



STAFF REPORT SAN CLEMENTE PLANNING COMMISSION

Date: July 8, 2020

PLANNER: Jennifer Savage, Senior Planner

SUBJECT: Zoning Amendment 20-069 – **Massage Ordinance**, to consider city-initiated proposal to amend the City’s Massage Ordinance. The project would amend San Clemente Municipal Code Title 5 and Title 17, San Clemente Zoning Ordinance, to deter human trafficking activity, clarify existing provisions, and correct erroneous text.

REQUIRED FINDINGS

The following findings shall be made to approve the proposed amendments. The draft Resolution (Attachment 1) provides an assessment of the proposed amendments’ compliance with these findings.

The Planning Commission is requested to forward a recommendation to the City Council regarding zoning amendments based on the findings per Section 17.16.040

1. General Findings. Prior to approval of a zoning amendment or amendment to the zoning maps, the following findings shall be made:
 - a. The proposed amendment is consistent with the General Plan.
 - b. The proposed amendment will not adversely affect the public health, safety and welfare.

BACKGROUND

In 2017, City Council directed the Human Affairs Committee (HAC) to review recommendations from the i-5 Freedom Network to amend the City’s massage regulations. The i-5 Freedom Network is a nonprofit, anti-human trafficking organization with a training, education, and legislative advocacy focus. HAC and staff worked together to consider the recommendations. The work was put on hold in 2018.

In 2019, City Council directed staff to amend the City’s massage regulations to address human trafficking and the i-5 Freedom Network’s recommendations. The Planning Commission held a study session on May 20, 2020, to discuss proposed amendments. The amendments would modify existing massage regulations in Titles 5 and 17 of the San Clemente Municipal Code. This item was continued from the June 3, 2020, Planning Commission meeting.

DISCUSSION

Planning Commission Study Session

The Planning Commission (PC) discussed the proposed amendments. The Commission also requested for clarifications and additional information:

Table 1 – Clarifications and Staff Responses

PC Requested Clarification/Additional Information	Staff Response
Is it legal to hold a property owner liable for violations and fines incurred by an operator?	There are methods to hold property owners accountable for municipal code violations that occur due to the conduct of the tenant. A widespread method for holding property owners accountable for the conduct of their tenants is through adding an "aiding and abetting" provision, which the draft provisions were revised to reflect (Attachment 3).
Should revocation/closure for 2 years be specific to human trafficking violations?	If revocation/closure for 2 years was specific to human trafficking violations, the City would have limited ability to prevent reopening an establishment for a non-human trafficking violation (e.g. unlawful sexual activity). Rather than making the 2-year closure human trafficking specific, Title 5 allows a new application if the cause of a revocation has been remedied.
Can the 2-year closure apply to an entire multitenant parcel? Or just the specific suite/tenant space where the violation occurred?	The closure should apply to a specific suite or tenant space, not an entire multitenant parcel. This would be consistent with neighboring jurisdictions and be less burdensome on commercial property owners. The draft provisions were revised to include "(e.g. suite, tenant space)" when discussing location closure.
Suggested changing the prohibition for "vibrators, dildos, or condoms" to "any electrical or non-electrical device, or mechanical or non-mechanical device".	Staff does not recommend modifying the language to "any electrical or non-electrical device, or mechanical or non-mechanical device". This would be undefinably broad and lead to enforcement issues. Also, the language

PC Requested Clarification/Additional Information	Staff Response
	would exclude condoms. Staff recommends keeping the existing language.
Do we need to define “subcontractor” and “contractor”? Or does the definition for “massage technician” with “any form of compensation” cover that type of employment?	The ordinance does not need to separately define “subcontractor” and “contractor.” To the extent that a person performs a massage for compensation, such a person would constitute a “massage technician” under the City’s broad definition for massage technicians provided in section 5.28.020. Notably, an individual’s status as a “massage technician” is not dependent on how the massage establishment categorizes this individual. Section 5.28.020 was revised to independent contractors under the “employee” definition.
Requested that massage establishments require patrons to provide an identification card. Is that legal? Does that violate HPPA?	The existing regulations require establishments to check patrons’ identification cards. However, the City should not require establishments to photocopy or otherwise store identification in order to protect customer privacy.
Asked if we can specify where employees may enter/exit.	Regulating where employees may enter/exit would disrupt the operations of massage establishments in good standing and be inconsistent with regulations in neighboring cities.

Overview of Proposed Amendments

The proposed amendments are intended to better deter human trafficking in the City of San Clemente. The i-5 Freedom Network submitted several recommendations to change the existing regulations, emphasizing what other nearby cities have in place. Most importantly, the amendments include review of applications and licenses by San Clemente Police Service. While Planning staff has historically reviewed the background information required for a massage establishment, this change will appropriately place review and verification of background information with Police Services. Amendments also include prohibition of subsequent massage services at properties where a violation occurs such as human trafficking violation; using the Orange County Human Trafficking Task

Force where human trafficking has occurred or is suspected; and provisions that require visible customer entries and exits.

The proposed amendments include all but one of the i-5 Freedom Network’s recommendations. Staff does not recommend including the provision to require a Human Trafficking Hotline Poster in the City’s regulations. State law requires this poster to be posted in establishments with massage services. Should the Planning Commission wish to include this facility requirement, the following language could be considered:

Hotline Poster. The establishment shall keep posted at all times the National Human Trafficking Hotline flyer placed in a conspicuous location within all areas of the establishment where locker facilities are provided and in any other employee areas, such as breakrooms. The poster shall be in Spanish, English, Vietnamese, and Chinese.

The proposed amendments would also make clarifications and corrections to address format erroneous text. Attachment 3 contains the proposed amendments to Title 5 and Title 17 with redline changes (deletions stricken, additions underlined).

