

ORDINANCE NO. 06(2016)

AN ORDINANCE OF THE CITY OF DIAMOND BAR AMENDING FOLLOWING SECTIONS OF TITLE 5 OF THE MUNICIPAL CODE PERTAINING TO BUSINESS LICENSING, MASSAGE ESTABLISHMENTS, AND MASSAGE TECHNICIANS: 5.00.080; 5.04.010; 5.04.020; 5.04.050; 5.04.060; 5.04.070; 5.04.080; 5.04.100; 5.04.110; 5.04.130; 5.04.140; 5.08.010; AND 5.08.070.

THE CITY COUNCIL OF THE CITY OF DIAMOND BAR, CALIFORNIA, HEREBY FINDS AND DETERMINES AS FOLLOWS:

A. The City Council desires to amend certain provisions of Title 5 of the Diamond Bar Municipal Code to revise certain general provisions relating to the issuance of business licenses and to make changes in the City's regulation of massage establishment businesses and the practice of massage consistent with the provisions of Assembly Bill 1147, which took effect on January 1, 2015.

B. The City Council finds that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") because it can be seen with certainty that the proposed Code Amendments will not result in a direct or reasonably foreseeable indirect physical change in the environment (Section 15060(c)(2) of the CEQA Guidelines) and this Ordinance is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (Section 15061 (b)(3) of the CEQA Guidelines) and does not apply to organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment (Section 15378(b)(5) of the CEQA Guidelines).

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DIAMOND BAR HEREBY ORDAINS AS FOLLOWS:

SECTION 1. Section 5.00.080 of Title 5, Chapter 5.08 of the Diamond Bar Municipal Code is amended as follows:

Sec. 5.00.080. – Reserved.

SECTION 2. Section 5.04.010 (Investigation of specific businesses) of Title 5, Chapter 5.04 of the Diamond Bar Municipal Code is amended as follows:

Sec. 5.04.010. – Investigation of specific businesses.

(a) Upon receipt of an application for one of the following businesses, the director or his or her designee shall conduct an investigation and criminal background check on the applicant(s), and managerial staff as deemed necessary by the director, and may obtain reports from the sheriff's department, building and safety, fire department, county health department,

and any such other information as he or she deems necessary to determine if the criteria for issuance of a business license have been met:

- (1) Adult oriented businesses (as defined in section 22.80.020 of this Code).
- (2) Alarm systems.
- (3) Alcoholic beverage sales (off-site consumption).
- (4) Bars, cocktail lounges and taverns.
- (5) Computer services/network gaming center (as defined in section 22.80.020).
- (6) Firearm dealers.
- (7) Indoor amusement/entertainment facilities (as defined in section 22.80.020).
- (8) Massage establishments.
- (9) Pawnbrokers and secondhand dealers.
- (10) Peddling-solicitation.
- (11) Psychic reading (as defined in section 22.80.020 of this Code).
- (12) Tow trucks and towing companies.

SECTION 3. Subsection (a)(4) of Section 5.04.020 (Application) of Title 5, Chapter 5.04 of the Diamond Bar Municipal Code is amended as follows:

- (4) Whether or not the applicant or any person or persons responsible for the management or supervision of applicant's business have been within the previous ten years, convicted of a crime, the nature of such offense, and the sentence received therefore including conditions of parole or probation, if any;

SECTION 4. Subsection (a)(4) of Section 5.04.050 (Grounds for denial of business license) of Title 5, Chapter 5.04 of the Diamond Bar Municipal Code is amended as follows:

- (4) Conviction of any crime within the past ten years where the trait shown is inconsistent with carrying on the business, occupation, or activity for the benefit of the public;

SECTION 5. Subsection (b) of Section 5.04.060 (Effect of business license denial) of Title 5, Chapter 5.04 of the Diamond Bar Municipal Code is amended as follows:

- (b) *Appealability.* Any person dissatisfied by the city's decision to grant, deny or condition a business license may appeal that decision to the city manager in a manner provided section 5.04.080.

SECTION 6. Subsection (b) of Section 5.04.070 (Conditions of approval) of Title 5, Chapter 5.04 of the Diamond Bar Municipal Code is amended as follows:

- (b) *Application to change conditions.* The director may change, modify or eliminate any conditions previously placed on a license upon written request if it finds that the reasons for the original imposition of such conditions have been cured or no longer exist.

SECTION 7. Section 5.04.080 (Appeal) of Title 5, Chapter 5.04 of the Diamond Bar Municipal Code is amended as follows:

Sec. 5.04.080. – Appeal.

- (a) Any person dissatisfied with a decision of the city to approve, deny or condition a business license application may appeal the decision to the city manager by filing with the city clerk a notice of appeal within 15 days of the date of mailing of the decision.
- (b) A notice of appeal shall be signed by the appellant or the legal representative of the appellant and shall state that the appellant appeals from a specified decision or a particular part thereof. The notice of appeals shall be accompanied with the required appeal fee, as set by resolution of the city council.
- (c) If a timely appeal is filed, the effect of the decision shall be stayed pending the city manager's resolution of the matter unless the director specifically finds that the public health and safety is endangered, in which case the decision shall take effect immediately.

