

**ORDINANCE NO. 3517 C.S.**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF MONTEREY**

**DELETING CITY CODE SECTION 22-31 AND ADDING CITY CODE SECTIONS 22-31 THROUGH 22-31.16 RELATING TO MASSAGE AND MASSAGE ESTABLISHMENTS.**

THE COUNCIL OF THE CITY OF MONTEREY DOES ORDAIN, as follows:

**SECTION 1:**

WHEREAS, the California Legislature recently approved Assembly Bill 1147 (Bonilla), which amended the California Massage Therapy Act (Cal. Bus. & Prof. Code § 4600 *et seq.*), and which went into effect on January 1, 2015;

WHEREAS, this new law authorizes cities to adopt or enforce local ordinances that govern zoning, business licensing, or reasonable health and safety requirements for establishments of a certified massage therapist or certified massage practitioner;

WHEREAS, the City of Monterey has experienced an increase in the number of massage establishments over the past several years;

WHEREAS, the City of Monterey desires to regulate massage establishments to balance community needs and to minimize the negative secondary effects associated with such uses;

WHEREAS, these health and safety regulations are not intended to provide the exclusive regulation of massage establishments. Massage establishments must comply with any and applicable regulations at the state and local level, including the Massage Therapy Act, and zoning regulations of the Monterey City Code;

WHEREAS, the City of Monterey determined that the proposed action is not a project as defined by the California Environmental Quality Act ("CEQA") (CCR, Title 14, Chapter 3 ("CEQA Guidelines"), Article 20, Section 15378). In addition, CEQA Guidelines Section 15061 includes the general rule that CEQA applies only to activities which 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 environment, the activity is not subject to CEQA. Because the proposed action and this matter have no potential to cause any effect on the environment, or because it falls within a category of activities excluded as projects pursuant to CEQA Guidelines section 15378, this matter is not a project. Because the matter does not cause a direct or any reasonably foreseeable indirect physical change on or in the environment, this matter is not a project. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

NOW THEREFORE, the Monterey City Council declares as follows:

SECTION 2: Monterey City Code, Chapter 22, Section 31 is hereby deleted.

SECTION 3: Monterey City Code, Chapter 22, Sections 31 through 31.16 are hereby added to read as follows:

**“Sec. 22-31 Massage Therapists and Massage Establishments.**

(a) This ordinance shall be known as the Massage Permit Ordinance.

(b) It is the purpose and intent of this Ordinance to provide for the orderly regulation of massage therapists and massage establishments, in the interest of public health, safety and welfare. This Ordinance relies upon the certification process of the California Massage Therapy Council under California Business and Professions Code Section 4600, *et seq.* In addition, this Ordinance provides certain minimum standards for the operation of massage establishments, their managing employees, and massage therapists and practitioners in order to protect the health, safety and welfare of the citizens of the City of Monterey, as well as to ward against illegal sexual commerce.

**Sec. 22-31.1 Definitions.**

1. “California Massage Therapy Council” or “CAMTC” means the California Massage Therapy Council created under California Business and Professions Code Section 4602.
2. “Certified Massage Practitioner” means a person who is currently certified as a massage practitioner by the CAMTC pursuant to California Business and Professions Code Section 4604.2 and who administers massage for compensation.
3. “Certified Massage Therapist” means a person who is currently certified as a massage therapist by the CAMTC pursuant to California Business and Professions Code Section 4604 and who administers massage for compensation.
4. “Massage” means the application of various techniques to the soft tissues of the human body as defined in California Business and Professions Code Section 4601(e). Application of massage techniques may include, but is not limited to, any method of pressure or friction, stroking, kneading, rubbing, tapping, stretching, pounding, vibrating, or stimulating the external surfaces of the body with hands or with any object or appliance.
5. “Massage establishment” means a place where Certified Massage Therapists or Certified Massage Practitioners practice massage as provided in California Business and Professions Code Section 4601(f). The following are not considered Massage Establishments under this Section: California state-licensed hospitals, nursing homes, the office of a licensed medical professional, or other state licensed physical or mental health facilities; nor a personal fitness training center, gym, athletic facility or health club, when the administering of massage is an incidental function of the business, constituting 10% or less of the business.
6. “Outcall massage service” means a business which provides a massage at a location designated by the client or the massage practitioner or therapist, other than a massage establishment.
7. “Owner” means any individual natural person, proprietorship, partnership, firm, association, joint stock company, corporation, organization, limited liability company,

trust, or combination of individuals of whatever form or character that owns, has an equity interest in, or shares a percentage of massage therapy proceeds with a massage establishment.

