

**ORDINANCE NO. 895**

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RANCHO CUCAMONGA, CALIFORNIA, AMENDING TITLE 5 AND TITLE 9 AND TITLE 17 OF THE RANCHO CUCAMONGA MUNICIPAL CODE TO REPEAL CHAPTER 9.24 AND SECTION 17.102.080 IN THEIR ENTIRETY AND ADDING CHAPTERS 5.18 AND 17.40 REGULATING THE OPERATION OF NEW AND EXISTING MASSAGE ESTABLISHMENTS**

THE CITY COUNCIL OF THE CITY OF RANCHO CUCAMONGA HEREBY ORDAINS AS FOLLOWS:

SECTION 1. Chapter 9.24 and Section 17.102.080 of the Rancho Cucamonga Municipal Code are hereby repealed and deleted.

SECTION 2. Chapter 5.18 is hereby added to Title 5 of the Rancho Cucamonga Municipal Code, to read as follows:

**“Chapter 5.18 Massage Business Permits**

**5.18.010 Purpose**

This chapter is intended to provide for the orderly regulation of massage therapists and massage establishments in the interest of public health, safety, and welfare.

**5.18.020 Definitions**

For the purpose of this chapter, the following words and phrases are defined and shall be construed as set out in this section, unless it is apparent from the context that a different meaning was intended:

- A. “Ancillary massage services” means less than 10% of the gross floor area of a business is dedicated to massage services.
- B. “Existing massage establishment” means any massage establishment that was legally established in or upon any premises within the city between January 1, 2015 and the effective date of this chapter.
- C. “Massage establishment” means any establishment where customers can receive a massage either as a primary or accessory function and where all massage therapists and practitioners are certified by the California Massage Therapy Council.
- D. “Massage services” means any method of treating the external parts of the human 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 human body with the hands or other parts of the human body, with or without the aid of any mechanical or electrical apparatus or appliances; or with or without

supplementary aids, such as rubbing alcohol, liniments, antiseptics, oils, powers, creams, lotions, ointments, or other similar preparations.

**5.18.030 Permit Required**

- A. It is unlawful for any person, firm, partnership or corporation to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises within the city, the operation of a massage establishment or ancillary massage establishment as herein described, without first having obtained a Massage Establishment Permit, issued by the City pursuant to the provisions herein set forth. Said permit shall immediately be surrendered to the Planning Director upon suspension, revocation, or expiration of said permit.
- B. A separate massage establishment permit shall be obtained for each separate massage establishment and/or any change in ownership to a massage establishment.

**5.18.040 Exemptions**

The provisions of this chapter shall not apply to:

- A. Physicians, surgeons, chiropractors, osteopaths or physical therapists who are duly licensed to practice their respective professions in the State;
- B. Barbers and cosmetologists licensed by the state, as defined and to the extent provided in Business and Professions Code section 7316 or any successor provision thereto, who are engaging in practices within the scope of their licenses, except that this exemption will only apply to massaging of the neck, face, scalp, hands, or feet that is ancillary to the primary service being provided by the barber or cosmetologist;
- C. Hospitals, nursing homes, sanitariums or other health care facilities duly licensed by the state whose employees are acting within the scope of their employment;
- D. Accredited high schools, junior colleges and colleges or universities whose coaches and trainers are acting within the scope of their employment.

**5.18.050 Applicability to Existing Massage Establishments**

Existing massage establishments shall not be exempt from this Chapter and must apply for a massage establishment permit within nine (9) months after the effective date of this Chapter. The Planning Director shall grant all timely applications for massage establishment permits by existing massage establishments unless grounds for suspension or revocation exist under section 5.18.100.

**5.18.060 Fees**

- A. Each application for a Massage Establishment Permit or an annual renewal required under this chapter shall be accompanied by a nonrefundable

application and investigation fee payable to the City which shall be set by resolution of the City Council.

- B. Each hearing required under this chapter may be subject to a nonrefundable application and investigation fee payable to the City which shall be set by resolution of the City Council.
- C. No refund or rebate of an application and investigation fee required under this chapter shall be allowed regardless of whether:
  - 1. The Massage Establishment Permit has been suspended or revoked;
  - 2. The holder of the Massage Establishment Permit discontinues an activity for which a Massage Establishment Permit is required pursuant to this chapter.
- D. The fees required under this section shall be in addition to any fee required under any other provisions of this Code or ordinance heretofore or hereafter adopted.

