Ordinance No. 2013 - 1744

AN ORDINANCE RELATING TO MASSAGE THERAPY

The Solano County Board of Supervisors ordains as follows:

Section 1.

Chapter 14.3 is repealed.

Section 2.

Chapter 14.3, sections 14.3.010 through 14.3.130, is added to the Solano County Code to read as follows:

Sections:

14.3.010 - Purpose and intent

(a) The Board of Supervisors recognizes that commercial massage therapy is a professional pursuit which can offer the public valuable health and therapeutic services and unless properly regulated, the practice of massage therapy and the operation of massage businesses may be associated with unlawful activity and pose a threat to the quality of life in the local community. It is the intent of this chapter to protect the public health, safety, and welfare by providing for the orderly regulation of businesses providing massage therapy services, discouraging prostitution and related illegal activities carried on under the guise of massage therapy, and establishing certain sanitation, health, and operational standards for massage businesses.

(b) It is the Board of Supervisors' further intent to rely upon the uniform statewide regulations applicable to massage practitioners and establishments that were enacted by the State Legislature as Business and Professions Code section 4600 et seq., to restrict the commercial practice of massage in the unincorporated areas of Solano County to those persons duly certified to practice by the California Massage Therapy Council, and to provide for the registration and regulation of massage businesses for health and safety purposes to the extent allowed by law.

14.3.020 - Definitions

As used in this chapter, the following words terms shall mean:

(a) "Business" means the advertising and soliciting of massages and includes a massage practitioner who is the owner or sole owner, operator and employee of a massage business operating as a sole proprietorship, as well as a massage establishment which employs massage practitioners.

(b) "California Massage Therapy Council" or "CAMTC" means the Massage Therapy Organization formed under Business and Professions Code section 4600.5.
(c) "Certified Massage Practitioner" means any individual certified by the California Massage Therapy Council as a Certified Massage Therapist or as a Certified Massage Practitioner under Business and Professions Code section 4600 et seq.

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

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

(f) "County Registration Certificate" means a registration certificate issued by the Director of Resource Management, or his or her authorized representative, upon submission of satisfactory evidence that a massage business employs or uses only certified massage practitioners pursuant to this chapter.

(g) "Director of Resource Management" means the Director of Resource Management of Solano County and his or her authorized representatives.

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

(i) "Health Officer" means the person appointed by the Solano County Board of Supervisors under the California Health and Safety Code or his or her authorized representatives.

(j) "Massage" or "massage therapy," means and refers to any method of treating the external parts of the body for remedial, health, or hygienic purposes for any form of compensation by means of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, or stimulating the external parts of the body, with or without the aid of any mechanical or electrical apparatus or appliances; or with or without supplementary aids, such as rubbing alcohol, liniments, antiseptics, oils, powders, creams, lotions, ointments, or other similar preparations commonly used in this practice; or by baths, including but not limited to Turkish, Russian, Swedish, Japanese, vapor, shower, electric tub, sponge, mineral, fomentation, or any other type of bath.

(k) "Massage business" means any business that offers massage therapy in exchange for compensation, whether at a fixed place of business or at a location designated by the customer or client through outcall massage services. Any business that offers any combination of massage therapy and bath facilities - including, but not limited to, showers, baths, wet and dry heat rooms, pools and hot tubs - shall be deemed a massage business under this chapter. The term "massage business" includes a certified massage practitioner who is the owner or sole owner, operator and employee of a massage business operating as a sole proprietorship.

(l) "Operator" or "massage business operator" means any and all owners of a massage business.

(m) "Outcall massage" means the engaging in or carrying on of massage therapy for compensation in a location other than the business operations address set forth in the massage business’ county registration certificate.

(n) "Owner" or "massage business owner" means any of the following persons:

1. Any person who is a general partner of a general or limited partnership that owns a massage business.

2. Any person who has a five percent (5%) or greater ownership interest in a corporation that owns a massage business.

3. Any person who is a member of a limited liability company that owns a massage business.
(4) Any person who has a five percent (5%) or greater ownership interest in any other type of business association that owns a massage business.

(p) "Practitioner" or "massage practitioner" shall be used interchangeably and mean any person who administers massage to another person, for any form of consideration (whether for the massage, as part of other services or a product, or otherwise).

