

ORDINANCE NO. 1607

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING TITLE 5 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 Business Licenses and Regulations Code to restore municipal 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 amendment 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: Section 5.28, Massage Establishments, to Title 5, Business Licenses and Regulations, of the San Clemente Municipal Code, is hereby amended to read as follows:

Chapter 5.28

MESSAGE ESTABLISHMENTS

Sections:

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5.28.010 - Purpose and Intent.

It is the purpose and intent of this chapter, in conjunction with Section 17.28.185, Massage Establishments, of the San Clemente Municipal Code, to provide for the orderly regulation of Massage Establishments and Massage technicians, as defined herein and to the extent permitted by state law, in the interests of the public health, safety and welfare by providing certain minimum requirements for Massage Establishment business license applications and by providing certain minimum qualifications for the operators of Massage Establishments and for Massage technicians and Massage technician trainees.

5.28.020 – Definitions

For the purposes of carrying out the intent of this Chapter, unless the content clearly indicates to the contrary, the following words, phrases, and terms shall have the following meanings:

“Accessory massage establishment” means 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.

“Applicant” means any person or entity desiring to obtain a license to operate a massage establishment, and includes each and every owner of the proposed establishment, including:

1. Sole Proprietorship. A sole proprietorship, also known as a sole trader or simply proprietorship, is a type of business entity that is owned and run by one individual or one legal person and in which there is no legal distinction between the owner and the business.

2. Corporations. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the names and residence addresses of each of the officers, directors, and each and every majority stockholder. In addition, a certified copy of its articles of incorporation, together with any authorizations to issue stock shall be attached to the application.
3. Partnerships. If the applicant is a partnership, the application shall set forth the name and residence address of each of the partners, including limited partners. If one or more of the partners is a corporation, the provisions of this section pertaining to a corporate applicant shall apply. If the applicant is a partnership, a certified copy of the partnership agreement, if there be one, shall be attached to the application, and if the applicant be a limited partnership, a certified copy of its certificate of limited partnership shall be attached to the application.
4. If a corporation or a partnership is an applicant, then the identifying information required in this section as to the "applicant" shall be provided also as to such stockholders, directors and/or partners as the case may be and a license may be issued or denied if such stockholders, directors and/or partners do or do not satisfy the requirements and standards imposed by this chapter as to the background and character of the "applicant."

"California Massage Therapy Council" means the non-profit organization formed pursuant to Business and Professions Code Chapter 10.5, commencing with section 4600, as amended. The organization may be referred to hereinafter as "CAMTC".

"City" means the city of San Clemente.

"City Manager" the City Manager and/or those officers, employees, and agents of the city, directed by the City Manager to carry out all or portions of this chapter.

"Compensation" means a payment, loan, advance, donation, contribution, or gift of money, of anything of value.

"Completed application" means an application packet which contains all of the information required pursuant to this chapter.

"Disqualifying conduct" means the conduct by the applicant that would disqualify the application for a massage establishment business license, including any of the following:

1. Within five years of the date of filing of the application in question or any time after the filing of the application and/or any time after the

issuance of a license, the licensee has been convicted in a court of competent jurisdiction of:

- a. Any crime specified in Government Code section 51030 et seq., or
 - b. Any misdemeanor or felony offense which relates directly to the operation of a massage establishment, whether as a massage establishment owner, operator, massage technician, or employee thereof; or
2. Within five years of the date of the filing of the application in question or any time after the filing of the application and/or any time after the issuance of a license, the licensee has had revoked any massage establishment, operator, massage practitioner, technician, therapist, trainee, or similar license issued by the state, or any county or city; or
 3. Within five years of the date of the filing of the application in question or any time after the filing of the application and/or any time after the issuance of a license, the licensee has been convicted in a court of competent jurisdiction of:
 - a. Any violation of California Penal Code sections 266(h), 315, 316, and 318 or Sections 647(b) or 653.23, or
 - b. Conspiracy or attempt to commit any such offense, or
 - c. Any offense in a jurisdiction outside the state which is the equivalent of any of the aforesaid offenses, or
 - d. Has been found guilty of or pleaded nolo contendere to any lesser-included offense of the above, or
 - e. Has been found guilty of or pleaded nolo contendere to any crime specified in Government Code section 51030 et seq.; or
 4. Is required to register under the provisions of California Penal Code section 290; or
 5. Has been subjected to a permanent injunction against the conducting or maintaining of a nuisance pursuant to California Penal Code sections 11225 through 11235; or
 6. Has engaged in, or allowed an employee or massage technician under supervision to engage 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 engaging in specified sexual acts with oneself or another person while providing massage services or while within view of a customer or patron of the massage establishment; or
 7. Has engaged in, or allowed an employee or massage technician under supervision to engage in, the exposing specified anatomical areas of oneself or of another person to view while providing massage services

