STAFF REPORT
CITY OF SOLANA BEACH

TO: Honorable Mayor and Members of the City Council
FROM: David Ott, City Manager
MEETING DATE: July 8, 2009
ORIGINATING DEPT: Department of Public Safety/City Attorney’s Office
SUBJECT: Introduce (1st Reading) Ordinance 409 - Massage Ordinance Revisions

BACKGROUND:
For more than 20 years, the City of Solana Beach has regulated the practice of massage within city limits. The City’s ordinance currently requires massage practitioners to first obtain a license in a process that requires payment of additional fees, a background check conducted by the Sheriff’s office, and extensive documentation of the practitioner’s proposed activities. The current ordinance also requires businesses to apply and provide similar information. The City also imposes regulations protecting the health and safety of citizens who receive professional massages within the City, which are designed to help reduce the risk that massage practitioners will engage in other, illicit activities.

The City’s ordinance has historically omitted holistic health practitioners from coverage. Holistic health providers are an unregulated group of people who (at least in theory) have received education on a variety of alternative health treatments, including massage, and who (at least theoretically) have passed a certification exam administered by a national non-profit organization. Cities have, however, experienced problems with certain holistic health providers practicing massage; some cities recently have seen some holistic health practitioners engage in prostitution or conduct sexual battery upon their patients, raising concerns that they ought to receive more regulatory oversight.

Until recently, the state has granted cities the authority to regulate the practice of massage. However, in the 2008 the state Legislature passed Senate Bill 731, by Senator Oropeza. SB 731 is designed to treat massage practitioners as professionals and to lift some of the stigma associated with the profession – stigma associating massage practice with prostitution.
Under the new legislation, the state has created a non-profit organization, which calls itself the California Massage Therapy Council, comprised almost entirely of industry representatives. This industry-led group has been placed in charge of overseeing massage schools and a voluntary certification program for massage professionals. Under this voluntary certificate program, practitioners who pass a background check, complete a minimum number of hours of coursework, and pass an industry-administered examination receive a certificate entitling them to practice massage anywhere in the state.

Certificate holders are exempt from most local regulations. Specifically, local governments may not make them pay any fee over the normal business licenses, may not zone their practices any differently than for other professional or personal services, may not require them to keep doors unlocked, and may not impose building code or similar requirements more strictly on them than on other professional or personal services. Local governments retain the authority to enact "reasonable" health and safety regulations, but the legislation does not explain what is or is not reasonable.

SB 731 takes effect September 1, 2009. The City Attorney and other City Staff have reviewed the City's current massage ordinance for compliance with SB 731, leading to this ordinance. In the course of review, city staff inquired about including holistic health providers in the ordinance.

**DISCUSSION:**
To comply with SB 731, this ordinance makes a number of changes to the code. First, it exempts those who have a state-issued certificate from applying for a permit from the City. This means that they will not need to pay the application or investigation fees; will not need to submit so much information to the City; will not undergo separate background checks by the Sheriff; and will not be subject to having a city-issued license revoked for a violation of the City's regulations. These changes are mandated by SB 731, rather than being staff-originated proposals. Second, certificate holders have been made exempt from a number of building code-style regulations imposed on massage establishments. Specifically, unless required generally by the Building Code or other applicable law, state certificate holders will be exempt from minimum lighting requirements, unlocked-door requirements, ventilation requirements, minimum requirements for restroom facilities, and others. Further, certificate holders will not be obligated to maintain a log of patients and services rendered to them. Again, these are required by SB 731 and are not staff-initiated proposals.

The proposed ordinance also imposes on certificate holders a requirement that they register with the City.

In the course of reviewing the City's massage ordinance for compliance with SB 731, several other changes are recommended to update the City's massage ordinance. First, to address concerns about holistic health providers, they will now be required to obtain permits from the City and be subject to all the same requirements and fees as massage technicians, unless they get a SB 731-created state certificate. Second, it
strengthens the Sheriff's enforcement abilities. Third, provisions requiring applicants for City permits to obtain medical screenings has been removed to conform with federal and state disability discrimination and medical privacy laws. Fourth, since SB 731 refers to some of the state certificate holders as "massage therapists," the term used in the new massage ordinance for City-permitted practitioners will be "massage technician," to avoid confusion between city and state regulation.

CEQA COMPLIANCE STATEMENT:
Not a project as defined by CEQA.

FISCAL IMPACT:
Those practitioners who obtain a state certification will no longer be paying the application fees associated with applying for a City permit. Since these fee amounts are set at a cost-recovery level, it is unlikely that this ordinance will have a significant effect on City finances.

WORKPLAN: N/A

OPTIONS:
- Approve staff recommendation.
- Adopt the recommendations except for those governing holistic health providers, which would continue the status quo of them not being regulated by the City.

DEPARTMENT RECOMMENDATION:
Staff recommends that the City Council:

1. Introduce Ordinance 409 amending Municipal Code section 4.04.010 and Chapter 4.28.

CITY MANAGER'S RECOMMENDATION:
Approve Department Recommendation

David Ott, City Manager

Attachments:
1. Ordinance No. 409
2. SBMC section 4.04.010 and SBMC Chapter 4.28 redlined
ORDINANCE 409

AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF
SOLANA BEACH AMENDING SECTION 4.04.010, AMENDING
CHAPTER 4.28, AND ADDING SECTION 4.28.310 OF THE SOLANA
BEACH MUNICIPAL CODE, PERTAINING TO THE LICENSING AND
REGULATION OF MASSAGE TECHNICIANS AND MASSAGE
BUSINESSES

WHEREAS, the Legislature has enacted Senate Bill 731 in the 2007-2008 term, creating a voluntary state licensing scheme for massage practitioners and therapists; and

WHEREAS, these new rules, codified in Business & Professions Code section 4600 et. seq., exempt those who obtain certificates from the state from certain local regulations of massage practice; and

WHEREAS, these new laws require amendments to the Solana Beach Municipal Code to ensure the Code’s compliance with Senate Bill 731 and to provide clearer guidelines for how the code can be enforced; and

WHEREAS, the City Council for the City of Solana Beach believes that it is necessary to maintain a strict regulatory regime to ensure the health and safety of those performing and receiving massage services in the city of Solana Beach; and

WHEREAS, as part of this comprehensive regulatory scheme, it is necessary to regulate holistic health practitioners who practice massage, because they are not subject to state regulation; NOW, THEREFORE

BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF SOLANA BEACH
AS FOLLOWS:

Section 1. Section 4.04.010 of the municipal code is amended to read as follows:

4.04.010 Permit or license required.
It shall be unlawful for any person, firm or corporation to engage in, conduct, manage or carry on any of the following businesses, practices, professions or occupations within the city without first having obtained a permit or license therefore in accordance with the uniform licensing procedure:

A. Amusement establishments and devices;
B. Aircraft ticket brokers;
C. Auctions and auctioneers;
D. Bingo;
E. Carnivals and go-cart centers;
F. Coupon books, distribution of;
G. Dances and dance halls;
H. Teen dance clubs;
I. Dances, teenage;
J. Entertainment;
K. Female entertainment;
L. Firearms, sale of;
M. Junk, automotive wrecking, non-operating vehicle storage yards;
N. Kennels;
O. Massage establishments, except for those where all personnel who perform massage are certified pursuant to Business & Professions Code § 4600 et. seq.;
P. Massage technicians, except those who are certified per Business & Professions Code § 4600 et. seq.;
Q. Outdoor assemblages;
R. Second-hand dealers;
S. Solicitors:
   1. License,
   2. Identification card;
T. Street patrols;
U. Swap meets and swap lots;
V. Taxicabs – taxicab drivers:
   1. Operator’s license,
   2. Driver’s identification card;
W. Jitneys – jitney drivers:
   1. Operator’s license,
   2. Driver’s identification card.

Section 2. Chapter 4.28 is amended, and Section 4.28.310 is added, to read as follows:
Chapter 4.28
MASSAGE ESTABLISHMENTS/MASSAGE TECHNICIANS

Sections:
4.28.010 Citation of chapter.
4.28.020 Purpose and intent.
4.28.030 Rules of construction.
4.28.040 Definitions.
4.28.050 Massage establishment permit.
4.28.060 Application for massage establishment permit.
4.28.070 Massage establishment permit application fee.
4.28.080 Off-premises massage business – Permit required.
4.28.090 Off-premises massage business permit.
4.28.100 Massage technician permit.
4.28.110 Massage technician permit application fee.
4.28.120 Application form for massage technician permit.
4.28.130 Massage technician – Operating requirements.
4.28.140 Massage technician trainee.
4.28.150 Massage establishment facilities.
4.28.160 Off-premises massage business – Operating requirements.
4.28.170 Name of business.
4.28.180 Massage establishment, massage technician, off-premises massage business advertising requirements.
4.28.190 Change of location.
4.28.200 Inspection.
4.28.210 Records of treatments.
4.28.220 Applicability of regulations to existing business.
4.28.230 Operative date – Massage technicians.
4.28.240 Exemptions.
4.28.250 Massage establishment, off-premises massage business, massage technician permit renewal.
4.28.260 Permit suspension or revocation.
4.28.270 Appeals.
4.28.280 Violation and penalty.
4.28.290 Severability.
4.28.300 Fee modification and allocation.
4.28.310 Additional requirements for certificate holders.

