

ORDINANCE NO. 2015 – 24

**AN ORDINANCE OF THE CITY OF SAN JUAN BAUTISTA RESCINDING CHAPTER 5-29
AND REPLACING IT WITH A NEW CHAPTER 5-29 REGULATING
MASSAGE ESTABLISHMENTS AND MASSAGE SERVICES**

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WHEREAS, the California Legislature approved Assembly Bill 1147, which amended the California Massage Therapy Act (California Business and Professions Code Sec. 4600 *et seq.*), which has recently authorized cities to adopt ordinances that govern zoning, business licensing, or reasonable health and safety requirements for establishments of a certified massage therapist or certified massage practitioner; and

WHEREAS, the City Council of the City of San Juan Bautista recognizes the need to regulate massage establishments to balance community needs and to minimize any negative secondary effect associated with such use.

THE CITY COUNCIL OF THE CITY OF SAN JUAN BAUTISTA DOES HEREBY ORDAIN AS FOLLOWS:

1. **Environmental Determination.** The project is exempt from environmental review per CEQA Guidelines under the General Rule (Section 15061(b)(3)) and is not a “project” as defined by CEQA, because this action has no potential to cause any effect on the environment.

2. **Chapter 5-29 Rescinded.** The current Chapter 5-29 of the Municipal Code, entitled “Massage Establishments and Massage Services” is rescinded.

2. **Chapter 5-29 Added.** Chapter 5-29 of the Municipal Code, entitled ““Massage Establishments and Massage Services” is hereby added to the San Juan Bautista Municipal Code as set forth on the attached seven (7) pages, marked Exhibit “A,” and incorporated herein by this reference thereto.

3. **Effective Date.** This ordinance shall be in full force and effect 30 days after its final passage and adoption.

4. **Severability.** If any portion of this ordinance is found to be unconstitutional or invalid the City Council hereby declares that it would have enacted the remainder of this Ordinance regardless of the absence of any such invalid part.

5. **Posting of Ordinance.** Within fifteen (15) days after the passage of this ordinance, the City Clerk shall cause it to be posted on the internet and in the public place designated by resolution of the City Council.

The foregoing ordinance was introduced at a regular meeting of the City Council of the City of San Juan Bautista duly held on October 20, 2015, and was passed and adopted at a regular meeting duly held on November 17, 2015 by the following vote:

AYES: Boch, Martorana, Edge, West, Lund

NOES: None

ABSENT: None

ABSTAIN: None

Robert Lund, Mayor

ATTEST:

City Clerk Connie Schobert

Chapter 5-29
MESSAGE ESTABLISHMENTS AND MESSAGE SERVICES

Article 1. Definitions

5-29-100 Definitions.

Unless the provision or context otherwise require, the definitions contained in this Article shall govern the construction of this Chapter.

5-29-105 California Massage Therapy Council "CAMTC."

"California Massage Therapy Council" or "CAMTC" shall mean the California Massage Therapy Council created under California Business and Professions Code Section [4602](#).

5-29-110 Certified Massage Practitioner.

"Certified Massage Practitioner" shall mean 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.

5-29-115 Certified Massage Therapist.

"Certified Massage Therapist" shall mean 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.

5-29-115 Employee.

"Employee" shall mean any person, including the Certified Massage Therapist or Certified Massage Practitioner, who renders any service to the permittee, who receives compensation directly from the permittee, and who has a physical contact with the customers and clients.

5-29-120 Health Officer.

"Health officer" shall mean the Health Officer of the County of San Benito or his authorized representative.

5-29-125 Massage.

"Massage" shall mean the application of various techniques to the soft tissues of the human body as defined in California Business and Professions Code Section [4601](#). 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

5-29-130 Massage establishment.

"Massage establishment" shall mean a place where certified massage therapists or certified massage practitioners practice massage as provided in California Business and Professions Code Section [4601\(f\)](#).

5-29-135 Reserved.

5-29-140 Reserved.

5-29-145 Permittee.

"Permittee" shall mean any person operating or maintaining a massage establishment.

5-29-150 Person.

“Person” shall mean any individual, copartnership, firm, association, joint stock company, corporation or combination of individuals of whatever form or character.

Article 2. Certification and Registration Required.