Impacts to Existing Massage Establishments

Massage establishments are required to renew their Massage Establishment Business License every year. Through this process, the applicant is required to submit background information. This information is currently reviewed by Planning and Business License staff. The amendments would require review by the City’s Police Services (currently the Orange County Sherriff Department) and the business license would not be approved until Police Services provides a recommendation.

GENERAL PLAN CONSISTENCY

The proposed amendments are consistent with goals and policies of the Centennial General Plan, as outlined in Table 2 below.

Table 2 – General Plan Consistency

Policies and Objectives	Consistency Finding
<p><i>Policy G-1.11 Keeping the General Plan and Specific Plans Current.</i> The City amends the General Plan to reflect new information, changing conditions, needs and community preferences. This may require updating one or more specific plans and other regulatory documents to maintain consistency.</p>	<p>Consistent. The proposed amendment would update a regulatory document, the Municipal Code, to reflect new information and conditions.</p>

ENVIRONMENTAL REVIEW

Staff recommends that the project be found exempt from environmental review pursuant to State CEQA Guidelines Sections 15378(b)(2) and 15378(b)(5) because the revisions relate to the ongoing administrative activities and organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment, and therefore do not constitute a “project” as defined by the State CEQA Guidelines (Cal. Code Regs., Title 14, § 15000 et seq.) and therefore are exempt from CEQA and no further environmental review is required.

PUBLIC NOTICE

A public notice was posted in the newspaper. In addition, a courtesy notice was sent to all existing massage / business license operators.

RECOMMENDATION

Staff recommends that the Planning Commission:

1. Determine the proposed amendments are not a project as defined by the State CEQA Guidelines Sections 15378(b)(2) and 15378(b)(5) and;
2. Adopt Resolution PC 20-015, recommending approval of the proposed Zoning Code amendments.

Attachments:

- 1) Resolution No. PC 20-015
Exhibit 1 Draft City Council Ordinance
Attachment A Amended Regulations (Title 5 and Title 17)
- 2) Table of i-5 Freedom recommendations and location of changes
- 3) Draft regulations with redline changes

RESOLUTION NO. PC 20-015

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN CLEMENTE, CALIFORNIA, RECOMMENDING THE CITY COUNCIL APPROVE AND ADOPT AN ORDINANCE AMENDING MASSAGE REGULATIONS TITLE 5 AND TITLE 17 (ZONING AMENDMENT 20-069) OF THE MUNICIPAL CODE TO DETER HUMAN TRAFFICKING ACTIVITY, CLARIFY EXISTING PROVISIONS, AND CORRECT ERRONEOUS TEXT.

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 Municipal Code to restore municipal land use regulatory and permitting authority over massage establishments consistent with AB 1147; and

WHEREAS, on May 14, 2015, the City Council adopted amendments to San Clemente Municipal Code Title 5 and Title 17 for the purposes of regulation massage uses consistent with State law; and

WHEREAS, on July 18, 2017, the City Council directed the Human Affairs Committee to review and consider recommendations from the i-5 Freedom Network regarding amendments to the City’s massage regulations; and

WHEREAS, on November 5, 2019, the City Council directed staff to draft amendments to address human trafficking; and

WHEREAS, the Planning Division completed an environmental assessment of the proposed zoning amendments for compliance with the California Environmental Quality Act (CEQA). Pursuant to CEQA Guidelines Sections 15378(b)(2) and 15378(b)(5) because the revisions relate to the ongoing administrative activities and organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment, and therefore do not constitute a “project” as defined by the State CEQA Guidelines (Cal. Code Regs., title 14, § 15000 et seq.) and therefore are exempt from CEQA and no further environmental review is required; and

WHEREAS, on May 20, 2020, the Planning Commission held a study session on the proposed amendments; and,

Resolution PC 20-015

WHEREAS, on July 8, 2020, the Planning Commission held a duly noticed public hearing on the subject amendments, and considered evidence presented by City staff and other interested parties.

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

Section 1: Pursuant to CEQA Guidelines Sections 15378(b)(2) and 15378(b)(5) because the revisions relate to the ongoing administrative activities and organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment, and therefore do not constitute a “project” as defined by the State CEQA Guidelines (Cal. Code Regs., Title 14, § 15000 et seq.) and therefore are exempt from CEQA and no further environmental review is required;

Section 2: With respect to Zoning Amendment 20-069, the Planning Commission recommends that the City Council find as follows:

- A. The proposed amendments are consistent with the General Plan and General Plan Policy G-1.11, in that the proposed amendment would update a regulatory document, the Municipal Code, to reflect new information, conditions, and community preferences to deter human trafficking. The proposed amendments would add provisions to require Police Service review of massage establishment applications and licenses; visible customer entries and exists; and limit massage establishments where violations occurred for a specific time period. The amendments would better deter human trafficking in the City of San Clemente.
- B. The proposed amendments will not adversely affect the public health, safety, and welfare, in that 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 amendments ensure that massage uses do not negatively affect the public health, safety, and welfare of the City’s residents, businesses, and visitors, and better deter human trafficking.

Section 3: The Planning Commission hereby recommends that the City Council approve an Ordinance amending Title 5 and Title 17 of the Municipal Code, Zoning Amendment 20-069, attached as Exhibit 1, subject to the above Findings.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of San Clemente on July 8, 2020.

