

ORDINANCE NO. NS-2903

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA ANA AMENDING CHAPTER 22 AND CHAPTER 41 WITH REGARD TO MASSAGE AND MASSAGE ESTABLISHMENTS

THE CITY COUNCIL OF THE CITY OF SANTA ANA HEREBY ORDAINS AS FOLLOWS:

Section 1. The City Council of the City of Santa Ana hereby finds, determines and declares as follows:

- A. The California legislature approved Assembly Bill 1147 (Government Code sections 51030-51034) which amended the California Massage Therapy Act (Business and Profession Code sections 4600-4621) effective January 1, 2015.
- B. The new law authorizes a city, county, or a city and a county to adopt or enforce local ordinances that govern zoning, business licensing, or reasonable health and safety requirements for establishments or businesses of a certified massage therapist or certified massage practitioner.
- C. The City Council finds that the permit requirements and restrictions imposed by the amended codes are reasonably necessary to protect the health, safety and welfare of the citizens of Santa Ana.

Section 2. In accordance with the California Environmental Quality Act, the recommended action is categorically exempt from further review per section 15061(b)(3) "General Rule", as it has determined that no significant environmental impact will result from approving these code amendments (Environmental Review Number ER-2016-57).

Section 3. Santa Ana Municipal Code Chapter 22 is hereby amended to read as follows:

**Chapter 22**

**MESSAGE ESTABLISHMENTS**

**Sec. 22-1. Definitions.**

Unless the particular provision or the context otherwise requires, the definitions and provisions contained in this section shall govern the construction, meaning, and application of words and phrases used in this chapter:

- (a) "California Massage Therapy Council" or "CAMTC" means the state-organized, non-profit organization created to regulate the massage industry as set forth in Chapter 10.5 of Division 2 of the California Business and Professions Code (commencing with Section 4600, as amended).
- (b) "Employee" includes every owner, partner, operator, manager, supervisor and worker, whether part-time, full-time, or temporary, whether paid or not, who renders services of any nature or is otherwise employed in the operation of a massage establishment. For purposes of this chapter, the term employee shall also include massage technicians who provide massage services as independent contractors to a massage establishment.
- (c) "Manager" means the owner or operator of the massage establishment, or any person(s) designated by the owner or operator to act as the representative and agent of the owner or operator in managing daily operations. Evidence of management may include, but is not limited to, evidence that the individual has power to direct or hire and dismiss employees, control hours of operation, create policy or rules, or purchase supplies.
- (d) "Massage" means any scientific manipulation of soft tissue, or method of applying pressure on, or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating the external parts of the human body with the hands or with the aid of any mechanical or electrical apparatus or appliances, or with or without supplementary aids such as rubbing alcohol, liniments, antiseptics, oils, powder, creams, ointments, or other similar preparations commonly used in this practice.
- (e) "Massage certificate" means a certificate issued by the CAMTC pursuant to Section 4604 of the Business and Professions Code (Chapter 10.5 commencing with section 4600, as amended).
- (f) "Massage establishment" means any establishment having a fixed place of business where any individual, firm, association, partnership, corporation, or combination of individuals, engages in, conducts, carries on or permits to be engaged in, conducted or carried on, massages, baths, or health treatments involving massage or baths as regular functions.
- (g) "Massage technician" means any massage practitioner, masseuse, massage therapist or any person who administers or in any way assists in administering any form of massage, bath, or health treatment involving massages or baths as the principal functions to another person for any consideration whatsoever. A massage technician may be an employee or independent contractor.

**Sec. 22-2. Massage establishment permit required.**

- (a) It shall be unlawful for any person, association, partnership or corporation to engage in, conduct or carry on, in or upon any premises within the city, the business of a massage establishment without a permit issued pursuant to the provisions of this chapter for each and every such massage establishment.
- (b) Any healing arts professional or other state licensed practitioner listed in section 22-5 of this chapter who employs, or contracts with, more than two (2) massage technicians must obtain a massage establishment permit.

