

DATE ISSUED: March 19, 2003 REPORT NO. 03-052

ATTENTION: Public Safety and Neighborhood Services Committee
Agenda of March 26, 2003

SUBJECT: Massage & Holistic Health Practitioner Implementation Task Force

REFERENCE: October 23, 2000, Minutes of the Council

SUMMARY

Issues - 1) Should the City of San Diego amend the San Diego Municipal Code regulating the massage and holistic health industries as proposed by the Massage & Holistic Health Practitioner Implementation Task Force?

Manager's Recommendation - Approve the changes to the San Diego Municipal Code.

Other Recommendations - None.

Fiscal Impact - None.

BACKGROUND

In November 1992, a Vice and Licensing Task Force was formed as a joint venture between the City Attorney's Office and the San Diego Police Department. The Task Force studied and made recommendations regarding the following industries: massage and holistic health; dance, cabaret, after-hours, and promoters; peep shows; nude entertainment; and escorts. The Task Force recommended amending Chapter III, Article 3 of the San Diego Municipal Code. The recommendations were presented to the Public Safety and Neighborhood Services Committee in 1995, 1996 and 2000. PS&NS forwarded the recommendations to the City Council, which were heard in the fall of 2000.

On December 5, 2000, the City Council passed a new ordinance, San Diego Municipal Code Division 44, to regulate Holistic Health Practitioners who provide massage services. The Council also passed amendments to San Diego Municipal Code Division 35 for Massage Businesses and Therapists. These ordinances became effective July 1, 2001. With respect to the

massage industry, the most significant changes were increasing the minimum training hours from 100 to 500 hours and requiring 12 hours of continuing education annually.

With respect to the holistic health industry, the most significant change was the regulation of the industry itself. The industry had been exempt from police regulation since 1985. The significant changes for the industry were requiring passage of the National Certification Exam in addition to their 1000 hours of training, requiring 12 hours of continuing education annually and passing the criminal background investigation.

On October 23, 2000, the Council directed the City Manager to form and make appointments for a task force of professionals to meet with the City Manager and the Police Department to evaluate the new regulations as they were enacted and enforced.

The Massage and Holistic Health Implementation (Task Force) was formed in February 2001 and included Holistic Health Practitioners (HHPs), Massage Therapists, Massage School Representatives, a National Certification Board Representative, an American Massage Therapy Association Representative, Office of Small Business representatives, Police Licensing representatives, and Business Improvement District representatives. The list of Task force candidates was disseminated by the City Manager's Office to the Council Offices to ensure that no essential individual, organization, or association that wanted to participate or should participate was excluded. The first meeting was held on March 8, 2001. The Task Force met about once a month. Representatives from the Office of Small Business kept meeting notes, recorded the meetings, and distributed the minutes to the Task Force members.

DISCUSSION

The Task Force members focused on community notification, implementation of the new regulations, grand-fathering of last-minute graduates, education requirements, certification board curriculum requirements, training validation, appropriate dress requirements for HHPs, operating requirements for HHPs, Chair Massage/Reflexology concerns, and enforcement issues or trends.

After careful review, the Task Force recommended that further changes be made to the existing San Diego Municipal Code Massage and Holistic Health ordinances to protect customers, promote professionalism, eliminate burdensome facility requirements, and clarify exemptions. The Task Force also discussed issues around chair massage and reflexology, as had been directed by City Council.

A. Task Force Recommended Amendments

The following is a summary of the changes recommended by the Task Force:

1. Changes applicable to Division 35 (Massage) and Division 44 (Holistic Health)

- a. Amend the "exemptions" in Sections 33.3513 & 33.4407 - The Task Force reviewed the current exemptions in SDMC sections 33.3513 & 33.4407 and found that a potential loophole exists for non-medical state-licensed individuals. Specifically, the ordinances allow non-medical individuals such as manicurists and cosmetologists to operate a massage establishment exempt from police regulation.

The recommended changes are intended to:

- Exempt any fixed business location where the exempt individual personally provides massage services under the scope of their California State license.
- Exempt any fixed business location where massage is administered by employees under the direction and control of state-licensed acupuncturists, chiropractors, osteopaths, physicians, physical therapists, and surgeons when the massage is directly related to the performance of the duties of the respective profession and the massage providers employed by the exempt professional are permitted as a massage therapist or holistic health practitioner.
- Continue the exemption for licensed registered nurses but discontinue the exemption for vocational nurses. Currently the ordinance exempts all state licensed nurses and does not differentiate between registered and vocational nurses; however, vocational nurses have had little or no training in massage therapy or therapeutic bodywork. They are also prohibited under state law from operating independent of the direction or control of a physician or registered nurse.

