

ORDINANCE NUMBER O- 18907 (NEW SERIES)

ADOPTED ON DEC 05 2000

AN ORDINANCE AMENDING CHAPTER III, ARTICLE 3, DIVISION 35, OF THE SAN DIEGO MUNICIPAL CODE BY REPEALING SECTION 33.3501; AMENDING AND RENUMBERING SECTION 33.3502 TO 33.3501; REPEALING SECTION 33.3503; AMENDING AND RENUMBERING SECTIONS 33.3504, 33.3520 AND 33.3521 TO 33.3502, 33.3503 AND 33.3504; ADDING NEW SECTIONS 33.3505 AND 33.3506; AMENDING AND RENUMBERING SECTIONS 33.3522 AND 33.3523 TO 33.3507 AND 33.3508; AMENDING AND RENUMBERING SECTIONS 33.3530 AND 33.3531 TO 33.3509 AND 33.3510; ADDING NEW SECTIONS 33.3511 AND 33.3512; AMENDING AND RENUMBERING SECTION 33.3532 TO 33.3513; ADDING NEW SECTION 33.3514; AMENDING AND RENUMBERING SECTION 33.3540 TO 33.3515; ADDING NEW SECTIONS 33.3516, 33.3517, 33.3518, 33.3519, 33.3520, 33.3521, 33.3522 AND 33.3523; REPEALING SECTION 33.3524; ADDING NEW SECTIONS 33.3524, 33.3525, 33.3526, 33.3527, 33.3528 AND 33.3529; REPEALING SECTIONS 33.3533, 33.3541, 33.3542, 33.3550, 33.3551, 33.3552, 33.3553, 33.3554, 33.3555 AND 33.3556; ALL RELATING TO MASSAGE BUSINESS AND MASSAGE THERAPISTS.

WHEREAS, the proposed amendments are intended to make the Municipal Code easier to read; to avoid duplicating definitions in each division; to rely on Chapter III, Article 3, Divisions 1 through 5 for rules which apply to all businesses governed by Chapter III, Article 3 of the Municipal Code, rather than repeating the rule in each division; to avoid duplicating or conflicting with other regulations governing these businesses; and to rely on Division 1 and Chapter 1, Article 1, as appropriate, including the severability clause contained in Section 11.0205;

WHEREAS, the Council of The City of San Diego takes legislative notice of the contents of the San Diego Vice and Licensing Task Force Report (June 1996) and its accompanying oral and documentary evidence as presented before the PS&NS Committee and the Council; and

WHEREAS, requiring higher entry standards and continuing education will deter the spread of criminal activity, particularly prostitution, in the industry; NOW, THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter III, Article 3, Division 35, of the San Diego Municipal Code be and the same is hereby amended by repealing Section 33.3501.

Section 2. That Chapter III, Article 3, Division 35, of the San Diego Municipal Code be and the same is hereby amended by amending and renumbering Section 33.3502 to 33.3501, to read as follows:

SEC. 33.3501 Purpose and Intent

It is the purpose and intent of this Division to provide for the orderly regulation of the business of *massage* and *massage therapists* in The City of San Diego by establishing certain minimum standards for the conduct of this type of business to protect the public health and welfare of the residents of The City of San Diego.

This Division is adopted pursuant to Chapter 6, Part I of Division I of Title 5 (Sections 51030 through 51034) of the California Government Code.

Section 3. That Chapter III, Article 3, Division 35, of the San Diego Municipal Code be and the same is hereby amended by repealing Section 33.3503.

Section 4. That Chapter III, Article 3, Division 35, of the San Diego Municipal Code be and the same is hereby amended by amending and renumbering Sections 33.3504, 33.3520 and 33.3521 to 33.3502, 33.3503 and 33.3504, to read as follows:

SEC. 33.3502 Definitions

For purposes of this Division:

"*Massage*" means any method of pressure on, or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating the external parts of the human body with the hands or other parts of the body, with or without the aid of any mechanical or electrical apparatus or appliances, or with or without supplementary aids such as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments or other similar preparations commonly used in this practice.