4.28.010 Citation of chapter.

This chapter may be cited as the “Solana Beach massage establishment and massage technician ordinance.”
4.28.020 Purpose and intent.

It is the purpose and intent of this chapter to provide for the orderly regulation of the business of massage and massage technicians in the city of Solana Beach by establishing certain minimum standards for the conduct of this type of business to protect the public health, safety, and welfare of the residents of the city of Solana Beach.

4.28.030 Rules of construction.

This chapter shall be construed liberally in order to effectuate its purposes. Unless otherwise specifically prescribed in this chapter, the following provisions shall govern its interpretation and construction:

A. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number.

B. The masculine form as used in this chapter applies equally to a female or a corporation.

C. Time is of the essence in this chapter. No license or permit holder shall be relieved of his obligation to comply promptly with any provision of this chapter by any failure of the city to enforce prompt compliance with any of its provisions, except as provided in SBMC 4.28.230.

D. Any right or power conferred or duly imposed upon any officer, employee, department or board of the city is subject to transfer by operation of law to any other officer, employee, department or board of the city.

E. No license or permit holder shall have any recourse whatsoever against the city for any loss, cost, expense or damage arising out of any provision or requirement of this chapter or the enforcement thereof.

F. This chapter does not relieve any license or permit holder of any requirement of any other ordinance, rule, regulation or specification of the city.

4.28.040 Definitions.

Whenever in this chapter the following words or phrases are used, they shall mean:

A. “Bathhouse” means an establishment having a fixed place of business where any person engages in, conducts or carries on any business of giving any kind or character of bath(s).

B. “Building inspection” means the planning and land use department of the city of Solana Beach or the department’s designee.

C. “Certificate holder” means a person who possesses a valid certificate pursuant to Business & Professions Code § 4500 et. seq. or a business where only persons so certified practice massage.

D. “City” means the city of Solana Beach.

E. “Health department” means the department of health services of the county of San Diego.
F. "Holistic health practitioner" means nonmedical health care therapists who use a massage specialty and therapeutic approach in caring for clients and who present to the licensing officer proof of satisfactory completion of 1,000 hours of instruction in such specialty or therapeutic approach at a school with a state-accredited curriculum and proof of membership in a state or nationally chartered organization devoted to the specialty or therapeutic approach. The practice of such health care therapists may include other services such as nutritional assistance or counseling as long as all activities are directed toward health care. A holistic health provider not in possession of a valid certificate pursuant to Business & Professions Code § 4600 et. seq. shall comply with all standards applicable to massage practitioners pursuant to this Chapter and Chapter 4.04.

G. "Massage" means 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.

H. "Massage establishment" means any establishment having a fixed place of business where any person, firm, association or corporation engages in or carries on or permits to be engaged in or carried on any of the activities mentioned in subsection G of this section. Any establishments engaged in or carrying on, or permitting any combination of massage and bathhouse shall be deemed a massage establishment. Any establishment in which a holistic health provider performs massage is a massage establishment.

I. "Massage technician" means any person, including a trainee, male or female, who gives or administers to another person, for any form of consideration, a "massage" or "bath" as those words are defined in this chapter.

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

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

L. "Off-premises massage" means the activity of providing massage services at a location other than premises licensed as a massage establishment. It includes massage technicians who provide off-premises massage services and who are self-employed and/or who contract with or work for a business other than a massage establishment.

M. "Permit" means the city-issued permit to operate a "massage establishment" required by this chapter or the city-issued permit to engage in the activities of a "massage technician" required by this chapter.

N. "Person" means a natural person, firm, partnership, association or corporation.

O. "Sheriff" means the sheriff of the county of San Diego.

P. "State approved school" means any school or institution of learning, which has for its purpose the teaching of the theory, method, profession or work of massage, and
which has been approved pursuant to Section 29007.5 of the California Education Code or pursuant to a similar code provision of another state.

Q. “Specified anatomical area” means pubic region, human genitals, perineum, anal region and the area of the female breast that includes the areola and the nipple.

4.28.050 Massage establishment permit.

A. The procedure to follow in obtaining a permit, except as otherwise herein provided, is that set forth in the uniform licensing or permitting procedures of Chapter 4.04 SBMC. In addition to the reasons stated in the uniform licensing or permitting procedures, the issuing officer may deny the application for a permit, or revoke an issued permit, if it is found that:

1. The applicant, or in the case of an applicant-corporation or partnership, any of its officers, directors, holders of five percent or more of the ownership (stock or partnership), within five years immediately preceding the date of the filing of the application, has been 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 has been convicted of any of the following offenses:

   a. Any offense described in California Penal Code Sections 211 (robbery), 266h (pimping), 266i (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 person to visit place for gambling or prostitution), 487 (grand theft), 488 (petty theft), 647(a) (soliciting or engaging in ‘lilwd or dissolute conduct in a public place), 647(b) (soliciting or engaging in prostitution), or 653.22 (loitering with intent to commit prostitution);

   b. Any offense described in California Penal Code, Part One, Title 9, Chapters 7.5 and 7.6;


2. Shown to the investigating law enforcement agency, by a preponderance of the evidence, to have violated the elements of one or more of the crimes listed in the previous subsections.

3. 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 subsection (A)(1) of this section.

4. 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 aforementioned offenses.

B. In the event that an application for a massage establishment permit is denied, the applicant may not reapply for one year from the date of denial.
C. No massage establishment permit shall be issued by the issuing officer until he has been notified in writing by the health department and the city’s building inspector that the applicant has fulfilled the requirements of this chapter.

D. This section does not apply to establishments where all personnel performing massage are certificate holders; such establishments do not need to obtain a massage establishment permit.

4.28.060 Application for massage establishment permit.

A. The application for a permit to operate a massage establishment shall set forth the nature or method of the massage to be administered, the proposed place of business and facilities therefore, and the name and address of each applicant.

B. In addition to the foregoing, any applicant for a permit shall furnish the following information:

1. The previous addresses of applicant, if any, for a period of five years immediately prior to the date of the application, and the dates of residence at each;

2. Written proof satisfactory to the sheriff that the applicant is over the age of 18 years;

3. Applicant’s height, weight, color of eyes and hair;

4. Portrait photographs, at least one inch by one inch. One photograph shall be retained by the sheriff and one photograph shall be affixed to the permit;

5. Business, occupation or employment history of the applicant for the three years immediately preceding the date of application;

6. The business license or permit history of the applicant, whether such person, in previously operating in this or another city, county 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;

7. Whether such person has ever been convicted of any crime, except misdemeanor traffic violations, including convictions dismissed pursuant to Penal Code Section 1203.4, and any pending criminal charges. 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;

8. Such other identification and information necessary to discover the truth of the matter herein specified as required to be set forth in this action;

9. Nothing contained herein shall be construed to deny to the sheriff the right to take the fingerprints and additional photographs of the applicant, nor shall anything contained herein be construed to deny the right of the sheriff to confirm the height and weight of the applicant;
10. 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 five percent 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;

11. Evidence of inspection of the facility by the San Diego County health department.

4.28.070 Massage establishment permit application fee.

The fee for a massage establishment permit shall be as specified in the currently adopted city fee schedule. The nonrefundable fee shall accompany the submission of each application to defray in part the cost of inspection, investigation and enforcement of this chapter.

Any massage establishment permittee failing to renew a massage establishment permit within 30 days after its expiration shall be assessed a 10 percent penalty for each month of failure to renew. 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.

4.28.080 Off-premises massage business – Permit required.

A. It shall be unlawful for any person, association, partnership or corporation to engage in, conduct, carry on or advertise, or to permit to be engaged in, conducted or carried on, any off-premises massage business within the city without a permit issued pursuant to the provisions of this chapter for each and every such massage business.

B. This section does not apply to certificate holders or businesses where the only persons performing massage are certificate holders.

4.28.090 Off-premises massage business permit.

A. Any person, association, partnership or corporation (except those described in Section 4.28.080.B. desiring to obtain a permit to conduct an off-premises massage business shall make an application to the city permitting officer. The fee for a massage establishment permit shall be as specified in the currently adopted city fee schedule. The nonrefundable fee shall accompany the submission of each application to defray in part the cost of inspection, investigation and enforcement of this chapter.