Chair

Resolution PC 20-015

CERTIFICATION:

I HEREBY CERTIFY that the foregoing resolution was duly adopted at a regular meeting of the Planning Commission of the City of San Clemente on July 8, 2020, and carried by the following roll call vote:

AYES: COMMISSIONERS:
NOES: COMMISSIONERS:
ABSTAIN: COMMISSIONERS:
ABSENT: COMMISSIONERS:

Secretary of the Planning Commission

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING TITLE 5 AND 17 OF THE SAN CLEMENTE MUNICIPAL CODE (**ZONING AMENDMENT 20-069**) TO **DETER HUMAN TRAFFICKING ACTIVITY, CLARIFY EXISTING PROVISIONS, AND CORRECT ERRONEOUS TEXT.**

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 Municipal Code to restore municipal land use regulatory and permitting authority over massage establishments consistent with AB 1147; and

WHEREAS, on May 14, 2015, the City Council adopted amendments to San Clemente Municipal Code Title 5 and Title 17 for the purposes of regulation massage uses consistent with State law; and

WHEREAS, the permit requirements and restrictions imposed by Title 5 and Title 17 are reasonably necessary to protect the health, safety, and welfare of the citizens of the City; and

WHEREAS, the City is authorized to regulate massage establishments pursuant to California Business and Professions Code Sections 460(c), 4612(b) and 16000, California Government Code Section 51030 et seq., and Section 7 of Article XI of the California Constitution; and

WHEREAS, there is a significant risk of injury to massage clients by improperly trained and/or educated massage practitioners and Title 5 and Title 17 provide reasonable safeguards against injury and economic loss; and

WHEREAS, there is opportunity for acts of prostitution and other unlawful sexual activity to occur in massage establishments. Courts have long recognized massage as a pervasively regulated activity and that some massage establishments are brothels and venues for human trafficking and exploitation in disguise. The establishment of reasonable standards and restrictions on operations will serve to reduce the risk of illegal

activity; and

WHEREAS, the City Council recognizes that massage establishments may have a serious deleterious effect upon adjacent areas, as well as the areas in which they are located, when illegal activities such as pandering or prostitution occur thereat; and

WHEREAS, the City Council understands that illegal activities occurring in massage establishments often incorporate the exploitation of women and new immigrants to this country; and,

WHEREAS, the regulations and restrictions contained in Title 5 and Title 17 tend to discourage massage establishments from degenerating into houses of prostitution and venues for human trafficking and exploitation and the means utilized in Title 5 and Title 17 bear a reasonable and rational relationship to the goals sought to be achieved; and

WHEREAS, the Planning Division completed an environmental assessment of the proposed zoning amendments for compliance with the California Environmental Quality Act (CEQA). Pursuant to CEQA Guidelines Sections 15378(b)(2) and 15378(b)(5) because the revisions relate to the ongoing administrative activities and organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment, and therefore do not constitute a “project” as defined by the State CEQA Guidelines (Cal. Code Regs., Title 14, § 15000 et seq.) and therefore are exempt from CEQA and no further environmental review is required; and

WHEREAS, on May 20, 2020, the Planning Commission held a study session on the proposed amendments; and,

WHEREAS, on July 8, 2020, the Planning Commission held a duly noticed public hearing on the subject amendments, and considered evidence presented by City staff and other interested parties; and

WHEREAS, on August XX, 2020, the City Council held a duly noticed public hearing on the subject amendments, and considered evidence presented by City staff, Planning Commission, and other interested parties.

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

Section 1: Pursuant to CEQA Guidelines Sections 15378(b)(2) and 15378(b)(5) because the revisions relate to the ongoing administrative activities and organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment, and therefore do not constitute a “project” as defined by the State CEQA Guidelines (Cal. Code Regs., Title 14, § 15000 et seq.) and therefore are exempt from CEQA and no further environmental review is required.

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

- A. The proposed amendments are consistent with the General Plan and General Plan Policy G-1.11, in that the proposed amendment would update a regulatory document, the Municipal Code, to reflect new information, conditions, and community preferences to deter human trafficking. The proposed amendments would add provisions to require Police Service review of massage establishment applications and licenses; visible customer entries and exists; and limit massage establishments where violations occurred for a specific time period. The amendments would better deter human trafficking in the City of San Clemente.
- B. The proposed amendments will not adversely affect the public health, safety, and welfare, in that 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 amendments ensure that massage uses do not negatively affect the public health, safety, and welfare of the City's residents, businesses, and visitors, and better deter human trafficking.

Section 3: Title 5 and Title 17 are hereby amended as shown on Attachment A.

Section 4: 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 5: The City Clerk shall certify to the passage of this ordinance and the same shall take effect as provided by law.

APPROVED, ADOPTED and SIGNED this _____ day of _____, 2020.

Mayor of the City of San Clemente, California

ATTEST:

City Clerk 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 on the ____ day of _____, _____, and said ordinance was adopted by the following vote:

AYES:
NOES:
ABSENT:

CITY CLERK of the City of
San Clemente, California

APPROVED AS TO FORM:

CITY ATTORNEY

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. Prostitution and other businesses engaged in illegal activities may use the guise of a massage establishment to shroud their activities and can pose significant risks to massage patrons and massage technicians from improperly or insufficiently trained or managed massage technicians and practitioners. The regulations imposed by this section are reasonably necessary to protect the health, safety and welfare of the residents and visitors of the City and are consistent with all applicable laws of the state of California.
- B. **Applicability.** This section applies to all businesses proposing to conduct massage, including Accessory Massage Establishments. This section 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 provided that said students are:
 - i. Earning practical hours for school/education by providing massages;
 - ii. Providing massages at an approved educational facility; and
 - iii. Providing massages under the direct supervision of a State-certified, City-licensed physical therapist or massage therapist.
- C. **Review Requirements.** Please refer to the use tables in Chapter 17.36, Commercial Zones and Standards, and Chapter 17.40, Mixed Use Zones and Standards, of this title for Conditional Use Permit and Minor Conditional Use Permit requirements.
1. **Massage Establishment Business License required for massage approved with a Conditional Use Permit.** All businesses that are proposing to conduct massage from a location with an approved and active Conditional Use Permit for massage services must obtain approval of a Massage Establishment Business License prior to the initiation of operations.

