

ORDINANCE NO. 2016-03

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARINA TO DELETE MUNICIPAL CODE, TITLE 5, CHAPTER 5.36 (MASSAGE BUSINESSES) AND ADD A NEW CHAPTER 5.36 TO REDEFINE “MASSAGE, “MASSAGE PRACTITIONERS,” “MASSAGE THERAPISTS,” “MASSAGE ESTABLISHMENTS,” AND REQUIRE LICENSING IN COMPLIANCE WITH THE LAWS OF THE STATE OF CALIFORNIA

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THE CITY COUNCIL OF THE CITY OF MARINA DOES ORDAIN AS FOLLOWS:

WHEREAS, the California Legislature adopted SB 731, which added Business and Professions Code Sections 4600 *et seq.*, 37101, 1600, to create a voluntary certification program for the massage therapy profession in order to “enable consumers to easily identify credible certified massage therapists” who have received background checks, been trained at approved schools, passed an examination and received certification from the California Massage Therapy Council; and

WHEREAS, SB 731 provides that a city is limited in the manner in which it can regulate certified massage therapist and practitioners, and conversely, that it has greater latitude to regulate those persons who are not certified by the California Massage Therapy Council; and

WHEREAS, the proposed ordinance will enable the City to protect and promote the public health, safety and welfare by disallowing massage businesses which are not licensed and do not have certified massage therapists and practitioners:

NOW THEREFORE, the Marina City Council declares as follows:

1. Chapter 5.36 is Deleted and is Substituted with a New Chapter 5.36 to Read As Follows”

5.36.010 Purpose.

It is the purpose and intent of this chapter to provide for the orderly regulation of the business of massage in the city by establishing certain minimum standards for the conduct of this type of business to protect the public health, safety and welfare of the residents of the city.

5.36.020 Statutory authority.

The ordinance codified in this chapter is adopted pursuant to Sections 51030 through 51034 of the California Government Code; Business and Professions Code Sections 4600 *et seq.*, 37101, 1600; and, Section 7 of Article XI of the Constitution of the State of California and regulates the business and practice of massage to the extent authorized therein.

5.36.030 Definitions.

Whenever used in this chapter, the following words and phrases shall be defined as follows:

A. California Massage Therapy Council “CAMTC.”

“California Massage Therapy Council” or “CAMTC” shall mean the California Massage Therapy Council created under California Business and Professions Code Section 4602.

B. Certified Massage Practitioner.

“Certified Massage Practitioner” shall mean a person who is currently certified as a massage practitioner by the CAMTC pursuant to California Business and Professions Code Section 4604.2 and who administers massage for compensation.

C. Certified Massage Therapist.

“Certified Massage Therapist” shall mean a person who is currently certified as a massage therapist by the CAMTC pursuant to California Business and Professions Code Section 4604 and who administers massage for compensation.

D. Employee.

“Employee” shall mean any person, including the Certified Massage Therapist or Certified Massage Practitioner, who renders any service to the licensee, who receives compensation directly from the licensee, and who has a physical contact with the customers and clients.

E. Health Officer.

“Health officer” shall mean the Health Officer of the County of Monterey or his authorized representative.

F. Massage.

“Massage” shall mean the application of various techniques to the soft tissues of the human body as defined in California Business and Professions Code Section 4601. Application of massage techniques may include, but is not limited to, any method of pressure or friction, stroking, kneading, rubbing, tapping, stretching, pounding, vibrating, or stimulating the external surfaces of the body with hands or with any object or appliance

G. Massage establishment.

“Massage establishment” shall mean a place where certified massage therapists or certified massage practitioners practice massage as provided in California Business and Professions Code Section 4601(f).

H. “Licensee” shall mean any person operating or maintaining a massage establishment.

I. “Person” shall mean any individual, copartnership, firm, association, joint stock company, corporation or combination of individuals of whatever form or character.

5.36.040 Massage for compensation shall only be permitted in City by a certified massage therapist or certified massage practitioner.

Except as set forth in 5.36.043, it shall be unlawful for any person to provide massage in exchange for compensation in the City of Marina unless they are a certified massage therapist or certified massage practitioner.