**Sec. 22-2.1. Massage establishment permit term.**

- (a) Permits for massage establishments shall be for a period of one (1) year, unless sooner revoked as set forth in this chapter.
- (b) No permit granted herein shall confer any vested right to any person or business for more than the limit period. All massage establishments subject to this chapter, shall comply with the provisions of this chapter and as may be amended hereafter.

**Sec. 22-3. Massage establishment permit application.**

- (a) Any person, corporation or partnership desiring to obtain a permit to operate a massage establishment shall make application to the chief of police or his/her designated representative. Prior to submitting such application a nonrefundable fee as established by resolution of the city council shall be paid to the department of finance to defray, in part, the cost of administering the requirements of this chapter. The department of finance shall issue a receipt showing that such permit application fee has been paid. The receipt, or a copy thereof, shall be supplied to the chief of police at the time such application is submitted.
- (b) The application for permit does not authorize conducting a massage establishment business until such permit has been granted.
- (c) Each applicant shall be the owner of the massage establishment and shall furnish the following information:
  - (1) The full true name and any other names used by the applicant.
  - (2) The present address and telephone number of the applicant.
  - (3) The previous addresses of applicant, if any, for a period of five (5) years immediately prior to the date of the application and the dates of residence at each.
  - (4) Acceptable written proof that the applicant is at least eighteen (18) years of age.
  - (5) The applicant's height, weight, color of eyes and hair, and date of birth.

- (6) Two (2) photographs of the applicant at least two (2) inches by two (2) inches taken within the last thirty (30) days.
- (7) Business, occupation or employment history of the applicant for the five (5) years immediately preceding the date of application.
- (8) The business license history of the applicant and whether such applicant, in previously operating in this or any other city, state or territory under license, has had such license revoked or suspended, the reason therefore, and the business activity or occupation subsequent to such action of suspension or revocation.
- (9) All convictions, including ordinance violations, exclusive of traffic violations, stating the dates and places of any such convictions.
- (10) If the applicant is a corporation, 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 addresses of each of its current officers and directors, and each stockholder holding more than five (5) percent of the stock in the corporation. If the applicant is a partnership, the applicant shall set forth the name, residence address and dates of birth of each of the partners, including limited partners. If the applicant is a limited partnership, it shall furnish a copy of its certificate of limited partnership as filed with the county clerk. If one (1) or more of the partners is a corporation, the provisions of this subsection pertaining to corporations shall apply. The applicant corporation or partnership shall designate one (1) of its officers or general partners to act as its responsible managing officer. The responsible managing officer may complete and sign all applications on behalf of the corporate officers and partners. Such designated persons shall complete and sign all application forms required of an individual applicant under this chapter, but only one (1) application fee shall be charged.
- (11) The name and address of the owner and lessor of the real property upon which the business is to be conducted, and a notarized copy of the lease or rental agreement, including any addendums to the agreement.
- (12) Such other identification and information as the police department may require in order to discover the truth of the matters hereinbefore specified as required to be set forth in the application.
- (13) Proof of submission to the California Department of Justice a complete set of the applicant's fingerprints taken by a police department or California Department of Justice approved contractor. The applicant shall be responsible for payment of any fingerprinting fee.

- (14) A site plan depicting the building and/or unit proposed for the massage establishment and a dimensional interior floor plan depicting how the massage establishment will comply with all applicable requirements of this chapter.
- (15) The complete name, date of birth, phone number and residence address of the proposed on-site manager who will be principally in charge of the operation of the establishment, and any other information as requested by the massage establishment application. A manager must possess the same qualifications as an owner.
- (16) A statement in writing, and dated, by the applicant that he or she certifies under penalty of perjury that all information contained in the application is true and correct.
- (d) The applicant, if an individual, or designated responsible managing officer, if a partnership or corporation, shall personally appear at the police department of the city and produce proof that the required application fee has been paid and shall present the application containing the aforementioned and described information.
- (e) The chief of police shall have forty-five (45) calendar days in which to investigate the application and background of the applicant. The department of building safety shall inspect the premises proposed to be devoted to the massage establishment and shall make separate recommendations to the chief of police or designee concerning compliance with the foregoing provisions.
- (f) The chief of police or designee, after receiving the application and aforementioned recommendations, shall grant the permit if he/she finds:
- (1) The required fee has been paid.
  - (2) The application conforms in all respects to the provisions of this chapter.
  - (3) The applicant has not knowingly made a material misrepresentation in the application.
  - (4) The applicant has fully cooperated in the investigation of his application.
  - (5) The applicant if an individual, or any of the stockholders of the corporation, any officers or directors, if the applicant is a corporation, or any of the partners, including limited partners, if the applicant is a partnership, has not within five (5) years prior to the application filing date been convicted of an offense involving conduct which requires registration under California Penal Code Section 290, or of conduct which is a violation of the provisions of California Penal Code Sections 266h, 266i, 311.6, 314, 315, 316, 318, 415, 647(a), 647(b), or 647(d), or any crime involving dishonesty, fraud, deceit, or moral turpitude, or any

