

ORDINANCE NO. 569-AC

**AN ORDINANCE OF THE CITY OF NEEDLES
APPROVING AMENDMENTS TO THE CITY OF NEEDLES MUNICIPAL CODE
PERTAINING TO THE REGULATION OF MASSAGE ESTABLISHMENTS:
REPEALING ARTICLE III OF CHAPTER 12 (LICENSES) "MASSAGE
ESTABLISHMENTS AND TECHNICIANS" AND ADDING ARTICLE VI TO
CHAPTER 12 "MASSAGE ESTABLISHMENTS";
AMENDING ARTICLE XXI SECTION 121.01 "DEFINITIONS"; ELIMINATING
SECTION 121.01(9); AMENDING SECTION 121.02 "ESTABLISHMENT AND
CLASSIFICATION OF BUSINESSES REGULATED; AND AMENDING SECTION
96.01 TABLE OF PERMISSIBLE USES.**

WHEREAS, on September 27, 2008, the Legislature adopted Senate Bill 731, which created the California Massage Therapy Council ("CAMTC") to provide voluntary statewide certification of massage practitioners and therapists; and

WHEREAS, Senate Bill 731 was widely criticized by local agencies as providing massage businesses with unprecedented protection from local zoning and land use authority, and interfering with local law enforcement efforts to close massage businesses, allowing prostitution and other illegal activities; and

WHEREAS, on September 18, 2014, in response to this criticism, Governor Brown signed Assembly Bill 1147 ("AB 1147"), effective January 1, 2015, which revises existing law regulating certified massage professionals and allows local agencies to impose reasonable zoning, business licensing, and health and safety requirements on massage establishments; and

WHEREAS, the City of Needles wishes to amend portions of the Municipal Code to ensure that the City regulates massage practitioners and massage establishments in compliance with the provisions of AB 1147 and other applicable law; and

WHEREAS, a public hearing notice for the Needles City Council meeting was published in the Needles Desert Star on February 11, 2015 and a Notice of Continuance was posted on February 25, 2015, continuing said hearing to April 14, 2015; and

WHEREAS, a public hearing notice for the Needles Planning Commission meeting was published in the Needles Desert Star on March 11, 2015; and

WHEREAS, on April 1, 2015, the Needles Planning Commission held a duly noticed and advertised public hearing to receive oral and written testimony relative to amendment of the Needles Municipal Code, and following the conclusion thereof, adopted Resolution No. 04-01-2015-1PC, recommending that the City Council make such amendment; and

WHEREAS, on April 14, 2015, the Needles City Council held a duly noticed and advertised public hearing to receive oral and written testimony relative to the amendment to the Needles Municipal Code; and

WHEREAS, the Needles City Council has sufficiently considered all testimony and documentary evidence presented to them in order to make the following determination:

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NEEDLES DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council finds that the actions contemplated by this Ordinance are exempt from the California Environmental Quality Act (“CEQA”) pursuant to Section 15060 (c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

SECTION 2. The City Council hereby declares that if any provision, section, paragraph, sentence, or word of this Ordinance is rendered or declared to be invalid or unconstitutional by any final court action in a court of competent jurisdiction, or by reason of any preemptive legislation, such invalidity shall not affect the other provisions, sections, paragraphs, sentences or words of this Ordinance, and to this end the provisions of this Ordinance are severable. The City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance enforced.

SECTION 3. Neither the adoption of this Ordinance nor the repeal of any other ordinance of this City shall in any manner affect the prosecution of any violation of any City ordinance or provision of the City of Needles Municipal Code, committed prior to the effective date hereof, nor be construed as a waiver of any penalty or the penal provisions applicable to any violation thereof.

SECTION 4. The City Council hereby repeals Part II, Chapter 12 (Licenses), Article III “Massage Establishments and Technicians” and adds to the City Code Article VI to Chapter 12 “Massage Establishments” as follows:

Section 12-220. **Purpose and Intent.**

The purpose and intent of this Article is to provide for the orderly regulation of Massage Establishments, as defined herein, and to prevent and discourage the misuse of Massage Therapy as a front for prostitution and related activities in violation of state law. It is in the interests of the public health, safety, and welfare to provide certain minimum building, sanitation, and operation standards for such businesses, and by requiring certain minimum qualifications for the Operators and practitioners of such businesses.

