



**CITY OF LEMON GROVE
PLANNING COMMISSION
REGULAR MEETING AGENDA**
Monday, August 28, 2023 at 6:00 p.m.
Lemon Grove Community Center
3146 School Lane, Lemon Grove, CA

Planning Commission

Seth Smith, Chairperson
Miranda Evans, Vice-Chairperson
John Burns, Commissioner
Jacquelyn Clark, Commissioner
Emily Jacobs, Commissioner

A complete agenda packet is available for review on the [City's website](#)

Call to Order / Roll Call

Pledge of Allegiance

Changes to the Agenda

Public Comment

Digitally submitted public comments received by the Planning Commission Clerk at jpablo@lemongrove.ca.us will not be read out-loud during the meeting. However, they will be provided to the Planning Commission and remain part of the meeting's records. Per the Lemon Grove Municipal Code Section 2.14.150, live comments are allotted a maximum of three (3) minutes.

Consent Calendar

1. Approval of Planning Commission Meeting Minutes of the Regular Meeting held on April 24, 2023

Reference: Deborah Harrington, City Clerk Consultant

Recommendation: Approve Planning Commission Minutes held on April 24, 2023.

Report(s) to Commission

2. Discuss Updating Massage Regulations

Reference: Michael Fellows, Community Development Manager

Recommendation: Discuss draft regulations and give direction to staff. This item is an interactive workshop for Planning Commission and Staff to discuss potential massage establishment regulations.

Business from the Community Development Manager

Business from the Planning Commission Attorney

Planning Commission Oral Reports on Meetings Attended at the Expense of the City

Adjournment

AFFIDAVIT OF NOTIFICATION AND POSTING

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO) SS
CITY OF LEMON GROVE)

I, Joel G. Pablo, Planning Commission Clerk for the City of Lemon Grove, hereby declare under penalty of perjury that a copy of the above Agenda of the Regular Meeting of the Planning Commission of the City of Lemon Grove, California, was delivered and/or notice by email not less than 72 hours before the hour of 6:30 pm on August 24, 2023 to the members of the governing agency, and caused the agenda to be posted on the City's website at www.lemongrove.ca.gov and at Lemon Grove City Hall, 3232 Main Street Lemon Grove, CA 91945.

/s/: Joel G. Pablo
Planning Commission Clerk

In compliance with the Americans with Disabilities Act (ADA), the City of Lemon Grove will provide special accommodations for persons who require assistance to access, attend and/or participate in meetings of the City Council. If you require such assistance, please contact the City Clerk at (619) 825-3841 or email jpablo@lemongrove.ca.gov. A full agenda is available for public review at City Hall.



CITY OF LEMON GROVE

PLANNING COMMISSION STAFF REPORT

Item No. 1.
Meeting Date: August 28, 2023
Submitted to: Planning Commissioners
Department: City Manager's Office
Staff Contact: Deborah Harrington, Planning Commission Clerk Consultant
dharrington@lemongrove.ca.gov
Item Title: **Approval of Planning Commission Meeting Minutes of the Regular Meeting held on April 24, 2023**

Recommended Action: Approve Planning Commission Meeting Minutes, meetings of April 24, 2023.

Environmental Review:

- Not subject to review Negative Declaration
 Categorical Exemption, Section | Mitigated Negative Declaration

Fiscal Impact: None.

Public Notification: None.

Attachment:

Attachment A: April 24, 2023 Planning Commission Meeting Meetings

**MINUTES OF THE REGULAR MEETING
OF THE LEMON GROVE PLANNING COMMISSION
Lemon Grove Community Center
3146 School Lane, Lemon Grove, CA 91945
MONDAY, APRIL 24, 2023, 2023 at 6:00 P.M.**

Call To Order:

Chairman Smith called the Regular Meeting of the Planning Commission to order at 6:00 p.m.

Present:

Chairperson Seth Smith, Commissioner Jacquelyn Clark, and Commissioner John Burns.

Absent: Vice-Chairperson Miranda Evans and Commissioner Emily Jacobs.

Staff Members Present:

Lydia Romero, City Manager, Elizabeth Mitchell, City Attorney, Tim Campen, Planning Commission Attorney, Michael Fellows, Community Development Manager and Deborah Harrington, Interim City Clerk.

Pledge of Allegiance:

The Pledge of Allegiance was led by Commissioner Clark.

Changes to the Agenda: None.

Consent Calendar:

1. Approval of Planning Commission Meeting Minutes of Regular Meetings held February 27, 2023.

Action: Moved by Commissioner Clark, seconded by Commissioner Burns, to approve the Consent Calendar. The motion carried by the following roll call vote:

AYES: Commissioners: Burns, Clark and Smith

NOES: Commissioners: None

Abstain: Commissioners: Evans, Jacobs

Public Comments: None.

Reports:

2. Tentative Map No. TM0-000-0064 and PDP-170-003 Time Extensions for a 6-unit condominium project at 8200 Hilltop Drive (APN 499-181-02-00)

All Planning Commissions stated they had no disclosures on this project.

Interim City Clerk Harrington noted notices as required by law had been given as well as exhibits and other documents.

Michael Fellows, Community Development Manager, presented the staff report and noted there are two findings that must be made for the time extension.

Action: Motion by Commissioner Clark, second by Commission Burns, to open the Public Hearing at 6:17 p.m.

Behzad Hafezi, applicant, made a presentation to the Planning Commission.

Planning Commissioners provided questions/comments to the applicant.

Action: Motion by Commissioner Burns, second by Commissioner Clark, to close the public hearing at 6:36 p.m.

Action: Motion by Commissioner Burns, second by Commissioner Clark, to adopt a Resolution approving a Time Extension of Approved Tentative Map No. TM0—000-0064 and Planned Development Permit (PDP) No. PDP-170-0003 to construct six (6) condominium units located at 8200 Hilltop Drive in the Residential Medium High (RMH) Zone, extending the expiration date from January 21, 2023 to January 21, 2026. The motion carried by the following roll call vote:

AYES: Commissioners: Clark, Burns, Smith
NOES: Commissioners: None
ABSENT: Commissioners: Evans, Jacobs

Community Development Manager Report

Community Development Manager noted the closing date for applications for the Planning Commission vacancy expiration is May 18, 2023.

The next regular meeting of the Planning Commission is May 22, 2023.

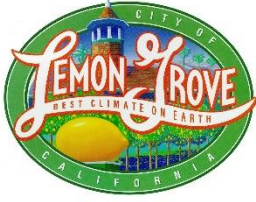
Business from Planning Commission Attorney – No Report.

Planning Commission Oral Reports on Meeting attended at the expense of the City – No Reports.

Adjournment

Chairman Smith adjourned the Planning Commission at 6:43 p.m.

Deborah Harrington
Interim City Clerk



CITY OF LEMON GROVE

PLANNING COMMISSION STAFF REPORT

Item No. 2

Meeting Date: August 28, 2023

Submitted to Planning Commission

Department: Community Development Department

Staff Contact: Michael Fellows, Community Development Manager

Item Title: Discuss Updating Massage Regulations

Recommended Action:

Discuss draft regulations and give direction to staff. This item is an interactive workshop for Planning Commission and Staff to discuss potential massage establishment regulations.

Discussion:

The Lemon Grove Municipal Code (LGMC) currently classifies massage establishments as an adult entertainment use that is a classification prohibited by State law. Staff is bringing this item forward to update our regulations to comply with State law and best practices. Staff is seeking feedback from the Commission on regulatory options as well as land use and zoning options to properly address massage establishments. After receiving feedback from the Commission, staff will return with a draft ordinance and suggested amendments to the LGMC.

Background

Prior to 2009, massage establishments were classified as an adult entertainment use with strict siting criteria. In 2008, the State Legislature introduced and the Governor signed the Massage Therapy Act (**Attachment C**) that sought to provide for more uniform regulations for massage businesses throughout the State. Effective in 2009, this action effectively preempted any local regulations of massage establishments. Under the 2009 Act cities could no longer classify massage establishments as an adult entertainment use and required local regulations to be no different than the other professional or personal services businesses (e.g. medical offices). This meant that discretionary permits, distance requirements or other regulations could no longer be required by cities.

In response to this State law change, in 2014 the City adopted local licensing requirements for massage establishments that are found in Chapter 8.20 Massage Therapy Practice – Local Licensing (**Attachment B**).

Due to issues raised by cities across California, the State Legislature repealed many of the provisions in the 2009 law and returned land use siting authority back to cities. However, there are still some limitations to the City’s authority to regulate massage establishment operations. Staff has attached a draft ordinance (**Attachment F**) focused on the operational areas the City may regulate.

Draft Regulations

Portions of LGMC Chapter 18.28 (**Attachment A**) are not legally valid or enforceable per State law (**Attachment D**). Over the past year the planning department has seen an increase of applications for massage businesses which is likely based in-part on the absence of regulations in our current code. Staff is seeking to vet proposed new regulations with the Planning Commission and illicit discussion on what regulations, if any, would best suit the needs of the City.

As part of creating new regulations, staff is seeking input from the planning commission on how best to regulate these uses. Below is the direction staff is seeking:

What type of permit should the City require to establish a new massage business?

- Business License/Zoning Clearance – This process would not apply any discretion to the approval process. The application would be reviewed for compliance with development standards and operation requirements then be approved or denied by staff.
- Minor Use Permit – This process would require a decision by the Community Development Manager who could approve, approve with conditions, or deny an application. This decision would be appealable to Planning Commission. Planning Commission’s decision would be appealable to City Council.
- Conditional Use Permit – This process would require a decision by Planning Commission that could approve, approve with conditions, or deny an application. The Planning Commission’s decision would be appealable to City Council.
- Massage Establishment Permit – This would be separate and in addition to any use permit requirement, and may include identity of all natural persons associated with ownership, criminal and business background checks, personal references, disclosure of ownership of other massage establishments, permit is non-transferable to new business owner(s), or other requirements.

Does the Planning Commission recommend requiring approval of ownership changes of massage establishments?

- Does Planning Commission recommend re-application of any Massage Establishment Permit, or lesser criteria for owner change?

Does the Planning Commission recommend providing concentration limits?

- Total maximum number allowed – This limitation would set a specific number of massage establishments permitted in the City. Once the total number is reached, the City would not approve additional massage establishments.
- Distance requirements between massage establishments. This option would provide for a linear distance from one massage establishment to another massage establishment.

Does Planning Commission recommend adding specific distance requirements from massage establishments to sensitive uses or specific zoning designations?

- Does Planning Commission recommend distance requirements from sensitive uses such as a church, school, playground, park, recreational area, daycare, etc.?
- Does Planning Commission recommend distance requirements from residential zones, single-family, multi-family, or other zoning designation?
- What length distance should be required if one of the above are recommended?

Which zones would Planning Commission recommend allowing massage establishments?

- Should massage establishments be allowed or limited to commercial zones, industrial zones, and/or Institutional zones?

Does Planning Commission recommend limitation of hours of operation of message establishments?

Should regulation of message establishments include “outcall” massage services?

- Should massage services performed at any location other than an approved, fixed location be permitted?
- Should specific locations for outcall massage services be prohibited, such as hotel rooms or other locations of temporary habitation?

Environmental Review:

Not subject to review

Negative Declaration

Categorical Exemption

Mitigated Negative Declaration

Fiscal Impact: No fiscal impact is associated with this workshop.

Public Notification: n/a.

Staff Recommendation: Discuss draft regulations and give direction to staff.

Attachments:

Attachment A – LGMC Chapter 8.20 Massage Therapy Practice

Attachment B – LGMC Chapter 18.28 Adult Entertainment

Attachment C – Massage Therapy Act (Business and Professions Code 4600-4621)

Attachment D – Massage (Government Code 51030-51034)

Attachment E – City Zoning Map

Attachment F – Draft Ordinance (not for adoption)

Lemon Grove, California Municipal Code

Title 18 CITYWIDE REGULATIONS

Chapter 18.28 ADULT ENTERTAINMENT

18.28.010 Purpose.

18.28.020 Definitions.

18.28.030 Special phrases.

18.28.040 Activities regulated.

18.28.050 Permitted locations.

18.28.060 Measure of distance.

18.28.070 Permit.

18.28.080 Development and maintenance standards.

18.28.090 Exceptions.

18.28.010 Purpose.

It is the purpose of this chapter to establish reasonable and uniform regulations to prevent the concentration of adult entertainment establishments, as defined in this chapter, within the city of Lemon Grove. These regulations are intended to prevent problems of blight and deterioration which accompany and are brought about by the concentration of adult entertainment establishments.

18.28.020 Definitions.

The following words and phrases are specifically defined to apply to the regulations of this chapter. Where words are not defined here or elsewhere in the municipal code, their common meanings shall apply.

A. "Adult bookstore" means an establishment that devotes more than fifteen percent of the total floor area utilized for the display of books and periodicals to the display and sale of the following:

1. Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records, or other forms of visual or audio representations which are characterized by an emphasis upon the depiction or description of specific sexual activities or specified anatomical areas; or

2. Instruments, devices or paraphernalia which are designed for use in connection with specified sexual activities.

An adult bookstore does not include an establishment that sells books or periodicals as an incidental or accessory part of its principal stock-in-trade and does not devote more than fifteen percent of the total floor area of the establishment to the sale of books and periodicals.

B. "Adult cabaret" means a nightclub, bar, theater, restaurant or similar establishment which regularly features live performances which are distinguished or characterized by an emphasis on specified sexual activities or by exposure of specified anatomical areas and/or which regularly features films, motion pictures, video cassettes, slides or other photographic reproductions which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas for observation by patrons.

C. "Adult drive-in theater" means an open lot or part thereof, with appurtenant facilities, devoted primarily to the presentation of motion pictures, films, theatrical productions and other forms of visual productions, for any form of consideration, to persons in motor vehicles or on outdoor seats, and presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons.

D. "Adult hotel or motel" means a hotel, motel or similar establishment offering public accommodations for any form of consideration which provides patrons with closed-circuit television transmission, films, motion pictures, video cassettes, slides or other photographic reproductions or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons.

E. "Adult mini-motion picture theater" means an establishment, with a capacity of more than five but less than fifty persons, where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material which is distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas for observation by patrons.

