ORDINANCE NO. 585

AN ORDINANCE OF THE CITY OF BRISBANE ADDING CHAPTER 8.10 TO THE MUNICIPAL CODE TO REGULATE MASSAGE ESTABLISHMENTS

The City Council of the City of Brisbane hereby ordains as follows:

SECTION 1: A new Chapter 8.10, entitled "Massage Regulations," is added to Title 8 of the Municipal Code, to read as follows:

Chapter 8.10
MASSAGE REGULATIONS

8.10.010 - PURPOSE

In enacting these regulations, the City of Brisbane City Council (hereafter referred to as "City Council") recognizes that massage is a viable, professional, healing art offering the public valuable health and therapeutic services.

It is the purpose and intent of the City Council that, consistent with California Business and Professions Code section 4600 et seq., massage establishments and persons offering massage be regulated in the interests of public health, safety, and welfare by providing minimum building, sanitation, and health standards and to ensure that persons offering massage possess the qualifications necessary to operate such businesses and to perform such services. The City Council recognizes the importance of allowing members of the public to more easily identify persons and businesses offering massage services that are qualified and trained and can be expected to conduct their work in a lawful and professional manner.

In the event of any conflicts or inconsistencies between the provisions of Chapter 8.10 and the remaining provisions of Title 8 or with the provisions of any other Chapter(s) of the Municipal Code, the provisions of Chapter 8.10 shall control, unless to do so would be inconsistent with the stated purpose of this Chapter.

This Chapter is not intended to be exclusive and compliance will not excuse noncompliance with any state or federal laws or local laws or regulations that are uniformly applied to other professional or personal service businesses including, without limitation, all zoning regulations; business license regulations; the City's building, fire, electrical, and plumbing code regulations; and health and safety laws, rules and regulations applicable to professional or personal services businesses in the City.

8.10.020 - AUTHORITY

The primary responsibility for enforcement of the provisions of Chapter 8.10 shall be vested in the Chief of Police or his/her designee.

8.10.030 - DEFINITIONS

For purposes of this chapter, the following words, terms and phrases are defined as follows:

"Applicant" shall mean an applicant for a City Certificate of Registration, and each of the following persons: the managing responsible officer/employee/operator, a general partner, a limited partner, a shareholder, a sole proprietor, or any person who has a five percent or greater ownership interest in a massage establishment, whether as an individual, corporate entity, limited partner, shareholder or sole proprietor.

"California Massage Therapy Council" (CAMTC) is the non-profit organization created pursuant to Business and Professions Code section 4600 et seq. that is authorized to evaluate qualifications of massage therapists and massage practitioners and issue certification in the State of California. There are two levels of certification: Certified Massage Therapist and Certified Massage Practitioner.

"CAMTC certificate" means the unconditional, valid and current certificate issued by the CAMTC to Certified Massage Therapists and Certified Massage Practitioners pursuant to Business and Professions Code section 4600 et seq. "CAMTC certificate" shall not include a conditional CAMTC certificate issued by the CAMTC to any Certified Massage Therapist or Certified Massage Practitioner.

"Certificate of Registration - Individual" means a certificate issued by the Brisbane Police Department upon submission of satisfactory evidence that a Certified Massage Therapist or Certified Massage Practitioner has a valid and current State Certification and has satisfied all other requirements of this Chapter.

"Certificate of Registration - Business" means a certificate issued by the Brisbane Police Department upon submission of satisfactory evidence that a massage establishment or sole proprietorship employs or uses only Certified Massage Therapists or Certified Massage Practitioners possessing valid and current State Certifications and has satisfied all other requirements of this Chapter.

"Certified Massage Therapist/Practitioner" means any person holding a current and valid State Certificate issued by the CAMTC pursuant to California Business and Professions Code section 4600 et seq., and following, whether as a Certified Massage Therapist or Certified Massage Practitioner, as defined therein.

"City" means the City of Brisbane; "Police Department" means the Brisbane Police Department.

"Client" means the customer or patron who pays for or receives massage services.

"Compensation" means the payment, loan, advance, donation, contribution, deposit, exchange, or gift of money or anything of value.

"Employee" means any person employed by a massage establishment who may render any service to the business, and who receives any form of compensation from the business.

"Massage" 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 or electrical apparatus or other appliances or devices, with or without such supplementary aids as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment or other similar preparations.

"Massage establishment" or "massage business" mean any establishment, having a fixed place of business where any person, firm, association, partnership, corporation, joint venture or a combination of individuals engages in, conducts, carries on or permits to be engaged in, conducted or carried on for consideration, massages or health treatments in the City in which massages are given in return for compensation of any type; including but not limited to any hot tub/sauna establishment, personal fitness training center, spa, gymnasium, athletic facility, health club or office in which massage services are made available to clients. The terms "massage establishment" or "massage business" also include a Certified Massage Therapist/Practitioner who is the sole owner, operator and employee of a massage business operating as a sole proprietorship whether at a fixed place of business or at a location designated by the customer or client through outcall massage services.

