

**ORDINANCE NO. 10102 (N.S.)
12/08/2010 (23)**

AN ORDINANCE AMENDING THE SAN DIEGO COUNTY CODE
RELATING TO MASSAGE ESTABLISHMENTS AND MASSAGE
THERAPISTS

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1: Section 21.102 of the County Code is amended to read as follows:

SEC. 21.102. LICENSE REQUIRED FROM THE SHERIFF.

The following activities require a license for which the Sheriff is the Issuing Officer:

- (a) Amusement Establishment and Devices
 - (b) Ride Centers/Go-Cart Centers
 - (c) Bathhouses
 - (d) Carnivals and Circuses
 - (e) Casino Parties
 - (f) Entertainment Establishments
 - (g) Entertainment Managers
 - (h) Firearms Dealers
 - (i) Fortune Telling
 - (j) Junk Yards and Motor Vehicle Wrecking Yards
 - (k) Massage Establishments
 - (l) Massage Technicians
 - (m) Merchandise Coupons
 - (n) Off-Premises Massage
 - (o) Outdoor Assemblies
 - (p) Outdoor Assembly Managers
 - (q) Pawnbrokers and Second Hand Dealers
 - (r) Public Dances
 - (s) Shooting Ranges
 - (t) Solicitors
- 1) License
 - 2) Identification Card
- (u) Swap Meets
 - (v) Taxicab Operators and Taxicab Drivers

- 1) Operator's License
 - 2) Identification Card
- (w) Teen-age Dances

Section 2: Title 2, Division 6, Chapter 5 of the San Diego County Code is amended to read as follows:

CHAPTER 5. MASSAGE ESTABLISHMENTS AND MASSAGE THERAPISTS

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS

SEC. 66.501. CITATION OF CHAPTER.

This Chapter may be cited as the San Diego County Massage Ordinance.

SEC. 66.502. PURPOSE AND INTENT.

It is the purpose and intent of this chapter to provide for the orderly local regulation of the massage business in the unincorporated areas of the County of San Diego, to the extent permitted by Chapter 10.5 (commencing with Section 4600) of Division 2 of the California Business and Professions Code. This chapter acknowledges the right that state law confers on Organization-Certified Massage Therapists to provide services within San Diego County, and is further intended to ensure that massage services are provided by qualified persons, and to ensure that massage therapy is not used as a subterfuge to violate subdivision (a) or (b) of Section 647 of the Penal Code. This ordinance also establishes basic sanitation standards for massage establishments in order to protect the health and safety of customers, but this is not a public health ordinance.

SEC. 66.503. CONSTRUCTION, IMPLEMENTATION AND ENFORCEMENT.

(a) This chapter shall be construed and enforced in accordance with Title 1 of the County Code.

(b) No license holder or massage therapist shall have any recourse whatsoever against County for any loss, cost, expense or damage arising out of any provision or requirement of this chapter or the enforcement thereof.

(c) Except as expressly provided in this chapter, this chapter does not relieve any license holder or massage therapist of any requirement of the County Charter or of any ordinance, rule, regulation or specification of County.

SEC. 66.504. DEFINITIONS.

The following definitions shall apply to this chapter:

- (a) “Sheriff” shall mean the Sheriff of the County of San Diego.
- (b) “Person” shall mean a natural person, firm, partnership, association or corporation.
- (c) “Massage” shall mean any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external parts of the body with the hands or other parts of the body with or without the aid of any mechanical or electrical apparatus or appliances with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments, or other similar preparations commonly used in this practice.
- (d) “Massage Establishment” shall mean any fixed place of business where any person (other than an exempt person as defined in section 66.523 of this Chapter) provides massage services for compensation.
- (e) “Off-Premises Massage” shall mean providing massage services for compensation at a location other than premises licensed as a massage establishment.
- (f) “Massage Therapist” shall mean any person who gives or administers to another person for any form of consideration, a “massage” as defined in this chapter.
- (g) “Organization-Certified Massage Therapist” shall mean any person holding a current and valid certification or conditional certification to administer massage for compensation in the State of California, issued pursuant to Chapter 10.5 of Division 2 of the California Business and Professions Code. This term encompasses state-law defined “massage practitioners” and “massage therapists.”
- (h) “Specified Anatomical Areas” shall mean pubic region, human genitals, perineum, anal region and the area of the female breast that includes the areola and the nipple.
- (i) “License” shall mean the business license to operate a “Massage Establishment” required by this chapter.

