

CITY OF MORGAN HILL ADMINISTRATIVE POLICIES AND PROCEDURES

SUBJECT: PERMITS FOR MASSAGE ESTABLISHMENTS

EFFECTIVE DATE: March 1, 2024

ORIGINATING DEPARTMENT: ECONOMIC DEVELOPMENT

- 1. Purpose.** To establish a permitting process to ensure certain minimum building, sanitation, and operation standards for massage establishment businesses, and by requiring certain minimum qualifications for the operators and practitioners of such businesses, while still facilitating and advancing the ethical practice of massage therapy, by relying upon the uniform statewide regulations enacted by the Legislature in 2008 as Business and Professions Code Sections 4600 et seq., known as the Massage Therapy Act, as subsequently amended, and by restricting the commercial practice of massage in the City to those persons duly certified to practice by the California Massage Therapy Council formed pursuant to those statutes. This policy shall remain in place unless and until the City Council adopts an ordinance addressing massage establishment permitting.
- 2. Policy.** No person may operate a massage establishment within the City without first obtaining a massage establishment permit from the Police Department of the City of Morgan Hill. No individual may practice massage therapy for compensation within the City unless that individual is a California Massage Therapy Council (CAMTC)-certified massage professional. The permit requirements are in addition to the requirements for a business license imposed pursuant to Chapter 5.04 of the City's Municipal Code, as well as any permits or authorizations that may be required under other applicable laws including but not limited to the City's building, fire, zoning, and health regulations. Any massage establishment operated, conducted, or maintained contrary to the provisions of this policy shall be, and the same is hereby declared to be, unlawful and a public nuisance.

3. Procedure.

Application. The owners of the massage establishment shall file an application for a permit on a form provided by the City. The application shall be accompanied by the fee established by the City's fee schedule. Any change in ownership or location requires a new application. The application shall include the information as may be required by the City to determine compliance with any eligibility requirements for issuance of the permit as specified by federal, state, or local law.

Permit issuance. The Police Chief shall issue a massage establishment permit if the applicant meets the requirements of this policy and no grounds for denial exist as described below. The Police Chief may impose conditions on the permit consistent with this policy and applicable law. The permit shall be valid for the fiscal year in which it is issued and, unless suspended or revoked, must be renewed by the massage establishment operator annually so long as the massage establishment is operating within the City.

Permit denial. The Police Chief may deny an application for a massage establishment permit on any of the following grounds:

- (a) The massage establishment, as proposed by the applicant, would not comply with the requirements of this policy.
- (b) The massage establishment, as proposed by the applicant, would not comply with any applicable law, including, but not limited to the City's building, fire, zoning, and health regulations.
- (c) The applicant has knowingly made any false, misleading or fraudulent statement of material fact in the application for a massage establishment permit. Any omission or falsified information within the application will result in an automatic denial.
- (d) 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 felony the commission of which occurred on the premises of a massage establishment.
- (e) Any owner of the massage establishment is currently required to register under the provisions of Section 290 of the California Penal Code ("Sex Offender Registration Act").
- (f) 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 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.
- (g) 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.
- (h) Any owner of the massage establishment, within five years of the date of application, and as established by clear and convincing evidence, has engaged in acts prohibited under California Penal Code Sections 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), or 653.22.
- (i) Any owner of the massage establishment is an individual who has not attained the age of eighteen years.
- (j) 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.

- (k) Any owner of the massage establishment currently owns or operates a massage establishment in the City of Morgan Hill that is not in good standing due to the existence of uncorrected violations or unpaid fines or fees.
- (l) Within the last five years, the applicant has failed to comply with a final court order or administrative action of an investigatory agency finding a violation of applicable federal, state and local wage and hour laws, including, but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any local minimum wage ordinance or prevailing wage requirements. For purposes of this subsection, a final court order or administrative action is one as to which there is no pending appeal and the time for filing an appeal has passed.

Appeal.

- (a) If an application for a massage establishment permit is denied, the Police Chief shall give written notice to the applicant specifying the grounds for denial.
- (b) The applicant may appeal the decision to deny a massage establishment permit pursuant to Chapter 1.20 of the City's Municipal Code.