felony offense involving the sale of a controlled substance specified in Sections 11054 through 11058 of the California Health and Safety Code.

- (6) The applicant has not had a massage establishment permit or massage technician permit or other similar license or permit denied or revoked for cause by this city or any other city located in or out of this state within the five (5) years prior to the date of application.
- (7) The massage establishment as proposed by the applicant would comply with all applicable laws including, but not limited to, health, zoning, fire and safety requirements and standards.
- (8) The applicant is at least eighteen (18) years of age.
- (g) Any person, corporation or partnership denied a permit by the chief of police or designee pursuant to these provisions may appeal pursuant to chapter 3 of this Code.
- (h) It shall be the responsibility of any massage establishment permit holder to notify the city within thirty (30) days of changing either his/her home address, phone number, or the address of the massage establishment.

**Sec. 22-3.1. Massage establishment permit renewal.**

- (a) Applications for the renewal of a permit shall be filed with the chief of police at least sixty (60) calendar days before the expiration of the current permit. Temporary permits will not be issued. Any permittee allowing his/her permit to lapse or which permit expired during a suspension shall be required to submit a new application and pay the corresponding original application fees.
- (b) Any person desiring to obtain a renewal of his/her respective permit shall file a written application under penalty of perjury on the required form with the chief of police who shall conduct an investigation. The application shall be accompanied by a nonrefundable filing fee established by separate resolution of the city council to help defray the cost of the investigation required by this chapter. An applicant shall be required to update the information contained in his/her original permit application and provide any new and/or additional information as may be reasonably required by the chief of police in order to determine whether said permit should be renewed.
- (c) Any person desiring to obtain a renewal of his/her respective permit shall provide a valid city issued business license at the time of filing.

**Sec. 22-4. Massage technician requirements.**

- (a) It shall be unlawful for any person to act as a massage technician, practitioner, or therapist unless such person holds a valid massage certificate issued by the CAMTC

pursuant to Section 4604 of the Business and Profession Code (Chapter 10.5 commencing with Section 4600, as amended) and a photo identification card prepared and issued by the city.

(b) Any massage technician acting or operating as an independent contractor shall have and maintain a valid city issued business license.

### **Sec. 22-5. Exemptions.**

The provisions of this chapter shall not apply to the following classes of individuals while engaged in the performance of the duties of their respective professions:

- (a) Acupuncturists, physicians, surgeons, chiropractors, osteopaths, or physical therapists who are duly licensed to practice their respective professions in the state. Practical nurses, licensed vocational nurses, or other persons without qualifications as massage technicians, whether employed or contracted by acupuncturists, physicians, surgeons, chiropractors or osteopaths or not, may not give massage or massage procedures.
- (b) Hospitals, nursing homes, sanatoriums, or other health care facilities duly licensed by the state.
- (c) Nurses registered under the laws of the state.
- (d) Barbers, cosmetologists, manicurists and estheticians who are duly licensed under the laws of the state when engaged in such practice within the scope of their license. Except that this exception applies solely for the massaging of the neck, face and/or scalp of the customer of said barber or cosmetologist or in the case of a licensed manicurist, the massaging of the forearm, hands, calves and/or feet. State licensed estheticians may provide skin care, which is limited to the face, neck, arms or upper part of the human body.
- (e) Accredited high schools and colleges, and coaches and trainers therein while acting within the scope of their employment.
- (f) Trainers of any amateur, semiprofessional or professional athlete or athletic team.

