

ORDINANCE NO. 1608

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING TITLE 17 OF THE SAN CLEMENTE MUNICIPAL CODE, FOR THE PURPOSE OF PROVIDING LOCAL REGULATORY AUTHORITY OVER MASSAGE USES CONSISTENT WITH STATE LAW.

WHEREAS, in January 2015, the State of California adopted Assembly Bill 1147 ("AB 1147"), an act to amend Section 460 of, and to add and repeal Chapter 10.5 (commencing with Section 4600) of Division 2 of, the Business and Professions Code, and to amend Section 51034 of the Government Code, relating to healing arts. The State law authorizes the City of San Clemente to adopt and enforce local ordinances that govern zoning, business licensing, and reasonable health and safety requirements for establishments and businesses of a licensed or certified healing arts professional, including a certified massage therapist. The law also made clarifying and conforming changes regarding local regulation of massage establishments and businesses; and

WHEREAS, on April 21, 2015, the City Council initiated a Municipal Code Amendment, a proposal to amend sections of the San Clemente Zoning Code to restore municipal land use regulatory and permitting authority over massage establishments consistent with AB 1147; and

WHEREAS, the City's Development Management Team reviewed the application for consistency with the General Plan and other applicable requirements; and

WHEREAS, the proposed code amendments are not defined as a project pursuant to California Environmental Quality Act (CEQA) Guidelines Section 21065, therefore the request is not subject to CEQA.

NOW, THEREFORE, the City Council of the City of San Clemente hereby resolves as follows:

Section 1: The proposed code amendments are not defined as a project pursuant to California Environmental Quality Act (CEQA) Guidelines Section 21065, therefore the request is not subject to CEQA.

Section 2: With respect to this ordinance, the City Council finds as follows:

- A. The proposed amendments are consistent with the General Plan, in that the types of massage uses conditionally permitted in certain commercial and mixed-use districts enhances those districts by locating massage uses with other similarly intense commercial uses.

- B. The proposed amendments will not adversely affect the public health, safety, and welfare, in the zones where massage uses are conditionally permitted ensures that neighborhood character is maintained and that new massage uses are compatible with the intent of the zone. The increased regulatory authority enhances the City's capacity to ensure that massage uses do not negatively affect the public health, safety, and welfare of the City's residents, businesses, and visitors.

Section 3: the definition of "Massage" is hereby amended in Municipal Code, Section 17.88.30, to read as follows:

"Massage" shall mean the scientific manipulation of the soft tissues, including but not limited to any method of treating any of the external parts of the body for remedial, health or hygienic purposes by means, including but not limited to, rubbing, stroking, pressuring, acupressuring, kneading, tapping, pounding, vibrating or stimulating with the hands, feet, elbows or any other part of the body, with or without the aid of any instrument or device and with or without such supplementary aids as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment, or other similar preparations commonly used in this practice, under such circumstances that it is reasonably expected that the person to whom the treatment is provided or some third person on his or her behalf will pay money or give any other consideration or any gratuity therefor.

Section 4: the definition of "Massage Establishment" is hereby amended in Municipal Code, Section 17.88.30, to read as follows:

"Massage establishment" shall mean a fixed location where massage is performed for compensation.

Section 5: the definition of "Massage Establishment" is hereby amended in Municipal Code, Section 17.88.30, to read as follows:

"Massage establishment, accessory" shall mean an establishment that provides massage which is incidental to the primary business, where the owner of the primary business is responsible for the massage services and conduct of the massage technician(s) employed at the location.

Section 6: Section 8 of Table 17.36.010 is hereby amended as follows:

	NC 1.1, NC 1.2	NC 2, NC 3, CC 1, CC 2, CC 3	RC 2
8. Unclassified Uses			
Accessory Buildings	C	C	C
Alcoholic Beverage Sales Concurrent With Motor Vehicle Fuel-Convenience Stores Sales 13	C	C	NP

8. Unclassified Uses	NC 1.1, NC 1.2	NC 2, NC 3, CC 1, CC 2, CC 3	RC 2
Amusement Centers ¹⁴	C	C	NP
Animal Grooming	MC	P	NP
Bowling Alleys	NP	C	NP
Drive-Thru Facilities, When in Conjunction with a Use Permitted or Conditionally Permitted in the Zone	NP	C	NP
Grading ¹⁵ , (Not Accompanying a Development Request)			
Emergency	P	P	P
Major	C	C	C
Minor	P	P	P
Health/Fitness/Sports Clubs and Facilities	C	C	NP
Internet Access Studio/Internet Cafe	P	P	NP
With 5 or more computers available to the public (excluding school, library and other similar public uses) ¹⁸	C	C	NP
Massage ¹⁹		C	
Accessory Massage ¹⁹	MC	MC	
Mortuaries	NP	C	NP
Pool Halls ²⁰	NP	C	NP
Recycling Facilities ²¹			
Reverse Vending Machines	P	P	NP
Small Collection	C	P	NP
Large Collection	NP	C	NP
Theaters	NP	C	NP
Wine Tasting (Only as an Accessory Use to establishments selling wine or wine-related products as a primary use)	MC	MC	NP

Section 7: Footnote 19 is amended in Section 8 of Table 17.36.020, to read as follows "Massage is subject to Section 5.28 of the City of San Clemente Municipal Code. Refer to Section 17.28.185, Massage Establishments, of this title, for special provisions for massage establishments and accessory massage establishments."

