

ORDINANCE NO. 2023-18

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
ESCONDIDO, CALIFORNIA, REPEALING AND REPLACING
ESCONDIDO MUNICIPAL CODE CHAPTER 16A, MASSAGE
REGULATION

The City Council of the City of Escondido, California, DOES HEREBY ORDAIN as follows:

SECTION 1. The City Council of the City of Escondido makes the following findings:

WHEREAS, the City of Escondido last updated the City's Massage Regulations in January 2015; and

WHEREAS, the Escondido Police Department manages the permitting process for massage establishments in the City of Escondido; and

WHEREAS, the City of Escondido Chief of Police has found that updating the City's Massage Regulations will better support legitimate massage businesses and will continue to allow the Police Department to promptly investigate allegations of illegitimate activities at massage establishments.

SECTION 2. That Escondido Municipal Code Chapter 16A, Massage Regulation, is repealed and replaced as set forth in Exhibit "A" to this Ordinance and Exhibit "A" is incorporated by this reference.

SECTION 3. That the City Clerk is hereby directed to certify to the passage of this ordinance and to cause the same or a summary to be published one time within 15 days of its passage in a newspaper of general circulation, printed and published in the County and circulated in the City of Escondido.

SECTION 4. That if any section, subsection, sentence, clause, phrase, or portion of this ordinance is held invalid or unconstitutional for any reason by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions.

SECTION 5. That as of effective date of this ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.

PASSED, ADOPTED AND APPROVED by the City Council of the City of Escondido at a regular meeting thereof this 10th day of JANUARY, 2024 by the following vote to wit:

AYES : Councilmembers: C. GARCIA, J. GARCIA, MARTINEZ, MORASCO, WHITE

NOES : Councilmembers: NONE

ABSENT : Councilmembers: NONE

APPROVED:

DocuSigned by:
Dane White
19FFE5DB8C3B409...
DANE WHITE, Mayor of the
City of Escondido, California

ATTEST:

DocuSigned by:
Zack Beck
A58535D0BDC1430...
ZACK BECK, City Clerk of the
City of Escondido, California

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO : ss.
CITY OF ESCONDIDO)

I, Zack Beck, City Clerk of the City of Escondido, hereby certify that the foregoing ORDINANCE NO. 2023-18 passed at a regular meeting of the City Council of the City of Escondido held on the 6th day of December, 2023, after having been read at the regular meeting of said City Council held on the 10th day of January, 2024.

DocuSigned by:
Zack Beck
A58535D0BDC1430...
ZACK BECK, City Clerk of the
City of Escondido, California

ORDINANCE NO. 2023-18

**Chapter 16A
MESSAGE REGULATION**

ARTICLE 1. GENERAL

- Sec. 16A-1. Definitions.**
- Sec. 16A-2. Exemptions.**
- Sec. 16A-3—16A-5. Reserved.**

ARTICLE 2. MESSAGE CERTIFICATION AND OPERATION

- Sec. 16A-6. Massage certification required.**
- Sec. 16A-7. Owner and operator requirements.**
- Sec. 16A-8. Inspection by officials.**
- Sec. 16A-9. Massage technician requirements.**
- Sec. 16A-10. Advertising requirements.**
- Sec. 16A-11—16A-15. Reserved.**

ARTICLE 3. ENFORCEMENT

- Sec. 16A-16. Violations.**
- Sec. 16A-17. Unlawful operation declared a nuisance.**
- Sec. 16A-18. Severability.**
- Sec. 16A-19—16A-24. Reserved.**

ARTICLE 4. MESSAGE ESTABLISHMENTS

- Sec. 16A-25. Massage establishment permit.**
- Sec. 16A-26. Massage establishment permit expiration.**
- Sec. 16A-27. Permit application, renewal application, and notice of change form.**
- Sec. 16A-28. Approval or denial of massage establishment permit.**
- Sec. 16A-29. Massage establishment permit suspension or revocation.**
- Sec. 16A-30. Appeals.**
- Sec. 16A-31. Reapplication after denial, revocation, or non-renewal of massage establishment permit.**

ARTICLE 1. GENERAL

Sec. 16A-1. Definitions.

