

Chapter 6.41OPERATIONS PERMIT: MASSAGE TECHNICIAN6.41.010 Purpose.

A. It is the purpose of this Chapter to provide for the orderly regulation of massage technicians.

B. It is unlawful for any individual to give or administer, or offer to give or administer, a massage in violation of any of the provisions of this Chapter.

6.41.012 Exemption For Individuals.

A. An exempt individual may personally give or administer, or personally offer to give or administer, a massage without having an Operations Permit: Massage Technician and without complying with the regulations of the other Sections of this Chapter, so long as all massages that are part of the individual's massage business are given or administered while engaging in practices within the scope of the exempted individual's State license or holistic health practice.

B. Exempt Individuals. So long as the requirements of Subsection A are being met, for purposes of this Chapter, an "exempted individual" is one who is within one or more of the following categories:

1. A physician, surgeon, chiropractor, osteopath, acupuncturist or physical therapist who is licensed to practice their respective professions in the State of California, while engaging in practices within the scope of their license.
2. A registered nurse, practical nurse or licensed vocational nurse who is licensed to practice under the laws of the State of California, while engaging in practices within the scope of their license.
3. A barber or beautician who is licensed under the laws of the State of California while engaging in practices within the scope of their license.
4. HOLISTIC HEALTH PRACTITIONER, while engaging in practices within the scope of their practice. An "Holistic Health Practitioner" is a non-medical health care therapist who uses massage in a therapeutic approach to caring for clients. The practice of such health care therapist may include other services such as nutritional assistance or counseling as long as all massage activities are directed toward health care. 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 Issuing Authority to be registered and provide proof of:

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(a) Satisfactory completion of no less than one thousand hours of instruction in such specialty or therapeutic approach at a school whose curriculum is accredited by the State of California;

(b) Membership in a State or nationally chartered organization devoted to the specialty of 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;

(c) 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; and

(d) Evidence of passing 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.

(e) In addition to the above requirements, it is required that all Holistic Health Practitioners submit annually, to the City of Encinitas, proof of continued membership in a State or nationally chartered organization as stated in 6.41.010(b). (Ord. 2001-06).

6.41.020 Definitions. The definitions used in administering Operations Permit: Massage Business chapter of this Code are applicable to the administration of this Chapter.

6.41.030 Issuing Authority. The City Clerk is the Issuing Authority for Operations Permit: Massage Technician.

6.41.040 Application.

A. An application shall be filed with the Issuing Authority no less than 45 days prior to the proposed date for the commencement of the giving or administering of massages.

B. If, during the processing of the application, there is any change in information contained in the application, the applicant shall notify the Issuing Authority, in writing, within ten working days of such change. (Ord. 2001-06).

6.41.042 Contents of Application. The applicant for an Operations Permit: Massage Technician shall furnish the following information: (SDCC 66.510)

A. Name, residence address and telephone number. 6.41.042B
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B. The previous addresses of applicant, if any, for a period of five years immediately prior to the date of the application and the inclusive dates of residence at each. (Ord. 2001-06).

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 that the applicant is at least 18 years of age.

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

G. Whether the applicant has ever been convicted of any crime, except misdemeanor traffic violations. If the applicant has been so convicted, a statement 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. (see §6.41.050)

H. The business license or permit history of the applicant; whether the applicant, in previously operating in this or another county, city or state under license or permit, has had such license or permit suspended or revoked, the reason therefor, and the business activity or occupation subsequent to such suspension or revocation.

I. A certificate from a medical doctor 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 examination must be conducted and the certificate executed within 20 days immediately preceding the submission of the certificate to the City.

J. Four portrait photographs, at least two inches by two inches, taken within the six (6) month period immediately preceding the date of application.

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

6.41.044 Processing An Application. Upon receipt of the application, the Issuing Authority shall collect the authorized processing fee. (SDCC 66.507) The Issuing Authority shall

retain one photograph of the applicant to be attached to the permit. Then, the Issuing Authority shall deliver a copy of the application to the following:

A. To the Health Department to coordinate the applicant's taking of examinations, as required; and

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B. To the Sheriff's Department to conduct a review and background check and report on the applicant's suitability under this Chapter. The Issuing Authority shall send one photograph of the applicant to the Sheriff.

C. Such other identification and information as the Sheriff may require in order to discover the truth of the matters presented by the applicant. (Ord. 2001-06).

D. Fingerprints. The applicant must allow the Sheriff to fingerprint the applicant for the purpose of allowing a search through the Federal Bureau of Investigation and the California State Division of Criminal Identification and Investigation. (SDCC 66.510o). (Ord. 2001-06).

