

# Agenda

# City of Loma Linda

*From the Department of Community Development*

**PLANNING COMMISSION  
REGULAR MEETING OF  
November 18, 2015  
7:00 p.m.  
CITY COUNCIL CHAMBERS  
25541 BARTON ROAD, LOMA LINDA, CA 92354**

**A. CALL TO ORDER** - Persons wishing to speak on an agenda item are asked to complete an information card and present it to the secretary. The Planning Commission meeting is recorded to assist in the preparation of the minutes, and you are, therefore, asked to give your name and address prior to offering testimony. All testimony is to be given from the podium.

**B. ROLL CALL**

**C. PLEDGE OF ALLEGIANCE**

**D. ITEMS TO BE DELETED OR ADDED**

**E. ORAL REPORTS/PUBLIC PARTICIPATION ON NON-AGENDA ITEMS (LIMITED TO 30 MINUTES; 3 MINUTES ALLOTTED FOR EACH SPEAKER)** - This portion of the agenda provides opportunity to speak on an item, which is **NOT** on the agenda. Pursuant to the Brown Act, the Planning Commission can take no action at this time; however, the Planning Commission may refer your comments/concerns to staff, or request the item be placed on a future agenda.

**F. NEW BUSINESS**

**G. PUBLIC HEARINGS (THREE MINUTES IS ALLOTTED FOR EACH SPEAKER PER PUBLIC HEARING ITEM)**

1. **DEVELOPMENT CODE AMENDMENT (DCA) NO. 15-158** – Defining and prohibiting medical marijuana dispensaries, cultivation of marijuana, and all commercial medical marijuana uses in the City

**RECOMMENDATION**

It is recommended that the Planning Commission recommend approval to the City Council of DCA No. 15-158 – Defining and prohibiting medical marijuana dispensaries, cultivation of marijuana, and all commercial medical marijuana uses in the City.

2. **DEVELOPMENT CODE AMENDMENT (DCA) 15-159** – Definitions and Regulations Relating to Massage Establishments and Massage Technicians

**RECOMMENDATION**

It is recommended that the Planning Commission recommend approval to the City Council of DCA No. 15-159 – New Regulations Relating to massage establishments, and massage technicians.

## **H. REPORTS BY THE PLANNING COMMISSIONERS**

### **I. COMMUNITY DEVELOPMENT DIRECTOR REPORT**

- J. ADJOURNMENT** - Reports and documents relating to each agenda item are on file in the Department of Community Development and are available for public inspection during normal business hours, Monday through Thursday, 7:00 a.m. to 5:30 p.m. The Loma Linda Branch Library can also provide an agenda packet for your convenience.

*In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk at (909) 799-2819. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. Later requests will be accommodated to the extent feasible.*

# Staff Report

# City of Loma Linda

From the Department of Community Development

## PLANNING COMMISSION MEETING OF NOVEMBER 18, 2015

PLANNING COMMISSION AGENDA:

TO: Planning Commission

FROM: Konrad Bolowich, Assistant City Manager

SUBJECT: **DEVELOPMENT CODE AMENDMENT (DCA) NO. 15-158** – Defining and prohibiting medical marijuana dispensaries, cultivation of marijuana, and all commercial medical marijuana uses in the City.

Approved/Continued/Denied By Planning Commission Date _____
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### RECOMMENDATION

It is recommended that the Planning Commission recommend approval to the City Council, of DCA No. 15-158 – Defining and prohibiting medical marijuana dispensaries, cultivation of marijuana, and all commercial medical marijuana uses in the City.

### BACKGROUND

The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances. The proposition further provides that “nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes.” The ballot arguments supporting Proposition 215 expressly acknowledged that “Proposition 215 does not allow unlimited quantities of marijuana to be grown anywhere.”

In 2004, the Legislature enacted Senate Bill 420 (codified as California Health & Safety Code § 11362.7 et seq. and referred to as the “Medical Marijuana Program” or “MMP”) to clarify the scope of Proposition 215 and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes. Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the Medical Marijuana Program to expressly recognize the authority of counties and cities to “[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective” and to civilly and criminally enforce such ordinances.

In City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. (2013) 56 Cal.4<sup>th</sup> 729, the California Supreme Court held that “[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land. . . .” Additionally, in Maral v. City of Live Oak (2013) 221 Cal.App.4<sup>th</sup> 975, the Court of Appeal held that “there is no right – and certainly no constitutional right – to cultivate medical marijuana. . . .” The Court in Maral affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority.

The Federal Controlled Substances Act, 21 U.S.C. § 801 et seq., classifies marijuana as a Schedule 1 Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United State, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful under federal law for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for medical purposes, although there is recent case law that raises a question as to whether the Federal Government may enforce the Act where medical marijuana is allowed.

On October 9, 2015 Governor Brown signed 3 bills into law (AB 266, AB 243, and SB 643) which collectively are known as the Medical Marijuana Regulation and Safety Act (hereafter “MMRSA”). The MMRSA set up a State licensing scheme for commercial medical marijuana uses while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a State license. The MMRSA allows the City to completely prohibit commercial medical marijuana activities.

The limited immunity from specified state marijuana laws provided by the Compassionate Use Act and Medical Marijuana Program does not confer a land use right or the right to create or maintain a public nuisance.

On June 28, 2011 the Loma Linda City Council unanimously adopted Ordinance No. 706, to prohibit medical marijuana distribution facilities within any zone within the corporate boundaries of the City of Loma Linda. The City Council found that commercial medical marijuana activities, as well as cultivation for personal medical use as allowed by the CUA and MMP can adversely affect the health, safety, and well-being of City residents. Citywide prohibition is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells and indoor electrical fire hazards that may result from such activities. Further, as recognized by the Attorney General’s August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, marijuana cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.

### **ANALYSIS**

The MMRSA contains language that requires the city to prohibit cultivation uses by March 1, 2016 either expressly or otherwise under the principles of permissive zoning, or the State will become the sole licensing authority. The MMRSA also contains language that requires delivery services to be expressly prohibited by local ordinance, if the City wishes to do so. The MMRSA is silent as to how the City must prohibit other type of commercial medical marijuana activities.

While the City Council believes that cultivation and all commercial medical marijuana uses are already prohibited under the City’s permissive zoning regulations and Chapter 17.100 – Medical Marijuana, the City desires to further strengthen Chapter 17.100 and enact this ordinance to expressly make clear that all such uses are prohibited in all zones throughout the City.

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Staff has determined that the project is not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15305, minor alterations in land use limitations in

areas with an average slope of less than 20% that do not result in any changes in land use or density and pursuant to the CEQA Guidelines Section 15061(b)(3), which states the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the physical environment, the activity is not subject to CEQA. Amending the LLMC, Title 17 would not involve new development or construction and would not result in any significant environmental impacts. Any future modifications to the proposed ordinance would be reviewed for potential environmental impacts.

### **Findings**

Text amendments to zoning documents are considered legislative acts and do not require findings. State law does require that the Municipal Code provisions be consistent with the General Plan. However, the General Plan (May 26, 2009) does not directly address issues regarding the sale of medical marijuana. General Plan documents are intended to promote the community's vision and to ensure that the quality of life remains high. According to Section 1.2.1 of the General Plan the vision for Loma Linda is that it will continue to be a safe, unique community in which to both live and work. The City's people, natural assets, a unique economy and a strong health foundation will provide a beautiful City for generations of all ages to enjoy. Prohibiting the establishment of medical marijuana dispensaries will help to safeguard the General Plan's vision for the community.

Updates to the Municipal Code are necessary to address once unforeseeable interests. Under the City's "permissive" zoning system, uses that are not expressly enumerated as permitted are deemed to be prohibited. To prevent disputes about whether a medical marijuana facility is an allowed use, the zoning ordinance should be amended to specifically prohibit the establishment of medical marijuana facilities in all areas of the City.

### **CONCLUSION**

The proposed amendment to Title 17 of the Municipal Code will prohibit the establishment of medical marijuana dispensaries in all areas of the City. The City's "permissive" zoning system may not be specific enough to address the issues related to the sale of marijuana. The amendments to the Municipal Code are consistent with the intent and purpose of the General Plan (May 26, 2009) to promote the community's vision and ensure that the quality of life in Loma Linda remains high.

### **EXHIBIT**

A – Draft Ordinance

Report prepared by:

Guillermo Arreola  
Senior Planner

## DRAFT ORDINANCE

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOMA LINDA, CALIFORNIA, AMENDING CHAPTER 17.100 OF THE LOMA LINDA MUNICIPAL CODE DEFINING AND PROHIBITING MEDICAL MARIJUANA DISPENSARIES, CULTIVATION OF MARIJUANA AND ALL COMMERCIAL MEDICAL MARIJUANA USES IN THE CITY.

The City Council of the City of Loma Linda does hereby ordain as follows:

Section 1. Findings and Purpose. The City Council finds and declares as follows:

A. In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code § 11362.5 and entitled “The Compassionate Use Act of 1996” or “CUA”).

B. The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances. The proposition further provides that “nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes.” The ballot arguments supporting Proposition 215 expressly acknowledged that “Proposition 215 does not allow unlimited quantities of marijuana to be grown anywhere.”

C. In 2004, the Legislature enacted Senate Bill 420 (codified as California Health & Safety Code § 11362.7 et seq. and referred to as the “Medical Marijuana Program” or “MMP”) to clarify the scope of Proposition 215 and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes. Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the Medical Marijuana Program to expressly recognize the authority of counties and cities to “[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective” and to civilly and criminally enforce such ordinances.