**5.18.070 Permit Application**

- A. Any person, firm, corporation, or partnership desiring to obtain a permit to operate a massage establishment shall make application under penalty of perjury of the laws of the State, to the Director.
- B. The applicant, if a corporation or partnership, shall designate one of its officers or general partners to act as its responsible managing employee. Such person shall complete and sign all application forms required of an individual applicant under this chapter; however, only one application fee shall be charged. The corporation's or partnership's responsible managing employee must, at all times, meet all of the requirements established for permittees by this chapter or the corporation or partnership permit shall be suspended until a responsible managing employee who meets such requirements is designated. If no such person is found within 90 days, the corporation or partnership permit shall be deemed canceled without further notice and a new initial application for permit must be filed.
- C. Submission of the application for a massage establishment permit does not authorize the applicant to engage in, conduct, or carry on the operation of a massage establishment. No business shall be conducted until such permit has been granted.
- D. Each applicant for a massage establishment permit shall submit the following information to the Planning Department:
  - 1. The legal name, address, and telephone number of the massage establishment;

2. A description of services to be provided at the massage establishment;
3. A description of any other businesses operated on the premises;
4. A floor plan indicating how the operation of a massage establishment is proposed to be conducted within the premises;
5. The legal name of all owners and managers of the massage establishment;
6. The home address and telephone number of all owners of the massage establishment, any previous home addresses for a period of 5 years immediately prior to the date of the application, and the dates of residence at each;
7. A valid and current driver's license, photo identification issued by a State or Federal governmental agency, or photographic identification bearing a bona fide seal by a foreign government for each owner of the massage establishment;
8. The form of business under which the massage establishment will be operating;
9. A signed statement from each owner of the massage establishment indicating that:
  - a. All of the information contained in the application is true and correct;
  - b. Each owner shall be responsible for the conduct of the massage establishment's employees and any independent contractors providing massage services at the massage establishment;
  - c. Each owner acknowledges that failure to comply with any local, State, or Federal law may result in the revocation of the Massage Establishment Permit;
10. The massage license and registration history of each owner of the massage establishment, including:
  - a. Whether the owner has operated any massage establishment or similar business or occupation within any other City, County, or State;
  - b. Whether any license or registration certificate previously obtained by the owner was revoked, suspended, or denied and, if so, the reason(s) therefore and any employment obtained subsequent to any revocation, suspension, or denial;

11. The employment history of each owner of the massage establishment for a period of 5 years immediately prior to the date of the application, including:
  - a. The dates of employment for each position;
  - b. Whether the owner, or a former employer of the owner during the owner's period of employment, was subject to an abatement proceeding under California Penal Code sections 11225 through 11235 or any similar provisions of law in a jurisdiction outside the State;
12. For each owner of the massage establishment that is certified by the California Massage Therapy Council (CAMTC), a copy of the owner's current certification from CAMTC as a Certified Massage Practitioner, Certified Massage Therapist, or conditionally Certified Massage Practitioner, and a copy of the owner's CAMTC-issued identification card;
13. For each owner of the massage establishment that is not certified by CAMTC, current fingerprints taken by a certified California Live Scan Fingerprinting Center for the purpose of conducting a background check on behalf of the City to determine the criminal history of the owner, including whether the owner has been convicted of any felony, misdemeanor, infraction, or municipal code violation or has been held liable for any administrative or civil action for an act that is substantially related to the practice of massage;
14. The name of each person to be employed or retained by the massage establishment to perform massage services for compensation, a copy of that person's current certification from CAMTC as a Certified Massage Practitioner, Certified Massage Therapist, or conditionally Certified Massage Practitioner, and a copy of that person's CAMTC-issued identification card;
15. The name and address of the owner of the real property upon, in, or from which the massage establishment will be operated. In the event that the owner of the massage establishment is not the owner of the real property, the application shall include a copy of any written lease between massage establishment and the property owner authorizing use of the premises for a massage establishment or, if there is no written lease, a written, notarized acknowledgment from the property owner declaring that the property owner has been advised that a massage establishment will be operated by the applicant upon, in, or from the property owner's real property;
16. Proof of current and valid Workers' Compensation insurance from an insurer authorized to do business in the State, in an amount as required by law;

17. Authorization for the City, its employees and agents to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the Massage Establishment Permit;
  18. The name of the individual to receive notices on behalf of the massage establishment;
  19. Any other information necessary to discover the truth of the matters required to be set forth in the application.
- E. Any changes to the information provided in the application during the period that the City is reviewing the application shall be immediately reported to the City. Failure to report such changes shall result in denial of the application.

