
ORDINANCE NO. 1086B

AN ORDINANCE REPEALING AND REENACTING LINCOLN MUNICIPAL CODE CHAPTER 5.32 REGARDING MASSAGE PARLORS AND FURTHER FINDING THE ORDINANCE IS EXEMPT FROM ENVIRONMENTAL REVIEW UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, since the enactment of Lincoln Municipal Code Chapter 5.32, drugs, sex and human trafficking and related prostitution has elevated in prevalence and as a societal concern; and

WHEREAS, law enforcement reports finding that more and more frequently, massage parlors and establishments, while some are reputable, also often serve as fronts for these types of criminal activities; and

WHEREAS, Lincoln Police Department has been participating in joint enforcement activities with the City of Rocklin Police Department to respond to massage businesses that are fronts for criminal activity; and

WHEREAS, the proposed revisions contemplated by this Ordinance change would bring Lincoln's Municipal Code into close alignment with Rocklin's Municipal Code, so that officers participating in joint operations in Lincoln are clear and consistent with the provisions being enforced.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF LINCOLN does ordain as follows:

Section 1. Incorporation of Recitals. The City Council hereby incorporates by reference the recitals set forth above.

Section 2. CEQA Analysis. This Ordinance is not subject to the California Environmental Quality Act ("CEQA"), as codified at Public Resources Code §§ 21000, et seq., and as further governed by 14 California Code of Regulations §§ 15000, et seq., because it is not a project as contemplated by 14 C.C.R. § 15378. Even if this Ordinance were subject to CEQA, the City Council finds this Ordinance exempt from the requirements of CEQA pursuant to 14 C.C.R. § 15061(b)(3), because there is no possibility it will have a significant effect on the environment.

Section 3. Severability. If any section, sub-section, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. City Council hereby declares that it would have adopted the Ordinance and each section, sub-section, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, sub-sections, sentences, clauses, phrases or portions to be declared invalid or unconstitutional.

Section 4. Publication. Within fifteen days of passage of this Ordinance, the City Clerk shall cause the full text of the Ordinance, with the names of those City Councilmembers voting

for and against the Ordinance, to be published in the Lincoln News Messenger. In lieu of publishing the full text of the Ordinance, the City Clerk, if so directed by the City Attorney and within fifteen days, shall cause a summary of the Ordinance, prepared by the City Attorney and with the names of the City Councilmembers voting for and against the Ordinance, to be published in the Lincoln News Messenger, and shall post in the office of the City Clerk a certified copy of the City Councilmembers voting for and against the Ordinance. The publication of a summary of the Ordinance in lieu of the full text of the Ordinance is authorized only where the requirements of Government Code § 36933(c)(1) are met.

Section 5. Repeal. Lincoln Municipal Code Chapter 5.32 is hereby repealed in its entirety.

Section 6. Reenactment. Lincoln Municipal Code Chapter 5.32 is hereby reenacted as follows:

Chapter 5.32 MASSAGE SERVICES

5.32.010 Purpose and intent.

It is the purpose and intent of the city of Lincoln to comply with California law while also protecting the health, safety and welfare of the inhabitants of the city through the enactment of standards of professional competence and operational requirements which promote the therapeutic use of massage therapy.

This chapter is not intended to be exclusive and compliance with city regulations will not excuse noncompliance with any state or local laws or regulations that are uniformly applied to other professional or personal services businesses including, without limitation, all zoning applications; business license regulations; building, fire, electrical, and plumbing codes; and health and safety laws and regulations applicable to professional or personal services businesses.

The California State Legislature implemented uniform statewide regulations pertaining to massage therapy and massage businesses (enacted by AB 1147 in 2014) now codified in Chapter 10.5 of Division 2 of the California Business and Professions Code (commencing at Section 4600 et seq.), hereinafter referred to as the "Massage Therapy Act", which created a statewide system for issuing massage worker permits, thereby preempting local permitting systems and requirements. The statewide permitting system is administered by the California Massage Therapy Council ("CAMTC").

The Massage Therapy Act allows local jurisdictions to enforce certain business licensing and to establish reasonable health and safety requirements for massage businesses, not in conflict with the Massage Therapy Act. To enable the city to carry out the local regulation and review of massage businesses found in the Massage Therapy Act, the city must maintain massage business regulations in the Lincoln Municipal Code.

There is a continued need for local regulations because there is significant risk of injury to massage clients by improperly trained or educated massage service providers and the city has a legitimate interest in providing reasonable safeguards against injury and economic loss to such massage clients. Government Code Section 51034 specifically recognizes the powers of cities to regulate massage businesses. In addition, the city wishes to promote the ethical practice of massage therapy and to prevent and discourage the misuse of massage therapy as a front for prostitution activities in violation of the law, including but not limited to subdivisions (a) and (b) of Section 647 of the California Penal Code.