(q) "Reception and waiting area" means an area immediately inside the front door of the massage business dedicated to the reception and waiting of patrons of the massage business and visitors, and which is not a massage therapy room or otherwise used for the provision of massage therapy services.

(r) "Registration" means the registration required by this chapter to operate a massage business.

(s) "School of massage" means any school or institution of learning that is recognized as an approved school under Business and Professions Code section 4600, or its successor.

(t) "Sheriff" means the Sheriff of Solano County and his or her authorized representatives.

(u) "Sole proprietorship" means and includes any legal form of business organization where the business owner (sometimes referred to as the "sole proprietor") is the only person employed by that business to provide massage services.

(v) "Solicit" means to request, ask, demand or otherwise arrange for the provision of services.

14.3.030 - CAMTC certification and local registration required

(a) Individuals. On and after May 1, 2014, it shall be unlawful for any individual to practice massage therapy for compensation as a sole proprietorship or employee of a massage business or in any other capacity within the unincorporated areas of Solano County unless that individual is a certified massage practitioner.

(b) Businesses. On and after May 1, 2014, it shall be unlawful for any business to provide massage for compensation within the unincorporated areas of Solano County unless all owners and individuals employed by the massage business to perform massage, whether as an employee, independent contractor, or sole proprietorship, are certified massage practitioners and the business has obtained a valid county registration certificate.

14.3.040 - Massage business registration

(a) Application. A registration application for a County Registration Certificate shall be filed on forms provided by the Director of Resource Management, submitted under penalty of perjury and shall include all of the following:

(1) Legal name of the massage business.

(2) Address and telephone number of the massage business.

(3) Legal names of all owners of the massage business and their CAMTC certification.
(4) A list of all of the massage business’ employees and independent contractors who are performing massage and their CAMTC certification.

(5) Residence address and telephone number of all owners of the massage business.

(6) Business address and telephone number of all owners of the massage business.

(7) The form of business under which the massage business will be operating (i.e., corporation, general or limited partnership, limited liability company, or other form).

(8) For all owners, a valid and current driver’s license and/or identification issued by a state or federal governmental agency or other photographic identification bearing a bona fide seal by a foreign government.

(9) For all owners, a signed statement that all of the information contained in the application is true and correct; that all owners shall be responsible for the conduct of the business’ employees or independent contractors providing massage services; and acknowledging that failure to comply with Business and Professions Code section 4600 et seq., any local, state, or federal law, or the provisions of this chapter may result in revocation of the business’ county registration certificate.

(b) Issuance. Upon submission by the massage business of all required information, the Director of Resource Management shall issue the massage business a county registration certificate, which shall be valid for two (2) years from the date of issuance. No reapplication will be accepted within one (1) year after an application or renewal is denied or a certificate is revoked.

(c) Amendment. A massage business shall apply to the County to amend its county registration certificate within thirty (30) days after any change in the registration information, including, but not limited to, the employment or termination of certified massage practitioners or the change of the business’ address.

(d) Renewal. A massage business shall apply to the County to renew its county registration certificate at least thirty (30) days prior to the expiration of the county registration certificate. If an application for renewal of a County registration certificate and all required information is not timely received and the certificate expires, no right or privilege to provide massage shall exist.

(e) Fees. There shall be no fee for the registration application or certificate, or any amendment or renewal of it. The provisions of this section shall not prevent the County from establishing fees for health and safety inspections as may be conducted from time to time.

(f) Transfer. A county registration certificate shall not be transferred except with the prior written approval of the Director of Resource Management. A written request for such transfer shall contain the same information for the new ownership as is required for applications for registration pursuant to this section. In the event of denial, notification of the denial and reasons for it shall be provided in writing and shall be provided to the applicant by personal delivery or by registered or certified mail.

14.3.050 - Operating requirements

On or after May 1, 2014, no person shall engage in, conduct, carry on, or permit any massage within the unincorporated areas of the County of Solano unless all of the following requirements are met:
(a) CAMTC-certification shall be worn by and clearly visible on the massage practitioner's person during working hours and at all times when the massage practitioner is inside a massage business or providing outcall massage.

(b) Massage shall be provided or given only between the hours of 7:00 a.m. and 10:00 p.m. No massage business shall be open and no massage shall be provided between 10:00 p.m. and 7:00 a.m. A massage commenced prior to 10:00 p.m. shall nevertheless terminate at 10:00 p.m., and, in the case of a massage business, all clients shall exit the premises at that time. It is the obligation of the massage business to inform clients of the requirement that services must cease at 10:00 p.m.