or while within view of a customer or patron of the massage establishment.

“Employee” means any and all persons, other than a massage technician, who may render any service to the licensee, and who receives compensation from the licensee or an agent, and who does not perform massages on the patrons.

“Licensee” means an individual, partnership, corporation or other entity that has been approved for a massage establishment business license.

“Manager” means an individual who manages or who is otherwise primarily responsible for the operation of the massage establishment, and shall include each and every person responsible for establishing personnel policy, hiring personnel, ensuring that the establishment complies with the requirements of this code and of other laws, and of establishing and administering any and all policies established by the owner for the operation of the establishment.

“Massage” means 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.

“Massage establishment” means a fixed location where massage is performed for compensation.

“Massage Establishment Business License” means a business license issued by the City to a massage establishment to conduct massage from a location with an approved Conditional Use Permit or Minor Conditional Use Permit, if required at the time the business was established, for the operation of a massage use.

“Massage technician” means any massage practitioner or massage therapist who administers to another person, for any form of compensation, a massage or other similar procedure, and who is certified by the State of California in compliance with the California Massage Therapy Act.

“Person” means any individual, sole proprietorship, firm, partnership, corporation, association or any combination of individuals of whatever form or character.

“Sole Provider” means a massage business where the owner owns 100

percent of the business, is the only person who provides massage services for compensation for the business pursuant to a valid and active certificate issued in accordance with the California Massage Therapy Act, and has no other employees, certified massage technicians, massage technicians, or independent contractors.

“Specified anatomical areas” means and includes any of the following human anatomical areas:

Genitals, pubic area, buttocks, anus or female breasts below a point immediately above the top of the areolae.

“Specified sexual activities” means and includes any of the following:

1. The fondling or other erotic touching of any bare human genitals, pubic area, buttocks, anus or female breast;
2. Human sex acts, actual or simulated, including intercourse, oral copulation or sodomy;
3. Human masturbation, actual or simulated;
4. The actual or simulated infliction of pain by one human upon another or by an individual upon himself or herself, for the purpose of the sexual gratification or release of either individual, as a result of flagellation, beating, striking or touching of an erogenous zone, including without limitation, the thigh, genitals, buttock, pubic area, or, if such person is a female, a breast;
5. Sex acts, actual or simulated, between a human being and an animal, including but not limited to intercourse, oral copulation, or sodomy; or
6. Excretory or urinary functions as part of, or in connection with, any of the activities set forth in subsections (1) through (5) of this definition.

5.28.030 – Applicability

- A. When Required. A Massage Establishment Business License shall be required for all businesses at fixed locations within the city that provide massage services as defined within this Chapter. It is unlawful for any person to operate or conduct a massage business or to permit a massage establishment to be operated or conducted, in or upon any premises within the city, or to render a massage or permit a massage to be rendered within the City at any location not licensed as a massage establishment, in accordance with the provisions set forth in this chapter.
- B. Exceptions. The following are exempt from the requirement for a Massage Establishment Business License:
 1. Sole Providers of massage as defined and set forth in this Chapter and in compliance with the California Massage Therapy Act.
 2. Accessory Massage Establishments. A separate Massage Establishment Business License, in addition to the Business License

required for the primary business, shall not be required for accessory massage establishments in compliance with this Chapter.