Except as otherwise provided in 5-29-320, 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.

Article 3. Permit Required

5-29-300 Massage establishment.

Except as set forth in 5-29-320, no person shall engage in, conduct or carry on, or permit to be engaged in, conducted or carried on, in or upon any premises in the City of San Juan Bautista, the operation of a massage establishment without first having obtained a permit therefor from the City Manager in accordance with the provisions of this Chapter. 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.

5-29-305 Separate locations.

A separate permit must be obtained for each branch location in which the operation of a massage establishment is to be carried on.

5-29-310 Display of permit – Massage establishment.

Every massage establishment permit issued pursuant to the provisions of this Chapter shall at all times be displayed in a conspicuous place within the massage establishment.

5-29-320 Permit Exceptions.

The permit requirements of Sections 5-29-300 through 5-29-310 shall not apply to the following persons while engaged in the performance of their duties:

- (a) 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;
- (b) 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;
- (c) Trainers of any amateur, semiprofessional or professional athlete or athletic teams while engaging in their training responsibilities for and with athletes;
- (d) 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;
- (e) Accredited high schools and colleges, and their coaches and trainers while acting within the scope of their employment;
- (f) Accredited colleges or universities that offer massage therapy programs whose instructors and students are acting within the scope of their employment or within the scope of their curriculum; and
- (g) Any other business or professions exempt by State law.

5-29-225 Nontransferability.

No permit issued pursuant to the provisions of this Chapter is transferable to any other person or location.

Article 3. Procedures – Massage Establishment Permit

5-29-300 Application.

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 10 percent 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 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 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 employee 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 person 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 massage establishment who is not a CAMTC-certified massage professional, the following information:
 - (1) Whether any owner of the massage establishment has within the five 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 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 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.

5-29-320 Issuance or denial of permit.

The City Manager shall, within twenty (20) days after receipt of an application complying with all the provisions of this Chapter, issue a permit or deliver to the applicant, personally or by mail, written notice of denial of the permit, setting forth the reason or reasons therefor, in accordance with the provisions of SJBMC 5-29-325.

5-29-325 Grounds for denial of permit.

The City Manager shall deny the permit if he finds:

(a) The massage establishment, as proposed by the applicant, would not comply with the requirements of this code and/or with any applicable law, including but not limited to the City's building, fire, zoning, and health regulations.

(b) The applicant has knowingly made any false, misleading or fraudulent statement of material fact in the application for a massage establishment permit.

(c) Any owner of the massage establishment, within five 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.

(d) Any owner of the massage establishment is currently required to register under the provisions of Section [290](#) of the California Penal Code.

(e) Any owner of the massage establishment, within five 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 and Professions Code Section [4609\(a\)](#).

(f) Any owner of the massage establishment has been subjected to a permanent injunction against the conducting or maintaining of a nuisance pursuant to Sections [11225](#) through [11235](#) of the California Penal Code, or any similar provision of law in a jurisdiction outside the State of California.

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

(h) Any owner of the massage establishment, within five 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.

If prosecution is pending against the applicant for conduct listed in this section, the City Manager 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.

5-29-330 Revocation of permit.

The City Manager shall revoke a permit issued pursuant to the provisions of this Article if:

(a) The person(s) to whom the massage establishment permit has been issued, or any employee have violated any provision of this Chapter or any relevant California or Federal law.

(b) The permittee or any employee 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](#), [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 and Professions Code Section [4609\(a\)](#) 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.

(c) The permittee or any employee is required to register under Section [290](#) of the California Penal Code.

(d) The permittee has been subject to a permanent injunction against the conducting or maintaining of a nuisance pursuant to this code, or Sections [11225](#) through [11235](#) of the California Penal Code, or any similar provision of law in any jurisdiction outside the State of California.

(e) 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.

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

(g) 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.

Notice of revocation of the permit shall be given in writing to the permittee by the City Manager. The permittee shall cease all operations under the permit within forty-eight (48) hours of delivery of said notice, unless a notice of appeal is filed pursuant to the provisions of SJBMC 5-29-335.

5-29-335 Appeal.