"Outcall massage" means the engaging in or carrying on of massage for compensation in a location other than the business operation's address set forth in the massage establishment's Certificate of Registration.

"Person" means any individual, firm, association, partnership, corporation, joint venture, limited liability company, or combination of individuals.

8.10.040 - EXEMPTIONS

The provisions of this Chapter shall not apply to the following classes of individuals or businesses while engaged in the performance of their duties:

A. Physicians, surgeons, chiropractors, dentists, osteopaths, nurses or any physical therapists who are duly licensed to practice their respective professions in the State of California and persons working directly under the supervision of or at the direction of such licensed persons, working at the same location as the licensed person, and administering massage services subject to review or oversight by the licensed person.

B. Barbers, cosmetologists, estheticians, manicurists and others who are duly licensed under the laws of the State of California while engaging in practices within the scope of their licenses, except that this exemption shall apply solely to the massaging of the neck, shoulders, face, scalp, hands, arms, feet and/or calves of the clients.

C. Hospitals, nursing homes, mental health facilities, or any other health facilities duly licensed by the State of California, and employees of these licensed institutions, while acting within the scope of their employment.

D. Accredited high schools, junior colleges, and colleges or universities whose coaches and trainers are acting within the scope of their employment.

E. Trainers of amateur, semi-professional or professional athletes or athletic teams while engaging in their training responsibilities for and with athletes; and trainers working in conjunction with a specific athletic event.

F. Individuals administering massages or health treatment involving massage to persons participating in single-occurrence athletic, recreational or festival events, such as health fairs, road races, track meets, triathlons and other similar events; provided, that all of the following conditions are satisfied:

1. The massage services are made equally available to all participants in the event;

2. The event is open to participation by the general public or a significant segment of the public such as employees of sponsoring or participating corporations;

3. The massage services are provided at the site of the event and either during, immediately preceding or immediately following the event;

4. The sponsors of the event have been advised of and have approved the provisions of massage services;

5. The persons providing the massage services are not the primary sponsors of the event.

8.10.050 - CAMTC CERTIFICATION REQUIRED

It shall be unlawful for any individual to engage in, conduct, or carry on, or perform massage for compensation within the City unless that individual is a Certified Massage Therapist/Practitioner with a CAMTC certificate that is in full force and effect.

It is unlawful for any business to engage in, conduct or carry on, or permit to be engaged in, conducted or carried on in or upon any premises within the City, the operation of a massage establishment or to allow any person to administer massage or function as a Certified Massage Therapist/Practitioner, unless all individuals employed by the massage business to perform massage, whether as an employee or independent contractor, are Certified Massage Therapists/Practitioners with CAMTC certificates that are in full force and effect. Massage establishments shall maintain on the premises and on file with the City copies of the CAMTC certificates held by all persons providing massage services at that business or establishment.

8.10.060 - CITY REGISTRATION REQUIRED

It shall be unlawful for any individual to engage in, conduct, or carry on, or perform massage for compensation within the City unless that individual has obtained a Certificate of Registration - Individual from the City.

It shall be unlawful for any business to engage in, conduct or carry on, or permit to be engaged in, conducted or carried on in or upon any premises within the City, the operation of a massage establishment or to allow any person to administer massage or function as a Certified Massage Therapist/Practitioner, unless the massage establishment has obtained a Certificate of Registration - Business from the City.

8.10.070 - APPLICATIONS FOR CERTIFICATES OF REGISTRATION

A. Submission of application.

1. All persons who wish to obtain a Certificate of Registration - Individual from the City, as defined by this Chapter, shall file a written application submitted under penalty of perjury with the Police Chief on an application form provided by the City, which shall contain all of the following information:

2. If an individual, the applicant shall produce:

   a. A valid and current State Certification; and

   b. A valid and current CAMTC-issued identification card.

3. If a sole proprietorship, the applicant/owner shall produce:

   a. A valid and current State Certification; and

   b. A valid and current CAMTC-issued identification card.

4. If a massage establishment other than a sole proprietorship, the applicants/owners shall produce:

   a. A valid and current State Certification (if they are certified); and

   b. A valid and current CAMTC-issued identification card (if they are certified); and

   c. A statement that the massage establishment shall employ only Certified Massage Therapists/Practitioners along with copies of valid and current State Certifications for all Certified Massage Therapists/Practitioners employed or who will be employed by the massage establishment (whether as employees or independent contractors) and copies of their valid and current CAMTC-issued identification cards.