Any off-premises massage business permittee failing to renew an off-premises massage business permit within 30 days after its expiration shall be assessed a 10 percent penalty for each month of failure to renew. 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.

B. Each applicant for a permit to conduct an off-premises massage business shall furnish to the city permitting officer all of the information required by SBMC 4.28.060.
C. The procedure to follow in obtaining an off-premises massage business permit is that set forth in the uniform licensing or permitting procedures of Chapter 4.04 SBMC.

D. Off-premises massage operations shall be carried on only between the hours of 7:00 a.m. and 12:00 midnight. This subsection applies to certificate holders and businesses where all who perform massage are certificate holders in addition to all other businesses and persons covered by this Section.

E. 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-premises massage permit shall be one-half that of the massage establishment fee.

F. Any massage conducted in a place not open to public view must be by appointment only, except for those performed by certificate holders.

G. Notwithstanding subsection F, an off-premises massage technician may perform massage without appointment if the massage is conducted in a public place open to view of the public, such as a shopping center kiosk or salon, or at events such as marathons and street fairs.

H. Any off-premises massage business permittee who hires, dispatches or contracts with other off-premises massage technicians to do off-premises massage is responsible for ensuring that those technicians comply with all applicable regulations in this chapter.

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

4.28.100 Massage technician permit.

A. The procedure to follow in obtaining a permit, except as otherwise herein provided, is that set forth in the uniform licensing or permitting procedures of Chapter 4.04 SBMC. In addition to the reasons stated in those procedures, the issuing officer shall deny the application for a permit, or revoke an issued permit, if it is found that:

1. The applicant, within five years immediately preceding the date of the filing of the application, has been 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 has been convicted of any of the following offenses:

   a. Any offense described in California Penal Code Sections 211 (robbery), 266h (pimping), 266i (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 person to visit place for gambling or prostitution), 487 (grand theft), 488 (petty theft), 647(a) (soliciting or engaging in lewd or dissolute conduct in a public place), 647(b) (soliciting or engaging in prostitution), or 653.22 (loitering with intent to commit prostitution);
b. Any offense described in California Penal Code, Part One, Title 9, Chapters 7.5 and 7.6;


2. Shown to the investigating law enforcement agency, by a preponderance of the evidence, to have violated the elements of one or more of the crimes listed in the previous subsections.

3. 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 subsection (A)(1) of this section.

4. 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 aforementioned offenses.

B. In the event that an application for a massage technician permit is denied, the applicant may not reapply for one year from the date of denial.

C. No massage technician permit shall be issued by the issuing officer until he has been notified in writing by the health department that the applicant has fulfilled the requirements of SBMC 4.28.120(M).

4.28.110 Massage technician permit application fee.

A. The annual nonrefundable fee for a massage technician permit shall be as set forth in the currently adopted city fee schedule; provided, however, the provisions of SBMC 4.28.120(L) and (M) shall not apply to such annual renewal. The appropriate fee shall accompany the submission of each application to defray the cost of investigation and examination. Any massage technician permittee failing to renew a massage technician permit within 30 days after its expiration shall be assessed a 10 percent penalty for each month of failure to renew. 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.

B. A permit to act as a massage technician does not authorize the operation of a massage establishment and/or off-premises massage business. Any person obtaining a permit to act as a massage technician who desires to operate a massage establishment and/or off-premises massage business must separately apply for a permit therefore.

C. A person who applies for a permit to operate a massage establishment and/or off-premises massage business and who desires to act as a massage technician within such establishment, who pays the fee required by SBMC 4.28.070, shall not be required to pay the fee required by this section.

4.28.120 Application form for massage technician permit.

The application for a massage technician permit shall contain the following:

A. Name, residence address and telephone number;
B. The previous addresses of applicant, if any, for a period of five years immediately prior to the date of the application, and the dates of residence at each;

C. Social Security number and driver’s license number, if any;

D. Applicant’s sex, weight, height, color of hair and eyes;

E. Written evidence, satisfactory to the sheriff, that the applicant is at least 18 years of age;

F. Business, occupation or employment of the applicant for the three years immediately preceding the date of application;

G. Whether such person has ever been convicted of any crime, except misdemeanor traffic violations, including convictions dismissed pursuant to Penal Code Section 1203.4, and any pending criminal charges. 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 convicted;

H. The business license or permit history of the applicant, whether such person, in previously operating in this or another city, county 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;

I. Two portrait photographs, at least one inch by one inch, taken within the six-month period immediately preceding the date of application. One photograph shall be retained by the sheriff for his files and one photograph shall be affixed to the permit;

J. Such other identification and information as the sheriff may require in order to discover the truth of the matters herein specified as required to be set forth in this section;

K. Furnish 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 proof that the school(s) attended by the applicant were state approved schools. In lieu of 500 hours of instruction, the applicant may furnish evidence of employment as a massage technician for 1,200 hours and evidence of passing a qualified written examination prepared by the health department and administered by the sheriff establishing competency and ability of the applicant to engage in the practice of massage;

L. Provide proof of successful completion of a national certification exam administered by a national professional certification organization approved by the sheriff. The exams administered by the NCBTMB and NCCAOM are approved by the sheriff;

M. Pass an examination prepared and conducted by the health department wherein the applicant shall be required to demonstrate a basic knowledge of anatomy, physiology, hygiene and manual and mechanical massage. These examinations shall be conducted at regular intervals. The health director shall advise the city clerk of the results of such examinations;
N. The name and address of the massage establishment, if any, at which the applicant expects to be employed;

O. The sheriff shall fingerprint the applicant for search by the Federal Bureau of Investigation and the California State Division of Criminal Identification and Investigation.

4.28.130 Certificate holder or massage technician – Operating requirements.

A. No certificate holder or massage technician or trainee or certificate holder, 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 technician or certificate holder 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 technician or certificate holder 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.

C. No massage technician or certificate holder, while performing any task or service associated with the business of massage, shall massage or intentionally touch the specified anatomical areas of another person.

D. Each massage technician must wear a name tag on their outermost garment when working in a massage establishment or providing off-premises massage therapy. The name tag must contain the technician’s name as it appears on the regulatory permit. This requirement does not apply to certificate holders.

4.28.140 Massage technician trainee.

A. Any person in possession of a massage therapist trainee permit on or before September 1, 2009 may continue to operate, subject to the terms and conditions in the Solana Beach Municipal Code, until their certificate expires. On or after September 1, 2009, those certificates will no longer be subject to renewal.

B. Effective September 1, 2009, no new person may operate as a massage technician trainee in the City of Solana Beach unless that person is meets the criteria in subdivision A of this section or is authorized to practice under state law.

4.28.150 Massage establishment facilities.

No permit to conduct a massage establishment shall be granted unless an inspection by the building inspector of the city and/or the licensing officer reveals that the proposed establishment complies with each of the following minimum requirements, and no person shall conduct the business of massage unless the massage establishment complies with the following conditions:
A. A recognizable and legible sign complying with 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 foot-candles at any point within the room shall be maintained in each room or enclosure where massage services are performed on patrons.

C. Adequate dressing, locker and toilet facilities shall be provided for patrons, except that the following requirements do not apply to certificate holders unless explicitly provided otherwise:

   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 covered at the floor-wall juncture with at least a three-eighths-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.

   3. All massage establishments, including certificate holders, must comply with all building requirements under federal or state law or under this Code.

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 city of Solana Beach. To allow for adequate ventilation in cubicles, rooms and areas provided for patrons’ use, which are not serviced directly by required window or mechanical systems of ventilation, partitions shall be constructed so that the height of partitions do not exceed 75 percent of the floor-to-ceiling height of the area in which they are located. Other than the requirement of compliance with the Building Code, this subsection does not apply to certificate holders.

F. A minimum of one separate washbasin provided with hot and cold running water, soap and individual towels in a dispenser shall be provided in each massage establishment for the use of employees. This washbasin shall be separate from washbasins located in toilet rooms. This section does not apply to certificate holders.

G. All plumbing and electrical installations shall be installed under permit and inspection of the building inspection department, and such installations shall be installed in accordance with the Uniform Building Code and the Uniform Plumbing Code. Nothing in this section shall be construed to require certificate holders to maintain higher standards for electrical or plumbing facilities than other similarly situated professional or personal service business establishments.

H. 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. Nothing in this section shall be construed to require certificate holders to maintain higher construction or maintenance standards than other similarly situated professional or personal service business establishments. Wet and dry heat rooms, steam or vapor rooms shall be thoroughly cleaned and disinfected with a disinfectant approved by the health department each day the business is in operation.
Bathtubs shall be thoroughly cleaned and disinfected with a disinfectant approved by the health department after each use.

I. Towels, sheets and linens of all types and items for personal use of operators and patrons shall be clean and freshly laundered. Towels, clothes and sheets shall not be used for more than one person. Reuse of such linen is prohibited unless the same has first been 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.