"*Massage establishment*" means a fixed place of business where any person engages in massage.

"*Massage therapist*" means any person who gives or administers a massage to another person, for any form of consideration whatsoever.

"*NCBTMB*" means the National Certification Board for Therapeutic Massage and Bodywork.

"*NCCAOM*" means the National Certification Commission of Acupuncture and Oriental Medicine.

"*Off-premise massage therapist business*" means the business of providing *massage* services by appointment at a location other than premises licensed as a

massage establishment. It includes *massage therapists* who provide *off-premise massage services* and who are self-employed and/or who contract with or work for a business other than a *massage establishment*.

"*Particular anatomical areas*" means the pubic region, human genitals, perineum, anal region, and the area of the female breast that includes the areola and the nipple.

"*State-approved school*" means any school or institution within the United States, which is approved by the state in which it resides, for the teaching of *massage*.

SEC. 33.3503 Permit Required for Massage Establishment

It is unlawful for any *person* to operate or allow the operation of a *massage establishment* without a *police permit*.

SEC. 33.3504 Massage Establishment Permit Application Contents

(a) Each applicant for a *permit* to operate a *massage establishment* shall furnish the following information to the *Chief of Police*:

- (1) The full true name and any other names ever used by the applicant.
- (2) The current residential address and telephone number of the applicant.
- (3) The address of the proposed *massage establishment*.

(4) Each residential address of applicant for the five years immediately preceding the date of the application, and the inclusive dates of each address.

(5) Written proof that the applicant is at least eighteen years of age.

(6) Applicant's height, weight, color of eyes and hair.

(7) Photographs of the applicant as specified by the *Chief of Police*.

(8) Applicant's business, occupation and employment history for the five years immediately preceding the date of application, including addresses and dates of employment.

(9) Whether the applicant has ever had any *license or permit* issued by any agency or board, or any city, county, state or federal agency revoked or suspended, or has had any professional or vocational *license or permit* revoked or suspended within five years immediately preceding the application, and the reason for the suspension or revocation.

(10) All criminal *convictions*, including those dismissed pursuant to Penal Code section 1203.4, except traffic, and a statement of the dates and places of such *convictions*.

(11) The name and address of the owner and lessor of the real property upon which the business is to be conducted, and a copy of the lease or rental agreement.

(12) Fingerprints.

(13) Such other identification and information as may be required in order to discover the truth of the matters herein specified as required to be set forth in the application.

(b) In addition to the information required by Section 33.3504(a), an applicant for a *massage establishment permit* must furnish the following information:

(1) if the applicant is a corporation, the name of the corporation exactly as shown in its Articles of Incorporation or Charter, together with the state and date of incorporation and names and residential addresses of each of its current officers and directors, and of each stockholder holding more than 5 percent of the stock of the corporation;

(2) if the applicant is a partnership, the name and residential addresses of each of the partners, including limited partners;

(3) if the applicant is a limited partnership, a copy of the limited partnership's certificate of limited partnership as filed with the County Clerk;

(4) if one or more of the limited partners is a corporation, the applicant shall provide the information about that partner required by Section 33.3504(b)(1);

(5) if the applicant is a corporation or partnership, the name of the responsible managing officer.

Section 5. That Chapter III, Article 3, Division 35, of the San Diego Municipal Code be and the same is hereby amended by adding new Sections 33.3505 and 33.3506, to read as follows:

SEC. 33.3505 Corporate Officers and Partners Deemed Applicants

Each corporate officer or partner of a *massage establishment* is deemed an applicant for a *massage establishment permit* and each must provide the information required in Section 33.3504.

SEC. 33.3506 Designation of Responsible Managing Officer, Signature on Applications

An applicant that is a corporation or partnership shall designate one of its officers or general partners to act as its responsible managing officer. The responsible managing officer may complete and sign all applications on behalf of the corporate officers and partners.