Section 12-221. **Definitions.**

For the purposes of this Article, unless the context clearly requires a different meaning, the words, terms and phrases set forth shall have the following definitions:

- (A) **“CAMTC”** shall mean the California Massage Therapy Council as established by the Massage Therapy Act, Chapter 10.5 of Division 2 of the Business and Professions Code;
- (B) **“Certified Massage Establishment”** means a Massage Establishment where each Massage Establishment Operator and each person employed or retained to practice Massage Therapy for compensation is a Certified Massage Professional;
- (C) **“Certified Massage Establishment Permit”** means a permit required by this Article to operate a Certified Massage Establishment;
- (D) **“Certified Massage Professional”** means any individual certified by the CAMTC as a “Certified Massage Therapist” or “Certified Massage Practitioner” as having met or exceeded the minimum educational standards established by California Business and Professions Code sections 4600 *et seq.*, and having passed all background checks required by CAMTC;
- (E) **“City”** shall mean the City of Needles;
- (F) **“Code”** shall mean the City of Needles Municipal Code;
- (G) **“Massage Establishment”** means any establishment having a fixed place of business, including a Sole Proprietor, firm, association, partnership, limited liability company, corporation, joint venture, or combination thereof, that offers Massage Therapy for compensation within the City. “Massage Establishment” shall include the term “massage and/or bodywork office or establishment.” Any business or establishment that offers any combination of Massage Therapy and bath facilities including, but not limited to, showers, baths, wet and dry heat rooms, pools and hot tubs, shall be deemed a Massage Establishment under this Article;
- (H) **“Massage Therapy”** means any method of pressure on, or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating the external parts of the human body with the hands or with the aid of any mechanical electrical apparatus, or other appliances or devices, with or without such supplementary aids such as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment, aromatherapy or other similar preparations and techniques. For the purposes of this Article, “Massage Therapy,” “massage” and/or “bodywork” will be used interchangeably;
- (I) **“Operator”** and/or **“Massage Establishment Operator”** means any and all owners of a Massage Establishment;
- (J) **“Operator Permit”** means a permit required by this Article to operate a Massage Establishment that does not qualify as a Certified Massage Establishment;
- (K) **“Patron”** means an individual on the premises of a Massage Establishment for the purpose of receiving Massage Therapy;

- (L) **“Person”** and/or **“Persons”** shall include any individual, firm, association, partnership, corporation, joint venture, limited liability company, or combination of individuals;
- (M) **“Reception and Waiting Area”** means an area immediately inside the main entry door of the Massage Establishment dedicated to the reception and waiting of Patrons and Visitors of the Massage Establishment, and which is not a Massage Therapy room or otherwise used for the provision of Massage Therapy services;
- (N) **“Sole Proprietorship”** and/or **“Sole Proprietor”** means a Massage Establishment where the owner owns 100 percent of the business, is the only person who provides Massage Therapy services for compensation for that business, and has no other employees or independent contractors;
- (O) **“Visitor”** means any individual not retained or employed by the Massage Establishment and not receiving or waiting to receive Massage Therapy services, but excluding law enforcement personnel or governmental officials performing governmental business.

Section 12-222. Certification by CAMTC Required for Practitioners.

It shall be unlawful for any individual to practice Massage Therapy for compensation within the City unless that individual is currently certified by the CAMTC as a Certified Massage Professional.

Section 12-223. Operation of Massage Establishments.

- (A) It shall be unlawful for any person or persons to operate a Massage Establishment, or to employ or retain a person to practice Massage Therapy for compensation, within the City without first obtaining a Certified Massage Establishment Permit or an Operator Permit pursuant to the requirements of this Article and a City Business License.
- (B) It shall be unlawful for any Massage Establishment Operator within the City to employ or retain any person to practice Massage Therapy for compensation, or to allow any person to perform Massage Therapy for compensation on the premises of a Massage Establishment, unless the person is a Certified Massage Professional, as defined in this Article.

For purposes of this Article, an Operator “employs or retains” a person to practice Massage Therapy for compensation if:

- (1) That person is a directly paid employee of the Massage Establishment; or
- (2) That person is an independent contractor who receives compensation for Massage Therapy provided to Patrons of the Massage Establishment; or

- (3) That person receives a referral of Patrons from the Massage Establishment and, at any time before or after the referral, arranges in any way for compensation to flow to the Massage Establishment Operator (whether or not the parties acknowledge the same or record such compensation in their financial records).

Section 12-224. Permit Applications for Massage Establishments.

(A) Certified Massage Establishment Permit.

- (1) All Operators of a Certified Massage Establishment shall file an application for a Certified Massage Establishment Permit with the City Manager or his/her designee. The application shall include the following information:
 - (a) The name, address, and telephone number of the Massage Establishment;
 - (b) The name, residence address and telephone number of the Massage Establishment Operator(s) applying for the Certified Massage Establishment Permit, along with a copy of a valid government issued photo ID;
 - (c) The form of business under which the Operator(s) will be conducting the Massage Establishment, i.e. corporation, general or limited partnership, limited liability company or other form. If the Operator 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 address(es) of each of its officers, directors, and each shareholder holding more than ten percent (10%) of the stock of the corporation. If the Operator is a general or limited partnership, the application shall set forth the name and residence address of each of its members. If one (1) or more of the members is a partnership, limited liability company, or corporation, the provisions of this section pertaining to partnership, limited liability company, or corporate Operator shall apply, as applicable;
 - (d) 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 Operator is not the legal owner of the property, the application shall be accompanied by a copy of a written and signed lease between the Operator and the property owner authorizing use of the premises as a Massage Establishment, or, if no written lease exists, a written, notarized acknowledgement from the property owner that the property owner has been advised that a Massage Establishment will be operated upon, in, or from the property;
 - (e) A description of the proposed Massage Establishment, including the type of treatments to be administered;