F. "Adult model studio" means any establishment open to the public where, for any form of consideration or gratuity, figure models who display specified anatomical areas are provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by persons, other than the proprietor, paying such consideration or gratuity. This provision shall not apply to any school of art which is operated by an individual, firm, association, partnership, corporation or institution which meets the requirements established in the [Education Code](#) of the state of California for the issuance or conferring of, and is in fact authorized thereunder to issue and confer, a diploma.

G. "Adult motion picture arcade" means any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas.

H. "Adult motion picture theater" means an establishment, with a capacity of fifty or more persons, where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material which is distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical area for observation by patrons.

I. "Adult theater" means a theater, concert hall, auditorium or similar establishment, either indoor or outdoor in nature, which, for any form of consideration, regularly features live performances which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical area for observation by patrons.

J. Anatomical areas. See "Specified anatomical areas" (Section [18.28.030\(A\)](#)).

K. "Body painting studio" means any establishment or business which provides the services of applying paint or other substances, whether transparent or nontransparent to or on the human body when such body is wholly or partially nude in terms of specified anatomical areas.

L. Bookstore. See "Adult bookstore" and "General bookstore."

M. Cabaret. See "Adult cabaret."

N. "Church" means an institution which people regularly attend to participate in or hold religious services, meetings and other activities. The term "church" shall not carry a secular connotation, and shall include buildings in which the religious services of any denomination are held.

O. Drive-In Theater. See "Adult drive-in theater."

P. "General bookstore" means an establishment engaged in the buying, selling and/or trading of new and/or used books, manuscripts and periodicals of general interest. A general bookstore does not include an establishment that is encompassed by the definition of adult bookstore.

Q. "General motion picture theater" means a building or part of a building intended to be used for the specific purposes of presenting entertainment as defined herein, or displaying motion pictures, slides, or closed circuit television pictures before an individual or assemblage of persons, whether such assemblage be of a public, restricted or private nature, except a home or private dwelling; where no fee, by way of an admission charge, is charged; provided, however, that any such presentations are not distinguished or characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical area in that any such depiction or description is only incidental to the plot or story line. A general motion picture theater does not include any establishment that is defined by adult motion picture theater, adult mini-motion picture theater, adult motion picture arcade, or adult drive-in theater.

R. "Legitimate or live theater" means a theater, concert hall, auditorium or similar establishment which, for any fee or consideration, regularly features live performances which are not distinguished or characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas in that any such depiction or description is only incidental to the primary purpose of the performance.

S. "Massage parlor" means an establishment where, for any form of consideration, massage, alcohol rub, fomentation, electric or magnetic treatment, or similar treatment or manipulation of the human body is administered, unless such treatment or manipulation is administered by a medical practitioner, chiropractor, acupuncturist, physical therapist or similar professional person licensed by the state of California. This definition does not include an athletic club, health club, school, gymnasium, reducing salon, spa or similar establishment where massage or similar manipulation of the human body is offered as an incidental or accessory service.

T. Motion Picture Theater. See "General motion picture theater."

U. Parlor. See "Massage parlor."

V. "Public playground/park/recreational area" means an area to which the public and particularly children, come to participate in athletic or recreational activities whether or not such activities are supervised or organized. Such areas include, but are not limited to, publicly owned and maintained parks, community gardens, athletic fields, playgrounds, and picnic areas.

W. Rap parlor. See "Massage parlor."

X. "School" means an institution of learning for minors, whether public or private, which offers instruction in those courses of study required by the California [Education Code](#) or which is maintained pursuant to standards set by the State Board of Education. This definition includes a nursery school, kindergarten, elementary school, junior high school, senior high school, or any special institution of learning under the jurisdiction of the State Department of Education, but it does not include a vocational or professional institution or an institution of higher education, including a community or junior college, college or university.

Y. "Sexual encounter establishment" means an establishment, other than a hotel, motel or similar establishment offering public accommodations, which, for any form of consideration, provides a place where two or persons may congregate, associate or consort in connection with specified sexual activities or the exposure of specified anatomical areas. This definition does not include an establishment where a medical practitioner, psychologist, psychiatrist or similar professional person licensed by the state of California engages in sexual therapy. For the purposes of these regulations, sexual encounter establishment shall include massage or rap parlor or other similar establishments.

Z. Sexual activities. See "Specified sexual activities" (Section 18.28.030(B)). (Ord. 422, 2014)

18.28.030 Special phrases.

The following expressions shall be interpreted according to the specific and detailed meanings provided.

A. "Specified anatomical areas" means:

1. Less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breasts below a point immediately above the top of the aureole; or
2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

B. "Specified sexual activities" means:

1. The fondling or other touching of human genitals, pubic region, buttocks, anus, or female breasts; or
2. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; or
3. Masturbation, actual or simulated; or
4. Excretory function as part of or in connection with any of the activities set forth in subsections (B) (1) through (3) of this section.

C. "Establishing an adult entertainment establishment" means:

1. The opening or commencement of any such establishment as a new establishment; or
2. The conversion of an existing establishment, whether or not an adult entertainment establishment, to any of the adult entertainment establishments defined herein; or
3. The addition of any of the adult entertainment establishments defined herein to any other existing adult entertainment establishment; or

4. The relocation of any such establishment.

D. "Transfer of ownership or control" means:

1. The sale, lease or sublease of such establishment; or

2. The transfer of securities which constitute a controlling interest in such establishment, whether by sale, exchange or similar means; or

3. The establishment of a trust, gift or other similar legal device which transfers the ownership or control of such establishment, except for transfer by bequest or other operation of law upon the death of the person possessing such ownership or control.

18.28.040 Activities regulated.

For the purpose of this chapter, the following activities as defined in this chapter shall be deemed adult entertainment: adult arcade; adult bookstore; adult cabaret; adult drive-in theater; adult mini-motion picture theater; adult model studio; adult motel; adult motion picture theater; adult theater; body painting studio; massage parlor; sexual encounter establishment; plus any other business which involves specified sexual activities or the display of specified anatomical areas.

18.28.050 Permitted locations.

A. Zone. Adult entertainment establishments which are enumerated in Section [18.28.040](#) may be established only within the general commercial zone.

B. Site. No adult entertainment establishment shall be permitted within one thousand feet of another such business, within five hundred feet of any area zoned for residential use, or within six hundred feet of any church, school, public playground, park or recreational area.

18.28.060 Measure of distance.

Distance without regard to intervening structures, shall be:

A. A straight line measured from the closest exterior structural wall of any two adult entertainment establishments.

B. A straight line measured from the closest exterior structural wall of the adult entertainment establishment to the closest property line of a church, school, public playground, park, recreational area, or residential zone.

18.28.070 Permit.

No person shall cause or permit the establishment, substantial enlargement or transfer of ownership or control of any adult entertainment establishment without first obtaining an administrative permit therefor pursuant to the administrative permit procedure from the chief of police for the city of Lemon Grove or other person or agency designated by the Lemon Grove city council as the administering agency. An application for such permit may be made where authorized by the applicable use regulations and shall be acted upon in accordance with the standards for location as specified in Section [18.28.050](#).

18.28.080 Development and maintenance standards.

The premises of all adult entertainment businesses hereafter commenced shall, in addition to compliance with all other applicable requirements of the city of Lemon Grove zoning ordinance, be required to comply with the following specific requirements.

A. Signs. Except for theater marquee signs, changeable copy signs, temporary signs and small permanent signs are not permitted. All signs shall be subject to review and approval by the planning commission.

B. Exterior Painting. Buildings and structures shall not be painted or surfaced with garish colors or textures or any design that would simulate a sign or advertising message.

C. Advertisements, displays of merchandise, signs, or any other exhibit depicting adult entertainment activities placed within the interior of buildings or premises shall be arranged or screened to prevent public viewing from outside such buildings or premises.

D. No outdoor loudspeakers or other outdoor sound equipment advertising or directing attention to an adult entertainment use is allowed.

E. Upon order of the city manager, graffiti appearing on any exterior surface of a building or premises, which graffiti is in public view, shall be removed and the surface shall be restored within seventy-two hours of notification to the owner or person in charge of the premises.

18.28.090 Exceptions.

A. A person possessing ownership or control of an adult entertainment establishment which does not comply with the standards for location pursuant to Section [18.28.050](#) on the effective date of the ordinance codified in this chapter, shall be permitted to transfer such ownership or control before January 1, 1983. The person acquiring such ownership or control, however, shall be required to discontinue the adult entertainment business within five years from the date of the transfer of ownership or control if such establishment does not comply with Section [18.28.050](#), Permitted locations.

B. A person possessing ownership or control of an adult entertainment establishment which meets the standards for location as specified in Section [18.28.050](#), shall be subject to the provisions of subsection A of this section when a church, school, public playground, park or recreation area, as defined by this chapter is established within six hundred feet of such adult entertainment establishment. Two years shall be permitted to utilize the transfer provisions of subsection A of this section, beginning on the date on which the church, school, public playground, park or recreational area begins operation.

Contact:

City Clerk: 619-825-3800

Published by [Quality Code Publishing, Seattle, WA](#). By using this site, you agree to the [terms of use](#).

Lemon Grove, California Municipal Code

Title 8 HEALTH AND SAFETY

Chapter 8.20 MASSAGE THERAPY PRACTICE—LOCAL LICENSING

Note

8.20.010 Title.

8.20.020 Purpose.

8.20.030 Rules of construction.

8.20.040 Definitions.

8.20.050 License—Required—Issuance requirements.

8.20.060 License—Application—Additional information.

8.20.070 Other business license regulations.

8.20.080 Violation—Penalty.

Note

* Prior history: Prior code §§ 66.507—66.523 and Ord. 51.

8.20.010 Title.

This chapter may be cited as the “Lemon Grove Massage Therapy Business License Ordinance.” (Ord. 424 §§ 1, 2, 2014; prior code § 66.501)

8.20.020 Purpose.

The purpose of this chapter is to implement local regulatory requirements, within the authority of the city of Lemon Grove, under the general laws of the state of California, to the fullest extent that local zoning, business licensing, police power and reasonable health and safety regulations are allowed. (Ord. 424 §§ 1, 2, 2014; prior code § 66.502)

8.20.030 Rules of construction.

This chapter shall be construed liberally in order to effectuate its purposes. Unless otherwise specifically prescribed in this chapter the following provisions shall govern its interpretation and construction:

- A. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number.
- B. All references herein, as applied to natural persons, shall be considered gender neutral.
- C. Any right or power conferred or duty imposed upon any officer, employee, department or board of the city is subject to transfer by operation of law to any other officer, employee, department or board of the city. Any officer or enforcement person referenced herein shall have the authority to delegate enforcement duties in the manner allowed by procedures established by the city manager or designee.
- D. No license or permit holder shall have any recourse whatsoever against the city for any loss, cost, expense or damage arising out of any provision or requirement of this chapter or the enforcement thereof.
- E. This chapter does not relieve any license or permit holder of any requirement of any ordinance, rule, regulation or specification of city or other regulatory body. This chapter does not limit applicable health and safety laws or regulations established by the county of San Diego or the state of California.
- F. This chapter, to the extent that it retains requirements established prior to January 1, 2010 related to the professionally recognized scope of practice of healing arts professionals licensed under California [Business and Professions Code](#) Section 500 et seq., shall remain in full force and effect. (Ord. 424 §§ 1, 2, 2014; prior code § 66.503)

8.20.040 Definitions.

For the purposes of this chapter, the words or phrases set forth in this section shall have the following meanings:

- A. “Building inspection” means the building inspection component of the Lemon Grove development services department.
- B. “City” means the city of Lemon Grove, California.
- C. “Certificate” means a valid certificate issued by the California Massage Therapy Council pursuant to the California Massage Therapy Act (California [Business and Professions Code](#) Section 4600 et seq.).
- D. “Council” or “State Council” means the California Massage Therapy Council created by the California Legislature pursuant to the California Massage Therapy Act (California [Business and Professions Code](#) Section 4600 et seq.), as amended.
- E. “County” means the county of San Diego, a political subdivision of the State of California.

F. “Health department” means the department of public health of the county.

G. “Independent contractor” means a massage therapist or massage practitioner who is not an employee of a massage establishment, but practices at the massage establishment as defined in applicable state law.

H. “License” means the business license to operate a massage therapy business required by this chapter.

I. “Massage” means the scientific manipulation of soft tissues. For the purpose of this chapter, “massage” and “bodywork” shall have the same meaning.

J. “Massage establishment” or “establishment” means a fixed location where massage is performed for compensation, excluding those locations where massage is only provided on an out-call basis.

K. “Massage practitioner” means a person who is certified by the State Council pursuant to [Business and Professions Code](#) Section 4604.2 and who administers massage for compensation.

L. “Massage therapist” means a person who is certified by the State Council pursuant to [Business and Professions Code](#) Section 4604 and who administers massage for compensation.

M. “Permit” means the business license permit to engage in the business and certified by the State Council to perform the business activities regulated herein.

N. “Person” means a natural person, firm, partnership, association, corporation or other legal entity. Nothing herein confers rights to a firm, partnership, association, corporation or other legal entity to receive a certification under [Business and Professions Code](#) Section 4604 or 4604.2.

O. “Solo provider” means a massage business where the owner owns one hundred percent of the business, is the only person who provides massage services for compensation for that business pursuant to a valid and active certificate issued in accordance with the California Massage Therapy Act, and has no other employees or independent contractors. (Ord. 424 §§ 1, 2, 2014; prior code § 66.504)

8.20.050 License—Required—Issuance requirements.

A. It is unlawful for any person to engage in, conduct, carry on, or to permit to be engaged in, conducted, or carried on, in or upon any premises in the city, the operation of a massage therapy practice as defined in the California Massage Therapy Act, without the business license required by this chapter.

B. No business may advertise, or hold itself out to the public, as a massage business unless it meets the applicable requirements of the Lemon Grove Municipal Code including, but not limited to, Titles 17 (Zoning) and 18, (Citywide Regulations) and meet all of the requirements found under the California Massage Therapy Act, as amended.

C. Independent contractors of local massage therapy businesses shall each obtain a business license prior to operating within the city of Lemon Grove. Each independent contractor shall possess a state certificate as a massage practitioner or massage therapist in order to be eligible to receive a business license. Any independent contractor whose state certificate has been suspended or revoked shall not be able to practice massage therapy unless and until that independent contractor receives a new certificate or a reactivated certificate.