8. "Person" means any individual, firm, association, partnership, corporation, joint venture, limited liability company, or combination of individuals.
9. "Police Chief" means the Police Chief of the City of Monterey or his or her authorized representative(s).
10. "Sexual or genital part" shall include the genitals, pubic area, anus, perineum of any person and the breasts of any female.
11. "Employee" means any person who renders any service, with or without compensation, for a Massage Establishment relating to the day-to-day operation of the Massage Establishment.

#### **Sec. 22-31.2 Certification and Registration Required.**

Except as otherwise provided in Section 22-31.4, it shall be unlawful for any person to provide massage in exchange for compensation unless they are a Certified Massage Therapist or Certified Massage Practitioner.

#### **Sec. 22-31.3 Massage Establishment – Permit Required.**

(a) Except as otherwise provided in Section 22-31.4, it shall be unlawful for any person to own or operate a massage establishment in the City without first having obtained a permit to conduct such business pursuant to this Ordinance.

(b) It is unlawful for a massage establishment operator to employ or retain any person to practice massage therapy for compensation, or to allow any person to perform massage therapy for compensation on the premises of a massage establishment, unless that person is listed on the massage establishment permit issued pursuant to this Ordinance.

(c) It is unlawful for a massage establishment to operate under any name or conduct business under any designation not specified in the massage establishment permit issued pursuant to this Ordinance.

(d) It is unlawful for a massage establishment to continue to operate following the sale or transfer of any interest in the massage establishment to a person who was not identified as an owner in the massage establishment permit application.

(e) In order to add authorized massage professionals to the permit, change the name or address of the massage establishment, change the owners of the massage establishment, etc., the permit must be amended under section 22-31.8 prior to any change to the information submitted with the permit application. It is unlawful for a massage establishment to operate with any changed conditions prior to approval of an amended permit.

(f) The permit required hereby shall be in addition to any required City business license, conditional use permit in accordance with Chapter 38 of this Code, or other permit if otherwise

required by law. A permit issued under this Ordinance does not authorize the permittee to practice massage therapy until the permittee has complied with all business license requirements and all other applicable federal, state, and City of Monterey laws and regulations.

**Sec. 22-31.4 Permit Exemptions.**

The permit requirements of this Ordinance shall not apply to the following persons while engaged in the performance of their duties:

- (1) Any individual licensed to practice the art of healing as defined under Business and Professions Code Section 500 et seq. while engaging in a practice within the scope of their license;
- (2) Any person licensed to practice barbering or cosmetology as defined in Business and Professions Code Section 7300 et seq. while engaging in a practice within the scope of their license;
- (3) Trainers of any amateur, semiprofessional or professional athlete or athletic teams while engaging in their training responsibilities for and with athletes;
- (4) Any employee of a California state-licensed hospital, nursing home, or other state-licensed physical or mental health facility while engaging in a practice within the scope of their employment;
- (5) Accredited high schools and colleges, and their coaches and trainers while acting within the scope of their employment;
- (6) Accredited colleges, or universities that offer massage therapy programs whose instructors and students are acting within the scope of their employments or within the scope of their curriculum; and
- (7) Any other business or professions exempt by State law.

**Sec. 22-31.5 Massage Establishment Permit Application.**

Every owner of a massage establishment shall complete an application, signed under penalty of perjury, furnished by the Police Chief, and pay the non-refundable application fee as determined by City Council resolution to cover the cost of the permitting activities established by this Ordinance. A massage establishment permit does not authorize the permittee to provide massage therapy services, and it is unlawful to do so without a valid CAMTC certification.