The adoption of qualification standards for massage service providers based upon the CAMTC certification program established under the Massage Therapy Act and the enhancement of the city's reasonable regulations on the operation of massage businesses and the conduct of massage service providers will serve to reduce the risk of potentially injurious and illegal activity.

This chapter establishes a local regulatory system for massage businesses to operate within the city.

5.32.020 Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

- A. "Applicant" means any person that seeks a massage business permit as required by this chapter.
- B. "Approved school of massage" means any school or institution of learning that is recognized as an approved school pursuant to California Business and Professions Code Division 2, Chapter 10.5, as it may be amended.
- C. "California Massage Therapy Council (CAMTC)" means the California Massage Therapy Council created pursuant to California Business and Professions Code Section 4602(a).

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- D. "Certificate" means the certificate, or conditional certificate, issued by the CAMTC to massage therapists, pursuant to California Business and Professions Code Section 4601(h) and to massage practitioners pursuant to subdivision 4601(g), or 4604.1(a), 4604.2(c) that entitles the holder to practice massage. When used in this chapter, "certification" means a person who has an active and valid CAMTC certificate.
- E. "Certified massage practitioner" means a person who is currently certified as a massage practitioner by the CAMTC, and who gives, performs or administers massage for compensation.
- F. "Certified massage therapist" means a person who is currently certified as a massage therapist by the CAMTC, and who gives, performs or administers massage for compensation.
- G. "Chief of police" means the chief of police, public safety chief or designee.
- H. "City" means the City of Lincoln.
- I. "City manager" means the city manager or designee.
- J. "Compensation" means the payment, loan, advance, donation, barter, contribution, deposit, or gift of money or anything of value.
- K. "Convicted" means having entered a plea, or receiving a verdict, of guilty. "Convicted" also includes having entered a plea of nolo contendere or no contest.
- L. "Independent contractor" means a person who contracts to do work for another person according to their own processes and methods; the contractor is not subject to another's control except for what is specified in a mutually binding agreement for a specific job.
- M. "Manager" means a person who supervises, inspects, directs, organizes, controls, or in any other way is responsible for or in charge of the conduct of the activities within a massage establishment.
- N. "Massage" or "massage therapy" means the systematic and scientific manipulation and treatment involving the external manipulation or pressure of soft tissue for therapeutic purposes. Massage therapy includes any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external surfaces of the body with hands, apparatus or appliances, with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointment, or other similar preparations. Massage therapy scope of practice does not include diagnosis, prescribing of drugs or medicines, spinal or other joint manipulations, nor any service or procedure for which a license to practice medicine, chiropractic, physical therapy, acupuncture, or podiatry is required by law.
- O. "Massage business" means any business providing massage therapy services, whether as a massage establishment or on-call massage services.
- P. "Massage establishment" means a fixed place of business; premises, facility or membership club where any person, gives performs or administers massage for compensation.
- Q. "Massage professional" means any person certified by the CAMTC to give, perform or administer to another person a massage for compensation. Massage professionals shall include certified massage practitioners and certified massage therapists.
- R. "Out-call massage services" means services in which a massage professional gives, performs or administers to another person a massage for compensation at a location other than a massage establishment permitted pursuant to this chapter.
- S. "Owner" means any and all owners of a business providing massage services or massage establishment including any of the following persons:
1. A sole provider as defined herein;
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- 2. Any general partner of a general or limited partnership that owns a massage business;
 - 3. Any person who has an 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 owners of any other type of business association that owns a massage business.
- T. "Permit" means the massage business permit.
 - U. "Person" means any natural person, individual, group, firm, association, partnership, corporation, company, sole proprietorship, or any other legal entity.
 - V. "Reflexology" means massage of the hands or feet based on the belief that pressure applied to specific points on these extremities benefits other parts of the body
 - W. "Sole 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 from CAMTC, and has no other employees or independent contractors.

5.32.030 Requirements for massage businesses.

- A. It is unlawful for any person to own, conduct, operate or maintain a massage business within the city without having a valid massage business permit issued pursuant to this chapter. Massage business permits shall also be required of any permanent or semi-permanent seated massage or reflexology installation. A massage business permit shall in no way be construed to allow any person to perform massage services within the city without an active and valid certificate from the CAMTC as a massage practitioner or massage therapist.
- B. It is unlawful for any person to own, conduct, operate or maintain a massage business within the city unless all persons providing massage services at a massage establishment each hold an active and valid certificate from the CAMTC as a massage practitioner or massage therapist.

5.32.040 Requirements for out-call massage services.

It is unlawful for any person to own, conduct, operate or maintain out-call massage services within the city unless all persons providing massage services for the out-call massage business hold an active and valid certificate from the CAMTC as a massage practitioner or massage therapist.

5.32.050 Advertisements.

It is unlawful for any person to advertise massage services within the city without complying with the requirements provided for in this chapter.