2. Changes to Division 35, Massage

- a). Amend the “toilet facilities” requirements in Section 33.3515 – The Task Force reviewed the facilities requirement in SDMC Section 33.3515 and agreed that this section is outdated. The current requirements for showers and separate male and female toilet facilities are an expensive and unfair hardship on many small massage establishments. The Task Force recommended amending the ordinance to delete the requirements for showers and separate male and female toilet facilities.
- b). Amend Section 33.3502 to allow foreign transcript acceptance – The Task Force discussed the acceptance of foreign transcripts and recommended these transcripts be accepted under strict guidelines. The recommended guidelines require the transcripts to be translated by an approved foreign transcription service and meet the approval of the national certification board.

3. Changes to Division 44, Holistic Health

- a). Amend Section 33.4408 to require professional operating requirements for HHPs – The task force recommended adding additional operating requirements related to patron draping, clothing requirements and intentional touching of particular anatomical areas, i.e., pubic region, human genitals, perineum, anal region, and the area of the female breast that includes the areola and the nipple. Similar restrictions are currently found in the operating requirements for massage therapists in SDMC Sections 33.3524 and 33.3525. Without these requirements a holistic health practitioner could provide massages while nude or touch the patron’s particular

anatomical areas and not be in violation of the ordinance. Vice Officers have recently reported instances where nude HHPs are providing massages.

In order to provide optimal levels of professional massage and bodywork services and to provide a reliable regulatory means of enforcement to hold unethical and unprofessional HHPs accountable, the Task Force recommended the following amendments to Division 42:

- The HHP must provide appropriate draping during treatment which includes covering the patron's particular anatomical areas in order to protect the patron's physical and emotional privacy.
- The HHP must wear clean, modest, and professional attire designed to safeguard the therapeutic value of the practitioner/patron relationship.
- The HHP must refrain from touching the patron's particular anatomical areas to prevent any behavior that sexualizes, or appears to sexualize, the patron/practitioner therapeutic relationship.
- The HHP must refrain from engaging in any sexual activity while performing any task or service associated with the regulated activity. Such sexual activity or prostitution is grounds for revoking the permit.

B. Chair Massage and Reflexology

As a result of concerns raised during last year's public hearings over the ordinances, the City Council requested a review of the effect of the ordinance on chair massage practitioners and reflexologists. The chair massage practitioners and reflexologists were requesting lower education and certification standards for their particular specialties. The Task Force formed a subcommittee to evaluate this proposal. The subcommittee met twice on the issues and then forwarded a report to the full Task Force for further review (see Attachment 2). The Task Force reviewed the subcommittee's report and then devoted almost two full meetings for discussion of the chair massage and reflexology issues. The Task Force made a great effort to consider solutions and come to a consensus on these issues; however, after careful review, the Task Force remained divided. The majority of the Task Force members voted against the lowering of the qualification standards exclusive to chair massage and reflexology practitioners. Although the Task Force was unable to forward recommendations for ordinance amendments for chair massage and reflexology practitioners, they agreed to present both sides of the debate and include the Police Department's recommendation on this particular issue to the PS&NS Committee.

C. Police Department Recommendations

The Police Department supports the Task Force's recommended amendments to San Diego Municipal Code (SDMC) Divisions 35 and 44.

With respect to the chair massage and reflexology issues, the Police Department reviewed the arguments for and against lower standards for chair massage practitioners and reflexologists and recommends continued regulation under the current education and certification requirements. SDMC Division 35 broadly defines massage to include the wide variety of massage and bodywork specialties in order to regulate them under the same general umbrella. The regulations allow a consistent approach and are designed to cover the basic minimum educational standards required for all massage and bodywork practitioners in San Diego, regardless of their particular specialty. Therefore, the Department urges the massage regulations not be amended to contain multiple definitions and requirements for different massage or bodywork specialties, such as reflexology and chair massage.

ALTERNATIVE

Approve selected recommendations.

Approve none of the recommendations.

Respectfully submitted,

David Bejarano
Chief of Police
Police Department

Approved: Michael T. Uberuaga
City Manager

BEJARANO/RN/rwn

Note: The attachment is not available in electronic format. A copy is available for review in the Office of the City Clerk.

Attachment: 1. Chair Massage & Reflexology Memorandum dated January 22, 2002