**5.18.080 Review Process**

- A. The Planning Director shall be the approving authority for massage establishment permits.
- B. If it is clear from the face of the application and supplementary materials that the applicant is not qualified for the Massage Establishment Permit, or if the required fee has not been paid, the application may be denied without further investigation.
- C. Upon receipt of an application for a Massage Establishment Permit, the Planning Director shall refer the application to other City departments, as appropriate, for review of the application and inspection of the premises to ensure compliance with applicable local, State and Federal laws and regulations, including, but not limited to, building, health, and fire safety regulations.
- D. The City may conduct additional investigations in a manner authorized by law when necessary to determine if the applicant meets the qualifications for a Massage Establishment Permit pursuant to this chapter.
- E. Upon acceptance of a complete application, the Planning Director shall issue or deny the application for a Massage Establishment Permit within 60 calendar days of the submission of the completed application. When necessary, the Planning Director may extend the time to issue or deny the permit.
- F. If prosecution is pending against the applicant or any owner for either conduct violating this chapter's provisions or conduct violating Business & Professions Code section 4600 et seq., the Planning Director may postpone the 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 the City Attorney or prosecuting attorney.

**5.18.090 Permit Issuance and Renewal**

- A. The Planning Director shall issue a Massage Establishment Permit if the applicant meets the requirements of this chapter and no grounds for denial exist under section 5.18.090. The Planning Director may impose conditions on the permit consistent with this chapter and applicable law. No permit granted herein shall confer any vested right to any person for more than the permit period.
- B. If the owner of the massage establishment is not the owner of the real property upon, in, or from which the massage establishment will be operated, the Planning Director may send a written notice to the property owner advising of the issuance of the permit and of the regulations applicable to the massage establishment. The police chief may also provide the property owner with copies of any other notices or communications with the massage establishment owner sent at any time before or after issuance of the permit.
- C. A massage establishment permit issued pursuant to the terms of this chapter shall be valid for a term of one year and shall expire on the same date as the business license of the massage establishment pursuant to Title 5 of this code. An application to renew the permit shall be submitted at least 30 days prior to the expiration of the current permit.

**5.18.100 Denial of Permit**

- A. The Planning Director may deny an application for a Massage Establishment Permit on any of the following grounds:
  - 1. The massage establishment would not comply with the requirements of this chapter or other applicable law, rule or regulation, including, but not limited to any local or State building, fire, zoning and health regulations;
  - 2. The applicant or any owner of the massage establishment has engaged in fraud or misrepresentation or has knowingly made a misstatement of material fact in the application for a Massage Establishment Permit;
  - 3. The applicant or any owner of the massage establishment has been the subject of a permanent injunction against the conducting or maintaining of a nuisance pursuant to sections 11225 through 11235 of the California Penal Code, or any similar law in any State or other jurisdiction;
  - 4. The applicant or any owner of the massage establishment has had any license, certificate or permit to practice massage or somatic therapy, or to own and/or operate a massage establishment suspended, revoked, withdrawn or denied;
  - 5. The applicant or any owner of the massage establishment has been convicted in a court of competent jurisdiction of any offense that relates directly to the conduct or operation of a massage establishment, or of any offense the commission of which occurred on the premises of a massage establishment or while performing out-call massage services;

6. The applicant or any owner of the massage establishment has been convicted in a court of competent jurisdiction of having violated, or has engaged in conduct constituting a violation of any of the following offenses: Sections 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), or 653.22 of the California Penal Code, or conspiracy or attempt to commit any such offense, or any similar offense in any state or other jurisdiction, whether or not any criminal prosecution has been pursued or conviction obtained for such acts;
7. The applicant or any owner of the massage establishment has been successfully prosecuted under the Red Light Abatement Act (California Penal Code section 11225 et seq.) or any similar law in another jurisdiction;
8. The applicant or any owner of the massage establishment is currently required to register pursuant to the Sex Offender Registration Act (Chapter 5.5 commencing with section 290 of Title 9 of Part 1 of the California Penal Code), or any similar law in any State or other jurisdiction;
9. The applicant or any owner of the massage establishment has engaged in any other unprofessional conduct or violation of any applicable law, rule or regulation that is substantially related to the providing of massage services.

**5.18.110 Suspension or Revocation of Permit**

- A. All massage establishment owners and operators shall be deemed to know and understand the requirements and prohibitions of this chapter. Any Massage Establishment Permit issued pursuant to this chapter may be suspended or revoked by the Planning Director, where they find that any of the following have occurred:
  1. The owner, operator, or any person employed or retained by the massage establishment has violated any provision of this chapter, or other applicable law, rule or regulation;
  2. The owner, operator, or any person employed or retained by the massage establishment has engaged in fraud or misrepresentation or has knowingly made a misstatement of material fact while working in or for the massage establishment;
  3. The owner, operator, or any person employed or retained by the massage establishment has been the subject of a permanent injunction against the conducting or maintaining of a nuisance pursuant to this code, or sections 11225 through 11235 of the California Penal Code, or any similar law in any state or other jurisdiction;
  4. The owner, operator, or any person employed or retained by the massage establishment has been convicted in a court of competent jurisdiction of any offense that relates directly to the conduct or operation of a massage establishment, or has at any time been convicted in a court of competent jurisdiction of any offense the commission of which occurred on the

premises of a massage establishment or while performing out-call massage services;