For the purpose of this chapter, the following words and phrases shall have the meanings ascribed to them in this section:

(a) *Applicant* shall mean the individual who applies for a permit or a permit renewal under the provisions of this chapter.

(b) *California Massage Therapy Council* or *CAMTC* shall mean council as defined in Business and Professions Code 4601, subdivision (d) and as established under Business and Professions Code section 4602, subdivision (a).

(c) *CAMTC certificate* shall mean a current and valid certificate issued by the California Massage Therapy Council to a massage technician.

- (d) *Certified massage technician* shall mean a massage technician with a CAMTC certificate.
- (e) *Chief of police* shall mean the police chief of the City of Escondido Police Department, and shall include their designee(s).
- (f) *City* shall mean the City of Escondido.
- (g) *Compensation* shall mean the payment, loan, advance, donation, contribution, deposit, exchange, gift of money or anything of value, or any form of consideration whatsoever.
- (h) *Employee* shall have the same meaning as section 16-3 of this code.
- (i) *Hearing officer* shall mean any person appointed by the city manager to preside over the administrative hearings provided by this chapter.
- (j) *Massage* shall mean 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 the 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.
- (k) *Massage establishment* shall mean a business or organization operating at a fixed location where a person, as defined in this chapter, provides, offers, sells, delivers, or dispenses massage as a distinct service for compensation, not including those businesses exempt from the definition of massage establishment under Article 38 of the Escondido Zoning Code.
- (l) *Massage establishment permit or permit* shall mean a regulatory license issued by the chief of police upon submission of satisfactory evidence as required that an owner, as defined in this chapter, employs or uses only certified massage-technicians and has satisfied all other requirements pursuant to the provisions of this chapter.
- (m) *Massage technician* shall mean any person who gives or administers to another person, for any form of compensation whatsoever, a massage as defined in this chapter. The terms "massage therapist," "massage practitioner," or any other terms used within the massage industry are included within this definition for the purposes of this chapter.
- (n) *Operator* shall mean any person who supervises, manages, directs, organizes, controls, or in any other way is responsible for or in charge of the daily operation, conduct, or activities of a massage establishment.

(o) *Owner* shall mean any of the following individuals:

- (1) The sole practitioner of a sole proprietorship operating a massage establishment.
- (2) Any general partner of a general or limited partnership that owns a massage establishment.
- (3) Any person who has ten (10) percent or greater ownership interest in a corporation that owns a massage establishment.
- (4) Any person who is a member of a limited liability company that owns a massage establishment.
- (5) All owners of any other type of business entity that owns a massage establishment.
- (6) Any person identified as an owner on the massage establishment permit.

(p) *Person* shall mean any individual, firm, association, business, trust, organization, corporation, partnership, company, or any other entity which is recognized by law as the subject of rights or duties.

(q) *Sole practitioner* means a single massage technician who is the sole provider of massage as a distinct service for compensation at a massage establishment without any employees or independent contractors.

(r) *Specified anatomical areas* shall mean 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.

Sec. 16A-2. Exemptions.

This chapter does not apply to the following:

(a) State-licensed professionals while engaged in the performance of the duties of their respective professions and while limited to the scope of their California state licenses including acupuncturists, aestheticians, barbers, chiropractors, cosmetologists, exercise physiologists, manicurists, nurses, naturopathic doctors, occupational therapists, osteopaths, physical therapists, and physicians.

(b) Trainers of any semiprofessional or professional athlete or athletic team, or athletic trainers hired by a local, state or federal government agency.

(c) Any educational institution regulated by the State of California, including any portion of the institution providing massage services, such as student clinics and work study programs, regulated under such state license.

Sec. 16A-3—16A-5. Reserved.**ARTICLE 2. MASSAGE CERTIFICATION AND OPERATION****Sec. 16A-6. Massage certification required.**

It is unlawful for any person to engage in, conduct or carry on, in or upon any premises within the city the business of providing massage, for any compensation without being in possession of a valid CAMTC certificate.

Sec. 16A-7. Owner and operator requirements.

(a) It is unlawful for any person to own, manage, or operate in or upon any premises within the city a massage establishment in the absence of a massage establishment permit as provided issued pursuant to this chapter.