Section 6. That Chapter III, Article 3, Division 35, of the San Diego Municipal Code be and the same is hereby amended by amending and renumbering Sections 33.3522 and 33.3523 to 33.3507 and 33.3508 to read as follows:

SEC. 33.3507 County Health Department Inspection and Investigation Required Before Issuing Massage Establishment Permit

(a) In addition to the requirements of Section 33.3504, any person desiring to operate a *massage establishment* shall make an application to the County of San Diego, Department of Health Services, for a health permit. An annual non-refundable fee, the exact amount of which shall be determined and kept on record by the County Department of Health Services, shall accompany the

submission of each application to the Department of Health Services to defray the cost of investigation, inspection and enforcement of the health aspects of this Division.

(b) Any *massage establishment permittee* failing to renew a health permit within thirty days after its expiration shall be assessed a 10 percent penalty for each month of failure to renew. This penalty shall be added to the cost of the renewal of the health permit fee. The entire sum shall be paid to the Department of Health Services. In no case shall the penalty exceed 60 percent of the renewal fee. The penalty imposed by this Section, whether or not the penalty is paid, shall not prevent imposition of any other penalties prescribed by this Chapter or prevent prosecution for *violation* of this Chapter.

SEC. 33.3508 Permit Required for Off-Premises Massage Business

(a) It is unlawful for any *person* to engage in, or operate an *off-premise massage business* without an *off-premise massage business police permit*.

(b) Any *person* possessing an *off-premise massage business permit* is also permitted to operate as a *massage therapist*, unless the *permittee* is governed by subsection (c).

(c) Any *person* desiring to operate an *off-premise massage business* but who will not provide *massage* services may obtain an *off-premise massage business permit* so long as the following conditions are met:

(1) The *person* meets the application requirements for an *off-premise massage business permit* except for the education requirements.

(2) The *person* does not possess an *outcall nude entertainment business* or *outcall nude entertainer permit*.

Section 7. That Chapter III, Article 3, Division 35, of the San Diego Municipal Code be and the same is hereby amended by amending and renumbering Sections 33.3530 and 33.3531 to 33.3509 and 33.3510 to read as follows:

SEC. 33.3509 Permit Required for Massage Therapist

It is unlawful for any *person* to act as a *massage therapist* without a *permit*. Any *person* desiring to engage in *off-premise massage* must obtain an *off-premise massage business permit*.

SEC. 33.3510 Massage Therapist Permit and Off-Premise Massage Business Permit Application Contents

Each applicant for a *massage therapist permit* or an *off-premise massage business permit* shall furnish the following information to the *Chief of Police*:

- (a) The full true name and any other names ever used by the applicant.
- (b) The current residential address and telephone number of the applicant.
- (c) Each residential and business address of applicant for the five years immediately preceding the date of the application, and the inclusive dates of each such address.
- (d) Written proof that the applicant is at least eighteen years of age.
- (e) Applicant's height, weight, color of eyes and hair.

- (f) Photographs of the applicant as specified by the *Chief of Police*.
- (g) Applicant's business, occupation and employment history for the five years immediately preceding the date of application.
- (h) Whether the applicant has ever had any *license* or *permit* issued by any agency or board, or any city, county, state or federal agency revoked or suspended, or has had any professional or vocational *license* or *permit* revoked or suspended within five years immediately preceding the application, and the reason for the suspension or revocation.
- (i) All criminal *convictions*, including those dismissed pursuant to Penal Code section 1203.4, except traffic, and a statement of the dates and places of such *convictions*.
- (j) The *massage establishment* at which the applicant expects to be employed, or a business address for the *off-premise massage business*.
- (k) Proof of the satisfactory completion of 500 hours of instruction from any *state-approved school* in a *massage* specialty and a therapeutic approach in caring for clients. The applicant must provide the *Chief of Police* with proof that the school(s) attended by the applicant were *state-approved schools*.
- (l) Proof of successful completion of a national certification exam administered by a national professional certification organization approved by the *Chief of Police*. The exams administered by the *NCBTMB* and *NCCAOM* are approved by the *Chief of Police*.
- (m) Fingerprints.