2. **Business License required for massage approved with a Minor Conditional Use Permit.** All businesses that are proposing to conduct massage incidental to the primary business and from a location with an approved and active Minor Conditional Use Permit for an accessory massage establishment must obtain approval of a Business License for the primary business prior to the initiation of operations.
3. **Change of Tenancy or Ownership.** Change of management, ownership, or tenancy of a Massage Establishment, which was legally established and operational by October 20, 2015, 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).
4. **Police Services Review and Recommendation.**
 - a. San Clemente Police Services shall review and provide a recommendation for the following applications for massage services: Conditional Use Permit; Minor Conditional Use Permit; Massage Establishment Business License; and Business Licenses of any business seeking to operate an accessory massage establishment.
 - b. Upon receipt of a complete application, the review authority shall forward a copy of the complete application to San Clemente Police Services.
 - c. The ultimate determination with regard to approving or denying the applications provided in subsection (a) above lies with the City's review authority. In reaching its determination, the review authority shall take into account the recommendation from San Clemente Police Services.

D. Facility Requirements.

1. **Massage Establishment Identifying Notice.** A recognizable and readable notice, shall be posted inside at the main entrance and comply with all of the following:
 - a. The notice shall be at least 8.5" by 11" in size;
 - b. The notice is constructed of wood, metal, glass, acrylic, or other substantial material;
 - c. The notice is permanently mounted in a location and oriented in a manner so as to be visible to all people entering the establishment;
 - d. The notice identifies the establishment as a massage establishment, or accessory massage establishment; and
 - e. The notice shall state, in English and Spanish, in lettering of a font size no smaller than 48 point: "Notice to All Patrons: This massage establishment and the massage rooms do not provide complete privacy and are subject to inspection by authorized City personnel without prior notice."

2. Turn Off Illuminated Signs. All illuminated signs, including but not limited to open signs, shall be turned off at close of business.
3. 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.
4. A minimum of one separate washbasin shall be provided in each massage establishment for use by the establishment's massage technicians and employees. 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.
5. 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, except that window signs that comply with Title 17 are permitted.
6. **Table showers.** 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 pursuant to the requirements of the California Building Codes.
7. **Massage Room Locks.** Locking doors are prohibited for any interior rooms where permitted massage services are rendered. No changing rooms or other types of rooms designed for privacy, if provided, shall be used to render massage services. In the context of this section, "locking doors" shall mean any type of device, temporary or permanent, living or otherwise, which restricts, prohibits, or slows entry into a room, or provides advanced notice of entry. Signs that state a massage is in progress are permitted.

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 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 section by any agent, massage technician, employee or independent contractor of the holder of a massage business license shall constitute a violation by the licensee.
2. Whenever an act or omission is made unlawful by this section, it shall also be unlawful for any person to allow, permit, aid, abet, or conceal such act or omission.
3. 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 5.28.020-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.

4. 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 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.
5. In no circumstance shall any owner, operator, responsible managing employee, manager, massage technician, licensee, employee or independent contractor expose any specified anatomical areas (as defined in San Clemente Municipal Code Section 5.28.020, Definitions) to another person or persons while at the massage establishment.
6. In no circumstance shall any specified sexual activities (as defined in San Clemente Municipal Code Section 5.28.020, Definitions) take place at any time at the massage establishment.
7. 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 5.28.020, Definitions).
8. 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 massage tables 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.
9. No massage establishment shall operate as a school of massage, or use the facilities as that of a school of massage.
10. No massage establishment employing a massage technician shall be equipped with tinted or one-way glass in any room or office.
11. 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 or stimulate, specified anatomical areas (as defined in San Clemente Municipal Code Section 5.28.020, Definitions), or pornographic magazines, videos, or other material.

12. 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.
13. 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.
14. 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.
15. 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 subcontracted 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.
16. 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 technician 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 section 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 years.
17. No person shall give, or assist in giving, any massage or other body treatment to any other person under the age of 18 years, unless the parent or guardian of the minor person has consented thereto in writing.
18. Entry and Exit. All clients shall enter and exit through the front door of the business. The front door shall face the street or, if no street-facing door exists, the door that is most visible from the customer-oriented and publicly-accessible area of the property. No entrance to any massage business shall be provided or permitted adjacent to any service/delivery area, City alley, utility/maintenance area, or, in the case of multi-tenant buildings or commercial centers, directly accessible to covered parking areas that are not directly accessible by other tenant suites visible from the massage business's entry. "Directly accessible" in the context of this section means public access to a business which occurs without passage through a common entryway, hall, staircase, courtyard, or

corridor that provides the main public access to multiple tenant suites in the building or commercial center.

F. Sanitation Requirements. In compliance with Orange County Health Department 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 within the massage establishment 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 5.28.020 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 Minor Conditional Use Permit or 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. The following condition shall be added to a Minor Conditional Use Permit or Conditional Use Permit:

1. A notarized statement signed by the applicant, massage business owner, property owner, and property manager, if applicable, acknowledging that the signatories 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 17 may result in

(1) the revocation of all City-issued license(s) and permit(s) related to, and for the purpose of conducting the massage business, and (2) civil, administrative, or criminal penalties. The signed statement shall include the acknowledgement that violations of this code, or any other local, county, state, or federal codes or regulations leading to a business license revocation will result in prohibition of a massage establishment in the same location (e.g. suite, tenant space) for two years from the date of said revocation.

- 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.** No person, partnership, corporation, or other type of entity shall operate a massage establishment, or accessory massage establishment, anywhere in the City without first obtaining any and all necessary permits and licenses to operate a massage establishment or accessory massage establishment. Failure to obtain any and all necessary permits or licenses to operate a massage establishment, or accessory massage establishment, constitutes a misdemeanor and is unlawful and a public nuisance. The City Manager, City Attorney, or City Prosecutor, 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 section or any permit provided pursuant to this section shall also be subject to enforcement under Title 1 of this code or suspension, revocation, or non-renewal of any applicable permit or license.
- K. **Post-Decision Procedures.** The procedures and requirements in section 17.16.060, Conditional Use Permits, and those related to appeals in section 17.12.140, Appeals of an action, shall apply following the decision on a massage establishment Conditional Use Permit application or accessory massage establishment Minor Conditional Use Permit application.