(b) It is unlawful for the owner or operator of any massage establishment to allow any person to perform massage at the massage establishment while committing any violation of this chapter.

(c) It is unlawful for a person to own or operate a massage establishment that does not meet one of the following conditions:

(1) The sole practitioner of a sole proprietorship operating a massage establishment possesses a valid CAMTC certificate; or

(2) The massage establishment only employs or uses massage technicians who possess a valid and current CAMTC certificate.

(d) It is unlawful for an owner or operator to fail to properly supervise any person, employee or independent contractor working in their massage establishment. Owners and operators are responsible for the conduct of their massage technicians at the massage establishment. A violation of any regulation by a massage technician contained in this chapter shall be prima facie evidence of the failure to supervise.

(e) It is unlawful for:

(1) An owner or operator, not including a sole practitioner of a sole proprietorship, to operate a massage establishment without posting a list of services and the name of the on-site operator on the wall closest to the main entrance in the massage establishment; or

(2) A sole practitioner of a sole proprietorship to operate a massage establishment without a printed or digital list of services accessible at the massage establishment.

(f) It is unlawful for an owner or operator to operate a massage establishment unless the CAMTC certificate for each massage technician is posted in public view or maintained in a clearly labeled and identifiable binder that is kept in the immediate vicinity of the cash register or reception desk.

(g) It is unlawful for:

(1) An owner or operator, not including a sole practitioner of a sole proprietorship, to allow or permit a massage technician to provide any services not specifically provided on the posted list of services that are required to be posted under subsection (e)(1) or for an owner or operator to receive any compensation for additional services not specifically included on the posted list of services; or

(2) A sole practitioner of a sole proprietorship to provide any services not specifically provided on the printed or digital list of services that are required to be accessible under subsection (e)(2) or receive any compensation for additional services not specifically included on the printed or digital list of services.

(h) It is unlawful for an owner or operator to allow a massage technician to lock any door or doors leading to a room used to provide massage. This provision shall not apply when there is no staff available to ensure the security for clients and staff who are behind closed doors. A patron may lock any door when alone in any room at any time.

(i) It is unlawful for an owner or operator to fail to maintain a record of services provided for each treatment. The record of treatment shall include the name and address of the patron, the name of the massage technician, the name of the operator, the type of service provided, and the time the service began and ended. This record shall be retained for a period of twelve (12) months from the date of service.

(j) It is unlawful for the owner or operator to offer or provide any massage between the hours of 10:00 p.m. and 7:00 a.m. or to remain open and offer or provide any other services during that period of time. All customers, patrons and visitors shall be excluded from the massage establishment between the hours of 10:00 p.m. and 7:00 a.m.

(k) It is unlawful for an owner or operator to fail to provide to all patrons clean and sanitary towels, and opaque coverings capable of covering the patron's specified anatomical areas. Such coverings shall be used for one customer and shall not be reused without first being cleaned.

(l) It is unlawful for an owner or operator to fail to provide or use disinfecting agents and sterilizing equipment sufficient to assure cleanliness.

(m) It is unlawful for an owner or operator to fail to provide or use disposable or washable protective coverings on massage tables and all massage tables shall be covered with durable, washable plastic, or other waterproof material.

(n) It is unlawful for an owner or operator, not including a sole practitioner of a sole proprietorship operating a massage establishment, to fail to keep or maintain on file and ready for inspection a statement designating the individual operator(s) responsible for the day-to-day operations when the massage establishment owner is not on the premises.

(o) It is unlawful for an owner or operator to not have a designated owner or operator on the premises at all times the massage establishment is open.

(p) It is unlawful for the owner or operator of any massage establishment to offer or provide massage services unless the owner or a designated on-site operator is present at the massage establishment.

(q) It is unlawful for an owner or operator to engage in, conduct or carry on business of a massage establishment unless they have a policy of insurance issued by an insurance company authorized to do business in the State of California evidencing that the person is insured under a liability insurance policy providing minimum coverage of one million dollars (\$1,000,000.00) for injury or death to any person arising out of the operation of any massage establishment and the administration of a massage. Evidence of such a policy shall be available at inspection upon request.