SECTION 8. Section 5.04.100 (Appeals—Hearing procedure) of Title 5, Chapter 5.04 of the Diamond Bar Municipal Code is as follows:

Sec. 5.04.100. - Appeals—Hearing procedure.

- (a) The city manager shall conduct the appeal hearing de novo and shall hear and consider evidence, argument and points and authorities of law, and may require parties before it to submit such argument and points and authorities of law prior to rendering any decision. The hearing will be held as provided in section 5.04.130.
- (b) The decision of the city manager shall be final.

SECTION 9. Section 5.04.110 (Modification, suspension or revocation) of Title 5, Chapter 5.04 of the Diamond Bar Municipal Code is as follows:

Sec. 5.04.110. – Modification, suspension or revocation.

Any license issued by the city may be conditioned, modified, suspended or revoked for cause by the director in accordance with section 5.04.140.

SECTION 10. Section 5.04.130 (Procedure for hearing) of Title 5, Chapter 5.04 of the Diamond Bar Municipal Code is amended as follows:

Sec. 5.04.130. – Procedure for hearing.

- (a) The licensee or legal representative of the licensee shall have the right to bring witnesses to testify on his or her behalf.
- (b) Hearings need not be conducted according to technical rules relating to evidence and witnesses.
- (c) The director / city manager shall issue a decision in writing. The decision shall contain a determination of the issues presented.
- (d) Appeals of the director's decision shall follow the appeal procedures set forth in sections 5.04.080 through 5.04.100.

SECTION 11. Section 5.04.140 (Grounds for revocation of business license) of Title 5, Chapter 5.04 of the Diamond Bar Municipal Code is amended as follows:

Sec. 5.04.140. – Grounds for revocation of business license.

The director may condition, suspend or revoke a business license if the director finds any of the following:

- (a) The applicant for the business license made a false statement in any application for a license or permit or in any report required under this title;
- (b) That any grounds or circumstances exist that would have justified denial of a business license application;
- (c) The licensee, manager or employees have failed to maintain the premises in a neat and clean condition and have allowed the business premises to deteriorate and become blighted;
- (d) That the building, structure, or equipment used in the conduct of the business does not comply with or fails to meet any health, zoning, fire, or building and safety laws of the State of California or the Diamond Bar Municipal Code;
- (e) That the licensee, manager or employees have violated any statute or any ordinance of the Diamond Bar Municipal Code resulting from any act performed in the exercise of any rights permitted by the issuance of the license;
- (f) That the licensee, manager or employees have violated any provision of federal or state law or any provision of the City of Diamond Bar Business License Ordinance, the City of Diamond Bar Municipal Code or any other statute, rule, permit or regulation on the business premises or relating to the licensed activity;
- (g) That the licensee has failed or refused to notify the city of any change in facts as required by this title within ten days after such change;

- (h) That the licensee, manager or employees have permitted, allowed or failed to prevent the use of the business as a base or magnet for unlawful or criminal activity, including, but not limited to, solicitation, prostitution and drug trafficking;
- (i) The licensee, manager or employees have allowed or failed to discourage criminal or otherwise unlawful activity to occur on or immediately adjacent to the business premises;
- (j) The licensee, manager or employees have failed to control the actions of the businesses' patrons in and immediately adjacent to the business premises; or
- (k) That the licensee has conducted the licensed business in a manner contrary to the peace, health, safety and the general welfare of the public.

SECTION 12. Section 5.08.010 (Acupressure) of Title 5, Chapter 5.08 of the Diamond Bar Municipal Code is amended as follows:

Sec. 5.08.010. - Reserved.

SECTION 13. Section 5.08.070 (Massage establishments and massage technicians) of Title 5, Chapter 5.08 of the Diamond Bar Municipal Code is repealed in its entirety and replaced with new Section 5.08.070 to read as follows:

(a) *Findings and Purpose.* The city council finds and declares as follows:

- (1) The permit requirements and restrictions imposed by this section are reasonably necessary to protect the health, safety, and welfare of the citizens of the city, while recognizing massage as a legitimate business interest that provides benefits to its patrons in a therapeutic setting.
- (2) The city is authorized to regulate massage establishments pursuant to the State Constitution, Cal. Gov't Code §§ 37100, 51030 *et seq.*, California Business and Professions Code §§ 460, 4600 through 4620 and § 16000, § 13 of the Chiropractic Act (initiative measure approved by the electors November 7, 1922, and amended) and Section 7 of Article XI of the California Constitution.
- (3) There is a significant risk of injury to massage clients by improperly trained and/or educated massage practitioners and this chapter provides reasonable safeguards against injury and economic loss.
- (4) There is opportunity for acts of prostitution, lewdness, and other unlawful sexual activity to occur in massage establishments, as well as for the use of massage establishments as venues to facilitate human trafficking. Courts have long recognized massage as a pervasively regulated activity and that massage establishments are often brothels in disguise. The establishment of reasonable standards for issuance of permits and restrictions on operations would serve to reduce the risk of illegal activity and would thereby benefit the public health.