D. In City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. (2013) 56 Cal.4<sup>th</sup> 729, the California Supreme Court held that “[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land. . . .” Additionally, in Maral v. City of Live Oak (2013) 221 Cal.App.4<sup>th</sup> 975, the Court of Appeal held that “there is no right – and certainly no constitutional right – to cultivate medical marijuana. . . .” The Court in Maral affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority.

E. The Federal Controlled Substances Act, 21 U.S.C. § 801 et seq., classifies marijuana as a Schedule 1 Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States,

and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful under federal law for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for medical purposes, although there is recent case law that raises a question as to whether the Federal Government may enforce the Act where medical marijuana is allowed.

F. On October 9, 2015 Governor Brown signed 3 bills into law (AB 266, AB 243, and SB 643) which collectively are known as the Medical Marijuana Regulation and Safety Act (hereafter “MMRSA”). The MMRSA set up a State licensing scheme for commercial medical marijuana uses while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a State license. The MMRSA allows the City to completely prohibit commercial medical marijuana activities.

G. The City Council finds that commercial medical marijuana activities, as well as cultivation for personal medical use as allowed by the CUA and MMP can adversely affect the health, safety, and well-being of City residents. Citywide prohibition is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, high water usage, malodorous smells and indoor electrical fire hazards that may result from such activities. Further, as recognized by the Attorney General’s August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, marijuana cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.

H. The limited immunity from specified state marijuana laws provided by the Compassionate Use Act and Medical Marijuana Program does not confer a land use right or the right to create or maintain a public nuisance.

I. On June 28, 2011 the Loma Linda City Council unanimously adopted Ordinance No. 706, to prohibit medical marijuana distribution facilities within any zone within the corporate boundaries of the City of Loma Linda.

J. The MMRSA contains language that requires the city to prohibit cultivation uses by March 1, 2016 either expressly or otherwise under the principles of permissive zoning, or the State will become the sole licensing authority. The MMRSA also contains language that requires delivery services to be expressly prohibited by local ordinance, if the City wishes to do so. The MMRSA is silent as to how the City must prohibit other type of commercial medical marijuana activities.

K. While the City Council believes that cultivation and all commercial medical marijuana uses are already prohibited under the City’s permissive zoning regulations, it desires to enact this ordinance to expressly make clear that all such uses are prohibited in all zones throughout the City.

L. The Planning Commission held a duly noticed public hearing on November 18, 2015 at which time it considered all evidence presented, both written and oral and at the end of the hearing voted to adopt a resolution recommending that the City Council adopt this Ordinance.

M. The City Council held a duly noticed public hearing on this Ordinance on December \_\_\_\_\_, 2015, at which time it considered all evidence presented, both written and oral.

Section 2. Authority. This ordinance is adopted pursuant to the authority granted by the California Constitution and State law, including but not limited to Article XI, Section 7 of the California Constitution, the Compassionate Use Act, the Medical Marijuana Program, and The Medical Marijuana Regulation and Safety Act.

Section 3. Chapter 17.100 of the Loma Linda Municipal Code is amended in its entirety to read as follows:

Chapter 17.100 Medical Marijuana

17.100.010 Dispensaries prohibited.

No medical marijuana or cannabis dispensary or distribution facility as defined in Section 9.32.010 of the Loma Linda Municipal Code or in Business & Professions Code § 19300.5(n), as the same may be amended from time to time, shall be permitted in any zone within the City of Loma Linda. For purposes of this Section, “Dispensary” shall also include a cooperative or a mobile distribution facility.

17.100.020 Commercial marijuana activities prohibited.

Commercial marijuana or cannabis activities of all types, including the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transport, delivery, dispensing, transfer, distribution, or sale of medical cannabis or medical cannabis products all as defined under Business & Professions Code Sec. 19300.5, as the same may be amended from time to time, are expressly prohibited in all zones and all specific plan areas in the City of Loma Linda. No person shall establish, operate, conduct or allow a commercial cannabis activity anywhere within the City.

17.100.030 Deliveries of medical marijuana prohibited.

To the extent not already covered by Section 17.100.020, all deliveries of medical cannabis as defined under Business & Professions Code Sec. 19300.5, as the same may be amended from time to time, are expressly prohibited within the City of Loma Linda, including the use by a dispensary of any technology platform owned and controlled by the dispensary, or independently licensed, that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical

cannabis products. No person shall conduct any deliveries that either originate or terminate within the City.

17.100.040 Cultivation of Marijuana prohibited.

To the extent not already covered by Section 17.100.020, cultivation of marijuana or cannabis for commercial or non-commercial purposes, including cultivation by a qualified patient or a primary caregiver, is expressly prohibited in all zones and all specific plan areas in the City of Loma Linda. No person, including a qualified patient or primary caregiver, shall cultivate any amount of cannabis in the City, even for medical purposes. Cultivation shall include planting, growing, harvesting, drying, curing, grading or trimming of cannabis.

17.100.050 Intent

This Chapter is meant to prohibit all medical marijuana or commercial cannabis activities, including but not limited to those for which a State license is required. Accordingly, the City shall not issue any permit, license or other entitlement for any activity for which a State license is required under the Medical Marijuana Regulation and Safety Act.

17.100.060 Unlawful Uses.

Uses that are unlawful under federal or state law shall not be treated as permitted uses, and shall not be determined to be similar to any uses permitted pursuant to this Title.

Section 4. Nothing in this Ordinance shall be interpreted to mean that the City's permissive zoning scheme allows any other use not specifically listed therein.

Section 5. CEQA. This ordinance is exempt from CEQA pursuant to CEQA Guidelines section 15305, minor alterations in land use limitations in areas with an average slope of less than 20% that do not result in any changes in land use or density and section 15061(b)(3) which is the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment and CEQA does not apply where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment. The City's permissive zoning provisions already prohibits all uses that are being expressly prohibited by this ordinance. Therefore, this ordinance has no impact on the physical environment as it will not result in any changes.

Section 6. 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 sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

Section 7. To the extent the provisions of the Loma Linda Municipal Code as amended by this Ordinance are substantially the same as the provisions of that Code as they read immediately

prior to the adoption of this Ordinance, then those provisions shall be construed as continuations of the earlier provisions and not as new enactments.

Section 8. The City Clerk shall certify as to the adoption of this Ordinance and shall cause a summary thereof to be published within fifteen (15) days of adoption and shall post a certified copy of this Ordinance, including the vote for and against same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

Section 9. This ordinance shall be in full force and effect thirty days after passage.

**PASSED, APPROVED, AND ADOPTED** this \_\_\_ day of \_\_\_\_\_, 2015.

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ATTEST:

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City Clerk

APPROVED AS TO FORM:

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Richard E. Holdaway, City Attorney

# Staff Report

# City of Loma Linda

From the Community Development Department

## PLANNING COMMISSION MEETING OF NOVEMBER 18, 2015

### PLANNING COMMISSION AGENDA:

TO: Planning Commission

FROM: Konrad Bolowich, Assistant City Manager

SUBJECT: **DEVELOPMENT CODE AMENDMENT (DCA) 15-159** – Definitions and Regulations Relating to Massage Establishments and Massage Technicians

Approved/Continued/Denied By Planning Commission Date _____
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### RECOMMENDATION

It is recommended that the Planning Commission recommend approval to the City Council, of DCA No. 15-159 – New Regulations Relating to massage establishments, and massage technicians, in the City.

### BACKGROUND

In September 2008, the Governor signed into law Senate Bill 731 (Oropeza), which added a new Chapter 10.5 to the California Business and Professions Code, providing for the formation of the nonprofit California Massage Therapy Council (CAMTC) to oversee a state-sanctioned program of voluntary certification for massage practitioners so that such persons could avoid being required to obtain local massage permits. The legislation also instituted relaxed requirements for the establishment and operation of massage businesses and removed what little land use authority local jurisdictions were previously able to exercise over the establishment of such businesses. SB 731 required cities to treat massage businesses no different than other businesses providing “personal services,” such as barber shops, beauty salons or nail salons, all of which are allowed by-right in the City’s Commercial zoning districts.

Since the approval of SB 731, many California cities have experienced a significant increase in the number of massage businesses that have opened. Many of the establishments are providing “services” other than traditional massage, up to and including various types of sex acts. This has been confirmed by multiple comments and reviews by patrons on websites that promote massage establishments offering these types of illegal services. Many of the massage businesses are characterized by late business hours and storefront windows completely covered by drapes, blinds or other window coverings. Further, there have been multiple occasions when staff, in the course of performing site inspections for Zoning and Use Reviews, has encountered difficulty gaining access to certain establishments, and alleged massage technicians dressed in less-than-professional attire.

Assembly Bill 1147 (Bonilla), signed into law in September 2014, seeks to restore a significant amount of oversight to local jurisdictions with respect to the establishment set forth numerous detailed operational standards for massage establishments.

### **ANALYSIS**

Massage establishment operators and technicians will be required to comply with the following:

- The requirement to obtain a Certificate of Operation, and an Operator Permit issued by the City;
- All massage practitioners and therapists shall provide proof of a current license issued by the California Massage Therapy Council (CAMTC);
- Scaled floor plans of the massage businesses shall be required, showing the customer waiting area, all massage rooms, restrooms, and any ancillary areas;
- Operational standards, including, but not limited to, hours of operation, instruments and equipment, professional attire, and sanitation; and
- Unannounced inspections by authorized City staff.

