

ORDINANCE NO. 2011-17

AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
AMENDING ESCONDIDO MUNICIPAL CODE
CHAPTER 16A

WHEREAS, the City of Escondido may make and enforce within its limits all local police, sanitary and other regulations not in conflict with general laws; and

WHEREAS, California Business and Professions Code section 4612 expressly authorizes a city to adopt reasonable health and safety requirements with respect to massage establishments including, but not limited to, requirements for cleanliness of massage rooms, towels and linens, and reasonable attire and personal hygiene requirements for persons providing massage services; and

WHEREAS, the City Council passed Escondido Ordinance 2000-12 to enact the current Escondido Municipal Code Chapter 16A – Massages, Massage Establishments and Alternative Health Care Practitioners; and

WHEREAS, in September 2009, the California Legislature adopted Senate Bill 731 to create a state-organized non-profit organization the California Massage Therapy Council (“CAMTC”) and authorized CAMTC to issue certificates to massage technicians; and

WHEREAS, the Escondido Police Department has worked closely with City staff to simplify and standardize regulation of massage establishments and has recommended adopting the state CAMTC certification as the only acceptable licensing standard for massage technicians in the City of Escondido; and

WHEREAS, the Escondido Police Department continues to receive complaints and investigate illicit activities conducted at some massage establishments; and

WHEREAS, the Escondido Police Department held a public forum with massage establishment owners and operators and incorporated several recommendations into the proposed ordinance; and

WHEREAS, the City Council understands that current local massage permit holders may continue to operate as massage technicians under their current permitting procedures until their annual business license expires during 2012 and those whose permits expire before June 1, 2012, may extend their local massage permit until May 31, 2012, but beginning on June 1, 2012, no business license for a massage technicians or a massage establishment will be issued without appropriate CAMTC certification; and

WHEREAS, the local massage permit regulations provided in Escondido Municipal Code Chapter 16A, Articles 1, 2, 3 and 4 will be become obsolete as the local massage permits expire during 2012 and are replaced with the state CAMTC certification; and

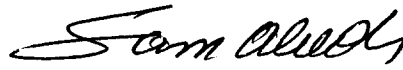
WHEREAS, the City Council believes that the proposed ordinance contains reasonable health and safety requirements that protect the public and support the activities of legitimate massage providers.

NOW, THEREFORE, the City Council of the City of Escondido, California, DOES HEREBY ORDAIN as follows:


PASSED, ADOPTED AND APPROVED by the City Council of the City of Escondido at a regular meeting thereof this 7th day of December, 2011 by the following vote to wit:

AYES : Councilmembers: DIAZ, GALLO, MORASCO, WALDRON, ABED
NOES : Councilmembers: NONE
ABSENT : Councilmembers: NONE

APPROVED: 5/0

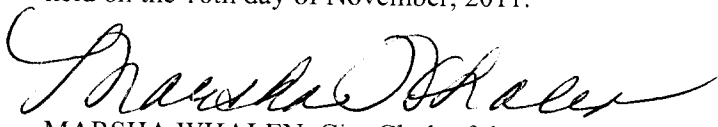


SAM ABED, Mayor of the
City of Escondido, California

ATTEST

MARSHA WHALEN, City Clerk of the
City of Escondido, California

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO : ss.
CITY OF ESCONDIDO)

I, MARSHA WHALEN, City Clerk of the City of Escondido, hereby certify that the foregoing ORDINANCE NO. 2011-17 passed at a regular meeting of the City Council of the City of Escondido held on the 7th day of December, 2011, after having been read at the regular meeting of said City Council held on the 16th day of November, 2011.


MARSHA WHALEN, City Clerk of the
City of Escondido, California

ORDINANCE NO. 2011-17

SECTION 1. That the above recitations are true.

SECTION 2. That Escondido Municipal Code Chapter 16A is amended to add Articles A, B and C to read as follows:

Chapter 16A MASSAGE REGULATION

ARTICLE A. GENERAL

Sec. 16A-1. Definitions.

For the purpose of this Chapter, the following words and phrases shall have the meanings ascribed to them in this Section:

(a) *California Massage Therapy Council (CAMTC)* shall mean the state-organized non-profit organization created to regulate the massage industry set forth in Chapter 10.5 of Division 2 of the Business and Professions Code of the state (commencing with Section 4600).

(b) *City* shall mean the City of Escondido.

(c) *CAMTC certificate* shall mean a current and valid certificate issued by the California Massage Therapy Council to a massage technician.

(d) *Massage* shall mean any method of pressure on, or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external parts of the body with the hands or the other parts of the body, with or without the aid of any mechanical or electrical apparatus or appliances or with or without such supplementary aids as rubbing alcohol, liniments, antiseptic, oils, powder, creams, lotions, ointments, or other preparations commonly used in this practice. It does not include contact with Specified Anatomical Areas, as defined below, which is prohibited by this Chapter and by Chapter 16E of the Escondido Municipal Code.