- C. Exemptions. The provisions of this chapter shall have no application and no effect upon and shall not be construed as applying to the following:
1. Treatment administered in good faith in the course of practice of any healing art or profession by any person licensed to practice any such art or profession under the Business and Professions Code of the state of California, or any other law of this state, including physicians, surgeons, chiropractors, osteopaths, podiatrists and physical therapists;
 2. Nurses registered under the laws of the state of California;
 3. Barbers, estheticians and beauticians who are duly licensed under the laws of the state of California while engaging in practices within the scope of their licenses;
 4. Hospitals, nursing homes, sanatoriums, or other health facilities duly licensed by the state of California;
 5. Coaches and trainers in accredited high schools, junior colleges and colleges or universities acting within the scope of their employment;
 6. Trainers of amateur, semi-professional or professional athletes or athletic teams so long as such persons do not practice massage therapy as their primary occupation at any location where they provide such services in the city; or
 7. Any profession over which the state has assumed exclusive jurisdiction as a matter of statewide concern and which gives the services or treatments included in the term "massage," as herein defined, as incidents to such business, calling or profession.

5.28.040 – Review Authority

- A. The City Manager, or designee, shall approve or disapprove an application for a Massage Establishment Business License.
- B. The City Manager may choose to refer any application for a Massage Establishment Business License to the City Council for review and final decision.

5.28.050 – Application filing and content

- A. Application filing.
 1. An application for a Massage Establishment Business License shall be filed and processed in compliance with this chapter.
 2. The applicant shall include the information and materials specified in this chapter together with the required license fee.

3. It is the responsibility of the applicant to provide evidence in support of the findings required by Section 5.28.060, Application review and decision.
- B. Application Content. Any applicant requesting a license pursuant to this section shall submit the following:
1. The present or proposed address where the business is to be conducted;
 2. The type of ownership of the business (i.e., Sole Proprietorship, Partnership, Corporation, etc.);
 3. The exact name, including any fictitious name, if applicable, under which the business is to be operated;
 4. Every applicant for a license, whether an individual or combination of individuals, and each partner or limited partner of an applicant, if a partnership applicant, and every officer, director, and each stockholder holding ten percent or more of the stock of a corporate applicant, shall furnish the following information:
 - a. The full name, date of birth, current residential address, business address, and telephone numbers,
 - b. California driver's license number or California identification number and social security number or resident alien number, if any,
 - c. Any other names or aliases, including nicknames, used within five years of the date of filing the application,
 - d. Each residence and business address for the five years immediately prior to the date of filing the application, and the inclusive dates of each such address,
 - e. Written proof that the applicant is over the age of eighteen years,
 - f. The applicant's height, weight and color of eyes,
 - g. Two portrait photographs at least two inches by two inches and shall have been taken within sixty days prior to filing the application,
 - h. The massage or similar business license or permit history of the applicant, whether such person, in previously operating in this or another city or state under license or permit, has had such license or permit revoked or suspended and the reason therefor; and the business activity or occupation subsequent to such action of suspension or revocation,
 - i. The name and address of any massage business or other establishment currently owned or operated by the applicant wherein the business of massage is conducted,
 - j. Any conviction, forfeiture of bond, or plea of nolo contendere upon any criminal violation or city ordinance violation (except minor traffic violations), within a five-year period, and, if so, the place and court

- in which such conviction, plea or forfeiture was heard, the specific charge, and the sentence imposed as a result thereof,
- k. Whether the applicant has ever been convicted of any crime specified in Section 51032 of the Government Code and, if so, the circumstances thereof and the sentence therefor, and
 - l. The applicant shall be required to furnish fingerprints for the purpose of establishing identification, and verify through a background check the information provided in the application is true and correct. Any required fingerprinting fee will be the responsibility of the applicant;
5. A description of the service(s) to be provided;
 6. A description of any other business to be operated on the same premises or on adjoining premises owned or controlled by the applicant;
 7. A complete list of the names, including any pseudonym, alias(es), alternate name(s), or nickname(s), and residential addresses of all massage technicians, employees, independent contractors and attendants in the business; the name and residential address of the operator, manager or other person principally in charge of the operation of the business; and the names and residential addresses of all principals of the business;
 8. The name and address of the record owner and lessor of the real property upon or in which the massage establishment is to be conducted, and a copy of the lease or rental agreement;
 9. The name(s) of person(s) having the management or supervision of the applicant's massage establishment;
 10. Written authorization for the city, its agents and employees, to seek information and conduct an investigation in to the truth of the statements set forth in the application and the qualifications of the applicant for the permit;
 11. A sketch or diagram showing the complete interior configuration of the business, including without limitation the location of the restrooms, massage rooms, customer areas, employee only designated areas, and any facility requirements as identified in Section 17.28.185, Massage Establishments, of the San Clemente Municipal Code. The sketch or diagram need not be professionally prepared, but it must be drawn to a designated scale, with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches;
 12. A signed statement that the massage business owner and/or applicant shall be responsible for the conduct of all employees, massage technicians and independent contractors working on the premises of