#### **Sec. 22-5.1. Persons working for exempted individuals.**

Any person conducting massage for an exempted class individual must possess a massage certificate and shall comply with all massage regulations. A massage technician employed by an exempted class individual must work under the direction and control of that individual who must be physically present at the location where the massage is being administered. A massage technician cannot rent office space or workspace at an exempt individual's location.

**Sec. 22-5.2. Evidence of exempt status.**

- (a) Any person or business exempted from the provisions of this chapter pursuant to section 22-5 shall file with the city a copy or provide other evidence of the certificates, permits, licenses, registration, or other approved authorizing documentation held by the persons who are providing massage services at the business, prior to commencing services within the city.
- (b) The city shall have the authority to make reasonable investigations into the information so provided pursuant to this section.

**Sec. 22-6. Massage establishment facilities.**

Every massage establishment shall maintain facilities meeting the following requirements:

- (a) Sign. Establishment must comply with the city sign ordinance contained in chapter 41.
- (b) Lighting. Minimum lighting shall be provided in accordance with Article 220 of the National Electric Code, and, in addition, at least one (1) unobstructed artificial light of not less than sixty (60) watts shall be provided in each room or enclosure where massage services are performed on patrons.
- (c) Ventilation. Minimum ventilation shall be provided in accordance with Section 1105 of the Uniform Building Code.
- (d) Equipment. Adequate equipment for disinfecting and sterilizing instruments used in performing the acts of massage shall be provided.
- (e) Water. Hot and cold running water shall be provided at all times.
- (f) Linen storage. Closed cabinets shall be provided for storage of clean linens, and approved receptacles shall be provided for storage of soiled linen.
- (g) Separation of sexes. If a shower facility is provided at a massage establishment, separate shower and dressing facilities shall be provided for male and female patrons, and each such separate facility or room shall be clearly marked as such.
- (h) Facilities for employees. A minimum of one (1) separate wash basin shall be provided in each massage establishment for the use of employees of any such establishment, which basin shall provide soap or detergent and hot and cold running water at all times and shall be located within or as close as practicable to the area devoted to the performing of massage services. In addition, there

shall be provided sanitary towels in permanently installed dispensers at each wash basin.

- (i) Compliance with Code. Proof of compliance with all applicable provisions of this Code shall be provided.

#### **Sec. 22-7. Massage facilities operation.**

Every person who owns, operates, manages or is employed in any massage establishment shall comply with the following operating requirements. These requirements shall be prominently and publicly displayed in a conspicuous place upon every premises operating under the provisions of this chapter:

- (a) No person shall be employed or permitted to act as a massage technician who is not in possession of a valid unrevoked massage certificate.
- (b) Bath and massage operations shall be carried on and the premises shall be open only between the hours of 8:00 a.m. to 10:00 p.m.
- (c) A list of services available and the cost of such services shall be posted in an open, public place on the premises, and shall be described in readily understandable language. No owner, operator, responsible managing employee, independent contractor, manager, or permittee shall permit, and no massage technician shall offer to perform any services other than those posted.
- (d) The massage establishment shall prominently display the massage establishment permit and any and all massage certificates for each and every massage technician employed in the establishment in the front lobby area of the premises, for examination upon demand by any police or code enforcement officer of the city.
- (e) Each massage technician shall wear a photo identification card prepared and issued by the city while administering a massage. The identification card shall be worn on outer clothing with the photo facing out. The massage technician shall not use any name other than specified on the photo identification card while on duty.
- (f) Massage establishments shall at all times be equipped with an adequate supply of clean sanitary towels, coverings and linens. Clean towels, coverings and linens shall not be used on more than one (1) patron unless they have first been laundered and disinfected. Disposable towels and coverings shall not be used on more than one (1) patron. Soiled linens and paper towels shall be deposited in approved receptacles.
- (g) In any establishment in which massage services are rendered only to members of the same sex at any one (1) time, such persons of the same sex shall be

placed in a single separate room or the operators of the massage establishment may elect to place such persons of the same sex in separate rooms or booths having adequate ventilation to an area outside said room or booth while massage services are being performed.