5. The application, when made by a sole proprietorship or a massage establishment, shall also include:

   a. The name, address and telephone number of the massage establishment where massage will be provided, or, where the massage establishment provides only off-premises massage, the principal address from which the business will be administered.

b. The name, address and telephone of the owner(s) and manager(s) of the massage establishment.

c. Contact information for the primary person in charge of the massage establishment, if different from subsection (b)(2) above.

d. A description of the massage services to be performed by each employee or independent contractor of a massage establishment, and a recent passport size photo of that person.

e. A complete description of all services to be provided.

f. A statement certifying that the operation of the massage establishment as proposed by the applicant complies with all applicable state and local laws, rules and regulations, including, but not limited to all county health regulations applicable to massage services and the City's building, health, and fire safety ordinances.

6. The Police Department may require the owner/applicant of a sole proprietorship or a massage establishment to produce a valid and current driver's license and/or identification card issued by a state or federal governmental agency or other photographic identification bearing a bona fide seal of a foreign government; and further may require the Certified Massage Therapists/Practitioners whom the owner/applicant has identified as employees to personally appear and produce to the City valid and current State Certifications, a valid and current driver's license and/or identification card issued by a state or federal governmental agency or other photographic identification bearing a bona fide seal of a foreign government.

7. If an applicant, owner or operator of a massage establishment owning 5 percent or more of the business is not a Certified Massage Therapist/Practitioner, then that individual is subject to a background check by the City and must submit the following additional items to the Brisbane Police Department in connection with his/her application for a Certificate of Registration.

a. The full name, including any nicknames or other names used presently or in the past, and the present address and phone number of the applicant;

b. The applicant's two (2) most recent addresses within the last seven (7) years, and the dates of residence at each address;

c. The applicant's date of birth, height, weight and colors of eyes and hair;

d. The applicant's driver's license and/or California I.D. number (if any) and Social Security number;

e. The applicant's two (2) most recent employers within the last seven (7) years, including their names, addresses and phone numbers, and the position held by the applicant;

f. The names and addresses of any massage facility or other businesses involving massage by which the applicant has been employed, or self-employed as a massage practitioner and/or massage therapist, whether State-certified or not, within the past ten (10) years;

g. Any criminal convictions on the part of the applicant for offenses other than traffic violations within the ten (10) years preceding the date of the application;

h. Any criminal charges pending against the applicant at the time of the application, other than traffic citations, the name and location of the court in which the criminal charges are pending and the applicable case numbers;

i. Whether the applicant has ever had a license, certificate or permit related to the practice of massage, or the operation of a massage establishment, or other business involving the practice of massage, suspended or revoked within the ten (10) years preceding the date of the application, the dates and reasons for any such suspensions or revocations, and the name and location of the jurisdiction or public agency which suspended or revoked such license, permit or certificate;

j. Whether the applicant, as a member of a corporation or partnership, has ever operated or been employed at any business which has been the subject of an abatement proceeding under the California Red Light Abatement Law (California Penal Code Sections 11225 through 11235) or any similar laws in other jurisdictions. If the applicant has previously worked at such a business, he/she should state on the application the name and address of the business, the dates on which the applicant was employed at such business, the name and location of the court in which the abatement action occurred, the applicable case number and the outcome of the abatement action;

k. Whether the applicant had previously applied to the City for a Certificate of Registration, the date of the previous application and any other name(s) under which the application was made;

l. The name and address of the owner of the real property upon or in which the business is to be conducted. In the event the applicant is not the legal owner of the property, the application must be accompanied by a copy of the lease and a notarized acknowledgment from the owner of the property that a massage establishment will be located on his/her property;

m. Proof of malpractice insurance in the sum of not less than one hundred thousand dollars ($100,000.00) per Certified Massage Therapist/Practitioner employed, or to be employed, at the massage

establishment up to a maximum of five hundred thousand dollars ($500,000.00); this requirement can be satisfied by malpractice insurance being provided in the name of individual Certified Massage Therapists/Practitioners or establishments;

n. Written authorization for the City, its agents and employees, to seek information and to conduct an investigation into the truth of the statements set forth in the application and into the background of the applicant;

o. An agreement by the applicant that he/she shall advise the City in AllCity which may occur during the City's processing of the application; and

p. A statement under penalty of perjury that the applicant has not knowingly and with the intent to deceive made any false, misleading or fraudulent statements or omissions of fact in his/her application or any other documents required by the City to be submitted with the application.

q. Such applicant shall be responsible for submitting fingerprints pursuant to "Livescan" procedures and pay all costs associated with such submittal. The applicant's fingerprints will then be submitted to the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) for evaluation. Upon receipt of the report from the DOJ and FBI, the Police Chief shall review the criminal history (if any) of the applicant.

8. All individuals, sole proprietorships and massage establishments already offering massage services in the City at the time this Ordinance takes effect are also required to obtain the necessary Certificate of Registration and comply with all of the other requirements of the Chapter.

