

ORDINANCE NUMBER O- 20437 (NEW SERIES)

DATE OF FINAL PASSAGE NOV 25 2014

AN ORDINANCE AMENDING CHAPTER 3, ARTICLE 3, DIVISION 35 BY RETITLING THE DIVISION, BY AMENDING SECTIONS 33.3501, 33.3502, 33.3504, 33.3505, REPEALING SECTION 33.3507, AMENDING AND RENUMBERING SECTION 33.3508 TO 33.3507, RENUMBERING SECTION 33.3509 TO 33.3508, AMENDING AND RENUMBERING SECTIONS 33.3510 TO 33.3509 AND 33.3511 TO 33.3510, REPEALING SECTION 33.3512, AMENDING AND RENUMBERING SECTIONS 33.3513 TO 33.3511 AND 33.3514 TO 33.3512, RENUMBERING SECTIONS 33.3515 TO 33.3513, 33.3516 TO 33.3514, AND 33.3517 TO 33.3515, AMENDING AND RENUMBERING SECTION 33.3518 TO 33.3516, RENUMBERING SECTION 33.3519 TO 33.3517, AMENDING AND RENUMBERING SECTIONS 33.3520 TO 33.3518 AND 33.3521 TO 33.3519, RENUMBERING SECTIONS 33.3522 TO 33.3520 AND 33.3523 TO 33.3521, AMENDING AND RENUMBERING SECTION 33.3524 TO 33.3522, RENUMBERING SECTION 33.3525 TO 33.3523, AMENDING AND RENUMBERING SECTIONS 33.3526 TO 33.3524 AND 33.3527 TO 33.3525, RENUMBERING SECTION 33.3528 TO 33.3526, AND BY REPEALING SECTION 33.3529; BY AMENDING CHAPTER 3, ARTICLE 3, DIVISION 44 BY AMENDING SECTIONS 33.4401, 33.4402, 33.4403, 33.4404, 33.4405, 33.4406, 33.4407, AND 33.4409, AND REPEALING SECTION 33.4410; AND BY REPEALING CHAPTER 4, ARTICLE 6, DIVISION 1 OF THE SAN DIEGO MUNICIPAL CODE, SECTIONS 46.0101 TO 46.0105, ALL RELATING TO MASSAGE AND HOLISTIC HEALTH PRACTITIONERS.

WHEREAS, Chapter 3, Article 3, Division 35 of the San Diego Municipal Code (SDMC) provides for police regulation and administration of the massage industry; and

WHEREAS, in 2008, the California Legislature passed Senate Bill 731 that implemented a voluntary state certification program for massage practitioners and massage therapists where a nonprofit organization called the California Massage Therapy Council (CAMTC) issues certifications; and

WHEREAS, in 2009, the bill was codified in Chapter 10.5 (commencing with section 4600) of Division 2 in California Business and Professions Code and the provisions set standards that therapists must meet to obtain certification; and

WHEREAS, the state law prohibits cities from requiring any additional permit for an individual to practice massage so long as they have a state-issued certificate from the CAMTC; therefore, the SDMC needs to be revised to exempt those massage therapists who hold a valid state certificate from obtaining a police permit; and

WHEREAS, the City wishes to ensure that the educational requirements to obtain a police permit are not less than what is required to receive a voluntary state certificate; therefore, the educational requirements to obtain a police permit will be updated to reflect those schools and exams approved by the CAMTC; and

WHEREAS, the SDMC requires that a police-permitted massage establishment obtain a County Health Department inspection and investigation for a health permit to obtain a San Diego police permit to operate; however, the County of San Diego no longer conducts these inspections or investigations, therefore this requirement will be deleted; and

WHEREAS, the SDMC requires that an applicant for a police-permitted massage trainee permit pass a qualifying test to obtain a permit, yet the qualifying test is no longer provided by the County of San Diego and SDPD no longer issues massage trainee police permits, therefore references to massage trainee permits will be eliminated from the SDMC; and

WHEREAS, permits for massage technicians are no longer issued so Chapter 4, Article 6, Division 1 is eliminated in its entirety; and

WHEREAS, several “grandfather clauses” are obsolete and will be deleted from the SDMC; NOW, THEREFORE,