- (h) Wet and dry heat rooms, steam or vapor rooms or cabinets, shower rooms and compartments, toilet rooms 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 department. Bathtubs shall be thoroughly cleaned with a disinfectant approved by the health department after each use.
- (i) Instruments utilized in performing massage shall not be used on more than one (1) patron unless they have been sterilized using approved sterilizing methods.
- (j) No persons shall enter, be or remain in any part of a massage establishment while in the possession of, consuming, or using any alcoholic beverage or drugs except pursuant to a prescription for such drugs. The owner, operator, responsible managing employee, manager or permittee shall not permit any such person to enter or remain upon such premises.
- (k) No massage establishment shall operate as a school of massage, or use the same facilities as that of a school of massage, except as provided below. It shall be unlawful for any person to perform any massage upon a member of the general public while on the premises of a school of massage.
- (l) No part of the establishment shall be used for residential or sleeping purposes.
- (m) All massage establishments shall have a manager on the premises at all times the massage establishment is open. The designated manager must possess a valid and current CPR certificate issued by the American Red Cross or the American Heart Association.
- (n) The operator, or the manager in the operator's absence, shall be responsible for ensuring compliance with this chapter and any applicable provisions of this Code. Any change in management must be reported to the police department within ten (10) days.
- (o) An operator and/or on-duty manager shall be responsible for the conduct of all employees, or independent contractors, while the employees are on the licensed premises. Any act of omission of any employee constituting a violation of the provisions of this chapter and any applicable provision of this Code shall be deemed the act of omission of the operator for the purposes of determining whether the operator's license shall be revoked, suspended or renewed.
- (p) All walls, ceilings, floors and other physical facilities for the establishment must be in good repair and maintained in a clean and sanitary condition.

**Sec. 22-8. Inspections.**

The department of building safety and/or the police department may, from time to time, make an inspection of each massage establishment in the city for the purpose of determining that the provisions of this Code are met.

**Sec. 22-9. Sale or transfer.**

- (a) Upon the sale or transfer of any interest in a massage establishment, the permit shall be null and void. Any person, firm or entity desiring to own or operate the massage establishment shall make a new application. A fee as established by resolution of the city council shall be payable for each such application involving sale or other transfer of any interest in an existing massage establishment. The provisions of section 22-3 of this chapter shall apply to any person, firm, or entity applying for a massage establishment permit for premises previously used as such establishment.
- (b) Any such sale or transfer of any interest in an existing massage establishment or any application for an extension or expansion of the building or other place of business of the massage establishment shall require inspection and shall require compliance with section 22-6 of this chapter.
- (c) The owner or operator of a massage establishment shall be responsible for notifying the city of any intention to rename, change management, change location, or convey the business to another person.

**Sec. 22-10. Change of location or name.**

- (a) A change of location of any of the aforementioned and described premises may be approved by the chief of police and planning manager, provided a new application and fee are submitted and all ordinances and regulations of the city are complied with.
- (b) No permittee shall operate under any name or conduct any establishment under any designation not specified in his permit.

**Sec. 22-11. Prohibited conduct.**

- (a) It shall be unlawful for any massage technician to perform any massage services in any commercial establishment other than a premises holding a valid massage establishment permit.
- (b) A massage technician shall be fully clothed at all times and shall not expose their genitals, pubic area, buttocks, or in the case of female technicians, their breasts, and such practices shall not be allowed or permitted by the massage establishment permittee or his designee.