(j) “Transitional Massage Technician’s Permit” shall mean an unexpired permit to engage in the activities of a “massage technician” issued by the County prior to April 30, 2011.

(k) “Holistic Health Practitioners” shall mean non-medical health care therapists who use a massage specialty and therapeutic approach in caring for clients.

SEC. 66.505. RESTRICTIONS ON PROVIDING MASSAGE SERVICES.

(a) Except as provided in subsections (b) (c) and (d) of this section, massage may only be arranged for or performed for compensation by an Organization-Certified Massage Therapist in a massage establishment that has a valid and current massage establishment license.

(b) Massage may be performed for compensation by an Organization-Certified Massage Therapist pursuant to a valid and current off-premises massage business license.

(c) Massage may be performed for compensation through December 31, 2011 by a massage technician pursuant to a transitional massage technician’s permit, but only in a massage establishment that has a valid and current massage establishment license, or pursuant to a valid and current off-premises massage business license.

(d) Massage may be performed for compensation by an exempt person as defined in section 66.523 of this Chapter, or by an Organization Certified Massage Therapist as provided in that section.

(e) Massage may be performed by a person enrolled in a course of instruction designed to qualify that person to obtain a massage therapist certification issued pursuant to Chapter 10.5 of Division 2 of the California Business and Professions Code, in a school that is state-approved or registered as provided in that Chapter, and licensed pursuant to section 66.506 of this Chapter.

SEC. 66.506. MASSAGE ESTABLISHMENT LICENSE.

(a) The Uniform Licensing Procedure set out in Chapter 1 of Division 1 of Title 2 of the County Code shall apply to massage establishments.

(b) A massage establishment license is a facility license; it is not a permit for any individual to perform massage for compensation.

(c) The Issuing Officer may deny an application for a massage establishment license for any of the following reasons:

- (i) for any reason stated in the Uniform Licensing Procedure,
- (ii) if the massage establishment does not meet a facility-related requirement set out in this Chapter, or
- (iii) if the applicant provides materially false information, or
- (iv) if it is found that the applicant, or in the case of an applicant-corporation or partnership, any of its officers, directors, holders of five percent (5%) or more of the corporation's stock or partners, within five (5) years immediately preceding the date of the filing of the application, has been:
 - a. adjudged to be a mentally disordered sex offender and has a duty to register with the Sheriff or Chief of Police under Section 290 of the Penal Code; or
 - b. has been convicted of a violation of Section California Penal Code Section 266(h) (Pimping), 266(i) (Pandering), 314 (Indecent Exposure), 315 (Keeping or Residing in a House of Ill-Fame), 316 (Keeping a Disorderly House -Disturbing the Peace), 318 (Prevailing upon a person to visit place for Gambling or Prostitution), 647(a) (Soliciting or Engaging in Lewd or Dissolute Conduct in a Public Place), 647(b) (Soliciting or Engaging in Prostitution) of the Penal Code, or 653.22 (Loitering with Intent to Commit Prostitution); or
 - c. has been convicted of any offense described in California Penal Code, Part One, Title 8, Chapter 4, Section 211 (Robbery), Title 13, Chapter 2, Section 459 (Burglary); Chapter 2, Section 487 (Grand Theft) and Chapter 2, Section 484 (Larceny [Theft]); or
 - d. has been convicted of any drug related felony convictions as identified in Section 11054 and 11055 of the Health and Safety Code; or
 - e. 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; or

f. has been convicted in another state of any offense which, if committed or attempted in this state, would have been punishable as one or more of the heretofore mentioned offenses.