5.32.060 Massage business permit—Application.

- A. An application for a massage business permit shall be made by the owner of the business. Such application shall designate the person or persons who will be the manager, if applicable, of the premises.
 - B. All applications for permits shall be filed with the chief of police on such forms as may be prescribed, and shall contain such information as reasonably deemed necessary for the proper processing of the application. The application for a permit does not authorize the operation of a massage business unless and until such permit has been granted.
 - C. Any application for a massage business permit shall contain the following information:
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1. The full true name and any other names used by the applicant. If the applicant is:
 - a. An individual; the individual shall state his/her full legal name.
 - b. A partnership; the partnership shall state its complete name, address, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any. In addition, the application must designate the person who will provide all information required by this chapter.
 - c. A corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of California, the names and capacities of all officers and directors, and the name of the registered corporate agent and the address of the registered agent for service of process. In addition, the application must designate the person who will provide all information required by this chapter.
 2. The true, full and precise name under which the massage business is to be conducted, as well as any and all names under which the massage business is to be advertised.
 3. The address where the massage business is to be located and all telephone numbers for the massage business.
 4. The name and address of the owner of the real property upon or in which the proposed massage business is to be conducted and, if applicable, the lessor. In the event the applicant is not the legal owner of the property, the application must be accompanied by a copy of the lease containing specific language from the owner of the property acknowledging that a massage business will be located on his or her property.
 5. The current residential address and telephone number of the owner, as well as the manager (if the manager is a different person) who will be principally in charge of the operation of the massage business, and the previous residential addresses and business addresses within the previous five years.
 6. The applicant's height, weight, color of eyes, and hair color.
 7. Written proof, to the satisfaction of the city that the applicant is at least eighteen years of age. This may be in the form of a current U.S. government-issued identification with photograph (such as a driver's license, U.S. Passport, or military identification card).
 8. The applicant's business, occupation or employment history for the five years immediately preceding the date of the application.
 9. The massage or similar business license history of the applicant, including whether such person, previously operating in this city or another city, county or state under a license or permit, has had such license or permit revoked or suspended; and the reasons and dates for any such revocation or suspension.
 10. All criminal convictions, except minor traffic infractions.
 11. A complete current list of the names of all proposed massage professionals and other employees or independent contractors who are or will be employed or retained in the massage business, if known. If not known at the time of submission of the application, the applicant shall provide the required information no later than ten calendar days prior to opening for business.
 12. A valid, government issued identification card and the full names and birthdays of each CAMTC massage professional that will be employed or retained to perform massage therapy either as employees, independent contractors, or in a rent space capacity for verification. If unable to verify, then the CAMTC photo identification cards for each proposed massage professional that will be employed or retained to perform massage therapy either as employees, independent contractors, or in a rent space capacity must be presented for verification.
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13. A complete set of fingerprints (live scan) taken by the police department. The applicant shall be responsible for payment of any fingerprinting fees.
 14. Authorization for the city, its agents, and employees to seek verification of the information contained in the application.
 15. Such other identification and information as the chief of police may reasonably require in order to discover the truth of the matters herein specified and as required to be set forth in the application.
 16. The certificate of occupancy provided by the building division.
 17. A current and valid policy of insurance issued by an insurance company authorized to do business in the state of California evidencing that the applicant is insured under a liability insurance policy providing minimum coverage of one million dollars for injury or death to any one person arising out of the operation of any massage business and the administration of a massage.
 18. If the owner will provide massage services, the owner's original CAMTC certificate and original CAMTC photo identification card, for copying by the police department.
 19. Proof of current city of Lincoln business license for the massage business.
 20. A statement in writing and dated by the person providing the information, that he or she certifies under penalty of perjury, that all information contained in the application is true and correct.
- D. In the event that the chief of police requires further information, or deems the application incomplete, the applicant shall be notified in writing of the required information within twenty calendar days of submitting the application. Additional information shall be provided within fifteen calendar days of the date of the request, after which time the application shall be deemed incomplete. Incomplete applications shall be deemed denied.

5.32.070 Term of massage business permits.

A permit for a massage business shall be issued for a term of one year. It may be renewed by the chief of police for additional one-year periods upon application by the permittee unless the permit is suspended or revoked in accordance with Section 5.32.110, 120. An application for renewal shall be accompanied by a nonrefundable fee as established by resolution of the city council.

During the term of a permit, if the permittee has any change in the information submitted on the original or any renewal application, the permittee shall notify the chief of police in writing of any such change within fourteen calendar days of the change.

5.32.080 Massage business permit fee.

Every application for a massage business permit shall be accompanied by a nonrefundable fee as established by resolution of the city council. The application and fee required pursuant to this section shall be in addition to any other license, permit or fee required by federal, state or local law.