- (5) The provisions of this section are intended to enhance the efficient processing of permits for massage establishments, owners and managers and the ongoing regulation of those permittees and certificate holders by the City of Diamond Bar. The provisions of this chapter in no way limit the authority of the city to inspect massage establishments or conduct investigations to ensure permittees are complying with applicable rules and regulations.
 - (6) The restrictions and requirements contained in this section are intended to stop the practice of businesses quickly changing ownership in name upon the discovery of criminal activity by the city.
 - (7) The restrictions and requirements contained in this section are intended to be in addition to the requirement of a valid business license issued pursuant to this title.
 - (8) The regulations and restrictions contained in this section are intended to discourage massage establishments from degenerating into houses of prostitution, and the means utilized in this section bear a reasonable and rational relationship to the goals sought to be achieved within the confines allowed by state law.
 - (9) The provisions of this section are not intended to be exclusive, and compliance therewith shall not excuse noncompliance with any state or local laws or regulations that are uniformly applied to other professional or personal service businesses.
 - (10) Pursuant to State law, the California Massage Therapy Council ("CAMTC") regulates massage technicians in order to protect the public, and it is in the public interest to require that all persons providing massage in the city have a certificate from CAMTC.
- (b) *Exceptions.* Except as otherwise expressly provided, the requirements of this section shall have no application and no effect upon and shall not be construed as applying to:
- (1) Treatment of services administered or provided in good faith by a physician, surgeon, chiropractor, acupuncturist, osteopath, physical therapist, nurse, or any other person licensed to practice any healing art under the provisions of Cal. Bus. & Prof. Code Div. 2 (commencing with § 500) while in the course of engaging in practices within the scope of his or her professional license.
 - (2) State-licensed hospitals, nursing homes, sanatoriums, or other health care facilities duly licensed by the State of California, or activities engaged in by the employees of such facilities in the course of their employment while working on the premises of such state-licensed facilities.
 - (3) The activities of coaches or trainers employed by accredited junior high schools, high schools, junior colleges, colleges or universities while acting within the scope of their employment.

- (4) Barbers, beauticians, or manicurists who are duly licensed by the State of California pursuant to the Barbering and Cosmetology Act set forth in Cal. Bus. & Prof. Code §§7300 *et seq.*, as the same may be amended from time to time, while engaging in practices within the scope of such license, except that this exemption applies solely for the massaging of the neck, face, and/or scalp of the customer or client of said barber or beautician or, in the case of a licensed manicurist, the massaging of the forearms, hands, calves, and/or feet at a state-licensed facility. Any business employing state-licensed barbers, beauticians, or manicurists at which massage services not otherwise exempted pursuant to this section are also provided shall be considered a massage establishment and must comply with all provisions of this section.
 - (5) Schools of cosmetology or barbering which comply with the requirements of Cal. Bus. & Prof. Code §§7362 *et seq.* when instructors are acting within the scope of their employment or when students are working as unpaid externs pursuant to the requirements of Cal. Bus. & Prof. Code §7395.1.
 - (6) Activities of any other business or professions to the extent exempted by state law.
- (c) *Definitions.* For purposes of this section, the following terms shall have the following meanings:
- (1) *Acupressure* means the practice of placing physical pressure by hand, elbow, or with the aid of various devices on the same points on the surface of the body targeted in acupuncture with the intention of treating illness and/or disease or relieving pain.
 - (2) *California Massage Therapy Council or CAMTC* means the nonprofit organization created to regulate and issue massage practitioner and therapist certificates pursuant to California Business & Professions Code §§4600 *et seq.*
 - (3) *CAMTC Certificate* shall mean a certificate, issued by CAMTC, certifying completion of the required curriculum in massage training.
 - (4) *Employee* includes every owner, partner, operator, manager, supervisor, person and worker, whether paid or not, full-time or part-time, who renders personal services of any nature or is otherwise employed in support of the operation of a massage establishment. For purposes of this chapter, the terms employee shall also include certified massage technicians who provide massage services, whether as independent contractors or otherwise, in or for a massage establishment.
 - (5) *Manager* means any individual designated or permitted by the owner of a massage establishment to act as the representative and/or agent of the owner in managing day-to-day operations of the massage establishment, with corresponding responsibilities. Evidence of management includes, but is not limited to, the ability of the individual to direct or hire and dismiss employees,

control hours of operation, create policy or rules or purchase supplies, and ensuring that the massage establishment complies with the requirements of this code and of other laws. An owner or operator may also be a manager, and a massage establishment may have more than one manager.