(Ord. No. 1608, § 10, 10-20-2015)

Chapter 5.28 - MASSAGE ESTABLISHMENTS^[3]

Footnotes:

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Editor's note— Ord. No. 1607, § 2, adopted Oct. 20, 2015, amended Ch. 5.28, §§ 5.28.010—5.28.180, in effect repealing and replacing said chapter as set out herein. Former Ch. 5.28 pertained to similar subject matter and derived from Ord. No. 1525, § 1, adopted Dec. 7, 2010 and Ord. No. 1545, § 1, adopted Dec. 20, 2011.

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.

(Ord. No. 1607, § 2, 10-20-2015)

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 or 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, whether as an employee or an independent contractor, and who receives compensation in any form from the licensee or an agent, and who does not perform any act of massage 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.

(Ord. No. 1607, § 2, 10-20-2015)

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.

ATTACHMENT A

- a. 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. However, San Clemente Police Services, or designee, shall review and make a recommendation for all applications for a Business License with an accessory massage establishment.
 - b. Upon receipt of a complete application, the review authority shall forward a copy of the complete application to San Clemente Police Services.
 - c. The ultimate determination with regard to approving or denying applications provided in subsection (a) above lies with the City's review authority. In reaching its determination, the review authority shall take into account the recommendation from San Clemente Police Services.
- 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.

(Ord. No. 1607, § 2, 10-20-2015)

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.

- C. San Clemente Police Services, or designee, shall review and make a recommendation for all applications for a Massage Establishment Business License and applications for a Business License with an accessory massage establishment.

(Ord. No. 1607, § 2, 10-20-2015)

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 18 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 60 days prior to filing the application,
 - h. The massage business license or permit history, or similar business history, of the applicant/owner/operator/manager, whether such person, in previously operating in this or another city or state under license or permit, has had such license or permit denied, revoked, suspended or refused to be renewed 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, managers, 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 within the last 10 years;
 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 notarized statement signed by the applicant, massage business owner, property owner, and property manager, if applicable, acknowledging that the signatories 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 17 may result in (1) the revocation of all City-issued license(s) and permit(s) related to, and for the purpose of conducting the massage business, and (2) civil, administrative, or criminal penalties. The signed statement shall include the acknowledgement that violations of this code, or

any other local, county, state, or federal codes or regulations leading to a business license revocation will result in prohibition of a massage establishment in the same location (e.g. suite, tenant space) for two years from the date of said revocation;

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. 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;
 15. Any additional application and material requirements specified in the City handout for the Massage Establishment license application; and
 16. 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.

(Ord. No. 1607, § 2, 10-20-2015)

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. Concurrently, the review authority shall forward a copy of the complete application to San Clemente Police Services. San Clemente Police Services shall review the application and provide the review authority with a recommendation as to whether the City should issue the license.
 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 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 18 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 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 60 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. Pursuant to section 5.28.090, a new application after revocation may not be submitted for two years.
4. Appeal. The review authority's decision may be appealed in compliance with section 5.28.100, Appeals.

(Ord. No. 1607, § 2, 10-20-2015)

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.

(Ord. No. 1607, § 2, 10-20-2015)

5.28.080 - Massage establishment business license expiration and renewal.

- A. Each Massage Establishment Business License shall expire after one 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 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 Business License, the location of the massage establishment, and the scheduled date for expiration of the license for which the licensee is seeking renewal. Failure to timely submit a renewal application may require the applicant to suspend massage business operations beginning on the date of the expiration of the massage establishment business license if the City does not complete its review and approve the renewal application before the such license's expiration date.
- C. Any application for renewal of a Massage Establishment Business 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 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 180 calendar days of the disposition, the application shall be deemed expired, and the applicant will be required to submit a new application.

(Ord. No. 1607, § 2, 10-20-2015)

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.; any law of the state regulating massage establishments or massage technicians; any Federal law; or any conditions of a Conditional Use Permit; 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; or
 6. There is an urgency or immediate action to protect the public from injury or harm.
- 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 applicant 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. Support for Employees. During revocation, abatement, or business closure activities, San Clemente Police Services or designee shall contact Orange County Human Trafficking Task Force as the first source for support where human trafficking has occurred or is suspected.
- E. Appeal. The licensee may appeal the decision of the City Manager in compliance with Section 5.28.100, Appeals.
- F. 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 two years 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.
- G. 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.
- H. No Establishment at Same Location. No Massage Establishment shall be opened at the same address where a massage establishment Business License was revoked, or a Massage Establishment Business License renewal application was denied, for at least two years at the location(s) where the massage business was licensed and/or permitted to operate (e.g. suite, tenant space).
- I. Posting Onsite Notice. Following suspension or revocation, the City Manager may post notice(s) of revocation or suspension on the premises, and the notice shall state the reasons for the revocation or suspension.
- J. 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.

(Ord. No. 1607, § 2, 10-20-2015)

5.28.100 - Appeals.

- A. The licensee shall have ten 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 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 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.

(Ord. No. 1607, § 2, 10-20-2015)

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.