J. All lavatories or washbasins shall be provided with hot and cold running water, soap and single-service towels in wall-mounted dispensers. Nothing in this section shall be construed to require certificate holders to maintain higher standards than other similarly situated professional or personal service business establishments.

K. Security deposit facilities for the protection of the valuables of the patrons shall also be available. This subsection does not apply to certificate holders.

L. Disinfecting agents and sterilizing equipment approved by the health department shall be provided for any instruments used in performing acts of massage.

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

N. 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. This section does not apply to certificate holders.

O. All rooms and areas of a massage establishment shall be subject to reasonable inspection during hours of the business operations in order to ensure compliance with this code or other health and safety laws or regulations.

P. In compliance with health department requirements, a minimum of one tub or shower and one toilet and washbasin shall be provided by every massage establishment; provided, however, that if male and female persons are employed by any massage establishment, or if male and female patrons are to be served simultaneously at the establishment, or any combinations thereof, a separate massage room or rooms, separate dressing facilities and separate toilet facilities shall be provided for male and female patrons and employees. Further, in those establishments where steam room or sauna baths are provided, if male and female patrons are to be served simultaneously, separate steam rooms or sauna rooms shall be provided for male and female patrons. This section does not apply to certificate holders.

Q. 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 technician shall offer to perform, any services other than those posted. This section does not apply to certificate holders.

R. 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 enter or remain in any area 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.

S. 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.

T. No owner, operator, responsible managing employee, manager or permittee
in charge of or in control of a massage establishment shall permit any massage technician
or certificate holder 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 technician or certificate holder 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.

4.28.160 Off-premises massage business – Operating requirements.

A. Requirements.

1. 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 technician or certificate holder to give a massage or to
be in any room with a patron unless the patron's specified anatomical areas are fully
covered.

2. 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 technician or certificate holder 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 technician or 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.

3. 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 technician or certificate holder
associated with the off-premises massage business to massage or intentionally
touch the specified anatomical areas of another person.
4. The possession of a valid off-premises business permit does not authorize the possessor to perform work for which a massage technician permit is required.

5. The off-premises massage business permit and a copy of the permit of each and every massage technician or certificate holder employed or working for the off-premises massage business will be available for inspection by a law enforcement officer on demand.

6. No common use of towels or linens shall be permitted, and reuse is prohibited unless they have first been re-laundered.

7. Disinfecting agents and sterilizing equipment sufficient to assure the cleanliness and safe condition thereof shall be provided for any instruments used in performing any massage.

B. Construction. This section shall be construed to require minimum standards only. Permittees, certificate holders, and massage businesses shall be required to comply with all applicable provisions of this title.

4.28.170 Name of business.

No person permitted to do business as herein provided shall operate under any name or conduct his business under any designation not specified in his permit.

4.28.180 Massage establishment, massage technician, off-premises massage business advertising requirements.

A. Each technician, establishment or business permitted under this chapter shall include the number of their regulatory 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 “regulatory permit.” "City of Solana Beach permit number 1111" or similar language will suffice so long as the correct permit number is included.

B. Advertising hours other than those allowed in this chapter 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.

D. This section does not apply to certificate holders.

4.28.190 Change of location.

A change of location of a permitted massage establishment shall be approved by the Solana Beach department of community development and the sheriff, provided all applicable provisions of this chapter are complied with.
4.28.200 Inspection.

The sheriff and/or the licensing officer may make, at least two times each calendar year, an inspection of each massage establishment in the city for the purpose of determining that the provisions of this chapter are met.

4.28.210 Records of treatments.

Every person, association, firm or corporation operating a massage establishment under a permit as provided in this chapter shall keep for a period of 90 days a record of the date and hour of each treatment, and the name of the technician administering such treatment. Such 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 inspection shall be confidential.

Any willfully unauthorized disclosure or use of such information by any officer or employee of the city 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 90 days of treatments rendered off the business site.

This section does not apply to certificate holders.

4.28.220 Applicability of regulations to existing business.

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

4.28.230 Operative date – Massage technicians.

All persons holding a valid massage technician permit and proof of employment as a massage technician within the city of Solana Beach on the effective date of the ordinance codified in this chapter have four years from July 1, 2001, to meet the requirements contained in SBMC 4.28.120(L) and (M). Until that time, their permits remain valid so long as they meet all additional requirements of this chapter. Such persons must provide proof of compliance with SBMC 4.28.120(L) and (M) to the licensing officer, however, they are not required to complete a new application form.

4.28.240 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 permit be required for the establishment at which a massage is administered by or under the control and direction of such persons:

1. Physicians, surgeons, chiropractors, osteopaths, physician’s assistants, nurse practitioners, acupuncturists or physical therapists who are duly permitted 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;

B. Renting office or work space at an otherwise exempt location does not provide the renter with an exemption from this section.

C. The exemptions described in this section do not relieve any massage technicians or certificate holders who are employed by an exempt individual from the requirements of this chapter.

4.28.250 Massage establishment, off-premises massage business, massage technician permit renewal.

Massage establishment permits, off-premises massage businesses and massage technician permits shall be renewed on an annual basis on the anniversary of the original issuance date.

In order to renew a massage technician permit, the permittee must provide proof of 12 hours of continuing education in massage practice. The continuing education hours must be obtained from a facility or organization approved by the organization created by Business & Professions Code § 4600 et. seq., or until that organization approves such training, by any provider deemed to be of adequate quality by the Sheriff, under guidelines to be established by the Sheriff. This section affects all applications for renewals of permits occurring after the effective date of the ordinance codified in this chapter.

4.28.260 Permit suspension or revocation.

A. In the event that any person holding a permit issued pursuant to this chapter shall violate or cause or permit to be violated any of the provisions of this chapter, or any provisions of any other ordinance or law relating to or regulating such business or occupation, or shall conduct or carry on such business or occupation in an unlawful manner, or for any reason for which the permit application could have been denied, the issuing officer may, in addition to other penalties provided by ordinance, suspend or revoke the permit after the permittee has been given the opportunity for a hearing as provided for in this chapter.

B. The issuing officer shall post for a period of 10 days the name and business address of any person receiving a notice of suspension or revocation, along with the fact that any interested member of the general public can submit information regarding the proposed suspension or revocation. Such information shall be submitted in writing and shall be delivered to the office of the issuing officer within five days of the last day of posting. The names and business addresses shall be posted in the office of the issuing officer.
4.28.270 Appeals.

In the event that an application is denied, or an active license or permit is suspended, the procedure to follow for appeal is that set forth in the uniform licensing procedures in Chapter 4.04 SBMC.

4.28.280 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 SBMC 4.28.040 without first obtaining the necessary permit or license 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 $1,000, plus all statutory penalty assessments and fees, 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 technician, as defined in this chapter, who is not in possession of a valid, unrevoked permit or who allows such massage technician 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 plus all statutory fees and penalties or by imprisonment in the county jail for a period not to exceed six months, or by both such fine and imprisonment.

4.28.290 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 city council 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.
4.28.300 Fee modification and allocation.

All fees established by this chapter shall be collected by the licensing officer and transferred to the city treasurer of the city of Solana Beach for deposit in the general fund, revenue to be allocated as determined by the city to defray the cost in enforcing the provisions of this chapter.

4.28.310 Additional requirements applicable to certificate holders.

A. No certificate holder may practice massage in the city of Solana Beach without first ensuring that the certificate holder's name business name, address of employment, and phone number of employment are on file with the Sheriff and with the city of Solana Beach.

B. No certificate holder may change any information listed in subsection A without first notifying the Sheriff and the city of Solana Beach of any such change.

C. Nothing in this Title exempts any certificate holder from any requirement that he or she obtain a business license or pay business tax or comply with any other rule applicable to the practice of business in the city of Solana Beach.

EFFECTIVE DATE: This Ordinance shall be effective thirty (30) days after its adoption. Within fifteen (15) days after its adoption, the City Clerk of the City of Solana Beach shall cause this Ordinance to be published pursuant to the provisions of Government Code §36933.

