



# City of Palo Alto

## Policy and Services Committee Staff Report

(ID # 2708)

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**Report Type:** Meeting Date: 4/10/2012

**Summary Title:** Massage Ordinance Follow-up

**Title:** Review and Recommend Council Approval of Proposed Updated Massage Ordinance

**From:** City Manager

**Lead Department:** Police

### **Recommendation**

Staff recommends that the Policy and Services Committee review the proposed updated Massage Ordinance and recommend approval of the ordinance to the City Council.

### **Executive Summary**

The draft ordinance was presented to the Policy and Services Committee on February 14, 2012. Committee members requested additional information be prepared and changes be considered to the draft ordinance. Staff has reviewed the proposed ordinance and completed modifications taking into consideration the requests of the Committee and community members. Staff is also prepared to further discuss the modifications and address the questions brought forth at the previous meeting.

### **Background**

At the February 14, 2012, Policy and Services Committee meeting staff presented proposed revisions to the existing Massage Ordinance, Palo Alto Municipal Code 4.54. Changes to the ordinance are necessitated by new state legislation that changed municipalities' ability to regulate the practice of massage. Palo Alto's existing ordinance is in violation of the new state law. Staff revised the ordinance to comply with state law and made additional changes to facilitate the ability of existing practitioners to remain in business. At the meeting, staff outlined the applicable state laws relating to massage regulation and described the input from

the massage community from several previous meetings. Staff explained how that input was taken into account when drafting the ordinance and how the proposed fee structure was derived.

After much discussion from staff and community members, the Policy and Services Committee recommended that modifications to the ordinance be considered and the following questions be addressed at a follow-up meeting on April 10, 2012:

1. Why is it necessary to make the proposed ordinance changes?
2. Why is it necessary to regulate massage at all in the City of Palo Alto?
3. Does the City of Palo Alto have problems with crimes related to massage?
4. Why is there a need for massage establishments to keep client contact records?
5. Are there ordinance language changes that can be made for the establishment requirements in the areas of hot/cold water, table coverings, and the need for safety boxes?
6. What do other cities do with massage and reflexology regulation?
7. What type of language can be added to the ordinance to cover reflexologists and reflexology-only businesses?

## **Discussion**

Staff conducted additional research and is prepared to address the questions and changes requested by the Committee.

- 1) Why is it necessary to make the proposed ordinance changes?

The current ordinance is out of compliance with state law changes that were made in September 2009. The City of Palo Alto has regulated massage since 1974 when questionable massage establishments were flourishing on El Camino Real. Most states within our country regulate massage to some

degree and most cities within our's and adjacent counties have massage ordinances.

2) Why is it necessary to regulate massage at all in the City of Palo Alto?

Massage therapy involves full body touching, unlike any other therapy outside of the medical profession. Due to the nature of massage, the predominant types of crimes reported in the massage setting are sexual in nature. Studies have shown that sexual assault crimes are vastly underreported and are likely to happen to many females in a variety of settings, both public and private. The Police Department has received complaints of unwanted sexual contact from customers of massage businesses. In addition, during a community meeting, several massage practitioners told staff they have been victims of unwanted sexual contact by clients.

Illegitimate massage businesses have a high likelihood of using victims of Human Trafficking in their business. As most municipalities in the Bay Area have some form of Massage regulation, there is a real risk of attracting illegitimate enterprises to an unregulated environment.

3) Does the City of Palo Alto have problems with crimes related to massage?

Over the past 10 years, ten sexual assault-type crimes have been investigated at Palo Alto massage establishments. Research into the availability of adult sensual massage in Palo Alto revealed multiple websites advertizing business to persons in Palo Alto. The crime of prostitution does occur in Palo Alto but is difficult to prosecute without complicated police sting operations. Data from the Records Management System shows Police and Fire responded to 67 calls for service at the three largest massage establishments since the beginning of 2005.

4) Why is there a need for massage establishments to keep client contact records?

The purpose of client contact records is to assist law enforcement in fact-finding when criminal allegations are made involving massage therapists. Most other municipalities require client contact records to be kept. The

information would only be available to law enforcement with a court order. Client records could aid in an investigation, either to prove or disprove allegations of misconduct against massage practitioners or clients.

5) Are there ordinance language changes that can be made for the establishment requirements in the areas of hot/cold water, table coverings, and the need for safety boxes?

Staff reviewed the sections pertaining to hot and cold water availability in establishments and did not make any changes. Staff believes that the existing language allows for flexibility in how hot and cold water is provided. Staff reviewed the section pertaining to establishment table covering material and did not make any changes, because the existing language only requires that tables and table coverings be washable. Specific coverings are suggested, but not required. Staff reviewed the section of hand-drying options and added electric hand-drying devices as an allowable option. Staff reviewed the section requiring locked boxes for personal possessions and removed the requirement. Refer to Attachment A.

6) What do other cities do with massage and reflexology regulation?

Many cities in Santa Clara and San Mateo Counties have massage ordinances. Please refer to Attachment B for a comparison of Palo Alto with 13 other cities. Only one city surveyed, Citrus Heights, included a reflexology exemption in its massage ordinance.

7. What type of language can be added to the ordinance to cover reflexologists and reflexology-only businesses?

In response to requests from reflexologists who attended the February 14<sup>th</sup> Committee meeting, staff reviewed the draft ordinance and added a definition for “reflexology” based on definitions from other states that regulate reflexology. Additional language was added to the ordinance to exempt reflexologists when practicing in Palo Alto.

## Resource Impact

The revised ordinance will have no fiscal impact on the City. The code enforcement officer who administers the massage permitting program will have additional duties and responsibilities.

## Timeline

Staff recommends presenting the draft ordinance changes to City Council at the next available meeting following approval by the Policy and Services Committee.

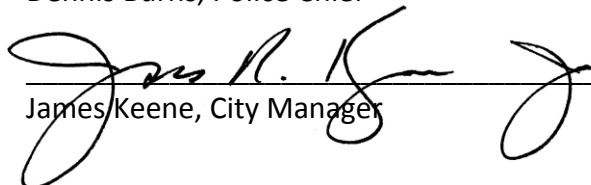
## Attachments:

- -: Attachment A - PAMC 4.54 (PDF)
- -: Attachment B - Massage Spreadsheet 032612 (PDF)
- -: Attachment C - February P&S - Massage Ordinance Minutes -EXCERPT (PDF)

Prepared By: April Wagner, Police Lieutenant

Department Head: Dennis Burns, Police Chief

City Manager Approval:

  
James Keene, City Manager

**\*\*\*Proposed Massage Municipal Code\*\*\***

**4.54.010 Purpose and intent.**

It is the purpose and intent of this chapter to provide for the orderly regulation of massage establishments and massage technicians, as defined in this chapter, in the interests of the public health, safety, and welfare by providing certain minimum building, sanitation and health standards for massage establishments, and by providing certain minimum qualifications for the operators of massage establishments and for massage technicians and massage technician trainees. Unless otherwise indicated, the requirements of this Code shall not apply to massage practitioners and therapists certified by the California Massage Therapy Council (CAMTC) or establishments in which the owners and all practitioners are CAMTC certified.