(Ord. No. 1607, § 2, 10-20-2015)

Table 1.
Where to find i-5 Freedom Network recommendations
in draft amendments

i5 Recommendation	Code Section
Illuminated signs off at close of business or 9:00 p.m.	<ul style="list-style-type: none"> ▪ New 17.28.185.D.2
Well-lit entrances	<ul style="list-style-type: none"> ▪ Addressed in new 17.28.185.E.17
Hotline Poster	<ul style="list-style-type: none"> ▪ New 17.28.185.D.3
Post notice in English and Spanish regarding lack of complete privacy	<ul style="list-style-type: none"> ▪ Existing modified 17.28.185.D.1
Entry and exit through front door located in most visible location	<ul style="list-style-type: none"> ▪ New 17.28.185.E.17
Massage rooms shall not have locks	<ul style="list-style-type: none"> ▪ New 17.28.185.D.8
Forms provided by Police and submitted under penalty of perjury	<ul style="list-style-type: none"> ▪ Forms continue to be provided by Business License Division ▪ New 17.28.185.C.3 and 5.28.040.C require Police Services review ▪ Existing: 5.28.050.B.13 requires penalty of perjury
The name and address of the owner and lessor of the real property, and signed acknowledgement that massage establishment will be located on her/his property	<ul style="list-style-type: none"> ▪ New: 17.28.185.H.1 ▪ Existing: 5.28.050.B.8
Applicant to provide list of names and residential address of all current and proposed employees and manager(s)	<ul style="list-style-type: none"> ▪ Existing modified: 5.28.050.B.7
Require name, aliases, and fictitious names used within last 10 years	<ul style="list-style-type: none"> ▪ Existing modified: 5.28.050.B.7
Massage permit history of applicant, owner, operator, and manager	<ul style="list-style-type: none"> ▪ Existing modified: 5.28.050.B.4.h
Applicant's signed statement acknowledging responsibility and potential revocation	<ul style="list-style-type: none"> ▪ Existing modified: 5.28.050.B.12
Landlord responsible for code violation fines	<ul style="list-style-type: none"> ▪ Existing modified: 5.28.050.B.12
Declare awareness of risk for unregulated massage establishments	<ul style="list-style-type: none"> ▪ Will be included in City Council Resolution
Number of code violations that suspend permits and licenses	<ul style="list-style-type: none"> ▪ Existing: 5.28.090.A
Use social worker and interpreter for abatement and closure	<ul style="list-style-type: none"> ▪ New: 5.28.090.D
Penalties and consequences	<ul style="list-style-type: none"> ▪ Existing modified: 17.28.185.J ▪ Existing: 5.28.090

i5 Recommendation	Code Section
Revocation for misrepresentation and violations	<ul style="list-style-type: none"> ▪ Existing modified: 17.28.185.J ▪ Existing and modified: 5.28.090
Revocation provisions apply to all massage service locations	<ul style="list-style-type: none"> ▪ Existing: 5.28.070.A
When massage services are closed or permits revoked for violations, prohibit massage service for 2 years at same location	<ul style="list-style-type: none"> ▪ New: 5.28.090.H ▪ Existing modified: 5.28.090.F
Police Services to post a notice of revocation or suspension	<ul style="list-style-type: none"> ▪ New: 5.28.090.I
After suspension or revocation, business operations are not allowed	<ul style="list-style-type: none"> ▪ Existing: 5.28.090.B
Violations are misdemeanors and may be punishable by fines, imprisonment, and fees	<ul style="list-style-type: none"> ▪ Existing modified: 17.28.185.J
Violations are public nuisances	<ul style="list-style-type: none"> ▪ Existing modified: 17.28.185.J

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. Prostitution and other businesses engaged in illegal activities may use the guise of a massage establishment to shroud their activities and can pose significant risks to massage patrons and massage technicians from improperly or insufficiently trained or managed massage technicians and practitioners. The regulations imposed by this section are reasonably necessary to protect the health, safety and welfare of the residents and visitors of the City and are consistent with all applicable laws of the state of California.
- B. **Applicability** ~~.....~~. This section applies to all businesses proposing to conduct massage, including Accessory Massage Establishments. This ~~chapter-section~~ 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 provided that said students are:
 - i. Earning practical hours for school/education by providing massages;
 - ii. Providing massages at an approved educational facility; and
 - iii. may provide ~~ing~~ massages 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 tables in Chapter 17.36, Commercial Zones and Standards, and Chapter 17.40, Mixed Use Zones and Standards, of this title for Conditional Use Permit and Minor Conditional Use Permit requirements.
1. **Massage Establishment Business License required** ~~for massage approved with a Conditional Use Permit~~. All businesses that are proposing to conduct massage from a location ~~with that have~~ an approved and active Conditional Use Permit ~~or Minor~~

~~Conditional Use Permit~~ for massage services must obtain approval of a Massage Establishment Business License prior to the initiation of operations.

2. Business License required for massage approved with a Minor Conditional Use Permit. All businesses that are proposing to conduct massage incidental to the primary business and from a location with an approved and active Minor Conditional Use Permit for an accessory massage establishment must obtain approval of a Business License for the primary business prior to the initiation of operations.

3.2. Change of Tenancy or Ownership- Change of management, ownership, or tenancy of a Massage Establishment, which was legally established and operational by October 20, 2015, 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).

4. Police Services Review and Recommendation.

a. San Clemente Police Services shall review and provide a recommendation for the following applications for massage services: Conditional Use Permit; Minor Conditional Use Permit; Massage Establishment Business License; and Business Licenses of any business seeking to operate an accessory massage establishment.

b. Upon receipt of a complete application, the review authority shall forward a copy of the complete application to San Clemente Police Services.

c. The ultimate determination with regard to approving or denying the applications provided in subsection (a) above lies with the City's review authority. In reaching its determination, the review authority shall take into account the recommendation from San Clemente Police Services.

