannot be used as a front for prostitution and other unlawful activities in violation of law including, but not limited to, subdivisions (a) or (b) of Section 647 of the California Penal Code.

**Sec. 16A-2. - Definitions.**

Whenever used in this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

- (a) "City" means the city of Salinas.
- (b) "Compensation" means the payment, loan, advance, donation, contribution, deposit or gift of money or anything of value.

- (c) “Massage,” “massage therapy,” and “bodywork” are used interchangeably in this chapter and shall mean the scientific manipulation of the soft tissues using specific massage techniques recognized by CMTC as legitimate.
- (d) “Massage business or establishment” means any business or establishment, including a sole proprietorship, which offers massage therapy in exchange for compensation whether at a fixed place of business, a location designated by the patron, or elsewhere in the City.
- (e) “Massage practitioner” shall have the meaning ascribed to it in California Business and Professions Code Section 4601(g), as the same may be amended or renumbered from time to time, as someone who was issued a conditional certificate, subject to fulfilling education requirements, and is engaged in the practice of massage therapy for compensation.
- (f) “Massage therapist” shall have the meaning ascribed to it in California Business and Professions Code Section 4601(h), as the same may be amended or renumbered from time to time, as someone who is certified by CMTC and engaged in the practice of massage therapy for compensation.
- (g) “CMTC certificate” shall mean a certificate issued by the CMTC to massage therapists and massage practitioners.
- (h) “Non-certified massage technician” is a person engaged in the practice of massage therapy for compensation without a CMTC certificate, including a person who is exempt under Section 16A-3.

Sec. 16A-3. - Certification required.

It shall be unlawful for any person to provide massage therapy in exchange for compensation without first obtaining a valid CMTC certificate or City massage technician permit, except for the following individuals:

- (a) Any individual licensed to practice the art of healing as defined under California Business and Professions Code Section 500 et seq. while engaging in the practice within the scope of his or her license;
- (b) Any person licensed to practice barbering or cosmetology as defined in California Business and Professions Code Section 7301 et seq. while engaging in a practice within the scope of his or her license;
- (c) Persons who provide massage therapy to any amateur, semi-professional or professional athlete or athletic teams so long as such persons do not practice massage therapy as their primary occupation within city limits;
- (d) Any employee of a California state-licensed hospital, nursing home or other state-licensed physical or mental health facility while engaging in a practice within the scope of his or her employment;
- (e) Accredited high schools and colleges, and their coaches and trainers while acting within the scope of their employment; and
- (f) Schools of massage, colleges, universities, and their students in training, provided such students provide massage therapy under the supervision of an instructor.

Sec. 16A-4. - Massage business or establishment; non-certified massage technician—Business license required.

It shall be unlawful for any person, association, partnership or corporation to operate a massage business or establishment without a business license issued by the City.

Sec. 16A-5. - Massage business or establishment; non-certified massage technician—Permit required.

It shall be unlawful for any person to engage in or conduct a massage business or establishment in the City for compensation or to practice as a non-certified massage technician in the City for compensation without having first obtained a permit to conduct such business or to engage in such practice pursuant to this section. Every applicant for a massage business or establishment permit shall complete an application furnished by the Salinas police department and pay the non-refundable permit fee as determined by resolution of the City Council. The permit shall be in addition to any business license required by the Salinas City Code. The following persons are exempt from filing for permits for a massage business or establishment:

- (a) Any person exempt under Section 16A-3 of this chapter;
- (b) Any person with a valid CMTC certificate or any massage business or establishment in which everyone providing massage holds a valid CMTC certificate;
- (c) Any approved massage schools as that term is defined in California Business and Professions Code Section 4601.

Sec. 16A-6. - Massage business or establishment; non-certified massage technician—Permit application, grant or denial.

The Salinas police department shall have a reasonable time, not to exceed sixty days, in which to make a reasonable investigation into the information provided on the application. A massage business or establishment permit and/or a non-certified massage technician permit shall be issued or denied within sixty days of receipt of the application to any applicant who has furnished all the information required by this section. The Salinas police department may conduct a background check for an applicant who is not certified by CMTC, as provided at Section 16A-15, to determine whether, based on the person's criminal history, the applicant is unfit to operate a massage business or establishment, in which case the massage business or establishment permit may be denied or restricted.

Sec. 16A-7. - Massage business or establishment permit; non-certified massage technician permit—Period of validity.

A massage business or establishment permit or a non-certified massage technician permit issued pursuant to this chapter is not transferable and is valid for twelve months from the date of issuance. At least sixty days prior to the expiration of a massage business or establishment permit, the permittee shall apply to renew the permit.

