

ORDINANCE NO. 2772

AN ORDINANCE OF THE CITY OF REDLANDS AMENDING CHAPTER 5.28 OF THE REDLANDS MUNICIPAL CODE REGULATING MASSAGE ESTABLISHMENTS WITHIN THE CITY OF REDLANDS

WHEREAS, the City currently regulates the practice of massage and the operation of massage establishments for the benefit of the public health, safety and welfare; and

WHEREAS, Business and Professions Code section 4600 et seq. (enacted by SB 731 in 2008 and amended by AB 619 in 2011) created a statewide permitting system administered by the California Massage Therapy Council for issuing massage worker permits, thereby preempting local permitting systems and requirements; and

WHEREAS, the Business and Profession Code continues to allow certain local regulation of massage establishments and, to enable the City to carry out such local regulation and review of massage establishments found in Business and Professions Code section 4600 et seq., the City must amend its massage establishment regulations;

The City Council of the City of Redlands does ordain as follows:

Section 1. Chapter 5.28 of the Redlands Municipal Code, entitled “Massage Establishments,” is hereby deleted in its entirety and rewritten to read as follows:

“Chapter 5.28 MASSAGE ESTABLISHMENTS

- 5.28.010: Declaration of Purpose and Intent.
- 5.28.020: Definitions.
- 5.28.030: Administration.
- 5.28.040: Certifications Required.
- 5.28.050: Massage Establishment Owner Background Check Required.
- 5.28.060: Additional Requirements.
- 5.28.070: Display of Permit.
- 5.28.080: Massage Establishment – Massage Technician Certificates Required.
- 5.28.090: Prohibited Conduct.
- 5.28.100: Facilities and Operations.
- 5.28.110: Exceptions.
- 5.28.120: Public Nuisance Abatement.
- 5.28.130: Revocation.
- 5.28.140: Civil Penalties.
- 5.28.150: Appeal.
- 5.28.160: Violation.

5.28.010: Purpose and Intent.

A. This chapter establishes new permitting standards intended to comply with California law and establish health and safety guidelines for massage establishments.

B. This chapter is not intended to be exclusive and compliance will not excuse noncompliance with any state or local laws or regulations that are uniformly applied to other professional or personal services businesses including, without limitation, all zoning applications; business license regulations; building, fire, electrical, and plumbing codes; and health and safety code laws and regulations applicable to professional or personal services businesses.

C. This chapter establishes a local regulatory system that allows only state certified massage therapists and massage practitioners to operate within the City. This chapter is also intended to allow a transitional period for certain existing massage practitioners to continue practicing while they obtain state certification before December 31, 2013, and to coordinate the timing of the City's business license renewal with the state massage certification process.

5.28.020: Definitions. Unless the contrary is stated or clearly appears from the context, the following definitions govern the construction of the words and phrases used in this chapter. Words and phrases not defined by this chapter have the meaning set forth elsewhere in this Code, the Business and Professions Code, or the Government Code.

A. "California Massage Therapy Council (CAMTC)" means the California Massage Therapy Council created pursuant to Business and Professions Code section 4500.5(a).

B. "Certified Massage Practitioner" means a person who is currently certified as a massage practitioner by the CAMTC, and who administers massage for compensation.

C. "Certified Massage Therapist" means a person who is currently certified as a massage therapist by the CAMTC, and who administers massage for compensation.

D. "Chief" means the City's Chief of Police, or his or her designee, or such other City Director designated by the City Manager.

E. "City" means the City of Redlands.

F. "Massage" means any method of pressure on, or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating the external parts of the human body with the hands or with the aid of any mechanical or electrical apparatus, or other appliance or devices, with or without such supplementary aids such as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment or other similar preparations.

G. "Massage Establishment" means and includes any massage establishment, parlor, or any room, place or institution where massage is given or administered by a massage technician as the primary service of the business establishment.

H. “Massage Technician” means any person, who gives, performs or administers to another person a massage for any form of consideration.