5. The owner, operator, or any person employed or retained by the massage establishment has been convicted in a court of competent jurisdiction of having violated, or has engaged in conduct constituting a violation of any of the following offenses: sections 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), or 653.22 of the California Penal Code, or conspiracy or attempt to commit any such offense, or any similar offense in any state or other jurisdiction, whether or not any criminal prosecution has been pursued or conviction obtained for such acts, and whether or not such acts occurred with or without the actual knowledge of the owner;
6. The owner, operator, or any person employed or retained by the massage establishment is currently required to register pursuant to the Sex Offender Registration Act (Chapter 5.5 commencing with section 290 of Title 9 of Part 1 of the California Penal Code), or any similar law in any state or other jurisdiction;
7. The owner of the massage establishment has continued to operate the massage establishment after the massage establishment permit has been suspended;
8. Massage services have been performed for compensation by a person who is not a CAMTC-certified massage professional, with or without the actual knowledge of the owner of the massage establishment;
9. The owner, operator or any person employed or retained by the massage establishment has engaged in conduct or committed acts that a reasonable person in the client's position would understand as an offer to perform on or engage in with a client acts that are sexual in nature or that involve the touching of the client's genitals, pubic area, anus, or areola;
10. The owner, operator or any person employed or retained by the massage establishment has engaged in any other unprofessional conduct or violation of any applicable law, rule or regulation that is substantially related to the providing of massage therapy.

#### **5.18.120 Appeals**

- A. Where there are grounds to deny, suspend or revoke a Massage Establishment Permit, the Planning Director shall provide 15 calendar days prior written notice, mailed to the last known address of the owner of the massage establishment, specifying the grounds for such action. The decision of the Planning Director shall be based on a preponderance of the evidence.
- B. For the purposes of this chapter, including imposing the 1 year moratorium period pursuant to this section, the decision of the Planning Director on the denial, suspension or revocation of the massage establishment permit shall become final, and not subject to any right of appeal, upon any of the following circumstances:

1. The owner has failed to file a timely notice of appeal;
  2. The owner has ceased business operations on or prior to the hearing date on the notice of appeal;
  3. The owner has failed to appear at the appeal hearing.
- C. The owner may appeal the decision of the Planning Director by filing a written notice of appeal with the City Clerk within fifteen (15) calendar days after deposit of the decision in the mail, specifying in detail the grounds for such appeal. The notice of appeal shall be accompanied by a nonrefundable fee established by the city's then current fee schedule. Failure to file a timely appeal will be considered a failure on the part of the owner to exhaust his or her administrative remedies for the purpose of seeking judicial review. In the event an appeal is timely filed, the suspension or revocation of a massage establishment permit shall not be effective until a final decision has been rendered by the City Manager.
- D. The City Manager or his or her designee shall hear and decide all appeals de novo. The City Clerk shall provide at least 10 calendar days prior written notice of the date, time, and place of the hearing.
- E. After the hearing on the appeal, the City Manager may refer the matter back to the Planning Director for a new investigation and decision, may affirm or modify the decision of the Planning Director, or may overturn the decision of the Planning Director. Upon the revocation of a Massage Establishment Permit, the massage establishment shall immediately cease operation, and, if so ordered by the City Manager, no other massage establishment shall be permitted to operate at that location by any person for a period of not less than 1 year ("the moratorium period").
- F. The decision of the City Manager shall be rendered within 30 days from the close of the hearing, and shall be mailed to the last known address of the owner of the massage establishment. If the owner of the massage establishment is not also the legal owner of the real property on which the massage establishment is situated, notice of such denial, suspension or revocation and, if applicable, the 1 year moratorium period, shall be provided to the owner of record of the property as shown on the latest county assessment roll.
- G. The decision of the City Manager shall be final and shall be subject to judicial review according to the provisions and time limits set forth in section 1094.6 of the California Code of Civil Procedure.
- H. Notwithstanding any other provision of this chapter, where a notice of revocation or suspension has been issued by the Planning Director to the owner of a massage establishment, the Planning Director shall not issue a Massage Establishment Permit for a new massage establishment at the same location unless and until such notice of revocation or suspension is dismissed by the Planning Director, or a final determination is made that the current Massage Establishment Permit is not or should not be suspended or revoked, or any suspension or moratorium period imposed pursuant to this section has expired.

