

ORDINANCE NO. 09-06

AN ORDINANCE OF THE CITY OF LAGUNA WOODS, CALIFORNIA, AMENDING CHAPTER 6.40 OF THE LAGUNA WOODS MUNICIPAL CODE PERTAINING TO MASSAGE REGULATIONS

WHEREAS, the provisions of the Laguna Woods Municipal Code that relate to the practice of massage therapy were last updated in 2004; and

WHEREAS, California State Senate Bill 731, which is effective September 1, 2009, revised Business and Professions Code sections 4600 et seq. and modified cities' ability to regulate the practice of massage therapy; and

WHEREAS, the City of Laguna Woods intends to provide for the orderly regulation of the practice of massage therapy, in the interest of public health, safety, and welfare, and wishes to recognize the practice of massage therapy as a valid profession and discourage the use of massage therapy as a subterfuge to commit illegal or illicit activity; and

WHEREAS, the City of Laguna Woods intends to modify its massage therapy regulations so that they are consistent with Senate Bill 731; and

WHEREAS, the City of Laguna Woods is authorized to adopt this ordinance pursuant to Sections 51030 through 51034 of the California Government Code, Sections 4600 through 4620 and Section 16000 of the California Business & Professions Code, and Section 7 of Article XI of the California Constitution.

NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Findings

The City Council hereby incorporates the foregoing recitals and findings.

SECTION 2. Repeal of Existing Regulations

Chapter 6.40, entitled Massage Business Regulations, is hereby repealed from Title 6 (Businesses) of the Laguna Woods Municipal Code.

SECTION 3. Adoption of Massage Therapy Regulations

Chapter 6.40, entitled Massage Therapy Regulations, is hereby added to Title 6 (Businesses) of the Laguna Woods Municipal Code as follows:

CHAPTER 6.40. MASSAGE THERAPY REGULATIONS

- 6.40.010. Purpose.
- 6.40.020. Definitions.
- 6.40.030. Licensing requirements.
- 6.40.040. Exemptions.
- 6.40.050. Display and filing of license.
- 6.40.060. Operations requirements.
- 6.40.070. Inspection by government officials.

6.40.010. Purpose.

The purpose of this chapter is to establish regulations for the massage therapy profession that are reasonable and necessary to protect public health and safety and reduce the potential for illegal and illicit activity within the City of Laguna Woods. This chapter is not intended to be exclusive and compliance with its provisions shall not excuse noncompliance with any State or other local laws.

6.40.020. Definitions.

For the purposes of this chapter, the following terms are defined:

- (05) *City* means the City of Laguna Woods.
- (10) *City Manager* means the City Manager of the City of Laguna Woods or his or her designee.
- (15) *Employed or retained* includes any person who is an employee, trainee, volunteer, or independent contractor of a massage business or establishment, regardless of whether or not compensation is paid.
- (20) *Massage, massage therapy, and bodywork* are used interchangeably in this chapter and mean the application of various techniques to the muscular structure and soft tissues of the human body, including, but not limited to, any method of pressure or friction against, or stroking, kneading, rubbing, tapping, compressing, pounding, vibrating, rocking or stimulating of external surfaces

of the body with hands or with the aid of any apparatus or other appliances or devices, with or without such supplementary aids as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment, or other similar preparations for any consideration whatsoever. Specifically excluded are spiritual healing, detoxification, hypnosis, colonic irrigation, yoga, vacuum cupping, exercise, or procedures which penetrate body cavities by any method.

(25) *Massage business or establishment* means any business or establishment with a fixed location that offers massage therapy or a combination of massage therapy and bath facilities, including, but not limited to, showers, baths, wet and dry heat rooms, plunges, saunas, pools and hot tubs. Any public bathing place where there is communal bathing or communal use of bath facilities at a fixed location where massage therapy is also performed shall be considered a massage business or establishment under this chapter.