The proposed changes to the code will strengthen the regulations for massage establishments that are permitted by the CAMTC, which presently requires cities to treat these establishments as similar to beauty salons and barber shops. Additional regulations may be found in the attached draft ordinance

In addition, the C-1 (Neighborhood Business) and C-2 (General Business) zones will be amended to allow massage establishments as permitted uses. The C-M (Commercial Manufacturing) zone will also be amended to remove massage establishments as permitted uses. Presently, all properties presently zoned C-M are developed with storage facilities, and a nature preserve, virtually zoning massage establishments out of the City.

### **ENVIRONMENTAL**

This ordinance is categorically exempt from environmental review pursuant to Sections 15060(c)(2) and 15061(b)(3) of the California Environmental Quality Act (“CEQA”) because adding and amending sections of the existing Land Use Code to establish remove and replace massage establishment and massage technician regulations cannot result in direct or reasonably foreseeable indirect adverse physical changes in the environment. Furthermore, the enactment or amendment of a zoning ordinance undertaken by a public agency is not considered a project under Section 15378 (a)(1) of CEQA. A Notice of Exemption will be filed upon adoption of the development code amendment.

### **EXHIBIT**

A – Draft Ordinance

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOMA LINDA, CALIFORNIA REPEALING AND REPLACING TITLE 5, CHAPTER 5.24, AND AMENDING TITLE 17, CHAPTERS 17.44, 17.46 AND 17.48 OF THE LOMA LINDA MUNICIPAL CODE RELATING TO CALIFORNIA MASSAGE THERAPY COUNCIL APPROVED MASSAGE ESTABLISHMENTS AND MASSAGE TECHNICIANS**

**WHEREAS**, there is substantial research that indicates that the skillful practice of massage can provide many health benefits including relief of pain from disease, injury and other sources, and that massage can be a valuable component of a wellness program; and

**WHEREAS**, in 2008 the California Legislature passed SB 731 which added a new Chapter 10.5 to the California Business and Professions Code which provided for the formation of a nonprofit Massage Therapy Organization to oversee a state-sanctioned program of voluntary certification for massage practitioners so that such persons could avoid being required to obtain local massage permits; and

**WHEREAS**, SB 731 had a sunset date of January 2, 2015; and

**WHEREAS**, in September 2014 the Legislature adopted AB 1147, amending the laws enacted by SB 731 and the various amendments thereto; and

**WHEREAS**, the purpose of AB 1147 was to restore much of the local control and land use authority to local governments which had been usurped by SB 731 and the various amendments thereto; and

**WHEREAS**, the City has experienced a number of problems with illicit activities at massage establishments since the passage of SB 731; and

**WHEREAS**, the City Council desires to amend Chapter 5.24 of the Loma Linda Municipal Code in order to make changes in its regulation of massage establishment businesses and the practice of massage in order to protect the public, and amend Title 17, Chapter 17.44 (C-1 Neighborhood Business Zone) and Chapter 17.46 (C-2 General Business Zone), to allow

massage establishments in these zones, and Chapter 17.48 (Commercial Manufacturing Zone), which eliminates massage establishments in this zone.

**NOW, THEREFORE,** the City Council of the City of Loma Linda does hereby resolve as follows:

**SECTION 1.** TITLE V, Chapter 5.24 of the Loma Linda Municipal Code is hereby repealed and readopted to read as follows:

**ARTICLE I  
GENERAL PROVISIONS**

**§ 5.24.010 FINDINGS AND PURPOSE.**

**§ 5.24.020 DEFINITIONS.**

**§ 5.24.030 EXCEPTIONS.**

**§ 5.24.040 BUSINESS LICENSE AND OTHER PERMITS REQUIRED.**

**§ 5.24.050 FLOOR PLANS REQUIRED.**

**ARTICLE II  
MASSAGE PRACTITIONERS AND MASSAGE THERAPISTS**

**§ 5.24.060 CAMTC CERTIFICATE REQUIRED.**

**ARTICLE III  
CERTIFICATES OF OPERATION AND OPERATOR PERMITS**

**§ 5.24.070 CERTIFICATE AND PERMIT REQUIREMENT.**

**§ 5.24.080 OPERATOR PERMIT.**

**§ 5.24.090 CERTIFICATE OF OPERATION.**

**§ 5.24.100 SUSPENSION AND REVOCATION OF PERMITS AND CERTIFICATES.**

**§ 5.24.110 APPEALS TO CITY MANAGER.**

**§ 5.24.120 NOTICES.**

**ARTICLE IV  
OPERATION AND FACILITY REQUIREMENTS**

**§ 5.24.130 OPERATIONAL REQUIREMENTS.**

**§ 5.24.140 BUILDING AND FACILITY REQUIREMENTS.**

**§ 5.24.150 INSPECTIONS.**

**ARTICLE V  
ENFORCEMENT**

**§5.24.160 PENALTY.**

**ARTICLE I  
GENERAL PROVISIONS**

**§ 5.24.010 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, while recognizing massage as a legitimate business interest that provides benefits to its patrons in a therapeutic setting.
- (B) This chapter is enacted pursuant to the provisions of the State Constitution, Cal. Gov't Code §§ 37100, 51030 *et seq.*, Cal. Bus. & Prof. Code §§ 460, 4600 through 4620 and § 16000, § 13 of the Chiropractic Act (initiative measure approved by the electors November 7, 1922, as amended) and AB 1147 (2014).
- (C) There is a significant risk of injury to massage clients by persons improperly trained and/or educated in providing massage services, and this chapter provides reasonable safeguards against injury and economic loss.
- (D) There is opportunity for acts of prostitution, lewdness, and other unlawful sexual activity to occur in massage establishments, as well as problems relating to human trafficking in massage establishments. Courts have long recognized massage as a pervasively regulated activity and that massage establishments are often brothels in disguise. The establishment of reasonable standards for issuance of permits and restrictions on operations would serve to reduce the risk of illegal activity and would thereby benefit the public health.
- (E) The provisions of this chapter are intended to enhance the efficient processing of permits for massage establishments, owners and managers and the ongoing regulation of those permittees and certificate holders by the City of Loma Linda. The provisions of this chapter in no way limit the authority of the City to inspect massage establishments or conduct investigations to ensure permittees are complying with applicable rules and regulations.

Ordinance No. \_\_\_\_

- (F) The restrictions and requirements contained in this chapter are intended to stop the practice of businesses quickly changing ownership in name upon the discovery of criminal activity by the City.
- (G) The restrictions and requirements contained in this chapter are intended to be in addition to the requirement of a valid business license issued pursuant to Chapter 5.04 of the Loma Linda Municipal Code.
- (H) The regulations and restrictions contained in this chapter are intended to discourage massage establishments from degenerating into houses of prostitution, and the means utilized in this chapter bear a reasonable and rational relationship to the goals sought to be achieved within the confines allowed by state law.
- (I) The provisions of this chapter are not intended to be exclusive and compliance therewith shall not excuse noncompliance with any state or local laws or regulations that are uniformly applied to other professional or personal service businesses.
- (J) The California Massage Therapy Council (“CAMTC”) can better, and more efficiently, regulate massage technicians in order to best protect the public and it is in the public interest to require that all persons providing massage in the City have a certificate from the CAMTC.

**§ 5.24.020 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**CALIFORNIA MASSAGE THERAPY COUNCIL** or **CAMTC** The nonprofit organization created to regulate and issue massage practitioner and therapist certificates pursuant to Cal. Bus. & Prof. Code §§ 4600 *et seq.*

**CAMTC CERTIFICATE.** A massage practitioner or massage therapist certificate issued by the CAMTC.

**CERTIFICATE OF OPERATION.** The certificate issued by the Finance Director entitling a business to be operated as a massage establishment.

**CHIEF OF POLICE.** The Chief of Police of the City of Loma Linda, including the person acting in said capacity as an employee of the San Bernardino County Sheriff’s Department, or his or her designee.

**CITY.** The City of Loma Linda.

**CITY MANAGER.** The City Manager of the City of Loma Linda, or his or her designee.

**COMMUNITY DEVELOPMENT DIRECTOR.** The Community Development Director of the City of Loma Linda, or his or her designee.

**COMPENSATION.** The payment, loan, advance, donation, contribution, deposit, exchange, or gift of money or anything of value.

**CONVICTION or CONVICTED.** A conviction following a guilty plea, nolo contendere plea, or judgment or verdict where the time for appeal has elapsed or conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Cal. Penal Code § 1203.4 allowing the applicant to withdraw his or her plea of guilty or nolo contendere and to enter a plea of not guilty, or dismissing the accusation or information.

**EMPLOYEE.** Any person, other than a massage practitioner, massage therapist, or operator, who renders any service, with or without compensation, to the operator or agent of an operator of a massage establishment relating to the day-to-day operation of the massage establishment whether as an employee or independent contractor.

**FINANCE DIRECTOR.** The Finance Director of the City of Loma Linda, or his or her designee.

**MAIN ENTRY DOOR.** A door from the outside of the establishment leading into the reception area.

**MANAGER.** The person(s) designated by the owner of the massage establishment to act as the representative and agent of the owner in managing day-to-day operations with corresponding responsibilities. Evidence of management includes, but is not limited to, the ability of the individual to direct or hire and dismiss employees, control hours of operation, create policy or rules or purchase supplies, and ensure that the massage establishment complies with the requirements of this code and of other laws. A **MANAGER** may also be an owner. A **MANAGER** must have a valid Operator Permit.