**4.54.020 Definitions.**

(a) For the purpose of this chapter, unless the context clearly requires a different meaning, the words, terms and phrases set forth in this section shall have the meanings given them in this section:

(1) "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.

(2) "Massage technician" means any person who administers massages, baths or health treatments involving massage or baths as the principal functions to another person for any consideration whatsoever.

(3) "Massage technician trainee" means a student who works in a massage establishment under the supervision and direction of a massage technician who has received a permit issued under the provisions of this chapter.

(4) "Massage establishment" means any establishment with more than one massage technician having a fixed place of business where any, firm, association, partnership, corporation, joint venture or combination of individuals engages in, conducts, carries on or permits to be engaged in, conducted or carried on massages, baths or health treatments involving massage or baths, where massage is part of primary function of the business.

(5) "Sole Proprietor Massage establishment" means any owner-operated establishment having a fixed place of business where an individual, carries on or permits to be engaged in, conducted or carried on massages, baths or health treatments involving massage or baths as the principal functions.

(6) "Recognized school of massage" means any school or institution of learning which teaches the theory, ethics, practice, profession and work of massage. The student shall possess a diploma or certificate of graduation from such school or institution of learning following the successful completion of such course of study or learning, and which school has been approved pursuant to California Education Code Section 29025, or, if said school is not located in California, has complied with standards commensurate with those required in said Section 29025. Any school or institution of learning offering or allowing correspondence course credit not requiring actual attendance at class, or courses of a massage technician not approved by the California State Department of Education shall not be deemed a "recognized school of massage."

(7) "Reflexology" Reflexology is the application of specific pressure by the use of the practitioner's hands, thumb, and fingers to reflex points in the client's hands, feet, or ears using alternating pressure, and such techniques as thumb walking, finger walking, hook and back up, and rotation on a reflex.

(8) "Permit" means the permit to engage in the activities of a massage technician or a massage technician trainee as required by this chapter.

(9) "Person" means any individual, firm, association, partnership, corporation, joint venture or combination of individuals.

(10) "California Massage Therapy Council" (CAMTC) means the governing non-profit board that is authorized to evaluate qualifications of massage therapists and issue certification in the State of California.

(11) "Accessory Technician Permit" A technician who is not a sole proprietorship may be eligible to receive an accessory technician permit. This permit will allow massage to be conducted within a business that is not a massage establishment, provided the following requirements are met:

- a. The technician must provide the police department with sufficient evidence to demonstrate that he or she is an independent contractor or an employee of the business.
- b. The business is not in the regular business of providing massage.
- c. The technician must obtain a massage technician permit as required by section 4.54.060 of this code.

#### **4.54.030 Massage establishment permit required.**

(a) Except as otherwise provided, it is unlawful for any person to engage in, conduct or carry on, in or upon any premises within the city the operation of massage establishment without a permit obtained from the chief of police, as required by this chapter. A massage establishment permit shall be issued to any person who has complied

with the requirements of Sections [4.54.050](#) and [4.54.110](#) of this chapter, and all other applicable provisions of this code or state law, as applicable; unless grounds for denial of such permit are found to exist. In addition to those set forth in Section [4.04.140](#), grounds for denial include:

- (1) The applicant made a material misstatement in the application for a permit;
- (2) The applicant has, within five years immediately preceding the date of the filing of the application, been convicted in a court of competent jurisdiction of an offense involving conduct which requires registration under California Penal Code Section 290, or any violations of Sections 311 through 311.7, 313.1, 314, 315, 316, 318 or 647(a), 647(b), 647(d), or 647(h) of the California Penal Code, or of any offense involving theft of property or violence;
- (3) That the operation of a massage establishment, as proposed by the applicant if permitted, would not comply with all applicable laws including, but not limited to, all city ordinances and regulations;
- (4) That the operation of the proposed massage establishment is likely to be injurious to the health, safety, welfare, and interest of the people of the city;
- (5) That the applicant is lacking in the background and qualifications to conduct a bona fide massage establishment; or
- (6) That the applicant has violated any provision of this chapter, or of any similar ordinance, law, rule or regulation of another public agency which regulates the operation of massage establishments.
- (7) That the CAMTC has revoked, suspended, or denied the applicant a permit.

#### **4.54.040 Massage establishment permit application fee; renewal**

(a) Any application for a permit to operate a massage establishment shall be accompanied by a nonrefundable fee as set forth in the municipal fee schedule. The application fee shall be used to defray, in part, the costs of investigation and report, and is not made in lieu of any other fees or taxes required under this code.

(b) A permit to operate a massage establishment shall be renewed annually. The renewal fee shall be as set forth in the municipal fee schedule. In addition, the massage technician must also submit valid identification, massage certification and a completed new permit application.

#### **4.54.050 Application for massage establishment permit.**

(a) Any application for a permit to operate a massage establishment shall be made with the chief of police. Within thirty working days following receipt of a completed application and LiveScan results, the chief of police shall either issue the permit or mail a



written statement of his reasons for denial thereof. The application shall set forth the exact nature of the massage bath or health treatment to be administered, the proposed place of business and facilities therefore, and the name and address of each applicant. The chief of police may request the applicant to allow fingerprints to be taken when needed for the purpose of establishing identification. In addition to the requirements of [Chapter 4.04](#) and this section, any applicant shall furnish the following items:

1. The address of the proposed location
2. The previous addresses of applicant, if any, for a period of three years immediately prior to the date of the application and the dates of residence at each;
3. Written proof that the applicant is at least eighteen years of age;
4. Applicant's height, weight, color of eyes and hair;
5. Two recent passport photos
6. Business, occupation or employment history of the applicant for the three years immediately preceding the date of the application;
7. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the names and residence addresses of each of its officers, directors, and each stockholder holding more than five percent of the stock of the corporation. If the applicant is a partnership, the application shall set forth the name and residence address of each of the partners, including limited partners. If one or more of the partners is a corporation, the provisions of this section pertaining to a corporate applicant shall apply;
8. The names and residence addresses of all persons currently employed or intended to be employed in the massage establishment, regardless of the nature of the employment, other than any person permitted pursuant to Section [4.54.060](#), along with the proposed or actual nature of the work performed or to be performed, and recent passport-size photographs, suitable to the police officer or designee processing the application, of each such employee. The chief of police may require such employee to allow fingerprints to be taken for the purpose of identification. Any applicant or permittee shall notify the city in writing of the names, addresses and nature of the work, of any new employees, within five days of such employment, and supply the photographs described in this subsection. Such new employees shall allow fingerprints to be taken for the purpose of identification upon request. "Employee" includes every owner, partner, manager, supervisor and worker, whether paid or not, who renders personal services of any nature in the operation of a massage establishment.
9. Such other information as may be deemed necessary by the chief of police.