the massage establishment and that failure to comply with California Business and Professions Code Section 4600 et seq., with any local, state, or federal law, or with the provisions of this chapter or Title 16 may result in the revocation of the city-issued permit.

13. If the applicant is a natural person, that person shall sign the application under penalty of perjury. If the applicant is other than a natural person, a partner, officer, director, major shareholder or major interest holder of the legal entity shall sign the application under penalty of perjury;
 14. If the applicant does not own the lot or parcel on which the massage business will operate, the owner shall consent to the filing of the application by signing and dating the application;
 15. Such other identification and information as may be necessary to verify the truth of the matters hereinabove specified as required to be set forth in the application;
 16. Any additional application and material requirements specified in the City handout for the Massage Establishment license application; and
 17. A copy of the resolution of approval for the operation of a massage use at the proposed massage establishment location.
- C. Right to Privacy. Notwithstanding the fact that an application filed hereunder may be a public record under Government Code sections 6250 et seq., certain portions of such application contain information vital to the effective administration and enforcement of the licensing scheme established herein which is personal, private, confidential, or the disclosure of which could expose the applicant to a risk of harm. Such information includes, but is not limited to, the applicant's residence address and telephone number, the applicant's date of birth and/or age, the applicant's driver's license and/or Social Security number, and/or personal financial data. The City Council in adopting the application and licensing system set forth herein has determined in accordance with Government Code section 6255 that the public interest in disclosure of the information set forth above is outweighed by the public interest in achieving compliance with this chapter by ensuring that the applicant's privacy, confidentiality, or security interests are protected. The City Manager shall cause to be obliterated from any copy of a completed license application made available to any member of the public, the information set forth above.

5.28.060 – Application review and decision

- A. Application review. Each application for a Massage Establishment Business License shall be reviewed to ensure that the application is

consistent with the purpose of this Chapter, and applicable regulations of the Zoning Code, if any.

1. Any applicant for a license shall personally appear at the city and produce proof to the planning division that the nonrefundable application fee has been paid to the city together with any additional fees required by this chapter for additional applicants, and thereupon, said applicant(s) shall provide a complete application in compliance with this Chapter.
 2. A Massage Establishment Business License application review is initiated when the City Manager receives a complete application package including the required information and materials specified in this Chapter, and any additional information required by the applicable review authority in order to conduct a thorough review of the proposed establishment.
 3. Upon receipt of a complete application, the review authority shall review the application to ensure accuracy of the application materials, and whether the application meets the requirements of this Chapter, Section 17.28.185, Massage Establishments, of the San Clemente Municipal Code, and any other related code or policies.
 4. During the course of the review process, the review authority may require the submittal of additional information.
 - a. The applicant shall be notified in writing of any revisions or additional information required and shall submit the requested information to the City Manager within 90 days after the date of the notice or within the period designated by the review authority.
 - b. Failure to submit the required information within the 90-day period or within the period of time designated by the review authority shall be cause for denial.
 5. On-site inspection. An application for a Massage Establishment Business License may require the review authority to perform an on-site inspection of the subject premises before confirming that the request complies with all the applicable criteria set forth in this Chapter, Section 17.28.185, Massage Establishments, of the San Clemente Municipal Code, and any other related code or policies.
- B. Findings and Decision
1. Determination of compliance. The review authority shall determine whether or not the application meets the requirements of this Chapter and Section 17.28.185, Massage Establishments, of the San Clemente Municipal Code.
 - a. Falsification of any of the above information shall be deemed sufficient reason for denial of the application.

