

ORDINANCE NO. 2016-5

AN ORDINANCE OF THE CITY OF LAGUNA HILLS,
CALIFORNIA, AMENDING AND RESTATING CHAPTER 4-
28 OF TITLE 4 OF THE LAGUNA HILLS MUNICIPAL CODE
RELATING TO THE REGULATION OF MASSAGE
ESTABLISHMENTS

THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA,
HEREBY FINDS AND DETERMINES AS FOLLOWS:

WHEREAS, Article XI, Section 7 of the California Constitution authorizes the City of Laguna Hills ("City") to make and enforce within its limits all ordinances and regulations not in conflict with general laws; and

WHEREAS, in 2008, the state legislature adopted Senate Bill 731 ("SB 731"), Section 4600 *et seq.* of the Business and Professions Code, relating to voluntary statewide certification of massage practitioners and therapists, and restricting local control of massage establishments; and

WHEREAS, SB 731 precluded cities from imposing local licensing and regulatory requirements on massage establishments that utilized state-certified massage therapists and practitioners exclusively; and

WHEREAS, the enactment of SB 731 has had an unintended consequence of causing the proliferation of illicit massage establishments that are fronts for prostitution and may also be involved in human trafficking; and

WHEREAS, like most cities in California, since the enactment of SB 731 the City has experienced a proliferation of massage establishments. In 2008, twelve (12) massage establishments were located within the City; there are presently twenty-nine (29) massage establishments in the City, some of which are suspected allowing sexually explicit activity to occur on the premises, including prostitution and that commonly advertise their services online using suggestive language and provocative photographs of scantily-clad women; and

WHEREAS, Assembly Bill 1147, signed by Governor Jerry Brown, and referred to as the "Massage Therapy Act", was enacted in response to criticism against SB 731 and restores local regulatory authority over massage establishments by allowing cities to impose reasonable conditions on the operation of massage establishments; and

WHEREAS, the City seeks to amend the Laguna Hills Municipal Code to conform to the requirements of the Massage Therapy Act and to regulate the business of massage to the extent authorized by the Massage Therapy Act by imposing permit

requirements and restrictions that are reasonably necessary to protect the health, safety and welfare of the citizens of the City; and

WHEREAS, it has been the experience of the City that illicit massage establishment operators have repeatedly evaded meaningful and effective regulation by simply transferring ownership of a massage business following the City's commencement of operator's permit revocation or non-renewal proceedings for cause, with a continuation of illicit services being provided thereafter at the same location and often with the same management and staff; and

WHEREAS, this Ordinance will facilitate meaningful and effective regulation of massage establishments by prohibiting any new massage establishment from opening for business at a location for a period of twelve (12) months where either: (1) the City has revoked or refused to renew an operator's permit for a massage establishment previously operating at the same address following the issuance of a notice of intent to revoke the operator's permit or a notice of intent to refuse to renew the operator's permit and a timely appeal was not filed by the permittee; (2) the City has revoked or refused to renew an operator's permit for a massage establishment previously operating at the same address following the issuance of a notice of intent to revoke the operator's permit or a notice of intent to refuse to renew the operator's permit, which revocation or refusal to renew decision was upheld by an administrative hearing officer on appeal; or (3) a massage establishment previously operating at the same address was voluntarily closed and/or the provision of massage services at the address discontinued after the issuance of a notice of intent to revoke the operator's permit or a notice of intent to refuse to renew the operator's permit and a timely appeal was not filed by the permittee; and

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

WHEREAS, there is a significant risk of injury to massage clients by improperly trained and/or educated massage therapists and this Ordinance provides reasonable safeguards against injury and economic loss; and

WHEREAS, the regulations and restrictions contained in this Ordinance reduce the burdens on the City's police personnel and permit the deployment of the police personnel such that more serious crimes may be prevented and more important laws be enforced.

THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA,
DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Chapter 4.28 (Massage Establishments) of Title 4 (Business Regulations) of the Laguna Hills Municipal Code is hereby amended and restated in its entirety to read as follows:

**Chapter 4-28
MESSAGE ESTABLISHMENTS**

Sections:

<u>4-28.010</u>	Findings and purpose.
<u>4-28.020</u>	Definitions.
<u>4-28.030</u>	State certification and operator's permit required.
<u>4-28.040</u>	Application for operator's permit.
<u>4-28.050</u>	Operator's permit issuance and denial.
<u>4-28.060</u>	Operational requirements.
<u>4-28.070</u>	Inspection by city official.
<u>4-28.080</u>	Out-call massage.
<u>4-28.090</u>	Home occupation prohibited.
<u>4-28.100</u>	Exemptions.
<u>4-28.110</u>	Transfer and duration of operator's permits.
<u>4-28.120</u>	Suspension, revocation, denial and appeal.
<u>4-28.130</u>	Application to existing massage establishment.
<u>4-28.140</u>	Violation—Penalty.

4-28.010 Findings and purpose.

The City Council finds and declares as follows:

- A. The permit requirements and restrictions imposed by this chapter are reasonably necessary to protect the health, safety and welfare of the citizens of the city.
- B. The city is authorized, by virtue of Section 7 of Article XI of the California Constitution, California Business and Professions Code Sections 460(c), 4612(b) and 16000, and California Government Code Section 51030 *et seq.*, as may be amended from time to time, to regulate massage establishments by imposing reasonable conditions on the operation of massage establishments.
- C. There is a significant risk of injury to massage clients by improperly trained and/or educated massage technicians and this chapter provides reasonable safeguards against injury and economic loss.
- D. Massage establishments present an opportunity for acts of prostitution, human trafficking, and the use and sale of illegal drugs. Such illegal activity has been documented by police reports in cities in Orange County, including but not limited to Garden Grove, Huntington Beach, and Lake Forest, which have several massage establishments. Courts have long recognized massage as a pervasively regulated activity and that some massage establishments are brothels in disguise. The enactment of reasonable standards and restrictions on the operation of massage establishments will serve to reduce the risk of illegal activity.