B. Other required information.

Applicants for Certificates of Registration shall also submit the following information to the Police Chief at the time of their application:

1. A birth certificate or other legal documentation that verifies the identity of the applicant and confirms that the applicant is at least eighteen (18) years of age;

2. Other related information requested by the Police Chief in order to adequately evaluate the application for a Certificate of Registration.

C. Payment of registration fees.

At the time of filing an original application for a Certificate of Registration, applicants shall pay registration fees (as applicable) in an amount established by a resolution of the City Council. All fees shall be non-refundable.

D. Processing of application and investigation.

Upon receipt of an application for a Certificate of Registration filed by an individual, as discussed in Section 8.10.070, the Police Chief shall review the application and supplementary material, if any, and shall issue a Certificate of Registration to the individual if the individual has provided satisfactory proof that he or she has (1) a valid and current State Certification, (2) a valid and current CAMTC-issued identification card, and (3) has satisfied the other requirements of this Chapter.

Upon receipt of an application for a Certificate of Registration filed by a sole proprietorship or massage establishment, the Police Chief shall review the application and supplementary material, if any. If it is clear from the face of the application and supplementary materials that the applicant is not qualified for a Certificate of Registration, or the application is incomplete, the application may be denied without further investigation. If it appears from the face of the application and supplementary material that the applicant may be eligible for the Certificate of Registration sought, the Police Chief shall verify the information submitted by the applicant and may further investigate as follows:

1. Investigation of location and premises of massage establishment. Upon receipt of an application for a new or existing massage establishment, the Police Chief shall refer the application to the City's applicable departments, which shall review the application and, if necessary, inspect the premises to ensure that the operation of the business at the designated site will comply with the provisions of this Chapter 8.10 and the City's zoning, building and fire safety standards, and any other applicable City codes, that are uniformly applied to all other individuals and businesses providing professional services. If a use permit is required for the massage establishment the applicant shall comply with the City's Zoning Code.

2. Additional investigation. The Police Chief may conduct additional reasonable investigation in a manner authorized by law when necessary to determine whether the applicant meets the qualifications for a Certificate of Registration pursuant to this Chapter 8.10.

E. Grant or Denial of Application for Certificate of Registration.

1. Time for grant or denial of applications. The Police Chief shall grant or deny the application for a Certificate of Registration within thirty (30) calendar days of the applicant's submission of the application and all required supplementary material. When necessary to conduct a complete investigation of an application, the Police Chief may extend this time to a maximum of sixty (60) calendar days. The granting of a Certificate of Registration requires the massage establishment and/or practitioner to be in compliance with Title 17 of this Code, as applicable.

2. Grounds for denial of Certificate of Registration. The Police Chief shall deny an application for Certificate of Registration if any of the following circumstances exist:

a. The application is incomplete and/or required supplementary materials are not submitted on a timely basis;

b. The applicant does not have the required State Certification;

c. The applicant has made a false, misleading or fraudulent statement or omission of fact in his/her application or other materials submitted with the application; or

d. The operation of the massage establishment would violate the City's zoning, building or fire regulations, or other provisions of law or the City Code, that are uniformly applied to all other individuals and businesses providing professional services.

3. Additional grounds for denial of Certificate of Registration. In addition to the foregoing grounds for denial, in the case of an applicant, owner or operator of a massage establishment owning 5 percent or more of the business who is not a Certified Massage Therapist/Practitioner, the application may also be denied if any of the following circumstances exist:

a. The applicant, including applicant as a corporation or partnership, or former employer of the applicant while the applicant was so employed, has been successfully prosecuted in an abatement proceeding under the California Red Light Abatement Law (Penal Code sections 11225 through 11235) or any other similar laws in another jurisdiction;

b. The applicant has been convicted of:

i. An offense which requires registration pursuant to California Penal Code section 290; or a violation of sections 266h, 266i, 311 through 311.7, 314, 315, 316, 318, 647(b), 647(d), 647(f), or 647.1 of the California Penal Code, or equivalent offenses under the laws of another jurisdiction, including any other state or country.

ii. A prior offense which involves violation of California Health and Safety Code sections 11351 through 11354, 11358 through 11363, 11378 through 11380, or the sale of controlled substances specified in California Health and Safety Code sections 11054, 11056, 11057 or 11058, or equivalent offenses under the laws of another jurisdiction, including any other state or country.

iii. Any offense involving dishonesty, fraud, deceit or the use of force or violence upon another person in the last 10 years; or

iv. Any offense involving sexual misconduct.

v. For purposes of this section, a plea of "nolo contendere" may also serve as the basis for the denial of a Certificate of Registration because the above listed underlying offenses bear a substantial relationship to the qualifications, functions or duties of a Certified Massage Therapist/Practitioner or massage establishment.