**5.18.130 Operational and Maintenance Standards**

- A. No massage establishment shall be established within 1,000 feet of any other massage establishment. This requirement shall not apply to ancillary massage establishments or existing massage establishments.
- B. No massage establishment shall be kept open for business between the hours of Nine p.m. (9:00 p.m.) of one day and Nine a.m. (9:00 a.m.) of the following day. A massage begun any time before Nine p.m. (9:00 p.m.) must nevertheless terminate at Nine p.m. (9:00 p.m.). The hours of operation of the massage establishment shall be displayed in a conspicuous public place in the reception and waiting area and in any front window clearly visible from outside of the massage establishment.
- C. The owner and manager of a massage establishment shall be responsible for displaying the City Registration Certificate and the CAMTC Registration Certificate of each and every Certified Massage Practitioner employed in the business in an open and conspicuous place on the premises. Passport-size photographs of the massage establishment permit holder shall be affixed to the respective Permit on display pursuant to this section.
- D. The massage establishment shall be supervised, during all hours of operation, by a manager specified in the massage establishment permit application. The manager shall wear a badge with the manager's name and it should clearly state the word "manager" on the badge. The name of the manager on duty shall be posted in a conspicuous place within the reception area daily.
- E. The owner and manager shall maintain a register of all employees or rent-space massage therapists. The employee register shall be maintained on the premises for a minimum period of 2 years following an employee's termination. The owner and manager shall make the employee register immediately available for inspection upon demand by a representative of the Police Department or the City at all reasonable times. The employee register shall include, but not be limited to the following information:
  - 1. The name, nicknames and/or aliases used by an employee or rent-space massage therapist;
  - 2. A high quality color photocopy of a lawfully issued CAMTC certificate for each employee and rent-space therapist that provides massage services;
  - 3. The home address and relevant phone numbers (including but not limited to home and cellular numbers) of each employee and rent-space therapist;
  - 4. The age, date of birth, gender, height, weight, color of hair and eyes of each employee and rent-space therapist;
  - 5. The date of employment and termination, if applicable, or, in the case of a rent-space therapist, the start and end dates of the lease agreement, as well as a copy of the employment agreement for each employee;

6. The duties of each employee.
- F. For each massage service provided, every massage establishment shall keep a complete and legible written record of the following information:
1. The date and hour that service was provided;
  2. The service received;
  3. The name or initials of the employee entering the information;
  4. The name of the employee administering the service.
- G. The records required under this section shall be open to inspection and copying by the Police Department, or other City officials charged with enforcement of this chapter. These records may not be used by any massage establishment owner or employee for any purpose other than as records of service provided and may not be provided to other parties by any person unless otherwise required by law. The records shall be retained on the premises of the massage establishment for a period of 2 years.
- F. All massage establishment owners and their employees shall wear clean outer garments. The garments shall not include any of the following:
1. Attire that is transparent or see-through, or substantially exposes the employee's undergarments;
  2. Swim attire, if not providing a water-based massage modality accepted by CAMTC;
  3. Attire that exposes the employee's genitals, pubic areas, buttocks, or breasts;
  4. Attire worn in a manner that constitutes a violation of California Penal Code section 314;
  5. Attire worn in a manner that is otherwise deemed by CAMTC to constitute unprofessional attire based on the custom and practice of the massage profession in the state.
- G. At all times during the massage services, the client's genitals shall be fully covered and contact shall not be made with the genitals.
- H. The premises' exterior doors and the doors separating the waiting or reception area from the remainder of the premises shall remain unlocked during business hours (including electronic locking devices) or when clients are present. External doors may only be locked during business hours if the massage establishment is a business entity owned by one individual with one or no employees or independent contractors who are not employees of the business and there is no staff available to assure security for clients and staff behind closed doors.