(n) Such other identification and information as may be required in order to discover the truth of the matters specified in this Section.

Section 8. That Chapter III, Article 3, Division 35, of the San Diego Municipal Code be and the same is hereby amended by adding new Sections 33.3511 and 33.3512, to read as follows:

SEC. 33.3511 Grounds for Denial of Massage Establishment Permit, Off-Premise Business Permit, Massage Therapist Permit

In addition to the grounds for denial stated in Section 33.0305, an application for a *massage establishment permit, off-premise massage business permit, or massage therapist permit* shall be denied for any of the following reasons:

(a) The applicant has within five years immediately preceding the date of the filing of the application, *been convicted* of any of the following offenses:

(1) any offense described in California Penal Code sections 266h, 266i, 315, 316, 318, 653.22, or 647(a) or (b);

(2) any offense described in California Penal Code, Part One, Title 9, Chapters 7.5 and 7.6; or,

(b) The applicant within five years immediately preceding the date of the filing of the application has *been convicted* of a charge of violating any lesser included or lesser related offense, including California Penal Code section 415, in satisfaction of, or as a substitute for, an original charge of any of the offenses listed in Section 33.3511(a).

(c) The applicant has *been convicted* of any offense which requires registration as a sex offender under California Penal Code section 290.

SEC. 33.3512 Trainee Permits, Requirements

(a) A person desiring to obtain a *massage therapist* or *off-premise massage business permit* and who does not meet the requirements of Sections 33.3510(j) and 33.3510(k), but who meets all other requirements of Section 33.3510, may obtain a trainee *permit* if the following criteria are met:

(1) The applicant provides the *Chief of Police* with proof of satisfactory completion of two hundred hours of instruction in a *massage* specialty and the therapeutic approach in caring for clients from a *state-approved school*;

(2) The applicant completes all the requirements of Section 33.3510, except 33.3510(j) and (k); and,

(3) In lieu of 33.3510(j), the applicant provides the *Chief of Police* with a "letter of intent to employ" from a prospective employer. This requirement may not be satisfied by a promise of employment to provide *off-premise massage* services, unless the employer is on the *premises* where the services are provided when the trainee is providing such services; and

(4) The applicant provides the *Chief of Police* with proof of passage of the County Health Department written and practical exams for massage.

(b) A trainee *massage therapist permit* is only valid for two years from the date of issuance. Within two years from the date of issuance of the trainee

permit, the *person* may obtain a *massage therapist* or *off-premise massage business permit* under Section 33.3510. If a trainee does not obtain a *massage therapist* or *off-premise massage permit* within that time, the trainee *permit* becomes null and void. A trainee *permit* may not be extended or renewed.

(c) The *Chief of Police* may require proof that a trainee is receiving ongoing instruction in a *massage* specialty and a therapeutic approach during the two year period described in Section 33.3512(b).

(d) The trainee must comply with all other regulations applicable to *massage therapists* contained in this Division.

Section 9. That Chapter III, Article 3, Division 35, of the San Diego Municipal Code be and the same is hereby amended by amending and renumbering Section 33.3532 to 33. 3513, to read as follows:

SEC. 33.3513 Exemptions

(a) This Division does not apply to the following classes of individuals while engaged in the performance of the duties of their respective professions within the scope of their California state licenses: acupuncturists, aestheticians, barbers, chiropractors, cosmetologists, exercise physiologists, manicurists, nurses, occupational therapists, osteopaths, physical therapists, physicians, and surgeons.

(b) This Division does not apply to trainers of any semiprofessional or professional athlete or athletic team, or trainers hired by a local, state or federal agency.