I. “Person” means and includes persons, firms, corporations, partnerships, associations or other forms of business organization or group.

J. “Specified anatomical areas” means and includes any of the following human anatomical areas: genitals, pubic regions, anuses or female breasts below a point immediately above the top of the areola.

K. “Specified sexual activities” means and includes all of the following:

1. Fondling or other erotic touching of specified anatomical areas;
2. Sex acts including, without limitation, intercourse, oral copulation, or sodomy;
3. Masturbation; or
4. Excretory functions as part of or in connection with any specified sexual activity listed in this definition.

5.28.030: Administration: The Chief is authorized to administer this chapter and to promulgate administrative policies and procedures required to implement the regulations set forth in this chapter.

5.28.040: Certifications Required:

A. **Massage Establishment.** It is unlawful for any person to own, operate or maintain a massage establishment unless all massage technicians employed by the massage establishment hold a current, valid certification from CAMTC as a massage practitioner or massage therapist.

B. **Massage Technician.** It is unlawful for any person to engage in, or carry on the business or activities of a massage technician without a certification from the CAMTC as a massage practitioner or massage therapist.

C. **Off-premises massage service.** It is unlawful for any person to own, operate, or maintain an off-premise massage service in the city unless all massage technicians employed by the off-premises massage service hold a current, valid certification from the CAMTC as a certified massage practitioner or certified massage therapist.

5.28.050: **Massage Establishment Owner Background Check Required.**

A. Except for massage establishment owners who possess a current and valid CAMTC certification, any person, association, partnership, or corporation who owns more than five percent (5%) of a massage establishment and desires to operate that massage establishment must make an application to the Chief for an investigation of the applicant's background and history. A nonrefundable fee, in an amount set by resolution of the City Council, must accompany the submission of each application to defray the cost of investigation, inspection and enforcement of this chapter. An annual nonrefundable renewal fee will also be charged to defray associated costs of investigation, inspection and enforcement.

B. Each applicant for background check must submit the following information.

1. The full true name and any other names used by the applicant.
2. The present address and telephone number of the applicant.
3. Driver's license number and social security number.
4. The proposed address of the massage establishment.
5. Each residence and business address of the applicant for the three years immediately preceding the date of the application, and the inclusive dates for such address.
6. Written proof that the applicant is at least 18 years of age.
7. Applicant's height, weight, and color of eyes and hair.
8. Two photographs of the applicant at least two inches by two inches taken within four months preceding the date of the application.
9. Applicant's business, occupation and employment history for the five years immediately preceding the date of application.
10. The business license or permit history of the applicant, including whether such applicant has ever had any license or permit issued by any agency or board, city, county or state revoked or suspended, or has had any professional or vocational license or permit revoked or suspended and the reasons for the revocation.
11. All criminal convictions for any of the offenses set forth in this chapter, and a statement of the dates and places of such convictions.
12. If the applicant is a corporation, the name of the corporation must be set forth exactly as shown in the articles of incorporation or charter, together with the state and date of incorporation and names and residence addresses of each of its current officers and directors, and each stockholder holding more than five percent of the stock of the corporation. If the applicant is a partnership, the application must set forth the names and residence addresses of

each of the partners, including the limited partners. If the applicant is a limited partnership, it must furnish a copy of its certificate of limited partnership filed with the county clerk. If one or more partners is a corporation, the provisions of this section pertaining to corporate applicants may apply. The applicant corporation or partnership must designate one of its officers or general partners to act as its responsible managing officer. Such person must complete and sign all application forms required of any individual applicant under this chapter, but only one application fee will be charged.

13. The name and address of the owner and lessor of the real property upon or in which the massage establishment is to be operated, and a copy of the lease or rental agreement. If the applicant is not the legal owner of the property, a notarized acknowledgement from the owner of the property that a massage establishment will be located on his or her property is required for each massage establishment permit location.