- (f) The name of each person that the Massage Establishment employs or retains to perform Massage Therapy;
 - (g) For each person that the Massage Establishment does or will employ or retain to perform Massage Therapy for compensation, a copy of that person's current CAMTC certification as a Certified Massage Practitioner or Certified Massage Therapist, and a copy of that person's current CAMTC-issued identification card;
 - (h) For each Operator of the Certified Massage Establishment, a copy of that person's current CAMTC certification as a Certified Massage Practitioner or Certified Massage Therapist, and a copy of that person's current CAMTC-issued identification card.
- (2) Any application for a Certified Massage Establishment Permit shall be accompanied by a fee to be set by resolution.
 - (3) Within thirty (30) days following receipt of a completed permit application, the City Manager or his/her designee shall grant a Certified Massage Establishment Permit to an Operator who has satisfied the requirements of this section and all other applicable laws, including but not limited to, the City's building, zoning, business, and health regulations. The permit shall include, but not be limited to, the name of the Massage Establishment, the address of the Massage Establishment, the name(s) of the Operator(s) of the Massage Establishment, the date of issuance of the permit, the date of expiration of the permit, the permit number, a listing of the Certified Massage Professionals registered and authorized to perform Massage Therapy for the Massage Establishment, and a listing of any other persons employed or retained to work in any other capacity on the premises.

(B) Operator Permit.

- (1) All Operators of a Massage Establishment that does not qualify as a Certified Massage Establishment shall file an application for an Operator Permit with the City Manager or his/her designee. The application shall include the following information:
 - (a) The name, address, and telephone number of the Massage Establishment;
 - (b) The name, residence address and telephone number of the Massage Establishment Operator(s) applying for the Operator Permit, along with a copy of a valid government issued photo ID;
 - (c) The form of business under which the Operator(s) will be conducting the Massage Establishment, i.e. corporation, general or limited partnership, limited liability company or other form. If the Operator 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 address(es) of each of its officers, directors, and each shareholder holding more than ten percent (10%) of the stock of the corporation. If the Operator is a general or limited partnership, the application shall set forth the name and residence address of each of its members. If one (1) or more of the members is a partnership, limited liability company, or corporation, the provisions of this section pertaining to partnership, limited liability company, or corporate Operator shall apply, as applicable;

- (d) The name and address of the owner of the real property upon, in, or from which the Massage Establishment is to be operated. In the event the Operator is not the legal owner of the property, the application shall be accompanied by a copy of a written and signed lease between the Operator and the property owner authorizing use of the premises as a Massage Establishment, or, if no written lease exists, a written, notarized acknowledgement from the property owner that the property owner has been advised that a Massage Establishment will be operated upon, in, or from the property;
- (e) A description of the proposed Massage Establishment, including the type of treatments to be administered;
- (f) The name of each person that the Massage Establishment employs or retains to perform Massage Therapy;
- (g) For each person that the Massage Establishment does or will employ or retain to perform Massage Therapy, a copy of that person's current CAMTC certification as a Certified Massage Practitioner or Certified Massage Therapist, and a copy of that person's current CAMTC-issued identification card;
- (h) Whether any license or permit has ever been issued to the Operator(s) by any jurisdiction under the provisions of any ordinance or statute governing massage or somatic practice, 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;
- (i) Whether the Operator(s) has within the five (5) years immediately preceding the date of application, been convicted in any state of a felony, or any crime of, or related to, prostitution, along with the jurisdiction of the conviction and charges of which the Operator(s) was convicted;

- (j) Whether the Operator(s) is currently required to register under the provisions of Section 290 of the California Penal Code or any similar mandatory registration law from another state or federal jurisdiction;
 - (k) The Operator(s)' business, occupation, and employment history for five (5) years preceding the date of application, and the inclusive dates of same;
 - (l) One (1) set of fingerprints for each Operator in a form satisfactory to the City Manager or his/her designee. The fingerprints shall be taken at a place designated by the City Manager or his/her designee, and any required fee for such fingerprinting shall be paid by the Operator;
 - (m) Such other information as may be required by the City Manager or his/her designee to determine compliance with any other eligibility requirements for issuance of the permit as specified by federal, state, or local law. The City Manager or his/her designee shall waive requirements of subsections (h) through (m) of this section for an Operator who is also a Certified Massage Professional, provided that they provide a copy of their CAMTC certification as a Certified Massage Practitioner or Certified Massage Therapist, and a copy of their CAMTC-issued identification card.
- (2) Any application for an Operator Permit shall be accompanied by a fee to be set by resolution.
- (3) Within thirty (30) days following receipt of a completed permit application, the City Manager or his/her designee shall grant an Operator Permit for the Massage Establishment if the Massage Establishment Operator(s) have satisfied the requirements of this section and all other applicable laws, including, but not limited to, the City's building, zoning, business, and health regulations, unless the City Manager or his/her designee determines any or more of the following to be true:
- (a) The Operator, or any shareholder, partner, or member of the Operator, within five (5) years immediately preceding the date of filing 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 Therapy 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 the Massage Establishment; or
 - (b) The Operator(s) is currently required to register under the provisions of Section 290 of the California Penal Code law or any similar mandatory registration from another state or federal jurisdiction; or