E. The regulations and restrictions contained in this chapter reduce the burdens on the city's police personnel and permit the deployment of the police personnel such that more serious crimes may be prevented and more important laws be enforced.

F. The regulations and restrictions contained in this chapter tend to discourage massage establishments from degenerating into houses of prostitution or sites for illegal drug use and sales; the means utilized in this chapter bear a reasonable and rational relationship to the goals sought to be achieved.

4-28.020 Definitions.

Unless the particular provision or the context otherwise requires, the definitions and provisions contained in this section shall govern the construction, meaning, and application of words and phrases used in this chapter.

"Acupressure" means the act of applying manual pressure to parts of the body with the intention of treating illness and/or disease or relieving pain.

"Application Filing Fees" means (1) the appropriate filing fee(s) established by the City Council, which represents the city's reasonable cost to process an application for a new or renewed massage establishment operator's permit and provide regulatory functions necessary to enforce this chapter, including without limitation inspections of massage establishments, and (2) the appropriate filing fee(s) as established by resolution of the Orange County Board of Supervisors, which represents the Orange County Sheriff's Department's cost to conduct an investigation in connection with an application for a new or renewed massage establishment operator's permit.

"CAMTC" means the California Massage Therapy Council, a non-profit organization formed pursuant to California Business and Professions Code Section 4600 *et seq.*

"Certified massage practitioner" means any individual certified by CAMTC as a certified massage practitioner or as a certified massage therapist pursuant to California Business and Professions Code Section 4600 *et seq.*

"Chief of Police Services" means the Chief of Police Services of the city of Laguna Hills or the member of the Orange County Sheriff's Department who serves as the commanding officer for the area of Orange County which includes the city of Laguna Hills, or his or her designee.

"City Council" means the City Council of the city of Laguna Hills.

"City Manager" means the City Manager of the city of Laguna Hills, or the City Manager's designee.

"Conviction" and "convicted" means a plea or verdict of guilty or a conviction following a plea of *nolo contendere*.

"Director" means the Community Development Director or the Community Development Director's designee.

"Employee" includes every owner, partner, operator, manager, supervisor, person and worker, whether paid or not, full-time or part-time, who renders personal services of any nature or is otherwise employed or retained in support of the operation of a massage establishment. For purposes of this chapter, the term "employee" includes independent contractors. Additionally, the term "employee" shall also include certified massage practitioners who provide massage, whether as independent contractors or otherwise, in or for a massage establishment.

"Manager" means a person or persons designated or authorized by the owner or operator of the massage establishment to act as the representative and agent of the owner or operator in managing day-to-day operations with the same liabilities and responsibilities. Evidence of management may include, but is not limited to, evidence that the individual has power to direct or hire and dismiss employees, control hours of operation, create policy or rules, or purchase supplies. A manager may also be an owner or operator. A massage establishment may have more than one manager.

"Massage" or "massage services" means any method of applying pressure on, causing friction against, stroking, kneading, rubbing, tapping, pounding, vibrating, acupressure, or bodywork, stimulating, compression on or movement of the external parts of the human body of another, either directly with the hands or some other body part, with or without the aid of or by means of any mechanical or electrical apparatus, hot stones, or other appliance or device, for money or any form of consideration. Massage may incorporate supplementary aids such as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment or other similar preparations commonly used in this practice.

"Massage establishment" means any business or establishment with a fixed location within the city of Laguna Hills where any individual, firm, association, partnership, limited liability company, corporation, or combination of individuals, offers, engages in, conducts, carries on or permits to be engaged in, conducted or carried on, massage services within the city, including the business office of a sole provider who provides massage services at such business office. Any type of business or establishment at which massage services are provided shall be considered a massage establishment for purposes of this chapter, regardless if the business holds itself out as something other than a massage establishment and/or also offers or provides other types of products or services. Any business or establishment that offers any combination of massage services and sauna facilities, including, but not limited to, showers, baths, wet and dry heat rooms, pools and hot tubs, shall be deemed a massage establishment under this chapter.

"Operator's permit" means the permit required pursuant to the provisions of this chapter to operate a massage establishment.

"Out-call massage" means the provision of massage at a location other than at a massage establishment. Such locations may include, but are not limited to, hotel rooms, offices, business establishments, or patron residences.

"Owner" or "operator" means any and all persons who have an ownership interest in a massage establishment who are responsible, in whole or in part, for its day-to-day operations including, but not limited to, any of the following persons: the sole proprietor of a sole proprietorship, any general or limited partner of a general or limited partnership, any shareholder of a corporation, any member or manager of a limited liability company.

"Person" means any individual or combination of individuals, sole proprietor, firm, association, partnership, corporation, limited liability company, joint venture, or other entity.

"Police Services Department" means the Police Services Department of the city of Laguna Hills, under contract with the Orange County Sherriff's Department.

"Seated massage" means any massage of the neck, arms, hands, shoulders, head, scalp and back area above the waist where the patron is fully clothed, sitting in a special chair designed for upper body massage and performed without the use of supplementary aids such as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment or other similar preparations commonly used in the practice of massage.

"Sole provider" means any legal form of business organization where the business owner owns 100% of the business, is the only person who provides massage services for compensation for that business pursuant to a valid and active state certificate, and has no other employees or independent contractors.

"State certification" or "state certificate" means a valid and current certificate issued by CAMTC pursuant to California Business and Professions Code Section 4600 *et seq.*, as may be amended from time to time.

4-28.030 State certification and operator's permit required.

A. Except as otherwise provided in Section 4-28.100, no individual shall engage in, conduct, carry on, administer, provide, practice or perform massage services within the city of Laguna Hills without first obtaining and thereafter maintaining state certification and presenting proof of such state certification, in accordance with the provisions of this chapter.