2. Findings. The review authority may approve a Massage Establishment Business License, only after first making all of the following findings:
 - a. The required fee has been paid;
 - b. The application conforms in all respects to the provisions of this Chapter, and Section 17.28.185, Massage Establishments, of the San Clemente Municipal Code;
 - c. An approved and active conditional use permit has been obtained for the massage establishment at the proposed location, pursuant to Section 17.28.185.C.1 of the San Clemente Municipal Code;
 - d. The applicant has not made a material misrepresentation, misstatement, or omission in the application;
 - e. The applicant, if an individual, or any of the principal stockholders of the corporation, or any officers or director, if the applicant is a corporation, or a partner if the applicant is a partnership, has not been convicted in a court of competent jurisdiction, or pleaded nolo contendere to any lesser-included offense specified in Section 51032, Massage, of the Government Code or engaged in disqualifying conduct;
 - f. The applicant has not had a massage establishment, massage technician, or other similar permit or license denied, revoked or suspended by the city, or any other state or local agency prior to the date of approval;
 - g. The applicant(s) is at least eighteen years of age;
 - h. The massage establishment employs or uses only state certified massage practitioners and therapists whose certifications are valid and that owners of the state certificates are the same persons to whom CAMTC issued valid and current identification cards; and
 - i. 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.
3. Decision.
 - a. The review authority shall review the application, the background of the applicant(s), and the premises, and determine whether the required findings can be met.
 - b. If prosecution is pending against the applicant for either conduct violating this chapter's provisions or conduct violating Business and Professions Code Section 4600 et seq., the review authority may postpone its decision on the application until the prosecution's final resolution. As used in this subsection, "prosecution" means charges filed by the district attorney, administrative proceedings

- brought by a local government or agency, or a civil or criminal action maintained by a city attorney.
- c. The review authority shall provide a written decision stating whether the application is approved, conditionally approved, or denied within sixty (60) calendar days of the filing of the completed application. The review authority shall deliver the notification to the applicant via first class mail and certified mail at the address shown on the application. The foregoing sixty day deadline is directory only; failure to meet such deadline shall not affect the power of the review authority to deny, or otherwise act on such application.
 - d. If the review authority denies the application, a new application may not be submitted for a period of one year.
4. Appeal. The review authority's decision may be appealed in compliance with Chapter 5.28.100, Appeals.

5.28.070 – License restrictions and regulations

- A. Employees. It is the responsibility of the licensee to ensure that each and every person who performs massage on the premises holds a CAMTC license issued by the State of California. The licensee shall notify the city, in writing, of the name and address of each person employed at the licensed establishment within five working days of employment. The requirements of this section are in addition to the other provisions of this chapter and zoning code and nothing contained herein shall relieve the licensee of the responsibility of ascertaining, prior to employment, whether said person has an active, unrevoked massage technician's license.
- B. Name of Business. No licensee licensed under this chapter shall operate under any name or conduct the business under any designation not specified in the license.
- C. Licenses not assignable. No Massage Establishment Business License may be sold, transferred or assigned by the licensee, or by operation of law, to any other person or persons. Any such sale, transfer or assignment, or attempted sale, transfer or assignment, shall be deemed to constitute a voluntary surrender of such license and such license shall thereafter be deemed terminated and void, provided and excepting, however, that 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 surrender or termination of such license and in each case the licensee shall thereafter be deemed to be the surviving partner(s).

- D. Vested rights. No license granted herein shall confer any vested right to any person or business for more than the license period. All massage operators, managers and technicians subject to this chapter shall comply with the provisions of this chapter as they may be amended hereafter.
- E. Sale or transfer of license. Upon the sale or transfer of any interest in a massage establishment or any entity owning such massage establishment, the license issued pursuant to this chapter shall be null and void unless the sale or transaction is to an applicant shown on the application for the license pursuant to which the establishment was operated. A new application under this chapter shall be made by any person desiring to own or operate such massage establishment. Nothing in this chapter shall be construed to preempt any requirements to comply with the provisions of Chapter 17.28.185 of the San Clemente Municipal Code, including, but not limited to, Section 17.28.185.C.2, Change of Tenancy or Ownership.