- (c) The Operator, or any shareholder, partner, or member of the Operator, within five (5) years of the date of application, has been convicted in a court of competent jurisdiction of any violation of Section 266, 266a, 266e, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), and/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 the aforesaid offenses; or
- (d) The Operator, or any shareholder, partner, or member of the Operator, has been subjected to a permanent injunction against the conducting or maintaining of a nuisance pursuant to Section 11225 through 11235 of the California Penal Code, or any similar provisions of law in a jurisdiction outside of the State of California; or
- (e) The Operator(s), if an individual, has not attained the age of eighteen (18) years; or
- (f) The Operator, or any shareholder, partner, or member of the Operator, has knowingly made a false statement or omission of a material fact in the application for the permit; or
- (g) The Operator, or any shareholder, partner, or member of the Operator, within five (5) years immediately preceding the date of filing the application, has had a permit or license to practice Massage Therapy for compensation or to own and/or operate a Massage Establishment revoked or denied in any jurisdiction.

The permit shall include, but not be limited to, the name of the Massage Establishment, the address of the Massage Establishment, the names of the Operator(s) of the Massage Establishment, the date of issuance of the permit, the date of expiration of the permit, the permit number, a listing of the Certified Massage Professionals registered and authorized to perform Massage Therapy for the Massage Establishment, and a listing of any other persons employed or retained to work in any other capacity on the premises.

(C) Denial of Permit Application.

- (1) If a Certified Massage Establishment Permit or an Operator Permit is denied, the City Manager or his/her designee shall serve on the Operator(s) a written notice of denial specifying the grounds for the denial and of the right to request a hearing in regard thereto.
- (2) The Operator(s) shall have the right to appeal from a decision by the City Manager or his/her designee to deny a Certified Massage Establishment Permit or an Operator Permit by filing with the City Clerk a written notice of appeal,

specifying the grounds for such appeal, within ten (10) days after the decision has been served on the Operator(s). Such appeal shall be heard by the City Council within 90 days after the notice of appeal is received by the City Clerk. The Operator(s) shall be given not less than fifteen (15) days written notice of the date, time and location of appeal hearing. The City Council shall consider all relevant evidence at the hearing, may continue the hearing, and may require evidence and legal briefing as the Council determines may be helpful in addressing issues raised by the appeal. Not more than sixty (60) days following the conclusion of the hearing, the City Council shall issue a written decision as to whether the application shall be granted or denied. The written decision shall be served on the Operator(s) as provided in Code of Civil Procedure Section 1094.6, with a copy served on the City Manager or his/her designee. The written decision of the City Council shall be final and shall only be subject to judicial review according to the provisions and time limits set forth in Code of Civil Procedure Section 1094.6.

Section 12-225. Notice to Property Owner.

Where the Operator for a Certified Massage Establishment Permit or Operator Permit is not the record owner as shown on the latest county recorder's official records for the property upon, in, or from which the Massage Establishment is to be operated, then upon issuance of the permit, the City Manager or his/her designee may send a written notice to the property owner advising of the issuance of the permit and of the regulations applicable to the Massage Establishment and the property pursuant to this Article. Any other notices sent to the Operator pursuant to this Article at any time before or after the issuance of the permit may also be sent to the property owner.

Section 12-226. Requirement to Amend Permit Application.

Whenever the information provided in the application for a Certified Massage Establishment Permit or Operator Permit on file with the City changes (e.g. a change in employees), the Operator shall, within ten (10) business days after such change, file an amendment to the permit application with the City Manager or his/her designee. The amendment shall be accompanied by a fee set by resolution. It shall be a violation of this Article for an Operator to allow, and person to perform, Massage Therapy for compensation on the premises of a Massage Establishment unless and until an amended permit has been issued by the City Manager or his/her designee.

Section 12-227. Permit Renewal.

A Certified Massage Establishment Permit or Operator Permit issued pursuant to the terms of this Article shall be valid for a term of one (1) year from the date of issuance. A permit that has not expired and has not been suspended or revoked pursuant to Section 12-230 "Revocation and Suspension of Permits" may be renewed for another one-year period, on submittal of a written application and payment of an application fee to be set by resolution.

Section 12-228. Regulations Applicable to the Operation of Massage Establishments.

