

**ORDINANCE NO. 96**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY, CALIFORNIA, REPEALING AND REENACTING CHAPTER 11 OF DIVISION 1 OF TITLE 4 OF THE SAN BERNARDINO COUNTY CODE AS ADOPTED BY THE TOWN OF YUCCA VALLEY RELATING TO MASSAGE SERVICES AND ESTABLISHMENTS**

The Town Council of the Town of Yucca Valley does ordain as follows:

**SECTION 1. MUNICIPAL CODE AMENDED.**

Chapter 11 of Division 1 of Title 4 of the San Bernardino County Code as adopted by the Town of Yucca Valley is hereby amended in its entirety to read as follows:

**“CHAPTER 11: MASSAGE SERVICES AND ESTABLISHMENTS**

**Sections**

- 41.111 Purpose and intent
- 41.112 Definitions
- 41.113 Permit requirements
- 41.114 Exemptions
- 41.115 Application for massage permit
- 41.116 Massage establishment standards
- 41.117 Outcall massage endorsement
- 41.118 Posting of license
- 41.119 Register of employees
- 41.120 Denial of massage permit
- 41.121 Revocation of massage permit
- 41.122 Employment of massagist
- 41.123 Inspection required
- 41.124 Unlawful acts
- 41.125 Appeals
- 41.126 Penalties

**41.111 Purpose and Intent.** It is the purpose and intent of this chapter to provide for the orderly regulation of massage services and establishments in the Town by establishing certain minimum standards for the education and conduct of this type of business which will protect the public health and welfare of the citizens of the Town.

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

(a) "Health Department" means the Department of Public Health of the County of San Bernardino.

(b) "Massage" means any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external parts of the human body with the hands or with the aid of any mechanical or electrical apparatus or appliances with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointment or other such similar preparations commonly used in the practice of massage, under such circumstances that it is reasonably expected that the person to whom the treatment is provided or some third person on his or her behalf will pay money or give any other consideration or any gratuity therefor.

(c) "Massage Establishment" means any establishment having a source of income or compensation derived from the practice of massage as defined in this section, and which has a fixed place of business where any person, firm, association or corporation engages in or carries on any of the activities as defined in the definition of massage in this section.

(d) "Massagist" means any person who, for any consideration whatsoever, engages in the practice of massage as defined in this section.

(e) "Outcall Massage Service" means any business, the function of which is to engage in or carry on massages at a location designated by the customer or client rather than a massage establishment as defined in this section.

(f) "Patron" means any person who receives a massage under such circumstances that it is reasonably expected that he or she will pay money or give any other consideration therefor.

(g) "Permittee" means the person to whom a permit has been issued to act in the capacity of a massagist (masseur or masseuse) as herein defined.

(h) "Person" means any individual, partnership, firm, association, joint stock company, limited liability company, corporation or combination of individuals of whatever form or character.

(I) "Recognized School" means any school or educational institution licensed to do business as a school or educational institution in the state in which it is located, or any school recognized by or approved by or affiliated with the American Massage Therapy Association, Inc. or by a professional association of similar status which has for its purpose, the teaching of the theory, method, profession, or work of massage, which school requires a resident course of study of not less than 100 hours before the student shall be furnished with a diploma or certificate of graduation from such school or institution of learning following the successful completion of such course of study or learning.

(j) "Sexual or Genital Area" means the genitals, pubic area, anus, or perineum of any person, or the vulva or breast of a female.

#### **41.113 Permit Requirements**

(a) Massagist's permit required. No person shall practice massage as a massagist, employee or otherwise within the Town of Yucca Valley, unless that person has a valid massagist's permit issued by the Town pursuant to the provisions of this chapter.

**41.114 Exemptions.** This chapter shall not apply to the following individuals while engaged in the personal performance of the duties of their respective professions:

(a) Physicians, surgeons, chiropractors, osteopaths, or physical therapists who are duly licensed to practice their respective professions in the State of California;

(b) Nurses who are registered under the laws of the State of California; and

(c) Barbers, beauticians, manicurists, and pedicurists who are duly licensed under the laws of the State of California except that this exemption shall apply solely to the massaging of the neck, face, scalp, hair, hands or feet of the customer or client for cosmetic or beautifying purposes.

(d) Any state registered athletic trainer who administers such athletic-related massage in the normal course of training duties.