5.36.040.5 Massage Establishment.

Except as set forth in 5.36.043, no person shall engage in, conduct or carry on, or permit to be engaged in, conducted or carried on, in or upon any premises in the City of Marina, the operation of a massage establishment without first having obtained a license therefor from the Chief of Police, or his or her designee, in accordance with the provisions of this Chapter. A massage establishment license does not authorize the licensee to provide massage therapy services, and it is unlawful to do so without a valid CAMTC certification.

5.36.041 Separate locations.

A separate license must be obtained for each branch location in which the operation of a massage establishment is to be carried on.

5.36.042 Display of License – Massage establishment.

Every massage establishment license issued pursuant to the provisions of this Chapter shall at all times be displayed in a conspicuous place within the massage establishment.

5.36.043 License Exceptions.

The license requirements of this Chapter shall not apply to the following persons while engaged in the performance of their duties:

- (a) Any individual licensed to practice the art of healing as defined under Business and Professions Code Section [500](#) et seq. while engaging in a practice within the scope of their license;
- (b) Any person licensed to practice barbering or cosmetology as defined in Business and Professions Code Section [7300](#) et seq. while engaging in a practice within the scope of their license;
- (c) Trainers of any amateur, semiprofessional or professional athlete or athletic teams while engaging in their training responsibilities for and with athletes;
- (d) Any employee of a California state-licensed hospital, nursing home, or other state-licensed physical or mental health facility while engaging in a practice within the scope of their employment;
- (e) Accredited high schools and colleges, and their coaches and trainers while acting within the scope of their employment;
- (f) Accredited colleges or universities that offer massage therapy programs whose instructors and students are acting within the scope of their employment or within the scope of their curriculum; and
- (g) Any other business or professions exempt by State law.

5.36.044 Nontransferability.

No license issued pursuant to the provisions of this Chapter is transferable to any other person or location.

5.36.050 License—Application—Contents.

A. Any person desiring to obtain a license to operate a massage establishment shall make an application to the chief of police or his designated representative. An annual nonrefundable fee established by resolution of the city council shall accompany the submission of each application to defray in part the cost of investigation, inspection and enforcement of this chapter.

B. Each applicant for a license to operate a massage establishment shall furnish the following information to the chief of police:

1. The full true name and any other names used by the applicant;
2. The present address and telephone number of the applicant;
3. The proposed name and address of the massage establishment;
4. Each residence and business address of applicant for the three years immediately preceding the date of the application, and the inclusive dates of applicant's use of each such address;

5. The form of business under which the applicant will be conducting the massage establishment, i.e., corporation, general or limited partnership, limited liability company, or other form. 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, directors, and each shareholder holding more than 10 percent of the stock of the corporation. If the applicant is a general or limited partnership, the application shall set forth the name and residence address of each of the partners, including limited partners. If one or more of the partners is a corporation, the provisions of this section pertaining to a corporate applicant shall apply. If the applicant is a limited liability company, the application shall set forth the name and residence address of each of the members. If one or more of the members is a partnership, limited liability company, or corporation, the provisions of this section pertaining to a partnership, limited liability company, or corporate applicant shall apply, as applicable.
6. The name and address of the owner of the real property upon, in, or from which the certified massage establishment is to be operated. In the event the applicant is not the legal owner of the property, the application shall be accompanied by a copy of any written lease between the applicant and the property owner authorizing use of the premises for a massage establishment, or, alternatively, if there is no written lease, then a written, notarized acknowledgment from the property owner that the property owner has been advised that a massage establishment will be operated by the applicant upon, in, or from the property owner's property.
7. A description of the proposed massage establishment, including the type of treatments to be administered.
8. The name of each employee who the massage establishment does or will employ or retain to perform massage therapy for compensation, whether on or off the massage establishment premises.
9. For each person who the massage establishment does or will employ or retain to perform massage therapy for compensation, whether on or off the massage establishment premises, a copy of that individual's current certification from the CAMTC as a certified massage practitioner or certified massage therapist, and a copy of his or her current CAMTC-issued identification card.
10. For each owner of the massage establishment who is a CAMTC-certified massage professional, a copy of his or her current certification from the California Massage Therapy Council as a certified massage practitioner or as a certified massage therapist and a copy of his or her current California Massage Therapy Council-issued identification card.
11. For each owner of the massage establishment who is not a CAMTC-certified massage professional, the following information:
  - (a) Whether any owner of the massage establishment has within the five years immediately preceding the date of application been convicted in any state of any misdemeanor or felony.
  - (b) Whether any owner of the massage establishment is currently required to register under the provisions of Section [290](#) of the California Penal Code.
  - (c) The business, occupation, and employment history of each owner of the massage establishment for five years preceding the date of application, and the inclusive dates of same.
  - (d) For any owner who is not a CAMTC-certified massage professional, one set of fingerprints of each owner of the massage establishment in a form satisfactory to the permit