5.32.090 Massage businesses permit issuance—Investigation—Grounds for denial.

- A. Upon receipt of a completed massage business permit application, the chief of police shall conduct an investigation, including an inspection of the massage establishment, if applicable, to ascertain whether a permit should be issued as requested. The chief of police shall, within forty-five calendar days of receipt of the completed application, approve, condition, or deny the permit.
 - B. The chief of police may deny a permit provided for in this chapter if he or she finds any of the following:
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1. The applicant, any owner, or any person directly engaged, employed, or retained in the massage business, has:
 - a. Been convicted of a violation of any provision of law pursuant to which a person is required to register under the provisions of Penal Code Section 290 [sex registry], or conduct in violation of California Penal Code Sections 266h [pimping], 266i [pandering], 314 [indecent exposure], 315 [keeping or residing in house of ill fame], 316 [keeping disorderly house], 318 [prevailing upon person to visit place for gambling or prostitution], 647(b), (d) [disorderly conduct], or 653.23 [supervision in the commission of a violation of section 647(b)], as may be amended from time to time, or convicted of an attempt to commit or conspiracy to commit any of the above mentioned offenses, or any other crime involving dishonesty, fraud, deceit, or moral turpitude or when the prosecution accepted a plea of guilty or nolo contendere to a charge of a violation of California Penal Code Sections 415 [disturbing the peace], 602 [trespass] or any lesser included or related offense, in satisfaction of, or as a substitute for, any of the previously listed crimes, or any crime committed while engaged in the ownership of a massage business or the practice of massage.
 - b. Been convicted of a violation of Health and Safety Code Section 11550 [use of controlled substance; drug rehabilitation program; possession of firearm; punishment] or any offense involving the illegal sale, distribution or possession of a controlled substance specified in Health and Safety Code Sections 11054 [schedule I list of controlled substances], 11055 [schedule II], 11056 [schedule III], 11057 [schedule IV] or 11058 [schedule V], as may be amended from time to time.
 - c. Been convicted of any offense in any other state or U.S. territory, which is the equivalent of any of the above mentioned offenses.
 - d. Been subjected to a permanent injunction against conducting or maintaining of a nuisance pursuant to Sections 11225 through 11235 of the California Penal Code [red light abatement code] as may be amended from time to time, or any similar provisions of law in a jurisdiction outside the state of California.
 - e. Committed an act in another jurisdiction which, if committed in this state, would have been a violation of law and which, if done by a permittee under this chapter, would be grounds for denial, suspension or revocation of the permit.
 - f. Committed any act, which, if done by a permittee, would be grounds for suspension or revocation of a permit.
 - g. Has had a massage business permit or massage therapist/practitioner permit or other similar license or permit denied, suspended or revoked for cause by the city, any state, local agency or other licensing authority, or has had to surrender a permit or license as a result of pending criminal charges or in lieu of said permit or license being suspended or revoked.
 2. The applicant has knowingly made any false, misleading or fraudulent statement of material fact in the application or in any documentation required to be filed in conjunction with said application. The application does not contain all the information required by Section 5.32.060 and applicant fails to complete the application after having been notified of any additional information or documents required.
 3. The applicant is not at least eighteen years of age.
 4. The massage establishment, as proposed, does not comply with all applicable laws, including, but not limited to, health, zoning, fire, building, and safety requirements and standards imposed by the laws of the state and the ordinances of the city, including this chapter.
 5. The applicant failed to obtain all the necessary approvals from the necessary city departments or other governmental agencies, including but not limited to, the city's economic development department.
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- 6. The applicant has refused to or cannot meet the requirements established by this code.
 - 7. The required fees(s) have not been paid and/or any other requirements of this chapter have not been satisfied within the time specified.
 - 8. The massage establishment is proposed in the same location in which a massage establishment has previously been closed due to criminal activity within five years prior to the date of the application.
- C. Notwithstanding subsection B., the applicant shall not be denied a permit solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Section 4852.01 of the California Penal Code, or on the basis that he or she has been convicted of a misdemeanor not specified in this chapter.
- D. If the chief of police, upon completion of the investigation, determines the applicant does not fulfill the requirements set forth in this chapter, the chief of police shall deny the application by dated written notice to the applicant.
- E. Upon issuance of any permit, the chief of police may limit the permit by any condition reasonably necessary to preserve the intent and purpose of this chapter. Such permit limitations shall be in writing to the applicant, with a signature from the applicant affirming they understand and will comply with the limitations as set by the chief of police.

5.32.100 Appeal from chief of police determination—Permit conditions and denials.

The chief of police shall cause a written notice of his or her decision to issue, condition or deny a permit to be mailed to the applicant by certified U.S. mail, postage prepaid, return receipt requested. Applicants aggrieved by the police chief's decision to condition or deny a permit may appeal such decision by following the procedures set forth in Section 5.16.190. If an appeal is not timely filed, the police chief's decision shall be final.

