

REPORT TO CITY COUNCIL

DATE: JANUARY 11, 2012

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: GREG RAMIREZ, CITY MANAGER

BY: MIKE KAMINO, DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT

SUBJECT: ADOPTION OF MASSAGE ESTABLISHMENTS AND PRACTITIONERS ORDINANCE NO. 11-392

At the December 14, 2011 City Council meeting, the Council introduced, read by title only, and waived further reading of the Massage Establishments and Practitioners Ordinance (Ordinance No. 11-392). The City Council unanimously approved the introduction of Ordinance No. 11-392.

The purpose of the Massage Establishments and Practitioners Ordinance is to establish comprehensive regulations for massage establishments and practitioners to protect the public health, safety and welfare by: (1) requiring a clean and safe environment for massage treatments; and (2) providing minimum standards for the conduct of massage.

RECOMMENDATION

Staff recommends the City Council adopt Ordinance No. 11-392, Massage Establishments and Practitioners.

Attachment: Ordinance No. 11-392

ORDINANCE NO. 11-392

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, AMENDING THE MUNICIPAL CODE AND ADOPTING NEW REGULATIONS FOR MASSAGE ESTABLISHMENTS AND PRACTITIONERS

THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, does ordain as follows:

A. Recitals.

(i) The City of Agoura Hills (“City”) has adopted regulations governing massage establishments pursuant to its police powers to protect public health, safety, and welfare. Specifically, the City has adopted Title IX of the Agoura Hills Municipal Code (“Code”) that sets forth a comprehensive zoning law that includes certain zoning restrictions, permitting and findings applicable to massage establishments, particularly in sections 9312.2 and 9312.3 to part 2 of chapter 3, and section 9673.7 of division 3 to part 3 of chapter 6 of the Title IX of the Code.

(ii) In 2009, the Legislature passed SB 731 (Business and Professions Code Section 4600 et seq.), which created a new entity, the non-profit California Massage Therapy Council (CAMTC), with regulatory authority over the certification of massage therapists and practitioners throughout the State of California. SB 731 also imposed new limitations on the authority of cities to enact or enforce regulations applicable to CAMTC-certified individual and massage establishments employing only those individuals and preempting the application of certain land use, zoning and facility requirements on such massage establishments. SB 731 does allow cities to adopt and enforce certain business licensing and reasonable health and safety requirements for massage establishments and massage practitioners.

(iii) The City desires to amend the Code so that its provisions are consistent with SB 731, and there is a need for regulations pertaining to massage practitioners and establishments in order to protect the public health, safety, and welfare.

(iv) On November 17, 2011, the Planning Commission of the City of Agoura Hills held a duly noticed public hearing to consider the Draft Massage Establishments and Practitioners Ordinance, and received testimony from City staff and all interested parties regarding the proposed Code amendments. Following the close of the public hearing, the Planning Commission adopted Resolution No. 11-1044, recommending approval of the said Draft Ordinance.

(v) On December 14, 2011, the City Council of the City of Agoura Hills conducted and concluded a duly noticed public hearing concerning the proposed Code amendments contained herein as required by law, and received testimony from City staff and all interested parties regarding the proposed amendments.

(vi) All legal prerequisites to the adoption of the Ordinance have occurred.

B. Ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AGOURA HILLS DOES ORDAIN AS FOLLOWS:

SECTION 1. The facts set forth in the Recitals, Part A of this Ordinance, are true and correct.

SECTION 2. Environmental Review. Pursuant to the California Environmental Quality Act (“CEQA”), and the City’s local CEQA Guidelines, City staff has determined that Ordinance No. 11-392 is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. City staff found that there is no possible significant effect related to Ordinance No. 11-392 (“project”), since the Ordinance would not contribute to any physical changes to the environment. Therefore, no further action is required under CEQA pursuant to Section 15061(b)(3) of the State CEQA Guidelines (14 CCR § 15061(b)(3)). The City Council has reviewed the project, and based upon the whole record before it, in the exercise of its independent judgment and analysis, concurs that City staff has correctly concluded that it can be seen with certainty that there is no possibility the proposed amendments to the Code and the effects from that adoption may have a significant effect on the environment.