5.28.080 – Massage Establishment Business License expiration and renewal.

- A. Each Massage Establishment Business License shall expire after one (1) year from the date of issuance of the license unless renewed in accordance with this chapter.
- B. The licensee requesting renewal of its Massage Establishment Business License shall file an application for renewal with the City Manager at least ninety (90) calendar days prior to the scheduled expiration of the license. The renewal application shall provide all information required under Section 5.28.050, Application filing and content, and shall also state that the licensee is currently operating under a massage establishment license, the location of the massage establishment, and the scheduled date for expiration of the license for which the licensee is seeking renewal.
- C. Any application for renewal of a massage establishment license shall be accompanied by a renewal fee in an amount established by resolution of the City Council. The renewal fee shall be used to defray the costs of investigation, report, and related application processing issues.
- D. The City Manager, or designee, shall review the application for renewal and approve or deny the application, pursuant to the criteria in and within the time provided in Section 5.28.060, Application review and decision, and shall either issue the renewed license or mail a written statement to the address indicated on the application via U.S. mail and certified mail return receipt requested, denying the license and stating the reasons therefor. The decision of the City Manager is final, unless the applicant files a written appeal in compliance with Section 5.28.100, Appeals. A

license for which renewal has been denied shall be of no effect or validity after its scheduled expiration.

- E. If criminal charges are pending against an applicant within a court or public agency, the conviction of which would result in the denial of the application, the City Manager shall suspend review of the application pending the final disposition of the criminal charges. The City Manager shall send written notice to the applicant notifying him/her that the application review is suspended pending the final disposition of the current criminal charges. The applicant may continue to operate the massage establishment pending the final disposition of the current criminal charges. The applicant shall have the obligation of notifying the City Manager when a final decision is reached, and the outcome of the criminal matter (i.e., conviction, dismissal, etc.). The application during the period of suspension shall be treated as if it were never submitted, and the sixty (60) calendar day review period shall be of no effect. Once the City Manager receives notice from the applicant of the final disposition of a criminal matter the City Manager shall resume his or her review of the application. The review period shall commence from the date that the City Manager receives notice of the final disposition of the criminal charges from the applicant. Notwithstanding the foregoing, if an applicant fails to notify the City Manager of the final disposition of the criminal charges within one hundred eighty (180) calendar days of the disposition, the application shall be deemed expired, and the applicant will be required to submit a new application.

5.28.090 – Revocation or suspension of license

- A. Grounds for revocation or suspension. The City Manager may suspend or revoke any license issued under this chapter at any time upon a determination that there has been:
1. A material false statement or omission made in the application; or
 2. That there has been a transfer of an ownership interest in the establishment or any entity which may own it; or
 3. That there has been a failure to comply with the provisions of this chapter, California Business and Professions Code Section 4600 et seq., or of any law of the state regulating massage establishments or massage technicians; or
 4. That the licensee, any other applicant under the application, or any operator or massage technician of such massage establishment has been convicted of a crime specified in Section 51032 of the Government Code as amended from time to time, or has engaged in disqualifying conduct;