**MASSAGE.** Any method of treating the external parts of the body for remedial, health, hygienic, or relaxation purpose. **MASSAGE** includes, but is not limited to, treatment by means of manual pressure, acupressure, friction, stroking, kneading, rubbing, tapping, pounding, vibrating, with or without the aid of or by means of any mechanical, electronic, or electrical apparatus or appliance, and with or without rubbing alcohol, liniments, aromatics, antiseptics, oils, powders, creams, lotions, ointments, or other similar preparations. **MASSAGE** specifically includes the application of any of these methods to the scalp, neck, or feet of any individual. (Some persons practicing massage may be exempt from all or parts of the permit requirements; please consult § 5.24.030).

**MASSAGE ESTABLISHMENT.** Any enterprise or establishment having a fixed place of business where any person engages in, conducts, carries on, or permits to be engaged in, conducted, or carried on, any of the activities set forth in the definition of **MASSAGE** in this section.

**MASSAGE PRACTITIONER.** A person who is certified as such by the CAMTC in accordance with the Massage Therapy Act.

**MASSAGE TECHNICIAN.** A massage practitioner or massage therapist certified by CAMTC.

**MASSAGE THERAPIST.** A person who is certified as such by the CAMTC in accordance with the Massage Therapy Act.

**MASSAGE THERAPY ACT.** Chapter 406 of the 2013-2014 Legislative Session, as the same may be amended from time to time.

**OPERATOR.** All persons who own or manage a massage establishment.

**OPERATOR PERMIT.** The permit issued by Chief of Police allowing a person to own or manage a massage establishment.

**OUT-CALL MASSAGE.** Any business or enterprise that engages in or performs massage for any form of consideration or in exchange for anything of value whatsoever at a location other than a massage establishment.

**OWNER.** All of the following:

- (1) The sole proprietor of a massage establishment, i.e., where the owner is the only person performing massage at that establishment;
- (2) In the case of a general business, each owner of the business;
- (3) In the case of a corporation, each stockholder holding more than 10% of the corporation and each officer and director of the corporation;
- (4) In the case of a partnership, each partner, excluding limited partners owning less than 10% of the partnership, and where a partner is a corporation, the provisions pertaining to a corporate applicant in division (3) apply.

**PATRON.** An individual on the premises of a massage establishment for the purpose of receiving a massage.

**PERMIT.** An Operator Permit or Certificate of Operation, unless the context indicates otherwise.

**PERMITTEE.** Any person who has obtained a Certificate of Operation or Operator Permit from the City.

**PERSON WHO HAS ENGAGED IN DISQUALIFYING CONDUCT.** A person who:

- (1) Within ten years preceding the date of filing of the application in question or, in the case of revocation proceedings, within ten years preceding the date of the revocation notice, has been convicted in a court of competent jurisdiction of any of the following:
  - (a) A violation of any provision of law pursuant to which a person is required to register under the provisions of Cal. Penal Code § 290;
  - (b) Conduct in violation of Cal. Penal Code §§ 266h, 266i, 314, 315, 316, 318, 653.22, 653.23, or § 647(a), (b) or (d);
  - (c) An attempt to commit or conspiracy to commit any of the above mentioned offenses;
  - (d) When the prosecution accepted a plea of guilty or nolo contendere to a charge of a violation of Cal. Penal Code §§ 415, 602 or any lesser included or related offense, in satisfaction of, or as a substitute for, any of the previously listed crimes;

- (e) Any crime committed while engaged in the management or ownership of a massage establishment or the practice of massage;
  - (f) A violation of Cal. Health & Safety Code § 11550 or any offense involving the illegal sale, distribution or possession of a controlled substance specified in Cal. Health & Safety Code §§ 11054, 11055, 11056, 11057 or 11058; or
  - (g) Any offense under a statute of any state or ordinance of any City or county, which is the equivalent of any of the aforementioned offenses, including Business & Professions Code § 4609(a).
- (2) Within ten years preceding the date of the filing of the application in question or, in the case of revocation proceedings, within ten years preceding the date of the revocation notice, has had any massage establishment, operator, technician, practitioner, therapist or trainee certificate, license or permit issued by any state, local agency or other licensing authority, including the CAMTC: denied, revoked or suspended for any reason other than lack of sufficient education; or has had to surrender such a certificate, license or permit as a result of pending criminal charges or administrative proceedings for suspension or revocation of any such certificate, license or permit;
  - (3) Within five years preceding the date of filing of the application in question or, in the case of revocation proceedings, within five years preceding the date of the revocation notice, has been convicted in a court of competent jurisdiction of any of the following:
    - (a) Any crime, other than an infraction or those listed above, involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or another, or substantially injure another;
    - (b) Any crime, other than an infraction or crimes relating to those offenses listed above, where the crime or act is substantially related to the management or ownership of a massage establishment or the practice of massage, including a violation of the Massage Therapy Act;
  - (4) Has been subjected to a permanent injunction against the conducting or maintaining of a nuisance pursuant to Cal. Penal Code §§ 11225 through 11235 of the Penal Code as the same may be amended from time to time, or any similar provisions of law in a jurisdiction outside the State of California; or
  - (5) Has been found to be maintaining a nuisance in connection with the same or similar type of business; or
  - (6) Within five years preceding the date of filing of the application in question or, in the case of revocation proceedings, within five years preceding the date of the revocation notice,
    - (a) Has engaged in the exposing of specified anatomical areas of oneself or of another person to view, or in touching the specified anatomical areas of

oneself or of another person, while providing massage services or while within view of a customer or patron of the massage establishment; or

- (b) Has been the Owner, Manager, or other similar position, in an establishment where the conduct described in subsection (6)(a) above has occurred.
- (7) Disqualifying conduct does not include the failure to obtain a Certificate of Operation or Operator Permit without any prior oral or written notification by the City that such was required, provided that the business and/or person cease operations immediately upon notification.

**PROOF OF BONA FIDE EMPLOYMENT.** Proof of an employer-employee relationship between the operator of the massage establishment and any person working at the massage establishment. Satisfactory **PROOF OF BONA FIDE EMPLOYMENT** must be shown by written payroll documentation evidencing the employer's compliance with California Employment Development Department (EDD) requirements for the withholding of California income tax, unemployment insurance contributions and disability contributions from the employee and written payroll documentation of the employer's compliance with Internal Revenue Service (IRS) requirements for the withholding of federal income taxes, Social Security (FICA) and Medicare contributions from the employee. Such written documentation can include, but is not limited to, W-2 wage and tax statements.

**RECEPTION AREA.** An area immediately inside the main entry door of the massage establishment dedicated to the reception and waiting of patrons and visitors of the massage establishment and which is not a massage room or otherwise used for the provision of massage services.

**RESIDENCE ADDRESS.** The actual physical home address and shall not include a P.O. Box, mailbox service, or other similar location.

**SOLE PROVIDER.** A massage business where the owner owns 100 percent of the business, is the only person who provides massage services for compensation for that business pursuant to a valid and active CAMTC Certificate, and has no other employees or independent contractors.

**SPA.** Facilities such as mineral baths, salt rooms, mineral rooms, saunas, steam rooms, whirlpools and other therapeutic baths.

**SPECIFIED ANATOMICAL AREAS.** Any of the following human anatomical areas: genitals, pubic area, buttocks, anus, or female breasts below a point immediately above the top of the areolae, without a health care referral and written consent of the patron.

**VISITOR.** A nonemployee who has entered the massage establishment for purposes other than receiving services.

**§ 5.24.030 EXCEPTIONS.**

- (A) *Complete exception.* The requirements of this chapter shall have no application and no effect upon and shall not be construed as applying to:

- (1) Any physician, surgeon, chiropractor, acupuncturist, osteopath, or physical therapist licensed to practice such profession in the State of California, within the scope of their license;
- (2) Any registered nurse or licensed vocational nurse, licensed to practice under the laws of the State of California, who is an employee of and working under the on-site direction of a physician, surgeon, chiropractor, osteopath, or physical therapist, duly licensed to practice their respective professions in this State.
  - (a) Any other person providing massage services that is employed by a physician, surgeon, chiropractor, osteopath, or physical therapist, shall be required to have a valid CAMTC Certificate, as well as work under the adequate supervision of such physician, surgeon, chiropractor, osteopath, or physical therapist as required by State law or regulation. If no specific law or regulation applies, adequate supervision shall have the same meaning as set forth in 16 California Code of Regulations section 312.
  - (b) If a duly licensed acupuncturist wishes to provide massage therapy services to his or her clients by an individual(s) other than his- or her- self, said individual(s) must have a valid CAMTC Certificate and the office of the acupuncturist shall be subject to all the provisions of this Chapter 5.24, as well as any other applicable provisions of the Loma Linda Municipal Code.
- (3) Any person licensed to practice any healing art under the provisions of Cal. Bus. & Prof. Code Div. 2 (commencing with § 500) when engaging in such practice within the scope of such license.
- (4) State-licensed hospitals, nursing homes, sanatoriums, or other health care facilities duly licensed by the State of California, and the employees of such facilities while working on the premises of such state-licensed facilities.
- (5) Accredited high schools, junior colleges, and colleges or universities whose coaches and trainers are acting within the scope of their employment.
- (6) Barbers, beauticians, or manicurists who are duly licensed by the State of California pursuant to the Barbering and Cosmetology Act set forth in Cal. Bus. & Prof. Code §§ 7300 *et seq.*, as the same may be amended from time to time, while engaging in practices within the scope of such license, except that this exemption applies solely for the massaging of the neck, face, and/or scalp of the customer or client of said barber or beautician or, in the case of a licensed manicurist, the massaging of the forearms, hands, calves, and/or feet at a State licensed facility. However, if a state licensed establishment also has a Certificate of Operation from the City to operate

as a massage establishment, the business must also comply with all provisions of this Chapter 5.24.