SECTION 3. Paragraph (g) of Section 6301 of Chapter 3, Article VI of the Agoura Hills Municipal Code is hereby repealed and replaced in its entirety with the following amendment to the license ordinance of the City of Agoura Hills.

“(g) Notwithstanding the provisions of section 6300, the license ordinance of the City of Agoura Hills is amended by deleting Chapter 7.54 (Massage) in its entirety and replacing it with a new Chapter 7.54 to read as follows:

Chapter 7.54. Massage

7.54.010. Massage regulations. Every person conducting or operating a massage establishment shall comply with the rules and regulations found in Division 12 (Massage Establishments and Practitioners), Part 2 (Special Regulations), Chapter 6 (General Provisions), Article IX (Zoning) of the Agoura Hills Municipal Code.

7.54.020. Business license required. Every person conducting or operating a massage establishment shall first procure a license and for each such place pay an annual license fee in the amount set forth under the appropriate headings in section 7.14.010 of this title.”

SECTION 4. Section 6301 of Chapter 3, Article VI of the Agoura Hills Municipal Code is hereby amended by the addition thereto of a new paragraph (h) to the license ordinance of the City of Agoura Hills to read as follows:

“(h) Notwithstanding the provisions of section 6300, the license ordinance of the City of Agoura Hills is amended by amending section 7.14.050 (Fee Schedule) to replace the term

“Massage Parlor” with the term “Massage Establishment,” and delete the term “Massage Technician.”

SECTION 5. Section 9120.1.A (G) of Part 3 of Chapter 1 of Article IX (Zoning Ordinance) of the Agoura Hills Municipal Code is hereby amended to read as follows:

“G. *Adult business.* “Adult business” means any business which, because minors are excluded by virtue of their age as a prevailing business practice, is not customarily open to the general public, including but not limited to, an adult arcade, adult bookstore, adult theater, cabaret, love parlor, ~~massage parlor~~, model studio, nude studio, sexual catharsis center, sexual encounter shop, sexual novelty store or any other similar use wherein the preponderant business is the offering of services, materials and/or products which have as their dominant theme the sexual arousal, sexual gratification and/or sexual stimulation of a customer. This definition does not apply, nor shall be interpreted to apply, to any business conducted, operated by or employing licensed chiropractors, licensed physicians, licensed physical therapists, licensed psychologists, licensed social workers or licensed marriage and family counselors, or state certified massage practitioners or therapists when performing professional services under or pursuant to the respective license or certificate held.”

SECTION 6. Item 3 in the “M” list in Section 9312.2 (Commercial use table 1), Part 2 (Commercial Use Tables), Chapter 3 (Commercial Districts), Article IX (Zoning) of the Agoura Hills Municipal Code is hereby amended as follows:

TABLE 1. PERMITTED USES WITHIN THE BUILDABLE AREA OF COMMERCIAL LOTS

	USE, SERVICE OR FACILITY	COMMERCIAL					BUSINESS PARK	
		CS	CRS	CR	CN	CS-MU	BP-OR	BP-M
3.	Message establishment	QL	QL		QL	QL	QL	QL

SECTION 7. Paragraph L of Section 9312.3. Special conditions, Part 2, Chapter 3, Article IX of the Agoura Hills Municipal Code is amended by replacing “L” in its entirety as follows:

“L. Permitted subject to the provisions of section 9662 et seq.”

SECTION 8. Division 12 “Massage Establishments and Practitioners” is hereby added to Part 2 (Special Regulations), Chapter 6 (General Provisions), Article IX (Zoning) of the Agoura Hills Municipal Code beginning at Section 9662 to read as follows:

“DIVISION 12. MASSAGE ESTABLISHMENTS AND PRACTITIONERS

9662. Purpose.

The purpose and intent of this division is to establish comprehensive regulations for massage establishments in order to protect the public health, safety, and welfare by: (1) requiring a clean and safe environment for massage treatments; and (2) providing minimum standards for the conduct of massages.

9662.1 Definitions.

“**CAMTC**” means the California Massage Therapy Council created under Chapter 10.5 (commencing with Section 4600) of Division 2 of the Businesses and Professions Code.

