ORDINANCE OF THE CITY OF OXNARD

ORDINANCE NO. 2811

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OXNARD AMENDING SECTIONS 11-140 AND 11-141, THE TITLE OF SECTION 11-143, SECTIONS 11-143, 11-154, AND 11-157 OF THE OXNARD CITY CODE AND REPEALING AND READOPTING ARTICLE IX OF CHAPTER 11 OF THE OXNARD CITY CODE CONCERNING THE REGULATION OF MASSAGE PROFESSIONALS AND MASSAGE BUSINESSES OR ESTABLISHMENTS

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WHEREAS, this article is intended to provide for the orderly regulation of persons and establishments engaged in the practice of massage therapy, as defined in this article, in the interest of public health, safety, and welfare;

WHEREAS, the practice of massage therapy is a valid professional field;

WHEREAS, the use of massage therapy is sometimes used as a subterfuge by persons with criminal tendencies to violate subdivision (a) or (b) of Section 647 of the California Penal Code or to commit other unlawful activity;

WHEREAS, some print and electronic advertisements for massage therapy are not intended to attract legitimate massage therapy clients but rather are intended to solicit patrons who are interested in paying for sexual services under the auspices of receiving a massage;

WHEREAS, beginning September 1, 2009, the Massage Therapy Organization ("MTO") will issue certificates to massage practitioners and massage therapists who meet the requirements set forth in Section 4601 of the California Business and Professions Code;

WHEREAS, a city may regulate massage establishments or businesses that are sole proprietorships, where the sole proprietor is certified by the MTO, and massage establishments or businesses that employ or use only persons certified by the MTO to provide massage services only in accordance with Section 4612 of the California Business and Professions Code; and

WHEREAS, pursuant to Section 4613 of the California Business and Professions Code, a city may regulate individuals who practice massage therapy and who are not certified by the MTO;

Now, therefore, the City Council of the City of Oxnard does ordain as follows:

Part 1. Section 11-140 of the Oxnard City Code is hereby amended to read as follows:

"The purpose of this article is to establish a procedure for processing dance, massage technician, and massage establishment permits required by articles V and IX of this chapter."

Part 2. Section 11-141 of the Oxnard City Code is hereby amended to read as follows:

"The license collector shall provide each applicant for a dance, massage technician, or massage establishment permit with a form specifying the information required for the permit. The city shall begin processing an application when the completed form, the applicable fee, and documents required are provided to the license collector."

Part 3. The title of Section 11-143 of the Oxnard City Code and Section 11-143 of the Oxnard City Code are hereby amended to read as follows:

"SEC. 11-143. ISSUANCE OF PERMIT; ISSUANCE OF IDENTIFICATION BADGE.

(A) If the reports state no basis on which the permit cannot be issued and state no corrective action that must be taken before the permit can be issued, the license collector shall issue the permit, subject to any conditions recommended by the service providers.

(B) A separate identification badge will be issued to each massage technician when the permit set forth in subdivision (A) above is issued."

Part 4. Subdivision (A) of Section 11-154 of the Oxnard City Code is hereby amended to read as follows:

"(A) A dance, massage technician, or massage establishment permit may be revoked or modified or conditions may be imposed for failure of the permittee to comply with applicable laws and regulations based on matters occurring after the permit is issued or on matters not considered at the time of issuance of the permit that would have authorized denial of the permit or the imposition of conditions on the permit. If a massage technician permit is revoked, the massage technician identification badge shall also be revoked."

Part 5. Subdivision (A) of Section 11-157 of the Oxnard City Code is hereby amended to read as follows:

"(A) Unless otherwise specified in the permit, dance, massage technician, and massage establishment permits issued shall remain in effect until modified or revoked or until the activity for which the permit was issued ceases to be provided at the same address or facility or by the same permittee."

Part 6. Article IX of Chapter 11 of the Oxnard City Code is hereby repealed and readopted to read as follows:

"ARTICLE IX. MASSAGE

"SEC. 11-232. DEFINITIONS.

For the purpose of this article, the following words shall have the following meanings:

(A) APPLICANT – A person who is required to file an application for a massage business or establishment permit or a massage technician permit.

(B) APPROVED SCHOOL – A facility that teaches the theory, ethics, practice, profession, and work of massage therapy and that is approved by any of the following:

(1) The Bureau for Private Postsecondary and Vocational Education pursuant to former Section 94739 of the California Education Code prior to July 1, 2007, and as of the date on which an applicant successfully completed a minimum of 250 hours of supervised, in-class instruction;

(2) The Department of Consumer Affairs;

(3) An institution accredited by the Accrediting Commission for Senior Colleges and Universities or the Accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges and that is one of the following:

(a) A public institution;

(b) An institution incorporated and lawfully operating as a nonprofit public benefit corporation pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the California Corporations Code and that is not managed by any entity for profit;

(c) A for-profit institution.