B. Except as otherwise provided in Section 4-28.100, no person shall engage in, conduct or carry on, or permit to be engaged, conducted, or carried on in or upon any premises within the city of Laguna Hills, the operation of a massage establishment without first obtaining and thereafter maintaining an operator's permit pursuant to this chapter, and without otherwise complying with the provisions of this chapter and Title 9 of this code.

C. No owner, operator or manager shall employ as an employee or otherwise retain any individual to conduct, carry on, administer, provide, practice or perform massage services within the city of Laguna Hills unless such individual has a state certificate. For

purposes of this chapter, an owner, operator or manager employs or retains an individual if: (1) that individual is a directly paid employee of the massage establishment; (2) that individual's association with the massage establishment is that of an independent contractor who receives compensation for massage services provided to patrons of the massage establishment; or (3) that individual receives a patron referral(s) from the massage establishment and arranges in any way for compensation to flow to such owner, operator, manager or massage establishment.

D. No operator's permit shall be issued to a person pursuant to this chapter unless: (1) the massage establishment is located and conducted within a zoning district that permits such uses; and (2) a certificate of use and occupancy permit ("COUO") has been issued for the by the city for the massage establishment, and all applicable COUO fees, established by resolution of City Council, have been paid.

4-28.040 Application for operator's permit.

A. Any person desiring an operator's permit for a massage establishment business shall file a written application on the required form with the Director, who shall process the application. The application shall be accompanied by an appropriate filing fee established by the City Council, which represents the city's reasonable cost to process the application and provide regulatory functions necessary to enforce this chapter, including without limitation inspections of massage establishment, and an appropriate filing fee as established by resolution of the Orange County Board of Supervisors, which represents the Orange County Sheriff's Department's costs to conduct an investigation, collectively referred to herein as the "Application Filing Fees". The application shall be completed and signed by the operator of the proposed massage establishment, if a sole proprietorship; one general partner, if the operator is a partnership; one officer or one director, if the operator is a corporation; one member or one manager, if the operator is a limited liability company; and one participant, if the operator is a joint venture. The application for an operator's permit does not authorize operation of a massage establishment unless and until such permit has been properly granted. The application shall contain or be accompanied by the following:

1. The type of legal entity or entities owning the proposed massage establishment, i.e., whether a sole proprietorship, partnership, limited liability company, corporation, or otherwise. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation or charter together with the state and date of incorporation and the names and residence addresses of each of its current officers and directors, and of each shareholder holding more than five (5) percent of the stock of that corporation. If the applicant is a limited liability company, the name of the limited liability company shall be set forth exactly as shown in its articles of organization or other organizational document together with the state and date of organization and the names and residence addresses of each of its current officers and directors, and of each member or other person who has an ownership interest in the limited liability company. If the applicant is a partnership, the application shall set forth the name and residence addresses of each of the partners, including limited partners. If it is a limited partnership, it shall furnish a copy of its certificate of limited partnership

filed with the Secretary of State. If one or more of the partners is a corporation or limited liability company, the provisions of this subsection pertaining to corporations and limited liability companies shall apply. An applicant that is a corporation, limited liability company or partnership shall designate one of its officers, members, managers, or general partners to act as its responsible managing officer. Such designated individual shall complete and sign all application forms required for an individual applicant under this chapter, but the Application Filing Fees shall only be charged once in connection with the application.

2. The precise name under which the massage establishment is to be conducted.

3. The present or proposed address and telephone numbers of the massage establishment.

4. A complete list of the names and residence addresses of all current or proposed employees of the massage establishment and the name and residence address of each manager proposed to be principally in charge of the operation of the massage establishment.

5. True and correct copies of a valid and current state certificate and CAMTC-issued identification card for each employee proposed to provide massage services at the massage establishment.

6. A description of any other business to be operated on the same premises as the massage establishment.

7. The name, address, and description of any other business within the city or the state, which is owned or operated by the applicant.

8. The following personal information concerning the applicant:

a. Full complete name and all aliases used by the applicant.

b. A valid and current driver's license and/or identification card issued by a state or federal government agency or other photographic identification bearing a bona fide seal by a foreign government.

c. Current residential address and all previous residential addresses for eight years immediately preceding prior to the present address of the applicant.

d. Date of birth.

e. Height, weight, color of hair, eyes, and sex.

- f. Two front faced portrait photographs at least two inches by two inches in size taken within thirty (30) days of submission of the application.
 - g. The applicant's complete business, occupation, and employment history for eight years preceding the date of application, including, but not limited to, the massage or similar business history and experience of the applicant.
 - h. The complete massage permit history of the applicant; whether such person has ever had any permit or license issued by any agency, board, city, county, territory, or state; the date of issuance of such a permit or license; whether any such permit or license was ever denied, revoked, or refused to be renewed and the reason therefore.
 - i. All criminal convictions, including pleas of nolo contendere, within the last ten (10) years including those dismissed or expunged pursuant to Penal Code Section 1203.4, but excluding minor traffic violations, and the date and place of each such conviction and reason therefor.
 - j. A complete set of fingerprints taken by the Police Services Department.
9. The name and address of the owner and lessor of the real property upon or in which the massage establishment is to be conducted. In the event the applicant is not the legal owner of the property, the application must be accompanied by a copy of the lease and a notarized acknowledgment from the owner of the property that a massage establishment will be located on his or her property, and that the massage establishment shall be subject to this chapter.
10. A statement signed by the applicant authorizing the city, its officers, agents and employees, to seek information and conduct an investigation into the truth of the statements set forth in the application and to ensure compliance with the provisions of this chapter.
11. A statement signed by the applicant confirming that the massage establishment shall only employ as employees certified massage practitioners to provide, perform, and administer massage services at the massage establishment.
12. A statement signed by the applicant acknowledging that the applicant, owner(s), operator(s) and manager(s) shall each be responsible for the conduct of all employees on the premises of the massage establishment, and that failure to comply with this chapter, or any local, state, or federal law, including California Business and Professions Code section 4600 et seq. (Massage Therapy Act), may result in the suspension, revocation, or non-renewal of the operator's permit and civil, administrative, or criminal penalties.
13. Such other identification and information as the Director and/or Chief of Police Services may require in order to discover the truth of the matters herein specified and as required to be set forth in the application.