D. An applicant who is denied a business license may request a hearing under Chapter 5.08 (Uniform Permit Procedures). Failure to have a valid certificate issued by the California Massage Therapy Council shall be grounds for denial of a business license. Upon suspension or revocation of any certificate by the State Council, the certificate holder shall also be prohibited from practicing under any validly issued business license until reinstated as a certificate holder by the California Massage Therapy Council under the California Massage Therapy Act, as amended. (Ord. 424 §§ 1, 2, 2014; prior code § 66.505)

8.20.060 License—Application—Additional information.

A. The application for a license to operate a massage therapy establishment shall set forth the proposed place of business and facilities therefor, and the name and address of each applicant and whether it will operate using independent contractors as massage practitioners and/or massage therapists. Each independent contractor shall be required to obtain a business license to practice massage therapy at a business in the city of Lemon Grove.

B. In addition to the foregoing, any applicant for a license shall furnish the following information:

1. Proof of a valid and active certificate to practice as a massage practitioner or massage therapist in the state of California;

2. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the names and residence addresses of each of its officers, and directors;

3. Any business entity, regardless of form, that has independent contractors who operate as massage practitioners or massage therapists within the city shall submit a list of independent contractors that work with the business entity within thirty days of contracting with the independent contractor to practice in Lemon Grove or operate from the business location within the city; and

4. An independent contractor shall list the location(s) of businesses where the independent contractor practices massage therapy in the city of Lemon Grove. (Ord. 424 §§ 1, 2, 2014; prior code § 66.506)

8.20.070 Other business license regulations.

To the extent they are applicable, the provisions of Title 5 (Business Taxes, Licenses, Permits and Regulations) govern the businesses authorized under this chapter. (Ord. 424 §§ 1, 2, 2014)

8.20.080 Violation—Penalty.

A. Every person, except those persons who are specifically exempted by this chapter whether acting as an individual, owner, employee of the owner, operator or employee of the operator, or whether acting as a mere helper for the owner, employee or operator, or acting as a participant or worker in any way, who gives massages or conducts a massage establishment or practices the giving or administering of any of the services defined in Section 8.20.040 without first obtaining the necessary permit or license shall be guilty of a misdemeanor and/or infraction as determined by the city attorney.

B. Any owner, operator, manager or permittee in charge or in control of a massage establishment who knowingly employs a person performing as a massage practitioner or massage therapist, as defined in this chapter, who is not in possession of a valid, unrevoked permit, or who allows such massage technician to perform, operate or practice within such place of business, is guilty of a misdemeanor and/or infraction as determined by the city attorney.

C. Any owner, operator or manager shall require that all employees and independent contractors possess a valid certificate to practice as a massage practitioner or massage therapist. Any business found to be operating with an employee or independent contractor who does not possess a valid state certificate shall be in violation of the requirements of this chapter.

D. Enforcement of the provisions of this chapter shall be governed by the procedures established under Title 1 (General Provisions) of the Lemon Grove Municipal Code. All remedies listed therein are cumulative, in addition to any other remedies available under the general laws of the state, may be utilized to remedy violations of this municipal code. Upon any finding (administrative or legal) that any person is practicing massage therapy without a valid license from the city of Lemon Grove or the state of California, the massage establishment or solo provider shall lose their business license granted hereunder subject to the applicable appeal process. (Ord. 424 §§ 1, 2, 2014; prior code § 66.524)

Contact:

City Clerk: 619-825-3800

Published by [Quality Code Publishing, Seattle, WA](#). By using this site, you agree to the [terms of use](#).


[Home](#)
[Bill Information](#)
[California Law](#)
[Publications](#)
[Other Resources](#)
[My Subscriptions](#)
[My Favorites](#)

 Code:

 Section:



[Up^](#) [Add To My Favorites](#)

BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 2. HEALING ARTS [500 - 4999.129] (*Division 2 enacted by Stats. 1937, Ch. 399.*)

CHAPTER 10.5. Massage Therapy Act [4600 - 4621] (*Chapter 10.5 added by Stats. 2014, Ch. 406, Sec. 2.*)

4600. This chapter shall be known and may be cited as the Massage Therapy Act. Whenever a reference is made to the Massage Therapy Act by any statute, it shall be construed to refer to this chapter.

(Added by Stats. 2014, Ch. 406, Sec. 2. (AB 1147) Effective January 1, 2015. Repealed as of January 1, 2027, pursuant to Section 4621.)

4600.5. (a) It is the intent of the Legislature that this act enable consumers and local governments to more easily identify certified massage professionals, provide for consistent statewide certification and oversight of massage professionals, ensure that schools approved by the council that are teaching massage provide a high level of training, assist local governments and law enforcement in meeting their duty to maintain the highest standards of conduct in massage establishments by vetting and disciplining certificate holders, provide for a self-funded nonprofit oversight body to certify massage professionals, and ensure full compliance with, and execution of, the requirements of this act.

(b) It is the intent of the Legislature that broad control over land use in regulating massage establishments be vested in local governments so that they may manage those establishments in the best interests of the individual community, and that the requirements and practice of the profession of massage therapy remain a matter of statewide concern, regulation, and oversight. Local governments should give strong consideration to establishing a registration program that grants local governments the ability to either suspend or revoke a registration of massage business for specific violations.

(c) It is the intent of the Legislature that local governments, law enforcement, nonprofit stakeholders, the massage industry, and massage professionals work together going forward to improve communication and share information to further increase the value of statewide certification, to collaborate in the implementation of this act, and to develop a model ordinance reflecting best practices in massage regulation for cities and counties to adopt that will respect local control, patient privacy, and the dignity of the profession of massage therapy.

(Amended by Stats. 2016, Ch. 411, Sec. 1. (AB 2194) Effective January 1, 2017. Repealed as of January 1, 2027, pursuant to Section 4621.)

4601. As used in this chapter, the following terms shall have the following meanings:

(a) "Approved school" or "approved massage school" means a school approved by the council that meets minimum standards for training and curriculum in massage and related subjects, that meets any of the following requirements, and that has not been otherwise unapproved by the council:

(1) Is approved by the Bureau for Private Postsecondary Education.

(2) Is approved by the Department of Consumer Affairs.

(3) Is an institution accredited by the Accrediting Commission for Senior Colleges and Universities or the Accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges and that is one of the following:

(A) A public institution.

(B) An institution incorporated and lawfully operating as a nonprofit public benefit corporation pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code, and that is not managed by any entity for profit.

(C) A for-profit institution.

(D) An institution that does not meet all of the criteria in subparagraph (B) that is incorporated and lawfully operating as a nonprofit public benefit corporation pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code, that has been in continuous operation since April 15, 1997, and that is not managed by any entity for profit.

(4) Is a college or university of the state higher education system, as defined in Section 100850 of the Education Code.

(5) Is a school requiring equal or greater training than what is required pursuant to this chapter and is recognized by the corresponding agency in another state or accredited by an agency recognized by the United States Department of Education.

(b) "Certificate" means a valid certificate issued by the council pursuant to this chapter.

(c) "Compensation" means a payment, loan, advance, donation, contribution, deposit, or gift of money, or anything of value.

(d) "Council" means the California Massage Therapy Council created pursuant to this chapter, which shall be a nonprofit organization exempt from taxation under Section 501(c)(3) of Title 26 of the United States Code.

(e) "Massage" means the scientific manipulation of the soft tissues. For purposes of this chapter, the terms "massage" and "bodywork" shall have the same meaning.

(f) "Massage establishment" or "establishment" means a fixed location where massage is performed for compensation, excluding those locations where massage is only provided on an out-call basis.

(g) "Massage practitioner" means a person who is certified by the council pursuant to Section 4604.2 and who administers massage for compensation.

(h) "Massage therapist" means a person who is certified by the council under Section 4604 and who administers massage for compensation.

(i) "Sole provider" means a massage business where the owner owns 100 percent of the business, is the only person who provides massage services for compensation for that business pursuant to a valid and active certificate issued in accordance with this chapter, and has no other employees or independent contractors.

(Added by Stats. 2014, Ch. 406, Sec. 2. (AB 1147) Effective January 1, 2015. Repealed as of January 1, 2027, pursuant to Section 4621.)

4602. (a) The California Massage Therapy Council, as defined in subdivision (d) of Section 4601, is hereby established and shall carry out the responsibilities and duties set forth in this chapter.

(b) The council may take any reasonable actions necessary to carry out the responsibilities and duties set forth in this chapter, including, but not limited to, hiring staff, entering into contracts, and developing policies, procedures, rules, and bylaws to implement this chapter.

(c) The council may require background checks for all employees, contractors, volunteers, and board members as a condition of their employment, formation of a contractual relationship, or participation in council activities.

(d) The council shall issue a certificate to an individual applicant who satisfies the requirements of this chapter for that certificate.

(e) The council is authorized to determine whether the information provided to the council in relation to the certification of an applicant is true and correct and meets the requirements of this chapter. If the council has any reason to question whether the information provided is true or correct, or meets the requirements of this chapter, the council is authorized to make any investigation it deems necessary to establish that the information received is accurate and satisfies any criteria established by this chapter. The applicant has the burden to prove that they are entitled to certification.

(f) The council shall be governed by a board of directors composed of 13 members who shall be chosen in the following manner:

(1) One member shall be a representative of the League of California Cities, unless that entity chooses not to exercise this right to appoint.

(2) One member shall be a representative of the California Police Chiefs Association, unless that entity chooses not to exercise this right to appoint.

(3) One member shall be a representative of the California State Association of Counties, unless that entity chooses not to exercise this right to appoint.

(4) One member shall be a representative of an "anti-human trafficking" organization to be determined by the council. This organization shall appoint one member, unless the organization chooses not to exercise this right to appoint.

(5) One member shall be appointed by the Office of the Chancellor of the California Community Colleges, unless that office chooses not to exercise this right to appoint.

(6) One member shall be a member of the public appointed by the Director of the Department of Consumer Affairs, unless the director chooses not to exercise this right to appoint.

(7) One member shall be appointed by the California Association of Private Postsecondary Schools, unless that entity chooses not to exercise this right to appoint.

(8) One member shall be appointed by the American Massage Therapy Association, California Chapter, who shall be a California-certified massage therapist or massage practitioner who is a California resident and who has been practicing massage for at least three years, unless that entity chooses not to exercise this right to appoint.

(9) One member shall be a public health official representing a city, county, city and county, or state health department, to be determined by the council. The city, county, city and county, or state health department chosen, shall appoint one member unless that entity chooses not to exercise this right to appoint.

(10) (A) One member shall be a certified massage therapist or a certified massage practitioner who is a California resident who has practiced massage for at least three years prior to the appointment, selected by a professional society, association, or other entity which membership is composed of massage therapist professionals, and that chooses to participate in the council. To qualify, a professional society, association, or other entity shall have a dues-paying membership in California of at least 1,000 individuals, have been established since 2000, and shall have bylaws that require its members to comply with a code of ethics.

(B) If there is more than one professional society, association, or other entity that meets the requirements of subparagraph (A), the appointment shall rotate based on a four-year term between each of the qualifying entities. The qualifying entity shall maintain its appointment authority during the entirety of the four-year term during which it holds the appointment authority. The order in which a qualifying professional society, association, or other entity has the authority to appoint shall be determined by alphabetical order based on the full legal name of the entity as of January 1, 2014.

(11) The members appointed to the board in accordance with paragraphs (1) to (10), inclusive, shall appoint three additional members, at a duly held board meeting in accordance with the board's bylaws. One of those appointees shall be an attorney licensed by the State Bar of California who has been practicing law for at least three years and who at the time of appointment represents a city, county, or a city and county in the state. One of those appointees shall represent a massage business entity that has been operating in the state for at least three years. The council shall establish in its bylaws a process for appointing an additional member, provided that the member has knowledge of the massage industry or can bring needed expertise to the operation of the council for purposes of complying with Section 4603.

(g) Board member terms shall be for four years.

(h) The board of directors shall establish fees reasonably related to the cost of providing services and carrying out its ongoing responsibilities and duties. Initial and renewal fees for certificates shall be in an amount sufficient to support the functions of the council in the administration of this chapter, but in no event shall exceed three hundred dollars (\$300). The renewal fee shall be reassessed biennially by the board.

(i) The meetings of the council shall be subject to the rules of the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code). The board may adopt additional policies and procedures that provide greater transparency to certificate holders and the public than required by the Bagley-Keene Open Meeting Act.

(j) Prior to holding a meeting to vote upon a proposal to increase the certification fees, the board shall provide at least 90 days' notice of the meeting, including posting a notice on the council's internet website unless at least two-

thirds of the board members concur that there is an active threat to public safety and that voting at a meeting without prior notice is necessary. However, the board shall not waive the requirements of subdivision (i).

(k) If the board approves an increase in the certification fees, the council shall update all relevant areas of its internet website and notify all certificate holders and affected applicants by email within 14 days of the board's action.

(l) The council shall assess its contact with non-English speakers. Based on this assessment, the council shall offer and make available all publicly available written and electronic materials provided to certificate holders and applicants in languages other than English that the council determines will be used by a substantial number of non-English speakers who are in contact with the council. This subdivision shall not apply to examinations, denial and disciplinary legal documents, and email communications. The council shall provide a report to the Legislature on the findings of its assessment of contact with non-English speakers on or before January 1, 2019.

(Amended by Stats. 2022, Ch. 236, Sec. 1. (AB 2687) Effective January 1, 2023. Repealed as of January 1, 2027, pursuant to Section 4621.)

4603. Protection of the public shall be the highest priority for the council in exercising its certification and disciplinary authority, and any other functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

(Added by Stats. 2014, Ch. 406, Sec. 2. (AB 1147) Effective January 1, 2015. Repealed as of January 1, 2027, pursuant to Section 4621.)

4603.1. Local governments shall impose and enforce only reasonable and necessary fees and regulations on massage businesses and massage establishments, in keeping with the requirements of existing law and being mindful of the need to protect legitimate business owners and massage professionals, particularly sole providers.

(Added by Stats. 2016, Ch. 411, Sec. 3. (AB 2194) Effective January 1, 2017. Repealed as of January 1, 2027, pursuant to Section 4621.)