- (A) Operational Requirements. Except as otherwise specifically provided in this Article, the following operational requirements shall be applicable to all Massage Establishments located within the City:
- (1) Massage Establishments shall comply with all applicable Code Requirements, including, but not limited to, obtaining a business license.
 - (2) No Massage Establishment shall be open for business between the hours of 8:00 p.m. and 9:00 a.m. A massage begun any time before 8:00 p.m. must nevertheless terminate at 8:00 p.m. The hours of operation shall be displayed in a conspicuous place in the Reception and Waiting Area and in any front window clearly visible from outside of the Massage Establishment. Patrons shall be permitted in the Massage Establishment only during the hours of operation.
 - (3) During the hours of operation, Patrons shall be permitted in Massage Therapy rooms only if at least one (1) duly authorized Certified Massage Professional is present on the premises of the Massage Establishment. Patrons shall not be permitted in any employee break room.
 - (4) During the hours of operation, Visitors shall not be permitted in any Massage Therapy room except:
 - (a) As a parent or guardian of a Patron who is a minor child;
 - (b) As a minor child of a Patron where necessary for the supervision of the child; or
 - (c) As a conservator, aid, or other caretaker of a Patron who is elderly or disabled.
 - (5) Except as otherwise provided herein, Visitors shall not 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 the restroom.
 - (6) A list of services, the length of services, and the cost of such services shall be posted in an open and conspicuous public place on the premises, or provided to Patrons before services are rendered. No Massage Establishment Operator shall permit, and no person employed or retained by the Massage Establishment shall perform or offer to perform any services or request or demand any fees other than those posted.

- (7) Each Massage Establishment shall require all Patrons to sign in before receiving service with their full name and the date of their visit. Each Massage Establishment shall post in the Reception and Waiting Area a notice containing the following text in upper case two inch high letters: "SOLICITATION OF PROSTITUTION IS A CRIME IN THE STATE OF CALIFORNIA AND WILL BE REPORTED TO LAW ENFORCEMENT." Any person practicing Massage Therapy in the Massage Establishment shall be required to notify the Needles division of the San Bernardino County Sheriff's Department of a Patron who solicits or attempts to solicit prostitution at the Massage Establishment.
 - (8) Each holder of a Certified Massage Establishment Permit or Operator Permit shall display that permit in an open and conspicuous place on the premises visible from the entrance and/or Reception and Waiting Area of the Massage Establishment. Any person who practices Massage Therapy shall carry with them their CAMTC issued certification card at all times while on the premises of a Massage Establishment for the purpose of practicing Massage Therapy.
- (B) Physical Facility and Building Code Requirements. Except as otherwise specifically provided in this Article, the following physical and building code requirements shall be applicable to all Massage Establishments located within the City:
- (1) One main entry door shall be provided for Patron entry to the Massage Establishment, which shall open to an interior Reception and Waiting Area. 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 employs or retains only one employee, 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) No doors shall be permitted in Massage Therapy rooms or cubicles. Only a drape or curtain or accordion-pleated closure may be used for privacy, which shall not be blocked to prevent opening. Dressing rooms and restrooms may have a door capable of locking.
 - (4) Minimum lighting equivalent to at least one (1) 40-watt light shall be provided in each Massage Therapy room or cubicle.
 - (5) A minimum of one ADA compliant and handicap accessible tub or shower, and one ADA compliant and handicap accessible toilet and washbasin shall be provided in every Massage Establishment.

- (6) A massage table 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 clothed. Massage Therapy tables shall have a minimum height of eighteen (18) inches.
 - (7) 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.
 - (8) All locker facilities that are provided for the use of Patrons shall be fully secured for the protection of the Patron's valuables, and each Patron shall be given control of the key or other means of access.
 - (9) Minimum ventilation shall be provided in accordance with the Building Code of the City.
 - (10) All restrooms or washbasins shall be provided with hot and cold running water, soap, and single-service towels in wall-mounted dispensers.
 - (11) The Massage Establishment shall comply with all applicable state and local building standards and requirements, and the fire code.
 - (12) All plumbing and electrical installations shall be installed under permit and inspection of the building inspection department and such installations shall be installed in accordance with the Uniform Building Code and the Uniform Plumbing Code.
- (C) Health and Safety Requirements. Except as otherwise specifically provided in this Article, 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 shall be covered with a clean sheet or other clean covering 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. Clean towels, coverings, and linens shall be stored in closed, clean cabinets when not in use. Heavy white paper may be used in lieu of towels, coverings, or linen, provided that the paper is used once for each Patron and then discarded into a sanitary receptacle.
 - (2) All Massage Therapy rooms or cubicles, wet and dry heat rooms, restrooms, shower compartments, hot tubs, and pools shall be thoroughly cleaned and disinfected as needed, and at least once each business day when the premises have

been or will be open and such facilities are in use. All bathtubs shall be thoroughly cleaned and disinfected after each use.