(b) Proof of malpractice insurance coverage or equivalent with a minimum of \$100,000 coverage shall be required within 30 days of permit issuance.

#### **4.54.060 Massage technician permit required.**

(a) It is unlawful for any person to act as a massage technician or a massage technician trainee unless such person holds a valid permit issued by the chief of police or

a certification from the CAMTC. A massage technician permit shall be issued to any person who has fulfilled the requirements of Section [4.54.080](#), and all other provisions of this code or state law, as applicable; unless grounds for denial of such permit are found to exist. In addition to those set forth in Section [4.04.140](#), grounds for denial include:

- (1) The applicant made a material misstatement in the application for a permit;
  - (2) The applicant has, within five years immediately preceding the date of the filing of the application, been convicted in a court of competent jurisdiction of an offense involving conduct which requires registration under California Penal Code Section 290, or any violations of Sections 311 through 311.7, 313.1, 314, 315, 316, 318 or 647(a), 647(b), 647(d), or 647(h) of the California Penal Code, or of any offense involving theft of property or violence;
  - (3) That the issuance of the permit is likely to be injurious to the health, safety, welfare, and interest of the people of the city;
  - (4) That the applicant is lacking in the background and qualifications to act as a massage technician; or
  - (5) That the applicant has violated any provision of this chapter, or of any similar ordinance, law, rule or regulation of another public agency which regulates the operation of massage establishments or massage technicians.
  - (6) That the CAMTC has revoked, suspended, or denied the applicant a permit.
- (b) A permit issued by the chief of police is not required for any massage technician and massage establishments if the owners and all technicians are massage practitioners or therapists, who are operating under a valid certificate issued by the Massage Therapist Organization (also known as the California Massage Therapy Council), per Chapter 10.5 (Commencing with Section 4600) of Division 2 of the California Business and Professions Code relating to massage therapy, provided however, that such person and business shall not be exempted from this Article if Chapter 10.5 is repealed. However notification of the CAMTC certification number must still be made to the police department where the CAMTC permit holder is working.

#### **4.54.065 Education Requirements**

(a) General educational requirements. Except as indicated below, all applicants for a Massage Technician permit must meet the following educational standards to qualify for such permit, at the discretion of the Chief of Police:

- (1) Possession of a diploma or certificate of completion from a “recognized school of massage” which shows satisfactory completion of a resident course of study of a minimum of two hundred (200) verifiable hours on the theory, ethics, history, practice, and/or methods of massage therapy, including the study of anatomy, physiology and hygiene.

(b) Exemptions from educational requirements. The following persons are exempt from the educational requirements set forth in subsection (a) above:

(1) Holders of Massage Establishment business permits and Massage Technician business permits issued by the City before the effective date of this Chapter shall have a period of eighteen (18) months from the effective date of this Chapter to satisfy the educational requirements set forth in subsection (a) above.

(2) Eighteen (18) months from the effective date of this ordinance, any therapist who does not have the required 200 hours of education will not be permitted to practice massage in Palo Alto. However, the chief of police may provide special consideration on a case-by-case basis to those massage technicians who can prove through documentation that they are currently enrolled in coursework associated with massage therapy and compliance of the 200 hour requirement is expected within a reasonable amount of time.

#### **4.54.070 Massage technician application fee.**

Any application for a permit to act as a massage technician shall be accompanied by a nonrefundable fee as set forth in the municipal fee schedule. A massage technician permit shall be renewed annually. The renewal fee shall be as set forth in the municipal fee schedule. Any person who applies for a permit to operate a massage establishment and who desires to act as a massage technician within said establishment shall not be required to furnish the information set forth in Section [4.54.080](#).

#### **4.54.080 Application for massage technician permit.**

(a) Any application for a permit to act as a massage technician shall be made with the chief of police. Within thirty working days following receipt of a completed application and LiveScan results, the chief of police shall either issue the permit, or mail a written statement of his reasons for denial thereof. If he takes neither action, the permit shall be deemed to be issued. The chief of police may request the applicant to furnish fingerprints when needed for the purpose of establishing identification. In addition to the requirements of [Chapter 4.04](#), the applicant shall furnish the following items:

- (1) Name, residence address and telephone number;
- (2) Social security number and driver's license number, if any;
- (3) Applicant's weight, height, color of hair and eyes;
- (4) Two recent passport photos of applicant;
- (5) Written evidence that the applicant is at least eighteen years of age;

(6) Business, occupation or employment of the applicant for the three years immediately preceding the date of application;

(7) The name and address of the establishment where the applicant is to be employed, and the name of the owner or operator of the same. Any massage technician granted a permit pursuant to this section must report a change in massage establishment employment within five days of said change;

(8) The name and address of the “recognized school of massage” attended, the date attended, and a copy of the diploma or certificate of graduation awarded to the applicant, or other documentation showing the applicant has completed 200 hours.

#### **4.54.090 Massage technician trainee.**

(a) Any person desiring to obtain a permit to act as a massage technician trainee shall make an application to the chief of police. Within thirty working days following receipt of a completed application and having received LiveScan results, the chief of police shall either issue the permit, or mail a written statement of his reasons for denial thereof. If he takes neither action, the permit shall be deemed to be issued. A massage technician trainee permit shall be issued to any person who has fulfilled all the requirements of Section [4.54.080](#), except item (8), and who produces written proof that the applicant is currently enrolled in a “recognized school of massage”, as defined in this chapter; of the date the applicant enrolled in the recognized school of massage; and the scheduled date of graduation; and that the applicant has completed at least fifty hours of instruction and the date this instruction was completed; provided the applicant submits a letter signed by the owner or manager of a permitted massage establishment stating his immediate intent to employ the applicant to do massage as a trainee working under the direct supervision and control of a massage technician who has received a permit under the provisions of this chapter unless:

(1) The applicant knowingly made a material misstatement in the application for the trainee permit; or

(2) The applicant has, within five years immediately preceding the date of the filing of the application, been convicted in a court of competent jurisdiction of an offense involving conduct which requires registration under California Penal Code Section 290, or any violation of Sections 311 through 311.7, 313.1, 314, 315, 316, 318 or 647(a), 647(b), 647(d) or 647(h) of the California Penal Code or of any offense involving theft of property.