14. A statement signed by the applicant that he or she certifies under penalty of perjury that all information contained in the application is true and correct.

B. If, during the term of an operator's permit, the permittee has any change in information submitted on the original or renewal application, the permittee shall notify the Director in writing of such change within ten (10) business days thereafter.

4-28.050 Operator's permit issuance and denial.

Upon receipt of a complete application for an operator's permit the Chief of Police Services shall conduct an investigation to ascertain whether such permit should be issued as requested. The Chief of Police Services shall report his or her findings to the Director and the Director shall make a recommendation to the City Manager for action on the permit. The City Manager shall, within sixty (60) days of receipt of a complete application, approve, conditionally approve, or deny the application. The sixty (60) day period shall not commence unless and until the Director deems the application complete. The sixty (60) day period may be extended by the City Manager at the request of the Chief of Police Services for up to thirty (30) additional days, to complete the investigation. The City Manager shall issue such permit as requested, unless he or she makes any of the following findings:

A. The applicant, if an individual; any of the officers or directors of the corporation, if the applicant is a corporation; any of the managers or officers of the company, if the applicant is a limited liability company; any partner, if the applicant is a partnership; or any manager or employee of the massage establishment, has within eight (8) years preceding the date of the application:

1. Been convicted of a violation of Sections 236.1 (Human trafficking), 266h (Pimping and pimping of a minor), 266i (Pandering and pandering with a minor), 314 (Lewd or obscene conduct; indecent exposure), 315 (Keeping or residing in a house of ill-fame), 316 (Keeping of disorderly houses), 318 (Place of illegal gambling or prostitution), Subsections (a) or (b) of Section 647 (Solicitation of lewd conduct or prostitution) of the California Penal Code, or any other provision of law pursuant to which a person is required to register under the provisions of Section 290 (Sex Offender Registration Act) of the California Penal Code, or being required to register as a sex offender in any other state, or when the prosecution accepted a plea of guilty or nolo contendere to a charge or violation of any lesser included or lesser related offense, in satisfaction of or as a substitute for, any of the previously listed crimes.

2. Been convicted of a felony offense involving the sale of a controlled substance specified in California Health and Safety Code Sections 11054 (Schedule I), 11055 (Schedule II), 11056 (Schedule III), 11057 (Schedule IV), or 11058 (Schedule V), or has been convicted in any other state of any offense that, if committed or attempted in the State of California, would have been punishable as one or more of the aforementioned offenses.

3. Been convicted of any offense in any other state that is the equivalent of any of the offense set forth in this Section 4-28.050.
4. Engaged in conduct in another jurisdiction which, if it had occurred within the city, would constitute grounds for denial, revocation or non-renewal of an operator's permit under this chapter.
5. Been subjected to a permanent injunction against the conducting or maintaining of nuisance pursuant to Sections 11225 through 11235 of the California Penal Code (Red Light Abatement Law), or any similar provisions of law in a jurisdiction outside the state.
6. Engaged in conduct which would constitute an offense as described in subsection (A)(1) of this section.
7. Committed an act in another jurisdiction which if committed in this state would have been a violation of law and/or, which, if done by a permittee under this chapter, would be grounds for denial, revocation or non-renewal of the operator's permit.
8. Committed any act involving fraud, deceit, dishonesty, corruption, moral turpitude or violence, which act or acts are substantially related to the qualifications, functions, or duties of a massage establishment operator.
9. Has had a massage operator's permit or other similar license or permit denied, revoked, or refused to be renewed for cause by a licensing authority or by any other city, county, or state.
10. Been convicted of any felony, misdemeanor, infraction, or municipal code violation, or held liable in any administrative or civil action for an act, that is substantially related to the qualifications, functions, or duties of a massage establishment operator.

B. The applicant has made a false, misleading, or fraudulent statement or omission of fact to the city in the permit application process.

C. The application does not contain all of the information required by Section 4-28.040 of this chapter.

D. The massage establishment as proposed does not comply with all applicable laws, including, but not limited to, health, zoning, fire and safety requirements and standards.

E. The massage establishment is proposed to be conducted as a home occupation within a residential zone.

F. Within a twelve (12) month period prior to the submittal of the application, the city has revoked or refused to renew an operator's permit for a massage establishment previously operating at the same address following the issuance of a notice of intent to

revoke the operator's permit or a notice of intent to refuse to renew the operator's permit and a timely appeal was not filed by the permittee in accordance with the appeal procedures set forth in this chapter.

G. Within a twelve (12) month period prior to the submittal of the application, the city has revoked or refused to renew an operator's permit for a massage establishment previously operating at the same address following the issuance of a notice of intent to revoke the operator's permit or a notice of intent to refuse to renew the operator's permit, which revocation or refusal to renew decision was upheld by an administrative hearing officer on appeal in accordance with the appeal procedures set forth in this chapter.

H. Within a twelve (12) month period prior to the submittal of the application, a massage establishment previously operating at the same address was voluntarily closed and/or the provision of massage services at the address discontinued after the issuance of a notice of intent to revoke the operator's permit or a notice of intent to refuse to renew the operator's permit and a timely appeal was not filed by the permittee in accordance with the appeal procedures set forth in this chapter.

I. The application was filed within six (6) months from the date a previous application by the applicant that was denied for failure to comply with subsections (B) or (C) of this section.

4-28.060 Operational requirements.