4604. (a) In order to obtain certification as a massage therapist, an applicant shall submit a written application and provide the council with satisfactory evidence that the applicant meets all of the following requirements:

(1) The applicant is 18 years of age or older.

(2) The applicant has successfully completed the curricula in massage and related subjects totaling a minimum of 500 hours, or the credit unit equivalent, that incorporates appropriate school assessment of student knowledge and skills.

(A) Of the 500 hours, a minimum of 100 hours of instruction shall address anatomy and physiology, contraindications, health and hygiene, and business and ethics.

(B) All of the 500 hours shall be from approved schools. The council shall accept the 500 hours if, at the time all of the hours were completed, the school or schools were approved. The 500 hours may be completed at more than one approved school. Notwithstanding any other law, pursuant to its policies and procedures for approval of schools, the council shall accept hours earned by an applicant for certification as a massage therapist if those hours were completed before July 1, 2016, and were earned from a school providing education in this state that was unapproved by the council after July 1, 2016, based solely on the fact that the National Certification Board for Therapeutic Massage and Bodywork took denial or disciplinary action against the school. For purposes of this section, "unapproved" means that the council determined that it will not accept hours from a school toward certification.

(3) The applicant has passed a massage and bodywork competency assessment examination that meets generally recognized psychometric principles and standards and that is approved by the council. The successful completion of this examination may have been accomplished before the date the council is authorized by this chapter to begin issuing certificates. This paragraph shall be inoperative commencing on January 1, 2019, and shall become operative on January 1, 2027.

(4) The applicant has successfully passed a background investigation pursuant to Section 4606, and has not violated any of the provisions of this chapter.

(5) All fees required by the council have been paid.

(6) The council may issue a certificate to an applicant who meets the qualifications of this chapter if the applicant holds a current and valid registration, certification, or license from any other state whose licensure requirements meet or exceed those defined within this chapter. If an applicant has received education at a school that is not approved by the council, the council shall have the discretion to give credit for comparable academic work completed by an applicant in a program outside of California.

(7) If an applicant has received education at a school located outside of California or a school located in a country outside of the United States that does not meet the requirements of subdivision (a) of Section 4601 to be an approved school, the council shall have the discretion to give credit for comparable academic work completed by an applicant toward certification.

(b) A certificate issued pursuant to this chapter and any identification card issued by the council shall be surrendered to the council by any certificate holder whose certificate is suspended or revoked.

(Amended by Stats. 2022, Ch. 236, Sec. 2. (AB 2687) Effective January 1, 2023. Repealed as of January 1, 2027, pursuant to Section 4621.)

4604.1. (a) The council shall not accept applications to issue any new certificates to practice as a certified massage practitioner on or after January 1, 2015.

(b) Certificates to practice as a certified massage practitioner for applications accepted prior to January 1, 2015, may be renewed without any additional educational requirements.

(c) A massage practitioner certificate and any identification card issued by the council, shall be surrendered to the council by any certificate holder whose certificate is suspended or revoked.

(Added by Stats. 2014, Ch. 406, Sec. 2. (AB 1147) Effective January 1, 2015. Repealed as of January 1, 2027, pursuant to Section 4621.)

4604.2. (a) A person who was issued a conditional certificate to practice as a massage practitioner shall, within five years of being issued the conditional certificate by the council, complete and report to the council the completion of, at least 30 hours of additional education per year from approved schools or from continuing education providers approved by the council, until he or she has completed a total of at least 250 hours of education.

(b) A conditional certificate issued to any person pursuant to this section shall immediately be nullified, without need for further action by the council, if proof of completion of the requirements specified in subdivision (a) is not filed with the council within the time period specified in subdivision (a).

(c) Notwithstanding subdivision (a) of Section 4604.1, the council shall issue a new certificate to practice as a massage practitioner to a person that successfully completes the requirements described in subdivision (a).

(Added by Stats. 2014, Ch. 406, Sec. 2. (AB 1147) Effective January 1, 2015. Repealed as of January 1, 2027, pursuant to Section 4621.)

4605. Except as otherwise provided, a certification issued pursuant to this chapter shall be subject to renewal every two years in the manner prescribed by the council. A certificate issued by the council shall expire after two years unless renewed as prescribed. The council may provide for the late renewal of a certificate.

(Added by Stats. 2014, Ch. 406, Sec. 2. (AB 1147) Effective January 1, 2015. Repealed as of January 1, 2027, pursuant to Section 4621.)

4606. (a) Prior to issuing a certificate to an applicant, or designating a custodian of records, the council shall require the applicant or the custodian of records candidate to submit fingerprint images as directed by the council and in a form consistent with the requirements of this section.

(b) The council shall submit the fingerprint images and related information to the Department of Justice for the purpose of obtaining information as to the existence and nature of a record of state and federal level convictions and of state and federal level arrests for which the Department of Justice establishes that the applicant or candidate was released on bail or on his or her own recognizance pending trial.

(c) Requests for federal level criminal offender record information received by the Department of Justice pursuant to this section shall be forwarded to the Federal Bureau of Investigation by the Department of Justice. The Department of Justice shall review the information returned from the Federal Bureau of Investigation, and shall compile and disseminate a fitness determination regarding the applicant or candidate to the council. The Department of Justice shall provide information to the council pursuant to subdivision (p) of Section 11105 of the Penal Code.

(d) The Department of Justice and the council shall charge a fee sufficient to cover the cost of processing the request for state and federal level criminal offender record information.

(e) The council shall request subsequent arrest notification service from the Department of Justice, as provided under Section 11105.2 of the Penal Code, for all applicants for certification or custodian of records candidates for whom fingerprint images and related information are submitted to conduct a search for state and federal level criminal offender record information.

(f) The council is authorized to receive arrest notifications and other background materials about applicants and certificate holders from a city, county, or city and county.

(Added by Stats. 2014, Ch. 406, Sec. 2. (AB 1147) Effective January 1, 2015. Repealed as of January 1, 2027, pursuant to Section 4621.)

4607. The council may discipline an owner or operator of a massage business or establishment who is certified pursuant to this chapter or is an applicant for certification pursuant to this chapter for the conduct of all individuals providing massage for compensation on the business premises.

(Amended by Stats. 2016, Ch. 411, Sec. 5. (AB 2194) Effective January 1, 2017. Repealed as of January 1, 2027, pursuant to Section 4621.)

4608. In addition to the other requirements of this chapter, a certificate holder shall:

(a) Display his or her original certificate wherever he or she provides massage for compensation. A certificate holder shall have his or her identification card in his or her possession while providing massage services for compensation.

(b) Provide his or her full name and certificate number upon the request of a member of the public, the council, or a member of law enforcement, or a local government agency charged with regulating massage or massage establishments, at the location where he or she is providing massage services for compensation.

(c) Include the name under which he or she is certified and his or her certificate number in any and all advertising of massage for compensation.

(d) Notify the council within 30 days of any changes in the certificate holder's home address or the address of any massage establishment or other location where he or she provides massage for compensation, excluding those locations where massage is only provided on an out-call basis. A certificate holder also shall notify the council of his or her primary email address, if any, and notify the council within 30 days of a change of the primary email address.

(Added by Stats. 2014, Ch. 406, Sec. 2. (AB 1147) Effective January 1, 2015. Repealed as of January 1, 2027, pursuant to Section 4621.)

4609. (a) It is a violation of this chapter for an applicant or a certificate holder to commit any of the following acts, the commission of which is grounds for the council to deny an application for a certificate or to impose discipline on a certificate holder:

(1) Unprofessional conduct, including, but not limited to, any of the following:

(A) Engaging in sexually suggestive advertising related to massage services.

(B) Engaging in any form of sexual activity on the premises of a massage establishment where massage is provided for compensation, excluding a residence.

(C) Engaging in sexual activity while providing massage services for compensation.

(D) Practicing massage on a suspended certificate or practicing outside of the conditions of a restricted certificate.

(E) Providing massage of the genitals or anal region.

(F) Providing massage of female breasts without the written consent of the person receiving the massage and a referral from a licensed California health care provider.

(2) Procuring or attempting to procure a certificate by fraud, misrepresentation, or mistake.

- (3) Failing to fully disclose all information requested on the application.
- (4) Impersonating an applicant or acting as a proxy for an applicant in any examination referred to in this chapter for the issuance of a certificate.
- (5) Impersonating a certificate holder, or permitting or allowing a noncertified person to use a certificate.
- (6) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter or any rule or bylaw adopted by the council.
- (7) Committing any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications or duties of a certificate holder.
- (8) Denial of licensure, revocation, suspension, restriction, citation, or any other disciplinary action against an applicant or certificate holder by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision, order, judgment, or citation shall be conclusive evidence of these actions.
- (9) Being convicted of any felony, misdemeanor, infraction, or municipal code violation, or being held liable in an administrative or civil action for an act, that is substantially related to the qualifications, functions, or duties of a certificate holder. A record of the conviction or other judgment or liability shall be conclusive evidence of the crime or liability.
- (10) Dressing while engaged in the practice of massage for compensation, or while visible to clients in a massage establishment, in any of the following:
 - (A) Attire that is transparent, see-through, or substantially exposes the certificate holder's undergarments.
 - (B) Swim attire, if not providing a water-based massage modality approved by the council.
 - (C) A manner that exposes the certificate holder's breasts, buttocks, or genitals.
 - (D) A manner that constitutes a violation of Section 314 of the Penal Code.
 - (E) A manner that is otherwise deemed by the council to constitute unprofessional attire based on the custom and practice of the profession in California.
- (11) Committing any act punishable as a sexually related crime or being required to register pursuant to the Sex Offender Registration Act (Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1 of the Penal Code), or being required to register as a sex offender in another state.

(b) The council may deny an application for a certificate for the commission of any of the acts described in subdivision (a). The council may also discipline a certificate holder, in any manner permitted by this chapter, for the commission of any of those acts by a certificate holder.

(c) The council shall deny an application for a certificate, or revoke the certificate of a certificate holder, if the applicant or certificate holder is required to register pursuant to the Sex Offender Registration Act (Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1 of the Penal Code), or is required to register as a sex offender in another state.

(Added by Stats. 2014, Ch. 406, Sec. 2. (AB 1147) Effective January 1, 2015. Repealed as of January 1, 2027, pursuant to Section 4621.)

4610. (a) An applicant for a certificate shall not be denied a certificate, and a certificate holder shall not be disciplined pursuant to this chapter except according to procedures that satisfy the requirements of this section. Denial or discipline that is not in accord with this section shall be void and without effect.

(b) The council may discipline a certificate holder by any, or a combination, of the following methods:

- (1) Placing the certificate holder on probation, which may include limitations or conditions on practice.
- (2) Suspending the certificate and the rights conferred by this chapter on a certificate holder for a period not to exceed one year.
- (3) Suspending or staying the disciplinary order, or portions of it, with or without conditions.
- (4) Revoking the certificate.

- (5) Taking other action as the council deems proper, as authorized by this chapter or policies, procedures, rules, or bylaws adopted by the board.
- (c) The council may issue an initial certificate on probation, with specific terms and conditions, to any applicant.
- (d) Any denial or discipline shall be decided upon and imposed in good faith and in a fair and reasonable manner. Any procedure that conforms to the requirements of subdivision (e) is fair and reasonable.
- (e) A procedure is fair and reasonable and meets requirements for fair procedure if the procedures specified in subdivision (f) or (g) are followed or if all of the following apply:
- (1) Denial or discipline shall be based on a preponderance of the evidence. In determining the basis for the denial or discipline and making a final decision that denial or discipline shall be imposed, the council may consider all written documents or statements as evidence, but shall weigh the reliability of those documents or statements. A final decision to deny or impose discipline may be based solely on a written statement or declaration made under penalty of perjury and the individual providing the written statement or declaration made under penalty of perjury shall not be required to appear at an oral hearing or provide additional documents or information beyond the written statement or declaration made under penalty of perjury that was already provided.
 - (2) The provisions of the procedure are publicly available on the council's Internet Web site.
 - (3) The council provides 15 calendar days prior notice of the denial or discipline and the reasons for the denial or discipline.
 - (4) The council provides an opportunity for the applicant or certificate holder, to be heard, orally or in writing, not less than five days before the effective date of the denial or discipline, by a person or body authorized to decide whether the proposed denial or discipline should go into effect.
- (f) (1) Notwithstanding any other law, if the council receives notice that a certificate holder has been arrested and charges have been filed by the appropriate prosecuting agency against the certificate holder alleging a violation of subdivision (b) of Section 647 of the Penal Code or any other offense described in paragraph (11) of subdivision (a) of Section 4609, the council shall immediately suspend, on an interim basis, the certificate of that certificate holder, and take all of the following additional actions:
- (A) Notify the certificate holder at the address last filed with the council that the certificate has been suspended and the reason for the suspension within 10 business days.
 - (B) Provide notification of the suspension by email to the clerk or other designated contact of the city, county, or city and county in which the certificate holder lives or works, pursuant to the council's records, within 10 business days.
 - (C) Provide notification of the suspension by email or first-class mail to any establishment or employer, whether public or private, that the council has in its records as employing the certificate holder, within 10 business days.
- (2) Upon notice to the council that the charges described in paragraph (1) have resulted in a conviction, the council shall permanently revoke the suspended certificate. The council shall provide notice to the certificate holder, at the address last filed with the council by a method providing delivery confirmation, within 10 business days that it has evidence of a valid record of conviction and that the certificate will be revoked unless the certificate holder provides evidence within 15 days from the date of the council's mailing of the notice that the conviction is either invalid or that the information is otherwise erroneous.
- (3) Upon notice that the charges described in paragraph (1) have resulted in an acquittal or have been otherwise dismissed prior to conviction, the certificate shall be immediately reinstated and the certificate holder and any establishment or employer that received notice pursuant to this section shall be notified of the reinstatement within 10 business days.
- (g) (1) Notwithstanding any other law, if the council determines that a certificate holder has committed an act punishable as a sexually related crime or a felony that is substantially related to the qualifications, functions, or duties of a certificate holder, the council may immediately suspend the certificate of that certificate holder. A determination to immediately suspend a certificate pursuant to this subdivision shall be based upon a preponderance of the evidence and the council shall also consider any available credible mitigating evidence before making a decision. Written statements by any person shall not be considered by the council when determining whether to immediately suspend a certificate unless made under penalty of perjury. If the council suspends a certificate in accordance with this subdivision, the council shall take all of the following additional actions:

(A) Notify the certificate holder within 10 business days, at the address last filed with the council, by a method providing delivery confirmation, that the certificate has been suspended, the reason for the suspension, and that the certificate holder has the right to request a hearing pursuant to paragraph (2).