INTRODUCED AND FIRST READ at a regular meeting of the City Council of the City of Solana Beach, California, on the 8th day of July, 2009; and

THEREAFTER ADOPTED at a regular meeting of the City Council of the City of Solana Beach, California, on the ___ day of ____________, 2009, by the following vote:

AYES: Councilmembers –

NOES: Councilmembers –

ABSTAIN: Councilmembers –

ABSENT: Councilmembers –

MIKE NICHOLS, Mayor

APPROVED AS TO FORM: ATTEST:

JOHANNA N. CANLAS, City Attorney ANGELA IVEY, City Clerk
AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF SOLANA BEACH
AMENDING SECTION 4.04.010, AMENDING CHAPTER 4.28, AND ADDING SECTION
4.28.310 OF THE SOLANA BEACH MUNICIPAL CODE, PERTAINING TO THE
LICENSING AND REGULATION OF MASSAGE TECHNICIANS AND MASSAGE
BUSINESSES

WHEREAS, the Legislature has enacted Senate Bill 731 in the 2007-2008 term,
creating a voluntary state licensing scheme for massage practitioners and therapists; and

WHEREAS, these new rules, codified in Business & Professions Code section
4600 et. seq., exempt those who obtain certificates from the state from certain local
regulations of massage practice; and

WHEREAS, these new laws require amendments to the Solana Beach Municipal
Code to ensure the Code's compliancy with Senate Bill 731 and to provide clearer
guidelines for how the code can be enforced; and

WHEREAS, the City Council for the City of Solana Beach believes that it is
necessary to maintain a strict regulatory regime to ensure the health and safety of those
performing and receiving massage services in the city of Solana Beach; and

WHEREAS, as part of this comprehensive regulatory scheme, it is necessary to
regulate holistic health practitioners who practice massage, because they are not
subject to state regulation; NOW, THEREFORE:

BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF SOLANA
BEACH AS FOLLOWS:

Section 1. Section 4.04.010 of the municipal code is amended to read as
follows:

Section 4.04.010 is amended to read as follows:

4.04.010 Licenses required.
It shall be unlawful for any person, firm or corporation to engage in, conduct, manage
or carry on any of the following businesses, practices, professions or occupations within
the city without first having obtained a license therefor in accordance with the uniform licensing procedure:

A. Amusement establishments and devices;
B. Aircraft ticket brokers;
C. Auctions and auctioneers;
D. Bingo;
E. Carnivals and go-cart centers;
F. Coupon books, distribution of;
G. Dances and dance halls;
H. Teen dance clubs;
I. Dances, teenage;
J. Entertainment;
K. Female entertainment;
L. Firearms, sale of;
M. Junk, automotive wrecking, nonoperating vehicle storage yards;
N. Kennels;
O. Massage establishments, except for those where all personnel who perform massage are certified pursuant to Business & Professions Code § 4600 et. seq.;
P. Massage technicians, except those who are certified per Business & Professions Code § 4600 et. seq.;
Q. Massage technician trainees;
R. Outdoor assemblages;
S. Second-hand dealers;
T. Solicitors:
   1. License,
   2. Identification card;
U. Street patrols;
V. Swap meets and swap lots;
W. Taxicabs – taxicab drivers:
   1. Operator’s license,
   2. Driver’s identification card;
X. Jitneys – jitney drivers:
   1. Operator’s license,
   2. Driver’s identification card.
Section 2. Chapter 4.28 is amended, and Section 4.28.310 is added, to read as follows:

Chapter 4.28
MASSAGE ESTABLISHMENTS/MASSAGE THERAPISTS

Sections:
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4.28.020 Purpose and intent.
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**4.28.010 Citation of chapter.**

This chapter may be cited as the "Solana Beach massage establishment and massage therapist ordinance." (Ord. 270 § 1, 2001; Ord. 71 § 1, 1988; 1987 Code § 4.64.010)

**4.28.020 Purpose and intent.**

It is the purpose and intent of this chapter to provide for the orderly regulation of the business of massage and massage therapists, technicians in the city of Solana Beach by establishing certain minimum standards for the conduct of this type of business to protect the public health, safety, and welfare of the residents of the city of Solana Beach. (Ord. 270 § 1, 2001; Ord. 71 § 1, 1988; 1987 Code § 4.64.020)

**4.28.030 Rules of construction.**
This chapter shall be construed liberally in order to effectuate its purposes. Unless otherwise specifically prescribed in this chapter, the following provisions shall govern its interpretation and construction:

A. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number.

B. The masculine form as used in this chapter applies equally to a female or a corporation.

C. Time is of the essence in this chapter. No license or permit holder shall be relieved of his obligation to comply promptly with any provision of this chapter by any failure of the city to enforce prompt compliance with any of its provisions, except as provided in SBMC 4.28.2304.28.230.

D. Any right or power conferred or duty imposed upon any officer, employee, department or board of the city is subject to transfer by operation of law to any other officer, employee, department or board of the city.

E. No license or permit holder shall have any recourse whatsoever against the city for any loss, cost, expense or damage arising out of any provision or requirement of this chapter or the enforcement thereof.

F. This chapter does not relieve any license or permit holder of any requirement of any other ordinance, rule, regulation or specification of the city. (Ord. 270-§ 1, 2001; Ord. 71-§ 1, 1988; 1987 Code § 4.64.030)

4.28.040 Definitions.

Whenever in this chapter the following words or phrases are used, they shall mean:

A. “Batthouse” means an establishment having a fixed place of business where any person engages in, conducts or carries on any business of giving any kind or character of bath(s).

B. “Building inspection” means the planning and land use department of the city of Solana Beach or the department’s designee.

C. “City” means the city of Solana Beach.

D. “Health department” means the department of health services of the county of San Diego.

E. “Holistic health practitioners” means nonmedical health care therapists who use a massage specialty and therapeutic approach in caring for clients and who present to the licensing officer proof of satisfactory completion of 1,000 hours of instruction in such specialty or therapeutic approach at a school with a state-accredited curriculum and proof of membership in a state or nationally chartered organization devoted to the specialty or therapeutic approach. The practice of such health care therapists may include other services such as nutritional assistance or counseling as long as all activities are directed toward health care. A holistic health provider not in possession of a valid certificate pursuant to Business & Professions Code § 4600 et. seq. shall comply with all standards applicable to massage practitioners pursuant to this Chapter and Chapter 4.04.
F. "License" means the city-issued license to operate a "massage establishment" required by this chapter.

G. "Massage" means 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.

H. "Massage establishment" means any establishment having a fixed place of business where any person, firm, association or corporation engages in or carries on or permits to be engaged in or carried on any of the activities mentioned in subsection G of this section. Any establishments engaged in or carrying on, or permitting any combination of massage and bathhouse shall be deemed a massage establishment. Any establishment in which a holistic health provider performs massage is a massage establishment.

I. "Massage therapist/technician" means any person, including a trainee, male or female, who gives or administers to another person, for any form of consideration, a "massage" or "bath" as those words are defined in this chapter.

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

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

L. "Off-premises massage" means the activity of providing massage services at a location other than premises licensed as a massage establishment. It includes massage therapists/technicians who provide off-premises massage services and who are self-employed and/or who contract with or work for a business other than a massage establishment.

M. "Permit" means the permit to engage in the activities of a "massage therapist/technician" required by this chapter.

N. "Person" means a natural person, firm, partnership, association or corporation.

O. "Sheriff" means the sheriff of the county of San Diego.

P. "State approved school" means any school or institution of learning, which has for its purpose the teaching of the theory, method, profession or work of massage, and which has been approved pursuant to Section 29007.5 of the California Education Code or pursuant to a similar code provision of another state.

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

R. "Certificate holder" means a person who possesses a valid certificate pursuant to Business & Professions Code § 4600 et. seq. or a business where only persons so certified practice massage. (Ord. 270 § 1, 2001; Ord. 71 § 1, 1988; 1987 Code § 4.64.040)

4.28.050 Massage establishment license.
A. The procedure to follow in obtaining a license, except as otherwise herein provided, is that set forth in the uniform licensing procedures of Chapter 4.04 SBMC. In addition to the reasons stated in the uniform licensing procedures, the issuing officer may deny the application of a license, or revoke an issued license, if it is found that:

1. The applicant, or in the case of an applicant-corporation or partnership, any of its officers, directors, holders of five percent or more of the ownership (stock or partnership), within five years immediately preceding the date of the filing of the application, has been 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 has been convicted of any of the following offenses:
   a. Any offense described in California Penal Code Sections 211 (robbery), 266h (pimping), 266i (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 person to visit place for gambling or prostitution), 487 (grand theft), 488 (petty theft), 647(a) (soliciting or engaging in lewd or dissolute conduct in a public place), 647(b) (soliciting or engaging in prostitution), or 653.22 (loitering with intent to commit prostitution);
   b. Any offense described in California Penal Code, Part One, Title 9, Chapters 7.5 and 7.6;

2. Shown to the investigating law enforcement agency, by a preponderance of the evidence, to have violated the elements of one or more of the crimes listed in the previous subsections.

3. 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 subsection (A)(1) of this section.

4. 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 aforementioned offenses.

B. In the event that an application for a massage establishment license is denied, the applicant may not reapply for one year from the date of denial.

C. No massage establishment license shall be issued by the issuing officer until he has been notified in writing by the health department and the city's building inspector that the applicant has fulfilled the requirements of this chapter.

