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ORDINANCE NO. 4381

An ordinance of the County of San Bernardino, State of California, amending Chapter 19 of Division 1 of Title 4 of the San Bernardino County Code, relating to massage clinics.

The Board of Supervisors of the County of San Bernardino, State of California, ordains as follows:

SECTION 1. Chapter 19 of Division 1 of Title 4 of the San Bernardino County Code is amended, to read:

CHAPTER 19: MASSAGE CLINICS

Section

- | | |
|----------------|---|
| 41.1901 | Definitions. |
| 41.1902 | License Exemptions. |
| 41.1903 | License Required. |
| 41.1904 | Application. |
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| 41.1906 | Investigation by the Planning Division. |
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| 41.1908 | Investigation by the Division of Environmental Health Services. |
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| 41.1910 | License Fee. |
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| 41.1913 | Notice of Massage Technicians Utilized by Clinic. |
| 41.1914 | Hours of Operation and Other Restrictions. |

- 1 **41.1915 Additional Requirements.**
- 2 **41.1916 Inspection and Enforcement.**
- 3 **41.1917 Abatement.**
- 4 **41.1918 Suspension or Revocation of License.**
- 5 **41.1919 Other Remedies.**
- 6 **41.1920 Appeal Rights.**
- 7 **41.1901 Definitions.**

8 For the purpose of this chapter, the following terms, phrases, words, and their
9 derivations shall have the meanings set forth herein. Words used in the present tense
10 includes the future tense, plural words include the singular, and singular words include
11 the plural. Words not specifically defined shall be given their common and ordinary
12 meanings. The word “shall” as used herein is mandatory and not merely directory.

13 “Customer” means all clients, customers, patrons, guests, and any other persons
14 who receive a massage.

15 “Massage” means the scientific manipulation of the soft tissues, or as otherwise
16 defined in the Message Therapy Act (Chapter 10.5 (commencing with Section 4600) of
17 Division 2 of the Business and Professions Code) or defined by the California Massage
18 Therapy Council.

19 “Massage clinic” means any massage clinic, parlor, business, or any room, place
20 or institution where massage is given or administered by a massage technician.

21 “Massage technician” means any person who gives, performs, or administers to
22 another person a massage.

23 “Notice address” means the address designated by the applicant or licensee for
24 the mailing of all notices, legal mail, and other written communications from the County
25 to the applicant or licensee.

26 “Person” means an individual, firm, corporation, partnership, association, or other
27 form of business organization or group.

28 “Recognized school” means any school or institution of learning which teaches

1 the theory, ethics, practice, profession, and work of massage, which school or institution
2 has been approved by the California Massage Therapy Council.

3 "Responsible department" means for purposes of this chapter the Land Use
4 Services Department of the County of San Bernardino.

5 "Sole provider" means a massage clinic where the owner owns 100 percent of
6 the clinic, and is the only person who provides massage services for compensation for
7 that clinic pursuant to a valid and active certificate issued in accordance with Chapter
8 10.5 of Division 2 of the Business and Professions Code. If the definition of sole
9 provider changes in in Chapter 10.5 of Division 2 of the Business and Professions
10 Code, then the new definition applies in this chapter.

11 **41.1902 License Exemptions.**

12 This chapter shall not apply to the following classes of individuals, and no
13 massage clinic license shall be required of such persons, while engaged in the
14 performance of the duties of their respective professions:

15 (a) Physicians, surgeons, chiropractors, osteopaths, or physical therapists
16 who are duly licensed to practice their respective professions in the State of California,
17 and persons working at the place of business and under the supervision of a licensed
18 physician, surgeon, chiropractor, osteopath, or physical therapist;

19 (b) Nurses who are registered as such under the laws of the State of
20 California;

21 (c) Barbers, beauticians and cosmetologists who are duly licensed under the
22 laws of the State of California;

23 (d) Athletic trainers;

24 (e) Acupuncturists who are duly certified to practice their profession in the
25 State or California.