(e) *Massage Establishment* shall mean a business or organization where an individual, firm, association, partnership, corporation, or other combination of individuals, certified in accordance with California Business & Professions Code sections 4600 through 4620: provide, offer, sell, deliver, or dispense massage as a distinct service for consideration.

(f) *Massage Technician* shall mean any person who gives or administers to another person, for any form of consideration whatsoever, a massage as defined in this Chapter. The terms "massage therapist," "massage practitioner," or any

other terms used within the massage industry are included within this definition for the purposes of this Chapter.

(g) *Operator* shall mean any person who supervises, manages, directs, organizes, controls, or in any other way is responsible for or in charge of the daily operation, conduct, or activities of a Massage Establishment.

(h) *Owner* shall mean any of the following individuals:

- (1) The sole practitioner of a sole proprietorship operating a Massage Establishment.
- (2) Any general partner of a general or limited partnership that owns a Massage Establishment.
- (3) Any person who has ten (10) percent or greater ownership interest in a corporation that owns a Massage Establishment.
- (4) Any person who is a member of a limited liability company that owns a Massage Establishment.
- (5) All Owners of any other type of business entity that owns a Massage Establishment.

(i) *Specified Anatomical Areas* shall mean any of the following areas of the human body: pubic region, human genitals, perineum, anal region, and the areas of the female breasts that include the areola and the nipple.

Sec. 16A-2. Exemptions.

This Chapter does not apply to the following:

a) State-licensed professionals while engaged in the performance of the duties of their respective professions and while limited to the scope of their California state licenses including acupuncturists, aestheticians, barbers, chiropractors, cosmetologists, exercise physiologists, manicurists, nurses, naturopathic doctors, occupational therapists, osteopaths, physical therapists, and physicians.

(b) Trainers of any semiprofessional or professional athlete or athletic team, or athletic trainers hired by a local, state or federal government agency.

(c) Any educational institution regulated by the State of California, including any portion of the institution providing Massage services, such as student clinics and work study programs, regulated under such state license.

Sec. 16A-3—16A-5. Reserved.

ARTICLE B. MESSAGE CERTIFICATATION & OPERATION

Sec. 16A-6. Massage certification required.

It shall be unlawful for any person to engage in, conduct or carry on, in or upon any premises within the City the business of providing Massage, for any consideration without being in possession of a valid CAMTC certificate.

Sec. 16A-7. Owner & operator requirements.

(a) It is unlawful for any person to own, manage, or operate in or upon any premises within the City a Massage Establishment in the absence of a valid business license pursuant to Chapter 16 of the Escondido Municipal Code.

(b) It is unlawful for the Owner or Operator of any Massage Establishment to allow any person to perform Massage at the Massage Establishment while committing any violation of this Chapter.

(c) It shall be unlawful for the Owner or Operator of any Massage Establishment to offer or provide massage services unless the Owner or a designated on-site Operator is present at the Massage Establishment.

(d) It is unlawful for a person to own or operate a Massage Establishment that does not meet one of the following conditions:

(1) The Massage Establishment is a sole proprietorship and the sole proprietor possesses a valid CAMTC certificate; or,

(2) The Massage Establishment only employs or uses Massage Technicians who possess a valid CAMTC certificate.

(e) It shall be unlawful for an Owner or Operator to fail to properly supervise any employee or independent contractor working in their Massage Establishment. Owners and Operators are responsible for the conduct of their Massage Technicians at the Massage Establishment. A violation of any regulation by a Massage Technician contained in this Chapter shall be prima facie evidence of the failure to supervise.

(f) It shall be unlawful for an Owner or Operator to operate a Massage Establishment without posting a list of services and the name of the on-site Operator on the wall closest to the main entrance in the Massage Establishment.

(g) It shall be unlawful for an Owner or Operator to operate a Massage Establishment unless the CAMTC certificate for each Massage Technician is

clearly posted or maintained in a clearly labeled and identifiable binder that is kept in the immediate vicinity of the cash register.

(h) It shall be unlawful for an Owner or Operator to allow or permit a Massage Technician to provide any services not specifically provided on the posted list of services as required in paragraph (f) or for an Owner or Operator to receive any compensation for additional services not specifically included on the posted list of services.

(i) It shall be unlawful for an Owner or Operator to allow a Massage Technician to lock any door or doors leading to a room used to provide Massage. This provision shall not apply when there is no staff available to ensure the security for clients and staff who are behind closed doors. A patron may lock any door when alone in any room at any time.

(j) It shall be unlawful for an Owner or Operator to fail to maintain a record of services provided for each treatment. The record of treatment shall include the name and address of the patron, the name of the Massage Technician, the name of the Operator, the type of service provided, and the time the service began and ended.

(k) It shall be unlawful for the Owner or Operator to provide any Massage between the hours of 10:00 p.m. and 7:00 a.m. or to remain open and provide any other services between the same hours.

(l) It shall be unlawful for an Owner or Operator to fail to provide to all patrons clean and sanitary towels, and opaque coverings capable of covering the patron's Specified Anatomical Areas. Such coverings shall be used for one customer and shall not be reused without first being cleaned.