(c) This Division does not apply to any educational institution licensed by the State of California, including any portion of the institution providing *massage* services, such as student clinics and work study programs, regulated under the state license. However, this exemption does not apply to any business owned or operated by such an institution that is not regulated under the state license.

(d) This Division does not apply to holistic health practitioners licensed under Division 44 of this Article.

(e) The exemptions described in this Section also exempt any fixed business location

(1) where the exempt individual provides massage services; or

(2) where massage is administered

(A) under the direction and control of the exempt individual; and

(B) when the exempt individual is physically present at the location.

(f) Renting office or work space at an otherwise exempt location does not provide the renter with an exemption from this Division.

(g) The exemptions described in this Section do not relieve any massage therapists who are employed by an exempt individual from the requirements of this Division.

Section 10. That Chapter III, Article 3, Division 35, of the San Diego Municipal Code be and the same is hereby amended by adding new Section 33.3514, to read as follows:

SEC. 33.3514 Renewal for Massage Therapist Permit

- (a) Renewals shall be annual in accordance with Section 33.0308.
- (b) Additionally, in order to renew a *massage therapist* or *off-premise massage business permit*, the *permittee* must provide proof of twelve hours of continuing education in *massage* therapy. The continuing education hours must be obtained from a facility or organization approved by the *NCBTMB* or the *NCCAOM*, or a *state-approved school*, or any other certification organization recognized by the *Chief of Police*.
- (c) Additionally, the *permittee* must show proof that the *permittee's* national certification is current. Proof from *NCBTMB*, *NCCAOM*, or any other certification organization recognized by the Chief of Police, is sufficient.
- (d) This Section affects all applications for renewals of *permits* occurring after one year from July 1, 2001.
- (e) This Section does not apply to *off-premise massage business permit* holders described in Section 33.3508(c).

Section 11. That Chapter III, Article 3, Division 35, of the San Diego Municipal Code be and the same is hereby amended by amending and renumbering Section 33.3540 to 33.3515, to read as follows:

SEC. 33.3515 Equipment and Cleanliness Requirements for Massage Establishments

(a) A minimum of one tub or shower and one toilet and wash basin must be provided for the patrons in every *massage establishment*; however, if male and female patrons are served, separate toilet facilities shall be provided for male and female patrons. Hot and cold running water under pressure must be provided to all wash basins, bathtubs, showers, and similar equipment. Each wash basin must be provided with soap or detergent and sanitary towels placed in permanently installed dispensers. A trash receptacle must be provided in each toilet room.

(b) Clean and sanitary towels, sheets, and linens must be provided for each patron receiving *massage* services. Shared use of towels or linens is prohibited and reuse is prohibited unless they have been first laundered. Heavy white paper may be substituted for sheets provided that such paper is used once for each *person*, then discarded into a sanitary receptacle.

(c) Disinfecting agents and sterilizing equipment must be used to ensure that any instruments used in performing any *massage* are clean and safe.

(d) Pads used on *massage* tables must be covered in a workmanlike manner with durable, washable plastic or other waterproof material.

(e) In toilet rooms, steam rooms and rooms containing tubs or showers, a waterproof floor covering shall be provided which extends up the walls at least 6 inches and shall be covered at the floor-wall juncture with at least a 3/8 inch radius.

(f) All walls, ceilings, floors, pools, showers, bathtubs, wet and dry heat rooms, steam rooms, tables and all other physical facilities must be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms or cabinets, showers and toilet rooms must be cleaned at least once each day the business is in operation. Bathtubs must be cleaned after each use.

(g) Cleanable and nonabsorbent waste containers with tight fitting covers shall be provided for the storing of all waste matter and shall be maintained in a clean and sanitary condition.

(h) Closed cabinets or containers shall be provided for the storage of laundered towels and linens. Nonabsorbent containers or laundry bags shall be provided for damp or soiled linen, and linen shall be kept therein until removed for laundering.