Section 8: Section 7 of Table 17.40.030 is hereby amended as follows:

7. Unclassified Uses	MU 3	MU 3-CB	MU 5.1
Accessory Buildings, Residential ¹⁸			
Detached, Over 15 Feet in Height	NP	NP	C
All Others	NP	NP	P
Accessory Buildings, Nonresidential ¹⁹	C	C	C
Alcohol Beverage Sales Concurrent with Motor Vehicle Fuel-Convenience Store Sales ²⁰	NP	NP	C
Amusement Centers ²¹	C	C	C
Animal Grooming Shops	NP	NP	MC
Bowling Alleys	NP	NP	C
Drive-Thru Facilities, When in Conjunction with a Use Permitted or Conditionally Permitted in this Zone	NP	NP	C
Grading ²² , Not Accompanying a Development Request.			
Emergency	P	P	P
Major	C	C	C
Minor	P	P	P
Health/Fitness/Sports Clubs and Facilities	C	C	C
Internet Access Studio/Internet Cafe	P	P	P
With 5 or more computers available to the public (excluding school, library and similar public uses) ²³	C	C	C
Massage ²⁴			
Accessory Massage ²⁴	MC	MC	MC
Mortuaries	NP	NP	C
Pool Halls ²⁴	C	C	C
Recycling Facilities: ²⁵ Reverse Vending Machines	MC	MC	MC
Theaters	C	C	C
Urban Private Storage ²⁶	C	C	NP
Wine Tasting (Only as an Accessory Use to establishments selling wine or wine related products as a primary use)	MC	MC	MC

Section 9: Footnote 24 is amended in Section 7 of Table 17.40.030, to read as follows "Massage is subject to Section 5.28 of the City of San Clemente Municipal Code. Refer to Section 17.28.185, Massage Establishments, of this title, for special provisions for massage establishments. To the extent otherwise allowed, Accessory Massage is permitted only in the commercial portion of a mixed-use building."

Section 10: Section 17.28.185, Massage Establishments, is hereby added to Title 17, Zoning, of the San Clemente Municipal Code, as follows:

17.28.185 - Massage Establishments.

- A. Purpose and Intent. The purpose of this section is to provide standards for massage establishments, where allowed in compliance with Title 17, Zoning, and Chapter 5.28, Massage Establishments, of the San Clemente Municipal Code.
- B. Applicability. This section applies to all businesses proposing to conduct massage, including Accessory Massage Establishments. This chapter shall not apply to the following classes of individuals while engaged in the performance of the duties of their respective professions:
 - 1. Physicians, surgeons, chiropractors, osteopaths or physical therapists who are duly licensed to practice their respective professions in the State of California.
 - 2. Nurses registered under the laws of the State of California.
 - 3. Trainers of any amateur, semi-professional or professional athlete or athletic team.
 - 4. Barbers and beauticians who are duly licensed under the laws of the State of California when engaged in such practice within the scope of their employment.
 - 5. Hospitals, nursing homes, sanatoriums, or other health care facilities duly licensed by the State of California; provided that at all times such physicians, surgeons, chiropractors, osteopaths and physical therapists are acting in adherence with the provisions of the state law that govern Massage.
 - 6. Accredited high schools and colleges and coaches and trainers therein while acting within the scope of their employment.
 - 7. Physical therapy students and massage therapy students, enrolled in a State approved educational program earning practical hours for school/education, may provide massage under the direct supervision of a State-certified, City-licensed physical therapist or massage therapist at all times when a student performs massage for educational purposes at an approved educational facility.
- C. Review Requirements. Please refer to the use table in Chapter 17.36, Commercial Zones and Standards, and Chapter 17.40, Mixed Use Zones and Standards, of this title.
 - 1. Massage Establishment Business License required. All businesses that are proposing to conduct massage from a location that have an

approved and active Conditional Use Permit or Minor Conditional Use Permit for massage services must obtain approval of a business license prior to the initiation of operations.