- (c) A massage technician shall not give massages at any location other than on the premises of a massage establishment with a valid massage establishment permit.
- (d) A massage technician shall not give a massage unless the breasts of female patrons are covered and the genitals of all patrons are covered, and such practices shall not be allowed or permitted by the massage establishment permittee or his designee.
- (e) No massage, for a fee, shall be done at the residence of a massage certificate holding massage technician or in any hotel, or motel in the city.
- (f) It shall be unlawful for a massage establishment to use, sell or furnish any product that is infused with marijuana. Such product may take the form of a spray, patch, topical, lotion, salve, cream, oil, balm, or similar form intended for external application during a massage. Marijuana as used in this section includes any product infused with tetrahydrocannabinol (THC) or cannabidiol (CBD).
- (g) It shall be unlawful for a massage technician, massage practitioner or a massage therapist to use or apply any product that is infused with marijuana. Such product may take the form of a spray, patch, topical, lotion, salve, cream, oil, balm, or similar form intended for external application during a massage. Marijuana as used in this section includes any product infused with tetrahydrocannabinol (THC) or cannabidiol (CBD).
- (h) It is a violation of this chapter for a permit holder to commit, and the city may deny an application for a permit or discipline a permit holder for, any of the following:
  - (1) Unprofessional conduct, including, but not limited to, denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a certificate holder by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision, order, or judgment shall be conclusive evidence of these actions.
  - (2) Procuring a permit by fraud, misrepresentation, or mistake.
  - (3) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision or term of this chapter or any rule or bylaw adopted by the city.
  - (4) Conviction or plea of guilty or nolo contendere to any felony or misdemeanor or infraction that is substantially related to the qualifications or duties of a permit holder, in which event the record of the conviction or plea shall be conclusive evidence of the crime.

- (5) Conviction or plea of guilty or nolo contendere to any felony or misdemeanor or infraction directly related to the operation of a massage establishment.
- (6) Impersonating an applicant or acting as a proxy for an applicant in any examination referred to under this chapter for the issuance of a permit.
- (7) Impersonating a certified practitioner or therapist, or permitting or allowing an uncertified person to use a certificate.
- (8) Committing any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications or duties of a permit holder.
- (9) Committing any act punishable as a sexually related crime.

#### **Sec. 22-12. Suspension or revocation.**

When the chief of police finds that any person holding a permit under the provisions of chapter 22 has violated the provisions of this chapter or is found guilty of conduct which would form the basis of denial of the license as set forth in sections 22-2 and 22-4, he/she may revoke or suspend the permit. No such revocation shall become effective until the permit holder has been notified in writing by certified mail of his/her right to appeal the revocation decision pursuant to the provisions of chapter 3 of this Code. If a timely appeal is filed, the revocation shall be effective only upon decision of the city council. Otherwise, the revocation shall become effective after the timely appeal period has passed.

#### **Sec. 22-13. Conducting as a nuisance.**

Any massage establishment operated, conducted or maintained contrary to the provisions of this chapter shall be and the same is hereby declared to be unlawful and a public nuisance, and the city attorney may, in addition to or in lieu of prosecuting a criminal action hereunder, commence a civil action or actions, proceeding or proceedings for the abatement, removal or enjoinder thereof, in the manner provided by law, and shall take such other steps and shall apply to such courts as may have jurisdiction to grant such relief as will abate or remove such massage establishment and restrain and enjoin any person from operating, conducting or maintaining a massage establishment contrary to the provisions of this chapter.

#### **Sec. 22-14. Existing businesses.**

The provisions of this chapter and chapter 41 shall be applicable to all persons and businesses described herein whether the herein described activities were established before or after the effective date of this chapter. All massage establishments within the city that were conducting activities requiring permitting and regulated under this section whose activities existed prior to the effective date of this chapter, have a period of one

(1) year from the date of the adoption of the revisions to apply for all permits required of massage establishments.

**Sec. 22-15. Advertising requirement.**

All advertising shall include the massage establishment permit number in any advertisement of services appearing in any printed or electronic advertising medium. The reference does not have to contain the words "massage establishment permit". "City of Santa Ana permit number" or similar language will suffice so long as the correct permit number is included.

**Sec. 22-16. Violation-Penalty.**

Any person violating this chapter shall be guilty of a misdemeanor, punishable by a fine of one thousand dollars (\$1,000.00) or by imprisonment for a period not to exceed six (6) months, or by both such fine and imprisonment.

