

ORDINANCE NO. 2549

AN ORDINANCE OF THE CITY OF REDDING AMENDING TITLE 6 (BUSINESS TAXES, LICENSES AND REGULATIONS) OF THE REDDING MUNICIPAL CODE BY ADDING CHAPTER 6.08 (MASSAGE) RELATING TO THE REGULATION OF MASSAGE

WHEREAS, the City Council finds that massage therapy is an integral component of the scope of services sought by residents and tourists when visiting the City of Redding; and

WHEREAS, the City of Redding Municipal Code does not currently address or regulate the operation of massage establishments, massage practitioners and massage therapists; and

WHEREAS, certain businesses and individuals in the City of Redding purporting to provide legitimate massage services have instead been engaged in illicit activities that violate state and federal laws relating to prostitution and sex trafficking; and

WHEREAS, in 2014 the California Legislature adopted AB 1147, to reenact and revise Business and Professions Code Section 4600 et seq., which relates to the regulation of massage establishments and those who practice massage therapy; and

WHEREAS, Business and Professions Code Section 4612(b) provides that a city is authorized to license, regulate, prohibit or permit an individual who provides massage for compensation without a valid certificate issued by the California Massage Therapy Council; and

WHEREAS, Government Code Section 51034 recognizes the authority of cities to regulate massage businesses under Section 7 of Article XI of the California Constitution which reserves the right of cities to make and enforce within its limits all local, police, sanitary and other ordinances not in conflict with general laws; and

WHEREAS, it is the intention of the City Council that massage establishments be closely regulated for the protection of the health, welfare, and safety of the those working at massage establishments and the public in general; and

WHEREAS, this ordinance will enable the City of Redding to promote the public health, safety and welfare by imposing stricter controls on massage establishments and on persons providing massage services who are not certified by the CAMTC.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF REDDING AS FOLLOWS:

Section 1. Title 6 of the Redding Municipal Code is amended to add Chapter 6.08 with a title to read as follows:

MASSAGE

Sections:

6.08.010	Definitions.
6.08.020	Operating Requirements.
6.08.030	Provisions Applicable to Location.
6.08.040	Inspection.
6.08.050	Exemptions.
6.08.060	Enforcement, Penalties and Nuisance Per Se.
6.08.070	Joint and Several Liability

Section 2. Title 6 of the Redding Municipal Code is amended to add Sections 6.08.010 through 6.08.080, inclusive, to Chapter 6.08 to read as follows:

Section 6.08.010 Definitions.

The following terms and phrases, whenever used in this Chapter, are defined as follows:

- A. “Adult-oriented merchandise” means any sexually-oriented implements, paraphernalia, or novelty items such as, but not limited to, condoms and items that are designed or marketed primarily for the stimulation of human genital organs.
- B. “CAMTC” means the California Massage Therapy Council.
- C. “Employee” means any owner, partner, operator, manager, supervisor or worker being part-time, full-time, temporary, permanent or independent contractor whether paid or not, who manages or operates a massage establishment, or renders personal services of any nature in the operation of a massage establishment or on behalf of a massage professional.
- D. “Genitals” means the parts of the human anatomy including the pubic area, anus, or perineum and the breasts of any female.
- E. “Massage” means the manipulation of soft body tissues. For the purposes of this definition, “massage” and “massage therapy” shall have the same meaning.
- F. “Massage establishment” means a fixed location where massage for compensation is provided on a regular or routine basis by a massage professional, or, in the case of massage provided by a person who has received a home occupation permit pursuant to Redding Municipal Code, the home of the massage professional.
- G. “Massage for compensation” means the provision of massage for consideration of any kind, whether monetary or otherwise, regardless of whether said consideration is provided in advance of the massage or after completion of massage.

- H. “Massage Professional” means any person who provides massage services to another person for compensation.
- I. “Person” means any individual, partnership, firm, association, joint stock company, corporation, joint venture, or combination of individuals of whatever form or character.

Section 6.08.020 Operating Requirements.