4. Notice to applicant of grant or denial of application. The Police Chief shall give written notice to the applicant of the grant or denial of the application for a Certificate of Registration by certified mail or by personal service. If the application is denied, the notice shall advise the applicant of the reasons for the denial and of his/her right to appeal the decision to the City Manager through the procedures set forth in subsection (5) below.

5. Appeal of denial of Certificate of Registration to the City Manager. Upon the denial of an application for a Certificate of Registration by the Police Chief, the applicant may appeal to the City Manager through the following procedures:

   a. Request for appeal hearing. The applicant shall file a written request for an appeal hearing, setting forth the specific grounds on which the decision of the Police Chief to deny the Certificate of Registration is contested, with the City Manager's office within ten (10) calendar days of the personal service of the Police Chief's decision on the applicant or within ten (10) calendar days of mailing of the Police Chief's decision by certified mail to the applicant at the most recent home or business address of the applicant on file with the Police Department.

   b. Notice of time and place of hearing. Upon receipt of a timely request for an appeal hearing, the City Manager's office shall notify the applicant in writing of the date, time and place of the hearing before the City Manager or his/her designee, which shall not be fewer than ten (10) calendar days after personal service of such written notice of hearing on the applicant or ten (10) calendar days of mailing of such written notice of hearing by certified mail to the applicant at the most recent home or business address of the applicant on file with the City.

   c. Hearing before the City Manager or his/her designee. At the hearing, both the applicant and the Police Chief shall have the right to appear and be represented by counsel, and to present evidence and arguments relevant to the grounds on which the decision to deny the Certificate of Registration is appealed. The burden of proof shall be on the applicant to demonstrate that he/she meets the qualifications for a Certificate of Registration and is entitled to the issuance of such Certificate of Registration.

   d. Decision of the City Manager or his/her designee. Within ten (10) calendar days of the hearing, the City Manager or his/her designee shall issue a written decision stating whether the decision of the Police Chief to deny the application is upheld or reversed, and the reasons for this determination. The decision shall be served upon the applicant by personal service or by certified mail. The decision of the City Manager or his/her designee shall be final.

8.10.080 - INFORMATION REQUESTS

In addition to the foregoing, the Police Chief may request information from the CAMTC pertaining to any individual who possesses or claims to possess a CAMTC certificate and who seeks to engage in or is currently engaged in rendering massage services in the City. The requested information may include, but need not be limited to, the current status of the individual's CAMTC certificate, any history of disciplinary action(s) taken against the individual, the home and work addresses of the CAMTC certificate holder, and any other information that may be necessary to verify facts relevant to administering the provisions of this Chapter.

8.10.090 - BUSINESS LICENSE

It is unlawful for any person, whether an employee or independent contractor of a massage establishment, to open or operate a massage establishment or engage in self-employment as a Certified Massage Therapist/Practitioner without obtaining and maintaining in effect a City business license and paying a business license tax.

8.10.100 - OPERATING REQUIREMENTS

Unless otherwise specified herein, all massage establishments shall comply with the following operating requirements.

A. Exterior signs. A recognizable and legible sign should be posted at the main entrance identifying the business and which clearly identifies the establishment to foot and/or automobile traffic. An additional "Massage" sign need not be in addition to the primary business sign. The sign shall be in compliance with Title 17 of this Code.

B. Display of Certificate of Registration. Every Certified Massage Therapist/Practitioner employed by the massage establishment shall hold a valid Certificate of Registration issued by the Police Department. The Certificate of Registration shall be displayed in plain view to all patrons who enter the premises. This requirement is in addition the requirements set forth in Business and Professions Code section 4603.7, which require the holder of a State Certificate to display his/her original certificate at his or her place of business and have his or her CAMTC-issued identification card on his or her person at all times while providing massage services.

C. Dressing/massage room. Clients of the massage establishment shall be furnished with a dressing/massage room, or private area for changing clothes.

D. Payment/tips. All massage services shall be paid for in the reception area, and all tips, if any, shall be paid for in the reception area. Massage establishments may utilize a system where tip envelopes are provided in the treatment rooms to be utilized and deposited by the client in the reception area.

E. Alcohol prohibited. No alcoholic beverages may be possessed or consumed on the premises of the massage establishment.

F. No condoms. No condoms shall be kept at the massage establishment unless they are the personal property of persons on site, and they are for the individual's personal use outside the business premises.

G. Standard of dress. The holder of the Certificate of Registration or State Certification, and all other employees of the massage establishment shall remain fully clothed at all times while on the premises of the massage establishment. At a minimum, such clothing shall be made of a non-transparent material and shall not expose the buttocks, genital area or breasts of any employee or the holder of the Certificate of Registration. Bikini swimsuits and halter tops shall not be acceptable.

