



City Clerk

CITY OF SAN JOSÉ, CALIFORNIA

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STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
CITY OF SAN JOSÉ

I, Toni J. Taber, City Clerk & Ex-Officio Clerk of the Council of and for the City of San José, in said County of Santa Clara, and State of California, do hereby certify that **Ordinance No. 29662**, the original copy of which is attached hereto, was passed for publication of title on the **8th day of December 2015**, was published in accordance with the provisions of the Charter of the City of San José, and was given final reading and adopted on the **December 15, 2015**, by the following vote:

AYES: CARRASCO, HERRERA, JONES, KALRA, KHAMIS, M. NGUYEN,
T. NGUYEN, OLIVERIO, PERALEZ, ROCHA; LICCARDO.

NOES: NONE.

ABSENT: NONE.

ABSTAINED: NONE.

Said ordinance is effective as of **January 15, 2016**.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of San José, this **17th day of December, 2015**.

(SEAL)

TONI J. TABER, CMC
CITY CLERK & EX-OFFICIO
CLERK OF THE CITY COUNCIL

ORDINANCE NO. 29662

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING CHAPTER 6.44 OF THE SAN JOSE MUNICIPAL CODE TO ADD A PURPOSE SECTION, ADD ADDITIONAL AND CLARIFYING DEFINITIONS, REQUIRE ALL MASSAGE THERAPISTS TO BE CERTIFIED BY THE CALIFORNIA MASSAGE THERAPY COUNCIL, REQUIRE MASSAGE BUSINESSES TO PROVIDE THE POLICE CHIEF WITH COPIES OF MASSAGE THERAPIST CERTIFICATES, REQUIRE MANDATORY REPORTINGS TO THE POLICE CHIEF, SPECIFY OPERATIONAL REQUIREMENTS AND MAKE OTHER CLARIFYING AND REQUIRED REVISIONS IN ACCORDANCE WITH STATE LAW

WHEREAS, massage is a viable professional field offering the public valuable health and therapeutic services; and

WHEREAS, the registration and health and safety requirements imposed by this Ordinance are reasonably necessary to protect the health, safety and welfare of the citizens of the City of San José; and

WHEREAS, massage businesses have been found to present opportunities for prostitution, human trafficking, and other unlawful activity, and police officers have made arrests for prostitution in massage businesses located within the City of San José; and

WHEREAS, the California and City of San José legislature and the courts have long recognized the necessity of imposing reasonable regulations and standards for the operation of massage businesses, including but not limited to, minimum educational and experience requirements, passage of practical examination of competence, sanitary conditions, hours of operation, and other operational regulations designed to minimize opportunities for illegal activities and to ensure protection of the health, safety and welfare of citizens; and

WHEREAS, there is significant risk of injury to clients of massage businesses by improperly trained or poorly educated massage therapists; and

WHEREAS, the presence of businesses known or reputed to be places of prostitution or other illegal activity can have an adverse impact on surrounding properties and result in blight, foster further illegal activities, and generally become a public nuisance; and

WHEREAS, the adoption of this Ordinance is not a project under California Environmental Quality Act ("CEQA") Guidelines Section 13578(b)(5) as an

administrative activity that will not result in potentially significant physical impact on the environment;

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

Chapter 6.44 of Title 6 of the San José Municipal Code is hereby amended to read as follows:

Part 1
General Provisions

6.44.010 Purpose

- A. The City of San José is authorized to regulate massage establishments pursuant to Government Code Section 51030 et seq., Business and Professions Code Sections 460 and 4600 et seq., Section 7 of Article XI of the California Constitution, and its Charter and general police powers under the California Constitution.
- B. In enacting these regulations the San José Council ("City Council") recognizes that massage is a viable professional field offering the public valuable health and therapeutic services.
- C. It is the purpose and intent of the City Council that the operation of massage establishments and persons offering massage be regulated in the interests of public health, safety, and welfare by providing minimum building, sanitation, and health standards and to ensure that persons offering massage shall possess the minimum qualifications necessary to operate such businesses and to perform such services offered.
- D. It is the intent of this Chapter to enact regulations to insure that those offering massage services are qualified and trained and can be expected to conduct their services in a lawful and professional manner. The City Council finds that existing

controls have not satisfactorily addressed or regulated serious criminal and public health problems, nor have the existing controls regulated the profession so as to sufficiently encourage compliance with State and local laws.