Amendments to permit. Whenever the information provided in the application for a certified massage establishment on file with the City changes, the operator shall file an application, provided by the City, to amend the permit to reflect such change. The application shall be accompanied by the fee established by the City's fee schedule.

Requirements for all massage establishment facilities and operations.

- (a) Operational Requirements. Except as otherwise specifically provided in this policy, the following operational requirements shall be applicable to all massage establishments located within the City:
 - (1) No massage establishment shall be kept open for business between the hours of ten p.m. of one day and eight a.m. of the following day. All massage must terminate at ten p.m. regardless of the time it commenced.
 - (2) The hours of operation of the massage establishment shall be displayed in a conspicuous public place in the reception and waiting area and in any front window clearly visible from outside of the massage establishment.
 - (3) Patrons and visitors shall be permitted in the massage establishment only during the hours of operation.
 - (4) During the hours of operation, patrons shall be permitted in massage therapy rooms only if at least one duly authorized certified massage professional is present on the premises of the massage establishment. Patrons shall not be permitted in any employee break room on the premises.
 - (5) During the hours of operation, visitors shall not be permitted in massage therapy rooms except as follows:
 - (A) The parents or guardian of a patron who is a minor child may be present in the massage therapy room with that minor child;

- (B) The minor child of a patron may be present in the massage therapy room with the patron when necessary for the supervision of the child; or
 - (C) The conservator, aid, or other caretaker of a patron who is elderly or disabled may be present in the massage therapy room with that elderly or disabled person.
- (6) During the hours of operation, except as otherwise provided herein, no visitors shall be permitted in massage therapy rooms, break rooms, dressing rooms, showers, or any other room or part of the massage establishment premises other than the reception and waiting area or toilet rooms.
- (7) Except for a patron who is inside a massage therapy room for the purpose of receiving a massage, no patrons or visitors shall be permitted in or on the massage establishment premises at any time who are less than fully clothed in outer garments of nontransparent material, or who display or expose themselves in underclothing or similar intimate apparel.
- (8) 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 English and may also be described in such other languages as may be convenient. No massage establishment operator shall permit, and no person employed or retained by the massage establishment shall offer to perform any services or request or demand fees other than those posted.
- (9) The massage establishment shall keep on the premises a complete and current roster of all owners, operators, and managing employees of the massage establishment and all massage professionals and other persons employed or retained by the massage establishment. The roster shall include the name, residence address, and phone number of each individual. The roster shall be available for inspection by City officials charged with the enforcement of this policy. It shall be the responsibility of each owner or operator to notify the City within seven days of any change in persons providing massage services and to provide copies of the state massage certification for all such persons to the City prior to such persons providing massage services.
- (10) All massage services and all tips, if any, shall be paid for in the reception area. Massage establishments may utilize a system where tip envelopes are provided in the treatment rooms to be utilized and deposited by the client in the reception area.
- (11) All owners and operators are expected to comply with the City's Wage Theft Prevention Policy (CP-17-01) adopted by City Council on July 26, 2017 ([CP-17-01-Wage-Theft-Prevention \(ca.gov\)](#)).
- (b) Physical Facility and Building and Fire Code Requirements. Except as otherwise specifically provided in this policy, the following physical facility and building code requirements shall be applicable to all massage establishments located

within the City:

- (1) Main entry door and reception and waiting area required. One main entry door shall be provided for patron entry to the massage establishment, which shall open to an interior patron reception and waiting area immediately. All patrons and any persons other than individuals employed or retained by the massage establishment shall be required to enter and exit through the main entry door. Unless the massage establishment is a sole proprietorship or a home occupation with one or no other employees, the main entry door shall be unlocked at all times during business hours.
 - (2) 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.
 - (3) All interior doors, including massage therapy rooms or cubicles, but excluding individual dressing rooms, showers, and toilet rooms, shall be incapable of being locked and shall not be blocked to prevent opening. Draw drapes, curtain enclosures, or accordion-pleated closures in lieu of doors are acceptable on all inner massage therapy rooms or cubicles.
 - (4) Minimum lighting equivalent to at least one forty-watt light shall be provided in each massage therapy room or cubicle.
 - (5) A massage table or professional massage chair specifically designed for seated massage shall be used for all massage therapy, with the exception of "Thai," "Shiatsu," and similar forms of massage therapy, which may be provided on a padded mat on the floor, provided the patron is fully attired in loose clothing, pajamas, scrubs, or similar style of garment. Massage tables shall have a minimum height of eighteen inches.
 - (6) Beds, floor mattresses, and waterbeds are not permitted on the premises of the massage establishment, and no massage establishment shall be used for residential or sleeping purposes, which may be shown by circumstantial evidence such as the presence of bedding, pillows, sleeping bags, suitcases, clothing, toiletries or other personal belongings, cooking appliances, utensils, or food in excess of a business establishment's normal requirements.
 - (7) All locker facilities that are provided for the use of patrons shall be fully secured for the protection of the patrons' valuables, and each patron shall be given control of the key or other means of access.
 - (8) The massage establishment shall comply with all applicable state and local building and fire codes as adopted in Title 15 of this code.
- (c) Health and Safety Requirements. Except as otherwise specifically provided in this policy, the following health and safety requirements shall be applicable to all massage establishments located within the City:

- (1) The massage establishment shall at all times be equipped with an adequate supply of clean sanitary towels, coverings, and linens, and all massage tables or chairs shall be covered with a clean sheet or other clean covering appropriate to the equipment for each patron. After a towel, covering, or linen has been used once, it shall be deposited in a closed receptacle and not used again until properly laundered and sanitized. Towels, coverings, and linens shall be laundered either by regular commercial laundering, or by a noncommercial laundering process that includes immersion in water at least one hundred forty degrees Fahrenheit for not less than fifteen minutes during the washing or rinsing operation. Clean towels, coverings, and linens shall be stored in closed, clean cabinets when not in use. A certified massage professional engaged in the practice of outcall massage shall carry a sufficient quantity of clean and sanitary towels, sheets, and linens to comply with the requirements.
- (2) All massage therapy rooms or cubicles, wet and dry heat rooms, toilet rooms, shower compartments, hot tubs, and pools shall be thoroughly cleaned and disinfected as needed, and at least once each business day when the premises has been or will be open and such facilities in use. All bathtubs shall be thoroughly cleaned and disinfected after each use.
- (3) All liquids, creams, or other preparations used on or made available to patrons shall be kept in clean and closed containers. Powders may be kept in clean shakers. All bottles and containers shall be distinctly and correctly labeled to disclose their contents. When only a portion of a liquid, cream, or other preparation is to be used on or made available to a patron, it shall be removed from the container in such a way as not to contaminate the remaining portion.
- (4) Unless otherwise licensed under state or local law, no invasive procedures shall be performed on any patron. Invasive procedures include, but are not limited to:
 - (A) Application of electricity that contracts the muscle;
 - (B) Penetration of the skin by metal needles;
 - (C) Abrasion of the skin below the nonliving, epidermal layers;
 - (D) Removal of skin by means of any razor-edged instrument or other device or tool;
 - (E) Use of any needle-like instrument for the purpose of extracting skin blemishes; and
 - (F) Other similar procedures.
- (5) All bathrobes, bathing suits, and/or other garments that are provided for the use of patrons shall be either fully disposable and not used by more than one patron, or shall be laundered after each use pursuant to subsection (c)(1) of this section.