5.32.110 Suspension and revocation—Notice.

Any permit issued under the terms of this chapter may be suspended or revoked by the chief of police in writing upon determining that any of the grounds specified in Section 5.32.120 exist. No permit shall be revoked or suspended by virtue of this section until a hearing has been held by the chief of police. Written notice of the time and place of such hearing shall be served upon the person to whom the permit was granted at least five calendar days prior to the date set for such hearing. Such notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending such permit. Service of notice may be either by personal delivery to the person to be notified, or by depositing it in the U.S. mail in a sealed envelope, postage prepaid, addressed to the person to be notified at his or her address as it appears in his or her application for a permit.

5.32.120 Grounds for suspension and revocation of an active permit.

Any permit issued under the terms of this chapter may be suspended or revoked if any permittee, his or her agent, employee, or independent contractor:

- A. Has demonstrated a pattern of violating or failing to comply with the terms and conditions of the permit.
 - B. Does any act which violates any of the grounds for denial of the permit.
 - C. Has demonstrated a pattern of violating any other provision of this chapter or any federal, state or local law or regulation relating to his or her permitted activity.
 - D. Has demonstrated a pattern of engaging in or permitting misconduct substantially related to the qualifications, functions or duties of the permittee.
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- E. Conducts the massage business in a manner contrary to the peace, health, or safety of the public.
 - F. Has knowingly made any false, misleading or fraudulent statement of material fact in the application or in any documentation required to be filed in conjunction with said application.
 - G. Has been convicted of any of the crimes identified in Section 5.32.090.
 - H. Employs, retains or allows any person to provide massage services without an active and valid certificate from the CAMTC as a massage practitioner or massage therapist.
 - I. Engages in unprofessional conduct, including, but not limited to, the following:
 - 1. Engaging in sexually suggestive advertising related to massage services. Engaging in any form of sexual activity on the premises of a massage establishment where massage is provided for compensation.
 - 2. Engaging in sexual activity while providing massage services for compensation.
 - 3. Practicing massage on a suspended or revoked permit.
 - 4. Providing massage of the genitals or anal region.
 - 5. Providing massage of the female breasts without the written consent of the person receiving the massage and a referral from a licensed California health provider.
 - 6. 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 massage professional's undergarments.
 - b. Swim attire, if not providing a water based massage modality approved by the CAMTC.
 - c. A manner that exposes the massage professional's breasts, buttocks, or genitals.
 - 7. A manner that constitutes a violation of Section 314 of the California Penal Code.
 - a. A manner that is otherwise deemed by the CAMTC to constitute unprofessional attire based on the custom and practice of the profession in California.

5.32.130 Appeal from chief of police determination—Permit renewals, suspensions and revocations.

Any permittee aggrieved by the decision of the chief of police in refusing to renew, suspending or revoking a permit may appeal by following the procedures set forth in Section 5.16.190. During the pendency of the appeal, the permit shall remain in effect. If such appeal is not timely filed, the decision of the chief of police shall be final.

5.32.140 New permit application after denial, revocation or suspension.

If a massage business permit is suspended or revoked pursuant to this chapter, no permit shall be granted to the former permittee to conduct or carry on a massage business within five years after such suspension or revocation. Furthermore, when an application for a permit is denied for cause, no new application for a permit from the same person shall be accepted within five years after denial unless the applicant can show a material change in his or her situation that would justify the issuance of such permit.

5.32.150 Minors.

It is unlawful for any person to employ or retain anyone under the age of eighteen years as a massage professional. It is unlawful for any person under the age of eighteen to perform services as a massage professional.

5.32.160 Health requirements.

- A. It shall be the responsibility of a massage professional to refrain from providing massage services, if the massage professional has reason to believe that he or she has any communicable or contagious disease, any open wound of any nature, or any other condition which may be hazardous to the health of a client. Any massage professional having reason to believe that he or she may have any such disease or condition shall promptly notify his or her employer, or, if the massage professional is an independent contractor, to notify the person with whom he or she has been retained, and it shall thereafter be unlawful for the employer or owner to utilize the services of the massage professional unless the disease or condition is no longer present.
- B. The manager shall daily observe and question massage professionals as to their health and any communicable or contagious disease. Whenever the manager has reason to suspect that a massage professional has a communicable or contagious disease, he or she shall require the suspected individual to have an examination by a licensed physician. If the massage professional is found to have a disease or condition which may be hazardous to the health of a client, his or her employment or services rendered under contract shall be discontinued until reinstatement as a massage professional is approved in writing by a licensed physician certifying that the massage professional is free from communicable or contagious diseases.