“**Massage**” means 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, stroking, kneading, rubbing, tapping, compressing, pounding, vibrating, rocking or stimulating of external surfaces of the body with hands or the aid of any apparatus or other appliances or devices, with or without supplementary aids such as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment, or other similar preparations for any consideration or compensation. The term, “massage,” does not include acupressure, which is defined in section 6301 of the code.

“**Massage establishment**” means a business or establishment, including a sole proprietor or independent contractor, that offers massage services at a fixed place of business, and also includes all establishments or businesses where massage is provided as an ancillary service, such as gyms, clubs, day spas and professional offices where such massage is not otherwise exempt under this division.

“**Massage practitioner**” means any person who gives or administers to another person for any form of consideration whatsoever a massage as defined in this section. The terms “massage therapist,” “massage technician,” or any other terms used within the massage industry are included within this definition. Massage practitioner also includes any person to whom a valid “massage therapist” or “massage practitioner” certificate has been issued by the CAMTC pursuant to sections 4601 and 4604 of the California Business and Professions Code, or any successor provision thereto.

“**Outcall massage**” means any massage performed by a massage practitioner outside the massage establishment where the massage practitioner is employed, or a massage administered by any person who is not employed by a fixed location massage establishment in the city.

“**Person**” means any individual, firm, association, partnership, corporation, joint venture, limited liability company or partnership, or combination of individuals in whatever form or character.

“Specified anatomical areas” means the following human anatomical areas: genitals; pubic regions; buttocks; anus; and female breasts below a point immediately above the top of the areola.

9662.2 CAMTC Certification and Business Registration Required.

- A. No person shall act as a massage practitioner unless such person holds and maintains a current, valid massage therapist or massage practitioner certification issued by the CAMTC. All massage practitioners shall file a copy of their current, valid massage therapist or massage practitioner CAMTC certification with the director.
- B. In addition to the requirement set forth in subsection (A), no person shall act as a massage practitioner in or upon any premises within the city, and administer a massage within the city without first obtaining a city business registration pursuant to chapter 8 of title VI of the code.

9662.3 Massage Establishment Registration and License Required.

- A. No person shall own or operate a massage establishment in or upon any premises within the city without first obtaining a city business registration for the establishment pursuant to chapter 8 of title VI of the code, and a massage parlor business license from the county pursuant to chapter 7.54 of the Los Angeles County Code. A separate business registration and license shall be obtained for each separate establishment owned or operated by such person.
- B. No person may own or operate a massage establishment in or upon any premises within the city unless all persons providing massage at or on behalf of the massage establishment have a CAMTC certificate, and have valid and current city business registration.

9662.4 Exceptions.

- A. Except as provided in subsection B, the requirements of this division do not apply to the following classes of individuals while they are engaged in the performance of their respective professions:
 - 1. Physicians, chiropractors, osteopaths, podiatrists, physical therapists, registered nurses or vocational nurses duly licensed to practice their respective profession in the State of California under the provisions of the California Business and Professions Code, while performing activities encompassed by such professional licenses.
 - 2. Other health care personnel, including acupuncturists, engaged in the healing arts that are regulated and licensed by the State of California pursuant to Division 2 of the California Business and Professions Code.

3. Barbers or cosmetologists, including estheticians, electrologists, and manicurists carrying out their particular occupation or business, who are duly licensed by the State of California, provided that nothing in this subsection shall authorize such individuals to provide massage services beyond the scope of the individual's license or certificate, and such massage is limited solely to the neck, face, scalp, feet, hands, arms, and lower limbs up to the knees, of their patrons. Nothing in this subsection shall exempt any establishment from the CAMTC certification requirements provided in this chapter if massage services are provided by anyone other than a barber or cosmetologist.
 4. State-licensed hospitals, nursing homes, and other state-licensed physical or mental health facilities and their employees.
 5. Athletic trainers certified by the State of California performing training services at professional, amateur or school athletic events or facilities, so long as such persons do not practice massage therapy as their primary occupation.
 6. Registered schools and their employees that provide massage therapy education or training and their students in training, provided that such students perform massage therapy only under the direct personal supervision of an instructor.
- B. Any individual who is employed by any person or persons duly exempted under part A of this section and administers massage services within the scope of his or her employment shall be required to obtain a massage therapist or massage practitioner certification from the CAMTC.