Each owner, operator and manager shall be responsible for ensuring compliance with the following operational requirements, which shall apply to all massage establishments:

A. Facilities

1. No massage establishment shall, during business hours, block visibility into the interior reception and waiting area through the use of curtains, closed blinds, shades or any other material that obstructs, blurs or darkens the view into the massage establishment.
2. The hours of operation shall be displayed in a conspicuous place in the reception area and in any front window clearly visible from outside of the massage establishment. Patrons and visitors shall be permitted in the massage establishment only during the posted hours of operation.
3. Front doors used for patron access shall remain unlocked during business hours unless the massage establishment is a business entity owned by one individual with only one or no employees. All doors leading into rooms where massage is performed shall remain unlocked during business hours. Internal offices or areas where cash or valuables are stored may be locked.

4. The following notice in a minimum 16-point font shall be displayed in an accessible and conspicuous public place in the reception area of the massage establishment and in each room where massage is performed:

NOTICE TO ALL PATRONS: THIS MASSAGE ESTABLISHMENT AND THE MASSAGE ROOMS DO NOT PROVIDE COMPLETE PRIVACY AND ARE SUBJECT TO INSPECTION BY LAW ENFORCEMENT AND AUTHORIZED CITY OF LAGUNA HILLS PERSONNEL WITHOUT PRIOR NOTICE.

5. Minimum lighting shall be provided in accordance with the city's electrical code and, in addition, at least one artificial light of not less than 40 watts shall be provided in each room or enclosure where massage is performed and shall be activated at all times while a patron is in such room or enclosure.

6. Closed cabinets or other covered space shall be provided and utilized for the storage of clean linens, and receptacles acceptable to the city shall be provided for the deposit of soiled linen.

7. The walls in all rooms where water or steam baths are given shall have a washable, mold-resistant surface.

8. A minimum of one toilet and one separate wash basin shall be provided for patrons in each massage establishment, which basin shall provide soap or detergent and hot running water at all times. A permanently installed soap dispenser, filled with soap, and a single service towel dispenser shall be provided at the restroom hand wash sink. A trash receptacle shall be provided in each toilet room. Showers may be provided at the operator's option.

9. All massage establishments shall have clean and sanitary towels, sheets and linens in sufficient quantity to meet the requirements of this chapter. Reuse of towels, sheets and linens is prohibited unless the same have first been laundered. Heavy white paper may be substituted for sheets, provided that such paper is used only once and then discarded into a sanitary receptacle.

10. All walls, ceilings, floors, pools, showers, bathtubs, steam rooms and all other physical facilities including appliances and apparatuses for the massage establishment shall be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms, or steam or vapor cabinets, shower compartments and toilet rooms shall be thoroughly cleaned and disinfected each day the business is in operation. Bathtubs shall be thoroughly cleaned and disinfected after each use.

11. Disinfecting agents and sterilizing equipment shall be provided for any instruments used in the performance of massage and the instruments shall be disinfected and sterilized after each use.

12. A massage table shall be provided in each massage room or enclosure and the massage shall be performed on this massage table. The tables shall have a minimum height of eighteen (18) inches. Two-inch thick foam pads with a maximum width of four feet may be used on a massage table and must be covered with durable, washable plastic or other waterproof material. Beds, mattresses, waterbeds, futons, sofa beds, or any type of portable or convertible beds are not permitted on the premises.

13. No part of the massage establishment shall be used for residential or sleeping purposes.

14. A sign, measuring at least 8.5 inches by 11 inches in size, containing the following written notice in minimum 16-point font, shall be posted in a conspicuous place near the public entrance of the massage establishment or in another conspicuous location in clear view of the public and employees where similar notices are customarily posted, displayed in English, Vietnamese, Mandarin, Spanish, Cantonese, and Korean:

SLAVERY AND HUMAN TRAFFICKING NOTICE (Cal. Civil Code § 52.6)

If you or someone you know is being forced to engage in any activity and cannot leave – whether it is commercial sex, housework, farm work, construction, factory, retail, or restaurant work, or any other activity – call the National Human Trafficking Resource Center at 1-888-373-7888 or the California Coalition to Abolish Slavery and Trafficking (CAST) at 1-888-KEY-2-FRE(EDOM) or 1-888-539-2373 to access help and services.

Victims of slavery and human trafficking are protected under United States and California Law.

The hotlines are:

- **Available 24 hours a day, 7 days a week.**
- **Toll-free.**
- **Operated by nonprofit, nongovernmental organizations.**
- **Anonymous and confidential.**
- **Accessible in more than 160 languages.**
- **Able to provide help, referral to services, training, and general information.**

B. Operations

1. No massage establishment shall be kept open for business or operated between the hours of ten (10:00) p.m. and seven (7:00) a.m.

2. A register of all certified massage practitioners who are currently providing, or who have previously provided, massage services on the premises, showing the names, nicknames, and aliases used by such employees, along with the dates of

their employment and termination, if applicable, and copies of each certified massage practitioner's current state certificate and CAMTC-issued identification card, shall be maintained on file on the premises of each massage establishment, and shall be made available upon request to any individual, including but not limited to, any regulatory official of the city.

3. Within ten (10) business days of a massage establishment hiring or contracting with a new certified massage practitioner to provide massage services, written notice of the name and residential address of the new employee and copies of his or her current state certificate and CAMTC identification card shall be filed with the Director.

4. Written notice shall be provided to the Director within ten (10) business days of the expiration, revocation, suspension, or surrender of an employee's state certification, and no employee whose state certification is expired, revoked, suspended, or surrendered shall be permitted to provide massage at the massage establishment until and unless valid state certification has been reestablished and notice and copies of such employee's current state certificate and CAMTC identification card have been provided to the Director.

5. All documents or information pertaining to a certified massage practitioner that is required to be maintained or provided pursuant to this Section 4-28.060(B) shall be maintained at the massage establishment for a minimum of two years following the date that a certified massage practitioner ceases providing massage at the massage establishment; such documents or information shall be provided to city regulatory officials upon demand.