authority. The fingerprints shall be taken at a place designated by the permit authority, and any required fee for such fingerprinting shall be paid by the applicant.

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12. Whether any license or permit has ever been issued to the applicant by any jurisdiction under the provisions of any ordinance or statute governing massage therapy, and as to any such license or permit, the name and address of the issuing authority, the effective dates of such license or permit, whether such license or permit was ever suspended, revoked, withdrawn, or denied; and copies of any documentary materials relating to such suspension, revocation, withdrawal, or denial.

13. Such other information as may be required by the permit authority to determine compliance with any other eligibility requirements for issuance of the permit as specified by federal, state, or local law.

5.36.060 Issuance or denial of license.

The chief of police or his or her designee shall, within thirty (30) days after receipt of an application complying with all the provisions of this Chapter, issue a license or deliver to the applicant, personally or by mail, written notice of denial of the license, setting forth the reason or reasons therefor, in accordance with the provisions of 5.36.070.

5.36.070 Grounds for denial of license.

The chief of police or his or her designee shall deny the license if he or she finds:

(a) The massage establishment, as proposed by the applicant, would not comply with the requirements of this code and/or with any applicable law, including but not limited to the City's building, fire, zoning, and health regulations.

(b) The applicant has knowingly made any false, misleading or fraudulent statement of material fact in the application for a massage establishment permit.

(c) Any owner of the massage establishment, within five years immediately preceding the date of filing of the application, has been convicted in a court of competent jurisdiction of any offense that relates directly to the operation of a massage establishment whether as a massage establishment owner or operator or as a person practicing massage for compensation, or as an employee of either; or has at any time been convicted in a court of competent jurisdiction of any misdemeanor or felony the commission of which occurred on the premises of a massage establishment.

(d) Any owner of the massage establishment is currently required to register under the provisions of Section [290](#) of the California Penal Code.

(e) Any owner of the massage establishment, within five years of the date of application, has been convicted in a court of competent jurisdiction of any violation of Sections [266](#), [266a](#), [266e](#), [266f](#), [266g](#), [266h](#), [266i](#), [266j](#), [315](#), [316](#), [318](#), [647\(b\)](#), or [653.22](#) of the California Penal Code, or any other crime involving theft, dishonesty, fraud or deceit; or conspiracy or attempt to commit any such offense, or any offense in a jurisdiction outside of the State of California that is the equivalent of any of the aforesaid offenses. A violation of Health and Safety Code Section [11550](#) or any offense involving the illegal sale, distribution or possession of a controlled substance specified in Health and Safety Code Section [11054](#), [11055](#), [11056](#), [11057](#) or [11058](#); or any offense under a statute of any state or ordinance of any city or county, which is the equivalent of any of the aforementioned offenses, including Business and Professions Code Section [4609\(a\)](#).

(f) Any owner of the massage establishment has been subjected to a permanent injunction against the conducting or maintaining of a nuisance pursuant to Sections [11225](#) through [11235](#) of

the California Penal Code, or any similar provision of law in a jurisdiction outside the State of California.

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(g) Any owner of the massage establishment who is an individual has not attained the age of 18 years.

(h) Any owner of the massage establishment, within five years immediately preceding the date of filing of the application, has had a permit or license to practice massage for compensation or to own and/or operate a massage establishment revoked or denied in any jurisdiction.

If prosecution is pending against the applicant for conduct listed in this section, the chief of police may postpone decision on the application until the final resolution of the prosecution. As used in this subsection, "prosecution" means charges filed by the district attorney, administrative proceedings brought by a local government or agency, or a civil or administrative action maintained by any city, county, state, or government.