(r) It is unlawful for an owner or operator to operate a massage establishment if the main entrance to a massage establishment is locked during posted business hours. An owner or operator shall ensure at least one (1) employee or independent contractor directly observes the entrance, without use of camera surveillance equipment, to ensure access to the main entrance and to ensure the security of all patrons. A sole practitioner of a sole proprietorship operating a massage establishment may use camera surveillance equipment to ensure access to the main entrance and to ensure the security of all patrons.

(s) It is unlawful for an owner or operator to operate a massage establishment if any external door is locked, unless the massage establishment is operated by a sole practitioner of a sole proprietorship.

(t) It is unlawful for an owner or operator to operate a massage establishment unless every employee or independent contractor of a massage establishment wears a uniform consistent with the service provided. The uniform shall be made of non-transparent material and may not expose any specified anatomical area. Swimwear, lingerie, and undergarments may not be used as a uniform or displayed as part of a uniform. The uniform shall include a nametag on the outermost garment bearing the employee's name as it appears on a valid and current driver's license and/or identification card issued by a state or federal government agency.

(u) It is unlawful for an owner or operator to operate a massage establishment which is used for residential or sleeping purposes.

(v) It is unlawful for an owner or operator to fail to notify the chief of police in writing of any changes in employees, massage technicians, CAMTC certification status of massage technicians, or of a change in ownership interest or designated operator prior to the change.

(w) It is unlawful for an owner or operator to operate a massage establishment in which any unprofessional conduct occurs as defined by Business and Professions Code section 4609.

Sec. 16A-8. Inspection by officials.

The investigating officials of the city shall have the right as otherwise provided for by law to enter the premises of a massage establishment from time to time during regular business hours for the purpose of making a reasonable inspection to enforce compliance with this chapter.

Sec. 16A-9. Massage technician requirements.

(a) It is unlawful for any person to give, provide, or administer to another person for any form of compensation a massage as defined in this chapter at a massage establishment or any location removed from a massage establishment within the city without being in possession of a valid CAMTC certificate.

(b) It is unlawful for a massage technician to practice massage for any form of compensation within the city without providing their CAMTC certificate to the chief of police as part of the business licensing process. The registration application shall include the: (1) massage technician's name, residence address and telephone number; (2) employer name, work addresses and telephone number; and (3) a copy of the massage technician's CAMTC certificate.

(c) It is unlawful for any person to give, provide, or administer to another person for any form of compensation whatsoever a massage as defined in this chapter at any location within the city in the absence of a valid business license pursuant to Chapter 16 of the Escondido Municipal Code, unless employed at a massage establishment with a valid business license. A separate business license is required for each location if a massage technician works at multiple locations.

(d) It is unlawful for a massage technician, not including a sole practitioner of a sole proprietorship operating a massage establishment, to provide any service not specifically listed on the massage establishment's posted list of services that are required to be posted under section 16A-7 subsection (e)(1) of this chapter.

(e) It is unlawful for a sole practitioner of a sole proprietorship operating a massage establishment to provide any service not specifically listed on the massage establishment's printed or digital list of services that are required to be accessible under section 16A-7 subsection (e)(2) of this chapter.

(f) It is unlawful for a massage technician to remove any article of the massage establishment uniform or other article of clothing while providing any massage service.

(g) It is unlawful for a massage technician to provide massage when any specified anatomical areas of either patron or massage technician are exposed.

(h) It is unlawful for a massage technician to touch the specified anatomical area of a patron whether or not the specified anatomical areas are covered.

(i) It is unlawful for a massage technician to lock the door to the room where massage is provided or to provide massage unless no staff is available to ensure security for clients and massage staff.

(j) It is unlawful for a massage technician to engage in any unprofessional conduct as defined by Business and Professions Code section 4609.

Sec. 16A-10—16A-15. Reserved.

ARTICLE 3. ENFORCEMENT

Sec. 16A-16. Violations.

Violation of any provisions of this chapter shall be treated as a strict liability offense, regardless of intent. Any person violating any of the provisions of this chapter is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in an amount not to exceed one thousand dollars (\$1,000.00), or imprisonment in the County Jail not to exceed six (6) months, or both. Any violation may also be subject to civil penalties and any other legal remedy provided in this code or state law. Each violation described in this chapter may be charged as a separate count for each day the violation occurs.