14. The full true names and other names used, the present addresses and telephone numbers, driver's license numbers, and social security numbers, and state certificates from the CAMTC or transitional licenses for all massage technicians who will be working as employees or independent contractors at each massage establishment permit location. The applicant must provide the Chief with any changes in the massage technicians that work at the massage establishment during the permit period within 10 working days of each change.

15. The Chief may require the applicant to furnish fingerprints when needed for the purpose of verifying identification.

16. Such other identification and information as may be required by the Chief in order to verify the information to be included in the application.

C. The city is allowed a reasonable time, not to exceed 60 days, in which to investigate the information on the application. During the investigation of the background information, a city representative including, without limitation, a member of the Police Department, Fire Department, Building and Safety Division, Planning Division, or any authorized representative thereof, may inspect, with or without the notice during regular business hours, the proposed place of business to determine whether it conforms to the requirements of this chapter. Upon completion of the inspection, the city representative must inform the Chief in writing of the findings of the inspection.

1. Background clearance will be issued, within 60 days of receipt of the application, to any applicant who has furnished all of the information required by this section in the application for such license, provided:

a. The applicant has not made a material false statement in the application and that all massage technicians who will be working as employees or independent contractors at each massage establishment permit location possesses certification from the CAMTC as a massage practitioner or massage therapist.

b. The applicant, if an individual, or in the case of an applicant which is a corporation or partnership, any of its officers, directors, holders or five percent or more of the corporation's stock, has not, within five years immediately preceding the date of the filing of the application been convicted in a court of competent jurisdiction of any of the following offenses: Penal Code sections 243.4; 261; 266a through 266j; 267; 314 to 316; 318; or 647 (a, b, d); any offenses requiring registration under Penal Code section 290 or Health and Safety Code section 11590; or any felony offense involving the possession, possession for sale, sale, transportation, furnishing, or giving away of a controlled substance specified in Health and Safety Code sections 11054 to 11058, as amended; or any offense in another state in which, if committed in California, would have been punishable as one or more of heretofore mentioned offenses; or any offense involving the use of force or violence upon the person of another; or any offense involving theft, embezzlement or moral turpitude;

c. The applicant is at least 18 years of age; and

d. The applicant has not had a massage technician, massage establishment, escort service, nude entertainment, nude photo studio or similar type of license or permit suspended within one year or revoked within three years immediately preceding the date of the filing of the application, unless the applicant can show a material change in circumstances or that mitigating circumstances exist since the revocation or suspension.

5.28.060: Additional Requirements. Before operating a massage establishment in the city, massage establishment owners must comply with all applicable codes adopted by the city, including, without limitation, the building, electrical, and plumbing codes.

5.28.070: Display of Permit. Any owner of a massage establishment or off-premise massage service must display the CAMTC certificates for all massage technicians prominently in a conspicuous place, capable of being viewed by customers or city representatives, at every location where massage is performed or conducted. For off-premise massage services, massage workers must also carry a copy of their CAMTC certificate and display it to customers upon request.

5.28.080: Massage Technician Certificates Required. It is unlawful for owners of massage establishments or off-site massage services to allow any person to perform massage that is not a certified massage therapist or certified massage practitioner.

5.28.090: Prohibited Conduct. It is unlawful for owners of massage establishments or off-premise massage services, or massage technicians to conduct or allow any of the following activities:

A. It is unlawful for any massage technician or any other employee working in a massage establishment or for an off-premise massage service, or customers, patrons, or

guests of the establishment or service, to engage in any specified sexual activities upon the premises of the massage establishment or the off-premise massage location.

B. It is unlawful for any massage technician or other employee of a massage establishment to expose specified anatomical areas in the presence of any patron, customer or guest.

C. In the course of administering the massage, it is unlawful for any massage technician or other massage establishment employee to make intentional physical contact with the specified anatomical areas of any customer, patron or guest.

5.28.100: Facilities and Operations. It is unlawful for any massage establishment to operate unless the massage establishment premises and operation comply with following minimum requirements:

A. Signs. A readable sign must be posted at the main entrance identifying the establishment as a massage establishment, provided, however, that all such signs must otherwise comply with the sign requirements of this code.