(m) It shall be unlawful for an Owner or Operator to fail to provide or use disinfecting agents and sterilizing equipment sufficient to assure cleanliness.

(n) It shall be unlawful for an Owner or Operator to fail to provide or use disposable or washable protective coverings on massage tables and all massage tables shall be covered with durable, washable plastic, or other waterproof material.

(o) It shall be unlawful for an Owner or Operator to fail to keep or maintain on file and ready for inspection a statement designating the individual Operator(s) responsible for the day-to-day operations when the Massage Establishment Owner is not on the premises.

(p) It shall be unlawful for an Owner or Operator to not have a designated Owner or Operator on the premises at all times the Massage Establishment is open.

(q) It shall be unlawful for an Owner or Operator to engage in, conduct or carry on business of a Massage Establishment unless they have a policy of insurance issued by an insurance company authorized to do business in the State of California evidencing that the person is insured under a liability insurance policy providing minimum coverage of one million dollars (\$1,000,000.00) for injury or death to any person arising out of the operation of any Massage Establishment and the administration of a Massage. Evidence of such a policy should be available at inspection upon request.

(r) It shall be unlawful for an Owner or Operator to operate a Massage Establishment if the main entrance to a Massage Establishment is locked during posted business hours. An Owner or Operator shall ensure at least one employee or independent contractor directly observes the entrance, without use of camera surveillance equipment, to ensure access to the main entrance and to ensure the security of all patrons.

(s) It shall be unlawful for an Owner or Operator to operate a Massage Establishment if unless every employee or independent contractor of a Massage Establishment wears a uniform consistent with the service provided. The uniform shall be made of non-transparent material and may not expose any Specified Anatomical Area. Swimwear, lingerie, and undergarments may not be used as a uniform or displayed as part of a uniform.

Sec. 16A-8. Inspection by officials.

The investigating officials of the City shall have the right as otherwise provided for by law to enter the premises of a Massage Establishment from time to time during regular business hours for the purpose of making a reasonable inspection to enforce compliance with this Chapter.

Sec. 16A-9. Massage technician requirements.

(a) It shall be unlawful for any person to give, provide, or administer to another person for any form of consideration a Massage as defined in this Chapter at a Massage Establishment or any location removed from a Massage Establishment within the City without a valid CAMTC certificate.

(b) It shall be unlawful for a Massage Technician to practice Massage for any form of consideration within the City without providing their CAMTC certificate to the Department of Community Development as part of the business licensing process. The registration application shall include the i) Massage Technician's name, residence address and telephone number; ii) the employer name, work addresses and telephone number; and iii) a copy of the Massage Technician's CAMTC certificate.

(c) It shall be unlawful for any person to give, provide, or administer to another person for any form of consideration whatsoever a Massage as defined in this Chapter at a Massage Establishment or any location from a Massage Establishment within the City in the absence of a valid business license pursuant to Chapter 16 of the Escondido Municipal Code. A separate business license is required for each location if a Massage Technician works at multiple Massage Establishments.

(d) It shall be unlawful for a Massage Technician to provide any service not specifically listed on the Massage Establishment's posted list of services.

(e) It shall be unlawful for a Massage Technician to remove any article of the Massage Establishment uniform or other article of clothing as part of any service provided.

(f) It shall be unlawful for a Massage Technician to provide Massage when any Specified Anatomical Areas of either patron or Massage Technician are exposed.

(g) It shall be unlawful for a Massage Technician to touch the Specified Anatomical Area of a patron.

(h) It shall be unlawful for a Massage Technician to lock the door to the room where Massage is provided or to provide Massage unless no staff is available to ensure security for clients and massage staff.

(i) It shall be unlawful for a Massage Technician to accept direct payment or gratuity from any patron.

Sec. 16A-10—16A-15. Reserved.

ARTICLE C. ENFORCEMENT

Sec. 16A-16. Violations.

Violation of any provisions of this Chapter shall be treated as a strict liability offense, regardless of intent. Any person, firm or corporation violating any of the provisions of this Chapter is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in an amount not to exceed one thousand dollars (\$1,000.00), or imprisonment in the county jail not to exceed six (6) months, or both. Any violation may also be subject to civil penalties and any other legal remedy provided in this Code or state law.

Sec. 16A-17. Injunctive relief.

In addition to the legal remedies provided for in this code, the violation of any

provision of this Chapter shall be deemed a public nuisance, and may be enjoined by the City of Escondido.

Sec. 16A-18. 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 council hereby declares that it would have adopted the division 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.

SECTION 3. That effective January 1, 2013, Escondido Municipal Code Chapter 16A, Articles 1, 2, 3 and 4 are repealed.

SECTION 4. SEPARABILITY. If any section, subsection sentence, clause, phrase or portion of this ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions.

SECTION 5. That as of the effective date of this ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 6. That the City Clerk is hereby directed to certify to the passage of this ordinance and to cause the same or a summary to be published one time within 15 days of its passage in a newspaper of general circulation, printed and published in the City of Escondido.