Sec. 16A-17. Unlawful operation declared a nuisance.

In addition to the legal remedies provided for in this code, the violation of any provision of this chapter 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 abatement, removal or injunction thereof, in the manner provided by law. The city attorney shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as shall abate or remove such massage establishment and restrain and enjoin any person from operating, conducting or maintaining a massage establishment contrary to the provisions of this chapter.

Sec. 16A-18. Severability.

If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this chapter. The council hereby declares that it would have adopted the division and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

Sec. 16A-19—16A-24. Reserved.

ARTICLE 4. MASSAGE ESTABLISHMENTS

Sec. 16A-25. Massage establishment permit.

No person may own or operate a massage establishment without an annual permit issued by the chief of police. The chief of police shall have the power and authority to promulgate rules, regulations and requirements that are consistent with the provisions of this chapter and applicable state law to investigate, issue, suspend or revoke massage establishment permits. The chief of police shall collect a nonrefundable fee, as established by city council resolution, to recoup all investigative costs. A massage establishment permit is not transferable. If at any time all or part of the ownership interest changes, or in the event of a change in address, a new permit application and fee must be submitted to the chief of police. Operation at a new address or with a new ownership prior to obtaining a new establishment permit shall be unlawful. A business providing massage services by certified massage technicians as an incidental use to their primary business, as authorized by the Escondido Zoning Code, are exempt from the requirements of this article. The granting of a permit does not relieve a person from obtaining all appropriate licenses, certificates, permits, or approvals required by local, state or federal laws. Persons must comply with all applicable local, state and federal laws, including those related to building, zoning, fire and other public safety regulations. The granting of a permit does not vest any development rights.

Sec. 16A-26. Massage establishment permit expiration.

A massage establishment permit shall be valid for one (1) year from issuance, coinciding with the city business license effective and expiration dates.

Sec. 16A-27. Permit application, renewal application, and notice of change form.

(a) An application for a massage establishment permit shall be filed by an owner on a form provided by the city submitted under penalty of perjury and shall include the following information:

(1) The full, true name under which the business will be conducted and proposed location.

(2) A complete description of all services to be provided at the proposed massage establishment.

(3) The full, true name, residential address, telephone number and date of birth of the massage establishment owner(s). Each corporate officer or partner of a massage establishment shall provide their individual information as required on the application.

(4) A valid and current driver's license and/or identification card issued by a state or federal government agency or other photographic identification bearing a bona fide seal by a foreign government.

(5) If the owner is a domestic stock, domestic nonprofit or qualified foreign corporation, limited liability company, general partnership and limited partnership information of record with the California Secretary of State, then the owner shall include copies of the following:

(A) A Business Entity Status Report, issued by the California Secretary of State.

(B) Articles of incorporation, charter, articles of association, statement of partnership authority, certificate of limited partnership or similar foundational document.

(C) Residential and business addresses of each person with more than a five (5) percent ownership interest in the massage establishment business entity.

(6) A signed statement acknowledging the owner(s) responsibility for the conduct of all employees or independent contractors working on the premises of the business and acknowledging that failure to comply with the Business and Professions Code section 4600 et seq., with any local, state or federal law, or with the provisions of this chapter may result in the suspension or revocation of the massage establishment permit.

(7) Tax identification number.

(8) The name, address, email address and telephone number of the real property owner and a copy of lease or rental agreement, if applicable.

(9) A copy of the valid and current state certificate issued by CAMTC for each massage technician who will work in the massage establishment whether an employee or independent contractor.

(10) The name and address of any massage business or other similar business providing massage services owned or operated by any person whose name is required to be given pursuant to this section for the five (5) years immediately preceding this filing of the application.

(11) A complete statement listing and explaining any and all aliases and fictitious names used by the owner(s) within the last five (5) years.

(12) A signed statement authorizing the city, its officers, agents and employees, to conduct a background check of the owner(s), to seek information and conduct an investigation into the trust of the statements set forth in the application and to ensure continual compliance with all applicable provisions of law.