- (7) Schools of cosmetology or barbering which comply with the requirements of Cal. Bus. & Prof. Code §§ 7362 *et seq.* when instructors are acting within the scope of their employment or when students are working as unpaid externs pursuant to the requirements of Cal. Bus. & Prof. Code § 7395.1.
- (8) Any other business or professions exempt by state law.

(B) *Partial exception.*

- (1) Businesses that offer massage services that are ancillary to the primary business shall only be required to comply with the provisions set forth in division (B)(2) of this section. For purposes of this division, ancillary massage services shall be those services where less than 15% of the gross floor area of the business is devoted to massage.
- (2) Massage services provided under division (B)(1) of this section shall be required to comply with the following:
  - (a) Massage services must be performed by the holder of a valid CAMTC Certificate.
  - (b) The business shall comply with the following provisions of this chapter:
    - (1) Section 5.24.130(A)(1) relating to hours;
    - (2) Section 5.24.130(C) relating to instruments, equipment and personnel;
    - (3) Section 5.24.130(D)(1) through (3) relating to personnel lists;
    - (4) Section 5.24.130(E) relating to prohibited conduct;
    - (5) Section 5.24.140(A) through (F) relating to building and facility requirements;
    - (6) Section 5.24.150 relating to inspections.

- (C) Any person claiming exception under this section shall furnish satisfactory evidence upon request that he or she is entitled to such exception, including, proof of bona fide employment, or if applicable, a citation to the particular provision of state law upon which that person relies.

**§ 5.24.040 BUSINESS LICENSE AND OTHER PERMITS REQUIRED.**

- (A) Nothing herein relieves an individual or business from obtaining a City business license, conditional use permit in accordance with Title 17 of this Code, or other permit if otherwise required by law.

- (B) Any individual applying for a business license as a massage practitioner or a massage therapist shall provide proof of a current CAMTC Certificate before being issued a business license.

**§ 5.24.050 FLOOR PLANS REQUIRED.**

- (A) All massage establishments shall be required to submit a scaled floor plan as part of their application for a Certificate of Operation.
- (B) All businesses that claim a partial exemption from this Chapter pursuant to Section 5.24.030(B) shall be required to submit scaled floor plans in order to verify the applicability of the exemption.
- (C) No changes may be made to the approved floor plan without written approval from the Community Development Department, which may require modification of any conditional use permit related to the location.

**ARTICLE II**

**MESSAGE PRACTITIONERS AND MESSAGE THERAPISTS**

**§ 5.24.060 CAMTC CERTIFICATE REQUIRED.**

- (A) No person shall provide massage services, including out-call massage services, from any location in the City without having been issued a CAMTC Certificate, regardless of whether such person has an Operator Permit or the business has a Certificate of Operation.
- (B) Any person certified by the state who desires to operate a massage establishment, must obtain an Operator Permit in accordance with §§ 5.24.070 through 5.24.120.
- (C) No Operator of a massage establishment shall hire as an employee or utilize as an independent contractor any person to perform massage unless such person holds a current and valid CAMTC Certificate.

**ARTICLE III**

**CERTIFICATES OF OPERATION AND OPERATOR PERMITS**

**§ 5.24.070 CERTIFICATE AND PERMIT REQUIREMENT.**

- (A) No person shall own or manage any massage establishment in any location within the City without first having obtained an Operator Permit.
- (B) No massage establishment shall be allowed to operate within the City unless the business first obtains a Certificate of Operation. No Certificate of Operation shall be approved until each Operator identified in the application has obtained an Operator Permit.
- (C) Any person desiring to obtain a Certificate of Operation and/or an Operator Permit shall make application in accordance with the provisions of this subchapter, which application shall be accompanied by a nonrefundable fee in an amount established by resolution of the City Council.

- (D) All applications shall be dated and shall contain the following statements:
  - (1) A certification under penalty of perjury that the information contained in the application is true and correct; and
  - (2) An authorization for 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 continual compliance with all applicable provisions of law.
- (E) The provisions of Sections 5.24.050, 5.24.130, 5.24.140, 5.24.150 and 5.24.160 shall apply to any business that operates as a massage establishment, even if such business fails to obtain an Operator's permit or Certificate of Operation. The City may immediately order a business that fails to have a Certificate of Operation or a permitted Operator to cease operation.
- (F) Within thirty working days following receipt of a completed application(s), the Community Development Director shall either issue the Certificate of Operation and/or Operator Permit or mail a written statement of the reasons for denial thereof. Notwithstanding the above, failure of the City to act upon a completed application within the time frame set forth above shall not be deemed approval of the application pursuant to this chapter. Any Certificate of Operation or any permit issued pursuant to this subsection shall be deemed conditional pending the City's receipt of the California Department of Justice report on the applicant's fingerprints. If the fingerprint report demonstrates that the applicant has made any false, misleading or fraudulent statement of material fact in the permit application or in any report or record required to be filed therewith, or discloses any disqualifying conduct, the permit shall be subject to denial or revocation pursuant to this chapter.

**§ 5.24.080 OPERATOR PERMIT.**

- (A) *Application; contents.* Applicants for Operator Permits shall submit the following information to the Community Development Director on a form supplied by the City:
  - (1) The full true name of the applicant;
  - (2) A complete statement listing and explaining any and all aliases and fictitious names used by the applicant within the ten years immediately preceding the application;
  - (3) The current residence address and business address and current residence and business telephone number of the applicant;
  - (4) A list of all previous residential and business addresses for a minimum of eight years immediately preceding the present address of the applicant and the dates of residence for each address;
  - (5) The applicant's place of birth, and original documentation to verify both the applicant's identity and employment authorization (if applicable), as

listed under 8 U.S.C. 1324a(b)(1) and 8 C.F.R. 274a.2(b)(1). Documentation to satisfy this requirement may include, but is not limited to, a California driver's license, California identification card, social security card, resident alien ("green") card, United States passport (unexpired or expired), unexpired foreign passport that contains a temporary I-551 stamp, or an unexpired employment authorization document issued by the United States Government in compliance with 8 C.F.R. 274a.2(b)(1)(v)(A);

- (6) The history of the applicant as to any similar business or occupation within ten years immediately preceding the filing of the application. Such information shall include, but not be limited to, the names and addresses of any other massage establishments or similar businesses the applicant has owned, managed, provided massage services at, or worked at, whether the applicant has had a permit or license to operate, manage, provide massage services at, or work at a massage establishment denied, revoked or suspended in any jurisdiction; the reasons for any such denial, revocation or suspension; and the business, activity or occupation the applicant engaged in subsequent to such denial, revocation or suspension;
  - (7) All criminal convictions within the last ten years, excluding minor traffic violations, and the date and place of each such conviction and reason therefor;
  - (8) Such other reasonable identification and information as the Community Development Director may require in order to discover the truth of the matter specified as required to be set forth in the application;
  - (9) The applicant shall have be photographed by the Community Development Director, or otherwise supply a photograph as directed by the City; and
  - (10) An acknowledgement that by applying for an Operator Permit, the applicant understands that they are responsible for all violations of employees or independent contractors that may take place in the massage establishment which they own or manage, and that any such violations are grounds for revocation of the Operator Permit.
- (B) Once the information required by division (A) of this section is submitted, the applicant shall have his or her fingerprints taken for a criminal history background (Livescan) check in the manner directed by the Loma Linda Police Department.
- (C) The Community Development Director shall issue the Operator Permit, unless after investigation he or she makes any of the following findings:
- (1) The applicant has failed to provide information, documentation and assurances required by this chapter or by the Community Development Director; has failed to reveal any fact material to qualification; or has supplied information that is untrue or misleading as to a material fact pertaining to the qualification criteria; or

- (2) The applicant is a Person Who Has Engaged In Disqualifying Conduct; or
  - (3) There is substantial evidence that the applicant has engaged in disqualifying conduct, even if there is no conviction for such conduct; or
  - (4) The applicant has violated any provision of this chapter, or any similar ordinance, law, rule, or regulation of any other public agency which regulates the operation of massage establishments; or
  - (5) The applicant is not at least eighteen years of age; or
  - (6) The applicant is delinquent in paying City fees or penalties owed in relation to any permit issued pursuant to this chapter.
- (D) Permits issued pursuant to this section shall remain in effect, unless revoked, for a period of three years. Applications for the renewal of a permit shall be filed with the Community Development Director on a form supplied by the City. Temporary permits shall not be issued and expired permits are not valid unless the permittee has a written receipt showing that the renewal application was filed at least thirty (30) days prior to expiration, without action having been taken by the Community Development Director. Renewal applications shall be signed under penalty of perjury and shall be accompanied by a nonrefundable filing fee established by resolution of the City Council. A permittee shall be required to update the information contained in his original permit application and provide any new and/or additional information as may be reasonably required by the Community Development Director in order to determine whether the permit should be renewed, including all information required by division (A) and (B) of this section. Failure to provide this documentation shall be grounds for nonrenewal of the permit.
- (E) If the criminal history background check report demonstrates that the applicant has made any false, misleading or fraudulent statement of material fact in the permit application or in any report or record required to be filed therewith, or discloses any disqualifying conduct, the permit shall be subject to denial.
- (F) *Automatic issuance and renewal for CAMTC Certificate holders.*
- (1) Any person who holds a valid CAMTC Certificate shall only be required to provide the following information on a form that includes the statements set forth in Section 5.24.30(D):
    - (a) The full true name of the applicant;
    - (b) The current residence and business address and current residence and business telephone number of the applicant; and
    - (c) The name and address of the massage establishment for which the Operator Permit is sought.
  - (2) A copy of the applicant's CAMTC Certificate and identification shall be provided with the application, along with a fee in an amount set by resolution of the City Council.