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

Section 1. That Chapter 3, Article 3, Division 35 of the San Diego Municipal Code is amended by retitling the Division and amending sections 33.3501, 33.3502, 33.3504, 33.3505; repealing section 33.3507; amending and renumbering section 33.3508 to 33.3507, renumbering section 33.3509 to 33.3508, amending and renumbering sections 33.3510 to 33.3509 and 33.3511 to 33.3510; repealing section 33.3512, amending and renumbering sections 33.3513 to 33.3511 and 33.3514 to 33.3512; renumbering sections 33.3515 to 33.3513, 33.3516 to 33.3514, and 33.3517 to 33.3515, amending and renumbering section 33.3518 to 33.3516; renumbering section 33.3519 to 33.3517; amending and renumbering sections 33.3520 to 33.3518 and 33.3521 to 33.3519, renumbering sections 33.3522 to 33.3520 and 33.3523 to 33.3521; amending and renumbering section 33.3524 to 33.3522; renumbering section 33.3525 to 33.3523; amending and renumbering sections 33.3526 to 33.3524 and 33.3527 to 33.3525, renumbering section 33.3528 to 33.3526, and by repealing section 33.3529, to read as follows:

Division 35: Massage Business and Massage Therapists

§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.

§33.3502 Definitions

For purposes of this Division, defined terms appear in italics. The following definitions apply in this Division:

Massage through Massage establishment [No change in text.]

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

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 [No change in text.]

Regulatory body means the Massage Therapist Organization (also known as the California Massage Therapy Council) that provides oversight to massage professionals pursuant to Division 2, Chapter 10.5 of the California Business and Professions Code (commencing with section 4600).

State certification means a valid certificate issued by the *regulatory body*.

§33.3504 Massage Establishment Permit Application Contents

(a) [No change in text.]

(1) through (9) [No change in text.]

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

(11) through (13) [No change in text.]

(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) through (3) [No change in text.]

(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) [No change in text.]

§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.

§33.3507 Permit Required for Off-Premise Massage Business

[No change in text.]

§33.3508 Permit Required for Massage Therapist

[No change in text.]

§33.3509 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) through (h) [No change in text.]
- (i) All criminal *convictions*, including those dismissed pursuant to California Penal Code section 1203.4, except traffic, and a statement of the dates and places of such *convictions*.
- (j) [No change in text.]
- (k) Proof of the satisfactory completion of 500 hours of instruction from any school approved by the *regulatory body*. The applicant must provide the *Chief of Police* with proof that the school(s) attended by the applicant were schools approved by the *regulatory body*.
- (l) Proof of successful completion of a national certification exam administered by a national professional certification organization approved by the *regulatory body*.
- (m) A copy of the national certification credential issued by a national professional certification organization approved by the *regulatory body*.
- (n) Fingerprints.
- (o) Such other identification and information as may be required in order to discover the truth of the matters specified in this section.

§33.3510. 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 33.3510(a).
- (c) The applicant has *been convicted* of any offense which requires registration as a sex offender under California Penal Code section 290.

§33.3511 Exemptions

- (a) through (d) [No change in text.]
- (e) This Division does not apply to any *massage therapists* or *massage practitioners* operating under a valid *state certificate*.
- (f) The exemptions described in this section also exempt any fixed business location where:
 - (1) the exempt *person* as described in section 33.3512(a) through (d) provides *massage services*; or
 - (2) *massage* is administered

- (A) under the direction and control of the exempt *person* as described in section 33.3512 (a) through (d); and
 - (B) when the exempt *person* as described in section 33.3512(a) through (d) is physically present at the location; or
- (3) the *massage establishment* employs or uses only *persons* who hold a valid *state certificate*, provided however, that such *establishments* shall not be exempted from this Division if Chapter 10.5 of the California Business and Professions Code relating to massage therapy is repealed.
- (g) [No change in text.]
 - (h) *Massage therapists* who are not themselves exempt, but who are employed by an exempt *person* are not exempt from the provisions of this Division.

§33.3512 Renewal for Massage Therapist Permit

- (a) Renewals shall be annual in accordance with section 33.0307.
- (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, school or organization approved by the *regulatory body* providing oversight to *massage* professionals pursuant to Chapter 10.5 of the California Business and Professions Code.

- (c) Additionally, the *permittee* must show proof that the *permittee's* national certification credential is current. Proof from any national certification organization recognized by the *regulatory body* providing oversight to *massage* professionals pursuant to Chapter 10.5 of the California Business and Professions Code is sufficient.
- (d) Section 33.3514(b) and (c) do not apply to *off-premise massage business* permit holders described in section 33.3507(c).