9662.5 Operational and Facilities Requirements.

Each massage establishment shall comply with the following operations and facilities requirements:

- A. Hours of Operation. No massage establishment shall be kept open for business between the hours of 10:30 p.m. and 7:00 a.m.
- B. Signs. A recognizable and legible sign complying with the requirements of this code shall be posted at the main entrance identifying the location as a massage establishment.
- C. Certificate Identification. All massage practitioners must maintain on their persons or on the premises their CAMTC certificate and/or CAMTC identification card for massage.
- D. Lighting. A minimum lighting shall be provided in accordance with the building code, and, in addition, at least one artificial light of not less than 40 watts shall be

provided in each enclosed room or booth where massage services are being performed on a patron.

E. Locking of Premises.

1. The doors to any cubicle, room, booth or other area in which massages are given may only be locked when staff is unavailable to assure the security of patrons and massage practitioners who are behind closed doors.
2. The exterior doors of the premises of a massage establishment, excepting entrances reserved for employees and deliveries, may only be locked during business hours when staff is unavailable to assure the security of the premises.

F. Ventilation. Minimum ventilation shall be provided in accordance with the building code.

G. Recording of Activities Prohibited. No building or part thereof where massage is being conducted shall be equipped with any electronic, mechanical or artificial device used, or capable of being used, for recording or videotaping, for monitoring the activities, conversation, or other sounds in the treatment room or room used by customers.

H. Register of Employees. Each massage establishment must maintain a register of all employees. The register must contain the names of all employees, their home addresses, age, birth date, gender, height, weight, color of hair, eyes, telephone number, social security number, date of employment and termination, if any, and the duties of each employee. All such information must be maintained in the register for a period of two years following such employee's termination. Such employee register must be available for inspection at the massage establishment to representatives of the city during regular business hours.

I. Patron Facilities. Adequate dressing and toilet facilities shall be provided for patrons.

J. General Prohibition on Outcall Massage. No outcall massage is permitted in the city.

K. All other applicable ordinances, laws, rules and regulations shall be satisfied.

9662.6 Health, Safety, and Physical Hygiene Requirements.

Each massage establishment must comply with the following requirements, as applicable:

A. Practitioner Attire and Hygiene. All employees and massage practitioners shall be dressed appropriately in clean, opaque clothing that does not expose specified

anatomical areas, as defined in this division, when administering massage in or upon the premises. "Dressed appropriately" shall further mean clothing which, at a minimum, provides complete coverage from mid-thigh to three inches below the collarbone. Any uniforms approved by the massage establishment shall comply with these requirements. There shall be no nudity by employees of the establishment or massage practitioners, and employees and practitioners shall not reveal specified anatomical areas, as defined in this division, while customers or patrons are present. All practitioners shall thoroughly wash their hands and arms with hot water and soap before and after each massage treatment.

- B. Patron Attire. All patrons shall be appropriately draped with a clean, white, opaque towel sufficient to cover specified anatomical areas while receiving massage services. All bathrobes or other garments provided for the use of patrons must either be disposed of after any use or laundered before their next use.
- C. Washbasins. A minimum of one (1) separate wash basin shall be provided in each massage establishment for the use of employees of any such establishment, which basin shall provide soap or detergent and hot and cold running water at all times, and shall be located within or as close as practicable to the area devoted to the performing of massage services. There shall also be provided at each washbasin sanitary towels placed in permanently installed dispensers.
- D. Maintenance of Premises and Equipment.
 - 1. All walls, ceilings, floors, pools, showers, bathtubs, saunas, steam rooms and all other physical facilities for the establishment shall be in good repair and maintained in a clean and sanitary condition. The walls in all rooms where water or steam baths, or showers, are given shall have a washable, mold-resistant surface.
 - 2. Wet and dry heat rooms, steam or vapor rooms, showers and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs shall be thoroughly cleaned after each use.
 - 3. Clean and sanitary towels and linens shall be provided for each patron of the establishment or each patron receiving massage services. No common use of towels or linens shall be permitted. Reuse of towels and linens shall be prohibited unless such towels and linens have first been laundered. Separate closed cabinets shall be provided for the storage of clean and soiled linen, and shall be plainly marked "clean linen" and "soiled linen."
 - 4. Disinfecting agents and sterilizing equipment shall be provided for any instruments used in administering any massage, and shall be disinfected and sterilized after each use.