- (3) The walls in all rooms where water or steam baths are given shall have washable, mold-resistant surfaces.
- (4) All liquids, creams, or other preparations used on or made available to Patrons shall be kept in clean and closed containers, and according to the instructions for storage and use. 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 so as to not contaminate the remaining portion.
- (5) Disinfecting agents and sterilizing equipment shall be provided for any instruments used in performing acts of Massage Therapy, and said instruments shall be disinfected and sterilized after each use.
- (6) Pads used on massage tables shall be covered with durable, washable plastic or other acceptable waterproof material.
- (7) 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 (1) Patron, or shall be laundered after each use.
- (8) 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 (1) Patron, or shall be fully disinfected after each use.
- (9) 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 shall be either fully disposable and not used by more than one (1) Patron, or shall be fully disinfected after each use.
- (10) The Patron's genitals, pubic area, anus, and areola must be fully covered at all times while any individual employed or retained by the Massage Establishment to practice Massage Therapy for compensation, or any other employee or Operator of the Massage Establishment, is in the Massage Therapy room or cubicle with the Patron. No Massage Therapy shall be provided to a Patron that results in contact with genitals, pubic area, anus, or areola of the Patron.
- (11) No alcoholic beverages shall be sold, served, or furnished to any Patron; nor shall any alcoholic beverages be kept, possessed, or consumed on the premises of the 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 the Massage Establishment within the City, including, but not limited to, all persons who are employed or retained to practice Massage Therapy or bodywork 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 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 and while in the presence of any Patron, customer, employee or Visitor, expose his or her pubic areas, areola, breasts, buttocks, or genitals.
 - (3) All persons shall thoroughly wash their hands with anti-bacterial soap and water or any equally effective cleansing agent immediately before providing Massage Therapy to a Patron. No Massage Therapy 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.

Section 12-229. Massage Establishment Inspection.

- (A) Any and all investigating officials of the city shall have the right to enter Massage Establishments from time to time during regular business hours to make reasonable inspections and observe and enforce compliance with building, fire, electrical, plumbing or health regulations, and this Code. A warrant shall be obtained whenever required by law.
- (B) The Massage Establishment Operator shall take immediate action to correct each violation noted by the investigating official. A re-inspection will be performed within thirty (30) days to ensure that each violation noted by the investigating official has been corrected.

Section 12-230. Revocation and Suspension of Permits.

In addition to any other remedy available to the City under this Code or state law, a Certified Massage Establishment Permit or Operator Permit may be suspended or revoked by the City Manager or his/her designee. Upon suspension or revocation, the Massage Establishment shall immediately cease operation. If so ordered by the City Manager or his/her designee, no

other Massage Establishment shall be permitted to operate at that location by any person for a period of not less than one (1) year. If the Operator is not also the legal owner of the real property on which the Massage Establishment is situated, notice of such suspension or revocation and the one-year prohibition, if any, shall be provided by the City Manager or his/her designee to the owner of record of the property as shown on the latest county recorder's official records.

Notwithstanding any other provision of this Article, where a notice of revocation or suspension has been issued to the Operator of a Massage Establishment, the City Manager or his/her designee shall not process or grant an application for a Certified Massage Establishment Permit or Operator Permit for a new Massage Establishment at the same premises unless and until such notice is dismissed, or a final determination is made that the permit is not or should not be revoked or suspended, or any prohibition period has expired.

(A) Grounds for Revocation and Suspension.

All Massage Establishment Operators shall be deemed to know and understand the requirements and prohibitions of this Article. The Massage Establishment Operator shall be responsible for the conduct of all Massage Establishment employees, agents, independent contractors, and other representatives, while on the premises of the Massage Establishment.

Any Certified Massage Establishment Permit or Operator Permit may be suspended or revoked by the City Manager or his/her designee after a hearing, where it is found by a preponderance of the evidence that any of the following have occurred, on even a single occasion:

- (1) The person(s) to whom the Certified Massage Establishment Permit or Operator Permit was issued, or any person employed or retained by the Massage Establishment, has been found to have violated any provision of this Article; or
- (2) Any owner of a Massage Establishment which is operating pursuant to a Certified Massage Establishment Permit is no longer qualified as a Certified Massage Professional; or
- (3) The permittee or any person employed or retained by the Massage Establishment has been convicted in a court of competent jurisdiction of having violated, or has engaged in conduct constituting a violation of California Penal Code Section 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 647(b), or 653.22, 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; or
- (4) The permittee or any person employed or retained by the Massage Establishment is required to register under Section 290 of the California Penal Code; or

- (5) The permittee has been subject to a permanent injunction against the conducting or maintaining of a nuisance pursuant to this Code, or Section 11225 through 11235 of the California Penal Code, or any similar provision of law in any jurisdiction outside of the State of California; or
- (6) The permittee or any person employed or retained by 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; or
- (7) The permittee has continued to operate the Massage Establishment after the Certified Massage Establishment Permit or Operator Permit has been suspended; or
- (8) Massage Therapy is or has been performed on the premises of the Massage Establishment, with or without the permittee's actual knowledge, by any person who is not a duly authorized Certified Massage Professional; or
- (9) There have been one or more acts prohibited under California Penal Code Sections 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), or 653.22 taking place on the premises of the Massage Establishment, whether or not any criminal prosecution has been pursued or conviction obtained for such acts, and whether or not they occurred with or without the actual knowledge of the permittee; or
- (10) Any person employed or retained by the Massage Establishment engages in conduct prohibited by the CAMTC in section 4609 of the California Business and Professions Code; or
- (11) The permittee or any person employed or retained by the Massage Establishment, or any other person on the premises of the Massage Establishment, has engaged in conduct or committed acts that a reasonable person in the Patron's position would understand as an offer to perform on or engage in with the Patron acts that are sexual in nature or that involve touching of the patron's genitals, pubic area, anus, and/or areola.