26 (f) Massage clinics or massage technicians that are sole providers.

27 **41.1903 License Required.**

28 It shall be unlawful for any person to own or operate a massage clinic within the

unincorporated area of the County of San Bernardino without having an unexpired license issued under this chapter.

41.1904 Application.

(a) Any person desiring to obtain a license to operate a massage clinic or renew an existing massage clinic license shall complete an application form provided by the responsible department of the County. Said application shall include, but not necessarily be limited to, the following items:

(1) The full name of, and any aliases currently or previously used by, the applicant, all officers and directors of the massage clinic, each owner of the massage clinic who has at least a 10 percent share of the ownership, and, if the massage clinic is a partnership, all partners.

(2) The work and residential addresses of the applicant, all officers and directors of the massage clinic, each owner of the massage clinic who has at least a 10 percent share of the ownership, and, if the massage clinic is a partnership, all partners.

(3) A description of the height, weight, color of eyes, and hair of the applicant, all officers and directors of the massage clinic, each owner of the massage clinic who has at least a 10 percent share of the ownership, and, if the massage clinic is a partnership, all partners. The responsible department or the responsible department's designee shall photograph each of the above-described persons.

(4) A certified birth certificate, immigration papers, passport, or current California driver's license evidencing the fact the applicant is not less than 18 years of age.

(5) A description of the business, occupation, or employment of the applicant, all officers and directors of the massage clinic, each owner of the massage clinic who has at least a 10 percent share of the ownership, and, if the massage clinic is a partnership, all partners. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation and a copy of the articles of incorporation must be attached to the application.

1 (6) The address of each location where the licensed activities will be
2 conducted.

3 (7) The name, home address, number of the state certificate or the
4 County massage technician license, and address of the location worked, of each
5 massage technician to be employed or used by the massage clinic.

6 (8) A description of any massage clinic licenses or permits previously
7 issued by the County or any other public agency to the applicant, all officers and
8 directors of the massage clinic, each owner of the massage clinic who has at least a 10
9 percent share of the ownership, and, if the massage clinic is a partnership, all partners,
10 and a statement as to whether or not any such license or permit was ever suspended or
11 revoked.

12 (9) A statement of whether the applicant or any officer or director of the
13 massage clinic, any owner of the massage clinic who has at least a 10 percent share of
14 the ownership, and, if the massage clinic is a partnership, any partner: is, or has been,
15 required to register under the Sex Offender Registration Act (Chapter 5.5 (commencing
16 with Section 290) Title 9 of Part 1 of the Penal Code); is, or has been, required to
17 register as a sex offender in another state; was convicted of any sexually related crime;
18 was convicted of Penal Code section 647, excluding subdivisions (c), (e), and (f); or was
19 convicted of any of the offenses described in Government Code section 51032.

20 (10) The address to which all notices and communications from the
21 County to the applicant or licensee shall be directed. It shall be the responsibility of the
22 applicant or licensee to immediately inform the responsible department in writing, of any
23 change to the applicant's or licensee's notice address.

24 **41.1905 Investigation by the Sheriff's Department.**

25 (a) An applicant shall submit the completed application to the Sheriff's
26 Department and pay any applicable Sheriff's Department fee.

27 (b) The Sheriff's Department shall conduct an investigation of the application.
28 The Sheriff's Department shall review the information set forth in the application. The

1 Sheriff's Department is authorized to request additional documents and information that
2 are reasonably related to the licensing requirements of this chapter from the applicant,
3 any officer or director of the massage clinic, any owner of the massage clinic who has at
4 least a 10 percent share of the ownership, and, if the massage clinic is a partnership,
5 any partner. The Sheriff's Department shall require the applicant to be fingerprinted and
6 to pay the fingerprinting fee in effect.