(30) *MTO certificate* means the certificate issued by the Massage Therapy Organization (MTO) to massage therapists pursuant to subdivision (c) of Section 4601 of the California Business and Professions Code, and to massage practitioners pursuant to subdivision (b) of Section 4601 of the California Business and Professions Code or subdivision (a) or (c) of Section 4604 of the California Business and Professions Code.

(35) *Person* means any individual, proprietorship, partnership, corporation, firm, association, joint venture, limited liability company, combination of individuals, or combination of the above in whatever form or character.

6.40.030. Licensing requirements.

(a) Except where a specific exemption is applicable pursuant to Section 6.40.040, it shall be unlawful and a misdemeanor for:

(1) Any person to engage in the practice of massage therapy unless such person holds and maintains in full force and effect a valid MTO certificate.

(2) Any massage business or establishment to employ or retain a person to engage in the practice of massage therapy unless such person holds and maintains in full force and effect a valid MTO certificate.

- (b) Any person who has in full force and effect a valid massage license issued by the City of Laguna Woods shall not be required to obtain an MTO certificate as long as that person maintains such license in full force and effect.
- (c) All persons, massage businesses or establishments subject to this chapter shall have 60 calendar days from the effective date of this chapter to file proof of valid MTO certification with the City and to comply with this chapter.

6.40.040. Exemptions.

(a) This chapter shall not apply to:

- (1) Physicians, surgeons, chiropractors, acupuncturists, osteopaths, podiatrists, naturopaths, physical therapists, and nurses who are duly licensed to practice their respective professions in the State of California under the provisions of the Business and Professions Code, while performing activities encompassed by such licenses.
- (2) Persons who are duly licensed to practice a healing arts profession in the State of California under the provisions of Division 2 of the Business and Professions Code, while performing activities encompassed by such licenses.
- (3) Barbers and cosmetologists who are duly licensed to practice their respective professions in the State of California under the Business and Professions Code, while performing activities encompassed by such licenses, provided that massage therapy is limited solely to the neck, face, scalp, feet, hands, arms, and lower limbs up to the knees, of their patrons.
- (4) Employees of State-licensed hospitals and nursing homes, or other state-licensed physical or mental health facilities, provided that massage therapy is only provided to their patients, while performing activities encompassed by such licenses.
- (5) Persons working in conjunction with an athletic event or similar single occurrence athletic event of no more than two days, including road races and marathons, provided that the following conditions are met:

- a. Massages are made equally available to all event participants; and

- b. The event is open to participation or qualification for participation by a significant segment of the public (e.g., members or employees of the sponsoring or participating organizations, etc.); and
- c. Massages are only provided in the facility where the event will take place during or immediately preceding or following the event; and
- d. The owner of the facility where the event will take place, as well as the primary event sponsors, have been advised of and have approved the practice of massage therapy; and
- e. Persons engaging in the practice of massage therapy hold valid MTO certificates or are exempt under Section 6.40.040.

(b) In the event that an exempt person, as defined above in subsection (a), employs or retains a non-exempt person to engage in the practice of massage therapy at the exempt person's business location, the non-exempt person must obtain an MTO certificate before engaging in the practice of massage therapy and the business must comply with the operations requirements set forth below in Section 6.40.060.

6.40.050. Display and filing of license.

(a) Each massage business or establishment must maintain on its premises evidence for review by local authorities that demonstrates that all persons engaging in the practice of massage therapy have a valid MTO certificate or City of Laguna Woods massage license.

(b) Proof of valid MTO certification for all persons that engage in the practice of massage therapy must be filed with the City within five business days of each MTO certificate's issuance or renewal.