- (3) The applicant shall be required to have his picture taken as specified above.
- (4) The Operator Permit shall automatically be issued upon completion of the form and verification of the validity of the CAMTC Certificate by the Community Development Director. No background check shall be required.
- (5) Renewals shall be required in accordance with division (D) of this section, but such renewals shall be automatic as long as the permittee maintains and provides a copy of his or her valid CAMTC Certificate.
- (G) Every person to whom a permit has been granted pursuant to this chapter shall be issued an identification badge by the Community Development Director which shall contain the person's name, photograph, expiration date and any other information deemed necessary by the Community Development Director. The badge shall be worn so as to be readily visible at all times while on the premises of the massage establishment. The identification shall be surrendered to the Community Development Director or his/her designee upon request.
- (H) Permits issued pursuant to this chapter may not be assigned or transferred.
- (I) It is the duty of each operator to notify the Community Development Director whenever there is a change in information which was required to be submitted in the application for the Operator Permit in the first instance. Such notification shall be in writing and made within ten business days of the change on a form provided by the City.
- (J) Each operator of a massage establishment shall be responsible for the conduct of all employees and independent contractors working on the premises of the business. Failure of the employees or independent contractors to comply with this chapter may result in the revocation of the operator's permit.
- (K) The operator of the massage establishment is responsible for verifying that all persons hold the appropriate CAMTC Certificate as required by this Chapter.
- (L) Any requirement of this Chapter applying to an operator shall apply to each and every operator of a massage establishment.

**5.24.090 CERTIFICATE OF OPERATION.**

- (A) Applications for a Certificate of Operation shall be filed with the Community Development Director and shall include the information set forth below:
  - (1) The full name of the applicant;
  - (2) The name under which the business is to be conducted, which name must match the name of the business under which the corresponding business license is issued under Chapter 5.04. No massage establishment business shall operate under any business name or conduct business under any designation not specified in the Certificate of Operation. If the applicant is

- a corporation, the name shall be exactly as shown on the articles of incorporation or on a valid DBA (“doing business as”);
- (3) The address of the proposed massage establishment;
  - (4) A detailed description of the operation and type of services to be provided by the massage establishment, including other therapies to be provided, and other businesses to be operated on the same premises;
  - (5) The full name of each operator of the massage establishment;
  - (6) A legal size copy of the floor plan approved as part of the conditional use permit, drawn to scale showing: entrances; exits; windows; interior doors; restrooms; all other separately enclosed rooms with dimensions, including, but not limited to closets, storerooms, break rooms, and changing rooms; and location of massage tables and chairs;
  - (7) The full name, address, and phone number of the legal owner of the property, if other than the applicant on which the massage establishment is to be located, along with a copy of the signed lease and a notarized acknowledgement from the owner of the property that a massage establishment will be located on his or her property; and
  - (8) The hours and days of operation.
- (B) The Community Development Director shall issue a Certificate of Operation upon verification of the following:
- (1) The massage establishment will comply with all applicable laws, including, but not limited to building, fire, zoning, health and safety regulations, as well as any conditions which have been imposed to comply with such laws; and
  - (2) Each person identified as an operator has obtained an Operator Permit.
- (C) Every massage establishment for which a Certificate of Operation has been granted pursuant to this chapter shall display the certificate in a conspicuous place so it may be readily seen by persons entering the premises.
- (D) A Certificate of Operation is not transferable to a separate location of the same business, to a different business at the same location, or to the same business under different ownership at the same location, or the same business under a different name.
- (E) It is the duty of each operator to notify the Community Development Director whenever there is a change in information which was required to be submitted in the application for the Certificate of Operation in the first instance. Any sale or transfer of any reportable interest of an owner in a massage establishment, which interest would be required to be reported under division (A) of this section in the first instance, shall render the Certificate of Operation temporarily suspended and subject to revocation in accordance with the provisions of this chapter unless prior

to the effective date of such sale or transfer, the new owner applies for and obtains an Operator Permit.

- (F) Notwithstanding any other provision of this code to the contrary, where a Notice of Intent to suspend or revoke, or a notice of suspension or revocation, has been issued regarding a massage establishment, or the business has otherwise been required to close because of suspension or revocation proceedings against the Operator, the Community Development Director shall not process or issue a new application for a Certificate of Operation for said location unless or until the revocation or suspension proceedings are dismissed or a final determination is made that the current Certificate of Operation should not be suspended or revoked, or a two year period has passed since the occurrence of the activity which gave rise to the suspension or revocation proceedings or other criminal actions.
- (G) Notwithstanding any other provision of this code to the contrary, when a massage establishment has been closed due to criminal activity and such decision is final, no new massage establishment may open in such location and no Certificate of Operation shall be issued for such location for a period of two years from the date of such final determination. For purposes of this section, closure due to criminal activity includes voluntary closure of the business after there have been arrests at the location or other notices relating to criminal activity or notices relating to suspension or revocation proceedings. This provision is not meant to prohibit the issuance of a Certificate of Operation to a business which initially failed to obtain a Certificate of Operation without any prior oral or written notification by the City that such was required.
- (H) Where the applicant for the Certificate of Operation is not the record owner, as shown on the latest county assessment roll, then upon issuance of the Certificate, the City shall send written notice to the property owner advising of the issuance of the certificate and the regulations applicable to the massage establishment and the property pursuant to this Chapter; this may be accomplished by including a copy of this Chapter with the notice.

#### **5.24.100 SUSPENSION AND REVOCATION OF PERMITS AND CERTIFICATES**

- (A) Subject to the procedures set forth in this section, the Community Development Director may suspend or revoke a Permit issued pursuant to this chapter whenever the Community Development Director determines that any of the following has occurred:
  - (1) The permittee, or an employee or independent contractor working on the premises, is conducting operations in a manner contrary to the provisions of this code;
  - (2) The permittee, or an employee or independent contractor working on the premises, is conducting operations in a manner which constitutes a public nuisance;

- (3) The permittee, or an employee or independent contractor working on the premises, is conducting operations in a manner which is detrimental to the health, safety or welfare of the City or its inhabitants;
  - (4) There is substantial evidence of prostitution or other unlawful activity;
  - (5) The permittee, or any employee or independent contractor working on the premises, has engaged in Disqualifying Conduct; or
  - (6) The Community Development Director makes any of the findings that would have justified denying the application in the first instance.
- (B) If, in the discretion of the Community Development Director, an alleged violation is minor and capable of correction, then prior to suspension or revocation a written notice shall be given to the Permittee of the alleged violation(s) involved to allow a period of time to correct the alleged violation(s), which period shall not exceed five business days, at the end of which period, an inspection shall be conducted to determine whether the alleged violation(s) has been corrected. For purposes of this section, written notice shall include either a notice of violation or an administrative citation.
- (C) If the Community Development Director determines that an alleged violation is not minor or capable of correction, that an alleged violation(s) continues without correction, or that there have been previous violations of this Chapter, even if for different reasons, then the Community Development Director may issue a Notice of Intent to suspend or revoke, along with an administrative or criminal citation. Examples of a violation which will be determined by the Community Development Director to be not capable of correction include but are not limited to substantial evidence of prostitution activity on the Massage Establishment premises or an immediate threat to public health, safety or welfare.
- (D) Notice of Intent to Suspend or Revoke. A Notice of Intent to Suspend or Revoke shall contain a statement of an alleged violation(s) which constitutes the basis for the suspension or revocation, notice of the right of the Permittee to respond to the charges in writing to the Community Development Director for a pre-appeal determination, notice of the right to appeal to the City Manager, and notice that a failure to respond in the time specified shall constitute a waiver of the right to respond, but not the right to appeal. If an alleged violation is capable of correction, the notice shall also advise the Permittee to correct the alleged violation(s) within the time to respond.
- (E) Response to Notice of Intent/Pre-appeal Determination.
- (1) The time to respond and request a pre-appeal determination shall be five business days from the date of service of the notice, regardless of whether the materials upon which the Notice of Intent is based are provided to the Permittee at that time.

- (2) If there is no response, the Permit shall be considered suspended or revoked upon the expiration of time in which to respond and request a pre-appeal hearing.
  - (3) If there is a response, the Permit shall remain in effect until a determination is made by the Community Development Director. In no event shall the Community Development Director hold a hearing until at least five (5) business days have passed from the time the City provides the materials upon which the Notice of Intent is issued to the Permittee.
- (F) Suspension or Revocation
- (1) If, after consideration of the Permittee's response, the Community Development Director determines that the Notice of Intent to Suspend or Revoke should be upheld, then the Community Development Director shall issue a Notice of Suspension or Revocation and serve it upon the Permittee as well as any other interested person requesting a copy of the same. Where all massage activity is required to cease, notice shall also be served on the owner of the property if different from the Operator or Certificate holder. The notice shall include information about the right to appeal.
    - (a) Upon issuance of a Notice of Suspension or Revocation of a Certificate of Operation, all massage activity at the Massage Establishment shall cease and no activity for which the Certificate of Operation is required shall be conducted while any appeal may be pending.
    - (b) Upon issuance of a Notice of Suspension or Revocation of an Operator Permit, the Operator must cease all work at the Massage Establishment. If there is no other person who has an Operator Permit which is not the subject of a suspension or revocation proceeding, then all massage activity at the Massage Establishment shall also cease and no massage activity shall be conducted while any appeal may be pending.
- (D) Surrender of Certificate of Operation and Permits. Any Permittee shall immediately surrender his or her permit or certificate to the Community Development Director upon its suspension or revocation. The Operator shall immediately surrender the Certificate of Operation upon revocation of an Operator Permit if there is no other permitted Operator.