All applications shall be dated and shall include, but are not limited to, the following information under penalty of perjury:

- (a) The name, address, and telephone number of the massage establishment.
- (b) The name, residence address and telephone number, and business address and telephone number of each owner of the massage establishment.
- (c) The form of business under which the applicant will be conducting the massage establishment, i.e., corporation, general or limited partnership, limited liability company, or other

form. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the names and residence addresses of each of its officers, directors, and each shareholder holding more than ten percent (10%) of the stock of the corporation. If the applicant is a general or limited partnership, the application shall set forth the name and residence address of each of the partners, including limited partners. If one (1) or more of the partners is a corporation, the provisions of this section pertaining to a corporate applicant shall apply. If the applicant is a limited liability company, the application shall set forth the name and residence address of each of the members. If one (1) or more of the members is a partnership, limited liability company, or corporation, the provisions of this section pertaining to a partnership, limited liability company, or corporate applicant shall apply, as applicable.

(d) The name and address of the owner of the real property upon, in, or from which the certified massage establishment is to be operated. In the event the applicant is not the legal owner of the property, the application shall be accompanied by a copy of any written lease between the applicant and the property owner authorizing use of the premises for a massage establishment, or, alternatively, if there is no written lease, then a written, notarized acknowledgment from the property owner that the property owner has been advised that a massage establishment will be operated by the applicant upon, in, or from the property owner's property.

(e) A description of the proposed massage establishment, including the type of treatments to be administered.

(f) The name of each individual who the massage establishment does or will employ or retain to perform massage therapy for compensation, whether on or off the massage establishment premises.

(g) For each individual who the massage establishment does or will employ or retain to perform massage therapy for compensation, whether on or off the massage establishment premises, a copy of that individual's current certification from the CAMTC as a certified massage practitioner or certified massage therapist, and a copy of his or her current CAMTC-issued identification card.

(h) For each owner of the massage establishment who is a CAMTC-certified massage professional, a copy of his or her current certification from the California Massage Therapy Council as a certified massage practitioner or as a certified massage therapist and a copy of his or her current California Massage Therapy Council-issued identification card.

(i) For each owner of the message establishment who is not a CAMTC-certified massage professional, the following information:

(1) Whether any owner of the massage establishment has within the five (5) years immediately preceding the date of application been convicted in any state of any misdemeanor or felony.

(2) Whether any owner of the massage establishment is currently required to register under the provisions of Section 290 of the California Penal Code.

(3) The business, occupation, and employment history of each owner of the massage establishment for five (5) years preceding the date of application, and the inclusive dates of same.

(4) For any owner who is not a CAMTC-certified massage professional, one (1) set of fingerprints of each owner of the massage establishment in a form satisfactory to the permit authority. The fingerprints shall be taken at a place designated by the permit authority, and any required fee for such fingerprinting shall be paid by the applicant.

(j) Whether any license or permit has ever been issued to the applicant by any jurisdiction under the provisions of any ordinance or statute governing massage therapy, and as to any such license or permit, the name and address of the issuing authority, the effective dates of such license or permit, whether such license or permit was ever suspended, revoked, withdrawn, or denied; and copies of any documentary materials relating to such suspension, revocation, withdrawal, or denial.

(k) Such other information as may be required by the permit authority to determine compliance with any other eligibility requirements for issuance of the permit as specified by federal, state, or local law.

**Sec. 22-31.6 Massage Establishment Permit Issuance.** The Police Chief shall issue a massage establishment permit if the applicant meets the requirements of this Ordinance and no grounds for denial exist under section 22-31.7. The Police Chief may impose conditions on the permit consistent with this Ordinance and applicable law.

(a) **Timing.** The Police Chief shall issue or deny the application for a new massage establishment permit within 60 calendar days of a completed application. When necessary, the Police Chief may extend the time to issue or deny the permit.

(b) **Notice.** If the applicant is not the record owner of the property where the massage establishment is located, the Police Chief may send a written notice to the property owner advising of the issuance of the permit and of the regulations applicable to the massage establishment. The Police Chief may also provide the property owner with copies of any other notices or communications with the applicant sent at any time before or after issuance of the permit.