6.44.020 Definitions

The definitions set forth in this part shall govern the application and interpretation of this Chapter.

6.44.030 California Massage Therapy Council or CAMTC

"California Massage Therapy Council" or "CAMTC" means the State of California non-profit organization established pursuant to Business and Professions Code Section 4602, as may be amended.

6.44.040 Chief of Police

"Chief of Police" means the Chief of Police of the City of San José or his or her authorized agents.

6.44.050 Client

"Client" means any person who receives a massage in exchange for money or any other thing of value, or for checks, credit or any other representation of value.

6.44.060 Massage

"Massage" means any method of treating the external parts of the body for remedial, health or hygienic purposes by means of pressure on or friction against; or stroking, kneading, rubbing, tapping, pounding or stimulating the external parts of the body with

hands or other parts of the body with or without the aid of any supplementary aids, such as rubbing alcohol, liniments, antiseptics, oils, powders, creams, lotions, ointments or other similar preparations commonly used in this practice; or by baths, not limited to Turkish, Russian, Swedish, Japanese, vapor, shower, electric tub, mineral, fomentation, or any other type of bath.

6.44.070 Massage Business

"Massage Business" means the business of providing Massage to a Client.

6.44.080 Massage Therapist

"Massage Therapist" means any person who is certified as a Certified Massage Practitioner or Certified Massage Therapist pursuant to California Business and Profession Code Section 4600 et seq.

6.44.090 Off-Premises Massage Business

"Off-Premises Massage Business" means any Massage Business that is conducted at locations other than at specified business premises maintained by the business operator for the purpose of providing Massage on the premises.

6.44.100 Permittee

"Permittee" means the holder of a Massage Business permit issued by the Chief of Police.

6.44.110 Recognized School of Massage

"Recognized School of Massage" means any school or institution of learning that is recognized as an approved school pursuant to California Business and Professions Code Section 4601, as may be amended.

6.44.120 Business Permit Required

It shall be unlawful for a person to maintain, manage, operate, conduct, control or own a Massage Business or Off-Premises Massage Business unless the business is maintained and operated in strict compliance with a valid business permit issued by the Chief of Police. A separate business permit is required for each location if a person maintains, manages, operates, conducts, controls or owns multiple Massage Businesses at different locations.

6.44.130 Ownership/Management License Required

- A. It shall be unlawful for any person to work as a manager or have any ownership interest in a Massage Business or Off-Premises Massage Business without having first obtained an ownership/management license from the Chief of Police.
- B. It shall be unlawful for any Massage Business to provide Massage in exchange for money or any other thing of value, or for checks, credit or any other representation of value, unless all individuals employed by the Massage Business to perform Massage, whether as an employee, independent contractor, sole proprietorship, or otherwise, are certified Massage Therapists.
- C. A separate ownership/management license is required for each location if a person owns, manages, or operates multiple Massage Businesses at different locations.

6.44.140 Massage Therapy Certification Required

It shall be unlawful for a person to perform Massage on a person in exchange for money or any other thing of value, or for checks, credit or any other representation of value unless that individual is a certified Massage Therapist.