#### 5.36.080 Operating requirements for massage establishments.

No person, association, partnership or corporation, shall 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 shall be carried on, and the premises shall be open, only between the hours of ten a.m. and twelve a.m. (midnight).

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 services shall be described in readily understandable language. No person shall permit or offer to perform, any services other than those posted.

C. A minimum of one tub or shower and one toilet and washbasin shall be provided for the patrons in every massage establishment. 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 every toilet room.

D. The massage establishment shall provide each client or patron thereof with a separate locker which shall have a locking device of a type approved by the chief of police or his designee and to which each client or patron shall be given a key and be allowed to store therein any valuables which the client or patron may bring to the massage establishment. There shall be no duplicate keys to such lockers; however, the owner, manager or the operator of the premises may retain within his or her sole management or control, a master key which allows access to such lockers. Said master key may be utilized for emergency purposes only when a locker or lockers contain valuables belonging to a client or patron of the massage establishment.

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 then discarded into a sanitary receptacle.

F. Disinfecting agents and sterilizing equipment sufficient to assure the cleanliness and safe condition thereof shall be provided for any instruments used in performing any massage. Instruments shall be disinfected after use on each patron.

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

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K. No massage establishment granted a license under the provisions of this chapter shall place, publish or distribute or cause to be placed, published or distributed, any advertisement, picture or statement which is known or through the exercise of reasonable care should be known to be false, deceptive or misleading in order to induce any person to purchase or utilize any professional massage services.

L. No person shall sell, give, dispense, provide or keep, or cause to be sold, given, dispensed, provided or kept, any alcoholic beverage on the premises of any massage establishment.

M. No person shall enter, be or remain in, any part of a massage establishment while in the possession of or while consuming or using any alcoholic beverage or drugs, except pursuant to a prescription for such drugs. The owner, operator or manager shall not permit any such person to enter or remain upon such premises.

5.36.090 Operative date for massage business.

Any person, association, partnership or corporation engaging in, conducting, or carrying on the operation of, a massage establishment on the effective date of the ordinance codified in this chapter shall, except as otherwise specifically provided herein, comply with all of the provisions of this chapter within ninety days of the effective date of the ordinance codified in this chapter.

5.36.100 Name of business.

No person, association, partnership or corporation licensed to do business as herein provided shall operate under any name or conduct his business under any designation not specified in his license.

5.36.110 Change of business location.

A change of location of a licensed massage establishment shall be approved by the chief of police, provided all applicable provisions of this chapter are complied with and a nonrefundable change of location fee as established by resolution of the city council has been paid to the chief of police, and the county health department and the city building department have inspected the new location and have advised the chief of police that it complies with the requirements of this chapter.)

5.36.120 Sale or transfer of business.

Upon the sale or transfer of any interest in a massage establishment including, in the case of a corporate owner, the sale or transfer of stock to a person who would hold more than five percent of the stock of the corporation, any license heretofore issued for such establishment or business shall be null and void. A new application shall be made in accordance with and subject to all the provisions of Sections 5.36.050 by any person, firm or entity desiring to own or operate the massage establishment or off-premises massage business. The application shall be accompanied by payment of the respective annual nonrefundable fees specified in Section 5.36.050 in addition to the payment of a sale or transfer fee as specified by resolution of the city council. Any such sale or transfer of any interest in any existing massage establishment or any application for an

extension or expansion of the building or other place of business of the massage establishment shall require inspection and shall require compliance with this Chapter.

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#### 5.36.130 Inspection.

The police department, building inspector, any other appropriate city official, and the county health department, shall make reasonable and periodic inspections of the records kept as required by this chapter, and of the foyer, hallways, restrooms and other areas used or intended for use in common by customers, rooms in which massages are given (whether occupied or unoccupied), and unoccupied rooms of each and every massage establishment in the city during hours of the business operation for the purpose of determining that there is compliance with the provisions of this chapter and the laws of the state.