No fee shall be required of a massage technician trainee applicant. The trainee must at all times comply with the laws relating to massage establishments, and the failure to comply may render the trainee ineligible to obtain a massage technician permit.

Any massage technician trainee who, during the life of the trainee permit, completes the instruction required of a massage technician, shall be issued a massage technician

permit upon payment of a massage technician application fee as set forth in the municipal fee schedule.

#### **4.54.100 Appeal.**

In the event a permit or permit application has been denied, the applicant shall proceed pursuant to the appeal and hearing provision in [Chapter 4.04](#).

#### **4.54.110 Massage establishment facilities and operations requirements.**

(a) Except as otherwise indicated, all massage establishments, including those certified by CAMTC, shall comply with the following facilities and operations requirements:

- (1) Massage establishments shall comply with all code requirements.
- (2) A minimum of one toilet and wash basin shall be provided in every massage establishment.
- (3) Cabinets or other covered space shall be provided for the storage of clean linen. Approved receptacles shall be provided for the storage of all soiled linen and paper towels.
- (4) Minimum ventilation shall be provided in accordance with the building code of the city. To allow for adequate ventilation in cubicles, rooms and areas provided for patrons' use, which are not serviced directly by required window or mechanical systems of ventilation, partitions shall be constructed so that the height of partition does not exceed seventy-five percent of the floor-to-ceiling height of the area in which they are located.
- (5) 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.
- (6) The walls in all rooms where water or steam baths are given shall have a washable, mold-resistant surface.
- (7) All lavatories or wash basins shall be provided with hot and cold running water, soap and single-service towels and/or hot-air hand dryers.
- (8) Every portion of a massage establishment, including appliances, apparatus and personnel, shall be kept clean and operated in a sanitary condition.
- (9) All massage establishments shall provide clean and sanitary towels, sheets and linens in sufficient quantity. Towels, sheets and linens shall not be used by more than one

person. Reuse of such linen is prohibited unless the same has first been laundered. Heavy white paper may be substituted for sheets; provided, that such paper is used once for each person and then discarded into a sanitary receptacle.

(10) All walls, ceilings, floors, pools, showers, bathtubs, steam rooms and all other physical facilities for the establishment must be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms, or steam or vapor cabinets, shower compartments and toilet rooms shall be thoroughly cleaned and disinfected each day the business is in operation. Bathtubs shall be thoroughly cleaned and disinfected after each use.

(11) Disinfecting agents and sterilizing equipment shall be provided for any instruments used in performing acts of massage and said instruments shall be disinfected and sterilized after each use.

(12) Pads used on massage tables shall be covered with durable, washable plastic or other acceptable waterproof material.

(13) (A) To protect patrons from potential health and sanitary hazards, all employees, massage technicians and massage technician trainees shall be clean and shall perform all services on the premises in full, clean outer garments.

(B) Exception. A massage technician may perform services wearing no clothing or wearing less than full outer garments when teaching a class gathered to learn the theory, practice, or work of massage, and when said class consists in part of massage by the technician or members of the gathered class.

The following items, (14) through (17), shall not apply to CAMTC certified establishments:

(14) Each service offered, the price thereof, and the minimum length of time such service shall be performed shall be posted or shall be available in a conspicuous public location in each massage establishment. All letters and numbers shall be capitals, and not smaller than 14 point font.

(15) (A) Massage establishments shall close and remain closed from eleven p.m. (11 p.m.) to nine a.m. (9:00 a.m.)

(B) After one year of operation a massage establishment may be exempted from the hours restrictions of this section by the chief of police upon a written request which details the factual reasons supporting good cause for the exemption. The chief of police, in determining what constitutes good cause for this exemption from the hours restrictions, shall consider and weight the following factors:

(i) The criteria outlined in Section [4.04.140](#) of [Chapter 4.04](#);

- (ii) The criteria outlined in Section [4.54.030](#) of this chapter;
- (iii) The impact which the massage establishment has had on the health, safety, and welfare of the local community, including, but not limited to, parking and traffic congestion;
- (iv) The massage establishment's compliance or noncompliance with all federal, state, and local laws, including, but not limited to, this municipal code.

If, upon review of those factors, the chief of police determines that good cause does exist for the requested exemption, the chief may then exempt the particular massage establishment from the hours restrictions of this section. However, in no event shall any massage establishment close later than two a.m. nor open earlier than six a.m.

- (C) The exemption from the hours restrictions of this section shall be subject to review and renewal annually at the same time as the renewal of the underlying permit and the same factual showing shall be made as that required for the initial exemption. The chief shall not grant an hours exemption unless said establishment has maintained the criteria specified in Section [4.54.110\(a\)\(16\)\(B\)](#).

(16) Every massage establishment and sole proprietor massage establishment shall keep written client records of the following: the date and hour of each service; the name, contact information and sex of each patron; the service provided, and the technician administering the service. A massage establishment is not required to provide client records to the City or any other enforcement agency without an order from a court of competent jurisdiction authorizing the release.

(17) Off-premises Massage Prohibited. Except as otherwise provided, no person, , shall engage in any of the services permitted under this chapter at any place other than an establishment permitted pursuant to [Chapter 4.54](#).

#### **4.54.120 Inspection by officials.**

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 to observe and enforce compliance with building, fire, electrical, plumbing or health regulations. A warrant shall be obtained whenever required by law.

#### **4.54.130 Business name.**

No person permitted to operate a massage establishment shall operate under any name or conduct business under any designation not specified in the permit.

#### **4.54.140 Business location change.**

Upon a change of location of a massage establishment, an application to the chief of police shall be made, and such application shall be granted, provided all applicable provisions of this code are complied with and a change of location fee as set forth in the municipal fee schedule to defray, in part, the costs of investigation and report, has been paid to the city.

**4.54.150 Sale or transfer of massage establishment interest.**

A sale or transfer of any interest in a massage establishment, which interest would be reported as required in this chapter upon application for a massage establishment permit, shall be reported to the chief of police within ten days of such sale or transfer. The chief of police shall investigate any person receiving any interest in a massage establishment as a result of such sale or transfer, and if such person satisfies the requirements relating to massage establishment permit applicants, the existing permit shall be endorsed to include such person. A fee as set forth in the municipal fee schedule shall be paid to the city for the investigation by the chief of police necessitated by each such sale or transfer.