6.44.150 Exemptions

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

- A. Physicians, surgeons, chiropractors, osteopaths, acupuncturists, or physical therapists who are duly licensed to practice their respective professions in the State of California.
- B. Nurses registered under the laws of the State of California.
- C. Barbers and beauticians who are duly licensed under the laws of the State of California while engaging in practices within the scope of their licenses, limited solely to the massaging of the neck, face, scalp, feet up to the ankle, or hands up to the wrist of the client.
- D. Hospitals, nursing homes, sanitariums or other health care facilities duly licensed by the State of California.
- E. Accredited high schools, junior colleges, and colleges or universities where coaches and trainers are acting within the scope of their employment.
- F. Trainers of amateur, semi-professional or professional athletes or athletic teams.

Part 2

Operating Regulations and Conditions

6.44.200 Operating Regulations and Permit Conditions

- A. The provisions of this Part shall constitute business permit terms and conditions applicable to each business permit issued by the Chief of Police.
- B. In addition, the provisions of this Part shall constitute operating regulations. It shall be unlawful for any person to violate these provisions.

6.44.210 Hours of Operation

- A. Massage in exchange for money or any other thing of value, or for checks, credit or any other representation of value shall be provided or given only between the hours of 7:00 a.m. and 10:00 p.m.
- B. The premises on which a Massage Business is operated or conducted shall be open only between the hours of 7:00 a.m. and 10:00 p.m.

6.44.215 Entry and Exit

All Clients shall enter and exit exclusively through the front door of the Massage Business. The front door shall be the door facing the street, or if no such door exists, the door that is most visible to members of the public passing by the Massage Business.

6.44.220 Listing of Services

- A. A list of services available shall be displayed in an open and conspicuous manner in a public place within the premises and shall be described in readily

understandable language. No person shall perform or offer to perform any service other than those posted.

- B. A Massage Therapist for an Off-Premises Massage Business shall provide to Clients and to the public upon request the list of services described in Subsection A.

6.44.230 Records of Massage Services

- A. The Permittee shall keep a written record of the date and hour of each Massage service; the name and address of each Client; the name of the Massage Therapist administering the service, the address at which the service was provided, the type of service administered, and such other information as the Chief of Police considers necessary on a Client service release form approved by the Chief of Police.
- B. Such written record shall be open to inspection by City officials including the Police Department and the City Attorney's Office for the administration and enforcement of the Municipal Code or State law.
- C. Such records shall be maintained on the premises of the Massage Business for a period of two years.
- D. In the case of an Off-Premises Massage Business, the Permittee shall maintain the above specified records at the business address provided by the Permittee on the business permit application.
- E. Each Permittee shall:

1. Provide the Chief of Police with a copy of the valid CAMTC certificate for every person who is employed or otherwise retained by Permittee to provide Massage prior to the commencement of such person's employment or Massage service.
2. Display in the reception area or similar open public place on the premises a copy of each CAMTC certificate for all persons employed or otherwise providing Massage. CAMTC certificates of former employees or contractors shall immediately be removed as soon as the Massage Therapist is no longer employed or providing Massage services through the Massage Business.
3. Require each Massage Therapist to clearly and prominently wear a CAMTC certification card at all times when the Massage Therapist is inside a Massage Business or providing Massage at an off-site premise.

6.44.240 Notifications

- A. A Permittee shall immediately notify the Chief of Police of any of the following occurrences:
1. Arrests of any owners, managers, employees, or Massage Therapists for an offense other than a misdemeanor traffic offense;
 2. Resignations, terminations, or transfers of owner/manager licensee or Massage Therapists employed or otherwise retained by Permittee to provide Massage;
 3. Any event involving the Massage Business, Permittee, owner/manager licensee or Massage Therapist that constitutes or may constitutes a violation of this Chapter, Municipal Code, or state or federal law.

- B. This provision requires reporting to the Chief of Police even if the Permittee believes the Chief of Police has or will receive the information from another source.