(B) Notify by email or any other means consistent with the notice requirements of this chapter, any business or employer, whether public or private, that the council has in its records as employing or contracting with the certificate holder for massage services, and the California city, county, or city and county that has jurisdiction over that establishment or employer, that the certificate has been suspended within 10 business days.

(2) A certificate holder whose certificate is suspended pursuant to this subdivision shall have the right to request, in writing, an oral hearing or consideration of a written statement to challenge the factual basis for the suspension. If the holder of the suspended certificate requests an oral hearing or consideration of a written statement on the suspension, the oral hearing or consideration of a written statement shall be held within 30 calendar days after receipt of the request. A holder whose certificate is suspended based on paragraph (1) shall be subject to revocation or other discipline in accordance with subdivision (a).

(3) If the council determines, after a hearing conducted pursuant to this subdivision, to lift the suspension, the certificate shall be immediately reinstated and the certificate holder, any establishment or employer, and the city, county, or city and county that has jurisdiction over that establishment or employer, that received notice pursuant to this section shall be notified of the reinstatement within 10 business days.

(h) Any notice required under this section may be given by any method reasonably calculated to provide actual notice. Any notice given by mail shall be given by first-class or certified mail sent to the last address of the applicant or certificate holder shown on the council's records.

(i) An applicant or certificate holder may challenge a denial or discipline decision issued pursuant to this section in a court of competent jurisdiction. Any action challenging a denial or discipline, including any claim alleging defective notice, shall be commenced within 90 days after the effective date of the denial or discipline. Certification issued pursuant to this chapter is not a fundamental vested right and judicial review of denial and disciplinary decisions made by the council shall be conducted using the substantial evidence standard of review. If the action is successful, the court may order any relief, including reinstatement, that it finds equitable under the circumstances.

(j) This section governs only the procedures for denial or discipline decision and not the substantive grounds for the denial or discipline. Denial or discipline based upon substantive grounds that violates contractual or other rights of the applicant or certificate holder, or is otherwise unlawful, is not made valid by compliance with this section.

(Amended by Stats. 2016, Ch. 411, Sec. 6. (AB 2194) Effective January 1, 2017. Repealed as of January 1, 2027, pursuant to Section 4621.)

4611. (a) It is an unfair business practice for a person to do any of the following:

(1) To hold himself or herself out or to use the title of "certified massage therapist" or "certified massage practitioner," or any other term, such as "licensed," "certified," "CMT," or "CMP," in any manner whatsoever that implies or suggests that the person is certified as a massage therapist or massage practitioner, unless that person currently holds an active and valid certificate issued by the council pursuant to this chapter.

(2) To falsely state or advertise or put out any sign or card or other device, or to falsely represent to the public through any print or electronic media, that he or she or any other individual is licensed, certified, or registered by a governmental agency as a massage therapist or massage practitioner.

(b) In addition to any other available remedies, engaging in any of the prohibited behaviors described in subdivision (a) constitutes unfair competition under Section 17200.

(Added by Stats. 2014, Ch. 406, Sec. 2. (AB 1147) Effective January 1, 2015. Repealed as of January 1, 2027, pursuant to Section 4621.)

4612. (a) Notwithstanding any other law, a city, county, or city and county shall not enact or enforce an ordinance that conflicts with this chapter or Section 51034 of the Government Code.

(b) Nothing in this chapter shall prevent a city, county, or city and county from licensing, regulating, prohibiting, or permitting an individual who provides massage for compensation without a valid certificate.

(Added by Stats. 2014, Ch. 406, Sec. 2. (AB 1147) Effective January 1, 2015. Repealed as of January 1, 2027, pursuant to Section 4621.)

4614. (a) Upon the request of any law enforcement agency or any other representative of a local government agency with responsibility for regulating or administering a local ordinance relating to massage or massage establishments, the council shall provide information concerning an applicant or a certificate holder, including, but not limited to, any of the following:

- (1) The current status of an application or certificate.
- (2) Any history of disciplinary actions.
- (3) The home and work addresses of the applicant or certificate holder.
- (4) The name and home and work addresses of any person whose certificate has been suspended and the length of the suspension, if the work address is located within the jurisdiction of agency making the request.
- (5) Any other information in the council's possession that is necessary to verify facts relevant to administering the local ordinance.

(b) Upon the request of the council, any law enforcement agency or any other representative of a local government agency with responsibility for regulating or administering a local ordinance relating to massage or massage establishments is authorized to provide information to the council concerning an applicant or certificate holder, including, but not limited to, any of the following:

- (1) The current status of any local application or permit.
- (2) Any history of legal or administrative action taken against the applicant or certificate holder.
- (3) Any information related to criminal activity or unprofessional conduct allegedly engaged in by a certificate applicant or certificate holder, including, but not limited to, police reports and declarations of conduct.
- (4) The home and work addresses of the applicant or certificate holder.
- (5) Any other information in the possession of the law enforcement agency or other local government agency that is necessary to verify information or otherwise implement this chapter.

(c) The council shall accept information provided by any law enforcement agency or any other representative of a local government agency with responsibility for regulating or administering a local ordinance relating to massage and review that information in a timely manner. The council shall have the responsibility to review any information received pursuant to this subdivision and to take any actions authorized by this chapter that are warranted by that information.

(Added by Stats. 2014, Ch. 406, Sec. 2. (AB 1147) Effective January 1, 2015. Repealed as of January 1, 2027, pursuant to Section 4621.)

4615. (a) The council shall have the responsibility to determine whether the school from which an applicant has obtained the education required by this chapter meets the requirements of this chapter.

- (1) If the council has any reason to question whether or not the applicant received the education that is required by this chapter from the school or schools that the applicant is claiming, the council shall investigate the facts to determine that the applicant received the required education before issuing a certificate.
- (2) For purposes of this section and any other provision of this chapter that authorizes the council to receive factual information as a condition of taking any action, the council may conduct oral interviews of the applicant and others or conduct any investigation deemed necessary to establish that the information received is accurate and satisfies the criteria established by this chapter.

(b) (1) The council shall develop policies, procedures, rules, or bylaws governing the requirements and process for approving, denying approval of, imposing corrective action on, or unapproving schools consistent with Section 4601. These policies, procedures, rules, or bylaws shall address topics including, but not limited to, what constitutes an acceptable curriculum, facility requirements, student-teacher ratios, clinical practice requirements, and provisions for the acceptance of accreditation from a recognized accreditation body or other form of acceptance.

- (2) The approval process for a school shall be consistent with the following timelines:

(A) (i) On or before 30 days from the date the council receives an initial application for school approval, the council shall notify the school whether or not, for the purpose of preliminary review, the application is complete.

(ii) A notice that an initial application is not complete for the purpose of preliminary review shall specify what additional documents or payment of fees the school is required to submit to the council to make the application complete for the purpose of preliminary review.

(B) Within 60 days from the date the council notifies the school that the initial application is not complete for purposes of preliminary review, the school shall provide the missing information and pay the required fees. If a school fails to do so, the council shall purge the application. The council may, in its sole discretion, provide a school with an additional 30 days to make its application complete for purposes of preliminary review. A school with a purged application may submit a new application for school approval, including the required fees, without prejudice, after 180 days have passed from the effective date of purging. The council shall post on its internet website the effective date of purging.

(C) (i) On or before one year from the date the council receives an initial application for approval as a school, the council shall approve the school, propose to deny approval of the school, or notify the school that corrective action is required. The council reserves the right to issue a one-time notice of corrective action on an initial application. If the school fails to adequately rectify the deficiencies, the council may deny the application.

(ii) Within one year from the date that the council notifies a school of its proposed decision to deny approval of an initial application for school approval, the council shall notify the school of its final decision pursuant to any oral telephonic hearing or consideration of a written statement provided in opposition to the proposed decision to deny approval of the initial application for school approval.

(D) A school may appeal the council's final decision to deny approval of the school. An appeal of the council's final decision to deny approval of a school shall be heard at the next board of directors meeting with a date, as posted on the council's internet website, that is at least 120 days from the last date for the school to timely request an appeal, unless a timely request for a continuance of the hearing date is granted. The council may, in its discretion, for good cause, continue the date an appeal may be heard, in which case the appeal shall be heard at a later board of directors meeting.

(3) The council shall exercise its authority to approve, deny approval of, and unapprove schools and specify corrective action in keeping with the purposes set forth in Section 4603.

(c) The council may charge a reasonable fee for the inspection or approval of schools, provided the fees do not exceed the reasonable cost of the inspection or approval process.

(d) The council shall note on its internet website the date that a letter proposing to deny a school's application for approval or reapproval or requesting corrective action has been sent to the school and the final outcome and date of that proposed action.

(e) For purposes of this section, the following terms have the following meanings:

(1) "Initial application" means a new application submitted by a school for school approval.

(2) "Complete application," for purposes of preliminary review, means an application that the council, after preliminary review, has determined contains all the necessary documents for the council to begin a more thorough review process that allows the council to make a decision to approve or propose to deny the application for school approval or request corrective action. A complete application is not an approved application and a determination by the council upon preliminary review that an application is complete shall not prejudice the council's ability to later determine that the application is not complete.

(3) "Preliminary review" means an initial review conducted by the council to determine if all fees have been paid and if all application and supporting documents have been submitted, so that the council can move forward and begin a more thorough review process. The preliminary review process does not include completion of a site visit or completion of background checks for noncertified individuals.

(Amended by Stats. 2019, Ch. 290, Sec. 1. (AB 775) Effective January 1, 2020. Repealed as of January 1, 2027, pursuant to Section 4621.)

4615.5. A school offering a professional massage therapy program that has not been approved by the council pursuant to this chapter, before enrolling a student in the school, shall notify the student in writing and obtain a

signed confirmation from the student that the student has received written notification of the following:

(a) That the school is not approved by the council.

(b) That the education completed at the school cannot be used to satisfy any of the requirements for certification as a massage therapist or massage practitioner in California.

(Added by Stats. 2019, Ch. 290, Sec. 2. (AB 775) Effective January 1, 2020. Repealed as of January 1, 2027, pursuant to Section 4621.)

4616. The council shall be sued only in the county of its principal office, which shall be in Sacramento, unless otherwise designated by the council.

(Added by Stats. 2014, Ch. 406, Sec. 2. (AB 1147) Effective January 1, 2015. Repealed as of January 1, 2027, pursuant to Section 4621.)

4617. The superior court of a county of competent jurisdiction may, upon a petition by any person, issue an injunction or any other relief the court deems appropriate for a violation of this chapter by any person or establishment operating in that county subject to the provisions of this chapter. An injunction proceeding under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

(Added by Stats. 2014, Ch. 406, Sec. 2. (AB 1147) Effective January 1, 2015. Repealed as of January 1, 2027, pursuant to Section 4621.)

4618. The Legislature finds and declares that due to important health, safety, and welfare concerns that affect the entire state, establishing a uniform standard of certification for massage practitioners and massage therapists upon which consumers may rely to identify individuals who have achieved specified levels of education, training, and skill is a matter of statewide concern and not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this chapter shall apply to all cities, counties, and cities and counties, including charter cities and charter counties.

(Added by Stats. 2014, Ch. 406, Sec. 2. (AB 1147) Effective January 1, 2015. Repealed as of January 1, 2027, pursuant to Section 4621.)

4619. (a) This chapter shall be liberally construed to effectuate its purposes.

(b) The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(c) If any provision of this chapter or the application of these provisions to any person or circumstance is held to be invalid, the invalidity shall not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

(Added by Stats. 2014, Ch. 406, Sec. 2. (AB 1147) Effective January 1, 2015. Repealed as of January 1, 2027, pursuant to Section 4621.)

4621. (a) This chapter shall remain in effect only until January 1, 2027, and as of that date is repealed.

(b) Notwithstanding any other law, the powers and duties of the council shall be subject to review by the appropriate policy committees of the Legislature.

(Amended by Stats. 2022, Ch. 236, Sec. 3. (AB 2687) Effective January 1, 2023. Repealed as of January 1, 2027, by its own provisions. Note: Repeal affects Chapter 10.5, commencing with Section 4600.)


[Home](#)
[Bill Information](#)
[California Law](#)
[Publications](#)
[Other Resources](#)
[My Subscriptions](#)
[My Favorites](#)

 Code:

 Section:



[Up^](#) [Add To My Favorites](#)

GOVERNMENT CODE - GOV

TITLE 5. LOCAL AGENCIES [50001 - 57607] (Title 5 added by Stats. 1949, Ch. 81.)

DIVISION 1. CITIES AND COUNTIES [50001 - 52203] (Division 1 added by Stats. 1949, Ch. 81.)

PART 1. POWERS AND DUTIES COMMON TO CITIES AND COUNTIES [50001 - 51298.5] (Part 1 added by Stats. 1949, Ch. 81.)

CHAPTER 6. Massage [51030 - 51034] (Chapter 6 added by Stats. 1976, Ch. 1352.)

51030. The legislative body of a city for incorporated areas or county for unincorporated areas may enact an ordinance which provides for the licensing for regulation of the business of massage when carried on within the city or county.

(Added by Stats. 1976, Ch. 1352.)

51031. The ordinance may condition the issuance of a license to engage in the business of massage upon proof that a massage business meets the reasonable standards set by the ordinance, which may include, but need not be limited to, the following areas:

- (a) Age of massage personnel.
- (b) Education and experience of massage personnel.
- (c) Passage by massage personnel of a practical examination of competence.
- (d) Sanitary conditions of the massage establishment.
- (e) Hours of operation of the massage business.
- (f) Prohibition of the sale or serving of food or beverage or the conducting of nonmassage business on the premises of the massage business. In the event that the business premises in which such massage business is conducted possesses or is qualified to possess a certificate of occupancy issued by such city or county, the prohibition of this subdivision shall apply only to the portion of the premises exclusively devoted to the conduct of the massage business.

(Added by Stats. 1976, Ch. 1352.)