(c) A list of the services available and the cost of such services shall be posted in the reception area within the massage premises, and shall be described in readily understandable language. Outcall service providers shall provide such a list to clients in advance of performing any service. No owner, manager, operator, or responsible managing employee shall permit, and no massage practitioner shall offer or perform, any service other than those listed as required by this section, nor shall an operator or a massage practitioner request or charge a fee for any service other than those on the required list of services.

(d) A copy of the CAMTC certificate of each and every owner and massage practitioner employed in the business shall be displayed in the reception area or similar open public place on the premises.

(e) For each massage service provided, every massage business shall keep a complete and legible written record of the following information: the date and hour that service was provided; the service received; the name or initials of the employee entering the information; and the name of the massage practitioner administering the service. Such records shall be open to inspection and copying by the Sheriff, or other County officials charged with enforcement of this chapter. These records may not be used by any massage practitioner or operator for any purpose other than as records of service provided and may not be provided to other parties by the massage practitioner or operator unless otherwise required by law. Such records shall be retained on the premises of the massage business for a period of two (2) years.

(f) Massage businesses shall at all times be equipped with an adequate supply of clean sanitary towels, coverings, and linens. Clean towels, coverings, and linens shall be stored in enclosed cabinets. Towels and linens shall not be used on more than one (1) client, unless they have first been laundered and disinfected. Disposable towels and coverings shall not be used on more than one (1) client. Soiled linens and paper towels shall be deposited in separate, approved receptacles.

(g) Wet and dry heat rooms, steam or vapor rooms or cabinets, toilet rooms, shower and bath rooms, tanning booths, whirlpool baths and pools shall be thoroughly cleaned and disinfected as needed, and at least once each day the premises are open, with a disinfectant approved by the Health Officer. Bathtubs shall be thoroughly cleaned after each use with a disinfectant approved by the Health Officer. All walls, ceilings, floors, and other physical facilities for the business must be in good repair, and maintained in a clean and sanitary condition.

(h) Instruments used in performing massage shall not be used on more than one (1) client unless they have been sterilized, using approved sterilization methods.
(i) All massage business operators and their employees, including massage practitioners, shall wear clean, non-transparent outer garments. The garments shall not expose their genitals, pubic areas, buttocks, or chest, and shall not be worn in such manner as to expose the genitals, pubic areas, buttocks, or chest.

(j) No person shall enter, be, or remain in any part of a massage business while in possession of an open container of alcohol, or consuming or using any alcoholic beverage or drugs except pursuant to a prescription for such drugs. The owner, operator, responsible managing employee, or manager shall not permit any such person to enter or remain upon such premises.

(k) No massage business shall operate as a school of massage, or use the same facilities as that of a school of massage.

(l) No massage business shall place, publish or distribute, or cause to be placed, published or distributed any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective clients that any service is available other than those services listed as an available service pursuant to subdivision (c), nor shall any massage business employ language in the text of such advertising that would reasonably suggest to a prospective client that any service is available other than those services as described in compliance with the provisions of this chapter.

(m) No massage shall be given unless the client's genitals are, at all times, fully covered. A practitioner shall not, in the course of administering any massage, make physical contact with the genitals or private parts of any other person.

(n) Where the business has staff available to assure security for clients and massage staff behind closed doors, the entry to the reception area of the massage business shall remain unlocked during business hours when the business is open for business or when clients are present.

(o) No massage business located in a building or structure with exterior windows fronting a public street, highway, walkway, or parking area shall block visibility into the interior reception and waiting area through the use of curtains, closed blinds, tints, or any other material that obstructs, blurs, or unreasonably darkens the view into the premises.

(p) All signs shall conform to all County laws and regulations.

(q) Minimum lighting consisting of at least one (1) artificial light of not less than forty (40) watts shall be provided and shall be operating in each room or enclosure where massage services are being performed on clients, and in all areas where clients are present.

(r) Ventilation shall be provided in accordance with applicable building codes and regulations.

(s) Hot and cold running water shall be provided at all times.

(t) Adequate dressing, locker and toilet facilities shall be provided for clients.

(u) A minimum of one (1) wash basin for employees shall be provided at all times. The basin shall be located within or as close as practicable to the area devoted to performing of massage services. Sanitary towels shall also be provided at each basin.