**41.115 Application for Massage Permit.** Application for a massage permit shall be made to the Town of Yucca Valley Community Development Department accompanied by the annual nonrefundable massage permit fee in such amount as established by resolution of the Town Council. The application shall contain the following:

(a) The name, business address, and all telephone numbers of the massage establishments where the massage is to be practiced;

(b) Name and residence address, and all names, nicknames and aliases by which the applicant has been known, including the two previous addresses immediately prior to the present address of the applicant;

(c) Social Security number, driver's license number, if any, and date of birth;

(d) Applicant's weight, height, color of hair and eyes, and sex;

(e) Written evidence that the applicant is at least 18 years of age;

(f) A complete statement of all convictions of the applicant for any felonies or misdemeanor or violation of a local ordinance, except misdemeanor traffic violations, and full statement of disposition of all such actions;

(g) Fingerprints of the applicant taken within 30 days of the submittal by the Police

Department;

(h) Two front face portrait photographs taken within 30 days of the date of application and at least two inches by two inches in size;

(I) The name and address of the recognized school attended, the dates attended and a copy of the diploma or certificate of graduation awarded the applicant;

(1) A person who is employed as a massagist in the Town on the day this chapter goes into effect or has been so employed for three of the previous six months and who has not graduated from a recognized school, may apply for a temporary permit which shall be valid for six months from the day this chapter goes into effect. The temporary permit may be extended for an additional six months upon a showing that the applicant is actively engaged, enrolled or participating in a course of study leading to graduation at a recognized school. In no event shall any temporary permit be valid after one year after this chapter goes into effect; certification as a massage therapist (MST.) or registered massage therapist (RMT.) shall serve in lieu of education;

(2) Employment shall be established by sworn affidavit from the employer. School enrollment shall be certified by an official of the recognized school;

(j) The massage or similar business history and experience for the ten years prior to the date of application, including but not limited to whether or not such person is previously operating in this or another city or state under license or permit has had such license or permit denied, revoked, or suspended and the reasons therefor, and the business activities or occupations subsequent to such action of denial, suspension or revocation;

(k) The names, current addresses and written statements of at least five bona fide permanent residents of the United States, other than relatives, that the applicant is of good moral character. If the applicant is able, the statement must first be furnished from residents of the Town, then the county, then the State of California, and lastly from the rest of the United States;

(l) A medical certificate signed by a physician, licensed to practice in the State of California, within seven days of the date of application. The certificate shall state that the applicant was examined by the certifying physician and that the applicant is free of communicable disease. The additional information required by this division shall be provided at the applicant's expense;

(m) Such other information, identification and physical examination of the person deemed necessary by the Community Development Director in order to discover the truth of the matters herein required to be set forth in the application;

(n) Authorization for the Town, its agents and employees and such other enforcement agencies as may be necessary to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the permit.

The Town may request the San Bernardino Department of Health to conduct some or all of the inspections or investigations required herein. The Department of Health is authorized to bill and collect from the applicant reasonable fees for such services and the applicant shall show evidence that such fees have been paid before a license or permit is issued hereunder;

(o) Written declaration by the applicant, under penalty of perjury, that the foregoing information contained in the application is true and correct, such declaration being duly dated and signed in the Town.

**41.116 Massage Establishment Standards.** No license to conduct a massage establishment shall be issued unless the following standards can be met:

(a) A readable sign shall be posted at the main entrance identifying the establishment as a massage establishment, provided; however, that all such signs comply with the Sign Ordinance.

(b) Minimum lighting shall be provided in accordance with the Uniform Building Code. In addition, at least one (1) unobstructed artificial light of not less than forty (40) watts shall be provided and used at all times in each enclosed room or booth while massage services are being rendered.

(c) Minimum ventilation shall be provided in accordance with the Uniform Building Code.

(d) Instruments used for massage shall be disinfected prior to each use by a reasonable method approved by the San Bernardino Department of Environmental Health. Where such instruments for massage are employed, adequate quantities of supplies for disinfection shall be available during all hours of operation.

(e) Hot and cold running water shall be provided.

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

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

(h) All walls, ceilings, floors, steam or vapor rooms, and all other physical facilities for the massage establishment shall be kept in good repair, maintained in a clean and sanitary condition.

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

**41.117 Outcall Massage Endorsement.** A massage permit may be endorsed to authorize a permittee to perform outcall massage if, in addition to meeting all the requirements of Section 41.115 (b) thru (o) of this Chapter, the massagist:

(a) Has completed a course of instruction of not less than 500 hours, conducted at a

school recognized, approved or accredited by the American Massage Therapy Association or by a professional association of similar stature; and

(b) Is currently certified as a massage therapist (M.S.T.) or a registered massage therapist (R.M.T.) by the American Massage Therapy Association or has an equivalent certification.

**41.118 Posting of License.** Every massagist shall post the permit required by this chapter in his/her work area.

**41.119 Register of Employees.** The licensee or person designated by the licensee of a massage establishment shall maintain a register of all persons employed at any time as massagists and their permit numbers. Such register shall be available at the massage establishment to representatives of the Town during regular business hours.

**41.120 Denial of Massage Permit.** The Community Development Director may deny any permit applied for if he or she determines any of the following:

(a) The permit applicant does not have sufficient massage training or has otherwise failed to fully comply with the application requirements of this chapter;

(b) The business proposed to be conducted would not or does not comply with all applicable laws, including but not limited to the Town's building, zoning, nuisance, and health regulations; or

(c) The permit applicant:

(1) Has knowingly attempted to procure the permit by false statements, representations, or nondisclosure of a material fact when such fact would have been considered good cause for denying the application for such permit; or

(2) Has been convicted of any offense listed in Cal. Gov't Code § 51032 as a permissible basis for denying a permit.