51032. (a) The ordinance may also provide that a license to engage in the business of massage may be denied upon a showing by the licensing authority of either of the following:

(1) Proof that the massage personnel and the owners or operators of a massage business have been convicted of a violation of Section 266i, 315, 316, 318, or subdivision (b) of Section 647 of the Penal Code, or proof that the massage personnel or the owners or operators of a massage business have been convicted in any other state of any offense which, if committed or attempted in this state, would have been punishable as one or more of the above-mentioned offenses of this subdivision.

(2) Proof that the massage personnel and the owners or operators of a massage business have been convicted of any felony offense involving the sale of a controlled substance specified in Section 11054, 11055, 11056, 11057, or 11058 of the Health and Safety Code or proof that the massage personnel or the owners or operators of the massage business have been convicted in any other state of any offense which, if committed or attempted in this state, would have been punishable as one or more of the above-mentioned offenses of this subdivision.

(b) The ordinance shall also provide that a license to engage in the business of massage shall be denied upon a showing by the licensing authority of proof that the massage personnel or the owners or operators of a massage business are required to register under the provisions of Section 290 of the Penal Code.

(Amended by Stats. 2005, Ch. 165, Sec. 1. Effective January 1, 2006.)

51033. (a) This chapter does not apply to cosmetologists, barbers, or to persons licensed to practice any healing art pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code or the Chiropractic Act when engaging in this practice within the scope of his or her license.

(b) Notwithstanding any other provision of law, this chapter shall apply to an independent contractor of any person described in subdivision (a) if the independent contractor is engaged in, or is purported to be engaged in, the business of massage.

(Amended by Stats. 2002, Ch. 1053, Sec. 1. Effective January 1, 2003.)

51034. (a) The Legislature in enacting this chapter recognizes the existing power of a city or county to regulate a lawful massage business pursuant to Section 37101, or pursuant to Section 16000 or 16100 of the Business and Professions Code, or under Section 7 of Article XI of the California Constitution.

(b) Nothing contained in this chapter shall be a limitation on that existing power or on the existing authority of a city to license for revenue purposes. A city, county, or city and county shall not enact or enforce an ordinance that conflicts with the provisions of this section or Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code.

(c) Nothing contained in this chapter shall authorize a city, county, or city and county to do any of the following:

(1) Prohibit a person of one sex from engaging in the massage of a person of the other sex.

(2) Define a massage establishment as an adult entertainment business, or otherwise regulate a massage establishment as adult entertainment.

(3) Require a massage establishment to have windows or walls that do not extend from the floor to ceiling, or have other internal physical structures, including windows, that interfere with a client's reasonable expectation of privacy.

(4) Require a massage establishment to have a shower or bath.

(5) Impose client draping requirements that extend beyond the covering of genitalia and female breasts, or otherwise mandate that the client wear special clothing.

(6) Prohibit a massage establishment from locking its external doors if the massage establishment is a business entity owned by one individual with one or no employees or independent contractors.

(7) Require a massage establishment to post any notice in an area that may be viewed by clients that contains explicit language describing sexual acts, mentions genitalia, or specific contraception devices.

(8) Impose a requirement that a person certified pursuant to Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code take any test, medical examination, or background check, including a criminal background check or requiring submission of fingerprints for a federal or state criminal background check, or comply with education requirements beyond what is required by Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code.

(9) Impose a requirement that an individual holding a certificate issued in accordance with Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code, obtain any other license, permit, certificate, or other authorization to provide massage for compensation. However, this paragraph shall not be construed to prohibit a city, county, or city and county from requiring by ordinance that a massage business or establishment obtain a license, permit, certificate, or other authorization in order to operate lawfully within the jurisdiction.

(10) Impose a dress code requirement on a person certified pursuant to Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code in excess of those already imposed pursuant to paragraph (10) of subdivision (a) of Section 4609 of the Business and Professions Code.

(11) Prohibit a person certified pursuant to Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code from performing massage for compensation on the gluteal muscles, prohibit specific massage techniques recognized by the California Massage Therapy Council as legitimate, or impose any

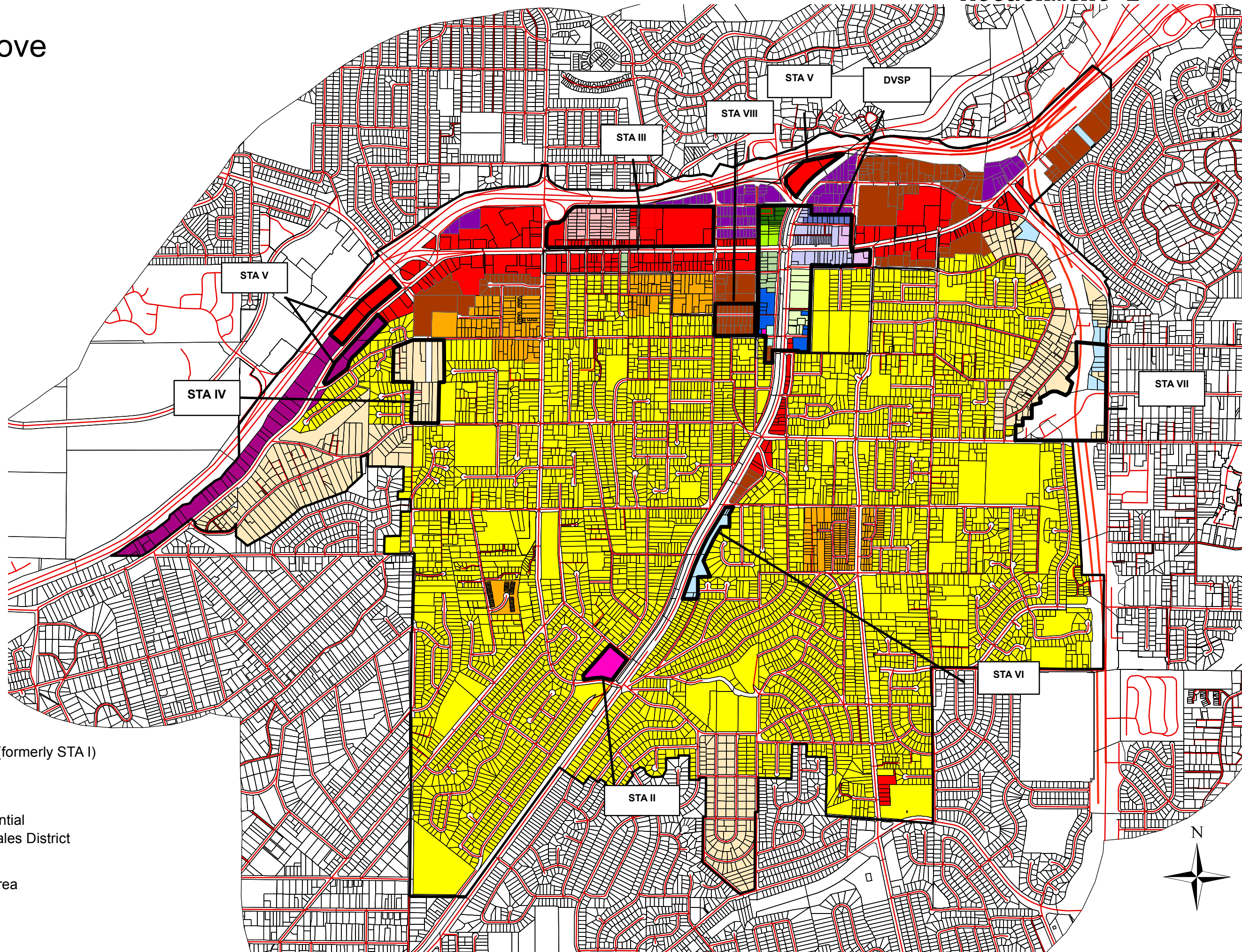
other specific restriction on professional practice beyond those set forth in subparagraph (E) of paragraph (1) of subdivision (a) of Section 4609 of the Business and Professions Code, except as authorized by Section 460 of the Business and Professions Code.

(Amended by Stats. 2016, Ch. 411, Sec. 9. (AB 2194) Effective January 1, 2017.)

City of Lemon Grove Zoning Map

Legend

- Residential Medium High-RMH
- Heavy Commercial-HC
- CityBoundary
- Parcels
- roads
- General Commercial-GC
- GC-HC
- Light Industrial-LI
- Retail Manufacturing-ReM
- Limited Commercial-LC
- Civic-CI
- Village Commercial 3-VC3
- Village Commercial 5-VC5
- Transit Mixed Use 3-TMU3
- Transit Mixed Use 5-TMU5
- Transit Mixed Use7-TMU7
- Commercial-Com
- Central Commercial-CC
- Residential Professional-RP
- Residential Medium-RM
- Residential Low Medium-RLM
- Residential Low-RL
- Lg Parcels
- Roads Freeway



- DVSP, Downtown Village Specific Plan (formerly STA I)
- STA II, Massachusetts Station
- STA III, Regional Commercial
- STA IV, Western Central Avenue Residential
- STA V, Federal Boulevard Automobile Sales District
- STA VI, Central Lemon Grove Avenue
- STA VII, Troy Street/SR-125 Planning Area
- STA VIII, Eastern Central Avenue



ORDINANCE NO. XXX
**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE,
 CALIFORNIA, AMENDING CHAPTER 8.20 (MASSAGE THERAPY
 PRACTICE-LOCAL LICENSING) AND CHAPTER 18.28 (ADULT
 ENTERTAINMENT) OF THE LEMON GROVE MUNICIPAL CODE RELATED
 TO MASSAGE PARLORS.**

WHEREAS, Chapter 8.20 of the Lemon Grove Municipal Code regulates massage businesses and massage technicians in the City of Lemon Grove; and

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

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

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

Section 1. The foregoing recitals are true and correct.

Section 2. Existing Chapter 8.20 [Massage Therapy Practice Local Licensing] of Title 8 [Health and Safety] of the Lemon Grove Municipal Code is hereby amended to read as follows in the underlined additions:

Title 8 HEALTH AND SAFETY

Chapter 8.20 MASSAGE THERAPY PRACTICE-LOCAL LICENSING

8.20.010 Title.

This chapter may be cited as the “Lemon Grove Massage Therapy Business License Ordinance.” (Ord. 424 §§ 1, 2, 2014; prior code § 66.501)

8.20.020 Purpose.

The purpose of this chapter is to implement local regulatory requirements, within the authority of the city of Lemon Grove, under the general laws of the state of California, to the fullest extent that local zoning, business licensing, police power and reasonable

health and safety regulations are allowed in order to protect the public health, safety and welfare and prevent the facilitation of human trafficking and prostitution.

8.20.030 Rules of construction.

This chapter shall be construed liberally in order to effectuate its purposes. Unless otherwise specifically prescribed in this chapter the following provisions shall govern its interpretation and construction:

A. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number.

B. All references herein, as applied to natural persons, shall be considered gender neutral.

C. Any right or power conferred or duty imposed upon any officer, employee, department or board of the city is subject to transfer by operation of law to any other officer, employee, department or board of the city. Any officer or enforcement person referenced herein shall have the authority to delegate enforcement duties in the manner allowed by procedures established by the city manager or designee.

D. No license or permit holder shall have any recourse whatsoever against the city for any loss, cost, expense or damage arising out of any provision or requirement of this chapter or the enforcement thereof.

E. This chapter does not relieve any license or permit holder of any requirement of any ordinance, rule, regulation or specification of city or other regulatory body. This chapter does not limit applicable health and safety laws or regulations established by the county of San Diego or the state of California.

F. This chapter, to the extent that it retains requirements established prior to January 1, 2010 related to the professionally recognized scope of practice of healing arts professionals licensed under California Business and Professions Code Section 500 et seq., shall remain in full force and effect.

8.20.040 Definitions.

For the purposes of this chapter, the words or phrases set forth in this section shall have the following meanings:

A. “Building inspection” means the building inspection component of the Lemon Grove development services department.

B. “City” means the city of Lemon Grove, California.

C. “Certificate” means a valid certificate issued by the California Massage Therapy Council pursuant to the California Massage Therapy Act (California Business and Professions Code Section 4600 et seq.).

D. “Council” or “State Council” means the California Massage Therapy Council created by the California Legislature pursuant to the California Massage Therapy Act (California Business and Professions Code Section 4600 et seq.), as amended.

E. “County” means the county of San Diego, a political subdivision of the State of California.

F. “Health department” means the department of public health of the county.

G. “Independent contractor” means a massage therapist or massage practitioner who is not an employee of a massage establishment, but practices at the massage establishment as defined in applicable state law.

H. “License” means the business license to operate a massage therapy business required by this chapter.

I. “Massage” means the scientific manipulation of soft tissues or any method of pressure on, or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external parts of the body with the hands or other parts of the body, with or without the aid of any mechanical or electrical apparatus or appliances or with or without such supplementary aids as rubbing alcohol, liniments, antiseptic, oils, powder, creams, lotions, ointments, or other preparations commonly used in this practice. For the purpose of this chapter, “massage” and “bodywork” shall have the same meaning.

J. “Massage establishment” or “establishment” means a fixed location where massage is performed for compensation, excluding those locations where massage is only provided on an out-call basis.

K. “Massage practitioner” means a person who is certified by the State Council pursuant to California Business and Professions Code Section 4604.2 and who administers massage for compensation.

L. “Massage therapist” means a person who is certified by the State Council pursuant to California Business and Professions Code Section 4604 and who administers massage for compensation.

M. “Operator” means any person who supervises, manages, directs, organizes, controls, or in any other way is responsible for or in charge of the daily operations, conduct or activities of a massage establishment.

N. “Owner” means any of the following:

(1) The sole practitioner of a sole proprietorship that owns a massage business;

(2) Any general partner of a general or limited partnership that owns a massage business;

(3) Any person who has five percent or greater ownership interest in a corporation that owns a massage business;

(4) Any person who is a member of a limited liability company that owns a massage business;

(5) All persons who own any other type of business entity that owns a massage business; or

(6) Any person identified as an owner on a massage establishment license or any other license, permit, or entitlement issued by the city to operate a massage business.

M. “Permit” means the business license permit to engage in the massage business ~~and certified by the State Council to perform the business activities regulated by this chapter herein.~~

N.O. “Person” means a natural person, firm, partnership, association, corporation or other legal entity. Nothing herein confers rights to a firm, partnership, association, corporation or other legal entity to receive a certification under California Business and Professions Code Section 4604 or 4604.2.