5.32.170 Operating requirements for massage businesses—General conditions.

- A. It is unlawful and a public nuisance to own, conduct, control, or operate a massage establishment unless the owner or manager designated in the application for the massage establishment is present within such massage establishment at all times.
 - B. An owner and/or manager shall be responsible for the conduct of all massage professionals while they are on the massage establishment premises. Any act or omission of any massage professional, whether an employee or an independent contractor, constituting a violation of the provisions of this chapter, shall be deemed an act or omission of the owner or manager for the purposes of determining whether the massage business permit shall be revoked, suspended, conditioned, denied, or renewed.
 - C. No massage professional shall provide massage of the genitals or anal region of any client or the breasts of any female client without the written consent of the female client and a referral from a licensed California health care provider, nor shall any owner or manager of a massage business allow or permit such massage to the above specified areas. A massage shall not be given and no client shall be in the presence of a massage professional, independent contractor, owner, manager, or other employee of a massage business unless the client's genitals and the female client's breasts are fully covered by a non-transparent covering.
 - D. The hours of operation of the massage establishment must be posted in the front window, or on the door if there is no front window, and clearly visible from the outside.
 - E. The owner and/or manager shall ensure that the CAMTC certificate for each on-duty massage professional is conspicuously displayed, visible from the entrance and/or reception and waiting area of the massage establishment, and that each massage professional has at his or her immediate disposal the CAMTC photo identification card at all times when working in the massage establishment. Such identification shall be provided upon request of a member of the public, the CAMTC, a member of law enforcement, or a city official.
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- F. No owner and/or manager shall employ or retain any person as a massage professional who does not have an active and valid CAMTC certificate. Every owner or manager shall report to the chief of police any change of employees or independent contractors, whether by new or renewed employment, discharge or termination, on the form and in the manner required by the chief of police. The owner or manager shall provide the name of the employee or contractor and the date of hire or termination within fourteen calendar days of the date of hire or termination.
 - G. All owners, managers, massage professionals, other employees and independent contractors of the massage business shall be fully clothed at all times while furnishing massage services. No such individual shall dress while engaged in the practice of massage for compensation in any manner as outlined in Section 5.32.120.
 - H. No massage business shall operate as a school of massage, or use the same facilities as that of a school of massage.
 - I. The massage establishment shall be open to inspection by the chief of police, the fire chief, the building official, or their authorized representatives during normal business hours of the massage establishment.

5.32.180 Requirements for massage businesses—Facilities.

All owners and managers shall comply with the following operating requirements for massage businesses as well as any other conditions specified by the chief of police:

- A. Structure. Massage businesses shall be carried on in a permanent building. The owner shall obtain all required building permits per the California Building Code ("CBC").
 - B. Signs. Any signs shall be in conformance with the current sign ordinances of the city. Each owner and/or manager shall post and maintain, adjacent to the main entrance and the front of the business, a readable informational sign identifying the premises as a massage establishment.
 - C. Services List. Each owner and/or manager shall post and maintain a list of services available and the cost of such services in the lobby of the massage establishment in a conspicuous public place. The services shall be described in English. No owner or manager shall permit, and no person employed or retained by the massage business shall offer to perform, any services or charge any fees other than those posted.
 - D. Lighting. The interior of the massage establishment shall maintain adequate illumination to make the conduct of employees, independent contractors, and clients within the premises readily discernible. The lighting in each massage room shall be at least one, forty-watt white light bulb and shall be continuously activated at all times while the client is in a massage room. No strobe, flashing lights or dimmer switches shall be used. No colored lights shall be used nor shall any coverings be used which change the color of the primary light source.
 - E. Ventilation. In each massage room, the owner and/or manager shall provide minimum ventilation in accordance with the applicable building and fire codes.
 - F. Toilet Facilities. A minimum of one toilet and one separate wash basin shall be provided for clients in each massage establishment. The wash basin shall provide soap and hot and cold running water at all times and shall be located within close proximity to the massage rooms. A permanently installed soap dispenser, filled with soap, and a single service towel dispenser or hand dryer shall be provided at the restroom wash basin. Bar soaps shall not be used. A trash receptacle shall be provided in each toilet room.
 - G. Dressing Rooms. A room, which may be the room where massage is administered for each client, shall be available on the premises with individual lockers or a separate storage area for the clothing of the client. A separate dressing area and clothing locker or storage area is required where the massage is
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- performed in a place other than where the client changes his or her clothing. Doors to such dressing rooms shall open inward and shall be self-closing.
- H. Window Coverings. Any windows in the lobby shall not be covered. The lobby must be clearly visible from the exterior of the massage establishment at all times.
 - I. Maintenance. Wet and dry heat rooms, shower rooms and bath and toilet rooms shall be thoroughly cleaned and disinfected as needed, but at least once each day the premises are open. All facilities for the massage establishment must be in good repair and shall be thoroughly cleaned and sanitized at least on a daily basis when the massage establishment is in operation.
 - J. Massage Tables. A massage table shall be provided in each massage room and all massages shall be performed on the massage table, with the exception of "Thai," "Shiatsu," and similar modalities of massage therapy, which may be performed on a padded mat on the floor. No more than one client may occupy a massage table at the same time. Beds and floor mattresses shall not be permitted on the premises.
 - K. Front Door. One front door that enters into the lobby and/or other waiting room shall be provided for client use. All clients and any persons other than employees or independent contractors shall be required to enter and exit through the front door of the massage establishment.