6. A manager shall be present on the premises during all times that the massage establishment is open. A written statement designating the person or persons authorized to act as a manager shall be filed with the Director prior to commencement of operation of the massage establishment and within ten (10) business days of any managerial change.

7. The name of each on-duty manager and each on-duty certified massage practitioner shall be posted daily in an accessible and conspicuous public place in the reception area of the massage establishment.

8. No massage establishment shall be open for business without having at least one certified massage practitioner on the premises and on-duty.

9. Any and all employees providing massage services shall carry and have on their persons, visible for the patron to see, a current and valid CAMTC-issued identification card that was issued to them; such identification card shall be provided to city regulatory officials upon demand.

10. Any and all changes of address or ownership of a massage establishment shall be reported immediately to the Director. Operator's permits are issued to specific owners and for specific fixed locations only. A new operator's permit shall

be obtained prior to the proposed relocation of a massage establishment, opening of another location, or change in ownership of the massage establishment.

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

12. Each service offered, the price thereof, and the minimum length of time such service shall be performed shall be posted in an open and conspicuous public location in each massage establishment. All letters and numbers shall be capitals, and not less than one inch in height. No services shall be performed and no sums shall be charged for such services other than those posted. Nothing herein prohibits a voluntary tip from being paid by the patron. All arrangements for services to be performed shall be made in a room in the massage establishment which is not used for administration of massages, baths or health treatments, unless no other room exists in the massage establishment.

13. Any posted signs which are in a language other than English shall also be posted in English.

14. The operator's permit issued to the massage establishment shall at all times be displayed in an accessible and conspicuous public place in the reception area of the massage establishment.

15. Copies of the current state certificates held by the employees providing massage services at the massage establishment shall at all times be displayed in an accessible and conspicuous public place in the reception area of the massage establishment; such copies shall be provided to city regulatory officials upon demand.

16. No alcoholic beverages or controlled substances shall be sold, served, furnished, kept, consumed, or possessed on the premises of any massage establishment.

C. Prohibited Conduct

1. Each owner, operator and manager shall be responsible for the conduct of all employees on the premises of the massage establishment. Any act or omission of any employee constituting a violation of any provision of this chapter shall be deemed the act or omission of each of the owners, operators and managers for purposes of determining: (a) compliance with this chapter; and (b) whether the operator's permit shall be suspended, revoked or renewed.

2. No owner, operator or manager shall hire, employ or allow any person to perform massage services unless such person possesses a valid and current state certificate. Each owner, operator and manager of a massage establishment shall have a continuing obligation to verify that all employees providing massage services hold the state certification required by this chapter.

3. No electrical, mechanical or artificial device shall be used by any massage establishment employee for audio and/or video recording or for monitoring the performance of a massage, of the conversation or of other sounds in the massage rooms or enclosures, without the prior written consent of the patron.
4. No employee shall violate the provisions of Section 647(b) of the California Penal Code (Solicitation of prostitution), or any other state law involving a crime of moral turpitude.
5. No employee shall engage in any form of unprofessional conduct as defined by Section 4609(a)(1) of the California Business and Professions Code, as may be amended from time to time, including without limitation:
 - a. Engaging in any form of sexual activity on the premises of a massage establishment.
 - b. Engaging in sexual activity while providing massage services for compensation.
 - c. Providing massage of the genitals or anal region.
 - d. Providing massage of female breasts without the written consent of the person receiving the massage and a referral from a licensed California health care provider for such massage.
6. No employee shall dress, while engaged in the practice of massage, or while visible to patrons in the massage establishment, in any of the following:
 - a. Attire that is transparent, see-through, or substantially exposes the person's undergarments.
 - b. Swim attire, if not providing a water-based massage modality approved by CAMTC.
 - c. A manner that exposes the employee's breast, buttocks, or genitals.
 - d. A manner that constitutes indecent exposure in violation of Section 314 (Lewd or obscene conduct; indecent exposure) of the California Penal Code.
7. No employee shall expose their genitals, pubic region, buttocks, anus, or in the case of a female, her breasts below a point immediately above the top of the aureole, to the view of a massage establishment patron.
8. A massage establishment patron's genitals, anus, and in the case of a female, her breasts, except as may be permitted by subsection (C)(5)(d) of this section, must be fully covered at all times while a certified massage practitioner or other employee is present in the same room as the patron.

4-28.070 Inspection by city official.

Any duly authorized official of the city, including but not limited to, representatives of the Police Services Department, code enforcement officers, health officials and building and fire inspectors, shall have the right to enter any massage establishment premises from time to time during regular business hours prior to the issuance of an operator's permit and subsequently thereafter for the purposes of making reasonable inspections to ensure compliance with this chapter and any other applicable laws, including building, fire, electrical, plumbing or health and safety regulations.

4-28.080 Out-call massage.

No person shall perform an out-call massage in the city without possessing a valid and current state certificate.

4-28.090 Home occupation prohibited.

No person shall operate a massage establishment as a home occupation within any residential zone in the city.

4-28.100 Exemptions.

