

A (Very) Brief History of the Massage Therapy Act

Where are we? How did we get here? First, some definitions:

The Massage Therapy Act: This is the state law that defines the qualifications for our voluntary certification, governs the California Massage Therapy Council (CAMTC) in issuing that certification, and sets standards of conduct for our profession. It also sets some limitations on how we can be regulated by local (city and county) massage ordinances. See [California Business and Professions Code Section 4600-4621](#) for the full text.

The California Massage Therapy Council: The not-for-profit, non-governmental public-benefit corporation that certifies massage providers under legislative authority.

SB 731: The bill, signed into law in 2008, which authorized creation of the Massage Therapy Act and the CAMTC and allowed voluntary statewide certification of massage therapists beginning in September of 2009.

AB 1147: The bill, signed into law in 2014, which significantly altered the terms of the Massage therapy Act, returning significant land use and establishment authority to local jurisdictions.

Land Use Authority: The power to regulate (in our particular case) the terms and locations in which massage establishments are allowed to open

Business regulation authority: The power to regulate (in our particular case) the terms under which massage establishments are allowed to operate in a city or county, from permitting of the business to health and safety requirements.

Prior to 2009, there was no state regulation of massage therapy establishments or massage therapists in the state of California. All regulation was done at the city or county level. Most often, massage was regulated as Adult Entertainment. Adult Entertainment ordinances are used to regulate most anything related to sex and commerce: strip clubs, sex toy retailers, x-rated movie theaters, adult bookstores.

Why were massage businesses in the same category as these businesses? Because, from a regulatory standpoint, massage businesses have historically been presumed to actually be in the business of prostitution instead of massage therapy; hence cities have regulated "massage parlors" instead of our massage businesses. With no real alternative available, massage therapists had to make the best of this situation.

In 2008, SB 731 was made into law and became the Massage Therapy Act. The Massage Therapy Act changed two important things for our profession:

1. It created a credential (the CAMTC certification) that was valid anywhere in the State of California, and prevented a city or county from requiring a certificate holder to have a second (usually locally issued) credential in order to practice their profession.

2. Then, as amended by AB 619 (effective January 1, 2012), it limited the land use authority of cities and counties to selectively discriminate against massage therapy businesses in their local ordinances. This meant that we had the legal right to locate our businesses in the same buildings and neighborhoods in which other health care and personal services were found.

This meant that, from 2012 until the end of 2014, CAMTC certified massage therapists experienced a brief window of time when our businesses were treated the same as the businesses of other health care professionals.

During the first sunset hearing of the Massage Therapy Act, in 2014, city and county government officials testified that the Massage Therapy Act had led to a "proliferation" of brothels posing as massage businesses and that in order to properly deal with this problem they needed their land use authority returned to them. This is exactly what AB 1147 did.

Many cities have since used that restored land use authority to restore the adult entertainment type of regulations that treat all massage establishments as if they are commercial sex establishments instead of providers of healthcare services.

The most typical forms of these regulations are:

- A conditional use permit - this definition from the City of Pasadena's website:

A Conditional Use Permit is required for uses typically having unusual site development features or operating characteristics requiring special consideration and conditions so they may be designed, located, and operated compatibly with neighboring properties. Some types of uses that require review under the conditional use permit provisions include: service stations, child day care centers, and businesses that sell alcohol or offer live entertainment.

A conditional use permit requirement is based on the assumption that the very nature of the property use represents a problem for the community in which it is to be located.

Conditional use permits are rarely required for health care providers. Normal zoning compliance will usually serve.

And conditional use permits are expensive. They can run into the thousands of dollars just in the application fee. This does not account for costs related to submitting architectural plans, notifying surrounding businesses or residents, and paying rent on a physical location that can't produce income until the permit is issued; a process that can take 3 to 9 months or more depending on city resources.

- Expensive Establishment Permits - a special permit, and potentially a very good regulatory tool, except when accompanied by a special fee; often hundreds or thousands dollars and rarely, if ever, imposed on health care businesses.

- Restrictive zoning - excluding massage establishments from neighborhoods where other health care and personal service businesses freely locate relegating them to areas of a town that are less attractive, more industrial, "red-light districts"
- Spacing requirements - preventing a massage establishment from locating closer than 1,000 feet from a school, church, residence, or another massage establishment.
- Capping total establishments - setting a firm numerical cap on the number of massage establishments allowed in a city simultaneously.
- Redundant background checks: requiring CAMTC certificate holders to pay the city or county for an additional background check

There are more types of difficulties created by these types of ordinances, but that gives you a sense of it.

There are a few cities that have taken a more sensible approach and worked to understand the needs of massage therapists in the construction of their ordinances, but the majority of ordinances passed since AB 1147 passed have contained provisions that harm massage therapists in their legitimate efforts to own a business and practice their profession.

Massage therapists across California are enduring significant costs to continue operating their businesses, being forced to close their businesses, or are prevented from opening them at all.

The portability of our certificate, giving us the right to work in jurisdictions across California, has remained intact, but cities and counties have created local ordinances that make it difficult or impossible to create businesses in which we might do our work.

This is what we are seeking to correct in Sacramento in the weeks and months to come as the legislature revises the Massage Therapy Act.

And that is why **your help is needed** in Sacramento this year to stand with your colleagues as we fight for our livelihood and for the legal protections our profession deserves.

If you are not getting our updates, please send an email to gr@amta-ca.org and ask to be added to our distribution.