**4.54.160 Display of permits, permits.**

The owner or operator of a massage establishment shall display the massage establishment permit and the permit of each and every massage technician or massage technician trainee employed in the establishment in an open and conspicuous place on the premises or keep the permits together in a designated area, such that the permits are easily accessible for inspection. Passport-size photographs of permittees shall be affixed to the respective permits on display pursuant to this section. Home addresses of massage technicians and massage technician trainees need not be displayed. A fine for continued violation will be collected in an amount to be determined by resolution of the City Council.

**4.54.170 Exemptions.**

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

- (1) Physicians, surgeons, chiropractors, osteopaths or physical therapists who are duly permitted to practice their respective professions in the state of California;
- (2) Nurses registered under the laws of the state of California;
- (3) Barbers and beauticians who are duly permitted under the laws of the state of California.
- (4) Reflexologists performing reflexology; however any reflexologist engaged in massage shall be required to comply with the provisions of this Chapter.

**4.54.180 Grounds for denial, probation, and disciplinary action.**



In addition to any provisions of this chapter, the grounds set forth in Section [4.04.140](#) shall apply to permits and permits required under this chapter. Any circumstances constituting grounds for denial shall also constitute grounds for revocation, suspension or disciplinary action.

#### **4.54.190 Hearing.**

Any permittee whose permit has been suspended or revoked shall proceed pursuant to the appeal and hearing provisions of [Chapter 4.04](#).

#### **4.54.200 Application to existing establishments and technicians.**

All operators of existing massage bath or health treatment establishments, and all persons engaged in giving massage, bathing and health treatments in the city upon the effective date of this chapter shall begin the application process and comply with all application and other requirements within sixty (60) days following the effective date of this chapter.

#### **4.54.210 Application of other code provisions.**

[Chapters 1.08 and 4.04](#) shall apply to the subject matter of this chapter in all respects, including those not specifically mentioned in this chapter.

# Massage Ordinance Comparison-April 2012

Agency	Education	Client Records	Liability Insurance	City Permit Option	Exempt Foot Massage	Reflexology Language
Belmont	500	yes	\$500,000	yes	no	no
Burlingame	500	yes	\$500,000	yes	no	no
CAMTC	250	no	no	n/a	no	no
Citrus Heights*	200	no	\$2,000,000	yes	no	yes-exempt reflexology
Foster City	500	yes	\$500,000	yes	no	no
Los Gatos	300	yes	\$100,000	yes	no	no
Millbrae	500	yes	\$500,000	yes	no	uses term 'reflexology' but requires the same permit as massage
Mountain View	100	no	no	yes	no but they have 'noncertified' massage establishments	no
PA(Proposed)	200	yes	\$100,000	yes	considering	considering
Redwood City	CAMTC only	CAMTC only	CAMTC only	CAMTC only	CAMTC only	CAMTC only
San Carlos	CAMTC only	CAMTC only	CAMTC only	CAMTC only	CAMTC only	CAMTC only
San Mateo	200	yes	\$100,000 practitioner \$500,000 est.	yes	no	no
SMCSO	CAMTC only	CAMTC only	CAMTC only	CAMTC only	CAMTC only	CAMTC only
Sunnyvale	100	yes	\$1,000,000	yes	no	no

\*only example of reflexology exemption



## POLICY AND SERVICES COMMITTEE

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### EXCERPT

Regular Meeting  
February 14, 2012

Chairperson Price called the meeting to order at 6:04 p.m. in the Council Conference Room, 250 Hamilton Avenue, Palo Alto, California.

Present: Espinosa, Klein, Schmid

Absent: Holman (Chair)

1. Request Policy and Service Committee Review of the Proposed Ordinance Changes to Section 4.54 Massage Establishments.

Assistant to the City Manager, Sheila Tucker stated she would be Staffing the Policy and Services Committee this year and looked forward to working with the Council and serving the Committee.

Palo Alto Police Lieutenant, April Wagner stated that the City Attorney's Office and Police Department Staff members had worked on the proposed Ordinance change for over a year. She said that the Palo Alto Municipal Code Ordinance 4.54 was enacted in 1974 to ensure lawful commerce of massage businesses in Palo Alto. The Palo Alto Police Department (PAPD) was responsible for enforcing the Ordinance. In 1996, state laws were anticipated to change the regulation of massage businesses. The City suspended enforcement on portions of the Ordinance that included, permit renewals, fee collections, and site inspections. Background checks and permitting of new massage applicants continued. The current Ordinance, as written, violated state law. The City had 191 City permitted or California Massage Therapy Council (CAMTC) certified massage therapists. Palo Alto had three permitted massage establishments; Water Course, Body Kneads, and the Massage Therapy Center. There were four establishments that should have been permitted under the current regulations. A City audit revealed two dozen unpermitted massage establishments in Palo Alto. The adoption of Senate Bill 731 (SB731) in September 2009 impacted the ability of municipalities to regulate the practice of massage and the CAMTC, a

public, non-profit, benefit corporation was created. The corporation standardized and regulated the issuance of certificates to massage therapists and practitioners. Adoption of Assembly Bill 619 (AB619) in 2011, continued legislative work on portions of SB731 that were going to expire. Fifty percent of the massage therapists in Palo Alto were not state-certified. Many local municipalities revisited their ordinance since the passage of SB731. Staff reviewed local updated ordinances and worked with CAMTC Board Members in creating the document. An outreach program was conducted that involved citizens and therapists in a modification review of the Ordinance. Key objectives were to comply with State regulations, to insure qualified trained workers, exempted CAMTC certified practitioners or be permitted by the City, and allowed sole proprietorships in Palo Alto. The final draft change added language to exempt CAMTC holders from obtaining additional City massage permits, increased education from 100 to 200 hours from an accredited school, added sole proprietorship, required malpractice insurance, must display City permits as required by State law, and to maintain limited client records and made available by a court order. The new Ordinance eliminated special building and zoning requirements by State law and added the ability to deny a City permit to an applicant who had been denied, suspended, or had a CAMTC certificate revoked. The cost recovery fees for the program and Staff time were changed to be consistent with other cities. New establishment fees were \$750, renewal fee \$450; sole proprietorship fee \$350, renewal fee \$150; massage technician permit \$300, renewal fee \$150 for people that did not want to be state certified. A 2-year CAMTC certificate fee was \$150, plus a \$90 Livescan fingerprint or a criminal history check fee. Practitioners were required to have 250 hours and therapists 500 hours of education from an accredited school. CAMTC certified therapists not establishments. In conclusion, the proposed Ordinance would recognize and allow massage practice to occur in Palo Alto, allowed existing therapists and establishments to continue doing business, and allowed time for the therapists to comply with the requirements. Those who chose to patronize the establishments could feel confident that the therapist had met standardized qualifications. The Ordinance was consistent with other municipalities and state requirements. CAMTC Board Members found the draft Ordinance to be compliant with the state law. The passage of the Ordinance would allow the City to resume consistent enforcement on the massage businesses in Palo Alto.