This chapter shall not apply to the following:

A. Healing arts professionals duly licensed pursuant to Division 2 (commencing with Section 500) of the California Business and Professions Code, including but not limited to physicians, surgeons, chiropractors, osteopaths, acupuncturists, physical therapists, physician assistants, or nurses while performing activities encompassed by such professional licenses and when other individuals under their direction and as an adjunct to their practice are engaging in any act, providing any treatment, or performing any procedure that falls within the professionally recognized scope of practices authorized by their respective professional licenses; however,

1. Massage technicians are required to be certified by CAMTC,
2. If the licensed healing arts professional's facility is used for the purpose of providing nonmedical massage, and/or an employee of the licensed healing arts professional is engaged in the business of massage on the same premises as the professional, the facility itself shall be licensed as a massage establishment pursuant to this chapter;

B. Cosmetologists, barbers, estheticians, or manicurists that are duly licensed pursuant to the California Barbering and Cosmetology Act, California Business and Professions Code Section 7300 et seq. while performing activities encompassed by such professional licenses, except that this exemption applies solely for the massaging of the neck, face, head and/or scalp of the customer or client of a barber, cosmetologist, or esthetician, or in the case of a licensed manicurist, the massaging of the forearms, hands, calves and/or feet;

C. Hospitals, nursing homes, sanatoriums, or other health facilities duly licensed by the State of California, or activities engaged in by employees of such facilities in the

course of their employment while working on the premises of such State-licensed facilities;

D. Coaches or trainers employed by accredited junior high schools, high schools, junior colleges, colleges, or universities, while acting within the scope of such employment, as well as trainers of amateur, semi-professional or professional athletes or athletic teams while acting in that capacity;

E. Schools of cosmetology or barbering which comply with the requirements of California Business and Professions Code Section 7362 et seq.;

F. Schools of massage approved by CAMTC pursuant to Business and Professions Code Section 4601(a); and

G. Any business where only seated massage is administered, subject to the following conditions:

1. Seated massage shall only be performed by a certified massage practitioner,
2. Seated massage shall only be performed in areas open to the public view,
3. Seated massage shall not be performed as a home occupation within any residential zone in the city.

4-28.110 Transfer and duration of operator's permits.

No operator's permit may be sold, transferred, or assigned by a permittee, or by operation of law, to any other person. Any attempt to sell, transfer, or assign an operator's permit shall be deemed to constitute a voluntary surrender of such permit and such permit shall thereafter be null and void; provided and excepting, however, that if the permittee is a partnership and one or more of the partners should die, one or more of the surviving partners may acquire, by purchase or otherwise, the interest of the deceased partner or partners without effecting a surrender or termination of such permit, and in such case, the permit, upon notification to the City Manager, shall be placed in the name of the surviving partners. An operator's permit issued to a corporation or limited liability company shall be deemed terminated and void when either any outstanding stock or membership interest of the corporation or limited liability company is sold, transferred, or assigned after the issuance of a permit, or any stock or membership interest authorized but not issued at the time of the granting of a permit is thereafter issued or sold, transferred, or assigned.

A. An operator's permit shall be valid for and expire in twelve (12) months from the date of issuance, unless earlier suspended or revoked.

B. An application for renewal of an operator's permit shall be filed with the Director no later than sixty (60) days prior to the expiration of the twelve-month permit term to prevent lapse of the permit. The renewal application shall be accompanied by an appropriate filing fee established by the City Council, which represents the city's reasonable cost to process the renewal application and provide regulatory functions

necessary to enforce this chapter, including without limitation inspections of massage establishment, and an appropriate filing fee as established by resolution of the Orange County Board of Supervisors, which represents the Orange County Sheriff's Department's costs to conduct an investigation.

C. Each applicant for renewal of an operator's permit shall provide such information as may be required by the Director and/or Chief of Police Services to update the information contained in the original permit application.

4-28.120 Suspension, revocation, denial and appeal.

Violation and Noncompliance. After an investigation, notice and opportunity to be heard, the City Manager may refuse to renew an operator's permit or may revoke or suspend an existing operator's permit on the grounds that the permittee has failed to comply with the requirements of this chapter. If the term of a suspended permit expires during the suspension period, a new application must be made at the end of the suspension period. In any such case, the permittee shall have the right to appeal a decision of the City Manager in the time and manner set forth in this section.

A. Revocation and Suspension of Operator's Permit.

1. The City Manager may revoke or refuse to renew an operator's permit if he or she makes any of the findings for denial of a permit under Section 4-28.050, upon any violation of subsections (A) or (C) of Section 4-28.030, upon any violation of subsections (B)(8) or (B)(16) of Section 4-28.060, upon any violation of Section 4-28.060(C), or upon any subsequent violation of any provision of this chapter within one (1) year following prior suspension under subsection (B)(2) of this section, or upon demonstrated inability to operate or manage the massage establishment in a law abiding manner, thus necessitating action by law enforcement officers.

2. The City Manager may suspend an operator's permit for a period of ninety (90) days for each violation of Section 4-28.060 of this chapter not listed in subsection A(1) above.

B. Notice.

When the City Manager concludes that grounds for denial, suspension, revocation, or refusal to renew an operator's permit exist, the City Manager shall serve the operator, either personally or by certified mail, with proof of service, addressed to the business or residence address of the operator, with a notice of denial or notice of intent to suspend, revoke or refuse to renew the operator's permit. This notice shall state the reasons for the proposed action, the effective date of the decision, the right of the applicant or permittee to appeal the decision of the City Manager, and that the decision will be final, if no appeal is filed within the time permitted.

C. Appeal.

1. The right to appeal the decision of the City Manager to deny, suspend, revoke, or refuse to renew an operator's permit shall terminate upon the expiration

of fifteen (15) days from the date of mailing of the notice of intent to suspend, revoke or refuse to renew the operator's permit.

2. Requests for appeal must be in writing and filed with the City Manager. If an appeal is timely filed by the applicant or permittee, the matter will be scheduled for a hearing before a city-appointed administrative hearing officer within sixty (60) days. In any such event, the suspension, revocation or refusal to renew shall not be in effect until a final decision has been rendered by the hearing officer. If no appeal is filed, the suspension, revocation or refusal to renew shall become effective upon expiration of the period for filing appeals.

3. The appellant shall be entitled to notice of the basis for the proposed action, a copy of the documents upon which the City Manager's decision was based, and the opportunity to present contrary evidence at the hearing.

4. Notice of the date, time, and place of the hearing shall be mailed at least ten (10) days prior to the date of the hearing, by the U.S. Mail, with proof of service attached, addressed to the address listed on the massage establishment application, or, the address given in the request for appeal, as the case may be.