H. Operating hours. All massage establishments shall be closed for business by no later than 10:00 p.m. and shall open for business no earlier than 6:00 a.m. It shall be unlawful for any Certified Massage Therapist/Practitioner, or other employee of a massage establishment, to give or practice massage during the hours when the massage establishment is closed.

I. List of services. A list of services available and the cost of such services shall be available in an open, public place within the premises, and they shall be described in readily understandable language. Nothing in this section shall preclude the list of services from being printed in another language in addition to English. No owner, operator, manager, and/or responsible of a massage establishment shall permit, and no Certified Massage Therapist/Practitioner shall offer or perform, any service other than those posted.

J. Records. Every massage establishment shall keep a written record of the date and hour of each service provided; the first and last name of each patron and the service received; and the first and last name of the Certified Massage Therapist/Practitioner administering the service. Said records shall be open to inspection by City officials, limited to sworn members of the Police Department, City code compliance officers and representatives of the City Attorney's Office charged with enforcement of this Chapter 8.10. These records may not be used by the massage establishment for any other purpose than as records of service provided, and unless otherwise required by law, they shall not be provided to third parties by the massage establishment. Said records shall be retained on the premises of the massage establishment business office for a period of not less than three (3) years.

8.10.110 - SANITATION REQUIREMENTS

A. Required maintenance of massage establishments. All premises and facilities of massage establishments shall be maintained in a clean and sanitary condition and shall be thoroughly cleaned after each day of operation. The premises and facilities shall meet applicable Code requirements of the City, including but not limited to those related to the safety of the structure, adequacy of the plumbing, heating, ventilating and waterproofing of rooms in which showers, water or steam baths are used.

B. Linens. All massage establishments shall provide clean, laundered sheets, towels, and other linens in sufficient quantity for use by their clients. Such linens shall be

laundered after each use and stored in a sanitary manner. No common use of linens or towels shall be permitted. Heavy white paper may be substituted for sheets on massage tables, so long as such paper is used only once for each client and is then discarded into a sanitary receptacle. Sanitary receptacles shall be provided for the storage of all soiled linens.

C. Privacy standards for massage rooms, dressing rooms and rest rooms. The massage establishment shall provide doors on all of its dressing rooms and massage rooms. Transparent draw drapes, curtain enclosures or accordion-pleated enclosures are acceptable in lieu of doors for dressing and massage rooms.

D. No residential use. No part of the massage establishment shall be used for residential or sleeping purposes. No cooking or food preparation will be allowed on the premises unless it is within an employee-only, designated kitchen area.

8.10.120 - PROHIBITED ACTS

A. Touching of sexual and genital parts of client during massage. No Certified Massage Therapist/Practitioner, or any other employee of a massage establishment, shall place either his/her hand or hands upon, or touch with any part of his/her body, a sexual or genital part of any other person in the course of a massage, or massage a sexual or genital part of any other person. Sexual and genital parts shall include the genitals, pubic area, anus or perineum of any person or the vulva or breast of a female. In the case of breast massage, female clients shall sign a written consent form, provided by the establishment and/or Certified Massage Therapist/Practitioner, prior to providing breast massage.

B. Uncovering and/or exposure of sexual and genital parts before, during or after massage. No Certified Massage Therapist/Practitioner, or other employee of a massage establishment, shall uncover and/or expose the sexual or genital parts, as defined in subsection A, above, of a client or themselves in the course of giving a massage, or before or after a massage. This subsection does not prohibit a client from turning over in the course of a massage, so long as the Certified Massage Therapist/Practitioner holds a towel, sheet, blanket or other drape over the client to protect his/her genital and sexual parts from exposure.

C. Violation of provisions of this section may be charged separately as provided by State law.

8.10.130 - OUT-CALL MASSAGE SERVICES

Any Certified Massage Therapist/Practitioner who has complied with all applicable provisions of this Chapter 8.10 may provide out-call massage services to clients within the City. Such Certified Massage Therapists/Practitioners shall maintain their Certificates of Registration upon their persons, or within their immediate reach, at all times while performing massage in the City and shall display these upon the request of any client, police officer or code compliance officer. Such Certified Massage Therapists/Practitioners shall also have his or her CAMTC-issued identification card in his or her possession while providing massage services.

8.10.140 - TRANSFER OF CERTIFICATE OF REGISTRATION

No Certificate of Registration issued pursuant to this Chapter 8.10 shall be transferred, altered in name, or assigned in any manner, whether by operation of law or otherwise, from location to location or from person to person, except that any individual possessing a valid Certificate of Registration shall be able to move from one employer to another without filing a new application or paying a new fee, so long as the holder of the Certificate of Registration notifies the Police Chief of the change in his/her employment within five (5) business days of their move date to the new location.