6.40.060. Operations requirements.

Massage businesses or establishments shall comply with the all of the following operations requirements in addition to all applicable requirements of the electrical, building, fire, plumbing, and other codes as adopted by the City, and State law:

- (1) All lavatories or wash basins shall be provided with soap and single service towels in wall-mounted dispensers;

(2) Massage businesses or establishments shall at all times be equipped with an adequate supply of clean sanitary towels, coverings and linens. After a towel, covering or linen has been used once it shall be deposited in a closed receptacle and not used until properly laundered and sanitized. Clean towels, coverings and linens shall be stored in closed, clean cabinets when not in use. Heavy white paper may be substituted for sheets, provided that such paper is used once for each person and then discarded into a sanitary receptacle;

(3) All massage therapy or bath facilities shall be maintained in good repair and thoroughly cleaned and disinfected as needed, but no less than once each business day that the premises are open and the facilities are in use. All bathtubs shall be thoroughly cleaned and disinfected after each use;

(4) All persons shall thoroughly wash their hands with soap and water or any equally effective cleansing agent immediately before engaging in the practice of massage therapy;

(5) Disinfecting agents and sterilizing equipment shall be provided for any instruments used in performing any type of massage, and said instruments shall be disinfected and sterilized after each use;

(6) Pads used on massage tables shall be covered with durable and washable plastic or other acceptable waterproof material;

(7) There shall be no display, storage, or use of any instruments, devices, or paraphernalia which are designed for use in connection with specified sexual activities, including, but not limited to, vibrators, dildos, or condoms, or any goods or items which are replicas of, or which simulate, specified anatomical areas, or pornographic magazines, videos, or other material;

(8) No person employed or retained by a massage business or establishment shall expose any genitals, pubic regions, buttocks, anuses, or female breasts below a point immediately above the top of the areola to the view of a patron of the massage business or establishment. Patrons shall be draped with a clean, opaque towel sufficient to cover their genitals, pubic regions, buttocks, anuses, or female breasts below a point immediately above the top of the areola during massage therapy;

(9) 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 business or establishment. All letters and numbers shall be capitals not less than one inch in height. No services shall be performed and no sums shall be charged for services other than those posted. This posting requirement shall not apply to exempt physicians and/or surgeons who employ or retain non-exempt persons to perform massage therapy as part of licensed medical activities. All arrangements for services to be performed shall be made in a room that is not used for massage therapy;

(10) Alcoholic beverages may not be sold, served, furnished, kept, consumed, imbibed, or possessed on the premises without a conditional use permit and any applicable California Department of Alcoholic Beverage Control licenses.

6.40.070. Inspection by government officials.

The City Manager and his or her authorized representatives shall have the right to enter massage establishments or businesses, from time to time, during regular business hours, unannounced, for the purpose of making reasonable inspections to observe and enforce compliance with this chapter and all laws of the City and State of California.

SECTION 4. Effective Date.

This Ordinance shall take effect and be in full force and operation thirty (30) days after adoption.

SECTION 5. Severability

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase added by this Ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs sentences, clauses, or phrases are declared unconstitutional, invalid, or ineffective.

SECTION 6. City Clerk's Certification.

The Deputy City Clerk shall certify to the passage of this Ordinance and shall cause this Ordinance to be published or posted as required by law.

PASSED, APPROVED AND ADOPTED THIS 16TH DAY OF SEPTEMBER 2009.

ROBERT B. RING, Mayor

ATTEST:

YOLIE TRIPPY, Deputy City Clerk

APPROVED AS TO FORM:

STEPHEN A. MCEWEN, City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF LAGUNA WOODS)

I, YOLIE TRIPPY, Deputy City Clerk of the City of Laguna Woods, do HEREBY CERTIFY that the foregoing **Ordinance No. 09-06** was duly introduced and placed upon its first reading at a Regular Meeting of the City Council on the 15th of July, 2009, and that thereafter, said Ordinance was duly adopted and passed at a Regular Meeting of the City Council on the 16th day of September, 2009 by the following vote to wit:

AYES: COUNCILMEMBERS: Conners, Hack, Rhodes, Robbins, Ring
NOES: COUNCILMEMBERS: None
ABSENT: COUNCILMEMBERS: None

YOLIE TRIPPY, Deputy City Clerk