- (6) All combs, brushes, and/or other personal items of grooming or hygiene that are provided for the use of patrons shall be either fully disposable and not used by more than one patron, or shall be fully disinfected after each use.
 - (7) No patrons shall be allowed to use any shower facilities of the massage establishment unless such patrons are wearing slip-resistant sandals or flip-flops while in the shower compartment. All footwear such as sandals or flip-flops that are provided for the use of patrons either shall be fully disposable and not used by more than one patron, or shall be fully disinfected after each use.
 - (8) Patrons' genitals and female patrons' breasts must be fully draped at all times while any individual employed or retained by the massage establishment is in the massage room or cubicle with the patron. No massage shall be provided to a patron that results in intentional contact, or occasional and repetitive contact, with the genitals or anal region of a patron, or of a female patron's breasts without the written consent of the person receiving the massage and a referral from a licensed California health care provider.
 - (9) No alcoholic beverages shall be sold, served, or furnished to any patron or visitor; nor shall any alcoholic beverages be consumed, kept, or possessed on the premises of a massage establishment.
 - (10) No birth control device or aid, including but not limited to condoms, shall be stored, kept, or distributed on the premises of a massage establishment.
- (d) Attire and Physical Hygiene Requirements. The following attire and physical hygiene requirements shall be applicable to all employees and any other persons who work permanently or temporarily on the premises of a massage establishment within the City, including, but not limited to, all persons who are employed or retained to practice massage for the massage establishment:
- (1) No person shall dress in:
 - (A) Attire that is transparent, see-through, or substantially exposes the person's undergarments;
 - (B) Swim attire, unless providing a water-based massage modality approved by the CAMTC;
 - (C) A manner that exposes the person's chest, breasts, buttocks, or genitals;
 - (D) A manner that constitutes a violation of Section 314 of the California Penal Code.
 - (2) No massage establishment operator, employee, or visitor shall, while on the premises of a massage establishment or while performing any outcall massage service, and while in the presence of any patron, customer, employee or visitor, expose his or her chest, breasts, buttocks, or genitals.

- (3) All persons shall thoroughly wash their hands with soap and water or any equally effective cleansing agent immediately before providing massage to a patron. No massage shall be provided upon a surface of the skin or scalp of a patron where such skin is inflamed, broken (e.g., abraded or cut), or where a skin infection or eruption is present.
- (e) Display of Permit and Certifications.
- (1) The massage establishment permit shall be displayed in an open and conspicuous place on the premises visible from the main entry door and/or reception and waiting area of the massage establishment.
- (2) Each person employed or retained by a massage establishment to perform massage in or on the premises or through an outcall massage service shall display on his or her person the valid current photograph-bearing identification card issued to that employee by the CAMTC. A copy of each such identification card and the person's original CAMTC certificate shall also be displayed in an open and conspicuous place visible from the main entry door and/or reception and waiting area of the massage establishment. The home address of any employee need not be displayed.
- (f) Display of Human Trafficking Notices. The massage establishment shall comply with the requirements in California Civil Code Section 52.6 related to the posting of information for victims of human trafficking.
- (g) Home Occupation and Outcall-Only Businesses—Exemptions.
- (1) Where a certified massage establishment is a home occupation, and the operator has complied with the provisions of Section 18.92.060 of this code pertaining to home occupations, the provisions of subsections (a)(2), (b)(1)—(3), and (b)(6) of this section shall not apply, and the portions of the residence subject to the requirements of subsections (b) and (c) of this section shall be only those portions that are used at any time by the patron of the massage establishment.
- (2) For massage establishments that provide outcall-only services and have no fixed location for performing massage, provisions of this section related to businesses with fixed locations shall not apply. Specifically, the provisions of subsections (a)(2) – (9), (b)(1) - (4), (b)(6) - (8), (c)(2) and (7), (e)(1), and (f) of this section shall not apply to outcall-only establishments.

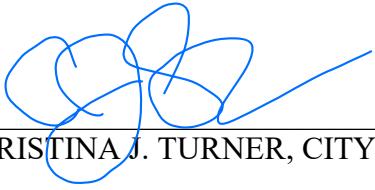
Massage establishment inspections.

- (a) The inspector shall have the right to enter any massage establishment, other than an establishment providing outcall-only services, during regular business hours, without a search or inspection warrant, to make reasonable inspection to ascertain whether there is compliance with the provisions of this policy. Inspectors shall have access to all areas of the massage establishment, including but not limited to drawers and cupboards used for storage. For home occupations, reasonable inspection shall be limited to the portions of the residence open to patrons.
- (b) The massage establishment operator shall take immediate action to correct each

violation noted by the inspector. A reinspection will be performed to ensure that each violation noted by the inspector has been corrected.

Revocation or suspension. All massage establishment operators shall be deemed to know and understand the requirements and prohibitions of this policy. Any massage establishment permit issued pursuant to this policy may be suspended or revoked by the Police Chief, where the Police Chief finds that any violation of this policy has occurred on even a single occasion. Appeal of the decision may be made pursuant to Chapter 1.20 of the City's Municipal Code.

APPROVED:



CHRISTINA J. TURNER, CITY MANAGER

3-20-24
DATE