~~Θ.P.~~ “Solo provider” means a massage business where the owner owns one hundred percent of the business, is the only person who provides massage services for compensation for that business pursuant to a valid and active certificate issued in accordance with the California Massage Therapy Act, and has no other employees or independent contractors.

Q. “Specified anatomical areas” means any of the following areas of the human body: pubic region, human genitals, perineum, anal region, and the areas of the female breasts that include the areola and the nipple.

**8.20.050 Massage Certification Required ~~License Required~~—
Issuance requirements.**

A. It is unlawful for any person to perform a massage for compensation without a valid massage practitioner certification issued by the California Massage Therapy Council pursuant to chapter 10.5 of the California Business and Professions Code.

B. A massage practitioner certification does not authorize the operation of a massage establishment. Any person who desires to operate a massage establishment must apply separately to the city for a business license.

C. It is unlawful for any massage business to operate within the jurisdiction of the city, unless all persons utilized by the massage business to perform massage, whether full-time, part-time or temporary status, as an employee, sole practitioner, independent contractor, or otherwise, possess a current, valid certification issued by the California Massage Therapy Council pursuant to chapter 10.5 of the California Business and Professions Code.

~~—A. It is unlawful for any person to engage in, conduct, carry on, or to permit to be engaged in, conducted, or carried on, in or upon any premises in the city, the operation of a massage therapy practice as defined in the California Massage Therapy Act, without the business license required by this chapter.~~

~~—B. No business may advertise, or hold itself out to the public, as a massage business unless it meets the applicable requirements of the Lemon Grove Municipal Code including, but not limited to, Titles 17 (Zoning) and 18, (Citywide Regulations) and meet all of the requirements found under the California Massage Therapy Act, as amended.~~

~~—C.— Independent contractors of local massage therapy businesses shall each obtain a business license prior to operating within the city of Lemon Grove. Each independent contractor shall possess a state certificate as a massage practitioner or massage therapist in order to be eligible to receive a business license. Any independent contractor whose state certificate has been suspended or revoked shall not be able to practice massage therapy unless and until that independent contractor receives a new certificate or a reactivated certificate.~~

~~—D.— An applicant who is denied a business license may request a hearing under Chapter 5.08 (Uniform Permit Procedures). Failure to have a valid certificate issued by the California Massage Therapy Council shall be grounds for denial of a business license. Upon suspension or revocation of any certificate by the State Council, the certificate holder shall also be prohibited from practicing under any validly issued business license until reinstated as a certificate holder by the California Massage Therapy Council under the California Massage Therapy Act, as amended.~~

**8.20.060 License—Required Application—Issuance Requirements
Additional information.**

A. It is unlawful for any person to engage in, conduct, carry on, or to permit to be engaged in, conducted, or carried on, in or upon any premises in the city, the operation of a massage establishment or operate as a solo provider ~~therapy practice as defined in the California Massage Therapy Act~~, without the business license required by this chapter.

B. No business may advertise, or hold itself out to the public, as a massage business unless it meets the applicable requirements of the Lemon Grove Municipal Code including, but not limited to, Titles 17 (Zoning) and 18, (Citywide Regulations) and meet all of the requirements found under the California Massage Therapy Act, as amended.

C. Independent contractors of ~~local~~ massage ~~therapy~~ businesses shall each obtain a business license prior to operating within the city of Lemon Grove. Each independent contractor shall possess a state certificate as a massage practitioner or massage therapist in order to be eligible to receive a business license. Any independent contractor whose state certificate has been suspended or revoked shall not be able to practice massage therapy unless and until that independent contractor receives a new certificate or a reactivated certificate.

D. The city shall issue a license to operate a massage business within the jurisdiction of the city to any massage business that demonstrates the following:

1. The massage business, owners, operators, and all massage technicians who perform massage or who will perform massage at the massage business, as applicable, would comply with all applicable laws, including but not limited to, the city's building, zoning, land use approvals, business license regulations; applicable County Health Department regulations; and all other applicable local, State and Federal laws, rules and regulations.

2. The massage business employs or uses only massage technicians to perform massages who possess a current and valid California Massage Therapy Council Certificate.

3. The owners and operators of the massage business have provided all information, documentation, and assurances required by this Chapter to the city; have not failed to reveal any fact material to qualification; and have not supplied information that is untrue or misleading as to a material fact pertaining to the qualification criteria.

4. The background check for any owners and operators authorized by this chapter shows that such owners and operators have not been required to register under the provisions of Penal Code Section 290 (sex offender registration); have not been convicted of a violation of Penal Code Section 266(h) (pimping), 266(i) (pandering), 314 (indecent exposure), 315 (keeping or residing in a house of ill-fame for the purposes of prostitution or lewdness), 316 (keeping a disorderly house, disturbing the peace for the purposes of assignation or prostitution), 318 (prevailing upon any person to visit a place for prostitution), 647(a) (soliciting or engaging in lewd or dissolute conduct in a public place), 647(b) (soliciting or engaging in prostitution), 653.22 (loitering with intent to commit prostitution), 653.23 (supervision of prostitute), or has not pled nolo contendere or has not been convicted of a violation of any lesser related offense, including, but not limited to, Penal Code Section 415, in satisfaction of, or as a substitute for, any of the aforementioned offenses; has not been convicted of any felony drug-related offense involving the controlled substance specified in Health and Safety Code Sections 11054, 11055, 11056, 11057 or 11058; has not been convicted of any act involving theft, dishonesty, fraud, deceit or moral turpitude; has not been convicted in any other State of any offense which, if committed or attempted in this State, would have been punishable as one or more of the aforementioned offenses; has not had an individual or business

permit, certificate or license with any agency, board, city, county, territory or State denied, revoked, restricted, or suspended within the last ten years; and has not been subject to an injunction for nuisance under Penal Code Sections 11225 through 11235 (red light abatement) within the last ten years.

The city may deny an application for a massage business license or renewal application, as applicable, within the jurisdiction of the city to any massage business that fails to demonstrate the foregoing requirements and/or for any reason specified under any applicable provision of this Municipal Code.

An applicant who is denied a business license may request a hearing under Chapter 5.08 (Uniform Permit Procedures). Failure to have a valid certificate issued by the California Massage Therapy Council shall be grounds for denial of a business license. Upon suspension or revocation of any certificate by the State Council, the certificate holder shall also be prohibited from practicing under any validly issued business license until reinstated as a certificate holder by the California Massage Therapy Council under the California Massage Therapy Act, as amended.

E. An annual renewal application shall be required for massage business licenses. Renewal applications shall be filed on a form provided by the city, shall be signed and submitted under penalty of perjury, and shall include updated information to the information required under Section 8.02.070 when there is any personnel change to ensure that the city has current information on file at all times relating to the massage business, the owners, operators, and all persons who perform massage or who will perform massage at the massage business.

F. A massage business license issued by the city pursuant to this chapter shall not be transferred, sold, or assigned to any other person or entity, except with the prior written approval of the city. A written request for such transfer shall contain the same information for the new ownership as is required on any application for a new massage business license issued under this chapter. No massage business license that is revoked or suspended by the city pursuant to this chapter or any other provision of this Municipal Code shall be transferred to any other person or entity for a period of five years from the date of such revocation or suspension. Any such transfer, sale, or assignment, or attempted transfer, sale or assignment of a massage business license in violation of this chapter is hereby declared invalid and the license shall become void effective on the date of such transfer, sale, or assignment, or attempted transfer, sale, or assignment.

G. A change of location of a licensed massage business shall be approved by the city provided the Massage Establishment is in compliance with all applicable provisions of this chapter and all local laws, rules, and regulations, and subject to all applicable provisions of this Municipal Code.

~~—A. The application for a license to operate a massage therapy establishment shall set forth the proposed place of business and facilities therefor, and the name and address of each applicant and whether it will operate using independent contractors as massage practitioners and/or massage therapists. Each independent contractor shall be required to obtain a business license to practice massage therapy at a business in the city of Lemon Grove.~~

~~—B. In addition to the foregoing, any applicant for a license shall furnish the following information:~~

~~—1. Proof of a valid and active certificate to practice as a massage practitioner or massage therapist in the state of California;~~

~~—2. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the names and residence addresses of each of its officers, and directors;~~

~~—3. Any business entity, regardless of form, that has independent contractors who operate as massage practitioners or massage therapists within the city shall submit a list of independent contractors that work with the business entity within thirty days of contracting with the independent contractor to practice in Lemon Grove or operate from the business location within the city; and~~

~~—4. An independent contractor shall list the location(s) of businesses where the independent contractor practices massage therapy in the city of Lemon Grove.~~

8.20.070 Other business license regulations License—Application—Additional information.

A. The application for a license to operate a massage therapy establishment shall set forth the proposed place of business and facilities therefor, and the name and address of each applicant and whether it will operate using independent contractors as massage practitioners and/or massage therapists. Each independent contractor shall be

required to obtain a business license to practice massage therapy at a business in the city of Lemon Grove.

B. In addition to the foregoing, any applicant for a license shall furnish the following information, which must be updated when there is any personnel change to ensure the city has current information on file at all times relating to the massage business, the owners, operators, massage practitioners, and massage therapists:

1. Proof of a valid and active certificate to practice as a massage practitioner or massage therapist in the state of California;

2. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the names and residence addresses of each of its officers, and directors;

3. Any business entity, regardless of form, that has independent contractors who operate as massage practitioners or massage therapists within the city shall submit a list of independent contractors that work with the business entity within thirty days of contracting with the independent contractor to practice in Lemon Grove or operate from the business location within the city; and

4. An independent contractor shall list the location(s) of businesses where the independent contractor practices massage therapy in the city of Lemon Grove.

5. Legal name, address, and telephone number of the real property owner of the premises at which the massage establishment will operate, and if a separate person or entity, an executed copy of the lease or rental agreement for the premises.

6. Complete description of all services to be provided at the massage business.

7. Legal name of all massage technicians who will perform massages at the massage business, and a copy of their current, valid and authentic California Massage Therapy Council Certificate. The legal name of any massage technician hired after the submittal of an application must be reported to the city prior to the massage technician performing any massage.

8. Legal name of all owners and operators of the massage business.

9. Current residential address and telephone number and current business address and telephone number of all owners and operators of the massage business.

10. Current, valid, and authentic driver's license or photo identification card issued by a State or Federal government agency, or other photographic identification bearing a bona fide seal by a foreign government, of all owners and operators of the massage business.

11. Date of birth, gender, height, weight, hair color, and eye color of all owners and operators of the massage business.

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

13. Signed statement by each owner and operator of the massage business acknowledging the following: (i) all of the information contained in the massage establishment license application is true and correct; (ii) all owners and operators are familiar with the requirements of this chapter and all applicable requirements of the Municipal Code, and shall communicate those requirements to employees of the massage business, and also to patrons of the massage business on inquiry or as called for by specific circumstances; (iii) all owners and operators are responsible for the massage business and the conduct of all persons who perform massages at the massage business, and ensuring compliance with this chapter and all applicable requirements of the Municipal Code; (iv) any act or omission of any employee of the massage business constituting a violation of any provision of this chapter shall be deemed to be an act or omission of the owner and operator for purposes of determining whether to suspend or revoke or deny the renewal of a massage business license; and (v) failure to comply with the California Business and Professions Code Sections 4600 et seq., or with any local, State or Federal laws, rules or regulations, and/or the provisions of this chapter may result in revocation of the massage business license.

14. Copy of a current and valid public health permit to operate a massage establishment issued by the Department of Environmental Health and/or the Health and Human Services Agency of the County of San Diego, unless deemed to be exempt from this requirement pursuant to this chapter or an applicable City or County exemption.

~~—To the extent they are applicable, the provisions of Title 5 (Business Taxes, Licenses, Permits and Regulations) govern the businesses authorized under this chapter.~~

8.20.080 Other business license regulations Violation—Penalty.

To the extent they are applicable, the provisions of Title 5 (Business Taxes, Licenses, Permits and Regulations) govern the businesses authorized under this chapter.

8.20.090 Massage Establishment Operating Requirements.

No person, association, partnership, or corporation may engage in, conduct or carry on, or permit to be engaged in, conducted or carried on the operation of a massage establishment unless each and all of the following requirements are met:

A. Massage operations may only be carried on, and the premises may only be open, between the hours of 10:00 a.m. and 10:00 p.m.

B. 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 service shall be described in readily understandable language in English and may also then be described in any other language. No owner, operator, responsible managing employee, manager, permittee, or licensee in charge of or in control of the massage establishment shall permit and no massage technician shall offer or perform, any service other than those posted.

C. The massage establishment business license and a copy of the permit of each and every massage technician employed by or working in the establishment must be displayed in an open and conspicuous public place on the premises.

D. Hot and cold running water under pressure shall be provided to all washbasins, bathtubs, showers, and similar equipment. Each washbasin shall be provided with soap or detergent and sanitary towels placed in permanently installed dispensers. A trash receptacle shall be provided in each toilet room.

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 been first laundered. 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.

F. Disinfecting agents and sterilizing equipment shall be available for any instruments used in performing any massage. Instruments will be disinfected or sterilized after each use.

G. Pads used on massage tables shall be covered in a workmanlike manner with durable, washable plastic or other waterproof material.

H. Each establishment shall provide to all patrons clean, sanitary, and opaque coverings capable of covering the patron's specified anatomical areas. Such coverings shall be used for one customer only and shall not be reused without first being cleaned.

I. No owner, operator, responsible managing employee, manager, or permittee in charge of or in control of a massage establishment shall permit a massage to be given unless the patron's specified anatomical areas are covered during the entire massage by the covering referred to in subsection (H).

J. With the exception of bathrooms or dressing rooms not open to public view, no person or persons shall be permitted in any area within the massage establishment which is used in common by the patrons or which can be viewed by patrons from such an area, unless the specified anatomical areas of all persons within that area are fully covered.

K. It is unlawful for an owner, operator, responsible managing employee, manager, permittee in charge of or in control of a massage establishment to permit any person or any massage technician to perform any service or task while in the presence of a patron or to be on the premises of a massage establishment during its hours of operation unless the massage technician is dressed in a manner that does not violate paragraph (10) of subdivision (a) of Section 4609 of the California Business and Professions Code.