SEC. 66.507. APPLICATION FOR A MASSAGE ESTABLISHMENT LICENSE.

(a) Every application for a massage establishment license shall set forth the proposed place of business and facilities therefore, the true legal name and residence or principal business address of the applicant or applicants, and any fictitious name, whether registered as a “dba” or not, that will be used in connection with the massage establishment. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its Articles of Incorporation, together with the names and residence addresses of each of its officers, directors, and each stockholder holding more than 5% of the stock of the corporation. If the applicant is a partnership, the application shall set forth the name and residence address of each of the partners, including limited partners. If one or more of the partners is a corporation, the provisions of this section pertaining to corporate applicants apply.

(b) Without limitation as to time, every applicant for a massage establishment license shall set forth any adverse business license or permit history of the applicant, i.e., whether that person or entity, in previously operating in this or another county, city or state, under license or permit, has had such license or permit suspended or revoked, the reason therefore, and the business activity or occupation subsequent to such suspension or revocation.

(c) Each individual who is an applicant for a massage facility license, or in the case of an applicant-corporation or partnership, any of its officers, directors, holders of five percent (5%) or more of the corporation’s stock, and all partners, shall furnish the information and documentation required by Section 21.107 of the Uniform Licensing Procedure.

(d) Except for Organization-Certified Massage Therapists who have been screened by the state Department of Justice pursuant to section 4601.3 of the California Business and Professions Code, each individual who is an applicant for a massage facility license, or in the case of an applicant-corporation or partnership, any of its officers, directors, holders of five percent (5%) or more of the corporation’s stock, and all partners, shall furnish the following additional information:

(i) Whether such person has ever been convicted of any crime, except misdemeanor traffic violations. If any person mentioned in this subsection has been so convicted, a statement must be made giving the place and court in which such conviction was had, the specific charge under which the conviction was obtained, the sentence imposed as a result of such conviction and the circumstances surrounding the crime for which he was convicted.

(ii) Such other identification and information necessary to discover the truth of the matters required to be set forth in this section or under the Uniform Licensing Procedure.

SEC. 66.508. MASSAGE ESTABLISHMENT LICENSE APPLICATION PROCEDURE AND FEE.

(a) The Uniform Licensing Procedure set out in Chapter 1 of Division 1 of Title 2 of the County Code, and the Sheriff's Regulatory Fees established in Chapter 19 of Division 1 of Title 2 of the County Code shall apply to massage establishments.

(b) In addition to the information and documentation required under the Uniform Licensing Procedure, the applicant for a massage establishment license shall provide a list of the massage therapists who will provide massage services at the establishment, and copies of the organization-issued certifications or Sheriff-issued transitional massage technician licenses held by those individuals. Updates to this information and documentation shall be provided when employees stop working and before any new massage therapist begins to work at the establishment.

SEC. 66.510. OFF-PREMISES MASSAGE BUSINESS LICENSE.

(a) Any person, association, partnership, or corporation desiring to obtain a license to conduct an off-premises massage business shall make an application to the Sheriff or his designated representative. An annual non-refundable fee shall accompany the submission of each application to defray the cost of investigation, licensing, inspection and enforcement of this section. An annual non-refundable renewal fee shall also be charged to defray associated costs of investigation and enforcement.

(b) The procedure to follow in obtaining an off-premises massage business License is that set forth in the Uniform Licensing Procedure, Sections 21.101 et seq. and Sec. 66.506 of this chapter.

(c) Each applicant for a license to conduct an off-premises massage business shall furnish to the Sheriff or his designated representative all of the information required by Sec. 66.507 of this chapter in addition to that required by the Uniform Licensing Procedure; provided however that Organization-Certified Massage Therapists who have been screened by the state Department of Justice pursuant to section 4601.3 of the Business and Professions Code need not furnish the information called for in subsection (d) of section 66.507.

(d) Off-Premises massage operations shall be carried on only between the hours of 7 a.m. and 12 midnight.