5. A massage table or chair must be provided in each massage room, and the massage must be performed on this massage table or chair with the exception of "Thai," "Shiatsu," or similar forms of massage, which may be provided on a padded mat on the floor. Standard or portable massage tables shall be used with a durable, washable plastic or other waterproof material as a covering. A clean sheet or other effective sanitary covering shall be placed over a padded floor mat, and any floor area upon which a patron may lie, in the course of receiving a massage. Heavy white paper may be substituted for sheets, provided that such paper is used once for each person and then discarded into a sanitary receptacle. Foam pads more than four inches thick or more than four feet wide may not be used. Beds, mattresses and water beds may not be used in the administration of a massage.
 6. All liquids, creams, or other preparations used on, or made available to, patrons 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 patron, it shall be removed from the container in such a way as not to contaminate the remaining portion.
- E. Persons Using Drugs or Alcohol Prohibited. No alcoholic beverages shall be sold, served, furnished, kept, or possessed on the premises of any massage establishment. A person shall not enter, be, or remain in any part of a massage establishment while in the possession of, consuming or using any alcoholic beverage or drugs. The business licensee, manager, and every supervising employee shall not permit any such person to enter or remain upon such premises.
- F. Improper Solicitation or Performance of Services. Except to the extent required in writing by a state licensed medical practitioner, no massage therapy may be provided to a patron that results in intentional contact, or occasional and repetitive contact with the genitals, anus or areola of any patron. No massage practitioner may offer to or perform any act of prostitution as such term is defined in the California Penal Code.

9662.7 Business Name.

No person registered with the city as a business, and licensed by the county as a business to own or operate a massage establishment, shall operate under any name or conduct business under any designation not specified in the registration and license.

9662.8 Inspections.

Any and all investigating officials of the city, or county, as applicable, shall have the right to enter massage establishments from time to time during regular business hours to make reasonable inspections to observe and enforce compliance with building, fire, electrical, plumbing, or health and safety regulations, and to ascertain whether there is compliance with the provisions of this division.

9662.9 Prohibited Advertising Practices.

It is unlawful for any person who does not possess a valid massage practitioner or massage therapist certification issued by the CAMTC, and for any massage establishment that employs such a person, to:

- A. State or advertise or place any sign or card or any device, or to represent to the public through any print or electronic media, that such person is certified, registered, or licensed by a governmental agency as a massage therapist or practitioner.
- B. Hold oneself out or use the title of “certified massage therapist,” “certified massage practitioner,” or any other term, such as “licensed,” “registered,” or “CAMTC,” that implies or suggests that such person holds certification issued by the CAMTC.

9662.10 Regulations Nonexclusive.

The provisions of this division regulating massage establishments and massage practitioners are not intended to be exclusive, and compliance therewith shall not excuse noncompliance with any other applicable provisions of this code or other law.

9662.11 Conflicts

If the provisions of this division conflict with or contravene other provisions of this code, the provisions of this division shall prevail as to all matters and questions arising out of the subject matter of this chapter.”

SECTION 9. Additional Compliance Period. A massage practitioner currently practicing in the City will have until one (1) year from the effective date of this division to obtain a CAMTC certificate, as identified in section 9662.2(A), and a massage practitioner business registration from the city, as identified in section 9662.2(B). A massage establishment currently in operation in the City will have until one (1) year from the effective date of this division to obtain a county business license, as identified in section 9662.3(A), and a city business registration, as identified in section 9662.3(B).

SECTION 10. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this ordinance or the application thereof to any person or place, 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 remainder of this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that an one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 11. Certification and Effective Date. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published pursuant to state law within fifteen (15) days after its adoption, and this Ordinance shall become effective thirty (30) days after its adoption.

PASSED, APPROVED AND ADOPTED this 11th day of January 2012, by the following vote to wit:

AYES: (0)
NOES: (0)
ABSENT: (0)
ABSTAIN: (0)

John M. Edelston
Mayor

ATTEST:

Kimberly M. Rodrigues, MMC
City Clerk

APPROVED AS TO FORM:

Craig A. Steele
City Attorney