(c) **Duration.** A massage establishment permit issued pursuant to the terms of this Ordinance shall be valid for a term of one (1) year from the date of issuance, and, unless suspended or revoked, must be renewed by the massage establishment operator annually so long as the massage establishment is operating within the City.

1. A permittee may apply for a renewal of a permit 30 calendar days prior to the expiration of the permit. If, upon the 14<sup>th</sup> day after the expiration of a permit, an application for renewal has not been received, the permit shall be deemed expired and no privilege to provide massage therapy shall exist. A massage establishment may continue to provide massage under the terms of the previous permit if a timely renewal application has been received and is awaiting a determination by the Police Chief.

2. The Police Chief shall renew the permit within 30 calendar days of submission of the application for renewal if the information upon which the original application was

granted remains unchanged and no violations of this Ordinance have been committed. In all other situations, the Police Chief shall approve or deny the application within 60 calendar days.

(d) No permit shall be sold, transferred, or assigned by the permittee or by operation of law to any other person. Any such sale, transfer, assignment, attempted sale, attempted transfer or attempted assignment shall constitute an immediate revocation of the permit and the permit shall thereafter be null and void. A new owner of a massage establishment must submit a new application for a massage establishment permit.

#### **Sec. 22-31.7. Massage Establishment Permit Denial.**

(a) The Police Chief may deny an application for a massage establishment permit on any of the following grounds:

1. The massage establishment, as proposed by the applicant, would not comply with the requirements of this Ordinance and/or with any applicable law, including, but not limited to the City's building, fire, zoning, and health regulations.
2. The applicant has knowingly made any false, misleading or fraudulent statement of material fact in the application for a massage establishment permit.
3. Any owner of the massage establishment, within five (5) years immediately preceding the date of filing of the application, has been convicted in a court of competent jurisdiction of any offense that relates directly to the operation of a massage establishment whether as a massage establishment owner or operator or as a person practicing massage for compensation, or as an employee of either; or has at any time been convicted in a court of competent jurisdiction of any misdemeanor or felony the commission of which occurred on the premises of a massage establishment.
4. Any owner of the message establishment is currently required to register under the provisions of Section 290 of the California Penal Code.
5. Any owner of the massage establishment, within five (5) years of the date of application, has been convicted in a court of competent jurisdiction of any violation of Sections 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), or 653.22 of the California Penal Code, or any other crime involving theft, dishonesty, fraud or deceit; or conspiracy or attempt to commit any such offense, or any offense in a jurisdiction outside of the State of California that is the equivalent of any of the aforesaid offenses. A violation of Health and Safety Code Section 11550 or any offense involving the illegal sale, distribution or possession of a controlled substance specified in Health and Safety Code Section 11054, 11055, 11056, 11057 or 11058; or 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 section 4609(a)
6. Any owner of the massage establishment has been subjected to a permanent injunction against the conducting or maintaining of a nuisance pursuant to Section 11225 through 11235 of the California Penal Code, or any similar provision of law in a jurisdiction outside the State of California.

7. Any owner of the massage establishment who is an individual has not attained the age of eighteen (18) years.

8. Any owner of the massage establishment, within five (5) years immediately preceding the date of filing of the application, has had a permit or license to practice massage for compensation or to own and/or operate a massage establishment revoked or denied in any jurisdiction.

(b) If prosecution is pending against the applicant for conduct listed in this Section, the Police Chief may postpone decision on the application until the final resolution of the prosecution. As used in this subsection, prosecution means charges filed by the district attorney, administrative proceedings brought by a local government or agency, or a civil or administrative action maintained by any city, county, state, or government.

#### **Sec. 22-31.8. Massage Establishment Permit Amendment.**

The owner of a permitted massage establishment may apply to amend the permit by submitting an application on a form provided by the Police Chief. The application shall be accompanied by the fee established by the City's fee schedule. The application shall not be granted unless the Police Chief determines that the terms of the amended permit comply with all requirements of this Ordinance and all other local, state, and federal laws. An amended permit shall retain its original expiration date. The Police Chief shall approve or deny the application for an amended permit within 60 calendar days.