(4) A college or university of the state higher education system, as defined in Section 100850 of the California Education Code;

(5) A school of equal or greater training that is approved by the corresponding agency in another state or territory of the United States or accredited by an agency recognized by the United States Department of Education.

The term "approved school" shall not include a school or institution of learning offering or allowing correspondence courses not requiring actual attendance at classes.

(C) COMPENSATION – The payment, loan, advance, donation, contribution, deposit, exchange, or gift of money or anything of value.

(D) LICENSE COLLECTOR – The city treasurer or designee.

(E) MASSAGE or MASSAGE THERAPY – The application of various techniques to the muscular structure and soft tissues of the human body, including but not limited to any method of pressure or friction against, or stroking, kneading, rubbing, tapping, compression, pounding vibrating, rocking or stimulating of the external surfaces of the body with hands or with any object or appliance.

(F) MASSAGE BUSINESS or ESTABLISHMENT – Any business or establishment which offers massage or massage therapy in exchange for compensation at a fixed place of business, including any business or establishment which offers any combination of massage or massage therapy and bath facilities, including but not limited to showers, baths, wet and dry heat rooms, steam rooms, pools, and hot tubs.

(G) MASSAGE PRACTITIONER – Any person to whom a massage therapy certificate has been issued pursuant to subdivision (b) of Section 4601 of the California Business and Professions Code or subdivisions (a) or (c) of Section 4604 of the California Business and Professions Code and who is engaged in the practice of massage therapy for compensation.

(H) MASSAGE TECHNICIAN – A person to whom a massage technician permit has been issued by the city's license collector.

(I) MASSAGE THERAPIST – Any person to whom a massage therapy certificate has been issued pursuant to subdivision (c) of Section 4601 of the California Business and Professions Code and who is engaged in the practice of massage therapy for compensation.

(J) MASSAGE THERAPY CERTIFICATE – A certificate issued by the Massage Therapy Organization pursuant to subdivision (a) of Section 4601 of the California Business and Professions Code.

(K) PERMITTEE – A person to whom a massage business or establishment permit or a massage technician permit has been issued by the city's license collector.

SEC. 11-233. MASSAGE ESTABLISHMENT AND TECHNICIAN PERMITS REQUIRED; TECHNICIAN IDENTIFICATION BADGES REQUIRED; FEES.

(A) No person shall operate a massage business or establishment and no person shall operate as a massage technician without a valid permit obtained pursuant to Article IV of Chapter 11 of this code. Fees for such permits shall be established by resolution of the city council.

(B) Any massage technician who provides massage therapy on the premises of a massage business or establishment and who also provides massage therapy at locations away from said massage business or establishment shall obtain one permit pursuant to this section to provide massage therapy at said business or establishment and a separate permit pursuant to this section to provide massage therapy at locations away from said business or establishment.

(C) While providing any massage therapy, all massage technicians shall display in a visible location in an area between the shoulder and the waist on the front of outer clothing worn by the massage technician an identification badge issued by the license collector.

SEC. 11-234. EXEMPTIONS.

Section 11-236 of this code shall not apply to the following:

(A) Persons holding a valid certificate to practice the healing arts under the laws of the State of California, including, but not limited to, holders of medical degrees such as physicians, surgeons, chiropractors, osteopaths, naturopaths, podiatrists, acupuncturists, physical therapists, registered nurses and licensed vocational nurses.

(B) Barbers and cosmetologists who are licensed under the laws of the State of California while providing massage therapy within the scope of their licenses, provided that such massage therapy is limited solely to the neck, face, scalp, feet, lower limbs up to the knees, hands, and arms of their patrons.

(C) Persons who hold a valid certificate issued on or after September 1, 2009, by the Massage Therapy Organization.

(D) Persons operating massage businesses or establishments as defined in paragraph (1) of subdivision (b) of Section 4612 of the California Business and Professions Code.

SEC. 11-235. QUALIFICATIONS FOR MASSAGE TECHNICIAN PERMIT.