No person or employee shall engage in, conduct, carry on, or permit any massage unless all of the following requirements are met:

- A. Massage shall be provided or given only between the hours of 7:00 a.m. and 10:00 p.m. A massage commenced prior to 10:00 p.m. must terminate at 10:00 p.m., and in the case of a massage establishment, all clients shall exit the premises at that time.
- B. No person who has not reached eighteen (18) years of age shall provide massage or be employed by a massage establishment.
- C. Within sixty (60) calendar days of the effective date of this of this Ordinance, all persons providing massage who have not been certified by the CAMTC, and all employees of a massage establishment not certified by the CAMTC, shall report to the Redding Police Department for submission of fingerprint images.
 - 1. The results of the background investigation resulting from the submission of fingerprint images shall be valid for a period of two years.
- D. Massage shall not be provided by any person not certified by the CAMTC nor shall any person who is an employee of a massage establishment provide services for his/her employer without having a valid, approved background investigation on file with the Redding Police Department.
 - 1. At all times while on premises at a massage establishment, all persons not certified by the CAMTC providing massage and all other employees, as defined in Section 6.08.010, shall, upon demand, immediately provide evidence of a valid, approved background investigation.
 - 2. Proof of a valid, approved background investigation as herein required, shall be kept on the person or on the premises of the massage establishment.
- E. No person who has not been certified by the CAMTC shall provide massage for compensation or act as an employee of a massage business if such person has:
 - 1. Been convicted of, or entered a plea of guilty or no contest to, an offense that requires registration under the Sex Offender Registration Act (Penal Code Section 290 *et seq.*), or which is a violation of Penal Code sections 261, 261.5, 261.9, 262, 264.1, 265, 266, 266a, 266b, 266c, 266d, 266e, 266f, 266g, 266h, 266i, 266j, 267,

269, 285, 288, 288a, 288.2, 288.3, 288.4, 288.5, 288.7, 289, 289.5, 289.6, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.10, 311.11, 311.12, 313.1, 314, 315, 316, 318 or 647(a)-(b) or equivalent offenses under the laws of another jurisdiction, even if expunged pursuant to Penal Code Section 1203.4 or equivalent statute under the laws of another jurisdiction.

2. Been convicted of, or entered a plea of guilty or no contest to, an offense involving the sale, possession for purposes of sale, purchase for the purpose of sale, transport, import, export, administration, gift or cultivation of a controlled substance specified in Health and Safety Code Sections 11054 through 11058, inclusive, or equivalent offenses under the laws of another jurisdiction, even if expunged pursuant to Penal Code Section 1203.4 or equivalent statute under the laws of another jurisdiction.
 3. Been convicted of, or entered a plea of guilty or no contest to, a violation of Penal Code section 415 as a result of being charged for a violation of Penal Code section 647.
 4. Been convicted of any state or federal law relating to the trafficking of humans for the purpose of labor or sex.
 5. Suffered revocation or suspension of a certificate issued under the Massage Therapy Act (Business and Professions Code Section 4600 et seq.) unless such certificate has been restored.
- F. Massage establishments shall at all times be equipped with an adequate supply of clean sanitary towels, coverings, and linens. Towels and linens shall not be used on more than one (1) client, unless they have first been laundered and disinfected. Disposable towels and coverings shall not be used on more than one (1) client.
- G. Wet and dry heat rooms, steam or vapor rooms or cabinets, toilet rooms, shower and bath rooms, tanning booths, whirlpool baths and pools located at massage establishments shall be cleaned and disinfected at least once each day when such facilities have been in use.
- H. All instruments used in massage shall be maintained in a clean and sanitary condition. Instruments utilized in providing massage shall not be used on more than one (1) client unless they have been sterilized.
- I. No dressing room shall be occupied by more than one person at a time except in the case where occupation is by a parent or legal guardian to a child then present.
- J. No room where massage is provided shall be occupied by a person other than the client and massage professional except in the case where occupation is by a care giver, parent or legal guardian to a child then present or massage is provided on a couple.
- K. Toilet facilities shall be provided in convenient locations within the massage establishment and shall consist of at least one unisex toilet with a lavatory or wash basin provided with soap and both hot and cold running water.

