

# AB 1147 Webinar

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# Division of Responsibility

- CAMTC: Regulates the practice of massage and certifies massage therapists and massage practitioners.
- Cities and Counties: Regulate the business of providing massage through land use and business licensing requirements.

# Division of Responsibility

- Cities and Counties can adopt and enforce local zoning, business licensing, and reasonable health and safety requirements for massage establishments or businesses with CAMTC-certified practitioners. (B&P 460(b) limited by Government Code 51034)
- Cities and Counties can't prohibit a CAMTC-certified practitioner from engaging in any act or performing any procedure that falls within the professionally recognized scope of practice. (B&P 460(a))
- No restrictions on city and county authority over an individual or a business with personnel without CAMTC certification.

# Local Government Authority

Government Code 51034 recognizes the following grants of authority to cities and counties:

- Land use and business regulations adopted pursuant to “police power” (Article XI, section 7 of Constitution)
- Local business regulations (Govt. Code 37100)
- Local business regulations (B&P Code 16000, 16100)
- Land use and business regulations (B&P Code 460(b))

# Local Government Restriction on Authority

Government Code 51034 imposes following restrictions on cities' and counties' authority:

- A city, county or city and county shall not enact or enforce an ordinance that conflicts with the provisions of Section 51034 or with Chapter 10.5 (commencing with 460) of Division 2 of the B&P Code.
- But...restrictions do not apply to individual who provides massage for compensation *without* a valid CAMTC certificate. (B&P 4612)

# Section 51034 Restrictions

- Prohibiting a person of one sex from engaging in the massage of a person of the other sex.
- Defining a massage establishment as adult entertainment.
- Requiring a massage establishment to have windows or walls that do not extend from the floor or ceiling or that interfere with a client's reasonable expectation of privacy.
- Imposing client draping requirements that extend beyond the covering of genitalia and female breasts.
- Prohibiting a massage establishment from locking its external doors if the massage establishment is a business entity owned by one individual with one or no employees or independent contractors.
- Requiring a massage establishment to post any notice in an areas that may be viewed by clients that contains explicit language describing sexual acts, mentions genitalia, or specific contraceptive devices.

# Section 51034 Restrictions

- Imposing a requirement that a certified massage professional take any test, medical examination, or background check or comply with education requirements beyond what is required in statute.
- Imposing a requirement that a CAMTC certified individual obtain a local license, permit, certificate, or other authorization to provide massage for compensation but may require a massage business obtain a license, permit, certificate or other authorization in order to lawfully operate within the jurisdiction.
- Imposing a dress code requirement on a certified massage professional more restrictive than imposed in B&P Section 4609.
- Prohibiting a certified massage professional from performing massage for compensation on the gluteal muscles, prohibiting specific massage techniques recognized by CAMTC as legitimate, or imposing any other specific restriction on professional practice beyond those set forth in B&P Section 4609.

# What next?

## Land Use or Business Regulation?

- Regulation and licensing of massage business pursuant to “police power” (Article XI, section 7 of Constitution); Gov’t Code 37101; B& P Code 16000 or 16100; *Owens v. City of Signal Hill* (1984) 154 Cal.App.3d 123
- Reasonable licensing and health & safety regulations under B&P 460(c)
- Note that AB 1147 does not repeal or modify Gov’t Code 51031 or 51032: some parts preempted as to CAMTC-certified therapist
- AB 1147 lifts cap on business license tax (voter approval?)
- Applying new standards for business operation



# What next?

## Business or Land Use Regulation?

- Regulation of massage business as “land use” pursuant to “police power” (Article XI, section 7 of Constitution); B&P 460(c)- zoning of businesses of healing arts professionals
- Existing massage businesses with CAMTC-certificated personnel
- New zoning and conditional use permit requirements
- Nonconforming property uses – termination provisions of city ordinances; reasonable amortization

# CAMTC's Purpose

- Protection of the public shall be the highest priority for the council in exercising its certification and disciplinary authority, and any other functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

# CAMTC Board

After September 15, 2015 the council goes from as many as 20 members to 13 specified members:

- Three chosen by 3 local government organizations
- Two chosen by massage professionals
- One chosen by the Office of the Chancellor of the California Community Colleges
- One chosen by Department of Consumer Affairs
- One chosen by the California Association of Private Postsecondary Schools
- Five chosen by CAMTC including an attorney representing a city, a local government or state public health official, and a member of an anti-human trafficking group

# Massage Therapist Requirements

- 18 years of age.
- A minimum of 500 hours of instruction in massage and related subjects.
- 100 hours of instruction must address anatomy and physiology, contraindications, health and hygiene, and business and ethics.
- All 500 hours must be from approved schools.
- Applicant must pass a massage and bodywork competency examination.

# Massage Practitioner Requirements

- No new applications for a certificate as a massage practitioner after January 1, 2015.
- Certificates to practice as a certified massage practitioner accepted prior to January 1, 2015 can be renewed.

# CAMTC's Authority & Responsibilities

- The council *may* discipline a certificated massage business owner or operator for the conduct of all individuals providing massage for compensation on the business premises.
- The council *may* deny an application for a certificate or impose discipline on a certificate holder for: unprofessional conduct, engaging in sexually suggestive advertising, engaging in any form of sexual activity on the premises of a massage establishment, engaging in sexual activity while providing massage, or dressing inappropriately while engaged in the practice of massage.

# CAMTC's Authority & Responsibilities

- The council *must* deny an application for a certificate, or revoke the certificate of a massage professional if the applicant or certificate holder is required to register under the Sex Offender Registration Act or is required to register as a sex offender in another state.
- The Council *must* provide information upon request of local government concerning an applicant or a certificate holder with work address within the jurisdiction including: current status of application or certificate; history of disciplinary actions; the home and work addresses of the applicant or certificate holder; the name and home and work addresses of any person whose certificate has been suspended and the length of the suspension, and any other information in the council's possession that is necessary to verify facts relevant to administering the local ordinance.

# CAMTC's Authority & Responsibilities

On or before June 1, 2016 the council shall provide a report to the appropriate policy committees of the Legislature that includes:

- A feasibility study of licensure for the massage profession.
- The council's compensation guidelines and current salary levels.
- The status of the council's progress towards revising the school approval process.
- Performance metrics such as: the annual number of denied certificates, the annual number of suspended, revoked, or otherwise disciplined certificates, the number of certificates taken off suspension, the number of school inspected and unapproved, the total number of complaints about certificate holders, including a subtotal of complaints received from local law enforcement and the action taken by the council as a result of those complaints.



# General Comments

- AB 1147 recognizes the broad Constitutional authority of local governments to regulate businesses, including businesses providing massage, through land use and local licensing, and health & safety requirements. Unless the statute specifies that a local government is prohibited from regulating in a specific way (e.g. defining a massage establishment as adult entertainment), local governments can regulate a massage business (e.g. requiring conditional use permit).
- AB 1147 does not allow local governments to regulate the practice of massage similar to the way state law prohibits local governments from regulating the practice of medicine or other professions. This is the responsibility of CAMTC.

# Expectations

- CAMTC has adopted strategic priorities that include “improving relationships with all stakeholders.” **Expect** CAMTC to reach out to cities through their city attorneys, police chiefs and city council to work with cities to update their ordinances so that they are “reasonable and comply with the new law.”
- AB 1147 sunsets as of January 1, 2017. **Expect** to defend the ability to regulate massage businesses. Collect information including: the number of establishments your city was able to discipline or close, the number of declarations filed with CAMTC, etc.

# Expectations

- The massage community is wary of jurisdictions enacting unreasonable ordinances. **Expect** that if jurisdictions adopt moratoriums, unreasonable caps and huge business licenses the massage community will seek to take the authority away for all cities. Cities need to be good stewards of the law and be thoughtful in their ordinances to ensure that legitimate massage businesses can operate.
- AB 1147 asks stakeholders for a model ordinance. **Expect** the League to be a resource. We will post ordinances on our web site that have been updated in accordance to AB 1147. Please share any and all information.