6.44.250 Linens Required

- A. The Permittee shall, at all times, have an adequate supply of clean sanitary towels, coverings and linens.
- B. Clean towels, coverings and linens shall be stored in cabinets.
- C. Towels and linens shall not be used on more than one client, unless they have first been laundered and disinfected.
- D. Disposable towels and coverings shall not be used on more than one client.
- E. Soiled linens and paper towels shall be deposited in separate, approved receptacles.

6.44.260 Separate Facilities Required

- A. The Permittee shall provide separate Massage rooms and separate dressing facilities if male and female clients are to be treated simultaneously on the same Massage Business premises, unless there is consent from the male and female Clients to receive Massage on separate Massage tables in the same room.
- B. Massage Businesses shall not contain sleeping quarters on the premises. There shall be no room or space used for sleeping, living or residential uses on the Massage Business premises.

6.44.270 Clothing Requirement

- A. The Permittee, owners, managers, employees, and Massage Therapists, when present on the premises of a Massage Business or when working or providing services for an Off-Premises Massage Business, shall be clean and shall wear clean, nontransparent outer garments. Such garments shall not expose their genitals, pubic areas, buttocks or chests and shall be in compliance with California Business and Professions Code Section 4609, as may be amended.
- B. A Massage shall not be given unless the Client's genitals and female client's breasts are fully covered.
- C. A Massage Therapist shall not, in the course of administering any Massage, make physical contact with the genitals of any person regardless whether the contact is over or under the persons clothing.

6.44.280 Drugs and Alcohol Prohibited

- A. No person shall enter or remain in any part of the premises of a Massage Business, or conduct, operate, be employed by or provide Massage for an Off-Premises Massage Business, while in the possession of, consuming, or using any alcoholic beverage or drugs except for medication provided pursuant to a prescription issued by a physician duly licensed to practice in the State of California. The Permittee, owner, operator, manager or Massage Therapist shall not permit any such person to enter or remain on such premises.
- B. No alcoholic beverage or drug, other than a prescription medication in the possession of the person for whom the prescription was written shall be stored or kept on the premises of a Massage Business.

6.44.290 Condoms Prohibited

- A. No person shall enter or remain in any part of the premises of a Massage Business, or conduct, operate, be employed by or provide Massage for an off-premises Massage Business, while in the possession of or while using a condom.
- B. No condom shall be stored or kept on the premises of a Massage Business.

6.44.300 School of Massage Prohibited

- A. No Massage Business or off-premises Massage Business shall operate as a School of Massage or use any of the premises or facilities of a school of massage except as specified in Subsection B.
- B. A School of Massage may be operated simultaneously with and in the same or a contiguous building with a Massage Business, provided that the facilities of the school are physically separated, clearly delineated and there is not a sharing of any portion of those respective facilities.

6.44.310 Advertising Restrictions

No person shall publish or distribute, or cause to be published or distributed, any advertising matter including on the internet or business identification card that would reasonably suggest to prospective Clients that any service is available other than a Massage. For example, no advertising shall contain any nudity or suggest sexual services are available.

6.44.320 Locks Prohibited

- A. No Massage shall be conducted within any cubicle, room, booth or treatment room on the premises of a massage business which is fitted with a lock.

- B. All exterior doors on the premises of a massage business shall remain unlocked from the interior side during business hours unless the Massage Business meets the requirement of California Government Code Section 51034(b)(5), as may be amended.

6.44.330 Minimum Age Requirement

No person shall be employed in a Massage Business or perform Massage or manage or hold an ownership interest in a Massage Business who is not at least eighteen years of age.

6.44.340 Insurance Requirement

- A. During the term of a business permit, the Permittee and each Massage Therapist who works for the Permittee or on the Permittee's business premises shall maintain in full force and effect professional liability or massage malpractice insurance or other such policy as the office of the risk manager shall require:
 - 1. With minimum policy limits to be set by the risk manager;

 - 2. Issued by an admitted insurer or insurers as defined by the California Insurance Code; and

3. Providing that no cancellation, change in coverage, or expiration by the insurance company or the insured shall occur during the term of the business permit, without thirty days written notice to the chief of police prior to the effective date of such cancellation or reduction in coverage.
- B. Proof of insurance shall be provided to the Office of the Risk Manager.