An applicant for a massage technician permit shall satisfy all of the following conditions:

(A) Furnish with his/her application a diploma or certificate of graduation from an approved school;

(B) Furnish proof of successful completion of a written and practical examination prepared and administered by the National Certification Board for Therapeutic Massage and Bodywork;

(C) Be at least 18 years of age;

(D) Submit a certificate from a medical doctor stating that the applicant has, within 30 days prior to the filing of the application, been examined and found to be free of any contagious or communicable disease;

(E) Not have been convicted within five years immediately preceding the date of filing the application of any of the following offenses: California Penal Code Sections 266(i), 315, 316, 318, 647(a), or 647(b) an offense which requires registration as a sex offender under California Penal Code Section 290; any felony offense involving the sale of a controlled substance specified in California Health and Safety Code Sections 11353, 11360(a), 11379, or 11379.5; any offense in another state, which if committed in this State, would have been punishable as one or more of the above-mentioned offenses; any offense involving the use of force or violence upon the person of another; or any offense involving theft, embezzlement, or moral turpitude;

(F) Not have had a massage technician permit suspended or revoked within one year immediately preceding the date of the filing of the application, unless the applicant can show a material change in circumstances or that mitigating circumstances arose since the revocation or suspension.

SEC. 11-236. QUALIFICATIONS FOR MASSAGE ESTABLISHMENT PERMIT.

An applicant for a massage establishment permit shall satisfy all of the following conditions:

(A) Be at least 18 years of age;

(B) Not have been convicted within five years immediately preceding the date of filing the application of any of the offenses listed in subsection 11-238(E) above;

(C) Not have had a massage establishment permit suspended or revoked within one year immediately preceding the date of the filing of the application, unless the

applicant can show a material change in circumstances or that mitigating circumstances arose since the revocation or suspension.

SEC. 11-237. BUSINESS LICENSE REQUIRED; DENIAL, REVOCATION, RESTRICTION, OR SUSPENSION OF BUSINESS LICENSE.

(A) The owner and/or operator of any massage business or establishment described in paragraph (1) of subdivision (b) of Section 4612 of the California Business and Professions Code and the permittee of any massage business or establishment shall obtain a city business license pursuant to Article 1 of Chapter 11 of this code.

(B) Any massage technician who provides massage therapy at a location away from a massage business or establishment shall obtain a city business license pursuant to Article 1 of Chapter 11 of this code when such massage therapy is not provided at the direction of and on behalf of a massage business or establishment licensed as set forth is subdivision (A) above.

(C) Notwithstanding any provision set forth in Article 1 of Chapter 11 of this code, the city may:

(1) In the application for a business license or for the renewal of a business license, require the massage business or establishment or any permittee to provide relevant information of the activities of the business or establishment regulated by this article;

(2) Make reasonable investigations into the information so provided;

(3) Charge a business licensing fee sufficient to cover the costs of the business licensing activities regulated by this article; and

(4) Deny, revoke, restrict, or suspend a business license for any of the following causes:

(a) An employee, agent, independent contractor, or other representative of the business or establishment or of the permittee has committed a violation of this article;

(b) An employee, agent, independent contractor, or other representative of the business or establishment has committed a violation of Chapter 10.5 (commencing with Section 4600) of Division 2 of the California Business and Professions Code; or

(c) The business or establishment or the permittee has provided materially false information in the application for a business license.

SEC. 11-238. REGISTRATION AND NOTIFICATION REQUIREMENTS.

(A) Every massage business or establishment as defined in paragraph (1) of subdivision (b) of Section 4612 of the California Business and Professions Code shall provide to the license collector a copy or other evidence of the massage therapy certificate of every person who provides massage therapy at the business or establishment prior to the commencement of massage therapy services by such person and shall maintain at the business or establishment a copy or other evidence of each such massage therapy certificate for review by local authorities.

(B) Every massage business or establishment as defined in paragraph (1) of subdivision (b) of Section 4612 of the California Business and Professions Code and every permittee of a massage business or establishment shall notify the license collector of any intention to rename, change management, or convey the business or establishment to another person.

(C) Every permittee of a massage business or establishment shall notify the license collector when the owner of the business or establishment sells or transfers the entire business or establishment to another person or when the owner of the business or establishment sells or transfers a portion of the business or establishment to another person.

(D) Every massage technician shall notify the license collector of a change in the permittee's home address or the address of the massage business or establishment where the permittee regularly provides massage therapy services within 10 days of such change.

SEC. 11-239. HOURS OF OPERATION.

Massage businesses or establishments as defined in paragraph (1) of subdivision (b) of Section 4612 of the California Business and Professions Code, massage businesses or establishments owned and/or operated by permittees, and massage technicians shall only provide massage therapy to the public for compensation between the hours of 8:00 a.m. and 8:00 p.m.

SEC. 11-240. PROHIBITED ADVERTISING PRACTICES.