7 (c) The Sheriff's Department shall promptly report to the responsible
8 department whether the application meets all of the requirements of this chapter and all
9 other applicable laws.

10 **41.1906 Investigation by the Planning Division.**

11 An applicant shall submit the completed application to the Planning Division of
12 the Land Use Services Department for a review of whether the massage clinic complies
13 with the development standards of Chapter 84.13 of the Development Code. The
14 applicant shall pay any applicable Land Use Services Department fee. The Planning
15 Division shall promptly report to the responsible department whether the application
16 meets all of the requirements of Chapter 84.13 of the County Development Code. An
17 application for the renewal of a massage clinic license shall not require a review under
18 this section.

19 **41.1907 Investigation by the San Bernardino County Fire Protection District.**

20 An applicant shall submit the completed application to the San Bernardino
21 County Fire Protection District (Fire Protection District) for inspection. The applicant
22 shall pay any applicable Fire Protection District fee. The Fire Protection District shall
23 promptly report to the responsible department whether the application meets all of the
24 applicable requirements of the inspection. An application for the renewal of a massage
25 clinic license shall not require an on-site inspection pursuant to this section.

26 **41.1908 Investigation by the Division of Environmental Health Services.**

27 (a) An applicant shall submit the completed application to the Division of
28 Environmental Health Services Division (DEHS) of the Department of Public Health and

1 pay any applicable DEHS fee. DEHS or the designee of DEHS shall promptly conduct
2 an investigation to determine compliance with the requirements of this section. An
3 application for the renewal of a massage clinic license shall not require an on-site
4 inspection pursuant to this section.

5 (b) Requirements.

6 (1) A readable exterior sign shall be posted at the main entrance
7 identifying the establishment as a massage clinic, provided, however, that all such signs
8 shall otherwise comply with the sign requirements of the County Code.

9 (2) No sign or advertisement on the premises of the massage clinic
10 may contain explicit language or graphic pictures describing sexual acts or genitalia.

11 (3) Minimum lighting shall be provided in accordance with the Uniform
12 Building Code as adopted by the County. In addition, at least one unobstructed artificial
13 light, white in color, of not less than 60 watts shall be provided and used at all times in
14 each enclosed room or booth while massage services are being rendered.

15 (4) Minimum ventilation shall be provided in accordance with the
16 Uniform Building Code as adopted by the County.

17 (5) Instruments used for massage shall be disinfected prior to each use
18 by a reasonable method approved by DEHS. Where such instruments for massage are
19 employed, adequate quantities of supplies for disinfection shall be available during all
20 hours of operation.

21 (6) Hot and cold running water shall be provided.

22 (7) Closed cabinets shall be utilized for the storage of clean towels and
23 linen. After use, towels and linen shall be removed from the room or booth and stored in
24 a clean container until laundered.

25 (8) Dressing and toilet facilities shall be provided for patrons.

26 (9) All walls, ceilings, floors, steam and vapor rooms, and all other
27 physical facilities for the massage clinic shall be kept in good repair, maintained in a
28 clean and sanitary condition.

1 (10) Clean and sanitary towels and linens shall be provided for patrons
2 receiving massage services. No common use of towels or linens shall be permitted.

3 (11) Licensees under this chapter shall insure that all persons working
4 on the massage clinic premises, including all massage technicians, shall be dressed in
5 clothing made of an opaque material, and at a minimum, shall not expose the
6 technician's undergarments or bare midriff, or any specified anatomical areas, and shall
7 comply with the following requirements, as applicable:

8 (A) All garments covering the upper torso (e.g., shirts or
9 dresses) shall have sleeves not less than two inches in length, measuring from the top
10 of the shoulder, and necklines no lower than two inches below the clavicle.

11 (B) Hems of dresses, skirts, smocks, or other similar garments
12 shall not be more than two inches above the top of the knee.

13 (C) Cuffs or hems of shorts, culottes, pants or other similar
14 garments shall not be more than six inches above the top of the knee.