(v) Pads used on massage tables shall be covered with material acceptable to the Health Officer.

(w) All massage businesses shall comply with all state and federal laws and regulations for handicapped clients.
A massage practitioner shall operate only under the name specified in his or her CAMTC certificate. A massage business shall operate only under the name specified in its county registration certificate.

14.3.060 - Inspection by officials

The investigating and enforcing officials of the County of Solano, including but not limited to the Sheriff, Health Officer and Director of Resource Management, or their authorized representatives, shall have the right to enter the premises from time to time during regular business hours for the purpose of making reasonable inspections to observe and enforce compliance with building, fire, electrical, plumbing or health and safety regulations, and to enforce compliance with applicable regulations, laws, and statutes, and the provisions of this chapter. The Environmental Health Division may charge a fee for any health and safety inspections, as provided in Chapter 11.

14.3.070 - Notifications

(a) A massage business shall notify the Director of Resource Management of any changes described in Section 14.3.040 pursuant to the timelines specified in it.

(b) A registrant shall immediately report to the Director of Resource Management any of the following:
   (1) Arrests of any employees or owners of the registrant's massage business for an offense other than a misdemeanor traffic offense;
   (2) Resignations, terminations, or transfers of practitioners employed by the registrant's massage business;
   (3) The occurrence of any event involving the registrant's massage business or the massage practitioners employed in it that constitutes a violation of this chapter or state or federal law.

14.3.080 – Business License

All persons shall obtain a business license where required by the County’s business license provisions. The issuance of a County Registration Certificate is a condition precedent to the granting of such a business license. Upon issuance of a county registration certificate under this chapter, the applicant shall apply for and furnish the information necessary to obtain a business license. No business license shall be issued until the County Registration Certificate has been issued and the business license fee has been paid. The business license fee shall be commensurate with the business license fee charged to other professionals as established by this code.

14.3.090 - 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, 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 and beauticians 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 provision shall apply solely to the massaging of the neck, face and/or scalp, hands or feet 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.

14.3.100 - Unlawful business practices may be enjoined; remedies cumulative

Any massage business operated, conducted, or maintained contrary to the provisions of this chapter shall constitute an unlawful business practice pursuant to Business and Professions Code section 17200 et seq., and the County Counsel or District Attorney may, in the exercise of discretion, in addition to or in lieu of taking any other action permitted by this chapter, commence an action or actions, proceeding or proceedings in the Superior Court of Solano County, seeking an injunction prohibiting the unlawful business practice and/or any other remedy available at law, including but not limited to fines, attorney fees and costs. All remedies provided for in this chapter are cumulative.

14.3.110 - Administrative fines

(a) Violations. Upon a finding by the Sheriff that a business has violated any provision of this chapter, the Sheriff may issue an administrative fine of up to five hundred dollars ($500).

(b) Separate Violations. Each client to whom massage is provided or offered in violation of this chapter shall constitute a separate violation. Each day upon which a massage business remains open for business in violation of this chapter shall also constitute a separate violation.
(c) Fine Procedures. Notice of the fine shall be served by certified mail with the legal violation and supporting facts. The notice shall contain an advisement of the right to request a hearing before the County Administrator or his or her authorized representative contesting the imposition of the fine.

(d) Appeals. Appeals must be requested in writing, and shall provide facts disputing the violation. Appeals must be addressed to the County Administrator, and must be received within ten (10) days of the date appearing on the notice of the fine. The decision of the County Administrator, or his or her authorized representative, shall be provided by certified mail. The decision will constitute a final administrative order with no additional administrative right of appeal.

(e) Failure to Pay Fine. If the fine is not paid within thirty (30) days from the date appearing on the notice of the fine or of the notice of determination from the County Administrator after the appeal hearing, the fine may be referred to a collection agency within or external to the County. In addition, any outstanding fines must be paid prior to the issuance or renewal of any registration.

14.3.120 - Suspension and revocation of certificates of registration

(a) Reasons. Certificates of registration may be suspended or revoked upon any of the following grounds:

(1) A practitioner or an owner is no longer in possession of a current and valid CAMTC-certification, including a sole proprietor or a person employed or used by a massage business to provide massage.