- L. No alcoholic beverages or controlled substances, as defined in Health and Safety Code Sections 11054 through 11058, inclusive or in the Controlled Substances Act (21 U.S.C. 810 et seq.), shall be sold, served, furnished, kept, consumed or possessed on the premises of any massage establishment unless the massage establishment has a valid license issued by the State of California Department of Alcoholic Beverage Control (“ABC”). Alcoholic beverages shall not be consumed, and massage establishment personnel must not allow a person to consume an alcoholic beverage in a massage establishment, unless the massage establishment has complied with all applicable ABC requirements.
1. Notwithstanding, if a home occupation permit has been issued pursuant to Redding Municipal Code Section 18.43.110 alcohol may be possessed at the home where the home occupation is permitted but not in the room where massage is provided. All other prohibitions set forth in Subdivision L of this Section shall apply.
- M. All massage professionals and employees of massage establishments shall wear clean, non-transparent outer garments while engaged in massage for compensation. Said garments shall not expose the genitals, pubic areas, buttocks, or chest and shall not be worn in such manner as to expose the genitals, pubic areas, buttocks, or chest. For the purposes of this Section, outer-garments means a garment worn over other garments and does not include garments like underwear, bras, lingerie or swimsuits.
- N. No massage for compensation shall be provided unless the client’s genitals are at all times fully covered. While engaged in massage for compensation, a massage professional shall not make, or offer to make, physical contact with the genitals of any other persons regardless of whether the contact is over or under the persons’ clothing nor shall the massage professional permit, or offer to permit, the client to make physical contact with the genitals of the massage professional regardless of whether the contact is over or under the massage professional’s clothing.
1. Notwithstanding, massage of the female breasts by the massage professional is permissible with the written consent of the client and delivery to the massage professional by the client of a written referral from a licensed health care provider.
- O. Except when massage is provided pursuant to a home occupation authorized by Redding Municipal Code 18.43.110, no adult-oriented merchandise or material which depicts the human genitals shall be kept at a massage establishment. In the case of a home occupation authorized pursuant to Redding Municipal Code 18.43.110, adult-oriented merchandise or material depicting human genitals shall be kept away from the possession and view of the client.
- P. Except where a home occupation is permitted under Redding Municipal Code 18.43.100, no massage professional or employee, excluding therefrom custodial or janitorial staff, shall occupy a massage establishment from the hours of 11:00 p.m. through 6:00 a.m.

- Q. A massage professional shall operate only under the name provided to the Redding Police Department under Redding Municipal Code Section 6.08.020(C). A massage establishment shall operate only under the name specified on its business license.
- R. No person may advertise to provide massage for compensation in a state of undress which violates Subdivisions M or N of this Section.

Section 6.08.030 Provisions Applicable to Location.

No person shall provide massage, operate a massage establishment or provide property for the operation of a massage establishment at a particular location if:

- A. Another massage establishment is or was operating at that particular location within the prior thirty-six (36) months and that massage establishment has been deemed by the Administrative Hearings Board or a court of competent jurisdiction to have violated any provision of this Chapter.
- B. Another massage establishment is or was operating at that particular location within the prior thirty-six (36) months and that massage business has outstanding unpaid fines or penalties, whether criminal, administrative or civil.

Section 6.08.040 Inspection.

- A. All persons providing massage and massage establishment employees shall, during permissible hours of operation, have on their person or immediately available at the massage establishment a valid identification which identifies the individual.
- B. For the sole purpose of inspecting and verifying compliance with this Chapter and otherwise facilitating the functions of this Chapter, the Director of Development Services, or his/her designee, or the Redding Police Chief, or his/her designee, is authorized to enter massage establishments to conduct administrative inspections thereof, and of the things specified in this section, relevant to those functions.
- C. Prior to inspection, City personnel shall inform those present at the massage establishment that inspection is made pursuant to this Chapter.
- D. All massage establishments shall submit to regular administrative inspections between the hours of 7:00 a.m. and 10:00 p.m.

Section 6.08.050 Exemptions.