6.44.350 Business Name

No person shall conduct or operate a Massage Business under any name not specified in a valid business permit issued by the Chief of Police.

6.44.360 Massage Business Premises - Physical Requirements

The premises of every Massage Business shall be maintained and shall at all times when open for business meet the following requirements:

- A. Minimum lighting shall be provided in accordance with Article 220 of the National Electrical Code, and, in addition, at least one artificial light of not less than forty watts shall be provided in each room or enclosure where massage services are performed on clients;
- B. Hot and cold running water shall be provided at all times on the premises;
- C. Cabinets shall be provided for storage of clean linens;
- D. Adequate bathing, dressing, locker and toilet facilities shall be provided for clients;

- E. A minimum of one separate wash basin for employees shall be provided at all times. The basin shall be located within or as close as practicable to the area devoted to the performing of massage services. Sanitary towels shall also be provided at each basin;
- F. Pads used on massage tables shall be covered with a durable washable plastic or other waterproof material which shall be cleaned and disinfected with a disinfectant at least once each day the premises are open;
- G. Wet and dry heat rooms, steam or vapor rooms or cabinets, toilet rooms, shower and bath rooms, bathtubs, tanning booths, whirlpool baths and pools shall be thoroughly cleaned and disinfected as needed, and at least once each day the premises are open, with a disinfectant.
- H. All walls, ceilings, floors and other physical facilities for the establishment must be in good repair and maintained in a clean and sanitary condition.
- I. All massage tables shall be at least two feet away from any wall at all times.
- J. Comply with all Planning, Building and other applicable codes and regulations.

6.44.370 Presence of Massage Therapist

No Massage Business shall be open for business without having at least one Massage Therapist who holds a valid Massage Therapist certification from CAMTC present on the premises during all business hours.

6.44.380 Massage at Hotels and Motels

It shall be unlawful for a person to perform Massage at a hotel or motel that does not have a business permit issued pursuant to this Chapter.

6.44.390 Massage at Place of Business

It shall be unlawful to perform Massage on any Client at any place of business that does not have a business permit unless:

- A. The place of business is an office regularly occupied by the Client for business purposes;
- B. The Client is the business owner, operator or an employee of the business; and
- C. The Massage is performed by a Massage Therapist who is employed by an Off-Premises Massage Business that holds a valid business permit.

6.44.400 Identification Card Display

- A. It shall be unlawful for any Massage Therapist to be present on the premises of a Massage Business or work for an Off-Premises Massage Business, or to otherwise perform Massage on a Client without having prominently displayed his or her CAMTC certification card issued by the CAMTC.
- B. The identification card shall be prominently displayed on the outermost garment at approximately chest height.
- C. The personal identification card shall be in good and readable condition at all times.

- D. A Massage Therapist shall only provide Massage under the name specified in his or her CAMTC certificate.

6.44.410 Signs

Any Massage Business signs shall be in conformance with the current ordinances and regulations of the City.

Part 3
Permits and Licenses

6.44.500 Procedures and Determinations

The procedures set forth in Chapter 6.02 for permits and licenses shall govern the application for, investigation, approval, denial, suspension and revocation of any business permit, ownership/management license, or Massage Therapist license issued pursuant to this Chapter, except as specifically provided in this Part.

6.44.510 Additional Requirements for Permits and Licenses

In addition to the procedures set forth in Chapter 6.02, a person applying for a permit or license under this Chapter shall provide to the Chief of Police:

- A. Proof that the applicant is at least eighteen years of age.
- B. For a business permit, the applicant shall provide:
 - 1. Proof of zoning approval for the business premises;

2. Proof of professional liability or malpractice insurance as specified in Part 2 of this Chapter;
 3. The name and address of each Massage Therapist employed by the Permittee or who works on the Permittee's business premises.
- C. For an ownership/management license, when the applicant is or will be a manager of the business, the applicant shall provide proof of a diploma or certificate of graduation from a Recognized School of Massage after successfully completing a one-hundred-hour course of instruction.