15 (12) Any massage clinic license issued by the County shall be displayed
16 in a conspicuous place within view of customers.

17 (13) Each massage technician providing services at the clinic must
18 display his or her County issued massage technician license or state issued certificate
19 wherever he or she provides massages for compensation.

20 (14) The premises to be used for massage services shall at all times
21 comply with applicable laws.

22 (c) DEHS shall promptly report to the responsible department whether the
23 application meets all of the requirements of this section. Upon determining that the
24 massage clinic complies with the requirements of this section, DEHS shall issue to the
25 massage clinic a health permit. Said health permit shall be posted in a conspicuous
26 place on the premises of the massage clinic. DEHS shall conduct annual compliance
27 checks.

28 **41.1909 Approval or Denial of License.**

1 (a) After completion of the investigation by the Sheriff's Department, the
2 Planning Division, the Fire Protection District, and DEHS, the applicant shall submit the
3 completed application to the responsible department for further processing. The
4 application shall be accompanied by a nonrefundable fee to the responsible department
5 as specified in Chapter 2 of Division 6 of Title 1 of the County Code relating to fees.

6 (b) An application for a massage clinic license shall be denied for any of the
7 following reasons:

- 8 (1) The applicant failed the inspection by the Sheriff's Department.
- 9 (2) The applicant failed the inspection by the Planning Division.
- 10 (3) The applicant failed the inspection by the Fire Protection District.
- 11 (4) The applicant failed the inspection by DEHS.
- 12 (5) The applicant, any officer or director of the massage clinic, any
13 owner of the massage clinic who has at least a 10 percent share of the ownership, or, if
14 the massage clinic is a partnership, any partner has within ten years immediately
15 preceding the date of the application been convicted of any of the offenses set forth in
16 Section 41.1904(a)(9) or has been required to register as a sex offender as set forth in
17 Section 41.1904(a)(9).
- 18 (6) The applicant, any officer or director of the massage clinic, any
19 owner of the massage clinic who has at least a 10 percent share of the ownership, or, if
20 the massage clinic is a partnership, any partner has had a massage clinic license or
21 massage technician license revoked or suspended for cause within the five year period
22 immediately preceding the date of the application.
- 23 (7) The application is incomplete.
- 24 (8) The applicant has knowingly misstated facts or falsified information
25 on the application.
- 26 (9) The applicant has failed to comply with any of the requirements of
27 this chapter.
- 28 (10) The applicant has conducted a business requiring a massage clinic

1 or massage technician license in the unincorporated portion of the County without such
2 a license within the five years immediately preceding the date of the application.

3 (11) The premises used or to be used for massage services fails to
4 comply with applicable laws, including, but not limited to building, fire, electrical,
5 plumbing and/or state and local health and safety codes and regulations.

6 (c) If the responsible department denies an application, the responsible
7 department shall cause a "notice of denial" to be mailed by first class mail, postage
8 prepaid, to the notice address designated by the applicant.

9 (d) If the responsible department approves an application, the responsible
10 department shall issue a massage clinic license to be mailed by first class mail, postage
11 prepaid, to the notice address designated by the applicant.

12 **41.1910 License Fee.**

13 Every holder of a license issued under this chapter shall pay a license fee as
14 specified in Chapter 2 of Division 6 of Title 1 relating to fees in addition to all other fees
15 required under this chapter.

16 **41.1911 Licenses Non-Transferable.**

17 All licenses issued under this chapter are non-transferable both as to location,
18 and as to the person holding the license.

19 **41.1912 Duration and Renewal of License.**

20 (a) Each license issued under this chapter shall terminate at the expiration of
21 two years from the date of its issuance unless revoked prior to said termination pursuant
22 to Section 41.1918.

23 (b) No application for the renewal of a license shall be accepted earlier than
24 90 days prior to expiration of the license. Any renewal of a license issued under this
25 chapter shall be subject to the same procedures and requirements of this chapter.