Mark Petersen-Perez, PaloAltoFreePress, spoke that massage therapists and practitioners had the right to deny law enforcement officials the ability to view the records unless they had a court order. The information was sensitive and confidential.

Vice President Susan Mix, Reflexology Association of California (Association), stated that the Ordinance revision did not unfairly encompass Reflexology within the Massage Ordinance. She said the scope of practice of Reflexology was a non-invasive, natural system of stress reduction and worked on a fully clothed person and only shoes and socks were removed. Work was done from the ankle to the tips of the toes, from the wrists to the tips of the fingers and the outer ear. Reflexologists do not rub backs of a client. The average price charged per session in the Bay Area was \$50 to \$100. She raised concerns that there may be establishments that were misclassified in Palo Alto as Reflexology and were included in the Ordinance. She urged the City to adopt an exemption to the Massage Ordinance and to create a separate ordinance for professional Reflexologists to protect the public. She said the Association was willing to work with the PAPD to craft an exemption.

Vicky Venter, Reflexologist, stated that Reflexology was not massage. The practice of Reflexology was to bring the body back to balance through relaxation through the nervous system and not the musculature system. She said Reflexology should not be governed under massage laws and should have its own laws to include setting educational standards to support public safety concerns.

Christine Issel, Reflexologist and Representative of the American Reflexology Certification Board (ARCB), spoke regarding the regulation and licensing of Reflexology businesses. She said some of the requirements that needed to be considered for licensing were evidence of an ARCB certification, proof of membership from one of the professional organization such as the Reflexology Association of California, proof of practitioner liability insurance, Livescan fingerprints, a government issued identification and to require the disclosure form from the California Business and Professional Code. She suggested setting educational standards and fingerprint requirements with the license application to prevent blurring the law and operating under misleading premises.

Beverly D'Urson stated that she patronized Happy Feet Foot Spa in Palo Alto. She opposed the revision to the Ordinance because it would take away the ability to choose certain healing techniques. She said the Happy Feet Foot Spa specialized in a certain massage technique and the revised ordinance would force their staff members to obtain a massage permit.

Robert Hessen spoke in support of the Happy Feet Foot Spa and asked that new restrictions not be imposed on the establishment. He clarified that the operation functioned in a transparent, open atmosphere that did not encourage inappropriate behavior. He urged the decision-making members

to examine the service that the Happy Feet Foot Spa offered before making a final decision.

David Bertelsen, Happy Feet Foot Spa owner, raised concerns that the revision to the Ordinance would require staff members to be licensed under the new law. He urged the Council to reject the changes because anyone that practiced any form of massage would be grouped under one umbrella and would require unnecessary licensing.

Ping Bertelsen, Happy Feet Foot Spa owner, stated neighboring cities did not require licensing for businesses similar to theirs and that Palo Alto law enforcement officers tried to convince them otherwise. He said the City of Mountain View had passed an ordinance specifically for their type of practice. A new category was created that exempted non-licensed massage practitioners from the standard massage licensing requirements. She said most of the south Bay Area establishments did not require licensing or fees that had the same type of business as theirs.

Babs Mitchell stated that the Palo Alto Police Officers had placed restrictive requirements on various equipment and cleaning procedures in her establishment and stated the issues in question should be revisited. She felt that any establishment that practiced any type of massage should be under one ordinance.

Dainuri Rott spoke in support of the Happy Feet Foot Spa. He said the services they offered were the only healthcare he used and were affordable. He asked the City to not enforce an ordinance that would force the establishment to discontinue their practice in Palo Alto.

Robin Malmquist stated that the definition of the term "therapist", "technician", and "practitioner" used in the Ordinance did not coincide with the definition used by CAMTC. They should be the same, consistent, and easily understood. He asked that the Ordinance not be implemented until after all CAMTC applicants were certified. Applicants waiting to be certified were placed in a state of limbo and faced with having to make a choice to either follow the Ordinance route or CAMTC regulations.

Council Member Klein asked if the state would occupy the massage field if the City did not move forward on the revision, and that the speakers at this evening's meeting may or may not be governed by the state.

Assistant City Attorney, Donald Larkin clarified that the state's intent was to not occupy the field of massage if the City did not move forward on the proposed changes. The state's attempt was to create a permitting system

that would take people away from local regulations. He said the Council had three options: 1) to allow massage practice with a state permit enforced through an ordinance, which was similar to the ordinances in neighboring cities. 2) the City allow people to opt out of local regulations by getting state-certified, which the enacted ordinance change would do, and 3) to repeal the City's Massage Ordinance and not require practitioners to obtain state certification and the option for no regulations.

Council Member Klein restated that if the City did nothing, and the City repealed the City's Ordinance, which was inconsistent with the state law, there would be no regulations at all.

Mr. Larkin said practitioners would not be required to be state-certified and there would be no regulation at all.

Council Member Klein asked how was this issue handled in unincorporated areas.

Mr. Larkin said they were governed by a County ordinance.

Council Member Klein said the state provided the City with a system where the City could opt in and state regulations would take over.

Mr. Larkin said that was correct. The state preempted the City from regulating anyone certified by the state but did not preempt the City from anyone who was not state-certified. The state placed the responsibility on the City to regulate non-state certified practitioners.

Council Member Klein asked if the City could adopt an ordinance that would require practitioners to pay an annual permit fee of \$1 if the City felt it did not require any type of regulations.

Mr. Larkin said the City could repeal the existing ordinance and not have any regulations or to have a level of regulation such as a \$1 annual permit fee to track permitted practitioners.

Council Member Klein asked Mr. Larkin if the City repealed the Ordinance and had no regulations, would there be no regulations set by the state.

Mr. Larkin said that was correct.

Council Member Klein asked if that had been done elsewhere.

Mr. Larkin said not in the local area but could not confirm for statewide.

Council Member Klein said there was an issue in the 1970's and asked if the City had encountered issues in the field of massage within the last 30-years. He asked if this discussion would be taking place if the state had not enacted their law.