A massage establishment may continue to provide massage under the terms of the previous permit while an application for an amended permit is awaiting a determination by the Police Chief.

#### **Sec. 22-31.9. Massage Establishment Permit – Suspension, Revocation, or Restriction.**

(a) The massage establishment operator shall be responsible for the conduct of all massage establishment employees, agents, independent contractors, or other representatives while such persons are on the premises of the massage establishment or providing outcall massage services on behalf of the massage establishment.

(b) Any massage establishment permit may be suspended, revoked, or restricted where the Police Chief finds that any of the following have occurred on even a single occasion:

1. The person(s) to whom the massage establishment permit has been issued, or any person employed or retained by the massage establishment, have violated any provision of this Ordinance or any relevant California or Federal law.

2. The permittee or any person employed or retained by the massage establishment has been convicted in a court of competent jurisdiction of having violated any of the following: California Penal Code Sections 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), or 653.22, of the California Penal Code, or any other crime involving theft, dishonesty, fraud or deceit; or conspiracy or attempt to commit any such offense, or any offense in a jurisdiction outside of the State of California that is the equivalent of any of the aforesaid offenses. A violation of Health and Safety Code Section 11550 or any offense involving the illegal sale, distribution or possession of a



controlled substance specified in Health and Safety Code Section 11054, 11055, 11056, 11057 or 11058; or 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 section 4609(a)

3. or conspiracy or attempt to commit any such offense, or any offense in a jurisdiction outside of the State of California that is the equivalent of any of the aforesaid offenses.

4. The permittee or any person employed or retained by the massage establishment is required to register under Section 290 of the California Penal Code.

5. The permittee has been subject to a permanent injunction against the conducting or maintaining of a nuisance pursuant to this code, or Section 11225 through 11235 of the California Penal Code, or any similar provision of law in any jurisdiction outside the State of California.

6. The permittee or any employee of the massage establishment has engaged in fraud or misrepresentation or has knowingly made a misstatement of material fact while working in or for the massage establishment.

7. The permittee has continued to operate the massage establishment after massage establishment permit has expired or been suspended.

8. Massage is or has been performed on the premises of the massage establishment, with or without the permittee's actual knowledge, by any person who is not a duly authorized CAMTC-certified massage professional.

#### **Sec. 22-31.10. Notice, Hearing, and Appeal.**

(a) Any person who has been denied a massage establishment permit; any person whose application for an amended permit has been denied; or any person whose privilege to operate a massage establishment has been suspended, revoked, or restricted shall be notified in writing by means of registered mail, certified mail, or hand delivery of the Police Chief's decision as well as the person's right to request a hearing under section 22-31.10(c).

(b) Notwithstanding the foregoing, the Police Chief may immediately suspend a massage establishment permit without a prior hearing if he or she determines that the continued provision of massage services constitutes an immediate and significant threat to the public health, safety or welfare. In such a case, if requested, the Appeals Hearing Board shall conduct the hearing following the suspension.

(c) Any person who has been notified in writing by the Police Chief of the denial a massage establishment permit; any person whose application for an amended permit has been denied; or any person whose privilege to operate a massage establishment has been suspended, revoked, or restricted, may request a hearing before the Appeals Hearing Board. The request for a hearing must be in writing and must be made within 10 calendar days from the date of the decision to deny, suspend, revoke, or restrict the permit. If no hearing request is made within this time period, the Police Chief's notice of denial, revocation, suspension or restriction shall become final and shall go immediately into full force and effect.

(d) Upon receiving a written request for hearing, the Board shall set a time and place for the hearing not less than 10 days nor more than 60 days thereafter. The applicant or permittee shall be notified of the hearing by means of registered mail, certified mail, or hand delivery at least five days before the hearing date.