Sec. 16A-8. - Massage business or establishment permit, non-certified massage technician permit—Suspension, revocation or restriction.

In accordance with California Business and Professions Code Section 4612(b), and Government Code Section 51034(c)(8), in order to protect the health, safety, and welfare of the

public, the chief of police has the authority to revoke, suspend or restrict a massage business or establishment or non-certified massage technician, regardless of whether such massage business or establishment or non-certified massage technician is exempt from permitting under Section 16A-3 of this chapter, after the massage business or establishment or non-certified massage technician has been given the opportunity for a hearing as set forth in this chapter where any of the provisions of this chapter or state law are violated.

#### Sec. 16A-9. - Hearing and appeal.

Any person who has been denied a massage business or establishment or non-certified massage technician permit, or any person whose privilege to conduct a massage business or establishment or to practice as a non-certified massage technician has been suspended, revoked or restricted may request a hearing conducted by the City Manager's office. The request for a hearing must be in writing and must be made within ten calendar days from the date of the decision to deny, suspend, revoke or restrict the permit or privilege. Upon receiving a written request for a hearing, the City Manager or his or her designee shall call a hearing within fourteen days thereafter, and shall set forth in writing and send to the applicant or the permittee, by means of certified mail or hand delivery, notice of the date, time, and place of the hearing at least five days before the hearing date. The hearing shall be conducted to determine the existence of any facts which constitute grounds for the denial, suspension, revocation or restriction. The hearing shall be conducted by a hearing officer appointed by the City Manager. The massage business or establishment or non-certified massage technician may have the assistance of counsel or may appear by counsel and shall have the right to present evidence. In the event the massage business or establishment or non-certified massage technician, or a representative, fails to appear at the hearing, the evidence of the existence of facts which constitute grounds for denial, suspension or revocation of the license or permit shall be considered un rebutted. A copy of the decision of the hearing officer specifying the findings of fact and the reasons for the decision shall be furnished to the massage business or establishment, non-certified massage technician or their representative. The decision of the hearing officer shall be final.

Notwithstanding the foregoing, the police chief may immediately suspend a massage business or establishment or non-certified massage technician permit or restrict a non-certified massage technician without a prior hearing if he or she determines that the continued provision of massage services constitutes an immediate and significant threat to the public health, safety or welfare. In such case, the City Manager or his designee shall conduct the hearing following the suspension.

#### Sec. 16A-10. - Massage business or establishment inspection.

In accordance with California Business and Professions Code Section 4612(b), a massage business or establishment shall be subject to reasonable inspection during regular business hours for the purpose of ensuring compliance with this chapter, state law, and applicable building, fire, electrical, plumbing or health regulations. This applies to those massage establishments that are permitted pursuant to this chapter and those that are exempt from the permitting requirements pursuant to Section 16A-3.

#### Sec. 16A-11. - Massage business or establishments—Operating requirements.

The following operating requirements apply to massage business or establishments that are permitted pursuant to this chapter and those that are exempt from the permitting requirements pursuant to Section 16A-3. No massage business or establishment shall engage in, conduct or carry on, or permit to be engaged in, conducted or carried on, the operation of a massage business or

establishment unless, in addition to those requirements otherwise set forth in this chapter, each and all of the following requirements are met:

- (a) In accordance with the Massage Therapy Act, a massage establishment shall display the original CMTC certificate of each person providing massage therapy at the premises of such massage establishment. Any massage practitioner or massage therapist must have his or her identification card in his or her possession while providing massage services for compensation, and must provide his or her full name and certificate number upon the request of law enforcement or City authorities. Any non-certified massage technician must have his or her identification in his or her possession while providing massage services for compensation, and must provide his or her full name and permit upon the request of law enforcement.
- (b) Massage operations shall be carried on, and the premises shall be open, only between the hours of 7:00 a.m. and 12:00 midnight.
- (c) A list of services available and the cost of such services shall be posted in an open and conspicuous public place on the premises. The services shall be described in readily understandable language. No owner, operator, responsible managing employee, manager or permittee in charge of or in control of the massage establishment shall permit any massage practitioner, massage therapist, or non-certified massage technician to perform any services other than those posted.
- (d) The massage establishment business license shall be maintained on the premises.
- (e) Clean and sanitary towels, sheets, and linens shall be provided for each patron receiving massage services. No common use of towels or linens shall be permitted and reuse is prohibited unless they have first been re-laundered. Heavy white paper may be substituted for sheets, provided that such paper is used once for each person, then discarded into a sanitary receptacle.
- (f) Disinfecting agents and sterilizing equipment sufficient to assure the cleanliness and safe condition thereof shall be provided for any instruments used in performing any massage. Instruments shall be disinfected after use on each patron.
- (g) Pads used on massage tables shall be covered in a workmanlike manner with durable, washable plastic or other waterproof material.
- (h) All exterior and interior doors shall remain unlocked during business hours, except if the massage establishment is a business entity owned by one individual with one or no employees or independent contractors or except when there is no staff available to ensure security for clients and for staff who are behind closed doors.
- (i) All employees shall wear non-transparent outer garments, covering the sexual and genital areas.
- (j) No massage business or establishment or massage technician or practitioner or non-certified massage technician shall place, publish or distribute or cause to be placed, published or distributed, any advertisement, picture or statement which is known, or through the exercise of reasonable care should be known, to be false, deceptive or misleading in order to induce any person to purchase or utilize any massage services.