D. This section does not apply to establishments where all personnel performing massage are certificate holders; such establishments do not need to obtain a massage establishment license. (Ord. 270 § 1, 2001; Ord. 71 § 1, 1988; 1987 Code § 4.64.050)

4.28.060 Application for massage establishment license.

A. The application for a license to operate a massage establishment shall set forth the nature or method of the massage to be administered, the proposed place of business and facilities therefor, and the name and address of each applicant.
B. In addition to the foregoing, any applicant for a license shall furnish the following information:

1. The previous addresses of applicant, if any, for a period of five years immediately prior to the date of the application, and the dates of residence at each;
2. Written proof satisfactory to the sheriff that the applicant is over the age of 18 years;
3. Applicant’s height, weight, color of eyes and hair;
4. Portrait photographs, at least one inch by one inch. One photograph shall be retained by the sheriff and one photograph shall be affixed to the license;
5. Business, occupation or employment history of the applicant for the three years immediately preceding the date of application;
6. The business license or permit history of the applicant, whether such person, in previously operating in this or another city, county 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;
7. Whether such person has ever been convicted of any crime, except misdemeanor traffic violations, including convictions dismissed pursuant to Penal Code Section 1203.4, and any pending criminal charges. 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;
8. Such other identification and information necessary to discover the truth of the matter herein specified as required to be set forth in this action;
9. Nothing contained herein shall be construed to deny to the sheriff the right to take the fingerprints and additional photographs of the applicant, nor shall anything contained herein be construed to deny the right of the sheriff to confirm the height and weight of the applicant;
10. 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 five percent 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;
11. Evidence of inspection of the facility by the San Diego County health department. (Ord. 287 § 1, 2002; Ord. 270 § 1, 2001; Ord. 71 § 1, 1988; 1987 Code § 4.64.060)

4.28.070 Massage establishment license application fee.

The fee for a massage establishment license shall be as specified in the currently adopted city fee schedule. The nonrefundable fee shall accompany the submission of each application to defray in part the cost of inspection, investigation and enforcement of this chapter.
Any massage establishment permittee failing to renew a massage establishment license within 30 days after its expiration shall be assessed a 10 percent penalty for each month of failure to renew. 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. (Ord. 270 § 1, 2001; Ord. 71- §1, 1988; 1987 Code § 4.64.070)

4.28.080 Off-premises massage business – License required.

A. It shall be unlawful for any person, association, partnership or corporation to engage in, conduct, carry on or advertise, or to permit to be engaged in, conducted or carried on, any off-premises massage business within the city without a license issued pursuant to the provisions of this chapter for each and every such massage business.

B. This section does not apply to certificate holders or businesses where the only persons performing massage are certificate holders. (Ord. 270 § 1, 2001; Ord. 71 § 1, 1988; 1987 Code § 4.64.080)

4.28.090 Off-premises massage business license.

A. Any person, association, partnership or corporation (except those described in Section 4.28.080.B) desiring to obtain a license to conduct an off-premises massage business shall make an application to the city licensing officer. The fee for a massage establishment license shall be as specified in the currently adopted city fee schedule. The nonrefundable fee shall accompany the submission of each application to defray in part the cost of inspection, investigation and enforcement of this chapter.

Any off-premises massage business permittee failing to renew an off-premises massage business license within 30 days after its expiration shall be assessed a 10 percent penalty for each month of failure to renew. 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.

B. Each applicant for a license to conduct an off-premises massage business shall furnish to the city licensing officer all of the information required by SBMC 4.28.060.

C. The procedure to follow in obtaining an off-premises massage business license is that set forth in the uniform licensing procedures of Chapter 4.04 SBMC.

D. Off-premises massage operations shall be carried on only between the hours of 7:00 a.m. and 12:00 midnight. This subsection applies to certificate holders and businesses where all who perform massage are certificate holders in addition to all other businesses and persons covered by this Section.

E. 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-premises massage license shall be one-half that of the massage establishment fee.

F. Any massage conducted in a place not open to public view must be by appointment only, except for those performed by certificate holders.

G. Notwithstanding subsection F, an off-premises massage therapist-technician may perform massage without appointment if the massage is conducted in a public place.
open to view of the public, such as a shopping center kiosk or salon, or at events such as marathons and street fairs.

H. Any off-premises massage business permittee who hires, dispatches or contracts with other off-premises massage therapists-technicians to do off-premises massage is responsible for ensuring that those therapists-technicians comply with all applicable regulations in this chapter.

I. The permittee must also make reasonable efforts to prevent criminal activity by the other therapists. In addition to all other grounds, prostitution by such a therapists-technician is grounds for revoking the permit. (Ord. 270 § 1, 2001; Ord. 71 § 1, 1988; 1987 Code § 4.64.090)

4.28.100 Massage therapist-technician permit.

A. The procedure to follow in obtaining a permit, except as otherwise herein provided, is that set forth in the uniform licensing procedures of Chapter 4.04 SBMC. In addition to the reasons stated in the uniform licensing procedures, the issuing officer shall deny the application for a permit, or revoke an issued permit, if it is found that:

1. The applicant, within five years immediately preceding the date of the filing of the application, has been 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 has been convicted of any of the following offenses:
   a. Any offense described in California Penal Code Sections 211 (robbery), 266h (pimping), 266i (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 person to visit place for gambling or prostitution), 487 (grand theft), 488 (petty theft), 647(a) (soliciting or engaging in lewd or dissolute conduct in a public place), 647(b) (soliciting or engaging in prostitution), or 653.22 (loitering with intent to commit prostitution);
   b. Any offense described in California Penal Code, Part One, Title 9, Chapters 7.5 and 7.6;

2. Shown to the investigating law enforcement agency, by a preponderance of the evidence, to have violated the elements of one or more of the crimes listed in the previous subsections.

3. 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 subsection (A)(1) of this section.

4. 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 aforementioned offenses.

B. In the event that an application for a massage therapist-technician permit is denied, the applicant may not reapply for one year from the date of denial.
C. No massage therapist-technician permit shall be issued by the issuing officer until he has been notified in writing by the health department that the applicant has fulfilled the requirements of SBMC 4.28.120(M). (Ord. 270 § 1, 2001; Ord. 71 § 1, 1988; 1987 Code § 4.64.100)

4.28.110 Massage therapist-technician permit application fee.
A. The annual nonrefundable fee for a massage therapist-technician permit shall be as set forth in the currently adopted city fee schedule; provided, however, the provisions of SBMC 4.28.120(L) and (M) shall not apply to such annual renewal. The appropriate fee shall accompany the submission of each application to defray the cost of investigation and examination. Any massage therapist-technician permittee failing to renew a massage therapist-technician license within 30 days after its expiration shall be assessed a 10 percent penalty for each month of failure to renew. 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.
B. A permit to act as a massage therapist-technician does not authorize the operation of a massage establishment and/or off-premises massage business. Any person obtaining a permit to act as a massage therapist-technician who desires to operate a massage establishment and/or off-premises massage business must separately apply for a license therefor.
C. A person who applies for a license to operate a massage establishment and/or off-premises massage business and who desires to act as a massage therapist-technician within such establishment, who pays the fee required by SBMC 4.28.070, shall not be required to pay the fee required by this section. (Ord. 270 § 1, 2001; Ord. 71 § 1, 1988; 1987 Code § 4.64.110)

4.28.120 Application form for massage therapist permit.
The application for a massage therapist-technician permit shall contain the following:
A. Name, residence address and telephone number;
B. The previous addresses of applicant, if any, for a period of five years immediately prior to the date of the application, and the dates of residence at each;
C. Social Security number and driver’s license number, if any;
D. Applicant’s sex, weight, height, color of hair and eyes;
E. Written evidence, satisfactory to the sheriff, that the applicant is at least 18 years of age;
F. Business, occupation or employment of the applicant for the three years immediately preceding the date of application;
G. Whether such person has ever been convicted of any crime, except misdemeanor traffic violations, including convictions dismissed pursuant to Penal Code Section 1203.4, and any pending criminal charges. 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 convicted;
H. The business license or permit history of the applicant, whether such person, in previously operating in this or another city, county or state under license or permit, has had such license or permit suspended or revoked, the reason therefor, and the business activity or occupation subsequent to such suspension or revocation;

I. A certificate from a medical doctor, physician's assistant, or nurse practitioner licensed to practice in the state of California stating that the applicant has been examined and found free of any contagious or communicable disease. The certificate must be submitted prior to the issuance of the permit or license and the examination must be given within 30 days immediately preceding the issuance of the permit or license. A new physical examination must be submitted yearly when the license is renewed;

J. Two portrait photographs, at least one inch by one inch, taken within the six-month period immediately preceding the date of application. One photograph shall be retained by the sheriff for his files and one photograph shall be affixed to the permit;