- (6) *Massage and Massage Services* means any method of treating the external parts of the body for remedial, health, hygienic, or relaxation purposes for compensation and includes, but is not limited to, treatment by means of manual pressure, acupressure, friction, stroking, kneading, rubbing, tapping, pounding, vibrating, with or without the aid of or by means of any mechanical, electronic, or other apparatus, and with or without rubbing alcohol, liniments, aromatics, antiseptics, oils, powders, creams, lotions, ointments, or other similar preparations. Massage specifically includes the application of any of these methods to the scalp, neck, or feet of any individual.
- (7) *Massage Establishment* shall mean any business or establishment having a fixed location where any individual, firm association, partnership, limited liability company, corporation, or combination of individuals, offers, engages in, conducts, carries on or permits to be offered, engaged in, conducted or carried on, massage services or out-call massage within the city, including the residence or business office of a sole provider who provides massage services at such premises. Any type of business or establishment at which massage services are provided shall be considered a massage establishment for purposes of this chapter, regardless if the business holds itself out as something other than a massage establishment and/or offers or provides other types of products or services. Notwithstanding the foregoing, the residence or business office of a sole provider who only engages in out-call massage and does not provide massage services at such residence or business office shall not be considered a massage establishment.
- (8) *Massage Practitioner* means a person who is certified as such by CAMTC in accordance with the Massage Therapy Act.
- (9) *Massage Technician* shall mean a massage practitioner or massage therapist certified by CAMTC.
- (10) *Massage Therapist* means a person who is certified as such by CAMTC in accordance with the Massage Therapy Act.
- (11) *Massage Therapy Act* means chapter 406 of the 2013-2014 Legislative Session, as the same may be amended from time to time.
- (12) *Operator* means any individual with direct responsibility, in whole or part, for the ongoing operations of a massage establishment. An operator may, but need not, also be an owner or a manager.
- (13) *Out-Call Massage* means the provision of massage services at a location other than at a massage establishment.

(14) *Owner* means any individual or entity that has a direct or indirect ownership interest of more than ten percent (10%) in a massage establishment or that is an officer, director, or limited liability company manager of such an owner. The term owner may include, without limitation, the sole proprietor of a sole proprietorship, any general or limited partner of a general or limited partnership, any member or manager of a limited liability company, any shareholder, officer, or director of a corporation, or any other person that has an ownership interest of more than ten percent (10%) in a massage establishment, whether as an individual, corporation, limited liability company, general partner, limited partner, shareholder, member, officer, director, or otherwise.

(15) *Patron* means an individual on the premises of a massage establishment for the purpose of receiving a massage.

(16) *Sole Provider* means any legal form of business organization owned entirely by an individual massage technician, where such owner is the only individual who provides massage services for the business and that has no other employees or independent contractors that provide massage services for or on behalf of the business.

(d) *CAMTC Certificate and business license requirements for massage services.*

(1) Except as otherwise provided in subsection (b), no individual shall engage in, conduct, carry on, practice or perform massage services within the city without first obtaining and thereafter maintaining a CAMTC Certificate and presenting proof of such CAMTC Certificate to the city in accordance with the provisions of this section.

(2) Except as otherwise provided in subsection (b), no person shall engage in, conduct or carry on, or permit to be engaged in, conducted, or carried on, in or upon any premises within the city, the operation of a massage establishment without first obtaining and thereafter maintaining a massage establishment business license pursuant to this section.

(3) No owner, operator, or manager of a massage establishment shall employ, retain, or allow any individual to perform massage services in the city unless such individual possesses a current and valid CAMTC Certificate. For purposes of this section, an owner, operator, or manager employs, retains, or allows an individual to perform massage services if (i) that individual is an employee of the massage establishment, (ii) that individual's association with the massage establishment is that of an independent contractor who receives compensation for massage services provided to patrons of the massage establishment, or (iii) that individual receives a patron referral or referrals from the massage establishment for massage services and arranges in any way for compensation relating to such services to flow to such owner, operator, manager or massage establishment.

(e) *Massage establishment business licenses generally.*

- (1) Where a conditional use permit is required pursuant to title 22, a business license application for a massage establishment shall be filed concurrently with the conditional use permit application. The business license for the massage establishment shall not be issued until the conditional use permit has been approved.
 - (2) Massage establishment business licenses issued pursuant to this chapter may not be assigned or transferred.
 - (3) The owner or operator of a massage establishment shall notify the director or his or her designee whenever there is a change in information which was required to be submitted in the initial or a renewal application for the massage establishment's business license. Such notification shall be in writing and made within ten business days of the change on a form provided by the city. If such change involves the addition of a new operator, manager, or employee who will be providing massage services, a true and correct copy of the individual's current CAMTC certificate and CAMTC-issued identification card shall be provided with the written notification form. If such change involves the addition of a new owner, operator, or manager, such individual shall not commence working at or for the massage establishment in such capacity until all background information required for such individuals pursuant to subsection 5.08.070(f) has been provided to the city, the city has completed a background investigation of the individual, and the director has determined that such individual has not engaged in prior conduct that would serve as the basis for denial of a business license for the massage establishment in accordance with this chapter.
 - (4) Each owner, operator, and manager of a massage establishment shall be responsible for the conduct of all employees and independent contractors working for or on behalf of the massage establishment. Failure of the employees or independent contractors to comply with the provisions of this chapter or the Massage Therapy Act may result in the issuance of criminal and/or administrative citations and shall be grounds for revocation of the massage establishment business license.
 - (5) Any requirement of this section applying to an owner or operator shall apply to each and every owner and operator of a massage establishment.
- (f) *Application information—Massage establishment businesses.* In addition to the information prescribed by sections 5.00.040(c) and 5.04.020, unless waived by the director for good cause, all applications for a business license for a massage establishment must contain the following information and documents.
- (1) The full name, home and business addresses, home and business telephone numbers, and email address of the responsible individual designated by the applicant to be the City's primary point of contact for the massage establishment and the business license. This individual shall be an owner or operator and shall complete and sign all application forms and provide all required information and documents on behalf of the applicant. By signing the application, this individual shall certify under penalty of perjury that all information contained in, and/or submitted as part of the application, including the personal background information pertaining to each individual owner, operator, manager, and employee, is true and correct. This individual shall also