- (k) It shall be unlawful for any person in a massage business or establishment to engage in any form of sexual activity on the premises where massage is provided for compensation or to massage a sexual or genital part of any other person. Sexual or genital parts shall include the region of the genitals and anus of any person, or the breasts of a female.
- (l) It shall be unlawful for any person providing massage services for compensation, in the presence of any other person in a massage business or establishment, to fail to conceal with a fully opaque covering the sexual or genital parts of his or her body.
- (m) No person shall sell, give, dispense, provide or keep, or cause to be sold, given, dispensed, provided or kept, any alcoholic beverage on the premises of any massage establishment.
- (n) No person shall enter, be or remain in any part of a massage establishment while in the possession of, consuming or using any alcoholic beverage or drugs except pursuant to a prescription for such drugs. The owner, operator or manager shall not permit any such person to enter or to remain upon such premises.
- (o) No person owning, operating or managing a massage business or establishment shall knowingly cause, allow or permit in or about the premises of such massage business or establishment any agent, employee or other person under his or her control or supervision to perform any acts prohibited by this section.

Sec. 16A-12. - Name of business.

No massage business or establishment in the City and no massage therapist or practitioner or non-certified massage technician practicing within the City shall operate under any name or conduct business under any designation not specified in the permit and/or business license.

Sec. 16A-13. - Sale or transfer.

A new application shall be made upon the sale or the transfer of any interest in a massage business or establishment. Any permit issued for the massage business or establishment prior to such sale or the transfer shall be null and void.

Sec. 16A-14. - Change of location.

The location or any change in location of a massage business or establishment shall be approved by the chief of police and the community and economic development department provided all applicable provisions of this chapter are complied with and all non-refundable fees as established by resolution of the City Council have been paid.

Sec. 16A-15. - Background checks—Owner or operator of massage establishment.

Nothing in this chapter shall prevent the City from requiring a background check of an owner or operator of a massage business or establishment who owns five percent or more of a massage business or massage establishment and who is not certified pursuant to state law. In addition to whatever other information the chief of police or his designee may require, except as may otherwise be restricted by state law, the background check may consist of an application that requires the applicant to state information including, but not limited to, the applicant's business, occupation, and employment history for five years preceding the date of application, the inclusive dates of same, and the names and address of any massage business or other like establishment owned or operated by any person who is subject to the background check required by this section.

Sec. 16A-16. - Penalty for violation of chapter.

Any person violating or failing to comply with any of the provisions of this chapter shall be guilty of a misdemeanor. Every person who violates any provision of this chapter may also be subject to administrative citations as provided by the Salinas City Code, in addition to all other legal remedies, criminal or civil, which may be pursued by the City to address any violations of this code.

SECTION 2. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Salinas City Council hereby declares that it would have passed this ordinance, and each and every section, subsection, clause, and phrase thereof not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 3. This ordinance shall take effect thirty (30) days from and after its adoption.

SECTION 4. The City Clerk of the City of Salinas is hereby directed to cause the following summary of this ordinance to be published by one (1) insertion in The Salinas Californian, a newspaper of general circulation printed, published, and circulated in the city of Salinas and hereby designated for that purpose by the Council of Salinas:

“Chapter 16A of the City Code is hereby repealed and is replaced in its entirety to update the regulations imposed upon the business of massage to be consistent with state law.”

This ordinance was introduced and read on the 12<sup>th</sup> day of May 2015, and passed and adopted on the 26<sup>th</sup> day of May 2015 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Joe Gunter, Mayor

ATTEST:

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Patricia M. Barajas, City Clerk

APPROVED AS TO FORM:

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Christopher A. Callihan, City Attorney