(e) All parties involved shall have the right to offer testimonial, documentary, and tangible evidence bearing on the issues, to be represented by counsel, and to confront and cross-examine witnesses. Formal rules of evidence shall not apply; any relevant evidence may be admitted if it is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The City shall have the burden of proof of any violations by a preponderance of the evidence. Any hearing under this Ordinance may be continued for a reasonable time for the convenience of a party or witness. In the event that the applicant or permittee fails to appear at the hearing, the evidence of the existence of facts which constitute grounds for the denial, suspension, revocation, or restriction of the permit shall be considered conclusively established.

(f) Within 30 days of the hearing, the Board shall issue a written decision specifying the reasons for the decision, which shall be delivered by means of registered mail, certified mail, or hand delivery to the applicant or permittee. The decision of the Board shall be final and shall be subject to judicial review according to the provisions and time limits set forth in Code of Civil Procedure Section 1094.6.

**Sec. 22-31.11. Massage Establishment Reapplication.** If a massage establishment permit is revoked or not renewed as a result of violations, no massage establishment permit may be issued at that location for a period of five years from the date of the revocation or non-renewal.

**Sec. 22-31.12. Massage Establishment – Inspections by Officials.** The investigating officials of the City shall have the right as otherwise provided for by law to inspect a massage establishment during regular business hours, without a search or inspection warrant, to ascertain whether there is compliance with the provisions of this Ordinance.

**Sec. 22-31.13. Massage Establishment General Operating Requirements.** No massage establishment shall engage in, conduct or carry on, or permit to be engaged in, conducted or carried on, the operation of a massage establishment unless each and all of the following requirements are met:

(a) Massage operations shall be carried on, and the premises shall be open, only between the hours of 8:00 a.m. and 9:00 p.m. A massage begun anytime before 9:00 p.m. must nevertheless terminate at 9:00 p.m. No client shall be in the establishment between 9:00 p.m. and 8:00 a.m.

(b) The main entrance to the massage establishment shall be unlocked during posted business hours unless the massage establishment is a business entity owned by one individual with one or fewer employees or independent contractors.

(c) Display of Permits and Certificates.

(1) The massage establishment permit shall be displayed in an open and conspicuous place on the premises visible from the main entry door and/or reception and waiting area of the massage establishment.

(2) Each person employed or retained by a massage establishment to perform massage in or on the premises or through an outcall massage service shall display on his or her person the valid current photograph-bearing identification card issued to that employee by the CAMTC. A copy of each such identification card shall also:

(A) Be kept in a specific location by management and accessible to any regulatory body performing an inspection; and

(B) Be displayed in an open and conspicuous place visible from the main entry door and/or reception and waiting area of the massage establishment. The displayed copy need only include the first name and first letter of the last name. The home address of any employee need not be displayed.

(d) No permittee or employee of a massage establishment shall: (1) expose the sexual or genital parts of the permittee or employee in the course of a massage therapy; (2) touch or expose the sexual or genital part of any other person in the course of a massage therapy; or (3) perform massage therapy on a patron with the intent or purpose of arousing, appealing to, or gratifying the sexual desires of said patron.

(e) No permittee or employee of a massage establishment shall perform any task or service associated with the massage establishment while nude, semi-nude, or dressed in lingerie, see-through, or transparent attire. Garments shall be maintained in a clean and sanitary condition. The only exceptions will be for specific massage modalities which have been approved by CAMTC.

(f) No person shall sell, give, dispense, provide or keep, or cause to be sold, given, dispensed, provided or kept, any alcoholic beverage on the premises of any massage establishment.

(g) Controlled Substances may not be consumed in a massage establishment unless the person has a prescription for the substance.

(h) No person shall enter, be or remain in, any part of a massage establishment while in the possession of, consuming, or using any alcoholic beverage or drugs except pursuant to a prescription for such drugs. The owner, operator, or manager shall not permit any such person to enter or remain upon such premises.

(i) Condoms or spermicides may not be stored, kept or used for any purpose in a massage establishment. Sexually-oriented implements, paraphernalia, or novelty items that are designed or marketed primarily for the stimulation of human genital organs shall not be stored, kept, or used for any purpose in a massage establishment.