(A) No massage business or establishment owned and/or operated by a permittee shall state, advertise, put out any sign, card, or other device, or represent to the public through any print or electronic media that a person who provides massage therapy at that business or establishment is certified, registered, or licensed as a "massage therapist" or "massage practitioner" if that person does not possess a valid massage therapy certificate.

(B) No massage business or establishment owned and/or operated by a permittee and no massage technician shall advertise through any print or electronic media that appears to be for adults only based on its classification, other advertising contained therein, words used within, or title.

11-241. MINORS.

It shall be unlawful for any massage business or establishment described in paragraph (1) of subdivision (b) of Section 4612 of the California Business and Professions Code and any massage business or establishment owned and/or operated by a permittee to employ any person under 18 years of age or to provide massage therapy to any person under 18 years of age, except at the special instance and request of a parent, guardian, or other person in lawful custody of said minor.

11-242. PHYSICAL FACILITY AND BUILDING CODE REQUIREMENTS.

The following facility requirements shall be applicable to all massage businesses and establishments described in paragraph (1) of subdivision (b) of Section 4612 of the California Business and Professions Code and to all massage businesses and establishments owned and/or operated by permittees:

(A) Separate, enclosed rooms or cubicles to provide individual space and privacy shall be provided to each customer while massage therapy is administered. Each massage room or cubicle shall contain a wash basin with hot and cold running water, soap or detergent, and a sanitary towel dispenser for use by the massage practitioner, massage therapist, or massage technician.

(B) Except where there is no staff available to assure security for massage therapy customers and massage staff who are behind closed doors, no massage therapy may be administered behind locked, closed doors;

(C) Minimum lighting in accordance with the city building code and at least one additional artificial light of not less than 40 watts shall be provided in each enclosed massage therapy room or cubicle.

(D) Massage tables with a minimum height of 18 inches shall be used for all massage therapy and shall be used only in massage therapy treatment rooms or cubicles. Beds and floor mattresses are not permitted on the premises of the business or establishment.

(E) All locker facilities that are provided for the use of customers shall be fully secured for the protection of the customer's valuables, and the customer shall be given control of the key or other means of access.

(F) Ventilation shall be in accordance with the city building code.

(G) Hot and cold running water and potable drinking water shall be accessible to customers and to staff of the massage business or establishment.

(H) Public toilet facilities shall be provided in accordance with the city building code.

(I) Front doors and front windows of all massage businesses and establishments shall be transparent and unobstructed and shall only be altered in compliance with this code. The foregoing sentence shall not apply to massage businesses and establishments located in office buildings that are served by an interior hallway.

SEC. 11-243. ADDITIONAL PHYSICAL FACILITY REQUIREMENTS.

The following facility requirements shall be applicable to all massage businesses and establishments owned and/or operated by permittees:

(A) A readable sign which complies with all applicable code requirements shall be posted at the main entrance identifying the establishment as a massage business or establishment, and a list of available services and the cost of such services shall be posted in an open and conspicuous public place at the business or establishment. No services shall be offered or performed at the business or establishment unless so posted.

(B) If male and female customers are to be served simultaneously at the massage business or establishment, separate bathing, separate massage rooms or cubicles, separate dressing facilities, and separate toilet facilities shall be provided for male and for female customers.

(C) A massage business or establishment shall not be located within 1,000 feet of another massage business or establishment, an adult book store, or an adult movie theater, measured in a straight line from the nearest wall of the massage business or establishment to the nearest wall of the other business. The foregoing sentence does not apply to:

(1) An adult massage business or establishment, which is subject to the locational requirements of section 16-337 of this code.

(2) A massage business or establishment that is operated on the same premises as another type of business, other than an adult business, and by the same persons who operate the other business; that occupies less than 30 percent of the square footage occupied by both businesses; and that is the source of less than 30 percent of the annual revenue derived from both businesses.

SEC. 11-244. HEALTH AND SAFETY REQUIREMENTS.

The following health and safety requirements shall be applicable to all massage businesses and establishments described in paragraph (1) of subdivision (b) of Section 4612 of the California Business and Professions Code and to all massage businesses and establishments owned and/or operated by permittees:

(A) An adequate supply of clean sanitary towels, coverings, and linens shall be available at all times, and all massage tables shall be covered with a clean sheet or other clean covering for each customer. After a towel, covering, or linen has been used for one customer, it shall be deposited in a closed receptacle and not used until property

laundered and sanitized. Clean towels, coverings, and linens shall be stored in closed, clean cabinets when not in use.

(B) All massage therapy rooms or cubicles, wet and dry heat rooms, steam rooms, toilet facilities, shower compartments, hot tubs, and pools shall be thoroughly cleaned and disinfected as needed and each day the business or establishment is in operation. All bathtubs shall be thoroughly cleaned and disinfected after each use.