5.32.190 Requirements for massage businesses—Operations.

All owners and managers shall comply with the following operating requirements for massage businesses as well as any other conditions specified by the chief of police:

- A. Sanitation. Each owner and/or manager shall provide and maintain on the premises adequate equipment and supplies for disinfecting and sterilizing instruments used in providing massages. Every portion of a massage establishment, including appliances and apparatus, shall be kept clean and in a sanitary condition. Appliances, apparatus, and equipment shall be disinfected after each use.
 - B. Linen. Shared use of towels or linen shall not be permitted. Towels and linen shall be laundered or changed promptly after each use. Separate enclosed cabinets shall be provided for the storage of clean and soiled linen and shall be plainly marked "clean linen" and "soiled linen" and shall have doors or covers.
 - C. Living Quarters Prohibited. No person or persons shall be allowed to reside, dwell, occupy or live inside a massage establishment at any time. A kitchen, if any, shall be for the sole use of employees and independent contractors, and shall be installed in an "employees only" area.
 - D. Persons Consuming Alcohol or Drugs. No person shall enter, be, or remain in any part of a massage establishment while consuming or using an alcoholic beverage or drug unless it is a drug prescribed for that individual. The owner or manager shall not permit any person consuming or using an alcoholic beverage or non-prescribed drug to enter or remain on such premises. Furthermore, no person shall administer or receive a massage while consuming or using an alcoholic beverage or drug unless it is a drug prescribed for that individual.
 - E. Recordings. No building or part thereof where massage or massage services are being conducted shall be equipped with any electronic, mechanical or artificial device used, or capable of being used, for recording or videotaping or monitoring the activities, conversation or other sounds in the treatment room or room used by clients, excepting only security cameras focused upon points of ingress and egress or the area at which financial transactions are conducted.
 - F. Warning Devices. The presence of any device which can be utilized as an early warning system, to alert the employees or independent contractors of a massage business to the presence of law enforcement officers or city authorities is prohibited in any massage establishment. Said devices may include, but
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are not limited to, light or music dimmers, electronic detection devices, external or internal video equipment and alarm systems other than those used for fire alarms.

- G. Coverings. Each massage establishment shall provide to all clients clean, sanitary, and opaque coverings of a minimum size of thirty inches by sixty inches, capable of covering the clients' specified anatomical areas, including but not limited to the genital area, buttocks, and female breasts. No shared use of such covering shall be permitted, and re-use is specifically prohibited unless adequately cleaned prior to its re-use.
- H. Records. Every owner and/or manager shall keep a record of the dates and hours of each treatment or service, the name and address of the client as confirmed by valid identification, the name of the massage professional administering such service and a description of the treatment or services rendered. These records shall be prepared prior to administering any massage or treatment and shall be retained for a period of two years after such treatment or service. These records shall be open to inspection upon demand only by officials charged with enforcement of this chapter or emergency personnel for emergency purposes and for no other purpose. The police department may periodically inspect the records to ensure compliance with this section.
- I. Hours of Operation. No massage establishment shall be open for business except during the hours of 6:00 a.m. to 10:00 p.m. on any day.
- J. Doors. All exterior doors (accept a rear entrance for staff only) and interior doors must remain unlocked during business hours, unless there is no massage business staff available to assure the security of clients and massage professionals who are behind closed doors. This subsection shall not apply to sole providers.
- K. Dress Code for Clients and Visitors. Except for a client who is inside a massage therapy room for the purpose of receiving a massage, no clients or visitors shall be permitted in or on the massage establishment premises at any time who are not fully clothed in outer garments of nontransparent material, or who display or expose themselves in underclothing, sheer clothing, or similar intimate apparel.
- L. Advertising.
 - 1. Any advertising matter published or distributed shall include in legible print the massage business license number.
 - 2. No massage business shall place, publish or distribute or cause to be placed, published or distributed any advertising matter that:
 - a. Depicts any portion of the human body that would reasonably suggest to prospective clients that any service is available other than legitimate massage services; or
 - b. Depicts individuals in suggestive poses that would reasonably suggest to prospective clients that any service is available other than legitimate massage services; or
 - c. Employs language in the text of any advertising that would reasonably suggest to prospective clients that any service is available other than legitimate massage services.
 - d. Advertise on a website known to advertise or promote illegal activities.

5.32.200 Operating requirements for out-call massage services.

- A. All equipment and apparatus shall be kept in a clean and sanitary condition and shall be disinfected after each use.
- B. Massage professional performing out-call massage services shall be fully clothed at all times while furnishing massage services. No such individual shall dress while engaged in the practice of massage for compensation in any manner as outlined in Section 5.32.120.