**41.121 Revocation of Massage Permit.** A massage permit issued by the Town may be revoked by the Community Development Department upon a finding that the massagist has been convicted of any offense which would be cause for denial of a permit upon an original application, or the massagist has made a false statement on an application for a permit, or the massagist has committed an act in violation of this chapter. Such proceedings shall be a duly noticed public hearing conducted by the Community Development Director.

**41.122 Employment of Massagist.** No person shall employ an individual as a massagist unless such employee has obtained and has in effect a massage permit issued pursuant to this chapter.

**41.123 Inspection Required.** The Chief of Police or his or her authorized representative shall from time to time make inspection of each massage business establishment for the purpose of

determining that the provisions of this chapter are fully complied with. It shall be unlawful for any person to fail to allow such inspection officer access to the premises or hinder such officer in any manner. Health Department representatives are deemed authorized representatives of the Chief of Police.

#### **41.124 Unlawful Acts**

(a) It shall be unlawful for any massagist to place his or her hand or hands upon, to touch with any part of his or her body, to fondle in any manner, or to massage a sexual or genital part of any other person. Sexual or genital parts shall include the genitals, pubic area, anus, or perineum of any person, or the vulva or breast of a female.

(b) It shall be unlawful for any massagist to expose his or her sexual or genital parts, or any portion thereof, to any other person. It shall also be unlawful for any massagist or employee, in a massage establishment, to expose the sexual or genital parts, or any portions thereof, of any other person.

(c) It shall be unlawful for any massagist while in the presence of any other person to fail to conceal with a fully opaque covering, the sexual or genital parts of his or her body.

(d) It shall be further unlawful for any permittee under this chapter to administer massage on an outcall basis as defined in Section 41.112 (e) of this Chapter, unless such permittee's massage permit includes a valid, current outcall massage endorsement. A massagist whose permit does not include an outcall massage endorsement shall administer massage solely within an establishment licensed to carry on such business under this Chapter. Any violation of these provisions shall be deemed grounds for revocation of the permit granted hereunder.

**41.125 Appeals.** Any affected person may appeal a decision of the Community Development Director to the Town Council. Appeals shall be filed with the Community Development Department within ten (10) days following the date of the action appealed. Upon receipt of the notice of appeal, the Director of Community Development shall schedule the matter on the next available possible regular Town Council meeting. The Council may affirm, revise, or modify the action appealed. In ruling on the appeal, the findings and action of the Council shall be final and conclusive in the matter.

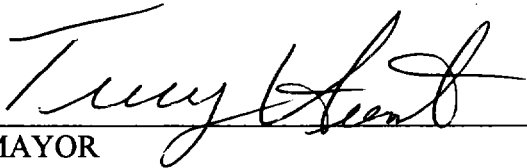
**41.126 Penalties.** Any person violating or causing or permitting the violation of any of the provisions of this chapter shall be guilty of a misdemeanor.”

**SECTION 2. NOTICE OF ADOPTION.** Within fifteen (15) days after the adoption hereof, the Town Clerk shall certify to the adoption of this Ordinance and cause it to be published once in a newspaper of general circulation printed and published in the County and circulated in the Town pursuant to Section 36933 of the Government Code.

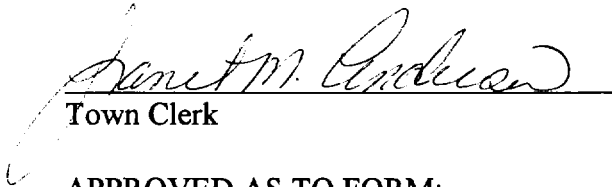
**SECTION 3. EFFECTIVE DATE.** This Ordinance shall become effective thirty (30)

days from and after the date of its adoption.

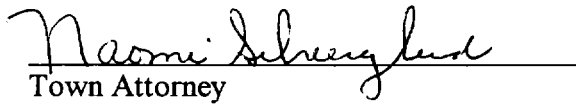
APPROVED AND ADOPTED by the Town Council and signed by the Mayor attested by the Town Clerk this 5<sup>th</sup> day of November 1998.

  
MAYOR

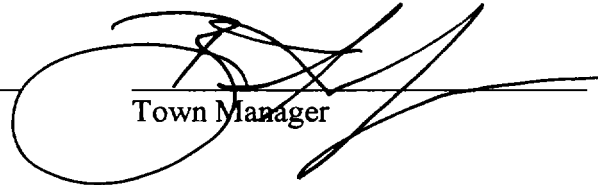
ATTEST:

  
Town Clerk

APPROVED AS TO FORM:

  
Town Attorney

APPROVED AS TO CONTENT:

  
Town Manager