26 (c) If a renewal application is filed during the pendency of a proceeding to
27 suspend or revoke the license, the County is authorized to consider and make findings
28 from such proceeding upon such application in accordance with this chapter.

1 **41.1913 Notice of Massage Technicians Utilized by Clinic.**

2 (a) Licensees under this chapter shall not permit anyone not holding a valid
3 unexpired massage technician's license issued by the County or a certificate issued
4 pursuant to Chapter 10.5 of Division 2 of the Business and Professions Code to perform
5 massages in the licensed massage clinic.

6 (b) Licensees under this chapter must notify the responsible department, in
7 writing, of the name, license or certificate number, date of hire, and location of work, of
8 each massage technician employed or otherwise utilized by the massage clinic. The
9 written notice must be provided within five days of the massage clinic hiring or utilizing
10 the services of a massage technician, whichever is first. Notification must be provided of
11 the termination of the services of each massage technician within five days of the
12 termination.

13 **41.1914 Hours of Operation and Other Restrictions.**

14 No massage clinic shall be open or conduct business between the hours of 10:00
15 p.m. and 7:00 a.m. Massage clinics shall not sell or serve food or beverages to any
16 patrons on the premises of the massage clinic.

17 **41.1915 Additional Requirements.**

18 (a) A massage technician, whether or not certified pursuant to the Massage
19 Therapy Act (Chapter 10.5 of Division 2 of the Business and Professions Code
20 (commencing with Section 4600)), shall not engage in any behavior or do anything that
21 violates or that is otherwise contrary to the requirements of the Massage Therapy Act or
22 that would constitute a ground for the denial or revocation of a certificate issued
23 pursuant to the Massage Therapy Act or that would constitute a ground for the discipline
24 of a holder of a certificate issued pursuant to the Massage Therapy Act. The
25 responsible department may suspend or revoke a license issued pursuant to this
26 chapter or the conduct of individuals providing massage for compensation on the
27 business premises that violate the above-identified chapter of the Massage Therapy
28 Act, including but not limited to a violation of subdivision (b) of Section 647 of the Penal

1 Code or any other offense described in paragraph (11) of subdivision (a) of Section
2 4609 of the Business and Professions Code.

3 (b) No massage services may be provided without first draping the customer
4 in accordance with the standards of the California Massage Therapy Council. Draping
5 must cover the genitalia and female breasts.

6 (c) No sign or advertisement on the premises of the massage clinic may
7 contain explicit language or graphic pictures describing sexual acts or genitalia.

8 (d) No sign or advertisement on any print advertisement, any video, or on the
9 internet may contain explicit language or graphic pictures describing sexual acts or
10 genitalia.

11 **41.1916 Inspection and Enforcement.**

12 Officers of the Sheriff's Department, the Code Enforcement Division of the Land
13 Use Services Department, the Fire Protection District, and DEHS, and any other
14 authorized officer of the County shall have the right to enter any massage clinic during
15 regular business hours to make reasonable inspection to ascertain whether the
16 requirements of this chapter are being met, provided that such officers shall not interfere
17 with the reasonable and normal business operations of the clinic.

18 **41.1917 Abatement.**

19 Any massage clinic operated or maintained in a manner contrary to the
20 requirements of this chapter is hereby declared to be unlawful and a public nuisance.
21 The District Attorney or County Counsel may, in addition to, or in lieu of any other
22 administrative, civil, or criminal proceedings, commence an administrative or civil action
23 for the abatement, removal, and enjoinder of such massage clinic operation in the
24 manner provided by law.

25 **41.1918 Suspension or Revocation of License.**

26 (a) A license issued under this chapter may be suspended or revoked on any
27 of the grounds set forth in Section 41.1909 or as otherwise provided in this chapter.