§33.3513 Equipment and Cleanliness Requirements for Massage Establishments

[No change in text.]

§33.3514 Massage Establishment Permit and Posting Requirements; Name Tags

[No change in text.]

§33.3515 Massage Establishment Hours and Services

[No change in text.]

§33.3516 Massage Establishments Patron's Specified Anatomical Areas Covered; No Touching, Advisal

(a) through (e) [No change in text.]

(f) The *responsible person* and *permittee* shall insure that patrons are advised of section 33.3516(a) through 33.3516(e), prior to treatment. The advisal may be:

- (1) posted as a document in the room where the *massage* is conducted;
- (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 33.3516(a) through

33.3516(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.

§33.3517 Plumbing and Electrical Requirements for Massage Establishments

[No change in text.]

§33.3518 Permit and Posting Requirements for Off-Premise Massage Business; Name Tags

[No change in text.]

§33.3519 Hours of Operation for Off-Premise Massage Business

[No change in text.]

§33.3520 Equipment and Cleanliness Requirements for Off-Premise Massage

[No change in text.]

§33.3521 Off-Premise Massage Appointment Requirements

[No change in text.]

§33.3522 Operating Requirements for Massage Therapists

(a) through (e) [No change in text.]

(f) The *permittee* shall insure that patrons are advised of section 33.3522(a) and section 33.3522(b) prior to treatment. The advisal may be:

- (1) posted as a document in the room where the massage is conducted;
- (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 33.3522(a) and section 33.3522(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 *massage therapists* comply with all applicable regulations in this Division.

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

§33.3523 *Massage Therapist Clothing Requirements*

[No change in text.]

§33.3524 *Massage Establishment, Massage Therapist, Off-Premise Massage Business Advertising Requirements*

(a) through (b) [No change in text.]

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

§33.3525 *Massage Establishment Change of Location*

A licensed *massage establishment* that changes location must conform to all applicable provisions of this Article.

§33.3526 *Exemption from Hours of Operation*

[No change in text.]

Section 2. That Chapter 3, Article 3, Division 44 of the San Diego Municipal Code is amended by amending sections 33.4401, 33.4402, 33.4403, 33.4404, 33.4405, 33.4406, 33.4407, and 33.4409, and repealing section 33.4410, to read as follows:

§33.4401 Purpose and Intent

It is the purpose and intent of this Division to provide for the orderly regulation of the *massage* services provided by any *holistic health practitioner* in the City of San Diego, and to protect the public health and welfare of the residents of the City of San Diego, by establishing minimum requirements for entry into the profession, preventing unqualified individuals from entering the profession, and by preventing unscrupulous individuals from using the profession for goals unrelated to maintaining human health and wellness. Nothing in this Division is intended to preclude *holistic health practitioners* from engaging in other non-medical health services, such as nutritional assistance or counseling, as long as the services are otherwise permitted under state and federal law. Nothing in this Division is intended to limit or define the *holistic health practitioner's* scope of practice. It is intended to regulate *massage* services provided as part of the practice. Therefore, any *holistic health services* that are not listed in the definition contained in section 33.4402, such as nutritional counseling, are not police-regulated.

§33.4402 Definitions

For purposes of this Division, defined terms appear in italics. The following definitions apply in this Division:

Holistic health practitioner [No change in text.]

Holistic health practitioner business means any business that is owned and operated by one or more *holistic health practitioners* and that hires or contracts with other *holistic health practitioners* or *massage therapists* for the purpose of offering non-medical health care.

Massage through State-approved school [No change in text.]

§33.4403 Permit Required for Holistic Health Practitioner, Business

- (a) It is unlawful for any *person* to operate as a *holistic health practitioner* without a *police permit*, unless the *holistic health practitioner* is exempt pursuant to section 33.4407.
- (b) It is unlawful for any *person* to own or operate a *holistic health practitioner business* without a *police permit*, unless the business is exempt under section 33.4407.
- (c) Any business or *person* providing *massage* services not having a *permit* under this Division must comply with Division 35 of this Article, unless the business or *person* is exempt under section 33.4407 or section 33.3511.