(e) An application for an off-premises massage business shall be accompanied by the fee set forth in the San Diego County Sheriff's Licensing Fee Ordinance. In the event application is made to establish a massage establishment and an off-premises massage business to be conducted on and from the same location, the fee for the off-premise massage license shall be waived.

(f) If an off-premises massage business will employ any individual to perform massage services other than the license applicant, the applicant shall provide a list of the massage therapists who will provide massage services for the business, and copies of the organization-issued certifications or Sheriff-issued transitional massage technician licenses held by those individuals. Updates to this information and documentation shall be provided when employees stop working and before any new employees begin to work for the business.

SEC. 66.511. TRANSITIONAL MASSAGE TECHNICIAN'S PERMITS.

(a) No application for a new massage technician's permit will be accepted or processed by the County.

(b) No application for a renewal of a massage technician's permit will be accepted or processed by the County after April 30, 2011. All renewal massage technician permits will expire on December 31, 2011.

(c) An Organization-Certified Massage Therapist does not need a massage technician's permit to perform massage for compensation in the unincorporated area of San Diego County. However, those services must be provided either in a licensed massage establishment, or under an off-premises massage business license, or in compliance with Section 66.523(b).

SEC. 66.510.1. MESSAGE THERAPIST -- OPERATING REQUIREMENTS.

(a) No massage therapist, while performing any task or service associated with the massage business, shall be present in any room with another person unless the person's specified anatomical areas are fully covered.

(b) No massage therapist shall be on the premises of a massage establishment 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 (4) 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 (3) 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.

(c) No massage therapist, while performing any task or service associated with the business of massage, shall massage or intentionally touch the specified anatomical areas of another person.

HYPERLINK

"[http://www.amlegal.com/nxt/gateway.dll?f=id\\$Id=San%20Diego%20County%20Code%20of%20Regulatory%20Ordinances%3Ar%3A23e9\\$cid=california\\$altmain-nf.htm\\$an=JD_66.504\\$3.0](http://www.amlegal.com/nxt/gateway.dll?f=id$Id=San%20Diego%20County%20Code%20of%20Regulatory%20Ordinances%3Ar%3A23e9$cid=california$altmain-nf.htm$an=JD_66.504$3.0)" \ "JD_66.504" **HYPERLINK**
"[http://www.amlegal.com/nxt/gateway.dll?f=id\\$Id=San%20Diego%20County%20Code%20of%20Regulatory%20Ordinances%3Ar%3A23e9\\$cid=california\\$altmain-nf.htm\\$an=JD_66.510\\$3.0](http://www.amlegal.com/nxt/gateway.dll?f=id$Id=San%20Diego%20County%20Code%20of%20Regulatory%20Ordinances%3Ar%3A23e9$cid=california$altmain-nf.htm$an=JD_66.510$3.0)" \ "JD_66.510" **HYPERLINK**
"[http://www.amlegal.com/nxt/gateway.dll?f=id\\$Id=San%20Diego%20County%20Code%20of%20Regulatory%20Ordinances%3Ar%3A1aa\\$cid=california\\$altmain-nf.htm\\$an=JD_21.101\\$3.0](http://www.amlegal.com/nxt/gateway.dll?f=id$Id=San%20Diego%20County%20Code%20of%20Regulatory%20Ordinances%3Ar%3A1aa$cid=california$altmain-nf.htm$an=JD_21.101$3.0)" \ "JD_21.101" **HYPERLINK**
"[http://www.amlegal.com/nxt/gateway.dll?f=id\\$Id=San%20Diego%20County%20Code%20of%20Regulatory%20Ordinances%3Ar%3A1aa\\$cid=california\\$altmain-nf.htm\\$an=JD_21.113\\$3.0](http://www.amlegal.com/nxt/gateway.dll?f=id$Id=San%20Diego%20County%20Code%20of%20Regulatory%20Ordinances%3Ar%3A1aa$cid=california$altmain-nf.htm$an=JD_21.113$3.0)" \ "JD_21.113" **HYPERLINK**
"[http://www.amlegal.com/nxt/gateway.dll?f=id\\$Id=San%20Diego%20County%20Code%20of%20Regulatory%20Ordinances%3Ar%3A23e9\\$cid=california\\$altmain-nf.htm\\$an=JD_66.510\\$3.0](http://www.amlegal.com/nxt/gateway.dll?f=id$Id=San%20Diego%20County%20Code%20of%20Regulatory%20Ordinances%3Ar%3A23e9$cid=california$altmain-nf.htm$an=JD_66.510$3.0)" \ "JD_66.510" **SEC. 66.513.**
MESSAGE ESTABLISHMENT FACILITIES.