- I. Clients and visitors shall be permitted in the massage establishment only during the hours of operation.
- J. Clients shall be permitted in massage rooms only if at least one CAMTC certified massage professional is present on the premises of the massage establishment.
- K. No visitors shall be permitted in massage rooms except the parents or guardian of a minor child who is a client; a minor child when necessary for the client's supervision of the child; or the conservator, aide, or other caretaker of a client.
- L. No visitors shall be permitted in break rooms, dressing rooms, showers, or any other room or part of the massage establishment premises other than the reception and waiting area or the toilets.
- M. Except for a client who is inside a massage therapy room for the purpose of receiving a massage, no clients or visitors shall be permitted in or on the massage establishment premises at any time who are less than fully clothed in outer garments of nontransparent material, or who display or expose themselves in underclothing or similar intimate apparel.
- N. A list of services available and the cost of such services shall be posted in an open and conspicuous public place on the premises, or provided to clients before services are rendered. The services shall be described in English and may also be described in such other languages as may be convenient. No massage establishment shall permit, and no person employed or retained by the massage establishment shall offer to perform, any services or request or demand fees other than those posted.
- O. All payments for massage therapy services, including gratuities or tips, shall be made only in the designated reception and waiting area and not in the massage therapy room. Any gratuities or tips that are solicited from the client in violation of this provision shall be presumed to be for the purpose of committing a sexually related act and may be grounds for the suspension or revocation of the owner's Massage Establishment Permit.
- P. No condoms, or written material or merchandise of a sexually explicit nature, shall be furnished, used, stored or kept on the premises of a massage establishment.
- Q. The use or possession of adult-oriented merchandise in or on any part of a massage establishment is expressly prohibited.
- R. No electrical, mechanical or artificial device shall be used by the massage establishment for audio and/or video recording or for monitoring the performance of a massage, or the conversation or other sounds in the massage therapy room or cubicle, without the knowledge or written consent of the client.
- S. The massage establishment shall fully maintain current and valid Workers' Compensation insurance as required by law at all times. Proof of insurance shall be maintained on the premises at all times.

- T. No alcoholic beverages shall be sold, served, furnished, kept, consumed, or possessed on the premises of any massage establishment.
- U. Controlled substances must not be consumed in a massage establishment unless the person has a prescription for the substance.
- V. No owner, operator, or any person employed or retained by the massage establishment shall permit, and no rent-space therapist shall offer or perform, any service other than those permitted under this chapter.
- W. A massage establishment shall not be used for residential or sleeping purposes unless the massage establishment is properly zoned and has all necessary use permits, and the massage establishment is owned by one individual with one or fewer employees or independent contractors.
- X. Massage establishment personnel or any massage therapist shall not inquire as to whether any client is a peace officer.

**5.18.140 Facilities Requirements**

- A. No massage services shall be given in any room or space enclosed or divided by walls and fitted with a door capable of being locked from the inside. This section shall not apply to the massage establishment's external doors and shall not operate to prohibit a massage establishment from locking its external doors if the massage establishment is owned by one individual with one or no employees or independent contractors.
- B. A list of services available and the cost of the services shall be posted in an open and conspicuous public place on the premises. The services shall be described in English and any other languages that the massage establishment chooses. Only services on the posted list shall be performed.
- C. Minimum lighting consisting of at least one artificial light of not less than forty watts shall be provided and shall be operating in each room or enclosure where massage services are being performed on clients, and in all areas where clients are present.
- D. Massage establishments shall at all times be equipped with an adequate supply of clean sanitary towels, coverings, and linens. Clean towels, coverings, and linens shall be stored in enclosed cabinets. Towels and linens shall not be used on more than one client, unless they have first been laundered and disinfected. Disposable towels and coverings shall not be used on more than one client. Soiled linens and paper towels shall be deposited in separate, approved receptacles.
- E. All walls, ceilings, floors, pools, showers, bathtubs, steam rooms, and all other physical facilities, shall be in good repair and maintained in a clean and sanitary condition.
- F. Adequate bathing, dressing, locker and toilet facilities shall be provided for clients. A minimum of one tub or shower; one dressing room containing a separate locker for each client to be served, which locker shall be capable of being locked; as well as a minimum of one toilet and washbasin, shall be provided in every massage

establishment; provided, however, that if male and female clients are to be served simultaneously at the massage establishment, separate bathing, massage room(s), dressing room(s), and toilet facilities shall be provided for male and female Clients. This requirement may be modified upon approval of the Planning Director if the services provided or site plan do not necessitate some or all of these facilities.

- G. A minimum of one 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 performing massage services. Sanitary towels shall also be provided at each basin. Hot and cold running water shall be provided at all times.
- H. In the reception area, in letters that are a minimum of one inch in height, a notice in English (and any other language that the massage establishment chooses) that provides substantially as follows: THIS MESSAGE ESTABLISHMENT AND THE MESSAGE ROOMS DO NOT PROVIDE COMPLETE PRIVACY AND ARE SUBJECT TO INSPECTION BY CITY AND HEALTH OFFICIALS WITHOUT PRIOR NOTICE.
- I. No room or space enclosed or divided by walls and fitted with a door where massage services are performed shall be equipped with any electronic, mechanical, or artificial device used or capable of being used, for the recording or videotaping of visual images and/or sound.
- J. Wet and dry heat rooms, steam or vapor rooms or cabinets, toilet rooms, shower and bath rooms, tanning booths, whirlpool baths and pools shall be thoroughly cleaned and disinfected as needed or required.
- K. Table showers, water tables, sitz massage tables, vichy showers and similar devices are prohibited.
- L. Standard or portable massage tables shall be used with a durable, washable plastic or other waterproof material as a covering. The tables shall be sanitized after each use.
- M. A massage establishment shall operate only under the name specified in its Massage Establishment Permit.
- N. No massage establishment located in a building or structure with exterior windows fronting a public street, highway, walkway, or parking area shall block visibility into the interior reception and waiting area through the use of curtains, closed blinds, tints, or any other material that obstructs, blurs, or unreasonably darkens the view into the premises.