K. Such other identification and information as the sheriff may require in order to discover the truth of the matters herein specified as required to be set forth in this section;

L. Furnish 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 proof that the school(s) attended by the applicant were state approved schools. In lieu of 500 hours of instruction, the applicant may furnish evidence of employment as a massage therapist for 1,200 hours and evidence of passing a qualified written examination prepared by the health department and administered by the sheriff establishing competency and ability of the applicant to engage in the practice of massage;

M. Provide proof of successful completion of a national certification exam administered by a national professional certification organization approved by the sheriff. The exams administered by the NCBTMB and NCCAOM are approved by the sheriff;

N. Pass an examination prepared and conducted by the health department wherein the applicant shall be required to demonstrate a basic knowledge of anatomy, physiology, hygiene and manual and mechanical massage. These examinations shall be conducted at regular intervals. The health director shall advise the city clerk of the results of such examinations;

O. The name and address of the massage establishment, if any, at which the applicant expects to be employed;

P. The sheriff shall fingerprint the applicant for search by the Federal Bureau of Investigation and the California State Division of Criminal Identification and Investigation. (Ord. 270 § 1, 2001; Ord. 71 § 1, 1988; 1987 Code § 4.64.120)

4.28.130 Certificate holder or Massage therapist-technician – Operating requirements.

A. No certificate holder or massage therapist-technician or trainee or certificate holder, 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-technician or certificate holder 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-technician or certificate holder 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.

C. No massage therapist-technician or certificate holder, while performing any task or service associated with the business of massage, shall massage or intentionally touch the specified anatomical areas of another person.

D. Each massage therapist-technician must wear a name tag on their outermost garment when working in a massage establishment or providing off-premises massage therapy. The name tag must contain the therapist's technician's name as it appears on the regulatory permit. This requirement does not apply to certificate holders. (Ord. 270 § 1, 2001; Ord. 71 § 1, 1988; 1987 Code § 4.64.130)

4.28.140 Massage therapist-technician trainee.

A. A massage therapist-technician trainee permit shall be issued to any person who:

1. Is currently enrolled and has completed at least 200 hours of instruction in a "state approved school" as defined in SBMC 4.28.040(P);

2. Submits a letter signed by the owner or manager of a licensed massage establishment stating the immediate intent to employ the applicant to do massage as a trainee working under the direct supervision and control of a licensed massage therapist; and

3. Has fulfilled all the requirements of SBMC 4.28.120, except subsections L, M and N.

B. The procedure to follow is that set forth in the uniform licensing procedures of Chapter 4.04 SBMC. In addition to the reasons stated in the uniform licensing procedures, the issuing officer may deny an application for a permit if it is found that:

1. The applicant, within five years immediately preceding the date of the filing of the application, has been 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 has been convicted of any of the following offenses:

   a. Any offense described in California Penal Code Sections 211 (robbery), 266h (pimping), 266i (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 person to visit place for gambling or prostitution), 487 (grand theft), 488 (petty theft), 647(a) (soliciting or engaging in lewd or dissolute conduct in a public
place), 647(b) (soliciting or engaging in prostitution), or 653.22 (loitering with intent to commit prostitution);
  b. Any offense described in California Penal Code, Part One, Title 9, Chapters 7.5 and 7.6;
  c. Any drug related offense identified in Section 11590 of the California Health and Safety Code; or
  d. Shown to the investigating law enforcement agency, by a preponderance of the evidence, to have violated the elements of one or more of the crimes listed in the previous subsections.

2. 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 subsection (B)(1) of this section.

3. 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 aforementioned offenses.

C. The trainee permit shall allow the student to work in a massage establishment under the supervision and direction of a massage therapist who has received a permit issued under the provisions of this chapter; provided, however, no licensed massage therapist shall be permitted to supervise more than two persons issued a trainee permit at any one time. The trainee permit shall expire 18 months from the date of issuance, at which time the trainee may make application for a massage therapist permit by providing evidence of compliance with SBMC 4.28.120(L), (M) and (N). The fee shall be the difference between the fee paid at the initial application and the fee currently specified for a massage therapist permit. The trainee permit shall not be renewed unless good cause is shown by the applicant for such renewal. Any person desiring to obtain a permit to act as a massage therapist trainee shall make an application to the issuing officer.

D. The nonrefundable fee for a massage therapist trainee permit shall be as specified in the currently adopted city fee schedule. The appropriate fee shall accompany the submission of each application. The trainee must at all times comply with the laws relating to massage establishments and the failure to comply may render the trainee ineligible to obtain a massage therapist permit.

E. An applicant who is denied a trainee permit may request a hearing from the sheriff in the manner prescribed by Chapter 4.04 SBMC, Uniform Licensing Procedures. (Ord. 297 § 2, 2002; Ord. 270 § 1, 2001; Ord. 71 § 1, 1988; 1987 Code § 4.64.140)

4.28.150 Massage establishment facilities.

No license to conduct a massage establishment shall be granted unless an inspection by the building inspector of the city and/or the licensing officer reveals that the proposed establishment complies with each of the following minimum requirements, and no person shall conduct the business of massage unless the massage establishment complies with the following conditions:
A. A recognizable and legible sign complying with 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 foot-candles at any point within the room shall be maintained in each room or enclosure where massage services are performed on patrons.

C. Adequate dressing, locker and toilet facilities shall be provided for patrons, except that the following requirements do not apply to certificate holders unless explicitly provided otherwise:

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 covered at the floor-wall juncture with at least a three-eighths-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.

3. All massage establishments, including certificate holders, must comply with all building requirements under federal or state law or under this Code.

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 city of Solana Beach. To allow for adequate ventilation in cubicles, rooms and areas provided for patrons' use, which are not serviced directly by required window or mechanical systems of ventilation, partitions shall be constructed so that the height of partitions do not exceed 75 percent of the floor-to-ceiling height of the area in which they are located. Other than the requirement of compliance with the Building Code, this subsection does not apply to certificate holders.

F. A minimum of one separate washbasin provided with hot and cold running water, soap and individual towels in a dispenser shall be provided in each massage establishment for the use of employees. This washbasin shall be separate from washbasins located in toilet rooms. This section does not apply to certificate holders.

G. All plumbing and electrical installations shall be installed under permit and inspection of the building inspection department, and such installations shall be installed in accordance with the Uniform Building Code and the Uniform Plumbing Code. Nothing in this section shall be construed to require certificate holders to maintain higher standards for electrical or plumbing facilities than other similarly situated professional or personal service business establishments.

H. 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. Nothing in this section shall be construed to require certificate holders to maintain higher construction or maintenance standards than other similarly situated professional or personal service business establishments. Wet and dry heat rooms, steam or vapor rooms shall be thoroughly cleaned and disinfected with a disinfectant approved by the health department each day the business is in operation. Bathtubs shall be thoroughly cleaned and disinfected with a disinfectant approved by the health department after each use.
I. Towels, sheets and linens of all types and items for personal use of operators and patrons shall be clean and freshly laundered. Towels, clothes and sheets shall not be used for more than one person. Reuse of such linen is prohibited unless the same has first been 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.

J. All lavatories or washbasins shall be provided with hot and cold running water, soap and single-service towels in wall-mounted dispensers. Nothing in this section shall be construed to require certificate holders to maintain higher standards than other similarly situated professional or personal service business establishments.

K. Security deposit facilities for the protection of the valuables of the patrons shall also be available. This subsection does not apply to certificate holders.

L. Disinfecting agents and sterilizing equipment approved by the health department shall be provided for any instruments used in performing acts of massage.

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

N. 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. This section does not apply to certificate holders.

O. All unoccupied rooms and areas of a massage establishment shall be subject to reasonable inspection during hours of the business operations in order to ensure compliance with this code or other health and safety laws or regulations.

P. In compliance with health department requirements, a minimum of one tub or shower and one toilet and washbasin shall be provided by every massage establishment; provided, however, that if male and female persons are employed by any massage establishment, or if male and female patrons are to be served simultaneously at the establishment, or any combinations thereof, a separate massage room or rooms, separate dressing facilities and separate toilet facilities shall be provided for male and female patrons and employees. Further, in those establishments where steam room or sauna baths are provided, if male and female patrons are to be served simultaneously, separate steam rooms or sauna rooms shall be provided for male and female patrons. This section does not apply to certificate holders.

Q. 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. This section does not apply to certificate holders.

R. 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 enter or remain in any area 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.
S. 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.

T. No owner, operator, responsible managing employee, manager or permittee in charge of or in control of a massage establishment shall permit any massage therapist technician or certificate holder 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 technician or certificate holder 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. (Ord. 270-§ 1, 2001; Ord. 71-§ 1, 1988; 1987 Code § 4.64.160. Formerly 4.28.160)

4.28.160 Off-premises massage business – Operating requirements.

A. Requirements.

1. 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 technician or certificate holder to give a massage or to be in any room with a patron unless the patron’s specified anatomical areas are fully covered.