(j) A minimum of one toilet and wash basin shall be provided for the patrons in every massage establishment. Hot and cold running water under pressure shall be provided to all wash basins, bathtubs, showers, and similar equipment. Each wash basin shall be provided with soap or detergent and sanitary towels placed in permanently installed dispensers. A trash receptacle shall be provided in every toilet room. Every portion of a massage establishment, including appliances and apparatus, shall be kept clean and be operated in a sanitary condition. All massage establishments shall provide clean laundered sheets and towels in sufficient

quantity which shall be laundered after each use, and stored in a sanitary manner. Receptacles shall be provided for the storage of used linens and paper towels.

(k) The name of the designated on-site manager/operator must be posted in an open and conspicuous place on the premises visible from the main entry door and/or reception and waiting area of the massage establishment. It is unlawful for an owner to not have an owner or designated on-site manager/operator on the premises at all times the massage establishment is open.

(l) No owner, manager, operator, responsible managing employee, or permittee shall permit, and no person performing massage shall offer or perform, any service other than those permitted under this Ordinance.

(m) A massage establishment may not be used for residential or sleeping purposes unless the massage establishment is properly zoned and has all necessary use permits, and the massage establishment is owned by one individual with one or fewer employees or independent contractors.

(n) No permittee or employee of a massage establishment shall place, publish, or distribute 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 customers that any service is available that is prohibited under this Ordinance nor shall any massage establishment employ language in any advertising text or business name that would reasonably suggest to a prospective client that any service is available that is prohibited under this Ordinance.

(o) No electrical, mechanical or artificial device shall be used by the owner and/or manager, massage therapist, or any employee of the massage establishment for audio and/or video recording or for monitoring the performance of a massage therapy, or the conversation or other sounds in the massage rooms without the knowledge and written consent of the patron.

(p) It is unlawful for an owner or designated on-site manager/operator to operate a massage establishment in which any unprofessional conduct occurs as defined by Business and Professions Code section 4609.

(q) During hours of operation, no person other than a valid permit holder under this Ordinance, a massage therapist or practitioner, or a patron or a patron's immediate family member shall be allowed beyond the reception area of the massage establishment. Patrons and visitors shall only be permitted in the Massage Establishment during the hours of operation. Patrons shall only be permitted in massage treatment areas if at least one massage therapist or massage practitioner is on the premises of the massage establishment.

#### **Sec. 22-31.14. Applicability to Existing Massage Establishments.**

(a) All persons currently holding a valid massage establishment permit shall have three months following the enactment of this Ordinance in which to comply with the requirements of the Ordinance. If a permittee does not attain compliance within the prescribed time limits, the Police Chief shall immediately suspend or revoke the permittee's permit(s).

(b) Any business that holds itself out as a massage establishment in any way will be subject to the provisions of this Ordinance.

**Sec. 22-31.15. Penalty for Violation.** Any person violating or failing to comply with any of the provisions of this Section shall be guilty of a misdemeanor. Every person who violates any provision of this Section may also be subject to administrative citations under City Code Sections 1-9 through 1-9.12, which is in addition to all other legal remedies, criminal or civil, which may be pursued by the City to address any violations of this code.

**Sec. 22-31.16. Severability.** If any section, subsection, sentence, clause or phrase of this Section is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Section. In addition, the City Council hereby declares that it would have passed the ordinance codified in this Chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this Section would be subsequently declared invalid or unconstitutional.”

SECTION 4: All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION 5: This ordinance shall be in full force and effect thirty (30) days from and after its final passage and adoption.


PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF MONTEREY this 16th day of June, 2015, by the following vote:

AYES:	5	COUNCILMEMBERS:	Downey, Haffa, Smith, Barrett, Roberson
NOES:	0	COUNCILMEMBERS:	None
ABSENT:	0	COUNCILMEMBERS:	None
ABSTAIN:	0	COUNCILMEMBERS:	None

APPROVED:

ATTEST:

  
\_\_\_\_\_  
Mayor of said City

  
\_\_\_\_\_  
City Clerk thereof