28 (b) Upon a determination that one or more grounds to suspend or revoke a

1 license exists, the responsible department shall cause a "notice of suspension" or
2 "notice of revocation" to be mailed by first class, postage prepaid mail, to the notice
3 address designated by the licensee.

4 (c) If a license issued under this chapter is revoked, there shall be a six-
5 month waiting period before:

6 (1) The holder of the revoked license may apply for a new license
7 under this chapter.

8 (2) Any person may apply for a license under this chapter where such
9 license relates to the massage clinic that had its license revoked, regardless of the
10 current location of the massage clinic and the identity of the applicant.

11 (3) Any person may apply for a license under this chapter where such
12 license relates to massage clinic operations located in the same place as the massage
13 clinic that had its license revoked.

14 (d) Following suspension or revocation, officers of the Sheriff's Department,
15 the Code Enforcement Division of the Land Use Services Department, the Fire
16 Protection District, DEHS, or any other authorized officer of the County may post a
17 notice of revocation or suspension on the premises stating the reasons for the
18 revocation or suspension and directing that the premises be closed and/or locked,
19 thereby prohibiting any public access.

20 (e) It is unlawful for any person to conduct the business of a massage clinic
21 after a license issued under this chapter has been suspended or revoked.

22 **41.1919 Other Remedies.**

23 In addition to any other enforcement or remedial action authorized by this
24 chapter, violation of any of the requirements of this chapter may result in the institution
25 of a criminal action, a civil action, and/or an administrative action as set forth in Chapter
26 2 of Title 1 of the County Code.

27 **41.1920 Appeal Rights.**

28 Any person whose application for a license or the renewal of a license under this

1 chapter is denied, or whose license issued under this chapter is suspended or revoked,
2 may appeal such action. The request for appeal must be in writing and filed with the
3 responsible department not more than 15 calendar days following the responsible
4 department's deposit into the mails (first class, postage prepaid) of the notice of denial,
5 suspension, or revocation. A hearing officer shall conduct the appeal hearing pursuant
6 to County Code sections 12.2700 through 12.2725, except that notwithstanding
7 Sections 12.2700 *et seq.*, the hearing officer's decision shall be final and no further
8 administrative appeal is available.

9
10 SECTION 2. This ordinance shall take effect thirty (30) days from the date of
11 adoption.

12 
13 _____
14 CURT HAGMAN, Chairman
Board of Supervisors

15 SIGNED AND CERTIFIED THAT A COPY
16 OF THIS DOCUMENT HAS BEEN DELIVERED
17 TO THE CHAIR OF THE BOARD

18 LYNNA MONELL, Clerk of the
19 Board of Supervisors

20 

1 STATE OF CALIFORNIA)
2) ss.
3 COUNTY OF SAN BERNARDINO)

4 I, LYNNA MONELL, Clerk of the Board of Supervisors of the County of San
5 Bernardino, State of California, hereby certify that at a regular meeting of the Board of
6 Supervisors of said County and State, held on the 7th day of April, 2020, at which
7 meeting were present Supervisors: Robert A. Lovingood, Janice Rutherford, Dawn
8 Rowe, Curt Hagman, Josie Gonzales, and the Clerk, the foregoing ordinance was
9 passed and adopted by the following vote, to wit:

10 AYES: SUPERVISORS: Robert A. Lovingood, Janice Rutherford,
11 Dawn Rowe, Curt Hagman, Josie Gonzales

12 NOES: SUPERVISORS: None

13 ABSENT: SUPERVISORS: None

14 IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official
15 seal of the Board of Supervisors this 7th day of April, 2020.

16 LYNNA MONELL, Clerk of the
17 Board of Supervisors of the
18 County of San Bernardino,
19 State of California

20 Deputy

21 Approved as to Form:

22 MICHELLE D. BLAKEMORE
23 County Counsel

24 By: Kenneth C. Hardy
25 KENNETH C. HARDY
26 Supervising Deputy County Counsel

27 Date: 5/7/2020