**§33.4404 Holistic Health Practitioner Permit, Holistic Health Practitioner Business
Permit Application Contents**

To obtain a *holistic health practitioner permit* or *business permit*, each applicant shall furnish the following information to the *Chief of Police*:

- (a) through (l) [No change in text.]
- (m) All criminal *convictions*, including those dismissed pursuant to California Penal Code section 1203.4, except traffic, and the dates and places of the *convictions*.

- (n) [No change in text.]

§33.4405 Grounds for Denial of Holistic Health Practitioner Permit, Business Permit

In addition to the grounds for denial stated in section 33.0305, an application for a *holistic health practitioner permit* or *business permit* shall be denied for any of the following reasons:

- (a) [No change in text.]
- (b) The applicant has within five years immediately preceding the date of the filing of the application *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 33.4405(a).
- (c) [No change in text.]

§33.4406 Renewal for Holistic Health Practitioner Permit, Business Permit

- (a) Renewal of a *permit* shall be annual in accordance with section 33.0308. At the time of annual renewal, the *permittee* must provide proof of the following:
- (1) through (2) [No change in text.]
- (b) 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.

§33.4407 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, or surgeons.

(b) through (c) [No change in text.]

§33.4409 Holistic Health Practitioner, Business, Advertising Requirements

(a) through (b) [No change in text.]

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

Section 3. That Chapter 4, Article 6, Division 1 of the San Diego Municipal Code is amended by repealing sections 46.0101 to 46.0105.

Section 4. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been made available to the City Council and the public prior to the day of its passage.

Section 5. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By

Paige E. Folkman
Deputy City Attorney

PEF:amt:cm
October 8, 2014
December 23, 2014 COR. COPY
Or.Dept:Police
Doc. No. 926529

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of NOV 10 2014.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

See attached memo and signature page.

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 236-6220

DATE: December 23, 2014
TO: City Clerk
FROM: Paige E. Folkman, Deputy City Attorney
SUBJECT: Massage and Holistic Practitioners Ordinance
(San Diego Ordinance O-20437 (Nov. 25, 2014))

This Memorandum is presented, pursuant to San Diego Charter (Charter) section 275(a), to notify the Office of the City Clerk that this Office is requesting to make a correction of a typographical error to the Massage and Holistic Practitioners Ordinance (San Diego Ordinance O-20437 (Nov. 25, 2014)). This correction is permitted under the provisions of Charter section 275(a)¹ and San Diego Municipal Code section 11.0207, which authorizes the City Attorney to make such revisions by memorandum.

The correction is to San Diego Municipal Code section number 33.3524 (renumbered from section 33.3526) on page 11 of the clean copy and page 12 of the strikeout of the Massage and Holistic Practitioners Ordinance cited above. The change is shown in redline/strike-out below:

**§33.3524 ~~Massage Establishment, Massage Therapist,
Off-Premise Massage Business Advertising
Regulations~~Requirements**

The word "Requirements" was accidentally stricken from the title of section 33.3524 of the clean copy of the ordinance and replaced with "Regulations." There are no changes to this title, so this corrected ordinance merely returns the title back to its original title when it was under section 33.3526. The digest for O-20437 was not affected by this change, hence it was not corrected.

¹ Charter section 275 addresses modifications to ordinances after first reading, as follows:

An alteration necessary only to correct a typographical or clerical error or omission may be performed by the City Clerk with the written approval and concurrence of the City Attorney, so long as the alteration does not materially or substantially alter the contents, requirements, rights, responsibilities, conditions, or prescriptions contained in the original text of the ordinance. A typographical or clerical error shall include, but is not limited to, incorrect spelling, grammar, numbering, punctuation, transposed words or numbers, and duplicate words or numbers.

City Clerk
December 23, 2014
Page 2

The Mayor does not need to take any action on the corrected copy of the ordinance.

PEF:ccm
Attachments
cc: Honorable Mayor and City Councilmembers
Independent Budget Analyst

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of NOV 10 2014.

ELIZABETH S. MALAND
City Clerk

By *Mary J. ...*
Deputy City Clerk

Kevin L. Faulconer

KEVIN L. FAULCONER, Mayor

Approved: 11/24/14
(date)

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on NOV 10 2014, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ed Harris	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage NOV 25 2014

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

(Seal)

By Mary Fernandez, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

OCT 28 2014

, and on NOV 25 2014

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

(Seal)

By Mary Fernandez, Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 20437