B. Lighting. Minimal lighting must be provided in accordance with the California Building Code, as adopted by this code, and, in addition, at least one unobstructed artificial light of not less than nine hundred (900) lumens must be provided in each enclosed room or booth where massage services are being performed on a patron.

C. Ventilation. Minimum ventilation must be provided in accordance with the California Building Code, as adopted by this Code.

D. Disinfection of Instruments. Instruments used for massage must be disinfected before each use. Where instruments for massage are employed, adequate quantities of supplies for disinfection must be available during all hours of operation.

E. Water. Hot and cold running water must be provided at all times.

F. Linen Storage. Closed cabinets must be utilized for the storage of clean towels and linen. After use, towels and linen must be removed and stored in a separate container until laundered.

G. Dressing and Toilet Facilities. For massage establishments consisting of 1500 square feet or more, or having more than 4 employees, separate dressing and toilet facilities must be provided for male and female patrons. This condition does not apply to massage establishment that offer foot massage services and provide other form of massage services or other type of activity regulated by this chapter.

H. Sanitary Conditions. All walls, ceilings, floors, steam and vapor rooms, and all other physical facilities for the massage establishment must be kept in good repair and be maintained in a clean and sanitary condition.

I. Clean Linen. Clean and sanitary towels and linens must be provided for patrons receiving massage services. No common use of towels or linens is permitted.

J. Compliance with Laws. The premises to be used must at all times comply with all applicable state and local laws and regulations.

K. Any room in which a massage establishment provides massage services may not be used for residential sleeping purposes.

L. A register of all individuals employed as massage technicians, and copies of their current CAMTC certifications and massage technician business licenses, must be maintained and available for inspection at all times during regular business hours.

M. Each person present in any area of the massage establishment outside the waiting area or other areas open to any member of the public must be a certified massage practitioner or certified massage therapist or the massage establishment owner.

N. The permits and certifications required by this chapter must be displayed in an open and conspicuous public place on the premises.

5.28.110: Exceptions. This chapter does not apply to the following classes of individuals, and no CAMTC certification is required of such persons, while engaged in the performance of the duties of their respective professions:

A. Acupuncturists who are duly certified to practice their profession in the state of California.

B. Barbers, beauticians, and cosmetologists with respect to scalp massage, who are duly permitted pursuant to Business and Professions Code section 7301 et seq., in accordance with the limitations of their permits.

C. Nurses who are registered as such under the laws of the state of California.

D. Physicians, surgeons, chiropractors, osteopaths, or physical therapists who are duly permitted to practice their respective professions in the state of California, or provide professional services in lawful compliance with Corporations Code section 13401(a).

5.28.120: Public Nuisance Abatement. Any massage establishment operated, conducted or maintained contrary to the provisions of this chapter is unlawful and a public nuisance. The City Attorney is authorized, in addition to or in lieu of any other legal or criminal proceedings, to commence an action or proceeding for abatement, removal or enjoinder of such massage establishment in the manner provided by law. The City Attorney may seek a court order to grant such relief to abate or remove such massage establishments and restrain and enjoin any person from operating, conducting or maintaining such an establishment contrary to the provisions of this chapter.

5.28.130: Revocation. Grounds for Revocation. The Chief may revoke any approval issued under this chapter for one or more of the following grounds:

- A. Fraud or Deceit. That the applicant practiced fraud or deceit in obtaining an approval under this chapter;
- B. Violation of Chapter. That the massage establishment owner, operator, massage technician, or its employee violated a provision or provisions of this chapter;
- C. Criminal Conviction. That the massage establishment owner, operator, massage technician, or its employee has been convicted in a court of competent jurisdiction of any offense described in this chapter;
- D. Improperly Maintained Facilities. That the facilities and operations of the massage establishment are not kept in compliance with this chapter, and that the owner or operator has failed to promptly remedy deficiency of which they have been notified. For purposes of this subsection, “notice” means notice given personally or by leaving notice at the massage establishment premises, or by first class mail, postage prepaid, to the address designated by the massage technician or establishment in accordance with this chapter;
- E. Employment of Uncertified Technicians. That the massage establishment has employed, allowed or permitted an uncertified person to perform massage in the massage establishment;
- F. Error. That the approval was issued in error.
- G. Civil Penalties. Assessment of three or more civil penalties as provided by this chapter during the any six month period; or
- H. Prohibited Conduct. A massage establishment owner, operator, massage technician, or its employee or agent has been found to have engaged in prohibited conduct in violation of this chapter.