acknowledge that he or she, along with each other owner, operator, and manager, shall be responsible for the conduct of all employees (including independent contractors) on the premises of the massage establishment or while working on its behalf, and that violations of the provisions of this chapter shall be grounds for revocation of the business license.

- (2) The legal name(s) of, and each fictitious business name used by, each owner and operator of the proposed massage establishment and what type of legal entity each is, i.e., whether a sole proprietorship, general partnership, limited partnership, limited liability company, corporation, or otherwise. Proof in the form of certified copies of an entities articles of incorporation, charter, articles of formation, certificate of limited partnership, dba filings, or other documents may be required by the director in his or her discretion. For corporations, the name of the corporation shall be set forth exactly as shown in its articles of incorporation or charter together with the state and date of incorporation and the names and residence addresses of each of its current officers and directors, and of each shareholder or other person who has an ownership interest in the corporation. For limited liability companies, the name of the limited liability company shall be set forth exactly as shown in its articles or organization or other organizational document together with the state and date of organization and the names and residence addresses of each of its current officers, directors, and managers, and of each member or other person who has an ownership interest in the limited liability company. For partnerships, the application shall set forth the name and residence addresses of each of the partners, including limited partners. If one or more of the partners of a partnership is a corporation or limited liability company, the provisions of this subsection pertaining to corporations and limited liability companies shall apply.
- (3) The precise name under which the massage establishment is to be conducted, along with the complete address and all telephone numbers of the massage establishment. No massage establishment shall operate under any business name or conduct business under any designation not specified in the business license.
- (4) A scaled and dimensioned floor plan showing entrances, exits, windows, interior doors, restrooms, all other separately enclosed rooms (including, but not limited to, closets, storerooms, break rooms, and changing rooms), and the location of massage tables and chairs.
- (5) A complete current list of the names and residence addresses of all current or proposed employees of the massage establishment and their respective jobs or positions.
- (6) True and correct copies of the current CAMTC certificate and CAMTC-issued identification card for each employee/massage technician who will be providing massage services for or at the massage establishment (including independent contractors).
- (7) The following personal information for each individual owner, operator, and manager of the massage establishment. The director may waive this requirement, in whole or in part, for any individual where it is shown to the satisfaction of the director that such individual will not be directly involved in the operation of the proposed massage establishment.

- a. Full complete name and all aliases or fictitious names used within the last ten years;
 - b. The individual's current residential and business addresses, and a list of all previous residential and business addresses for a minimum of the last eight years;
 - c. Written proof of the individual's age, date of birth, height, weight, color of hair and eyes, and sex;
 - d. Two identification photographs and fingerprints;
 - e. The individual's complete business, occupation and employment history for the ten years immediately preceding the filing of the application, including, but not limited to, the names and addresses of any other massage establishments or similar businesses the individual has owned, operated, managed, provided massage services at, or worked at;
 - f. The complete massage permit history for the individual; whether the individual has had a permit or license to operate, manage, provide massage services at, or work at a massage establishment denied, revoked, or suspended in any jurisdiction; the reasons for any such denial, revocation, or suspension; and the business, activity, or occupation the applicant engaged in subsequent to such denial, revocation, or suspension;
 - g. A description of all criminal convictions, including pleas of nolo contendere, within the last ten years, including those dismissed or expunged pursuant to California Penal Code section 1203.4, but excluding traffic or infraction violations, and the date and place of each such conviction and reason therefor;
 - h. Such other information and identification deemed necessary by the sheriff's department.
- (8) The name and address of the owner and lessor of the real property upon or in which the massage establishment is to be conducted. In the event the owner of the massage establishment is not the legal owner of the property, the application must be accompanied by a notarized acknowledgment from the owner of the property that a massage establishment will be located on his/her/its property, and that the massage establishment shall be subject to the provisions of this chapter, along with a copy of the lease, if applicable.
- (g) *Issuance or denial of a massage establishment business license.* Upon receipt of a complete application for a massage establishment business license, the director shall conduct a background investigation, review the application and determine whether to issue, deny, and/or condition a business license in accordance with this title. In addition to the grounds for denial set forth in section 5.04.050, the director may deny an application for an initial or a renewal massage establishment business license if he or she makes any of the following findings:
- (1) A massage establishment is not a permitted use in the proposed location or no conditional use permit for the massage establishment has been issued, if applicable, and the massage establishment does not possess legal

nonconforming use status, pursuant to the provisions of title 22, Development Code.