Code Enforcement Officer, Heather Johnson said possibly. She stated that the CMTC was a voluntary, non-profit, program the City could opt into. The state would not take precedence if Palo Alto did not have a set of regulations. People with no formal training in the field of massage would be able to practice in Palo Alto. She said she could not identify cities that did not have ordinance regulations because the focus was on cities that had and studied their municipal code.

Council Member Klein said the City had an Ordinance for 15 years that was in a state of suspense and asked if there had been any problems.

Ms. Wagner said no. She said in an attempt to be a little more compliant to the changing regulations only portions of the existing Ordinance were suspended. The City continued to allow new practitioners to practice and did background checks. No fees were charged, and no site inspections were made.

Council Member Klein said the massage field had its share of problems with prostitution and asked if there had been problems along those lines or in the practice of massage in Palo Alto in the past 30 years.

Ms. Johnson said there had been problems. She said 99.9 percent of the therapists did a great job and provided a good service but a small portion did not.

Council Member Klein asked about the Reflexology issue.

Ms. Johnson said adopting an ordinance to accommodate Reflexology seemed reasonable. Businesses that were discussed at this evening's meeting did not fall into the category of Reflexology. The Happy Feet Foot Spa practice fell into the description of massage. Their technique was not limited to touching hands, feet, and ears as regulations defined by the Reflexology Association of California. The issue of Reflexology was not addressed because patrons had described the service they received from the Happy Feet Foot Spa fit the definition of massage.

Council Member Klein asked about the situation in the Cities of Mountain View and Los Altos.



Ms. Wagner stated that the City of Mountain View accommodated a non-certified massage establishment. The establishment and therapist paid fees but was exempted from education requirements.

Council Member Klein said his understanding was that there was intent to exempt sole proprietorship.

Ms. Wagner said that was incorrect. She said the definition of a sole proprietor was a single person, massage establishment. It basically was a person practicing massage in a rented room in an office space.

Charlie Cullen, Deputy Director of Technical Services, clarified that was prohibited under the old Ordinance and a new category was created in order to certify sole proprietors. The City of Mountain View's situation was an exception to the rule and had a special category that most other municipalities did not support in their ordinance. The City of Los Altos was on tract to require CMATC certification only and not provide any another method to qualify under their local ordinance.

Council Member Klein said it was still unclear what was being accomplished for a sole proprietorship massage establishments.

Ms. Wagner said in the effort to try to identify massage therapists they were not aware of that were practicing in Palo Alto, they discovered a large number of individuals who had their own personal offices, their own businesses that were single individuals, renting spaces and had clients. The PAPER deemed Palo Alto as a city that should be pro-business. They felt it was inappropriate to have 75 percent of the therapist not be state-certified. This was an incentive to work with these individuals to allow them to run a successful business, which meant having to change current regulations and to allow single persons to have sole proprietorship establishments.

Council Member Klein asked if that individual was being regulated.

Ms. Wagner said yes, if they were not state-certified.

Council Member Klein said he was having trouble with the language as written in the Municipal Code. He said 4.54.020 defined a massage establishment as any establishment with more than one massage technician.

Ms. Wagner said that was correct. It was a single person acting as a business owner and a massage technician.

Council Member Klein said his interpretation of the code was that this was one individual not subjected to the City's regulation.

Mr. Larkin said the individual was not subjected to the establishment regulations but was subjected to the individual permit regulations.

Council Member Klein asked Mr. Larkin where that statement was located and if it referred to the statement "the technician permit would be required."

Mr. Larkin said yes.

Council Member Schmid stated the document did not state this was a Police Department matter and needed clarification on why a law enforcement officer was representing the City.

Ms. Wagner stated that a Code Enforcement Officer's position was charged with enforcing this statute. The position assumed the permitting of taxicabs, alarms, massage establishments, solicitors, but she was not sure how far back the history was of the Code Enforcement Officer assuming the responsibility of permitting.

Council Member Schmid said Council Member Klein mentioned there were problems in the field of massage in the 70's and asked if there had been any problems since. He raised concerns that the Police Department was occupied with critical activities and asked if the field of massage was one of them.

Ms. Wagner said 99.9 percent of the time there were none but could be a pervasive problem in communities. She confirmed that Palo Alto had its share of illicit activities but no recent incidents had been identified in massage parlors. Passage of the Ordinance would bring the issue to state law and help the Code Enforcement Officer oversee that the practice of massage functioned accordingly in the community.

Council Member Schmid said his contact with the Police was through the Police Blotter in the newspaper and had assumed that every police call was listed. He said he did not recall seeing incidents or complaints that pertained to illicit sexual activities.

Ms. Wagner confirmed they had gotten calls and some that required special investigation procedures but none were in massage establishments.

Council Member Schmid said it would be helpful and important to have a statement that identified these issues in terms of the number of past and

present complaints along with the number of incidents that occurred in neighboring cities. The information would identify that these issues were activities handled by the Police Department and not by another City department.

Mr. Cullen clarified that historically the issues that Council Member Klein referred to in the 70's became an enforcement issue for the Police Department. The enforcement permitting process fell under the Police Department's jurisdiction when the Ordinance was enacted and remained with the Police Department. The Police Department's Code Enforcement Officer was a non-sworn, civilian, officer who enforced a number of other ordinances and in charge of permitting, ensured that practitioners complied with the rules and the Ordinance. The Code Enforcement Office could initiate an investigation if she saw an illicit activity occurring but the criminal aspect would be investigated by a sworn officer.

Council Member Schmid raised concerns that the CAMTC was a non-profit organization that provided education and certification and that a CAMTC permitted practitioner would be outside the local code enforcement. He asked if that implied that a CAMTC permitted individual was not in danger of illicit activity.

Ms. Wagner clarified that the CAMTC had a rigorous application process and had the ability to suspend, revoke, or deny a permit based on a complaint. CAMTC thresholds of complaints were low. Their investigation process was extensive and a practitioner under investigation would face heavy scrutiny.

Mr. Larkin clarified that the CAMTC was a non-profit organization, a public benefit corporation created by the state government and a quasi-governmental agency similar to the state bar for attorneys. It was not an independent, non-profit without government functions.

Council Member Schmid raised concerns regarding establishments to maintain a logbook.

Ms. Wagner clarified the logbook was similar to a hotel registry. Law enforcement officers could review the information but would require a court order. The method was to assist both in the defense or prosecution of a therapist working at a business.

Council Member Schmid asked if other professions such as physical therapist or personal trainers were asked to maintain a logbook.