Section 3. Article XVIII of Chapter 41 of the Santa Ana Municipal Code is hereby amended to read as follows:

**ARTICLE XVIII.  
MESSAGE**

**Sec. 41-1750. Specific purposes.**

- (a) In addition to the general purposes listed in section 41-1, the specific purposes of this article are to:
- (1) Establish a procedure which places strict limits on processing time and creates an orderly process for reviewing applications to conduct massages, in the interest of public health, safety, and welfare.
  - (2) Ensure orderly and thorough city review of applications for conducting massages, including, but not limited to, massage establishment(s).
  - (3) Establish reasonable and uniform regulations that will reduce possible adverse secondary effects that businesses conducting massages may have upon the residents of the city and preserve the integrity of existing commercial areas of the city and of residential areas which are in close proximity to such commercial areas.
- (b) This article shall not apply to a retail or service use that is currently licensed by the State of California Board of Barbering and Cosmetology or an exempt individual as defined in section 22-5 of this Code.

**Sec. 41-1751. Definitions.**

Unless the particular provision or the context otherwise requires, the definitions and provisions contained in this section shall govern the construction, meaning, and application of words and phrases used in this chapter:

- (a) "California Massage Therapy Council" or "CMTC" means the state-organized, non-profit organization created to regulate the massage industry as set forth in Chapter 10.5 of Division 2 of the California Business and Professions Code (commencing with Section 4600, as amended).
- (b) "Employee" includes every owner, partner, operator, manager, supervisor and worker, whether part-time, full-time, or temporary, whether paid or not, who renders services of any nature or is otherwise employed in the operation of a massage establishment. For purposes of this chapter, the term employee shall also include massage technicians who provide massage services as independent contractors to a massage establishment.
- (c) "Manager" means the owner or operator of the massage establishment, or any person(s) designated by the owner or operator to act as the representative and agent of the owner or operator in managing daily operations. Evidence of management may include, but is not limited to, evidence that the individual has power to direct or hire and dismiss employees, control hours of operation, create policy or rules, or purchase supplies.
- (d) "Massage" means any scientific manipulation of soft tissue, or method of applying pressure on, or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating the external parts of the human body with the hands or with the aid of any mechanical or electrical apparatus or appliances, or with or without supplementary aids such as rubbing alcohol, liniments, antiseptics, oils, powder, creams, ointments, or other similar preparations commonly used in this practice.
- (e) "Massage certificate" means a certificate issued by the CMTC pursuant to Section 4604 of the Business and Professions Code (Chapter 10.5 commencing with section 4600, as amended).
- (f) "Massage establishment" means any establishment having a fixed place of business where any individual, firm, association, partnership, corporation, or combination of individuals, engages in, conducts, carries on or permits to be engaged in, conducted or carried on, massages, baths, or health treatments involving massage or baths as regular functions.
- (g) "Massage technician" means any massage practitioner, masseuse, massage therapist or any person who administers or in any way assists in administering any form of massage, bath, or health treatment involving massages or baths as

the principal functions to another person for any consideration whatsoever. A massage technician may be an employee or independent contractor.

**Sec. 41-1752. Permitted zones and locations.**

No massage establishment may be located within the city unless it meets the following zoning and location criteria:

- (1) Massage establishments may be permitted on parcels in the C1, C1-MD, C2, C4, C5, or CSM zoning districts.
- (2) Massage establishments may be permitted on a parcel within any Specific Plan or Specific Development zoning district in which retail service uses are defined and permitted.
- (3) No massage establishment is permitted in any other zoning district.

**Sec. 41- 1753. Permits and certificates-Contents of application.**

No massage establishment may be operated or established in the city without first obtaining the following:

- (1) Approved certificate of occupancy.
- (2) A city issued business license.
- (3) Approved massage establishment permit issued by the chief of police, as set forth in section 22-2 of this Code.