5. The city-appointed administrative hearing officer shall conduct the hearing on appeal, receive relevant evidence, and shall decide whether to uphold the City Manager's decision to refuse to renew, revoke, or suspend the operator's permit. Within forty-five (45) days after the conclusion of the hearing, the hearing officer shall file with the City Manager, a written decision, supported by written findings based on the evidence submitted, and a statement of his/her decision. A copy of such report shall be mailed to the appellant on the same day it is filed with the City Manager. The decision of the hearing officer shall become effective three (3) days after its mailing to the appellant. The decision of the hearing officer shall be final.

6. The following rules of evidence shall apply:

a. Oral evidence shall be taken only under oath or affirmation. The hearing officer shall have authority to administer oaths, and to receive and rule on admissibility of evidence.

b. Each party shall have the right to call and examine witnesses, to introduce exhibits, and to cross-examine opposing witnesses who have testified under direct examination. The hearing officer may call and examine any witness.

c. Technical rules relating to evidence and witnesses shall not apply to administrative hearings provided for in this chapter. Any relevant evidence may be admitted if it is material and is evidence customarily relied upon by responsible persons in the conduct of their affairs regardless of the existence of any common law or statutory rule which might make admission of such evidence improper over objection in civil actions. Hearsay testimony may be admissible and used for the purpose of supplementing or explaining any

evidence given in direct examination, but shall not be sufficient in itself to support a finding unless such testimony would be admissible over objection in civil actions. The rules of privilege shall be applicable to the extent they are now, or are hereafter permitted in civil actions. Irrelevant, collateral, undue, and repetitious testimony shall be excluded.

7. No operator's permit granted herein shall confer any vested right to any person or business for more than the permit period. All massage establishment owners, operators, managers, and employees subject to this chapter shall comply with the provisions of this chapter as they may be amended hereafter.

4-28.130 Application to existing massage establishment.

Each owner or operator of a massage establishment doing business in the city on the effective date of this chapter is subject to the licensing and operational standards set forth in this chapter.

A. Each owner or operator of a massage establishment doing business in the city with an operator's permit on the effective date of this chapter may continue under its current operator's permit unless otherwise revoked or suspended pursuant to the provisions of this chapter.

B. Each owner or operator of a massage establishment doing business in the city without an operator's permit on the effective date of this chapter shall file an application for an operator's permit no later than one hundred twenty (120) days following the effective date of this chapter.

4-28.140 Violation—Penalty.

A. Violators of this chapter may be cited and enforcement action taken pursuant to the provisions of Chapter 1-32 of this code.

B. Any massage establishment operated, conducted, or maintained contrary to the provisions of this chapter shall be, and the same is hereby declared to be, unlawful and a public nuisance, and the city may, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings, for the abatement, removal, and enjoinder thereof, in the manner provided by law, and shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such massage establishments and restrain and enjoin any person from operating, conducting, or maintaining a massage establishment contrary to the provisions of this chapter.


SECTION 2. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more section, subsection, subdivision, sentence, clause, phrase, or portion thereof be

declared invalid or unconstitutional.

SECTION 3. The City Council finds that the proposed Ordinance is not subject to the California Environmental Quality Act ("CEQA") Cal. Pub. Resources Code Section 21000 et seq.) pursuant to Section 15061(b)(3) of the State CEQA Guidelines (Cal. Code of Regs., Title 14, Section 15000 et seq.) because it can be seen with certainty that there is no possibility that this ordinance may have a significant effect on the environment.

SECTION 4. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted at the duly designated posting places within the City and published once within fifteen days after passage and adoption as may be required by law; or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the Office of the City Clerk five days prior to the date of adoption of this Ordinance; and, within fifteen days after adoption, the City Clerk shall cause to be published, the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

PASSED, APPROVED, AND ADOPTED this 22nd day of November 2016



DON SEDGWICK, MAYOR PRO TEMPORE

ATTEST:



MELISSA AU-YEUNG, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LAGUNA HILLS)

I, Melissa Au-Yeung, City Clerk of the City of Laguna Hills, California, DO HEREBY CERTIFY that the foregoing Ordinance No. 2016-5 was duly introduced and placed upon its first reading at a Regular Meeting of the City Council on the 25th day of October 2016, and that thereafter, said Ordinance was duly adopted and passed at a Regular Meeting of the City Council held on the 22nd day of November 2016, by the following vote, to wit:

AYES: Council Members Carruth, Gilbert, and Mayor Pro Tempore Sedgwick

NOES: None

ABSENT: Council Member Blount and Mayor Kogerman

ABSTAIN: None

(SEAL)



MELISSA AU-YEUNG, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LAGUNA HILLS)

AFFIDAVIT OF POSTING
AND PUBLICATION

MELISSA AU-YEUNG, being first duly sworn, deposes and says:

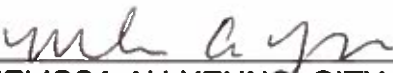
That she is the duly appointed and qualified City Clerk of the City of Laguna Hills;

That in compliance with State Laws of the State of California, ORDINANCE NO. 2016-5, being:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA AMENDING AND RESTATING CHAPTER 4-28 OF TITLE 4 OF THE LAGUNA HILLS MUNICIPAL CODE RELATING TO THE REGULATION OF MASSAGE ESTABLISHMENTS

on the 4th day of November 2016, was published in summary in the Saddleback Valley News and on the 2nd day of December 2016, was published in summary in the Saddleback Valley News; and was, in compliance with City Resolution No. 2004-05-25-2, on the 28th day of October 2016, and on the 23rd day of November, caused to be posted in summary in three places in the City of Laguna Hills, to wit:

Laguna Hills City Hall
Laguna Hills Community Center
La Paz Center



MELISSA AU-YEUNG, CITY CLERK
Laguna Hills, California