8.10.150 - EXPIRATION AND RENEWAL

A. All Certificates of Registration issued pursuant to this Chapter shall expire annually on the anniversary of their issuance, unless revoked sooner by the Police Chief. Applications for renewal of a Certificate of Registration must be submitted to the Police Chief by no later than sixty (60) calendar days prior to the expiration of such Certificate of Registration on a form provided by the Police Department, which shall require the applicant for renewal to update the information contained in his/her original application. The applicant must pay the City a non-refundable renewal fee, in the amount established by resolution of the City Council, at the time of filing his/her application for renewal. After investigating the application for renewal, the Police Chief may renew the Certificate of Registration if the applicant continues to meet the standards for the issuance, and none of the grounds for denial of a Certificate of Registration set forth in Section 8.10.070E2 exist. The Police Chief shall give the applicant for renewal written notice of his/her decision within sixty (60) calendar days of the submission of the application for renewal to the Police Department by personal service of the decision on the applicant or by deposit of the decision in the United States mail by certified mail to the applicant's most recent home or business address on file with the Police Department. If the application is denied, the notice shall state the specific grounds for the denial and that the applicant may appeal to the City Manager pursuant to the procedures set forth in Section 8.10.070E4.

B. If the holder of a Certificate of Registration does not file a timely application for renewal at least sixty (60) calendar days before expiration of the Certificate of Registration, he/she shall be required to file an application for a new Certificate of Registration pursuant to Section 8.10.060 and to pay the applicable fees.

C. The holder of a Certificate of Registration (whether an individual or a business) must immediately cease all massage-related functions, as defined in this Chapter and in State law, upon the expiration of their Certificate of Registration, whether by non-renewal, failure to timely renew, or otherwise.

8.10.160 - SUSPENSION AND REVOCATION

A. Grounds for suspension or revocation of Certificate of Registration. The Police Chief may suspend for a period of up to one year or revoke a Certificate of Registration, according to procedures set forth in subsection B below, if there is probable cause to believe that:

1. The holder of the Certificate of Registration no longer has the required State Certification;

2. The holder of the Certificate of Registration has operated or managed the massage establishment in a manner that violates any provision of this Chapter 8.10, or other applicable City Code provisions, state or federal law;

3. The holder of the Certificate of Registration has made a false or misleading statement or omission of fact on his/her application for a Certificate of Registration, or for renewal of the Certificate of Registration, or in any supplementary materials submitted with the application;

4. The holder of the Certificate of Registration is operating or managing the massage establishment in a manner that poses a danger to the health and safety of clients and/or the public, or without due regard for proper sanitation or hygiene; or

5. A non-certified owner, operator, corporation, or partner who owns five percent or more of the massage business has been convicted of a crime that would have caused denial of the Certificate of Registration.

B. Procedure for suspension or revocation of Certificate of Registration:

1. Notice to holder of Certificate of Registration. Whenever the Police Chief has probable cause to believe that grounds for the suspension or revocation of a Certificate of Registration exist, he/she shall give the holder of the Certificate of Registration written notice of the alleged grounds for the proposed suspension or revocation of the Certificate of Registration and notify the holder of the Certificate of Registration of his/her right to request a hearing before the Police Chief or his/her designee on whether the Certificate of Registration should be suspended or revoked. The notice shall be served on the holder of the Certificate of Registration personally or by deposit of the notice in the United States mail by certified mail to the most recent home or business address on file with the Police Department. Said notice shall also state that if no written request for a hearing is received within ten (10) calendar days of the personal service of the Police Chief's decision on the applicant or within ten (10) calendar days of mailing of the Police Chief's decision by certified mail to the applicant, the applicant shall be deemed to have waived his/her right to a hearing.

2. Hearing before Police Chief. The hearing on the revocation or suspension of the Certificate of Registration, if timely requested as specified above, shall be held before the Police Chief or his/her designee no fewer than ten (10) calendar days after the personal service of the notice to the holder of the Certificate of Registration, or no fewer than ten (10) calendar days after mailing of the notice to the holder of the Certificate of Registration by certified mail to the most recent home or business address on file with the Police Department. At the hearing, the holder of the Certificate of

Registration and a representative of the City shall have the right to appear and to be represented by counsel, and to present evidence and arguments that are relevant to a determination of whether grounds for suspension or revocation of the Certificate of Registration exist.

3. Decision of Police Chief. Within ten (10) calendar days after the hearing, the Police Chief or his/her designee shall issue a written decision that states whether the Certificate of Registration is suspended or revoked, the length of any suspension, and the factual basis for the decision, and that the holder of the Certificate of Registration may appeal any suspension or revocation to the City Manager through the procedures set forth in paragraph (4), below. The decision of the Police Chief shall be served on the holder of the Certificate of Registration by personal service or by certified mail to the Certificate of Registration holder's most recent home or business address on file with the Police Department. Said notice shall also state that if no written request for an appeal hearing is timely received, the applicant shall be deemed to have waived his/her rights to an appeal hearing.