**5.18.150 Additional Permittee Responsibilities**

- A. It shall be the responsibility of the massage establishment permittee who employs or allows any person acting or purporting to act as a massage therapist, or the employer of any person acting or purporting to act as a massage therapist, to ensure that such person complies with the requirements of this chapter and all laws.

- B. The massage establishment permittee shall be held responsible for the conduct of all persons on the premises who engage in providing the service of massage therapy. Any act or omission of any person giving massage therapy, or any service of massage therapy, shall be deemed the act or omission of the holder of the massage establishment permit for the purposes of determining whether the permit may be revoked, suspended, or denied. Proof of knowledge of any violation of this section shall not be required for purposes of suspension, revocation, or denial of a Massage Establishment Permit.

**5.18.160 Cease of Business**

If at any time during the duration of a permit issued under this chapter a permittee ceases to do business as a massage establishment, the permittee shall:

- A. Return any permit issued under this Chapter to the Planning Director within 5 business days;
- B. Notify the Business License Department.

**5.18.170 Inspection**

- A. The City, including the Police Department shall, from time to time and during any hour in which a massage establishment is open for business, make an administrative inspection of each massage establishment for the purpose of determining compliance with this chapter.

**5.18.180 Violations**

- A. It is the duty of the Planning Director, Community Improvement Officer, Police Chief or designees to enforce the rules and regulations in accordance with this Chapter.
- B. Pursuant to the City's prosecutorial discretion, the City may enforce violations of the provisions of this chapter as criminal, civil and/or administrative actions.
- C. Any person who violates the provisions of this chapter may be subject to administrative fines in an amount not to exceed one thousand dollars (\$1,000), or such other amount as may be permitted under section 36901 of the California Government Code. In addition to the recovery of administrative fines, the City may recover its costs and expenses incurred in enforcing a violation of this chapter. An order to pay administrative fines and costs may be appealed pursuant to section 1.12.210.
- D. If a person falsely states or advertises or puts out any sign or card or other device, or falsely represents to the public through any print or electronic media, that he or she or any other individual is licensed, certified, or registered by a governmental agency as a massage therapist or massage practitioner, that person shall be subject to a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, to be assessed and collected in a civil action brought by the City Attorney, District Attorney, or Attorney General.

E. Notwithstanding any other provision of this chapter, a Massage Establishment Permit may not be issued, renewed or amended unless and until due and unpaid citations are paid in full.

**5.18.190 Nuisance**

- A. Any use or condition caused or permitted to exist in violation of any of the provisions of this chapter shall be and is hereby declared a public nuisance.
- B. The violation of any provision of this chapter shall be and is hereby declared to be contrary to the public interest and shall, at the discretion of the City, create a cause for injunctive relief.
- C. Any person subject to this chapter who personally, or through an agent, employee, independent contractor or other representative, violates any provision of this chapter shall be guilty of a separate offense for each and every day during any portion of which any such violation is committed, continued or permitted by such person. All remedies provided herein shall be cumulative and not exclusive.”

SECTION 3. Section 17.30.030 is hereby amended to reflect the information contained in the following table:

**TABLE 17.30.030-1 ALLOWED LAND USES AND PERMIT REQUIREMENTS BY BASE ZONING DISTRICT**

Land Use/Zoning District	VL	L	LM	M	MH	H	MU	OP	NC	GC	CC	SC	RRC	CO	IP	GI	MI/HI	HI	OS	HR	FC	UC
<b>Retail, Service and Office Uses</b>																						
Massage Establishment <sup>(12)</sup>	N	N	N	N	N	N	P	P	P	P	P	P	P	P	N	N	N	N	N	N	N	N
Massage Establishment, Ancillary <sup>(12)</sup>	N	N	N	N	N	N	P	P	P	P	P	P	P	P	P	P	N	N	N	N	N	N

(12) *Massage Establishment Permit required. See additional regulations for massage establishments in Chapter 5.18.*

SECTION 4. The purpose of this Section is to provide for the discontinuance of every massage establishment rendered legally nonconforming by this Ordinance because it is not located within a commercial zone while providing property owners sufficient time to amortize any property investments in order to avoid the potential taking of property.

a. For purposes of this Section, the term "Nonconforming massage establishment" means a massage establishment rendered legally nonconforming by this Ordinance because it is not located within a commercial zone.