No license to conduct a massage establishment shall be granted unless the facility complies with applicable land use, building code, and zoning requirements

for a professional or personal service business at that location. In addition, the facility shall meet the following requirements:

(a) A recognizable and legible sign complying with Division 1 (commencing with Section 51.101) of this Code shall be posted at the main entrance identifying the premises as a massage establishment.

(b) A light level of no less than five (5)-foot candles at any point within the room shall be maintained in each room or enclosure where massage services are performed on patrons.

(c) Any dressing, locker and toilet facilities that are provided shall meet these requirements:

(1) In steam rooms and rooms containing tubs or showers, a waterproof floor covering shall be provided which extends up the walls at least six inches and shall be coved at the floor-wall juncture with at least a 3/8 inch radius. Toilet rooms shall be of similar construction.

(2) Walls of toilet and bathing facilities shall be smooth, waterproof and kept in good repair.

(d) Cabinets shall be provided for the storage of clean linen. Approved containers shall be provided for the storage of all soiled linen.

(e) Minimum ventilation shall be provided in accordance with the Building Code of the County of San Diego. To allow for adequate ventilation in cubicles, rooms and areas provided for patron's use, which are not serviced directly by required window or mechanical systems of ventilation, partitions shall be constructed so that the height of partitions does not exceed seventy-five percent (75%) of the floor-to-ceiling height of the area in which they are located.

(f) All plumbing and electrical installations shall be installed under permit and inspected by the Department of Planning and Land Use Building Inspection and such installations shall be installed in accordance with the Uniform Building Code and the Uniform Plumbing Code.

(g) All walls, ceilings, floors, pools, showers, bathtubs, steam rooms, and all other physical facilities for the establishment must be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms, or steam or vapor cabinets, shower compartments, and toilet rooms,

shall be thoroughly cleaned and disinfected each day the business is in operation. Bathtubs shall be thoroughly cleaned and disinfected after each use.

(h) Towels, linens, and sheets of all types and items for personal use of operators and patrons shall be clean and freshly laundered. Towels, linens, and sheets shall not be used for more than one person. Reuse of such linen is prohibited unless the same has been first laundered. Common use of towels or linens is prohibited. Heavy white paper may be substituted for sheets provided that such paper is used once for each person and then discarded into a sanitary receptacle.

(i) All lavatories or wash basins shall be provided with hot and cold running water, soap and single service towels in wall mounted dispensers.

(j) Disinfecting agents and sterilizing equipment shall be provided for any instruments used in performing acts of massage.

(k) Pads used on massage tables shall be covered in a workmanlike manner with durable washable plastic or other acceptable waterproof material.

(l) No exterior entrance to the massage establishment which is regularly used by the public for ingress or egress to such establishment shall be locked during business hours, unless all clients and staff are behind closed doors and no staff are available to assure security for those clients and staff.

(m) All unoccupied rooms and areas of a massage establishment shall be subject to reasonable inspection during hours of the business operation.

(n) 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 owner, operator, responsible managing employee, manager, or permittee in charge of, or in control of the massage establishment, shall permit, and no massage therapist shall offer to perform any services other than those posted.

(o) With the exception of bathrooms, showers and dressing rooms, no owner, operator, responsible managing employee, manager, or permittee in charge of or in control of any massage establishment 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 specified anatomical areas are fully covered.