The provisions of this Chapter shall not apply to the following classes of individuals or businesses while engaged in the performance of their duties:

- A. Physicians, surgeons, chiropractors, osteopaths, nurses or any physical therapists who are duly licensed to practice their respective professions in the State of California and persons working directly under the supervision of, or at the direction of, such licensed persons, working at the same location as the licensed person and administering massage services subject to the review or oversight by the licensed person.

- B. Barbers and beauticians who are duly licensed under the laws of the State of California while engaging in practices within the scope of their licenses, except that this provision shall apply solely to the massage of the neck, shoulders, arms, face and/or scalp, hands or feet of clients.
- C. Hospitals, nursing homes, mental health facilities or any other health facilities duly licensed by the State of California, and employees of these licensed facilities while acting in the scope of their employment.
- D. Accredited elementary schools, middle schools, high schools, junior colleges, and colleges or universities whose coaches or trainers are acting within the scope of their employment.
- E. Youth and adult sport programs operated within an organized sport program offering league play whose coaches or trainers are acting within the scope of their employment.
- F. Martial arts programs operated for instruction in the martial arts whose coaches or trainers are acting within the scope of their employment.
- G. Trainers of amateur, semi-professional or professional athletes or athletic teams while engaged in their training responsibility for and with athletes and trainers working in conjunction with a specific athletic event.
- H. Individuals administering massages or health treatment involving massage to persons participating in single-occurrence athletic, recreational or festival events, such as health fairs, road races, track meets, triathlons and other similar events provided that all of the following conditions are met:
 - 1. The massage services are made equally available to all participants in the event;
 - 2. The event is open to participation by the general public or a significant segment of the public; and
 - 3. The massage services are provided at the site of the event and either, during, immediately preceding or immediately following the event.
- I. Students of a licensed school of massage while engaged in massage therapy as part of the curriculum when under the direct supervision of a massage professional licensed by the CAMTC or a massage professional fully compliant with all provisions set forth in this Chapter.

Section 6.08.060 Enforcement, Penalties and Nuisance Per Se.

- A. The City Attorney is authorized to file a civil action to recover civil penalties in an amount not to exceed one thousand dollars (\$1,000) per violation and to take any other action in law or equity which he or she may deem necessary in order to enforce this Chapter.

- B. This Chapter may be enforced by means of the administrative processes and remedies set forth in Chapters 1.13 and 1.14 of the Redding Municipal Code. Administrative penalties shall be an amount not to exceed one thousand dollars (\$1,000) per violation.
- C. This Chapter is cumulative to all other remedies now or hereafter available to abate or otherwise regulate, enforce or prevent public nuisances or to enforce the provisions of the Redding Municipal Code.
- D. Each violation of this Chapter shall constitute a separate violation. Each client to whom massage is provided or offered in violation of this Chapter shall also constitute a separate violation.
- E. A violation of any provision of this Chapter constitutes a public nuisance.

Section 6.08.070 Joint and Several Liability

All responsible parties, as defined in Redding Municipal Code Section 1.14.020, shall be jointly and severally liable for violations of any provision set forth in this Chapter.

Section 3. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any person or circumstance. The City Council of the City of Redding hereby declares that it would have adopted each section, subsection subdivision paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections subdivisions paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 4. The City of Redding finds that this Ordinance is not a “project” according to the definition set forth in the California Environmental Quality Act (“CEQA”), and, pursuant to CEQA Guidelines sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061(b)(3) (there is no possibility the activity in question may have a significant effect on the environment), the adoption of this ordinance is therefore not subject to the provisions requiring environmental review.

I HEREBY CERTIFY that the foregoing ordinance was introduced and read by the City Council at a regular meeting on the 21st day of June, 2016; and was duly read and adopted at a regular meeting on the 19th day of July, 2016, by the following vote:

AYES:	COUNCIL MEMBERS:	Cadd, Sullivan, Weaver, & McArthur
NOES:	COUNCIL MEMBERS:	Schreder
ABSENT:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None

/s/ Missy McArthur
MISSY McARTHUR, Mayor

Attest:

Form Approved:

/s/ Pamela Mize
PAMELA MIZE, City Clerk

/s/ Barry E. DeWalt
BARRY E. DeWALT, City Attorney