4. Request for appeal hearing before the City Manager. The holder of the Certificate of Registration may appeal the decision of the Police Chief or his/her designee by filing a written request for an appeal hearing setting forth the specific grounds on which the decision of the Police Chief or his/her designee is contested, with the City Manager's office within ten (10) calendar days of the personal service to the holder of the Certificate of Registration of the Police Chief's decision, or within ten (10) calendar days of service of the decision by certified mail to the Certificate of Registration holder's most recent home or business address on file with the Police Department.

5. Appeal hearing before the City Manager. Upon receipt of a timely request for an appeal hearing, the City Manager's office shall notify the holder of the Certificate of Registration in writing of the date, time and place of the hearing before the City Manager or his/her designee which shall not be fewer than ten (10) calendar days after service of such written notice on the Certificate of Registration holder by personal service, or ten (10) calendar days after mailing of the notice by certified mail to the Certificate of Registration holder's most recent home or business address on file with the Police Department. At the hearing, both the holder of the Certificate of Registration and the Police Chief or his/her designee shall have the right to appear and be represented by counsel and to present evidence and arguments which are relevant to the grounds for the appeal, as stated in the request for an appeal hearing. Within ten (10) calendar days of the hearing, the City Manager or his/her designee shall issue a written decision that states whether the decision of the Police Chief or his/her designee is upheld, modified or reversed, and the length of any suspension. The decision shall be served on the holder of the Certificate of Registration by personal service or by certified mail. The decision of the City Manager or his/her designee shall be final.

6. Effective date of revocation or suspension. Any suspension or revocation of a Certificate of Registration shall become effective immediately upon the personal service of the written decision of the Police Chief or his/her designee, or, in the event of an appeal, the written decision of the City Manager or his/her designee, on the holder of the Certificate of Registration, or five (5) calendar days after the mailing of such decision by certified mail to the holder of the Certificate of Registration.

7. Surrender of suspended or revoked Certificate of Registration to Police Chief. Upon a written decision by the Police Chief or his/her designee, or in the event of an appeal, by the City Manager or his/her designee, which suspends or revokes a Certificate of Registration, the original and any copies of the Certificate of Registration shall be surrendered immediately to the Police Chief. In the case of a suspension, the Police Chief shall return the Certificate of Registration after the period of suspension has ended.

8.10.170 - CRIMINAL PENALTY

Any person subject to this Chapter who personally, or through an agent, employee, independent contractor or other representative, violates any material provision of this Chapter shall be guilty of a misdemeanor. Any person convicted of a misdemeanor shall be subject to punishment by fine and/or imprisonment to the maximum extent permitted by State law.

8.10.180 - INSPECTIONS

Massage establishments shall permit the City to conduct reasonable inspections during regular business hours to ensure compliance with State and local laws, including but not limited to this Chapter and California Business and Professions Code section 4600 et seq., or applicable fire, health and safety requirements.

8.10.190 - PUBLIC NUISANCE

Any massage establishment operated, conducted, or maintained contrary to the provisions of this chapter shall be unlawful and a public nuisance, and the City Attorney may, in the exercise of discretion, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings, for the abatement, removal and enjoinment thereof, in a manner provided by law.

8.10.200 - RESPONSIBILITY OF OWNER OR OPERATOR

The owner or operator of a massage establishment shall be responsible for the conduct of all employees or independent contractors of the business.

8.10.210 - MASSAGE ESTABLISHMENTS CLOSED DUE TO CRIMINAL ACTIVITY

No massage establishment shall be opened at a location where a massage establishment was closed due to criminal activity for one year.

8.10.220 - NOTIFICATIONS

A massage establishment shall immediately report to the Police Chief any of the following:

A. Arrests of any employees or owners of the massage establishment for an offense other than a misdemeanor traffic offense;

B. Resignations, terminations, or transfers of Certified Massage Therapists/Practitioners employed by the massage establishment;

C. Loss of CAMTC certification by any of the massage establishment's employees or independent contractors;

D. Any intention to rename, change management, or convey the massage establishment to another person;

E. The occurrence of any event involving the massage establishment or the Certified Massage Therapists/Practitioners employed therein that constitutes a violation of this Chapter or state or federal law.

SECTION 2: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

SECTION 3: This Ordinance shall be in full force and effect thirty days after its passage and adoption.

W. Clarke Conway, Mayor

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the 19th day of June.

AYES: Councilmembers Lentz, Liu, Miller and Mayor Conway
NOES: Councilmember O'Connell
ABSENT: None

Sheri Marie Spediacci, City Clerk