**Sec. 41-1754. Development and operating standards.**

(a) The following development and operating standards shall be applied to the operation of any massage establishment:

- (1) The owner must advise the city, in writing, at the time of the application for a permit of the business hours and, thereafter, of any changes in such hours. No person shall operate a massage establishment or administer a massage in any massage establishment between the hours of 10:00 p.m. and 8:00 a.m. A massage begun any time before 10:00 p.m., must nevertheless terminate at 10:00 p.m. All customers, patrons and visitors shall be excluded from the massage establishment during these hours and be advised of these hours.
- (2) All exterior signs identifying the premises as a massage establishment shall comply with the sign requirements of the city.

- (3) Each operator and/or on-duty responsible employee shall display the massage establishment permit in a conspicuous public place in the lobby of the massage establishment.
- (4) The hours of operation must be posted in the front window and clearly visible from the outside.
- (5) The operator and/or on-duty responsible employee must also post, on a daily basis in a conspicuous public place in the lobby, the name of the operator and/or on-duty responsible employee as well as all on-duty massage technicians.
- (6) "No loitering" signs shall be posted at the front and rear of the business. No outside waiting or seating area is permitted in accordance with section 602 of the Penal Code.
- (7) Employees shall be at least eighteen (18) years of age. There shall be a minimum of one (1) employee managing the massage establishment during all working hours. During each employee's working hours, the employee shall wear a city issued badge identifying the business and the employee's full name.
- (8) Occupancy shall not exceed that required under the Uniform Building Code and Uniform Fire Code, and the maximum occupancy load shall be posted at the main entrance.
- (9) Window areas shall not be covered or made opaque in any way. All windows and entrances must be unobstructed at all times.
- (10) Lighting levels on the premises within sixty (60) feet of the use and in all required parking areas shall be maintained at a minimum one (1) foot-candle of light.
- (11) No exterior pay phones shall be permitted.
- (12) Rear exits are prohibited unless required by either the building code or the fire code. When required, rear exit doors shall be kept in a locked closed position and shall have panic hardware.
- (13) No person shall be employed or permitted to act as a massage technician who is not in possession of a valid, un-revoked massage certificate and a photo identification card prepared and issued by the city as required in chapter 22 of this Code.
- (14) It shall be unlawful for any person to perform any massage upon a member of the general public while on the premises of a school of massage.

(15)Residing in a massage establishment is prohibited. No person or persons shall be allowed to live, reside or dwell inside the massage establishment at any time. No food of any kind shall be prepared for sale or sold in the establishment.

(16)No interior doors may be locked during operating hours.

**Sec. 41-1755. Applicability to other regulations.**

The provisions of this article are not intended to provide exclusive regulation of the regulated expressive business uses. Such uses must comply with any and all applicable regulations imposed in other articles of the zoning code, other city ordinances and state and federal law. Should a conflict exist between the provisions of this article and the provisions of other articles of chapter 41 of this Code, the provisions of this article shall prevail.

**Secs. 41-1756 - 41-1799. Reserved.**

Section 4. If any section, subsection, sentence, clause or phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Santa Ana hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause or phrase or portion thereof irrespective of the fact that any one or more section, subsection, sentence, clause or phrase or portions be declared invalid or unconstitutional.

ADOPTED this 5<sup>th</sup> day of July, 2016.



Miguel A. Pulido  
Mayor

APPROVED AS TO FORM:  
Sonia Carvalho, City Attorney

By:  \_\_\_\_\_  
Lisa Storck  
Assistant City Attorney

AYES: Councilmembers: Amezcuca, Benavides, Martinez, Pulido, Reyna, Sarmiento (6)

NOES: Councilmembers: None (0)

ABSTAIN: Councilmembers: None (0)

NOT PRESENT: Councilmembers: Tinajero (1)

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, MARIA D. HUIZAR, Clerk of the Council, do hereby attest to and certify that the attached Ordinance No. NS-2903 to be the original ordinance adopted by the City Council of the City of Santa Ana on July 5, 2016, and that said ordinance was published in accordance with the Charter of the City of Santa Ana.

Date: 7/11/2016

Maria D. Huizar  
Clerk of the Council  
City of Santa Ana