(2) An owner or sole proprietor: is required to register under the provisions of Penal Code section 290 (sex offender registration); is convicted of Penal Code sections 266i (pandering), 315 (keeping or residing in a house of ill-fame), 316 (keeping disorderly house), 318 (prevailing upon person to visit a place for prostitution), 647(b) (engaging in or soliciting prostitution), 653.22 (loitering with intent to commit prostitution), and 653.23 (supervision of prostitute); has a business permit or license denied, revoked, restricted, or suspended by any agency, board, city, county, territory, or state; is subject to an injunction for nuisance under Penal Code sections 11225—11235 (red light abatement); is convicted of a felony offense involving the sale of a controlled substance; is convicted of any crime involving dishonesty, fraud, deceit, violence, or moral turpitude; or is convicted in any other state of an offense which, if committed in this state, would have been punishable as one or more referenced offenses in this paragraph.

(3) The County determines that a material misrepresentation was included on the application for a certificate of registration or renewal.

(4) The registered certificate holder fails to comply with one or more of the health and safety requirements under this chapter.

(5) Violations of this chapter or Business and Professions Code section 4600 et seq. have occurred on the massage business premises or were committed by a practitioner or an owner.

(b) Suspension Term. The term of suspension shall not be more than sixty (60) days.

(c) Procedures. Written notice of the suspension or revocation shall be served on the sole proprietor or owners by certified mail with the legal violation and supporting facts. The notice shall contain an advisement of the right to request an appeal violation hearing before the County Administrator, or his or her authorized representative.
(d) Effective Date of Suspension or Revocation. Suspension or revocation issued under subdivisions (a) and (b) will be effective ten (10) days from the date appearing on the order, unless a timely appeal is filed in accordance with subdivision (e).

(e) Appeal.

(1) The decision of the Sheriff or the Director of Resource Management is appealable to the County Administrator.

(2) An appeal must be in writing, and be hand-delivered or mailed to the County Administrator.

(3) An appeal must be received by the County Administrator on or before the effective date of suspension or revocation provided by subdivision (d).

(4) The filing of a timely appeal will stay a suspension or revocation pending a decision on the appeal by the County Administrator or his or her authorized representative.

(5) A hearing shall be scheduled within thirty (30) days unless an extension is authorized by the appellant.

(6) The decision of the County Administrator, or his or her authorized representative, shall be a final administrative order, with no further administrative right of appeal.

(f) Reapplication. No reapplication will be accepted within one (1) year after a certificate is revoked.

(g) Evidence. The following rules shall apply to any hearing required by this chapter. All parties involved shall have the right to offer testimonial, documentary, and tangible evidence bearing on the issues, to be represented by counsel, and to confront and cross-examine witnesses. Any relevant evidence may be admitted if it is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Formal rules of discovery do not apply to proceedings governed by this chapter. Unless otherwise specifically prohibited by law, the burden of proof is on the registrant in any hearing or other matter under this chapter.

14.3.130 - Public Nuisance

It shall be unlawful and a public nuisance for a massage business to be operated, conducted, or maintained contrary to the provisions of this chapter. The County may exercise its discretion, in addition to or in lieu of prosecuting a criminal action, to commence proceedings for the abatement, removal, and enjoinderment of that business in any manner provided by law.

Section 3.

Any portion of this ordinance deemed invalid or unenforceable shall be severed from the remainder, which shall remain in full force and effect.

Section 4.

This ordinance shall be effective thirty (30) days after its adoption.
Section 5.

This ordinance shall remain in effect only until January 1, 2015, or such other time as may be established thereafter by Business and Professions Code section 4620, or its successor.

Section 6.

A summary of this ordinance shall be published once within fifteen (15) days after its adoption, in the Fairfield Daily Republic, a newspaper of general circulation in the County of Solano.

Passed and adopted by the Solano County Board of Supervisors at its regular meeting on November 26, 2013, by the following vote:

AYES: Supervisors Hannigan, Spering, Thomson, Vasquez, and Chair Seifert.

NOES: Supervisors None.

EXCUSED: Supervisors None.

[Signature]
Linda J. Seifert, Chair
Solano County Board of Supervisors

ATTEST:

Birgitta E. Corsello, Clerk
Board of Supervisors

[Signature]
Patricia A. Crittenden, Chief Deputy Clerk

Introduced: November 5, 2013

Adopted: November 26, 2013

Effective: December 27, 2013