**§5.24.110 APPEALS TO CITY MANAGER.**

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- (A) *Appeals.*
- (1) Appeals shall be in writing and filed with the City Clerk within the following time frames:

- (a) Appeals from any decision of the Community Development Director to deny a permit shall be in writing, shall clearly state the applicable basis for the appeal, and shall be filed not later than ten (10) calendar days following the giving of the Notice of denial.
  - (b) Appeals from a Notice of Intent to Suspend or Revoke a permit where no response is filed in accordance with Section 5.24.100 E above shall be filed not later than ten (10) calendar days following the expiration of the response period.
  - (c) Appeals from a Notice of Suspension or Revocation issued after a response is filed in accordance with Section 5.24.100 E above shall be filed not later than ten (10) calendar days following the giving of the Notice of Suspension or Revocation.
- (2) The City Clerk shall not accept an appeal from a decision of the Community Development Director, and no hearing shall be held, unless the appellant has paid a filing fee, in an amount set by resolution of the City Council, to defray the cost of such appeal. Any appeal without the timely payment of fees shall be considered to be untimely.
  - (3) The scope of the appeal hearing pursuant to this section shall be limited to those issues raised by the appellant in the written appeal, as submitted pursuant to subsection (A)(1) of this section.
- (B) *City Manager Action.*
- (1) Upon receipt of a timely filed appeal, the City Clerk shall set the matter for hearing before the City Manager. The hearing shall be held not fewer than ten (10) calendar days nor more than thirty (30) calendar days from the date of the appeal request. The hearing may be continued from time to time upon the mutual consent of the parties. For the purposes of this section, “City Manager” may include a hearing officer appointed by the City Manager, who shall then act in the City Manager’s place.
  - (2) The appellant shall be provided with notice of the time and place of the appeal hearing, as well as a copy of all relevant materials at least seven calendar days prior to the hearing.
  - (3) At the time of such hearing, the City Manager shall review the records and files relating to the decision.
    - (a) The City Manager shall permit any interested person to present any relevant evidence bearing on the issues involved in the matter.
    - (b) In conducting the hearing, technical rules relating to evidence and witnesses shall not apply. Any relevant evidence may be admitted if it is material and if it 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 evidence may be admissible if it is the sort upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The rules of privilege shall be applicable to the extent they are now, or are hereafter permitted in civil actions. Irrelevant, collateral, and repetitious testimony shall be excluded.

- (c) In determining whether a person should be disqualified for meeting the definition of Person Who Has Engaged In Disqualifying Conduct as set forth in § 5.24.02, the City Manager may consider: the nature and severity of the act(s) or crime(s); whether there were any additional subsequent act(s) or crime(s); the number of act(s) or crime(s); and how recent the act(s) or crime(s) were.
- (4) The appellant shall have the burden of proving that he or she meets the requirements for issuing the permit or certificate in the first instance; the City shall have the burden in proving that grounds exist for revoking or failing to renew a permit.
- (5) Based upon the evidence presented at the hearing, the City Manager shall determine whether the decision should be affirmed, modified or reversed.
- (6) The City Manager's decision shall be communicated in writing to the appellant within ten working days after the close of the hearing and submission of the matter to the City Manager for decision. The City Manager's decision shall state whether the decision is affirmed, modified or reversed and shall state the reasons therefor.
- (7) The decision of the City Manager shall include notice that the decision is final and conclusive, that judicial review may be sought therefrom pursuant to Cal. Civil Proc. Code § 1094.5, and that any action filed in the superior court shall be filed within 90 days following the City Manager's notice pursuant to Cal. Civil Proc. Code § 1094.6.

**§5.24.120 NOTICES.**

- (A) All notices required to be given pursuant to this chapter shall be served on the responsible party (i.e., permittee, applicant, appellant, or a representative thereof) either by personal delivery or by deposit in the United States mail in a sealed envelope postage prepaid addressed to such responsible party as the name and address appear in the most recent application on file with the City. Service by mail shall be deemed to have been completed on the date deposited in the mail. Notices shall include information regarding appeal rights and a statement that the failure to file an appeal shall constitute a failure to exhaust administrative remedies.
- (B) In all cases where the certificate holder is not the property owner, notices shall also be sent to the property owner of record where the notice relates to possible closure of the business due to suspension or revocation.

**ARTICLE IV**

Ordinance No. \_\_\_\_

## OPERATION AND FACILITY REQUIREMENTS

### § 5.24.130 OPERATIONAL REQUIREMENTS.

- (A) *Hours and conditions of operation.*
- (1) No massage establishment shall operate nor shall any massage be administered in any massage establishment between the hours of 10:00 p.m. and 8:00 a.m. A massage begun any time before 10:00 p.m. must nevertheless terminate at 10:00 p.m. The hours of operation must be displayed in a conspicuous public place in the lobby within the massage establishment and in any front window clearly visible from outside of the massage establishment. These hours of operation may be modified pursuant to a conditional use permit.
  - (2) During hours of operation, no person other than a valid permit holder under this chapter, a massage practitioner, a massage therapist, or a patron shall be allowed beyond the reception area of the massage establishment.
  - (3) Patrons and visitors shall only be permitted in the massage establishment during the hours of operation.
    - (a) Visitors shall only be permitted in the reception area of the massage establishment.
    - (b) Patrons shall only be permitted in massage treatment areas if at least one massage technician is on the premises.
  - (4) The massage establishment shall be supervised during all hours of operation by a manager who is one of the operators specified in the permit application. The name and photograph (minimum size of four inches by six inches) of the on-duty manager shall be posted in a conspicuous public place in the lobby of the massage establishment at all times that the business is open. This provision shall not apply to Sole Providers.
  - (5) No massage establishment shall be used for residential purposes. There shall be no massage tables, cots, or beds in the establishment other than as shown on the approved floor plan. Locker facilities shall be provided for all employees and independent contractors and all personal items of the employees and independent contractors shall be kept in the lockers while at the massage establishment.
- (B) *Posting requirements.* In addition to any other requirements for posting set forth in this chapter, the following shall also apply:
- (1) A recognizable and legible sign complying with the requirements of this code shall be posted at the main entrance identifying the establishment as a massage establishment.
  - (2) Each service offered, the price thereof, and the minimum length of time such service shall be performed shall be posted in English and such other languages as may be convenient to communicate such service, in a

conspicuous public location in each massage establishment. 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.

- (3) Any posted signs which are in a language other than English shall also be posted in English.

(C) *Instruments, equipment, and personnel.*

- (1) Disinfecting agents and sterilizing equipment shall be provided for any instruments used in performing acts of massage and said instruments shall be disinfected and sterilized after each use.
- (2) Unless otherwise approved by a conditional use permit, massages shall be administered only on standard or portable massage tables or chairs which are covered with a durable, washable plastic or other acceptable waterproof material. Beds, mattresses, water beds, futons, sofa beds, any type of portable or convertible beds, and foam pads more than four inches thick or with a width of more than four feet shall not be permitted in the establishment.
- (3) No massage technician shall massage the genitals or anal area of any patron nor shall any operator of a massage establishment allow or permit such a massage to the above-specified areas.
- (4) No massage technician shall massage the breasts of a female patron without the written consent of the person receiving the massage and a referral from a licensed California health care provider, nor shall any operator of a massage establishment allow or permit such a massage to the above-specified area.
- (5) A massage shall not be given and no patron shall be in the presence of any massage establishment staff unless the patron's genitalia and, if a female patron, the female patron's breasts, are fully covered by a fully opaque, nontransparent covering.
- (6) Persons providing services in the massage establishment shall not be dressed in attire that is: transparent, see-through, substantially exposes the massage technician's undergarments, or exposes the massage technician's breasts, buttocks, or genitals; in a manner which has been deemed by CAMTC to constitute unprofessional attire based on the custom and practice of the profession in California; or in swim attire unless such person is providing a water-based massage modality which has been approved by CAMTC.
- (7) All massage establishments shall be so equipped, maintained and operated as to effectively control the entrance, harborage, and breeding of vermin, including flies. When flies or other vermin are present effective control measures shall be instituted for their control or elimination.