(i) All *establishments* shall be so equipped, maintained, and operated as to effectively control the entrance, harborage, and breeding of vermin, including flies. When flies or other vermin are present, effective control measures shall be instituted for their control or elimination.

Section 12. That Chapter III, Article 3, Division 35 of the San Diego Municipal Code be and the same is hereby amended by adding new Sections 33.3516, 33.3517, 33.3518, 33.3519, 33.3520, 33.3521, 33.3522, 33.3522, and 33.3523, to read as follows:

**SEC. 33.3516 Massage Establishment Permit and Posting Requirements;
Name Tags**

(a) It is unlawful for any *responsible person* to employ or permit any person to act as a *massage therapist* who is not in possession of a valid *massage therapist permit*.

(b) The *massage establishment business permit*, public health permit, and a copy of the *permit* of each *massage therapist* working in the *establishment* shall be displayed in an open and conspicuous public place on the *premises*.

(c) Each *massage therapist* must wear a name tag on their outermost garment when working in the *massage establishment*. The name tag must contain the *therapist's* name as it appears on the *police permit*. This subsection, subsection (c), is regulatory only.

SEC. 33.3517 Massage Establishment Hours and Services

(a) It is unlawful for any *responsible person* to allow the *establishment* to be open between the hours of 12:00 a.m. and 6:00 a.m. All customers, patrons and visitors must be excluded from the *premises* during those hours.

(b) A list of services available and the cost of such services shall be posted in an open and conspicuous public place on the *premises*. The services shall be described in readily understandable language. No services other than those posted are allowed.

SEC. 33.3518 Massage Establishments Patron's Specified Anatomical Areas Covered, No Touching, Advisal

(a) Each *establishment* shall provide to all patrons clean, sanitary and opaque coverings capable of covering the patron's *particular anatomical areas*. No common use of such covering shall be permitted, and reuse is prohibited unless the covering has been laundered after each use. In addition, no *responsible person* shall permit a *massage* to be given unless the patron is covered by the covering provided by the *establishment*. This subsection is regulatory only.

(b) No *responsible person* shall permit any person in any area within the *massage establishment* which is used by the patrons or which can be viewed by patrons from such an area, unless the person's *particular anatomical areas* are fully covered. This subsection does not apply to momentary nudity, occurring in bathrooms, shower areas, or dressing or locker rooms. This subsection is regulatory only.

(c) No *permittee* shall give a *massage* or be in any room with a patron unless the patron's *particular anatomical areas* are fully covered with an opaque covering. This subsection is regulatory only.

(d) No *responsible person* shall permit any person to *massage*, or intentionally touch the *particular anatomical areas* of another *person*. This subsection is regulatory only.

(e) No *permittee* shall *massage* or intentionally touch the *particular anatomical areas* of another *person*. This subsection is regulatory only.

(f) The *responsible person* and *permittee* shall insure that patrons are advised of Sections 33.3518(a)-(e), prior to treatment. The advisal may be

- (1) posted as a document in the room where the *massage* is conducted, or
- (2) contained in patron intake documents; or (3) posted in any other manner approved by the *Chief of Police*. The advisal may paraphrase the language of Section 33.3518(a)-(e), so long as such language is approved by the *Chief of Police*. Language quoting these sections need not be preapproved by the *Chief of Police*. This subsection is regulatory only.

SEC. 33.3519 Plumbing and Electrical Requirements for Massage Establishments

All plumbing and electrical installations in *massage establishments* must be installed under permit and inspection by the Building Inspection Department and such installations shall be installed in accordance with the Uniform Building Code and the Uniform Plumbing Code as adopted by this Code.

SEC. 33.3520 Permit and Posting Requirements for Off-Premises Massage Business; Name Tags

- (a) It is unlawful for any *person* to engage in *off-premise massage* services who is not in possession of a valid *off-premise massage business permit*.
- (b) The *off-premise massage business permit* must be displayed in an open and conspicuous place on the licensed business *premises*.
- (c) Each *permittee* must wear a name tag on their outermost garment when providing *off-premise massage* services. The name tag must contain the

therapist's name as it appears on the *police permit*. This subsection, subsection (c), is regulatory only.