6.44.520 Inspection to Determine Compliance

The City officials charged with investigating and enforcing this Chapter and the Municipal Code, including, but not limited to, the Police Department, Fire Department, and Planning, Building and Code Enforcement Department, are authorized to inspect the premises and all business records of each massage business during business hours for the purposes of determining compliance with the provisions of this Chapter.

6.44.530 New Managers and Massage Therapists - Notification

- A. The Permittee shall notify the Chief of Police, in writing, of the name and residence and business premises address of each person employed as a Massage Therapist or a manager prior to the start of employment.
- B. A Massage Therapist shall not commence employment or providing Massage services unless the following has been provided to the Chief of Police:
1. Proof of insurance; and

2. A copy of the CAMTC certification.

6.44.540 Change of Name or Location

A change of location or name of a Massage Business shall be subject to the approval of the Chief of Police. The new location shall comply with each and every requirement of this Chapter.

6.44.550 Permit and License Fees

Fees for the massage business permit and ownership/management license applications, and renewal applications shall be as set forth in the Schedule of Fees established by Resolution of the City Council.

6.44.560 Term of Permits and Licenses

- A. Each business permit and ownership/management license issued pursuant to this Chapter shall expire two years after the date of issuance.
- B. No business permit or ownership/management license issued by the Chief of Police pursuant to this Chapter may be sold, transferred or assigned by the Permittee or 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 voluntary surrender of such permit or license and such permit or license shall be thereafter be deemed terminated and void.
- C. In addition to the provisions set forth in Chapter 6.02 of the Municipal Code, a business permit or owner/manager license issued pursuant to this Chapter may be denied, suspended or revoked if the Permittee or licensee committed any offense involving lewdness, indecent exposure, prostitution, human trafficking,

sex trafficking, labor trafficking or other similar offense or the employees, independent contractors, sole proprietorship, or otherwise of the Massage Business have committed such offenses during the course of employment or services.

6.44.570 Compliance With all Laws

All Massage Business, including Permittee, owner, manager, operator or Massage Therapist, shall comply with all local, state, and federal laws and regulations.

6.44.580 Public Nuisance and Remedies

It shall be unlawful and a public nuisance for a Massage Business to be operated, conducted, or maintained in violation of the provisions of this Chapter. The City may exercise its discretion and commence any criminal or civil actions or proceedings available under the Municipal Code, state or federal law against any person or entity in violation of this Chapter or any other applicable law. All remedies under Chapter 6.02, this Chapter, the Municipal Code and state and federal law are cumulative.

6.44.590 Conflicts

In the event of any conflicts or inconsistencies between the provisions of this Chapter and the provisions of any other chapter(s) of the Municipal Code, the provisions of this Chapter shall control, unless do so would be inconsistent with the stated purpose of this Chapter.

PASSED FOR PUBLICATION of title this 8th day of December 2015, by the following vote:

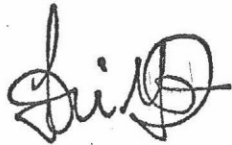
AYES: CARRASCO, HERRERA, JONES, KALRA, KHAMIS,
M. NGUYEN, T. NGUYEN, OLIVERIO, PERALEZ,
ROCHA; LICCARDO.

NOES: NONE.

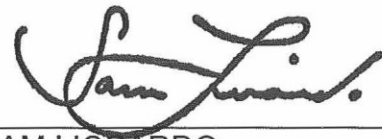
ABSENT: NONE.

DISQUALIFIED: NONE.

ATTEST:



TONI J. TABER, CMC
City Clerk



SAM LICCARDO
Mayor