b. All nonconforming massage establishments shall be discontinued on the later occurrence of either: (1) the anniversary of the effective date of this Ordinance; or (2) the expiration of the term of a lease on the property entered into for the subject property prior to the effective date of this Ordinance.

c. Notwithstanding the preceding paragraph, the owner of a nonconforming massage establishment or the owner of the property on which it is located may request an extension of the time before which the nonconforming massage establishment must be discontinued in order to amortize the property owner's investment and to avoid a potential taking of property. Such requests shall be subject to the following requirements:

i. The request for an extension must be made in writing and within 9 months of the effective date of this Ordinance and must include the following information in addition to any other relevant information required by the City: (1) the length of the requested extension of the amortization period; and (2) evidence in support of the claim that the requested extended amortization period is necessary.

ii. The Planning Director or his or her designee shall be the review authority and shall conduct a public hearing on the request. Notice and conduct of the public hearing shall comply with Section 17.14.050 of the Municipal Code. In reviewing a request, the Planning Director shall consider the following:

1. Length of the abatement period in relation to the owner's investment in the use;
2. Length of time the use was operating prior to the date of nonconformity;
3. Suitability of the structure for an alternative use;
4. Harm to the public if the use remains beyond the abatement period; and
5. Cost and feasibility of relocating the use to another site.

iii. The person making the request shall bear the burden of proof.

iv. The Planning Director, shall approve, conditionally approve, or deny the request for an extension in writing, citing findings of fact; evidence or lack thereof of economic hardship; the impact of the nonconforming massage establishment impact on the community; and other factors that may affect the length of the abatement period required to avoid an unconstitutional taking. The Planning Director shall send a copy of written decision to person who made the request within ten (10) days following the date of the Director's action.

v. Any interested person may appeal the Planning Director's decision to the City Manager or his or her designee. All appeals must be submitted in writing, identifying the determination or action being appealed and specifically stating the basis or grounds of the

appeal. Appeals must be filed within twenty (20) days following the date of the Planning Director's action. Unless otherwise agreed upon by the person filing the appeal and the applicant, appeal hearings should be conducted within a reasonable time frame from the date of appeal submittal. Notice of hearing for the appeal shall be provided pursuant to noticing requirements of Section 17.14.050 of the Municipal Code. Each appeal shall be considered a de novo hearing. The City Manager or his or her designee may act to confirm, modify, or reverse the action of the Planning Director, in whole or in part, or add or amend such conditions as deemed necessary. The action of the City Manager shall be final on the date of decision. The City shall send a copy of written decision to the person who filed the appeal within ten (10) days following the date of the City Manager's action.

SECTION 5. If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this Ordinance or any part thereof is for any reason held to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid, or ineffective.

SECTION 6. CEQA. This Ordinance is exempt from CEQA pursuant to CEQA Guidelines section 15305, minor alterations in land use, and section 15061(b)(3) which is the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment, and CEQA does not apply where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment. The City already requires permits for massage establishments regulated by this Ordinance. Therefore, there is no possibility that this Ordinance may have a significant effect on the environment.

SECTION 7. The City Clerk shall certify to the adoption of this Ordinance and shall cause the same to be published in the manner prescribed by law.

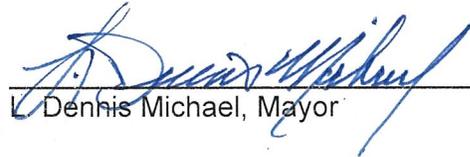
PASSED, APPROVED, AND ADOPTED this 3<sup>rd</sup> day of October 2016.

**AYES:** Alexander, Kennedy, Michael, Spagnolo, Williams

**NOES:** None

**ABSENT:** None

**ABSTAINED:** None

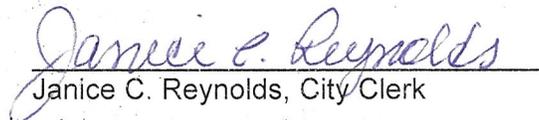
  
\_\_\_\_\_  
Dennis Michael, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Janice C. Reynolds, City Clerk

I, **JANICE C. REYNOLDS, CITY CLERK** of the City of Rancho Cucamonga, California, do hereby certify that the foregoing Ordinance was introduced at a Regular Meeting of the City Council of the City of Rancho Cucamonga held on the 21<sup>st</sup> day of September 2016, and was passed at a Special Meeting of the City Council of the City of Rancho Cucamonga held on the 3<sup>rd</sup> day of October 2016.

Executed this 4<sup>th</sup> day of October 2016, at Rancho Cucamonga, California.

  
\_\_\_\_\_  
Janice C. Reynolds, City Clerk