(C) Only the customer and the massage technician, massage practitioner, or massage therapist shall be present in the massage room or cubicle while massage therapy is being provided.

(D) Notwithstanding any provision set forth in this article, only customers and employees shall be permitted in any massage room or cubicle, and any break room or rest area shall only be utilized by employees or independent contractors of the business or establishment.

(E) All liquids, creams, or other preparations used on or made available to customers shall be kept in clean and closed containers. Powders may be kept in clean shakers. All bottles and containers shall be distinctly and correctly labeled to disclose their contents. When only a portion of a liquid, cream, or other preparation is to be used on or made available to a customer, it shall be removed from the container in such a way as not to contaminate the remaining portion.

(F) All bathrobes or other garments that are provided for the use of customers shall be either fully disposable and shall not be used by more than one customer or shall be laundered and sanitized after each use.

(G) All footwear such as sandals or flip-flops that are provided for the use of customers shall be either fully disposable and shall not be used by more than one customer or shall be fully disinfected after each use.

(H) All combs, brushes, and/or other personal items of grooming or hygiene that are provided for the use of customers shall be either fully disposable and shall not be used by more than one customer or shall be fully disinfected after each use.

(I) The customer's genitals, pubic area, anus, and female patron's breasts below a point immediately above the top of the areola must be fully draped at all times while any employee of the business or establishment is in the massage therapy room or cubicle with the customer. No massage therapy shall be provided to a customer that results in intentional contact or occasional and repetitive contact with the genitals, anus, or areola of a customer.

SEC. 11-245. ATTIRE AND PHYSICAL HYGIENE REQUIREMENTS.

The following attire and physical hygiene requirements shall be applicable to all permittees, massage practitioners, and massage therapists who are employed or retained by or who provide massage therapy at a massage business or establishment described in paragraph (1) of subdivision (b) of Section 4612 of the California Business and Professions Code or at a massage business or establishment owned and/or operated by a permittee:

(A) All persons shall be clean and wear clean and sanitary outer garments at all times. All outer garments shall be of a fully opaque, nontransparent material and provide complete covering from at least the mid thigh to two inches below the collarbone. The midriff may not be exposed.

(B) All persons shall thoroughly wash their hands with soap and water or any equally effective cleansing agent immediately before providing massage therapy to a customer. No massage therapy shall be provided upon a surface of the skin or scalp of a customer where such skin is inflamed, broken (i.e. abraded, cut), or where a skin infection or eruption is present.

(C) No person afflicted with an infection or parasitic infection capable of being transmitted to a customer shall knowingly provide massage therapy to a customer or remain at a massage business or establishment while so infected or infested.

SEC. 11-246. INSPECTIONS.

(A) All massage businesses and establishments described in paragraph (1) of subdivision (b) of Section 4612 of the California Business and Professions Code and all massage businesses and establishments owned and/or operated by permittees shall permit representatives of the health department, police department, fire department, license collector, and/or other city or county departments or agencies to conduct a reasonable inspection of the public areas of and areas otherwise open to plain view on or within the business or establishment to the extent allowed by law and during the regular business hours of the business or establishment for the purpose of ensuring compliance with state and local laws, including but not limited to Chapter 10.5 (commencing with Section 4600) of the California Business and Professions Code where applicable, the requirements of this article, and/or other applicable fire, health, and safety requirements.

(B) Nothing in this section shall be deemed to prohibit the above described government officials from pursuing any and all available legal remedies to secure entry into and inspection of the business or establishment if such entry is refused or for any other reason allowed by law.

(C) It is a violation of this article for the business or establishment to prohibit or interfere with such lawful inspection of the business or establishment at any time it is open for business.

SEC. 11-247. OWNER AND/OR OPERATOR RESPONSIBILITY.

The owner and/or operator of any massage business or establishment described in paragraph (1) of subdivision (b) of Section 4612 of the California Business and Professions Code and the permittee of any massage business or establishment shall be responsible for the conduct of all employees, agents, independent contractors, or other representatives of the business or establishment while such persons are on the premises of the business or establishment."

Part 7. Within 15 days after passage, the City Clerk shall cause this ordinance to be published one time in a newspaper of general circulation within the city. Ordinance No. ____ was first read on _____, 20__ and finally adopted on _____, 20__ to become effective thirty days thereafter.

AYES:

NOES:

ABSENT:

_____
Dr. Thomas E. Holden, Mayor

ATTEST:

_____
Daniel Martinez, City Clerk

APPROVED AS TO FORM:

for
_____
Alan Holmberg, City Attorney
7-14-09