(B) Notice of Revocation or Suspension.

The City Manager or his/her designee, before revoking or suspending any Certified Massage Establishment Permit or Operator Permit, shall provide the Operator with written notice of the alleged grounds for suspension or revocation and of a right to request a hearing in regards thereto.

(C) Hearing and Appeal.

The Operator(s) shall have the right to appeal from a decision by the City Manager or his/her designee to suspend or revoke a Certified Massage Establishment Permit or an Operator

Permit by filing with the City Clerk a written notice of appeal, specifying the grounds for such appeal, within ten (10) days after the decision has been served on the Operator(s). Such appeal shall be heard by the City Council within ninety days (90) and with not less than fifteen (15) days written notice to the Operator(s) of the date, time and location of the hearing. The City Council shall consider all relevant evidence at the hearing, may continue the hearing, and may require such evidence and legal briefing as may be helpful in addressing issues raised by the appeal.

(D) Notice of Decision.

Within a reasonable time, but not more than sixty (60) days following the conclusion of the hearing, the City Council shall issue a written decision as to whether the permit shall be revoked or suspended. The written decision shall be served on the permit holder as provided in Code of Civil Procedure section 1094.6, with a copy submitted to the City Clerk and City Attorney. The written decision shall be final and subject to judicial review according to the provisions and time limits set forth in Code of Civil Procedure section 1094.6.

Section 12-231. Legal Non-Conforming Uses.

Notwithstanding any provision to the contrary in this Code, including Part III, Article XV "Non-conforming Situations," any Massage Establishment legally operating within the City prior to execution of this Article shall have one (1) year to come into compliance with the same.

Section 12-232. Change of Business Name or Location.

No person permitted to operate a Massage Establishment under this Article shall operate under any name or conduct business under any designation not specified in the Certified Massage Establishment Permit or Operator Permit and City business license. Upon change of location of a Massage Establishment where there is no change in Massage Establishment Operator(s), an application for an amended Certified Massage Establishment Permit or Operator Permit shall be filed with the City Manager or his/her designee, and such application shall be granted, provided all applicable provisions of this Article are complied with as to the new location.

Section 12-233. Permits Non-transferrable.

Certified Massage Establishment Permits and Operator Permits are non-transferable. Upon a sale or transfer of any Massage Establishment, or upon the sale or transfer of some or all of the interest of any Massage Establishment Operator to a person who is not already an Operator of the Massage Establishment, a new Certified Massage Establishment Permit or Operator Permit shall be required.

Section 12-234. Exemptions.

This Article shall not apply to the following classes of individuals while engaged in the performance of the duties of their respective professions:

- (A) Physicians, surgeons, chiropractors, osteopaths, podiatrists, physical therapists, nurses, or any other person licensed to practice any healing art under the provisions of Division 2 of the Business and Professions Code when engaging in such practice within the scope of his or her license.
- (B) Trainers of any amateur, semi-professional, or professional athlete or athletic team, so long as such persons do not practice Massage Therapy as their primary occupation at any location where they provide such services within the City.
- (C) Barbers, estheticians, and cosmetologists who are duly licensed under the laws of the State of California, while engaging in practices within the scope of their licenses.
- (D) Individuals in the City temporarily for educational events or disaster relief.
- (E) Somatic practitioners who use no physical touch of any kind at any time in their practice.
- (F) Enrolled students of a CAMTC approved school of massage when they are performing massage within the City as part of a formal supervised internship or training program operated by the school, without compensation other than school credit, on the premises of a Massage Establishment duly authorized to operate pursuant to the terms of this Article; and provided that the Massage Establishment Operator has first notified the City Manager or his/her designee in writing of the name, residence address, and school of the students, and dates of the training.

Section 12-235. Enforcement.

- (A) Any Massage Establishment operated, conducted, or maintained contrary to the provisions of this Article shall be, and is hereby declared to be, unlawful and a public nuisance, and the City may, in addition to or in lieu of prosecution in a criminal action under this Article, commence an action or actions, proceeding or proceedings for the abatement, removal, and enjoinder thereof, in the manner provided by law, and shall take such other steps, and shall apply to such courts or court as may have jurisdiction to grant such relief as will abate or remove such Massage Establishment, and restrain and enjoin any person from operating, conducting, or maintaining a Massage Establishment contrary to the provisions of this Article. Such remedies shall be in addition to any other judicial or administrative remedies available to the City under the City Code or state law.
- (B) Unless otherwise exempted by the provisions of this Article, every person, whether acting as an individual, Operator, employee of or person retained by the Operator, or whether acting as a mere helper for the Operator, or whether acting as a participant or worker in any way, who practices Massage Therapy or Operates a Massage Establishment in violation of this Article, shall be guilty of a misdemeanor, punishable by up to six (6) months in county jail and/or a fine of up to \$1,000.00; however, the City attorney may reduce the penalty to an infraction as follows:

- (1) \$250.00 for the first offense;
 - (2) \$500.00 for the second offense; and
 - (3) \$1,000.00 for each offense thereafter.
- (C) Each violation of this Article shall constitute a separate violation and each violation may be charged as a separate count in the event of administrative or criminal enforcement action.