- (2) Within twelve months prior to the submittal of the application, the location of the proposed massage establishment has been the site of a massage establishment that was closed, either voluntarily or in response to action by the city, due to arrests for criminal activity, violations of this section, and/or notices pertaining to criminal activity, code violations, or business license suspension or revocation proceedings.
- (3) Anyone who provides or will provide massage services for or at the massage establishment, does not possess a current and valid CAMTC Certificate.
- (4) Any owner, operator, manager, or employee of the massage establishment has engaged in disqualifying conduct. Disqualifying conduct includes the following:
 - a. Within ten years preceding the date of filing of the application, the individual has been convicted in a court of competent jurisdiction of any of the following:
 - (i) A violation of any provision of law pursuant to which a person is required to register under the provisions of California Penal Code section 290;
 - (ii) Conduct in violation of California Penal Code sections 266h, 266i, 315, 316, 318, 653.22, 653.23, or 647 (b);
 - (iii) An attempt to commit or conspiracy to commit any of the above mentioned offenses;
 - (iv) When the prosecution accepted a plea of guilty or nolo contendere to a charge of a violation of California Penal Code sections 415, 602, or any lesser included or related offense, in satisfaction of, or as a substitute for, any of the previously listed crimes;
 - (v) Any crime committed while engaged in the management or ownership of a massage establishment or the practice of massage;
 - (vi) A violation of any offense involving the illegal sale, distribution or possession of a controlled substance specified in California Health & Safety Code section 11054, 11055, 11056, 11057 or 11058; or
 - (vii) Any offense under a statute of any state or ordinance of any city or county, which is the equivalent of any of the aforementioned offenses, including California Business & Professions Code section 4609(a).
 - b. Within ten years preceding the date of the filing of the application, the individual has had any massage establishment, operator, technician, practitioner, therapist, or trainee certificate, license, or permit issued by any state, local agency, or other licensing authority, including the CAMTC, denied, revoked, or suspended for any reason other than lack of sufficient education; or has had to surrender such a certificate, license, or permit as a result of pending criminal charges or administrative proceedings for suspension or revocation of any such certificate, license, or permit;

- c. Within ten years preceding the date of filing of the application, the individual has been convicted in a court of competent jurisdiction of any of the following:
 - (i) Any crime, other than an infraction or those listed above, involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or another, or substantially injure another;
 - (ii) Any crime, other than an infraction or crimes relating to those offenses listed above, where the crime or act is substantially related to the management or ownership of a massage establishment or the practice of massage, including a violation of the Massage Therapy Act;
 - (iii) Has been subjected to a permanent injunction against the conducting or maintaining of a nuisance pursuant to California Penal Code sections 11225 through 11235, as the same may be amended from time to time, or any similar provisions of law in a jurisdiction outside the State of California; or
 - (iv) Has been found to be maintaining a nuisance in connection with the same or similar type of business; or
 - d. Within ten years preceding the date of filing of the application, the individual has engaged in the exposing of specified anatomical areas of oneself or of another person to view, or in touching the specified anatomical areas of oneself or of another person, while providing massage services or while within view of a customer or patron of the massage establishment, or has been the owner, operator, or manager of an establishment where such conduct occurred.
- (h) *Renewal of massage establishment business licenses.*
- (1) Business licenses for massage establishments shall be renewed annually in accordance with this title.
 - (2) Each applicant for renewal of a massage establishment business license shall provide such information and documents as may be reasonably required by the director to determine that the massage establishment is operating in compliance with the provisions of this title and/or any conditions imposed on the business license. The director may refuse to renew a business license for a massage establishment upon finding the existence of any facts or circumstances that would constitute grounds for the denial or revocation of a business license.
- (i) *Requirements of operation for massage establishments.* The following requirements of operation shall apply to all massage establishments located in the city. Each owner, operator, and manager of a massage establishment shall be responsible for ensuring that the requirements of operation are complied with at all times.
- (1) *Building and facility requirements.*
 - a. All massage rooms and dressing rooms shall be screened off by hinged doors, draw drapes, curtain enclosures, or accordion-pleated closures. Except for bathroom doors, interior doors shall not have locks on them.