5. The licensee employs or uses one or more non-CAMTC certified massage practitioners or massage therapists to perform massage services;
 6. There is an urgency or immediate action to protect the public from injury or harm; or
 7. That the licensee has engaged in disqualifying conduct.
- B. Prohibition Against Operation. It is unlawful for any person to conduct the business of a massage establishment or carry on the business of massage while the Massage Establishment Business License remains suspended or revoked pending a hearing.
 - C. Notice of Suspension or Revocation. Notice shall be given to the Massage Establishment Business License by letter stating the grounds for proposed revocation or suspension. Notice shall be given by personal service or certified, registered, or first class mail of the letter to the address shown on the last application or renewal.
 - D. Appeal. The licensee may appeal the decision of the City Manager in compliance with Section 5.28.100, Appeals.
 - E. New application after revocation. No person may apply for a license under this chapter within one year from denial of a license to such applicant or within one year from the revocation of a license issued to such licensee, unless the cause of the denial or revocation has been, to the satisfaction of the City Manager, removed within such time. The City Manager may consider a new application upon a finding that the applicant has remedied the cause of the denial or revocation and has complied with all applicable provisions of this code.
 - F. Surrender of license. Each person to whom a license has been issued under this chapter shall immediately surrender his/her license to the City Manager upon its revocation or suspension.
 - G. Recovery of Attorney's Fees. In addition to the provisions of Section 1.16.030, Nuisances – Attorney's fees and costs, of the San Clemente Municipal Code, in the event the city brings an action for the enforcement of any of its ordinances, resolutions or any right(s) afforded it by Chapter 5 of the San Clemente Municipal Code, the city shall be entitled to the award of its reasonable attorney's fees as well as any other professional fees incurred in the revocation or suspension of a business license and/or conditional use permit for a massage establishment.

5.28.100 – Appeals

- A. The licensee shall have ten (10) calendar days from the date the notice of intent to suspend or revoke was mailed to the licensee to appeal the suspension or revocation to the City Council. The appeal shall be filed in

writing in the office of the city clerk and shall be accompanied by a filing fee, as established by resolution of the City Council. An appeal that is timely and properly filed together with the filing fee shall stay suspension or revocation of the license until the City Council renders a decision on the appeal.

- B. The appeal shall set forth the specific grounds for the appeal and the relief or action requested from the City Council.
- C. An appeal that was timely and properly filed together with the filing fee shall be heard by the City Council, except that the City Council, in its sole discretion, may appoint a hearing officer to conduct the hearing. The hearing shall be commenced at the earliest possible date authorized by law, but in no event later than forty-five (45) calendar days from the date the appeal was filed. The city clerk shall mail notice of the date, time and place of the hearing to the appellant at least ten days prior to the hearing. If a hearing officer is appointed, the hearing officer's duties shall be limited to taking testimony, ruling on evidentiary issues and preparing a summary of the evidence for transmittal to the City Council. The City Council shall independently review the record of the hearing and allow the appellant and the City Manager, and their respective representatives, to argue to the record prior to acting on the appeal.
- D. The hearing may be continued from time to time. The hearing shall be limited to the specific grounds set forth in the written appeal. The appellant and the City Manager shall have the right to offer testimonial, documentary and tangible evidence bearing on those grounds, be represented by counsel, and confront and cross-examine witnesses. Any relevant evidence that is the sort of evidence upon which reasonable persons are accustomed to reply in the conduct of serious affairs shall be admitted. The City Council, or the hearing officer, may establish additional procedures not in conflict with the provisions of this subsection.
- E. Within forty-five (45) calendar days after the appeal was filed, the City Council shall act on the appeal and the city clerk shall deposit in the U.S. mail, certified mail, return receipt requested, addressed to the appellant at the address shown on the application, written notice of the decision, including a factual statement of the findings upon which the decision was based. Otherwise, the appeal shall be deemed sustained and the licensee shall be entitled to continue to operate the massage establishment or conduct massage as a massage technician subject to the provisions of this chapter and all other applicable laws and city ordinances and regulations.

- F. In acting on the appeal, the City Council may affirm, reverse or modify the decision of the City Manager and may take any action which might have been legally taken by the City Manager in the first instance.
- G. The decision of the City Council shall be final and conclusive, unless timely judicial review is sought pursuant to Code of Civil Procedure Section 1094.8. In the event a timely action or proceeding is brought pursuant to Section 1094.8, the decision to suspend or revoke the license shall be stayed automatically pending a final decision on the merits by the trial court. As used in this subsection, final decision on the merits does not include rehearing or appellate procedures.

5.28.110 - Massage Technician Certification.

It is unlawful for any person to perform or administer a massage without a certificate issued pursuant to Business and Professions Code Chapter 10.5, commencing with section 4600, as amended. Any violation of this section is subject to the enforcement provisions of Title 1 of this Code.

Section 3: 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 4: 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