An applicant or permittee may appeal any action or determination of the City Manager under the provisions of this Chapter by filing written notice thereof with the City Clerk not later than forty-eight (48) hours after the delivery of any written notice given by the City Manager. The effect of revocation of a permit shall be suspended by the filing of a notice of appeal until the determination of the appeal by the City Council. The City Council shall hold a public hearing on the appeal at its next regular meeting occurring more than seven (7) days after filing of the notice of appeal. Notice of said hearing shall be published once in the official newspaper and delivered in writing, personally or by mail, to the applicant or permittee not less than five (5) days prior to said hearing. At such hearing the applicant or permittee shall be required to show sufficient cause why the action or determination of the City Manager should not be upheld. The City Council shall, at said hearing, hear all other interested parties who desire to be heard. The determination of the City Council on the appeal shall be final and conclusive.

5-29-340 Mailed notice.

Any notice mailed pursuant to the provisions of this Article or of Article 4 of this Chapter shall be deemed delivered twenty-four (24) hours after its deposit in a post office or mailbox.

Article 4. General Provisions

5-29-400 Facilities necessary.

No permit to conduct a massage establishment shall be issued unless an inspection reveals that the establishment complies with the requirements of the construction codes set forth in Chapter 10-1 SJBMC, and each of the following minimum requirements:

(A) Construction of rooms used for toilets, tubs, steam baths, and showers shall be made waterproof with approved waterproofed materials.

(B) For toilet rooms, toilet room vestibules and rooms containing bathtubs, there shall be a waterproof floor covering, which will be carried up all walls to a height of at least six inches (6"). Floors shall be covered up on base with at least three-fourths-inch (3/4") cover. The walls of all toilet rooms and rooms containing bathtubs shall be finished to a height of six feet (6') with a smooth, non-absorbent finish surface of Keene cement, tile, or similar material.

(C) Steam rooms and shower compartments shall have waterproof floors, walls and ceilings.

(D) Floors of wet and dry heat rooms shall be adequately pitched to one (1) or more floor drains properly connected to the sewer. (Exception: dry heat rooms with wooden floors need not be provided with pitched floors and floor drains.)

(E) A source of hot water must be available within the immediate vicinity of dry and wet heat rooms to facilitate cleaning.

(F) Separate toilet facilities for each sex shall be provided in convenient locations. All toilet facilities shall be equipped with self-closing doors opening in the direction of ingress to such facilities. Toilets shall be designated as to the sex accommodated therein.

(G) Lavatories or wash basins provided with both hot and cold running water shall be installed in either the toilet room or the vestibule. Lavatories or wash basins shall be provided with soap in a dispenser and with sanitary towels.

(H) All portions of massage establishment and baths shall be provided with adequate light and ventilation by means of windows or skylights with an area of not less than one-tenth (1/10) of the total floor area, or shall be provided with approved artificial light and a mechanical operating ventilating system. When windows or skylights are used for ventilations, at least one-half (1/2) of the total required window area shall be operable.

To allow for adequate ventilation, cubicles, rooms, and areas provided for patrons' use not served directly by a required window, skylight, or mechanical system of ventilation shall be constructed so that the height of partitions does not exceed seventy-five percent (75%) of the floor-to-ceiling height of the area in which they are located. All electrical equipment shall be installed in accordance with the requirements of Chapter 10-1 SJBMC.

All electrical appliances used in the operation of the establishment shall comply with the provisions of Chapter 10-1 SJBMC.

5-29-405 Operating requirements.

(A) Every portion of a massage establishment, including appliances, apparatus, and personnel shall be kept clean and operated in a sanitary condition.

(B) Wet and dry heat rooms, shower compartments, and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs shall be thoroughly cleaned after each use.

5-29-415 Inspection.

Every permittee operating a massage establishment shall allow inspection thereof during business hours by the City Manager, the Health Officer, the Chief of Police or their representatives.

5-29-420 Advertising.

No massage establishment granted a permit under the provisions of this Article 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 patrons that any service is available other than those services described in SJBMC 5-29-125, nor shall any massage establishment indicate in the text of such advertising that any service is available other than those services described in SJBMC 5-29-125.

Article 5. Application of Chapter5

5-29-600 Existing business.

The provisions of this Chapter shall apply to all persons presently engaged in any of the activities regulated by this Chapter. Such persons shall comply with the provisions of this Chapter within thirty (30) days after the effective date of this Chapter.