2. Change of Tenancy or Ownership. Change of management, ownership, or tenancy of a Massage Establishment, which was legally established and operational by [insert date of Massage Ordinance approval], shall require a Conditional Use Permit/ Minor Conditional Use Permit as required in Chapter 17.36, Commercial Zones and Standards, and Chapter 17.40, Mixed Use Zones and Standards, of this title, as determined by the City Manager. A change of management, ownership, or tenancy shall include, but not be limited to, the sale of at least 50 percent of the shares in any type of corporation, or a change in any of the principal officers in a corporation as determined by the City Manager or his or her designee. Notwithstanding the foregoing, if the licensee is a partnership and one or more of the partners should withdraw, one or more of the remaining partners may acquire, by purchase or otherwise, the interest of the partner or partners who withdrew without effecting a change in management, ownership, or tenancy, and in such case, the licensee shall be deemed to be the surviving partner(s).

D. Facility Requirements.

1. A recognizable and readable sign shall be posted at the main entrance identifying the establishment as a massage establishment; provided that all such signs shall comply with Chapter 17.84, Sign Regulations, of this title.
2. If shower facilities are provided, an enclosed changing area, directly adjacent to the shower shall be provided. The changing area shall be designed to allow the patron utilizing the shower facility to exit the shower, and enter the changing area, without being exposed or visible to any other area of the massage establishment. A private changing area shall be provided for each shower facility provided. The minimum dimension of the changing area shall be 25 square feet, and meet ADA standards.
3. A minimum of one separate washbasin shall be provided in each massage establishment for the use of employees of any such establishment. Said 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 at each washbasin sanitary towels placed in permanently installed dispensers.
4. The storefront windows of the massage establishment shall be transparent to provide clear visibility into the unit. The windows shall not

be obscured by curtains, blinds, or other temporary devices during operating hours.

5. Table showers

- a. If an establishment is proposing the use of table showers in the facility, the entire massage room where the table shower is located shall be designed and built as a shower facility.
- b. The floor and walls shall be designed and built to be waterproof per California Building Code requirements.
- c. The room shall drain properly per the California Building Code.

E. Operational Requirements.

1. A massage business licensee shall have the premises supervised at all times when open for business by the operator or a designated manager. A person designated as the responsible managing officer shall be on the premises at all times of operation and must be registered with the city manager by the owner to receive all complaints and citations. The appointment of a managing officer in charge must be in writing with the managing officer in charge acknowledging this appointment. The violation upon the premises of any massage establishment of any provision of this chapter by any agent, employee or independent contractor of the holder of a massage business license shall constitute a violation by the licensee.
2. Each massage establishment shall have at least one person who has a valid California Massage Therapy Council (as defined in San Clemente Municipal Code Section 5.28.010-Definitions, and hereinafter referred to as "CAMTC") certification on the premises at all times while the establishment is open for business. All persons who perform or administer massage services are required to be licensed by CAMTC, pursuant to Business and Professions Code Chapter 10.5, commencing with section 4600, as amended.
3. The operator of a massage establishment shall maintain a register of all persons employed as a massage technician and their CAMTC certification numbers, along with all receptionists, or other employees of the establishment. Such register shall be provided to the City upon application of a massage establishment license and business license, and shall be updated when an employee, massage technician, or independent contractor is added or discontinues services at the establishment. Notification shall be provided to the City within ten (10) calendar days of the date an employee, massage technician, or

independent contractor is added or discontinues service at the establishment. The register shall also be made available for inspection by representatives of the city at any time during the establishment's business hours. If the register is not made available during inspection, the establishment may receive an administrative citation, along with any individual, not including patrons, at the establishment that cannot be verified as a legal employee.

4. In no circumstance shall any owner, operator, responsible managing employee, manager, licensee, employee or independent contractor expose any of his or her specified anatomical areas (as defined in San Clemente Municipal Code Section 5.28.010, Definitions) to another person or persons while at the massage establishment.
5. In no circumstance shall any specified sexual activities take place at any time at the massage establishment.
6. No person or persons shall be allowed to live inside the massage establishment at any time. No food of any kind shall be prepared for sale or sold in the establishment unless an appropriate food vending license is obtained. There shall be no beds located in areas not designated specifically as massage rooms. Locker facilities shall be provided for all employees and independent contractors. All personal items of the employees or independent contractors shall be kept in the lockers while at the establishment.
7. No massage establishment shall operate as a school of massage, or use the facilities as that of a school of massage.
8. No massage establishment employing a massage technician shall be equipped with tinted or one-way glass in any room or office.
9. 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 (as defined in San Clemente Municipal Code Section 5.28.010, Definitions), or pornographic magazines, videos, or other material.
10. 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.