#### 5.36.140 Suspension or revocation of license.

The chief of police shall revoke a License issued pursuant to the provisions of this Article if:

- (a) The person(s) to whom the massage establishment permit has been issued, or any employee have violated any provision of this Chapter or any relevant California or Federal law.
- (b) The licensee or any employee has been convicted in a court of competent jurisdiction of having violated any of the following: California Penal Code Sections [266](#), [266a](#), [266e](#), [266f](#), [266g](#), [266h](#), [266i](#), [266j](#), [315](#), [316](#), [318](#), [647\(b\)](#), or [653.22](#), of the California Penal Code, or any other crime involving theft, dishonesty, fraud or deceit; or conspiracy or attempt to commit any such offense, or any offense in a jurisdiction outside of the State of California that is the equivalent of any of the aforesaid offenses. A violation of Health and Safety Code Section [11550](#) or any offense involving the illegal sale, distribution or possession of a controlled substance specified in Health and Safety Code Section [11054](#), [11055](#), [11056](#), [11057](#) or [11058](#); or any offense under a statute of any state or ordinance of any city or county, which is the equivalent of any of the aforementioned offenses, including Business and Professions Code Section [4609\(a\)](#) or conspiracy or attempt to commit any such offense, or any offense in a jurisdiction outside of the State of California that is the equivalent of any of the aforesaid offenses.
- (c) The licensee or any employee is required to register under Section [290](#) of the California Penal Code.
- (d) The licensee has been subject to a permanent injunction against the conducting or maintaining of a nuisance pursuant to this code, or Sections [11225](#) through [11235](#) of the California Penal Code, or any similar provision of law in any jurisdiction outside the State of California.
- (e) The licensee or any employee of the massage establishment has engaged in fraud or misrepresentation or has knowingly made a misstatement of material fact while working in or for the massage establishment.
- (f) The licensee has continued to operate the massage establishment after massage establishment permit has expired or been suspended.

(g) Massage is or has been performed on the premises of the massage establishment, with or without the licensee's actual knowledge, by any person who is not a duly authorized CAMTC-certified massage professional.

Notice of revocation of the license shall be given in writing to the licensee by the chief of police. The licensee shall cease all operations under the permit within forty-eight (48) hours of delivery of said notice, unless a notice of appeal is filed pursuant to the provisions of 5-36-150.

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#### 5.36.150 Appeal.

An applicant or licensee may appeal any action or determination of the chief of police under the provisions of this Chapter by filing written notice thereof with the city clerk not later than forty-eight (48) hours after the delivery of any written notice given by the chief of police. The effect of revocation of a license shall be suspended by the filing of a notice of appeal until the determination of the appeal by the City Council. The City Council shall hold a public hearing on the appeal at its next regular meeting occurring more than seven (7) days after filing of the notice of appeal. Notice of said hearing shall be published once in the official newspaper and delivered in writing, personally or by mail, to the applicant or licensee not less than five (5) days prior to said hearing. At such hearing the applicant or licensee shall be required to show sufficient cause why the action or determination of the chief of police should not be upheld. The City Council shall, at said hearing, hear all other interested parties who desire to be heard. The determination of the City Council on the appeal shall be final and conclusive.

#### 5.36.160 Mailed notice.

Any notice mailed pursuant to the provisions of this Article or of Article 4 of this Chapter shall be deemed delivered twenty-four (24) hours after its deposit in a post office or mailbox.”

2. Validity of Ordinance. If any part of this ordinance is held to be invalid, unlawful, or unconstitutional, it shall not affect the validity of any other part of the ordinance.

3. Effective Date. This ordinance shall take effect and be in force 30 days from and after its final passage.

4. Posting of Ordinance. Within 15 days after the passage of this ordinance, the City Clerk shall cause it to be posted in the three public places designated by resolution of the City Council.

The foregoing ordinance was introduced at a regular meeting of the City Council of the City of Marina duly held on the 17<sup>th</sup> day of May, 2016 and passed and adopted at a duly held meeting of the City Council of the City of Marina held on the 7<sup>th</sup> day of, June 2016 by the following vote:

AYES, COUNCIL MEMBERS: Amadeo, Brown, Morton, O'Connell, Delgado

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: None

ABSTAIN, COUNCIL MEMBERS: None

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Bruce C. Delgado, Mayor

ATTEST:

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Anita Sharp, Deputy City Clerk