D. Facility Requirements-

1. Massage Establishment Identifying Notice. A recognizable and readable ~~sign~~ notice, shall be posted inside at the main entrance and comply with all of the following:

a. The notice shall be, at least 8.5" by 11" in size;

b. The notice is constructed of wood, metal, glass, acrylic, or other substantial material;

c. The notice is ~~and~~ permanently mounted in a location and oriented in a manner so as to be visible to all people entering the establishment;

- ~~d. The notice, which identifies the establishment as a massage establishment, or accessory massage establishment; and~~
- ~~a.e. provided that all such signs notices shall comply with Chapter 17.84, Sign Regulations, of this title. The notice shall state, in English and Spanish, in lettering of a font size no smaller than 48 point: "Notice to All Patrons: This massage establishment and the massage rooms do not provide complete privacy and are subject to inspection by authorized City personnel without prior notice."~~
2. Turn Off Illuminated Signs. All illuminated signs, including but not limited to open signs, shall be turned off at close of business.
- 2.3. 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.
- 3.4. A minimum of one separate washbasin shall be provided in each massage establishment for ~~the use by of employees of any such~~ the establishment's massage technicians and employees. 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.
- 4.5. 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, except that window signs that comply with Title 17 are permitted.
- 5.6. 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 pursuant to the requirements of the California Building Codes.~~
- ~~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.~~
- 6.7. Massage Room Locks. Locking doors are prohibited for any interior rooms where permitted massage services are rendered. No changing rooms or other types of rooms designed for privacy, if provided, shall be used to render massage services. In the context of this section, "locking doors" shall mean any type of device, temporary or permanent, living or otherwise, which restricts, prohibits, or slows entry into a room, or provides advanced notice of entry. Signs that state a massage is in progress are permitted.
- 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~~ 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~~ section by any agent, massage technician, employee or independent contractor of the holder of a massage business license shall constitute a violation by the licensee.

2. Whenever an act or omission is made unlawful by this section, it shall also be unlawful for any person to allow, permit, aid, abet, or conceal such act or omission.

32. 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 5.28.0240-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.

43. 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 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.

54. In no circumstance shall any owner, operator, responsible managing employee, manager, massage technician, licensee, employee or independent contractor expose any ~~of his or her~~ specified anatomical areas (as defined in San Clemente Municipal Code Section 5.28.~~01~~0020, Definitions) to another person or persons while at the massage establishment.

65. In no circumstance shall any specified sexual activities (as defined in San Clemente Municipal Code Section 5.28.020, Definitions) take place at any time at the massage establishment.

76. 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 5.28.020, -Definitions).

687. 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-massage tables~~ 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.

~~798.~~ No massage establishment shall operate as a school of massage, or use the facilities as that of a school of massage.

~~108.~~ No massage establishment employing a massage technician shall be equipped with tinted or one-way glass in any room or office.

~~119.~~ 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 ~~or stimulate~~, specified anatomical areas (as defined in San Clemente Municipal Code Section 5.28.~~010020~~, Definitions), or pornographic magazines, videos, or other material.

~~120.~~ 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.

~~134.~~ 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.

~~142.~~ 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.

~~153.~~ 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 subcontracted 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.

~~164.~~ Every ~~Massage-massage Establishment-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 ~~mMassage tTherapist or mMassage pPractitioner-massage~~

technician 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-section~~ as authorized by the law or court order, if necessary. Such records shall be kept on the premises of the mMassage eEstablishment for a period of two years.

~~175. 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).~~

186. No person shall give, or assist in giving, any massage or other body treatment to any other person under the age of 18 years, unless the parent or guardian of the minor person has consented thereto in writing.

197. Entry and Exit. All clients shall enter and exit through the front door of the business. The front door shall face the street or, if no street-facing door exists, the door that is most visible from the customer-oriented and publicly-accessible area of the property. No entrance to any massage business shall be provided or permitted adjacent to any service/delivery area, City alley, utility/maintenance area, or, in the case of multi-tenant buildings or commercial centers, directly accessible to covered parking areas that are not directly accessible by other tenant suites visible from the massage business's entry. "Directly accessible" in the context of this section means public access to a business which occurs without passage through a common entryway, hall, staircase, courtyard, or corridor that provides the main public access to multiple tenant suites in the building or commercial center.

F. **Sanitation Requirements**— In compliance with Orange County Health Department requirements:

1. Adequate equipment for disinfecting and sterilizing instruments used in performing the acts of massage shall be provided.
2. Hot and ~~c~~Cold running water within the massage establishment 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~~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 5.28.010-020 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 Minor Conditional Use Permit or 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. The following conditions shall be added to a Minor Conditional Use Permit or Conditional Use Permit:

~~1.~~ 1A notarized statement signed by the applicant, massage business owner, property owner, and property manager, if applicable, acknowledging that the signatories 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 17 may result in (1) the revocation of all City-issued license(s) and permit(s) related to, and for the purpose of conducting the massage business, and (2) civil, administrative, or criminal penalties. The signed statement shall include the acknowledgement that violations of this code, or any other local, county, state, or federal codes or regulations leading to a business license revocation will result in prohibition of a massage establishment in the same location (e.g. suite, tenant space) for two years from the date of said revocation.

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** ~~.....~~. No person, partnership, corporation, or other type of entity shall operate a massage establishment, or accessory massage establishment, anywhere in the City without first obtaining any and all necessary permits and licenses to operate a massage establishment or accessory massage establishment. Failure to obtain any and all necessary permits or licenses to operate a massage establishment, or accessory massage establishment, constitutes a misdemeanor and is unlawful and a public nuisance. Any massage establishment operated, conducted, or maintained contrary to the provisions of this chapter shall be unlawful and a public nuisance, and ~~The~~ the City Manager, City Attorney, or City Prosecutor, 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 section~~ or any permit provided pursuant to this ~~chapter section~~ shall also be subject to enforcement under

Title 1 of this code or suspension, revocation, or non-renewal of any applicable permit or license.

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

(Ord. No. 1608, § 10, 10-20-2015)

Chapter 5.28 - MASSAGE ESTABLISHMENTS^[3]

Footnotes:

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Editor's note— Ord. No. 1607, § 2, adopted Oct. 20, 2015, amended Ch. 5.28, §§ 5.28.010—5.28.180, in effect repealing and replacing said chapter as set out herein. Former Ch. 5.28 pertained to similar subject matter and derived from Ord. No. 1525, § 1, adopted Dec. 7, 2010 and Ord. No. 1545, § 1, adopted Dec. 20, 2011.