Upon a determination on the grounds to revoke an approval under this chapter, the Chief must cause a notice of revocation to be mailed by first class, postage prepaid mail, to the address designated by the massage technician or establishment pursuant to this chapter.

5.28.140: Civil Liability and Penalties.

- A. Any person violating any provision of this chapter is liable in a civil action brought by the City Attorney of an amount up to \$500 per violation. Such person is also liable for reasonable attorneys’ fees and costs incurred by the City Attorney in any civil proceeding filed to enforce this chapter.

B. Enforcing this chapter through civil action may be filed as an alternative to criminal enforcement. Civil enforcement does not require the violation to be knowing or willful. A civil action cannot be filed if the person is being criminally prosecuted.

C. Each violation of this chapter is a separate offense subject to the civil penalty.

D. The City Attorney may settle any civil enforcement before or after to the filing of a civil action by imposing a civil penalty in an amount not exceeding the potential civil liability, including attorneys' fees set forth in this section. If such civil penalty is paid in full, the City Attorney can agree not to file civil or criminal actions or, if action has already been filed, may dismiss such action. Imposition of all civil penalties is public record.

E. All civil fines must be deposited into the general fund.

5.28.150: Appeal. Any person denied an approval under this chapter or a massage establishment owner or operator whose approval has been revoked may appeal the denial or revocation in writing pursuant to the appeal procedures provided in by chapter 1.09 of this code. Such appeal must be in writing and must be filed with the City Clerk not more than fifteen (15) days following the Chief's deposit into the mail of the notice of denial or revocation sent to the applicant or massage establishment owner or operator to the address listed by the applicant or massage establishment owner or operator pursuant to this chapter. Any successful appeal will result in approval or reinstatement of an approval and refund of any fines collected by the City.

5.28.160 Violation. In addition to any other penalties provided for in this chapter, any person who violates, or causes or permits the violation of, any provision of this chapter shall be deemed guilty of a misdemeanor, or at the discretion of the City Attorney, may be deemed guilty of an infraction, as the interests of justice warrant."

Section 2: This ordinance is exempt from review under the California Environmental Quality Act (California Public Resources Code section 21000 et seq., "CEQA") and the State CEQA Guidelines (14 California Code of Regulations section 15000 et seq.) because it establishes rules and procedures to permit operation of existing facilities; consists only of minor revisions and clarifications to existing regulations and specification of procedures related thereto; and consists of actions taken to assure the maintenance, protection and enhancement of the environment. This ordinance, therefore, does not have the potential to cause significant effects on the environment. Consequently, it is categorically exempt from further CEQA review under State CEQA Guidelines sections 15301, 15305 and 15308.

Section 3. If any part of this ordinance or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this ordinance are severable.

Section 4. The Mayor shall sign this ordinance and the City Clerk shall certify to the adoption of this ordinance and shall cause it, or a summary of it, to be published once in the

Redlands Daily Facts, a newspaper of general circulation within the City, and thereafter, this ordinance shall take effect as provided by law.

Pete Aguilar, Mayor

ATTEST:

Sam Irwin, City Clerk

I, Sam Irwin, City Clerk of the City of Redlands, hereby certify that the foregoing ordinance was duly adopted by the City Council at a regular meeting thereof held on the ____ day of _____, 2012.

AYES:

NOES:

ABSENT:

ABSTAINED:

Sam Irwin, City Clerk