Section 12-236. Miscellaneous.

See Part III Article VI Section 96.01 "Table of Permissible Uses" for zoning allowances.

SECTION 5. The first paragraph of Part III (Zoning) Article XXI Section 121.01 of the City Code is amended to read follows:

"Adult oriented business" means an adult arcade, adult bookstore, adult novelty shop, adult video store, adult cabaret, adult motel, adult motion picture theatre, adult theatre, ~~massage parlor~~, sexual encounter establishment, escort agency or nude model studio. Under no circumstances shall a "Massage Establishment" as defined in 12-221 be considered an "Adult Oriented Business." Adult oriented businesses are those businesses defined as follows:

SECTION 6. Part III Article XXI Section 121.01(9) is deleted in its entirety.

SECTION 7. Part III Article XXI Section 121.02. "Establishment and Classification of Businesses Regulated" is amended to read as follows:

The establishment of any adult oriented business shall be permitted only in the highway commercial zone located north of the Needles Highway/I-40 interchange, west of Needles Highway, and shall be subject to the following restrictions. No person shall cause or permit the establishment of any of the following adult oriented businesses, as defined in this article, within six hundred (600) feet of another such business or within six hundred (600) feet of any religious institution, school, boys' club, girls' club, or similar existing youth organization, or public park, or any public building regularly frequented by children, or any residence:

- (1) Adult arcade;
- (2) Adult bookstore, adult novelty store or adult video store;
- (3) Adult cabaret;

- (4) Adult motel;
- (5) Adult motion picture theater;
- (6) Adult theater;
- ~~(7) Massage parlor;~~
- (8) Sexual encounter establishment;
- (9) Escort agency;
- (10) Nude model studio.

SECTION 8. Part III Article VI, Section 96.01 "Table of Permissible Uses" is hereby amended to read, in pertinent part, as follows:

3.00 OFFICE, CLERICAL, RESEARCH AND SERVICES
 Not primarily related to goods and services

All operations conducted entirely within fully enclosed buildings.

<u>Uses</u>	<u>Descriptions</u>	<u>R 1</u>	<u>R 2</u>	<u>R 3</u>	<u>C R</u>	<u>C 1</u>	<u>C 2</u>	<u>C 3</u>	<u>M 1</u>	<u>M 2</u>	<u>P</u>
331	Operations designed to attract and serve customers or clients on the premises, such as attorneys, physicians, other professions, insurance and stock brokers, travel agents, government offices, etc.				C	Z	Z	Z			
332	Operations designed to attract little or no customer or client traffic other than employees of the entity operating the use				C	Z	Z	Z			
333	Office or clinic of physicians or dentists with not more than 10,000 square feet of gross floor area				C	Z	Z	Z			
334	Operations designed to attract and serve customers or clients on the premises				C	Z	Z	Z			
3.35	Massage Establishment				Z	Z	Z	Z	Z	Z	

SECTION 9. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published and posted pursuant to the provisions of law and the City Code. This Ordinance shall take effect thirty (30) days after passage.

NOW, THEREFORE, BE IT ORDAINED that the City Council of the City of Needles, California, approves an amendment to the City Code.

INTRODUCED AND READ for the first time and ordered posted at a regular meeting of the City Council of the City of Needles, California, held on the 14th day of April, 2015, by the following roll call vote:

AYES: Councilmembers Gudmundson, Evans, Frazier, Darcy and Richardson
NOES: None
ABSENT: Vice Mayor Williams
ABSTAIN: None



Mayor Edward Paget, M.D.

Attest: 

City Clerk Dale Jones, CMC

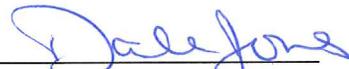
PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of Needles, California, held on the 28th day of April, 2015.

AYES: Councilmembers Gudmundson, Evans, Frazier, Williams,
NOES: None Darcy and Richardson
ABSENT: None
ABSTAIN: None



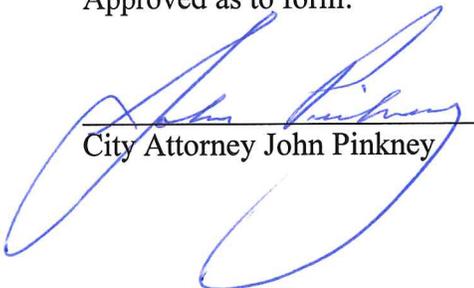
Mayor Edward Paget, M.D.

(Seal)

Attest: 

City Clerk Dale Jones, CMC

Approved as to form:



City Attorney John Pinkney