- b. In addition to the minimum lighting required by Chapter 15.00 Division 6 of the Municipal Code, all rooms in which massages are being provided shall be lit with a minimum of one light fixture emitting at least 210 lumens for every 150 square feet of space during the administration of such services, with lighting levels spread evenly throughout the space. No dimmer switches, strobe lights, flashing lights, colored light, or any coverings or other apparatus, other than a lampshade, which changes or darkens the color of the primary light source shall be used in any room in which massage services are being provided.
- c. Any locker facilities provided for the use of patrons shall be fully secured for the protection of the patrons' valuables, and the patron shall be given control of the key or other means of access.
- d. The walls in all rooms where water or steam baths are given shall have a washable mold-resistant surface.
- e. One main entry that enters into the reception area shall be provided for patron use. Where feasible, this main entry shall be located on the storefront side of the building or tenant space. All patrons, and any persons other than those providing services at the massage establishment, shall be required to enter and exit solely through the main entry.
- f. All exterior doors (except rear exterior doors used only for employee access to and from the massage establishment) shall remain unlocked during business hours, and the establishment shall comply with the provisions of the Diamond Bar Municipal Code pertaining to the posting of signs stating that doors shall remain unlocked during business hours. Exits for emergency purposes shall be provided where deemed necessary by the building official. Notwithstanding the above, all exterior doors may be locked, provided that the massage establishment is a business entity owned by one individual with one or no employees or independent contractors.
- g. There shall be no audio or visual internal communication devices within the establishment, such as, but not limited to, buzzers, alarms, or intercom systems.

(2) *Maintenance of premises and equipment.*

- a. All walls, ceilings, floors, pools, showers, bathtubs, steam rooms and all other physical facilities of the establishment shall be in good repair and maintained in a clean and sanitary condition.
- b. Wet and dry heat rooms, steam or vapor rooms, or steam or vapor cabinets, shower compartments and toilet rooms shall be thoroughly cleaned each day the business is in operation.
- c. Adequate equipment for disinfection and sterilization of instruments used in performing the massages shall be provided.
- d. Hot and cold running water shall be provided at all times.

- e. Clean and sanitary towels and linens shall be provided for each patron of the establishment or each patron receiving massage services. No common use of towels or linens shall be permitted.
- f. Standard or portable massage tables or chairs shall be used with a durable, washable plastic or other waterproof material as a covering. Beds, mattresses, water beds, futons, sofa beds, any type of portable or convertible beds, and foam pads more than four inches thick or with a width of more than four feet shall not be permitted in the establishment.

(3) *Personnel lists.*

- a. Copies of the CAMTC certificate and identification card for each employee required to possess a CAMTC certificate pursuant to this chapter shall be maintained on file on the premises of the massage establishment at all times, and for a minimum period of two years following the date that the person ceases providing services/employment to the massage establishment. Copies shall be made available to any individual upon request, including but not limited to employees of the city. In addition, within ten days of a massage establishment hiring or contracting with a new employee, written notice of the name, residential address, and position of the new employee and true and correct copies of his or her CAMTC certificate and identification card (if required) shall be filed with the director.
- b. Within five days of the expiration, revocation, suspension, or surrender of an employee's CAMTC Certificate, the owner or operator shall provide written notice of such expiration, revocation, suspension, or surrender to the director, and such employee shall not be permitted to operate, manage or provide massage services at the massage establishment until and unless a he or she receives a valid new or renewed CAMTC Certificate and a copy of such new CAMTC Certificate and identification card for the employee has been provided to the director.
- c. A register of all persons who are currently, or who within the last two years were, employed, working or providing services at or for the massage establishment shall be maintained on the premises of the massage establishment at all times. The owner shall make the register immediately available for inspection upon demand of a representative of the sheriff's department, any health officer, or any other official charged with enforcement of this title. The register shall include at least the following information:
 - 1) Name, nicknames, and/or aliases;
 - 2) Home address and relevant phone number, including but not limited to home, cellular, and pager numbers;
 - 3) Age, date of birth, gender, height, weight, color of hair and eyes;
 - 4) The date of employment, and termination, if any;
 - 5) The duties of each person.

(4) *Hours of operation.*

- a. No massage establishment shall be open for business or operated between the hours of 10:00 p.m. and 7:00 a.m. of any day, and all customers, patrons and visitors shall be excluded from the massage

establishment between those hours. A massage begun any time before 10:00 p.m. shall nevertheless terminate at 10:00 p.m. The hours of operation shall be displayed in a conspicuous public place in the lobby within the massage establishment and in any front window outside of the massage establishment.

- b. During hours of operation, only employees of the massage establishment or a patron shall be allowed beyond the reception area of the massage establishment, with the exception of representatives of the sheriff's department, any health officer, any other official charged with enforcement of this title, or a CAMTC official.
- c. Patrons and visitors shall only be permitted in the massage establishment during the hours of operation.
 - (1) Visitors who are not patrons shall only be permitted in the reception area of the massage establishment.
 - (2) Patrons shall only be permitted in massage treatment areas if at least one massage technician is on the premises.
- d. The massage establishment shall be supervised during all hours of operation by a manager specified in the permit application. The name and photograph (minimum size of four inches by six inches) of the on-duty manager shall be provided in accordance with Section 5.08.070(i)(3)c. This provision shall not apply to sole providers.
- e. No massage establishment shall be used for residential purposes.