(13) Completed fingerprinting and background check for the owner(s) applying for an establishment permit unless otherwise certified by CAMTC.

(14) Proof of liability insurance as required by this chapter.

(15) Any other information as may be reasonably required by the chief of police to identify the business owner, applicant and business entity, and to ensure compliance with all applicable laws and regulations.

(b) Upon receipt of the completed application, the chief of police may refer the application to other city departments that may inspect the premises proposed to be used as a massage establishment and shall make a written recommendation to the chief of police concerning compliance with the respective requirements. The chief of police shall have up to thirty (30) days after the submission of all required information to complete an investigation.

(c) An application for a massage establishment permit renewal shall be filed by an owner on a form provided by the city submitted under penalty of perjury and shall include the following information:

(1) Any changes in the information provided on the original application form.

(2) A copy of the valid and current state certificate issued by CAMTC for each massage technician who works in the massage establishment whether an employee or independent contractor.

(3) A renewed signed statement authorizing the city, its officers, agents and employees, to conduct a background check of the owner(s), to seek information and conduct an investigation into the trust of the statements set forth in the application and to ensure continual compliance with all applicable provisions of law.

(4) A renewed signed statement acknowledging the owner(s) responsibility for the conduct of all employees or independent contractors working on the premises of the business and acknowledging that failure to comply with the California Business and Professions Code section 4600 et seq., with any local, state or federal law, or with the provisions of this chapter may result in the suspension or revocation of the massage establishment permit.

(5) Proof of a current and valid city business license.

(6) Proof of liability insurance.

(7) Any other information as may be reasonably required by the chief of police to identify the business owner, applicant and business entity, and to ensure compliance with all applicable laws and regulations.

(d) The owner shall apply to the chief of police to renew the permit no later than thirty (30) days prior to the expiration of the permit, or ten (10) days prior to expiration of the permit if the owner is a sole practitioner of a sole proprietorship operating a massage establishment. The owner shall be required to submit a new application upon expiration of their permit if a timely renewal application was not received. No business shall occur at any time that the permit is expired.

(e) An owner shall report any change in massage technicians, employees or a change in ownership interest or designated operator by filing a form provided by the city with the chief of police which shall include the following information:

(1) The full, true name, residential address, telephone number and date of birth of the employee, massage technician, or independent contractor.

(2) A complete statement listing and explaining any and all aliases and fictitious names used by the employee, massage technician, or independent contractor.

(3) A complete statement listing and explaining any and all roles and titles held by the employee, massage technician, or independent contractor.

(4) A valid and current driver's license and/or identification card issued by a state or federal government agency or other photographic identification bearing a bona fide seal by a foreign government of the employee, massage technician, or independent contractor.

(5) A copy of the valid and current state certificate issued by CAMTC for each massage technician who will work in the massage establishment whether an employee or independent contractor.

(6) Any other information as may be reasonably required by the chief of police to identify the massage technician, employee or independent contractor, and to ensure compliance with all applicable laws and regulations.

(f) If the owner is a legal entity other than a natural person, the legal entity shall authorize, in writing, at least one of its officers or partners to act on its behalf. The owner(s) or designated officer or partner shall complete and sign all applications or forms required of an individual applicant under this chapter. The legal entity's representative must, at all times, meet all of the requirements set by this chapter or the massage establishment permit shall be suspended or revoked.

Sec. 16A-28. Approval or denial of massage establishment permit.

A massage establishment permit shall be issued and/or renewed by the chief of police to any massage establishment that demonstrates all of the following:

(a) The operation, as proposed by the applicant, if permitted, would comply with all applicable laws, including, but not limited to, the city's building, zoning, business license, and health regulations and all requirements listed in this chapter.

(b) The massage establishment employs or uses only massage technicians with CAMTC state certificates whose certifications are valid and current and that owners of the state certificates are the same persons to whom CAMTC issued valid and current identification cards.

(c) The applicant has provided all information, assurances, or documentation required by this chapter, has not failed to reveal any fact material to qualification, and has not supplied information that is untrue or misleading as to a material fact pertaining to the qualification criteria.