SEC. 33.3521 Hours of Operation for Off-premise Massage Business

It is unlawful for any *permittee* to provide *off-premise massage* services between 12:00 a.m. and 6:00 a.m.

SEC. 33.3522 Equipment and Cleanliness Requirements for Off-Premise Massage

(a) It is unlawful for any *permittee* to use or allow any person to use instruments for *off-premise massage* services that are not kept in a safe and sanitary condition.

(b) It is unlawful for any *permittee* to use or allow any *person* to use towels or linens that are not clean or have not been laundered after each use.

SEC. 33.3523 Off-Premise Massage Appointment Requirements

(a) Any *massage* conducted in a place not open to public view must be by appointment only.

(b) Any *off-premise massage therapist* who also engages in *outcall nude entertainment* may not provide *nude entertainment* immediately prior to, or immediately after, the *massage* appointment.

(c) An *off-premise massage therapist* may perform *massage* without appointment if the *massage* is conducted in a public place open to view of the public such as in an airport, shopping center kiosk, or salon, or at events such as marathons and street fairs.

Section 12. That Chapter III, Article 3, Division 35, of the San Diego Municipal Code be and the same is hereby amended by repealing Section 33.3524.

Section 13. That Chapter III, Article 3, Division 35, of the San Diego Municipal Code be and the same is hereby amended by adding new Sections 33.3524, 33.3525, 33.3526, 33.3527, 33.3528, and 33.3529, to read as follows:

SEC. 33.3524 Operating Requirements for Massage Therapists

(a) No *massage therapist*, while performing any task or service associated with the *massage establishment* or *off-premise massage business*, shall be present in any room with another *person* unless the *person's particular anatomical areas* are fully covered. This subsection does not apply to momentary nudity occurring in bathrooms, shower areas, or dressing or locker rooms. This subsection is regulatory only.

(b) No *massage therapist*, while performing any task for service associated with the business of *massage*, shall *massage* or intentionally touch the *particular anatomical areas* of another *person*. This subsection is regulatory only.

(c) Each *massage therapist* must wear a name tag when working as a *massage therapist*. The name tag must contain the *therapist's* name as it appears on the *police permit*. This subsection is regulatory only.

(d) It is unlawful for any *massage therapist* to use towels, linens or instruments during the *massage* that are not in a clean or in a safe condition.

(e) It is unlawful for any *massage therapist* to provide *massage* services between 12:00 a.m. and 6:00 a.m.

(f) The *permittee* shall insure that patrons are advised of Section 33.3524(a) and (b) prior to treatment. The advisal may be (1) posted as a document in the room where the massage is conducted, or (2) contained in patron intake documents; or (3) posted in any other manner approved by the *Chief of Police*. The advisal may paraphrase the language of Section 33.3524(a) and (b), so long as such language is approved by the *Chief of Police*. Language quoting these sections need not be preapproved by the *Chief of Police*. This subsection is regulatory only.

(g) Any *off-premise massage business permittee* who hires, dispatches or contracts with other *off-premise massage therapists* to do *off-premise massage* is responsible for ensuring that those *therapists* comply with all applicable regulations in this Division.

The permittee must also make reasonable efforts to prevent criminal activity by the other *therapists*. In addition to all other grounds, prostitution by such *therapists* is grounds for revoking the *permit*.

SEC. 33.3525 Massage Therapist Clothing Requirements

(a) No *responsible person* shall permit any *massage therapist* to be on the *premises* during its hours of operation while performing or available to perform any task or service associated with the operation of a *massage business*, unless the *massage therapist* is fully covered from a point not to exceed four inches above

the center of the kneecap to the base of the neck excluding the arms, with the following exception: shorts may be worn so long as they extend down the leg a minimum of three inches from the crotch and the body above that point is fully covered to the base of the neck, excluding the arms. The covering, which includes trousers, pants or shorts, will be of an opaque material and will be maintained in a clean and sanitary condition. This subsection is regulatory only.