Ms. Wagner said they did kept records that contained contact information, such as name, address, phone number and services performed. Hair dressers often maintained a logbook for the purpose of sending out mailers.

Council Member Schmid stated that would be different than a logbook that contained specific dates, times, and detailed descriptions of services received.

Mr. Cullen clarified that the Police Department was sensitive to the issues involved. Customer records in massage establishments would require a subpoena in order for a law enforcement officer to view the records. The process would be similar to any other business that faced a criminal investigation. He wanted to make clear that the subpoena requirement was added to the regulations.

Council Member Schmid said the definition of a massage was touching of the exterior space of the body and could include several areas. He felt the definition of massage was too broad. Reflexology stated they did not have the same temptations that led to past abuses. He asked what definition did the Police Department use and if they felt it was too broad.

Ms. Wagner stated the practice of massage involved the manipulation or applying pressure to the body. There was the threat of possible injury to the body during manipulation as well as criminal or sexual aspect that could occur. The definition of massage needed to be broad. The intent of the Ordinance was not to focus on the Reflexologist's scope of work limited to the hands, feet, and ears but work that extended to the manipulation, applying pressure, and touching all over the body.

Council Member Schmid noted that one of the speakers stated that half of the states make a distinction between massage therapy and Reflexology. He said the definition was not a standard definition but an interpretation and broader than others used.

Council Member Espinosa stated what the Committee was hearing were issues of trying to determine a problem and how to fix it. There was the issue of illicit activities in Palo Alto and for the Council to support the Police Department to quickly address the situation. The other was how the proposed Ordinance change would impact the massage businesses in terms of people getting healthcare services, training requirements for employees, and wanting to protect the public. The impacts would affect the massage business, entrepreneurs, and small businesses without a real good cause and change an industry on services they were able to provide in the

community. He asked what Staff's thoughts were on his comments and if there were concerns in respect to the development of the Ordinance.

Ms. Wagner said everyone's needs were considered in developing the Ordinance. She said that the category "sole proprietorship" was created to allow businesses to occur, to define massage and that all establishments played by the same rules. Additionally, state-certified people would be exempted.

Council Member Espinosa asked if information could be collected regarding illicit activities, not on individual cases, if the Committee wanted to get a better understanding if the problem was significant enough to move forward to consider other impacts.

Ms. Wagner explained that the nature of illicit activities occurred behind closed doors and did not know if accurate data could be obtained on the number of illicit activities that occurred.

Council Member Espinosa asked if full cost recovery was the goal of the price point.

Mr. Cullen said cost recovery probably did not cover Staff's time spent in the implementation and moving forward on permitting.

Council Member Espinosa asked Staff what the timeline would be to carve out the Reflexology portion and to come back to the Committee to address the issue.

Ms. Wagner said it could take a few months. There were establishments that referred to themselves as Reflexology and performed other services. She did not think it would be necessary to develop an Ordinance solely for Reflexology. She said a definition could be added to the Ordinance to exempt Reflexology.

Council Member Espinosa said the speakers touched on issues the Police Department felt that needed stricter regulations such as the method used to wash down equipment, separate faucets to accommodate hot and cold running water, terminology issues, and implementation dates. He asked if Staff could respond to these issues, was Staff in disagreement, or if further discussions needed to occur.

Ms. Wagner said the intent was to apply regulations governed by state laws for municipalities to enforce health and safety rules that applied to massage businesses. She said the terminology issues could be revisited to see if a

better term could be used to define “technicians”, “practitioners” and therapists”.

Mr. Larkin stated that Staff attempted to answer many of the questions during individual meetings with the practitioners and Staff would revisit comments that were overlooked.

Council Member Schmid said Reflexology was an alternative type of practice and had a separate form of certification process. He felt that the Happy Feet Foot Spa was not Reflexology or the standard therapy and appeared to be innocuous. He said there was a spectrum of activities that seemed outside the boundaries that was focused on in reviewing the definitions. He suggested looking at how neighboring jurisdictions dealt with their ordinances, not just in a general sense, but what were the differences and how they might apply to what the City was dealing with.

Ms. Wagner said they had reviewed other city ordinances and found there were different distinctions. She disagreed with the statement that the situation of having clothes on in an open room was different from clothes off in a closed room. She felt because there was a layer of clothing between the person’s hands and the body they were working on that through pressure and manipulation did not mean a criminal act could not occur. Happy Feet Foot Spa practiced Reflexology but the major portion of their service was full body massage. She understood why people appreciated the low-cost massage option. The intent of the Police Department was not to put anyone out of business. The Happy Feet Foot Spa proprietors were offered solutions to comply with the proposed Ordinance and time for their employees to get proper training. Mr. Bertelsen’s response was that Happy Feet Foot Spa would be put out of business if the employees received the proper education and would leave for better jobs. The Police Department wanted to see the Happy Feet Foot Spa to continue their operations in Palo Alto; however, their practices met the definition of massage and would need to comply with the same rules as other massage businesses in Palo Alto.

**MOTION:** Council Member Klein moved, seconded by Council Member Espinosa that Staff return to the Policy and Services Committee with revised language for the recommended ordinance that excludes Reflexology.

Council Member Klein stated that businesses were not always regulated. Regulations came about because of abuses in one form or another. One issue that resulted from licensing was people tried to move around boundaries to have lower-cost alternatives. Society did not allow people who were not appropriately state-certified to do things that were close to what licensed people did and resulted in disagreements. He said he would

be willing to exempt Happy Feet Foot Spa on the same basis as a Reflexology, but if their practice fitted the definition of massage they would need to comply with the same rules. He asked if Reflexology should have a licensing procedure.

Mr. Larkin agreed.

Council Member Espinosa said he agreed with Council Member Klein's comments, but not for all the same reasons. He was in agreement of moving the item forward but did not agree that the City needed broad regulations around the field of massage. He felt that when the item was brought back to the full Council there would be Council Members that will raise the question of what was the problem that Staff was trying to resolve, why the proposed revision was needed, and how the Ordinance would solve those problems. He supported the Motion.

Council Member Schmid suggested having a clear statement that identified the problem and how the regulations would deal with the problem. He said it would be helpful for Staff to return with more information regarding the ordinances in other cities. The City could do a comparison to what other municipalities were doing in regards to their ordinances.

Ms. Tucker said in moving forward it might be helpful for Staff to come back with information regarding historical investigations and arrests around this type of behavior both locally as well as surrounding jurisdictions. The information provided would be done on general information and not individual cases.

**MOTION PASSED** 3-0, Holman Absent