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- C. Each massage professional performing out-call massage services shall have in his or her possession, their CAMTC photo identification card while administering a massage.
 - D. Out-call massage services must be performed in accordance with all other conditions as set forth in this chapter, and shall not include any services prohibited from being offered at a massage establishment under this chapter.
 - E. No out-call massage services shall be conducted except during the hours of 6:00 a.m. to 10:00 p.m. on any day.
 - F. No massage professional performing out-call massage services shall provide massage of the genitals or anal region of any client. No massage professional performing outcall massage services shall provide massage to the breasts of any female client without the written consent of the female client and a referral from a licensed California health care provider.

A massage shall not be given and no client shall be in the presence of a massage professional performing out-call massage services unless the client's genitals and the female client's breasts are fully covered by a non-transparent covering.

- G. A list of services shall be available for review of the client or authorized representative of the chief of police upon request and shall be described in English. No massage professional shall offer to perform out-call massage services other than those listed.
- H. No person shall administer or receive an out-call massage while consuming or using an alcoholic beverage or drug unless it is a drug prescribed for that individual.

5.32.210 Display of permit/certificate.

- A. Every massage business permit issued pursuant to this chapter shall be conspicuously displayed so that it may be easily seen by any client or other person on the massage establishment premises.
- B. Any person providing massage services or out-call massage services shall have an active and valid CAMTC certificate and CAMTC photo identification card readily available for inspection at all times while providing such services, and shall show the certificate and identification card to any member of the public, the CAMTC, a member of law enforcement, or a city official upon request.
- C. Any person who provides out-call massage services, or who is a sole proprietor or independent contractor leasing space at a massage establishment, shall have their permit available for inspection at all times while providing such services, and shall show the permit to any authorized representative of the city.

5.32.220 Permit—Non-transferable, change of address or contact information.

Any massage business permit issued pursuant to this chapter is valid only at the address, if applicable, and for the person specified therein and cannot be sold, transferred or assigned to any other person. Change of the massage business address requires the owner or manager to notify the chief of police in writing ten calendar days prior to the massage business moving to a new location and requires an inspection of the massage establishment prior to the massage business accepting clients for massage therapy. Failure to notify the chief of police of the change of address shall render any permit void and any operation of a massage business unlawful.

5.32.230 Exemptions.

The following persons and businesses shall be exempt from the requirements of this chapter.

- A. Persons holding an active and valid certificate to practice the healing arts under the laws of the state of California and their employees and independent contractors, including, but not limited to, holders of

medical degrees such as physicians, surgeons, chiropractors, osteopaths, naturopaths, podiatrists, acupuncturists, physical therapists, registered nurses, and licensed vocational nurses, when practicing the healing arts within the scope of an applicable license.

- B. State-licensed hospitals, nursing homes, sanitariums, physiotherapy businesses, or other state-licensed physical or mental health facilities and their employees or independent contractors.
- C. Approved schools of massage and their students in training provided such students provide massage therapy only under the direct personal supervision of an instructor.
- D. Barbers and cosmetologists who are licensed under the laws of the state of California, while providing massage therapy within the scope of their licenses, provided that such massage therapy is limited solely to the neck, face, scalp, feet, and lower limbs up to the knees, and hands and arms, of their clients.
- E. Persons who, acting within the scope of their employment, provide massage therapy to semi-professional or professional athletes or athletic teams, facilities or events.

5.32.240 Criminal penalties.

It is unlawful and a public nuisance to violate any of the provisions of this chapter. Violation of this chapter is a misdemeanor.

5.32.250 Civil injunction.

The violation of any provision of this chapter shall be and is hereby declared to be contrary to the public interest and shall, at the discretion of city, create a cause of action for injunctive relief.

5.32.260 Administrative remedies.

In addition to the civil remedies and criminal penalties set forth above, any person that violates the provisions of this chapter may be subject to administrative remedies, as set forth by city ordinance.

5.32.270 Cumulative remedies, procedures and penalties.

Unless otherwise expressly provided, the remedies, procedures and penalties provided by this chapter are cumulative to each other and to any others available under state law or other city ordinances.

5.32.280 Separate offense for each day.

Any person that violates any provision of this chapter shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof, and shall be punished accordingly.

5.32.290 Severability.

The provisions of this chapter are hereby declared to be severable. If any provision, clause, word, sentence, or paragraph of this chapter or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this chapter.

INTRODUCED at a regular meeting of the City Council of the City of Lincoln held on January 28, 2025.

PASSED AND ADOPTED this 11th day of February, 2025

AYES: COUNCILMEMBERS: Andreatta, Brown, Eklund, Pearl, Reedy

NOES: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None

Holly Andreatta, Mayor

ATTEST:

Hope Ithurnburn, City Clerk