2. 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 technician or certificate holder 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 technician or 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.

3. 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 technician or certificate holder associated with the off-premises massage business to massage or intentionally touch the specified anatomical areas of another person.

4. The possession of a valid off-premises business license does not authorize the possessor to perform work for which a massage therapist technician permit is required.
5. The off-premises massage business license and a copy of the permit of each and every massage therapist/technician or certificate holder employed or working for the off-premises massage business will be available for inspection by a law enforcement officer on demand.

6. No common use of towels or linens shall be permitted, and reuse is prohibited unless they have first been relaundered.

7. Disinfecting agents and sterilizing equipment sufficient to assure the cleanliness and safe condition thereof shall be provided for any instruments used in performing any massage.

B. Construction. This section shall be construed to require minimum standards only. The applicant, permittees, certificate holders, and massage businesses shall be required to comply with all applicable provisions of this title. (Ord. 270 § 1, 2001; Ord. 71 § 1, 1988; 1987 Code § 4.64.170. Formerly 4.28.170)

4.28.170 Name of business.
No person licensed to do business as herein provided shall operate under any name or conduct his business under any designation not specified in his permit. (Ord. 270 § 1, 2001; Ord. 71 § 1, 1988; 1987 Code § 4.64.190. Formerly 4.28.190)

4.28.180 Massage establishment, massage therapist/technician, off-premises massage business advertising requirements.
A. Each therapist, establishment or business licensed under this chapter shall include the number of their regulatory 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 "regulatory permit." "City of Solana Beach permit number 1111" or similar language will suffice so long as the correct permit number is included.

B. Advertising hours other than those allowed in this chapter 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.

D. This section does not apply to certificate holders.
(Ord. 270 § 1, 2001)

4.28.190 Change of location.
A change of location of a licensed massage establishment shall be approved by the Solana Beach department of community development and the sheriff, provided all applicable provisions of this chapter are complied with. (Ord. 270 § 1, 2001; Ord. 71 § 1, 1988; 1987 Code § 4.64.200. Formerly 4.28.200)

4.28.200 Inspection.
The sheriff and/or the licensing officer shall make, at least two times each calendar year, an inspection of each massage establishment in the city for the purpose of
determining that the provisions of this chapter are met. (Ord. 270 § 1, 2001; Ord. 71 § 1, 1988; 1987 Code § 4.64.210. Formerly 4.28.210)

4.28.210 Records of treatments.
    Every person, association, firm or corporation operating a massage establishment under a license as provided in this chapter shall keep for a period of 90 days a record of the date and hour of each treatment, and the name of the therapist administering such treatment. Such 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 inspection shall be confidential.
    Any willfully unauthorized disclosure or use of such information by any officer or employee of the city 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 90 days of treatments rendered off the business site.
    This section does not apply to certificate holders.
    (Ord. 270 § 1, 2001; Ord. 71 § 1, 1988; 1987 Code § 4.64.220. Formerly 4.28.220)

4.28.220 Applicability of regulations to existing business.
    The provisions of this chapter shall be applicable to all persons and businesses described herein whether the herein described activities were established before or after the effective date of the ordinance codified in this chapter. (Ord. 270 § 1, 2001; Ord. 71 § 1, 1988; 1987 Code § 4.64.230. Formerly 4.28.230)

4.28.230 Operative date – Massage therapists.
    All persons holding a valid massage therapist permit and proof of employment as a massage therapist within the city of Solana Beach on the effective date of the ordinance codified in this chapter have four years from July 1, 2001, to meet the requirements contained in SBMC 4.28.120(L) and (M). Until that time, their permits remain valid so long as they meet all additional requirements of this chapter. Such persons must provide proof of compliance with SBMC 4.28.120(L) and (M) to the licensing officer, however, they are not required to complete a new application form. (Ord. 270 § 1, 2001; Ord. 71 § 1, 1988; 1987 Code § 4.64.150. Formerly 4.28.150)

4.28.240 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 by or under the control and direction of such persons:
    1. Physicians, surgeons, chiropractors, osteopaths, physician’s assistants, nurse practitioners, acupuncturists 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. Holistic health practitioners. To qualify for this exemption, the person, prior to initiating the conduct of a massage business within the city, must first present themselves to the licensing officer to be registered and provide proof of:
   a. Satisfactory completion of no less than 1,000 hours of instruction in such specialty or therapeutic approach at a state accredited school; and
   b. Membership in a state or nationally chartered organization devoted to the specialty or therapeutic approach whose members are subject to a code of behavior that is effectively enforced against members by the organization and which requires participation in continuing education.

   B. This section 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. This exemption does not apply to any business owned or operated by such an institution that is not regulated under the state license.

   C. Renting office or work space at an otherwise exempt location does not provide the renter with an exemption from this section.

   D. The exemptions described in this section do not relieve any massage therapists technicians or certificate holders who are employed by an exempt individual from the requirements of this chapter. (Ord. 270 § 1, 2001; Ord. 71 § 1, 1988; 1987 Code § 4.64.240)

### 4.28.250 Massage establishment, off-premises massage business, massage therapist permit renewal.

Massage establishment licenses, off-premises massage businesses and massage therapist permits shall be renewed on an annual basis on the anniversary of the original issuance date.

In order to renew a massage therapist-technician permit, the permittee must provide proof of 12 hours of continuing education in massage therapy practice. The continuing education hours must be obtained from a facility or organization approved by the NCBTMB or the NCCAOM, or any other certification organization recognized by the sheriff as sufficient organization certified by Business & Professions Code § 4600 et. seq., or until that organization approves such training, by any provider deemed to be of adequate quality by the Sheriff, under guidelines to be established by the Sheriff. This section affects all applications for renewals of permits occurring after the effective date of the ordinance codified in this chapter. (Ord. 270 § 1, 2001)

### 4.28.260 License suspension or revocation.

A. In the event that any person holding a license issued pursuant to this chapter shall violate or cause or permit to be violated any of the provisions of this chapter, or any provisions of any other ordinance or law relating to or regulating such business or occupation, or shall conduct or carry on such business or occupation in an unlawful manner, or for any reason for which the license application could have been denied, the
issuing officer may, in addition to other penalties provided by ordinance, suspend or
revoke the license after the licensee has been given the opportunity for a hearing as
provided for in this chapter.

B. The issuing officer shall post for a period of 10 days the name and business
address of any person receiving a notice of suspension or revocation, along with the
fact that any interested member of the general public can submit information regarding
the proposed suspension or revocation. Such information shall be submitted in writing
and shall be delivered to the office of the issuing officer within five days of the last day
of posting. The names and business addresses shall be posted in the office of the
issuing officer. (Ord. 270 § 1, 2001)

4.28.270 Appeals.

In the event that an application is denied, or an active license or permit is suspended,
the procedure to follow for appeal is that set forth in the uniform licensing procedures in
Chapter 4.04 SBMC. (Ord. 270 § 1, 2001)

4.28.280 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 SBMC 4.28.040 without first obtaining the necessary permit or license 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 $1,000 plus all statutory
penalty assessments and fees, 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/technician, as defined in this chapter, who is not in
possession of a valid, unrevoked permit or who allows such massage therapist
technician 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 plus all statutory fees and penalties or by imprisonment in the county jail
for a period not to exceed six months, or by both such fine and imprisonment.

Upon a conviction under this section, the court shall, in addition to other punishment it
imposed, impose a fine of $200.00, no part of which shall be suspended. (Ord. 270 § 1,
2001; Ord. 74 § 1, 1988; 1987 Code § 4.64.250. Formerly 4.28.250)

4.28.290 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 city council 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. (Ord. 270 § 1, 2001; Ord. 71 § 1, 1988; 1987 Code § 4.64.260. Formerly 4.28.260)

4.28.300 Fee modification and allocation.
All fees established by this chapter shall be collected by the licensing officer and transferred to the city treasurer of the city of Solana Beach for deposit in the general fund, revenue to be allocated as determined by the city to defray the cost in enforcing the provisions of this chapter. (Ord. 270 § 1, 2001; Ord. 71 § 1, 1988; 1987 Code § 4.64.270. Formerly 4.28.270)

4.28.310 Additional requirements applicable to certificate holders.
   A. No certificate holder may practice massage in the city of Solana Beach without first ensuring that the certificate holder’s name, business name, address of employment, and phone number of employment are on file with the Sheriff and with the city of Solana Beach.
   B. No certificate holder may change any information listed in subsection A without first notifying the Sheriff and the city of Solana Beach of any such change.
   C. Nothing in this Title exempts any certificate holder from any requirement that he or she obtain a business license or pay business tax or comply with any other rule applicable to the practice of business in the city of Solana Beach.