(d) The background check for any applicant/owner authorized by the chapter shows that:

(1) Such person has not been required to register under the provisions of section 290 of the California Penal Code;

(2) There exists no probable cause to believe such person has been in violation of the crimes indicated in this chapter or California Penal Code section 415;

(3) Such person has not had an individual or business permit or license with any agency, board, city, county, territory, or state denied, revoked, restricted, or suspended within the last five (5) years; and

(4) Such person has not been subject to an injunction for nuisance under Penal Code sections 11225 through 11235 within the last five (5) years.

Sec. 16A-29. Massage establishment permit suspension or revocation.

(a) An establishment permit may be suspended or revoked upon any of the following grounds:

(1) There is cause to believe an owner or operator has committed a violation that could have caused denial of the massage establishment permit.

(2) There is cause to believe an owner has made a material misrepresentation on the application for a massage establishment permit or renewal.

(3) There is cause to believe the owner or operator or massage technician has engaged in conduct in a manner which violates any of the provisions of this chapter, any conditions of the massage establishment permit, or any of the laws which would have been grounds for denial of the massage establishment permit.

(4) Violations of this chapter or of California Business and Professions Code section 4600 et seq., have occurred on the business premises.

(5) The owner or operator has failed to comply with one (1) or more of the owner and operation requirements under this chapter.

(6) The registered permit holder has engaged in fraud, misrepresentation, or false statements in obtaining or renewing a massage establishment permit.

(b) Any repeat violations or any arrests that result in criminal charges shall provide a prima facie basis for revocation.

Sec. 16A-30. Appeals.

(a) Notice of permit denial, suspension or revocation shall contain a statement of the violation(s) which constitute the basis for the suspension or revocation and information about the right to appeal. Notice of the suspension or revocation shall be given by first class mail to the owner and real property owner at the addresses shown on the massage establishment permit. Service shall be deemed complete when the notice is mailed by first class mail. The owner shall have ten (10) calendar days from the date the notice is served to appeal to the city manager in writing and upon payment of an administrative decision appeal fee. Upon issuance of a notice of suspension or revocation, the massage

establishment permit shall be surrendered and no massage activity may occur while any appeal proceeds.

(b) Upon receipt of an appeal, the city manager shall appoint a hearing officer. A hearing shall be scheduled upon not less than ten (10) calendar days and not more than thirty (30) days, unless extended by mutual agreement. Notice of the hearing shall be given by first class mail to the owner and real property owner at the addresses shown on the massage establishment permit. Service shall be deemed complete when the notice is mailed.

(c) The hearing officer's jurisdiction is limited to determining whether evidence exists to provide grounds for the massage establishment permit denial, suspension or revocation.

(d) The city shall provide proof of any violations by a preponderance of the evidence. Formal rules of evidence shall not apply to the hearing.

(e) The hearing officer shall:

(1) Receive evidence regarding the proposed suspension, revocation or permit denial.

(2) Maintain a record of all evidence introduced.

(3) Record the hearing.

(4) Consider the nature, volume, severity, and frequency of any violations.

(5) Decide whether grounds exist of the suspension or revocation or denial.

(6) Issue a written decision within seven (7) days of the hearing that includes the factual and legal basis of the decision and a notice of the appeal rights contained in this chapter.

(f) The hearing officer's decision shall be final upon mailing by first class mail to the owner and real property owner at the addresses listed on the massage establishment permit application.

(g) The hearing officer's decision is subject to review pursuant to California Code of Civil Procedure section 1094.6.

Sec. 16A-31. Reapplication after denial, revocation, or non-renewal of massage establishment permit.

(a) An owner may not submit a new application within five (5) years of having an application or renewal of a massage establishment permit denied, or a message establishment permit revoked, as a result of violations of this chapter.

(b) If a massage establishment permit is revoked, or not renewed as a result of violations of this chapter, no massage establishment permit may be issued at that location for a period of one (1) year from the date of revocation or non-renewal. If the massage establishment whose permit was revoked, or not renewed as a result of violations, is located in a multi-unit property, no other unit in the

same property may be occupied by any massage establishment for a period of one (1) year from the date of the revocation or non-renewal. This limitation shall not apply to massage establishments that are already located in a unit at the property as of the date of revocation or non-renewal.