- (8) Clean and sanitary towels, sheets and linens shall be provided for each patron of the establishment. No common use of towels or linens shall be permitted. 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.
  - (9) All massage tables shall be at least two feet away from all walls at all times.
- (D) *Personnel lists.*
- (1) Within seven calendar days of receiving a Certificate of Operation, the operator shall provide the Community Development Director with a complete list of all massage technicians who are working or will work, be employed, or provide massage services in the massage establishment along with a copy of their CAMTC certificate and identification card, as well as with the name and residence address of the manager principally in charge of the operation of the massage establishment and of any other manager.
  - (2) The operator shall have a continuing obligation to notify the Community Development Director in writing of any changes in massage technicians and managers within seven calendar days of such change.
  - (3) The operator shall maintain copies of each massage technician's CAMTC Certificate and identification card on file on the premises of the massage establishment which shall be available to any individual upon request, including but not limited to employees of the City. Additionally, the operator shall be required to file copies of each CAMTC Certificate and identification card with the Community Development Director within seven days of a massage technician beginning to work at the massage establishment. Information required by this section shall be maintained at the massage establishment for a minimum of two years following the date that the person ceases providing services/employment to the massage establishment.
  - (4) The operator shall maintain on the premises of the massage establishment a register of all non-state certified persons employed, working or providing other services at the massage establishment. The register shall be maintained for a minimum of two years following the time that the person ceases providing services/employment to the massage establishment. The Operator shall make the register immediately available for inspection upon demand of a representative of the Community Development Director, any health officer, or any other official charged with enforcement of this chapter. The register shall include but is not limited to the following information:
    - (a) Name, nicknames and/or aliases;

- (b) Home address and relevant phone number, including but not limited to home, cellular and pager numbers;
- (c) Age, date of birth, gender, height, weight, color of hair and eyes;
- (d) The date of employment, and termination, if any;
- (e) The duties of each person; and
- (f) In a separate portion of the register, Social Security numbers, which shall only be available for review by the Loma Linda Police Department or other law enforcement personnel, but not health officers or other officials charged with the enforcement of this chapter.

(E) *Prohibited conduct.*

- (1) No alcoholic beverages shall be sold, served, or furnished on the premises of any massage establishment without a valid alcoholic beverage license from the State and conditional use permit from the City.
- (2) No storage or sale of condoms or spermicides shall be permitted within the massage establishment.
- (3) No operator shall hire, employ or allow a person to perform massage services unless such person possesses a valid CAMTC Certificate. Each operator of a massage establishment shall verify that all persons hold the appropriate CAMTC Certificate required by this chapter. Nothing herein prevents an operator from hiring, employing, or allowing a person to perform services allowed by such person's cosmetology or barber license, if the business has a state establishment license in addition to a Certificate of Operation.
- (4) No person shall use or possess, nor shall there be any storage of, any sexually-oriented implements or paraphernalia which are designed or market primarily for the stimulation of human genital organs or sadomasochistic activity.
- (5) No electrical, mechanical or artificial device shall be used by any massage establishment staff for audio and/or video recording or for monitoring the performance of a massage, of the conversation or other sounds in the massage rooms, without the knowledge and written consent of the patron.
- (6) No operator of a massage establishment shall place, publish or distribute or allow or cause to be placed, published or distributed any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective patrons or clients that any service is available other than those services described in this chapter and posted on the premises as required in this chapter, nor shall any massage establishment employ language in the text of any advertising that would reasonably suggest to a prospective patron that any service is available other than those services

described in this chapter and posted on the premises as required by this chapter.

**§5.24.140 BUILDING AND FACILITY REQUIREMENTS.**

- (A) The building, or unit within the building where the massage establishment is located, shall comply with all applicable building code requirements.
- (B) All massage rooms and dressing rooms shall be screened off by hinged doors that can open inward. Swinging doors that can open inward, draw drapes, curtain enclosures, or accordion-pleated closures in lieu of doors are acceptable on all inner dressing rooms and massage therapy rooms or cubicles. Except for bathroom doors, interior doors may not have locks on them.
- (C) In addition to any lighting required by the provisions of the Loma Linda Municipal Code, all rooms in which massages are being provided shall be lit with a minimum of one light fixture emitting at least 210 lumens for every 150 square feet of space during the administration of such services, with the light fixtures being spread throughout the space. No dimmer switches, strobe lights, flashing lights, colored light, or any coverings or other apparatus, other than a lampshade, which changes or darkens the color of the primary light source shall be used in any room in which massage services are being provided.
- (D) Any locker facilities provided for the use of patrons shall be fully secured for the protection of the patron's valuables and the patron shall be given control of the key or other means of access.
- (E) The walls in all rooms where water or steam baths are given shall have a washable mold-resistant surface.
- (F) All walls, ceilings, floors, pools, showers, bathtubs, steam rooms and all other physical facilities for the establishment must 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.
- (G) One main entry that enters into the reception area shall be provided for patron use. All patrons, and any persons other than those providing services at the massage establishment, shall be required to enter and exit through the front door of the establishment.
- (H) All exterior doors (except rear exterior doors used only for employee entrance to and exit from the massage establishment) shall remain unlocked during business hours, and the establishment shall comply with the provisions of the Loma Linda Municipal Code pertaining to the posting of signs stating that doors shall remain unlocked during business hours. Exits for fire safety purposes may be allowed where deemed necessary by the appropriate public safety agency. Notwithstanding the above, the front door may be locked if there is no staff available to assure security for the clients and massage staff who are behind

closed doors, provided that the massage establishment is owned by one individual with one or no employees or independent contractors.

- (I) There shall be no buzzer, alarm or intercom system.
- (J) No massage business located in a building or structure with exterior windows fronting a public street, highway, walkway, or parking area shall block visibility into the interior reception and waiting area through the use of curtains, closed blinds, tints, or any other material that obstructs or darkens the view into the premises or by signs that cover more than 25% of any windowpane. The interior of the business shall be plainly visible from the exterior of the business by passing vehicles and pedestrians.

**§ 5.24.150 INSPECTIONS.**

- (A) Representatives of the City’s Police Department, Fire Department, Community Development Department, and Finance Department, and agents for the City from the County Health Department and representatives of any state or local agencies with regulatory authority over massage establishments shall have the right to enter massage establishments, from time to time, during regular business hours, or at any time that the massage establishment is occupied or open for business, to verify the massage establishment is in compliance with all applicable laws without the need for an inspection or abatement warrant.
- (B) The operator shall cause to be conspicuously posted so that the same may be readily visible to persons in the reception area of the massage establishment, in letters that are a minimum of one inch in height, a notice in English which provides substantially as follows:

THIS MASSAGE ESTABLISHMENT AND THE MASSAGE ROOMS  
DO NOT PROVIDE COMPLETE PRIVACY AND ARE SUBJECT TO  
INSPECTION BY CITY AND HEALTH OFFICIALS WITHOUT  
PRIOR NOTICE

In addition, operators are encouraged to post this notice in language(s) that are best understood by the customers of the massage establishment.
- (C) No person shall refuse to permit, cause delay of, or interfere with, a lawful inspection or compliance check of the premises by the officials listed in division (A) of this section at any time.

**ARTICLE V**  
**ENFORCEMENT**

**§5.24.160 PENALTY.**

- (A) It is unlawful for any person to engage in conduct that violates any provision of this chapter, to engage in conduct which fails to meet the standards set forth in this chapter, or to own, manage, or operate a massage establishment that is not fully in compliance with the operational standards set forth in this chapter.
- (B) If any person violates any of the provisions of this chapter, or fails to comply with any of the mandatory requirements of this chapter, he or she shall be guilty of an infraction. Any person convicted of an infraction under the provisions of a city ordinance shall be punishable by a fine of not more than fifty dollars for a first violation; a fine not exceeding one hundred dollars for a second violation of the same ordinance within one year; and a fine not exceeding two hundred fifty dollars for each additional violation of the same ordinance within one year. Each such person shall be deemed guilty of a separate offense for every day during such portion of which any violation of this chapter is committed, continued or permitted by such person, and shall be punishable therefor as provided by this chapter. Administrative citations and warning notices may be utilized as determined appropriate to the circumstances by the enforcing personnel.
- (C) In addition to the above, any massage establishment operated, conducted or maintained contrary to the provisions of this chapter shall be and is declared to be unlawful and a public nuisance and the City may, in addition to or in lieu of prosecuting a criminal action under this chapter, commence an action or actions, proceeding or proceedings, for the abatement, removal and enjoinder thereof, in the manner provided by law, including any code enforcement procedures established pursuant to the laws of the State of California or the City of Loma Linda; and may take such other steps and may 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. If an injunction is sought, attorney's fees and costs will be assessed at the discretion of the court against the party subject to said injunction.

**SECTION 2.** The following sections of the Loma Linda Municipal Code is hereby amended to read as follows:

**§Section 17.44.020 Permitted uses.**

Permitted Uses in the C-1 zone shall be as follows:

- A. Retail activities completely within an enclosed building as follows:

Massage Establishments (in accordance to the provisions of Chapter 5.24)

**§Section 17.46.020 Permitted uses.**

Permitted Uses in the C-2 zone shall be as follows:

Ordinance No. \_\_\_\_

A. Retail activities completely within an enclosed building as follows:

Massage Establishments (in accordance to the provisions of Chapter 5.24)

**§Section 17.48.020 Permitted uses.**

Permitted Uses in the C-M zone shall be as follows:

A. Any uses permitted in the C-1 and C-2 zones pursuant to the same regulations therein;

~~Massage Establishments~~

**SECTION 3.** Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase be declared unconstitutional.

**SECTION 4.** Certification. The City Clerk shall certify the passage of this ordinance and shall cause the same to be processed as required by law.

**SECTION 5.** This Ordinance is exempt from CEQA pursuant to section 15061(b)(3) under the general rule that CEQA does not apply to activities which can be seen with certainty to have no effect on the environment. Changing the regulations relating to Massage Establishments will not create any environmental impacts.

**SECTION 6.** Ordinance. This ordinance shall become effective on the thirty-first day after passage.

Passed, approved, and adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
RHODES RIGSBY, MAYOR  
CITY OF LOMA LINDA

ATTEST:

\_\_\_\_\_  
PAMELA BYRNES-O’CAMB, CITY CLERK  
CITY OF LOMA LINDA