(p) No owner, operator, responsible managing employee, manager or permittee in charge of or in control of a massage establishment shall during the course of any service or task associated with the operation of a massage operation permit any person to massage, or intentionally touch the specified anatomical areas of another person.

(q) No owners, operator, responsible managing employee, manager or permittee in charge of or in control of a massage establishment shall permit any massage therapist to be on the premises of a massage establishment 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 (4) 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 (3) 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.

(r) A current list of the individuals providing massage services in the massage establishment, and evidence of the organization-issued certificates or transitional massage technician licenses held by those individuals shall be maintained at the massage establishment at all times and shall be made immediately available to the Sheriff for inspection upon request.

SEC. 66.513.1. OFF-PREMISES MASSAGE BUSINESS -- OPERATING REQUIREMENTS.

(a) No owner, operator, responsible managing employee, manager or permittee in charge of or in control of any off-premises massage business shall knowingly permit a massage therapist to give a massage or to be in any room with a patron unless the patron's specified anatomical areas are fully covered.

(b) No owner, operator, responsible managing employee, manager or permittee in charge of or in control of an off-premises massage business shall permit any massage therapist to be on the premises of a massage establishment 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 (4) 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 (3) 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.

(c) No owner, operator, responsible managing employee, manager or permittee in charge of or in control of an off-premises massage business shall knowingly allow any employee or massage therapist associated with the off-premises massage business to massage or intentionally touch the specified anatomical areas of another person.

(d) The possession of a valid off-premises business license does not authorize the possessor to perform work for which a transitional massage technician permit or a certification or conditional certification to administer massage for compensation in the State of California, issued pursuant to Chapter 10.5 of Division 2 of the California Business and Professions Code, is required.

(e) The off-premises massage business license and a copy of the transitional massage technician permit or the certification or conditional certification to administer massage for compensation in the State of California, issued pursuant to Chapter 10.5 of Division 2 of the California Business and Professions Code of each and every massage therapist employed or working for the off-premises massage business will be available for inspection by a law enforcement officer on demand.

(f) No common use of towels or linens shall be permitted and reuse is prohibited unless they have been first laundered.

(g) Instruments used in performing any massage shall be disinfected or sterilized prior to any subsequent use.

This section shall be construed to require minimum standards only. The application shall be required to comply with all applicable provisions of this Code.

SEC. 66.514. [RESERVED]

SEC. 66.515. [RESERVED.]

SEC. 66.516. NAME OF BUSINESS.

No person licensed to do business as herein provided or doing business pursuant to a certification or conditional certification to administer massage for compensation in the State of California, issued pursuant to Chapter 10.5 of Division 2 of the California Business and Professions Code shall operate under

any name or conduct his business under any designation not specified in his permit, certification, or conditional certification.

SEC. 66.517. CHANGE OF LOCATION.

A change of location of a licensed massage establishment shall be approved by the Sheriff provided all applicable provisions of this chapter are complied with.

SEC. 66.518. [RESERVED.]

SEC. 66.519. INSPECTION.

The Sheriff may inspect massage establishments in the County of San Diego for the purpose of determining that the provisions of this chapter are met.

SEC. 66.520. [RESERVED.]

SEC. 66.521. RECORDS OF TREATMENTS.

Every person, association, firm, or corporation operating a massage establishment or an off-premises massage business under a license as herein provided shall keep for a period of ninety days a record of the date and hour of each treatment, and the name of the therapist administering such treatment. Said record shall be open to inspection by officials charged with the enforcement of these provisions for the purposes of law enforcement and for no other purpose. The information furnished or secured as a result of any such information by any officer or employee of the County of San Diego shall constitute a misdemeanor and such officer or employee shall be subject to the penalty provisions of this Code, in addition to any other penalties provided by law. Records shall be kept for a period of ninety days of treatments rendered off the business site.

SEC. 66.522. APPLICABILITY OF REGULATIONS TO EXISTING BUSINESS.