(b) No *permittee* shall engage in any service or task in the presence of any patron unless the person is fully covered from a point not to exceed four inches above the center of the kneecap to the base of the neck, excluding the arms, with the following exception: shorts may be worn so long as they extend down the leg a minimum of three inches from the crotch and the body above that point is fully covered to the base of the neck, excluding the arms. The covering, which includes trousers, pants, or shorts, will be of any opaque material and will be maintained in a clean and sanitary condition. This subsection is regulatory only.

**SEC. 33.3526 Massage Establishment, Massage Therapist, Off-premise
Massage Business Advertising Requirements**

(a) Each therapist, *establishment*, or business licensed under this Division shall include the number of their *police permit* in any advertisement of services appearing in any newspaper, telephone directory, printed advertising medium, or electronic media. The reference does not have to contain the words "*police permit*." "City of San Diego permit number 1111," or similar language, will suffice so long as the correct *police permit* number is included.

(b) Advertising hours other than those allowed in this Division is grounds for regulatory action against the *permittee*. This subsection is regulatory only.

(c) In addition to any criminal penalty, a violation of Business and Professions Code section 17500 (false or misleading statements) is grounds for regulatory action against the *permittee*.

This Section is effective one year from July 1, 2001.

SEC. 33.3527 Massage Establishment Change of Location

A licensed *massage establishment* that changes location must conform to all applicable provisions of this Article. Additionally, the *responsible person* for a *massage establishment* must provide proof that the San Diego County Department of Health Services and the Department of Building Inspection inspected the new location and concluded that it complies with the requirements of this Division and all other applicable laws. In addition to any fees required by this Article, a non-refundable health permit fee must be paid to the County of San Diego for inspection of the new location.

SEC. 33.3528 Exemption from Hours of Operation

Notwithstanding other sections of this Division, a *permittee* may seek an exemption from the limits on the hours of operation for the *permittee* when there is a special event, such as an organized New Years Eve event or a charitable fundraiser. The *Chief of Police* may grant the exemption if the public safety is not at risk.

SEC. 33.3529 Operative Date -- Massage Therapists -- Grandfather Clause

All persons holding a (1) valid *massage technician permit*, or (2) an *off-premise massage permit*, and a (1) current business tax certificate or (2) proof of employment as a *massage technician* within the City of San Diego on July 1, 2001, have four years from July 1, 2001, to meet the requirements contained in Sections 33.3510(k) and (l). Until that time, their permits remain valid so long as they meet all the other requirements of this Division. Such persons must provide proof of compliance with 33.3510(k) and (l) to the *Chief of Police*; however, they are not required to complete a new application form.

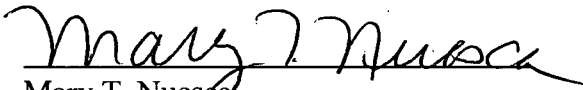
Section 14. That Chapter III, Article 3, Division 35, of the San Diego Municipal Code be and the same is hereby amended by repealing Sections 33.3533, 33.3541, 33.3542, 33.3550, 33.3551, 33.3552, 33.3553, 33.3554, 33.3555 and 33.3556.

Section 15. That the City Clerk is instructed to delete the reference to Section 33.3504 contained in Section 42.0215 of this Code.

Section 16. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 17. That this ordinance shall take effect and be in force on July 1, 2001, after its passage.

APPROVED: CASEY GWINN, City Attorney

By 
Mary T. Nuesca
Deputy City Attorney

MTN:pev:jp:jrl
07/03/00
07/21/00 COR.COPY
09/13/00 COR.COPY
10/25/00 REV.1
11/14/00 REV. 2
11/21/00 REV.3
Or.Dept:Police
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