11. Alcoholic beverages may not be sold, served, furnished, kept, consumed, imbibed, or possessed on the premises without a Conditional Use Permit approved in compliance with Chapter 17.16.060, Conditional Use Permits, and any applicable California Department of Alcoholic Beverage Control licenses.
 12. Hours of operation shall be limited to the hours of 7:00 a.m. to 9:00 p.m. daily. A massage begun any time before 9:00 p.m. must nevertheless terminate at 9:00 p.m. The hours of operation shall be clearly displayed within a common area of the facility, or may be displayed as a form of window signage in compliance with Chapter 17.84, Sign Regulations, of this title.
 13. The owner or operator of each massage establishment shall display the business license issued to the establishment and the CAMTC license issued to each massage technician employed in the establishment in an accessible, visible, and conspicuous place on the premises. CAMTC certified massage practitioners shall have his or her original state certification at his or her place of business and his or her identification card in his or her possession while providing massage services. All sub-contracted massage technicians, as defined by the Internal Revenue Service, operating within a massage establishment shall have his or her business license at his or her place of business.
 14. Every Massage Establishment shall keep a written record of the date and hour of each treatment administered, the name and telephone number of each patron, the name of the Massage Therapist or Massage Practitioner administering treatment, and the type of treatment administered, to be recorded on a patron release form. Such written record shall be open to inspection by officials charged with enforcement of this chapter as authorized by the law or court order, if necessary. Such records shall be kept on the premises of the Massage Establishment for a period of two (2) years.
 15. No massage services shall be provided to a patron that results in intentional contact, or occasional repetitive contact, with specified anatomical areas (as defined in San Clemente Municipal Code Section 5.28.010-Definitions).
 16. No person shall give, or assist in giving, any massage or other body treatment to any other person under the age of eighteen (18) years, unless the parent or guardian of the minor person has consented thereto in writing.
- F. Sanitation Requirements.
1. Adequate equipment for disinfecting and sterilizing instruments used in performing the acts of massage shall be provided.

2. Hot and Cold running water shall be provided at all times.
 3. All walls, ceiling, floors, pools, showers, bathtubs, steam rooms, and all other physical facilities for the establishment must be in good repair and maintained in a clean and sanitary condition. Wet and dry rooms, steam and vapor rooms or cabinets, shower compartments, and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs/table showers shall be cleaned after each use.
 4. 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.
 5. Minimum ventilation shall be provided in accordance with the California Building Code.
- G. Attire Requirements.
1. Dressing while engaging in the practice of massage for compensation, or while visible to clients in a massage establishment, in any of the following is a violation of Chapter 4609 California Business and Professions code:
 - a. Attire that is transparent, see-through, or substantially exposes the massage technician's undergarments.
 - b. Swim attire, if not providing a water-based massage modality approved by CAMTC.
 - c. A manner that exposes the massage technician's specified anatomical areas (as defined in San Clemente Municipal Code Section 5.28.010-Definitions).
 - d. A manner that constitutes a violation of Section 314 of the Penal Code.
 - e. A manner that is otherwise deemed by CAMTC to constitute unprofessional attire based on the custom and practice of the profession in California.
- H. Permit conditions. In approving a Conditional Use Permit to establish a massage use, the review authority may impose conditions (e.g., security and safety measures, light, noise buffers, parking, etc.) on the use to ensure that it operates in a manner that provides adequate protection to the public health, safety, and general welfare.
- I. Inspection by Government Officials. The City Manager, or designee, shall have the right to enter massage establishments or businesses, from time to time, unannounced, for the purposes of making reasonable inspections to observe and enforce compliance with this Section and all laws of the City and State of California.
- J. Nuisances. Any massage establishment operated, conducted, or maintained contrary to the provisions of this chapter shall be unlawful and

a public nuisance, and the City Attorney may in the exercise of discretion, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings, for the abatement, removal or enjoinder thereof, in a manner provided by law. Violations of this chapter or any permit provided pursuant to this chapter shall also be subject to enforcement under Title 1 of this Code or suspension, revocation, or non-renewal of any applicable permit.

- K. Post-Decision Procedures. The procedures and requirements in Chapter 17.16.060, Conditional Use Permits, and those related to appeals in Chapter 17.12.140, Appeals of an action, shall apply following the decision on a massage establishment Conditional Use Permit application.

Section 11: Severability. If any section, subsection, sentence, clause, 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 San Clemente hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

Section 12: The City Clerk shall certify to the passage of this ordinance and the same shall take effect as provided by law.

APPROVED AND ADOPTED this ____ day of _____, _____.

ATTEST:

City Clerk of the City of
San Clemente, California

Mayor of the City of San
Clemente, California

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF SAN CLEMENTE)

I, **JOANNE BAADE**, City Clerk of the City of San Clemente, California, hereby certify that Ordinance No. _____ having been regularly introduced at the meeting of _____, was again introduced, the reading in full thereof unanimously waived, and duly passed and adopted at a regular meeting of the City Council held on the ____ day of _____, _____, and said ordinance was adopted by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this ____ day of _____, _____.

CITY CLERK of the City of
San Clemente, California

APPROVED AS TO FORM:

CITY ATTORNEY