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-massage Establishments-establishments~~ and ~~Massage-massage~~ technicians, as defined herein and to the extent permitted by ~~state~~ State law, in the interests of the public health, safety and welfare by providing certain minimum requirements for ~~Massage-massage Establishment establishment~~ business license applications and by providing certain minimum qualifications for the operators of ~~Massage-massage Establishments-establishments~~ and for ~~m~~Massage technicians and ~~Massage-massage~~ technician trainees.

(Ord. No. 1607, § 2, 10-20-2015)

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; ~~or~~ 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, whether as an employee or an independent contractor, and who receives compensation in any form from the licensee or an agent, and who does not perform any act of 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.

(Ord. No. 1607, § 2, 10-20-2015)

5.28.030 - Applicability.

- A. When Required. ~~.....~~ A Massage Establishment Business License shall be required for all businesses at fixed locations within the Ceity 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 Ceity, 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-a. 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. However, San Clemente Police Services, or designee, shall review and make a recommendation for all applications for a Business License with an accessory massage establishment.

b. Upon receipt of a complete application, the review authority shall forward a copy of the complete application to San Clemente Police Services.

c. The ultimate determination with regard to approving or denying applications provided in subsection (a) above lies with the City's review authority. In reaching its determination, the review authority shall take into account the recommendation from San Clemente Police Services.

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 Ceity; or

7. Any profession over which the Sstate 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.

(Ord. No. 1607, § 2, 10-20-2015)

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.
- C. San Clemente Police Services, or designee, shall review and make a recommendation for all applications for a Massage Establishment Business License and applications for a Business License with an accessory massage establishment.

(Ord. No. 1607, § 2, 10-20-2015)

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 18 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 60 days prior to filing the application,
 - h. The massage business license or permit history, or similar business history, of the applicant/owner/operator/manager, whether such person, in previously operating in this or another city or state under license or permit, has had such license or permit denied, revoked, suspended or refused to be renewed 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, managers, 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 within the last 10 years;
 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 Ceity, 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-notarized~~ statement ~~that signed by~~ the applicant, massage business owner, property owner, and property manager, if applicable, and/or applicant acknowledging that the signatories 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~~ 17 may result in (1) the revocation of the all Ceity-issued license(s) and permit(s) related to, and for the purpose of conducting the massage business, and (2) civil, administrative, or criminal penalties. The signed statement shall include the acknowledgement that violations of this code, or any other local, county, state, or federal codes or regulations leading to a business license revocation will result in prohibition of a massage establishment in the same location (e.g. suite, tenant space) for two years from the date of said revocation;-
 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;
 - ~~9. 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~~14. 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~~15. Any additional application and material requirements specified in the City handout for the Massage Establishment license application; and
 - ~~17~~16. 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.

(Ord. No. 1607, § 2, 10-20-2015)

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 Ccity and produce proof to the Planning Division that the nonrefundable application fee has been paid to the eCity 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. Concurrently, the review authority shall forward a copy of the complete application to San Clemente Police Services. San Clemente Police Services shall review the application and provide the review authority with a recommendation as to whether the City should issue the license.
 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 ~~C~~onditional ~~U~~se ~~P~~ermit 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 ~~C~~eity, or any other state or local agency prior to the date of approval;
 - g. The applicant(s) is at least 18 years of age;
 - h. The massage establishment employs or uses only ~~S~~tate 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 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 60 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. Pursuant to section 5.28.090, a new application after revocation may not be submitted for two years.
4. Appeal. The review authority's decision may be appealed in compliance with ~~Chapter~~ section 5.28.100, Appeals.

(Ord. No. 1607, § 2, 10-20-2015)

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 C-eity, 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~~ Zoning code-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.

(Ord. No. 1607, § 2, 10-20-2015)

5.28.080 - Massage establishment business license expiration and renewal.

- A. ~~.....~~ Each Massage Establishment Business License shall expire after one 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 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 ~~M~~massage ~~E~~establishment ~~B~~business ~~L~~icense, the location of the massage establishment, and the scheduled date for expiration of the license for which the licensee is seeking renewal. Failure to timely submit a renewal application may require the applicant to suspend massage business operations beginning on the date of the expiration of the massage establishment business license if the City does not complete its review and approve the renewal application before the such license's expiration date.
- C. ~~.....~~ Any application for renewal of a ~~massage~~ Massage establishment ~~Establishment Business License~~ 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 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 180 calendar days of the disposition, the application shall be deemed expired, and the applicant will be required to submit a new application.

(Ord. No. 1607, § 2, 10-20-2015)

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; any Federal law; or any conditions of a Conditional Use Permit; 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 applicant 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. Support for Employees. During revocation, abatement, or business closure activities, San Clemente Police Services or designee shall contact Orange County Human Trafficking Task Force as the first source for support where human trafficking has occurred or is suspected.

- ~~DE.~~ Appeal—..... The licensee may appeal the decision of the City Manager in compliance with Section 5.28.100, Appeals.
- ~~EF.~~ 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~~ two years 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.
- ~~FG.~~ 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.
- H. No Establishment at Same Location. No Massage Establishment shall be opened at the same address where a massage establishment Business License was revoked, or a Massage Establishment Business License renewal application was denied, for at least two years at the location(s) where the massage business was licensed and/or permitted to operate (e.g. suite, tenant space).
- H.I. Posting Onsite Notice. Following suspension or revocation, the City Manager may post a notice(s) of revocation or suspension on the premises, and the notice shall state the reasons for the revocation or suspension.
- ~~GI.~~ 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 Ccity 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 Ccity 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 Ceonditional Use Permit for a massage establishment.

(Ord. No. 1607, § 2, 10-20-2015)

5.28.100 - Appeals.

- A. ~~.....~~The licensee shall have ten 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 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 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.

(Ord. No. 1607, § 2, 10-20-2015)

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.

(Ord. No. 1607, § 2, 10-20-2015)