L. Any person performing services as a massage technician must wear a visible California Massage Therapy Council identification card and have a copy of their driver's license or any other photo identification card issued by a state or federal agency readily available for inspection by city or county investigating officials.

M. An operator or owner must be on the business premises at all times during hours of operation of the business.

N. For each massage service provided, every massage establishment shall keep a complete and legible written record of the following information: the date and hour that service was provided; the service received; the name or initials of the employee entering the information; and the name of the massage practitioner administering the service. Such records shall be open to inspection and copying by law enforcement or designee, or may be used by any massage practitioner or operator as records of service provided, but may not be provided to other parties by the massage practitioner or operator unless otherwise required by law. Such records shall be retained on the premises of the massage establishment for a period of two years and be immediately available for inspection during business hours.

O. No massage establishment 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, blurs, or unreasonably darkens the view into the premises.

P. All signs shall be in accordance with the current ordinances of the city of Lemon Grove.

8.20.100 Massage Establishment—Prohibited Conduct.

In addition to the conduct, activities, items, and/or substances prohibited by federal, state, and local laws, the following conduct is prohibited at massage establishments:

- A. The sale, service, or consumption of alcohol or marijuana; and
- B. Audio and/or video recording of, or monitoring of, the patron, the massage therapist, or the massage therapy, without the prior written consent of the patron; and
- C. Residing in or at the massage establishment by any person including but not limited to the operator, owner, responsible person, or employee of the massage establishment; and

D. Advertising or marketing illegal activity, advertising or marketing sexual content related to massage therapy, or advertising or marketing sexual content in the promotion of the massage establishment; and

E. Use or possession of adult-oriented merchandise, including "sex toys" and/or condoms, in any part of a massage establishment; and

F. Any sexual activity at a massage establishment; and

G. No owner, operator, responsible managing employee, manager, permittee, or licensee in charge of or in control of a massage establishment shall permit any person to massage or intentionally touch the specified anatomical areas of another person while performing the services of a massage technician.

8.20.110 Off-premises Massage Prohibited.

It is unlawful for any person to engage in, conduct, carry on, or permit to be engaged in, conducted or carried on, massage, for any form of consideration, in any hotel room, motel room, guesthouse or other place of public accommodation. This section shall not be construed to prohibit:

A. Maintaining a licensed massage establishment upon the premises of a place of public accommodation; or

B. The holder of a massage practitioner certification issued by the California Massage Therapy Council pursuant to Chapter 10.5 of the California Business and Professions Code from giving or administering massages within hospitals, convalescent centers, rest homes, offices, or the private home of a patron. For the purposes of this section, offices and private homes shall not include hotel rooms or motel rooms.

8.20.120 Existing Businesses Regulated.

The provisions of this chapter shall be applicable to all persons and businesses described in this chapter whether the described activities in the chapter were established before or after the effective date of this chapter. Any existing massage technician who performs massage and any massage establishment that employs or utilizes persons to perform massage within the jurisdiction of the city, that operates with a valid and current business license issued by the city and all other necessary approvals issued prior to the effective date of any amended regulations in this chapter, and that operates in compliance with all local, state, and federal laws, ordinances, rules and regulations, must be in full

compliance with this chapter no later than sixty days following the effective date of any new regulations.

8.20.130 Exemptions.

This chapter shall not apply to:

A. Physicians, surgeons, chiropractors, osteopaths, psychiatrists, psychologists, acupuncturists, physical therapists, family counselors or other health care professionals who are licensed to practice their respective professions by the state of California or who are permitted to practice temporarily under the auspices of an associate or establishment duly licensed by the state of California, pursuant to the Business and Professions Code;

B. Nurses and other health care professionals who are registered or licensed under the laws of this state and administer a massage in the normal course of professional health care duties;

C. A trainer of any duly constituted athletic team or athlete who administers massage in the normal course of training duties to the team or athlete;

D. Barbers, cosmetologists, and estheticians duly licensed under the laws of the state who administer a massage incidental to a barber or beauty service provided in the normal performance of their profession. This exemption shall apply only if massage is provided from a fixed and permanent location of business;

E. Therapeutic massage administered in or under the auspices of any health facility, hospital or other establishment licensed under California statutes in which the above-described persons practice their respective professions, provided the massages are given only by exempt individuals or persons acting under their supervision;

F. Any bona fide athletic club which offers tennis, racquetball, swimming or other sport activities and possesses a sauna or steam room. Massage shall only be administered to members of the athletic club by persons who are exempt under this section.

8.20.140 Inspection by Officials.

The city, county, or any investigating official shall have the right to enter the premises of the massage establishment from time to time during regular business hours

to conduct reasonable inspections to enforce compliance with this chapter and with building, fire, electrical, plumbing, and/or state and local health and safety regulations.

No person shall refuse to permit or interfere with a lawful inspection of the massage establishment by city or county investigating officials.

8.20.150 Unlawful Massage Establishment or Operation.

Any massage establishment operated, conducted, or maintained contrary to the provisions of this chapter and/or state and federal laws shall be and the same is hereby declared to be unlawful and a public nuisance. The city attorney may, in addition to, or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings for the abatement, removal, or enjoinder thereof, in any manner provided by law.

8.20.160 Violation—Penalty.

A. Every person, except those persons who are specifically exempted by this chapter whether acting as an individual, owner, employee of the owner, operator or employee of the operator, or whether acting as a mere helper for the owner, employee or operator, or acting as a participant or worker in any way, who gives massages or conducts a massage establishment or practices the giving or administering of any of the services defined in Section 8.20.040 without first obtaining the necessary permit or license shall be guilty of a misdemeanor and/or infraction as determined by the city attorney.

B. Any owner, operator, manager, or person in charge or in control of a massage establishment who knowingly employs a person performing as a massage practitioner or massage therapist, as defined in this chapter, who is not in possession of a valid, unrevoked permit, or who allows such massage technician to perform, operate or practice within such place of business, is guilty of a misdemeanor and/or infraction as determined by the city attorney.

C. Any owner, operator, or manager shall require that all employees and independent contractors possess a valid certificate to practice as a massage practitioner or massage therapist. Any business found to be operating with an employee or independent contractor who does not possess a valid state certificate shall be in violation of the requirements of this chapter.

D. Enforcement of the provisions of this chapter shall be governed by the procedures established under Title 1 (General Provisions) of the Lemon Grove Municipal Code. All remedies listed therein are cumulative, in addition to any other remedies available under the general laws of the state, may be utilized to remedy violations of this municipal code. Upon any finding (administrative or legal) that any person is practicing massage therapy without a valid license from the City of Lemon Grove or the state of California, the massage establishment or solo provider shall lose their business license granted hereunder subject to the applicable appeal process.

Section 3 Existing Section 18.28.020 [Definitions] of Chapter 18.20 [Adult Entertainment] of Title 18 [Citywide Regulations] of the Lemon Grove Municipal Code is hereby amended to read as follows:

18.28.020 Definitions.

The following words and phrases are specifically defined to apply to the regulations of this chapter. Where words are not defined here or elsewhere in the municipal code, their common meanings shall apply.

A. “Adult bookstore” means an establishment that devotes more than fifteen percent of the total floor area utilized for the display of books and periodicals to the display and sale of the following:

1. Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records, or other forms of visual or audio representations which are characterized by an emphasis upon the depiction or description of specific sexual activities or specified anatomical areas; or
2. Instruments, devices or paraphernalia which are designed for use in connection with specified sexual activities.

An adult bookstore does not include an establishment that sells books or periodicals as an incidental or accessory part of its principal stock-in-trade and does not devote more than fifteen percent of the total floor area of the establishment to the sale of books and periodicals.

B. “Adult cabaret” means a nightclub, bar, theater, restaurant or similar establishment which regularly features live performances which are distinguished or characterized by an emphasis on specified sexual activities or by exposure of specified

anatomical areas and/or which regularly features films, motion pictures, video cassettes, slides or other photographic reproductions which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas for observation by patrons.

C. “Adult drive-in theater” means an open lot or part thereof, with appurtenant facilities, devoted primarily to the presentation of motion pictures, films, theatrical productions and other forms of visual productions, for any form of consideration, to persons in motor vehicles or on outdoor seats, and presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons.

D. “Adult hotel or motel” means a hotel, motel or similar establishment offering public accommodations for any form of consideration which provides patrons with closed-circuit television transmission, films, motion pictures, video cassettes, slides or other photographic reproductions or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons.

E. “Adult mini-motion picture theater” means an establishment, with a capacity of more than five but less than fifty persons, where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material which is distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas for observation by patrons.

F. “Adult model studio” means any establishment open to the public where, for any form of consideration or gratuity, figure models who display specified anatomical areas are provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by persons, other than the proprietor, paying such consideration or gratuity. This provision shall not apply to any school of art which is operated by an individual, firm, association, partnership, corporation or institution which meets the requirements established in the Education Code of the state of California for the issuance or conferring of, and is in fact authorized thereunder to issue and confer, a diploma.

G. “Adult motion picture arcade” means any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas.

H. “Adult motion picture theater” means an establishment, with a capacity of fifty or more persons, where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material which is distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical area for observation by patrons.

I. “Adult theater” means a theater, concert hall, auditorium or similar establishment, either indoor or outdoor in nature, which, for any form of consideration, regularly features live performances which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical area for observation by patrons.

J. Anatomical areas. See “Specified anatomical areas” (Section 18.28.030(A)).

K. “Body painting studio” means any establishment or business which provides the services of applying paint or other substances, whether transparent or nontransparent to or on the human body when such body is wholly or partially nude in terms of specified anatomical areas.

L. Bookstore. See “Adult bookstore” and “General bookstore.”

M. Cabaret. See “Adult cabaret.”

N. “Church” means an institution which people regularly attend to participate in or hold religious services, meetings and other activities. The term “church” shall not carry a secular connotation, and shall include buildings in which the religious services of any denomination are held.

O. Drive-In Theater. See “Adult drive-in theater.”

P. “General bookstore” means an establishment engaged in the buying, selling and/or trading of new and/or used books, manuscripts and periodicals of general interest.

A general bookstore does not include an establishment that is encompassed by the definition of adult bookstore.

Q. “General motion picture theater” means a building or part of a building intended to be used for the specific purposes of presenting entertainment as defined herein, or displaying motion pictures, slides, or closed circuit television pictures before an individual or assemblage of persons, whether such assemblage be of a public, restricted or private nature, except a home or private dwelling; where no fee, by way of an admission charge, is charged; provided, however, that any such presentations are not distinguished or characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical area in that any such depiction or description is only incidental to the plot or story line. A general motion picture theater does not include any establishment that is defined by adult motion picture theater, adult mini-motion picture theater, adult motion picture arcade, or adult drive-in theater.

R. “Legitimate or live theater” means a theater, concert hall, auditorium or similar establishment which, for any fee or consideration, regularly features live performances which are not distinguished or characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas in that any such depiction or description is only incidental to the primary purpose of the performance.

~~S. “Massage parlor” means an establishment where, for any form of consideration, massage, alcohol rub, fomentation, electric or magnetic treatment, or similar treatment or manipulation of the human body is administered, unless such treatment or manipulation is administered by a medical practitioner, chiropractor, acupuncturist, physical therapist or similar professional person licensed by the state of California. This definition does not include an athletic club, health club, school, gymnasium, reducing salon, spa or similar establishment where massage or similar manipulation of the human body is offered as an incidental or accessory service.~~

FS. Motion Picture Theater. See “General motion picture theater.”

~~U. Parlor. See “Massage parlor.”~~

VT. “Public playground/park/recreational area” means an area to which the public and particularly children, come to participate in athletic or recreational activities whether or not such activities are supervised or organized. Such areas include, but are not

limited to, publicly owned and maintained parks, community gardens, athletic fields, playgrounds, and picnic areas.

~~W. Rap parlor. See “Massage parlor.”~~

~~XU.~~ “School” means an institution of learning for minors, whether public or private, which offers instruction in those courses of study required by the California Education Code or which is maintained pursuant to standards set by the State Board of Education. This definition includes a nursery school, kindergarten, elementary school, junior high school, senior high school, or any special institution of learning under the jurisdiction of the State Department of Education, but it does not include a vocational or professional institution or an institution of higher education, including a community or junior college, college or university.

~~VY.~~ “Sexual encounter establishment” means an establishment, other than a hotel, motel or similar establishment offering public accommodations, which, for any form of consideration, provides a place where two or persons may congregate, associate or consort in connection with specified sexual activities or the exposure of specified anatomical areas. This definition does not include an establishment where a medical practitioner, psychologist, psychiatrist or similar professional person licensed by the state of California engages in sexual therapy. ~~For the purposes of these regulations, sexual encounter establishment shall include massage or rap parlor or other similar establishments.~~

~~ZW.~~ Sexual activities. See “Specified sexual activities” (Section 18.28.030(B)).

Section 4 Existing Section 18.28.040 [Activities Regulated] of Chapter 18.20 [Adult Entertainment] of Title 18 [Citywide Regulations] of the Lemon Grove Municipal Code is hereby amended to read as follows:

For the purpose of this chapter, the following activities as defined in this chapter shall be deemed adult entertainment: adult arcade; adult bookstore; adult cabaret; adult drive-in theater; adult mini-motion picture theater; adult model studio; adult motel; adult motion picture theater; adult theater; body painting studio; ~~massage parlor~~; sexual encounter establishment; plus any other business which involves specified sexual activities or the display of specified anatomical areas.

Section 5. [ADD CEQA DETERMINATION HERE].

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

Section 7. This Ordinance shall be effective thirty (30) days following its adoption. Within fifteen (15) days following its adoption, the City Clerk shall certify to the passage of this Ordinance and cause the same to be published, or the title thereof, as a summary as required by state law in a newspaper of general circulation designated for legal notices publication in the City of Lemon Grove.

INTRODUCED at a regular meeting of the City Council of the City of Lemon Grove, California, on [INSERT DATE].

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Lemon Grove, California, on [INSERT DATE] by the following vote

AYES:

NOES:

ABSENT:

ABSTAIN:

Racqual Vasquez, Mayor

Attest: Deborah Harrington, City Clerk

Approved as to Form: Kristen Steinke, City Attorney