(5) *Posting requirements.* In addition to any other requirements for posting set forth in this title, the following requirements shall apply:

- a. A recognizable and legible sign complying with the requirements of this code shall be posted at the main entrance identifying the establishment as a massage establishment.
- b. Each service offered, the price thereof, and the minimum length of time such service shall be performed shall be posted in a conspicuous public location in each massage establishment. No services shall be performed and no sums shall be charged for such services other than those posted. Nothing herein prohibits a voluntary tip from being paid by the patron. Such services may either be posted on a sign or printed in a menu of services.
- c. Any posted signs which are in a language other than English shall also be posted in English.

(6) *Prohibited conduct.* Each owner, operator, and manager shall be responsible for the conduct of all employees while such employees are performing services at or for the massage establishment. Any act or omission of any employee constituting a violation of this chapter shall be deemed an act or omission of each of the owners, operators, and managers for purposes of determining compliance with this chapter and whether the business license or any other permit required by the city shall be revoked, suspended, denied, or renewed. In addition to conduct prohibited by any other provision of law or this code, the following conduct at or by employees of massage establishments is expressly prohibited:

- a. No alcoholic beverages shall be sold, served, or furnished on the premises of any massage establishment unless expressly authorized under a conditional use permit and licensed by the Department of Alcoholic Beverage Control.
- b. No storage or sale of condoms, spermicides or other makeshift prophylactic materials (e.g. plastic wrap) shall be permitted within the massage establishment.
- c. No person shall use or possess, nor shall there be any storage of, any sexually-oriented implements or paraphernalia which are designed or marketed primarily for the stimulation of human genital organs or sadomasochistic activity.
- d. No electrical, mechanical, or artificial device shall be used by any massage establishment employee for non-security audio and/or video recording or for monitoring the performance of a massage, of the conversation or other sounds in the massage rooms, without the prior written consent of the patron.
- e. No employee of a massage establishment shall, while engaged in the practice of massage, or while visible to patrons in the massage establishment, dress: (i) in attire that is transparent, see-through, or substantially exposes the employee's undergarments; (ii) in a manner that exposes the massage technician's breasts, buttocks, or genitals; (iii) in a manner which has been deemed by CAMTC to constitute unprofessional attire based on the custom and practice of the profession in California; or (iv) in swim attire unless such person is providing a water-based massage modality which has been approved by CAMTC.
- f. No owner, operator, manager or employee of a massage establishment shall engage in, or permit any other employee to engage in, any form of unprofessional conduct as defined in California Business and Professions Code section 4609(a)(1), including, without limitation, engaging in any form of sexual activity on the premises of a massage establishment or while providing massage services, providing massage of the genitals or anal regions, or providing massage of the breasts of a female patron without the written consent of the person receiving the massage and a referral from a licensed California health care provider.

(j) *Inspections.*

- (1) Representatives of the sheriff's department, fire department, community development department, and agents for the city or from the County Public Health Department, and representatives of any state or local agencies with regulatory authority over massage establishments shall have the right to enter massage establishments, from time to time, during regular business hours, or at any time that the massage establishment is occupied or open for business, to verify the massage establishment is in compliance with all applicable laws without the need for an inspection or abatement warrant. No person shall refuse to permit, cause delay of, or interfere with, a lawful inspection or compliance check of the premises by such officials at any time.

- (2) The operator shall cause to be conspicuously posted so that the same may be readily visible to persons in the reception area of the massage establishment, in letters that are a minimum of one inch in height, a notice in English and such other languages as may be convenient to communicate such notice, which provides substantially as follows:

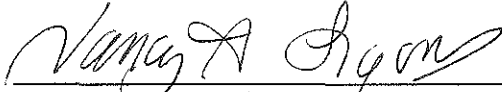
THIS MESSAGE ESTABLISHMENT IS SUBJECT TO INSPECTION BY CITY AND HEALTH OFFICIALS WITHOUT PRIOR NOTICE

In addition, operators are encouraged to post this notice in language(s) that are best understood by the customers of the massage establishment.

SECTION 14. If any section, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subdivision, paragraph, sentence, clause and phrase thereof, irrespective of the fact that any one (or more) section, subdivision, paragraph, sentence, clause or phrase had been declared invalid or unconstitutional.

SECTION 15. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same or a summary thereof to be published once within fifteen (15) days after this ordinance is passed and adopted, in a newspaper of general circulation, published and circulated in the City of Diamond Bar and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

PASSED, APPROVED AND ADOPTED THIS 1st DAY OF November 2016, BY THE CITY COUNCIL OF THE CITY OF DIAMOND BAR.



Nancy A. Lyons, Mayor


I, Tommye Cribbins, City Clerk of the City of Diamond Bar, do hereby certify that the foregoing Ordinance was duly introduced at the regular meeting of the City Council of the City of Diamond Bar held on the 18th day of October, 2016, and was finally passed and adopted by the City Council of the City of Diamond Bar, at a regular meeting of the City Council held on the 1st day of November 2016, by the following vote:

AYES: Council Member: Herrera, Low, Tye, MPT/Lin, M/Lyons

NOES: Council Member: None

ABSTAIN: Council Member: None

ABSENT: Council Member: None

ATTEST: 

Tommye Cribbins, City Clerk
City of Diamond Bar