The provisions of this chapter shall be applicable to all persons and business described herein whether the herein described activities were established before or after the effective date of this chapter.

SEC. 66.523. EXEMPTIONS.

(a) This chapter shall not apply to the following classes of individuals; and no permit shall be required of such persons while engaged in the performance of the duties of their respective professions; nor shall a license be required for the establishment at which a massage is administered solely by of such persons:

- (1) Physicians, surgeons, chiropractors, osteopaths or physical therapists who are duly licensed to practice their respective professions in the State of California.
- (2) Registered Nurses, Practical Nurses and Licensed Vocational Nurses who are licensed to practice under the laws of this state.
- (3) Trainers of any amateur, semiprofessional or professional athlete or athletic team.
- (4) Barbers and beauticians who are duly licensed under the laws of this State.
- (5) Until April 30, 2011, by holistic health practitioners who are duly registered in compliance with this Code.

(b) If an individual who is a member of an exempted class listed above employs a person or persons who are not members of an exempted class, all such employees who give or administer to another person, for any form of consideration, a “massage” as defined in this chapter, shall be Organization-Certified Massage Therapists and shall comply with all the requirements of Sections 66.508 through 66.509. Said employees are prohibited from administering a massage when the exempted-class employer is not present on the premises where the massage is being administered.

SEC. 66.524. VIOLATION AND PENALTY.

(a) Every person, except those persons who are specifically exempted by this chapter, whether acting as an individual, owner, employee of the owner, operator or employee of the operator, or whether acting as a mere helper for the owner, employee, or operator, or acting as a participant or worker in any way, who gives “massages” or conducts “a massage establishment” or practices the giving or administering of any of the services defined in Section 66.504 of the chapter without first obtaining the necessary permit or license or certification or conditional certification to administer massage for compensation in the State of California, issued pursuant to Chapter 10.5 of Division 2 of the California Business and Professions Code, shall be guilty of a misdemeanor. Upon a conviction under this subsection, the Court shall, in addition to any other punishment it imposes, impose a fine of \$100.00, no part of which shall be suspended.

(b) Any owner, operator, manager, or permittee in charge or in control of a massage establishment and/or Off-Premises Massage business who knowingly

employs a person performing as a massage therapist, as defined in this chapter, who is not in possession of a valid, unrevoked transitional massage technician permit or certification or conditional certification to administer massage for compensation in the State of California, issued pursuant to Chapter 10.5 of Division 2 of the California Business and Professions Code, or who allows such massage therapist to perform, operate or practice within such place of business is guilty of a misdemeanor, and upon conviction such person shall be punished by a fine not to exceed \$1,000.00 or by imprisonment in the County Jail for a period not to exceed six months or both such fine and imprisonment. Upon a conviction under this subsection, the Court shall, in addition to any other punishment it imposed, impose a fine of \$200.00, no part of which shall be suspended.

SEC. 66.525. [RESERVED.]

SEC. 66.526. [RESERVED.]

SEC. 66.527. [RESERVED.]

SEC. 66.528. [RESERVED.]

SEC. 66.529. [RESERVED.]

SEC. 66.530. SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this chapter. The Board of Supervisors hereby declares that it would have adopted the chapter and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SEC. 66.531. FEE MODIFICATION AND ALLOCATION.

All fees established by this chapter shall be reviewed annually by the Chief Administrative Officer to determine whether such fees are adequate to cover the cost of implementing the provisions of this chapter. If the Chief Administrative Officer determines that such fees should be modified he shall submit his proposal to the Board of Supervisors for approval. The Board of Supervisors, who, after the effective date of this chapter, may establish any schedule of fees.

Section 2: This ordinance shall take effect and be in force thirty days after its passage and before the expiration of fifteen days after its passage, a summary hereof shall be published once with the names of the members of this Board voting

for and against it in the San Diego Commerce a newspaper of general circulation published in the County of San Diego.

PASSED, APPROVED AND ADOPTED by the Board of Supervisors of the County of San Diego this 8th day of December, 2010.