6.41.046 Fees.

A. The City Council, by resolution, shall establish application fees to cover the cost of processing applications and conducting pre-issuance inspections, investigations and examinations; and permit issuance fees for post issuance inspections and the enforcement of the provisions of this Chapter.

B. The amount of the fees shall include the charges fixed by the Health Department and Sheriff's Department for providing services to the City in the administration of this Chapter. (SDCC 66.531)

6.41.047 Qualifying Requirements. In order to be entitled to the issuance of an Operations Permit: Massage Technician, the applicant must satisfy the following requirements:

A. Ability To Massage. The applicant must present:

1. A diploma or certificate of graduation from a State-approved school teaching a massage specialty and a therapeutic approach in caring for clients and in which the applicant has satisfactorily completed 500 hours of instruction; or (Ord. 2001-06).
2. Evidence of lawful employment as a massage technician for no less than 1200 hours; and

3. 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. (SDCC 66.510l)

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B. Basic Knowledge. The applicant must 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 Officer shall advise the City of the results of such examination. (SDCC 66.510m)

6.41.048 Issuing of Operations Permit: Massage Technician.

- A. The Operations Permit: Massage Technician shall:
1. Identify the permittee;
 2. Identify the Massage Business for which the permittee will work;
 3. Identify the massage establishment, if any;
 4. Specifically permit off-premises massage service, if appropriate;
 5. Impose conditions that are reasonably necessary to the massage technician's compliance with the regulations of this Code;
 6. Specify a permit expiration date, one year from the date of issuance;
 7. Expressly state that while the Operations Permit: Massage Technician authorizes the person to give or administer massages, each person who gives or administers a massage must be part of a massage business which possesses and is in full compliance with the terms of, a validly issued, unexpired, and unrevoked Operations Permit: Massage Business;
 8. Have affixed to the permit a photograph of the permittee; and
 9. If appropriate, expressly note that the permittee is in a trainee status.

B. An Operations Permit: Massage Technician shall not be issued until the Issuing Authority has been notified in writing by the Health Department and the Sheriff that the applicant has fulfilled the requirements of this Title.

C. Unless otherwise specified, any license or permit issued under this Chapter shall expire one year from the date of issuance and shall be renewed by filing a renewal application not less than 40 days prior to the expiration date. (Ord. 2001-06).

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6.41.050 Denial of Application / Revocation of Permit.

A. In addition to the other standards stated in this Chapter and Title, the Issuing Authority may deny the application for a permit or revoke an issued permit if it is found that:

1. Within five years immediately preceding the date of the filing of the application, the applicant has been, or during the term of an issued permit is:

a. Adjudged to be a mentally disordered sex offender with a duty to register with the Sheriff or Chief of Police under Section 290 of the Penal Code;

b. Convicted of a violation of California Penal Code Section 266(h) (Pimping), 266(i) (Pandering), 314 (Indecent Exposure), 315 (Keeping or Residing in a House of Ill-Fame), 316 (Keeping a Disorderly House - Disturbing the Peace), 318 (Prevailing upon a Person to Visit Place for Gambling or Prostitution), 647(a) (Soliciting or Engaging in Lewd or Dissolute Conduct in a Public Place), 647(b) (Soliciting or Engaging in Prostitution), or 653.22 (Loitering with Intent to Commit Prostitution) of the Penal Code, or convicted in another state of any offense which, if committed or attempted in this State, would have been punishable as one or more of the heretofore mentioned offenses; or (Ord. 2001-06).

c. Any offense described in California Penal Code, Part One, Title 9, Chapters 7.5, Section 311 (Obscene Matter) and 7.6, Section 313 (Harmful Matter); or

d. Any offense described in California Penal Code, Part One, Title 8, Chapter 4, Section 211 (Robbery) , Title 13, Chapter 2, Section 459

(Burglary); Chapter 2, Section 487 (Grand theft) and Chapter 2, Section 484 (Larceny [Theft]); or (Ord. 2001-06).

e. Any drug related felony convictions as identified in Section 11054 and 11055 of the Health and Safety Code; or (Ord. 2001-06)

f. Has been convicted of a charge of violating any lesser included or lesser related offense, including California Penal Code section 415, in satisfaction of, or as a substitute for, an original charge of any of the offenses listed in Section 6.41.050 A.1. a, b, c, d, and e, or (Ord. 2001-06).

g. Any pending criminal charges listed in the above sections 6.41.050 a,b,c,d,e,f, upon conviction, subjects the license to denial or revocation. (Ord. 2001-06).

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h. Shown, by a preponderance of the evidence, to have violated the elements of one or more of the crimes listed in the previous subsections, 6.41.050 a through h.

2. In applying for the permit, the applicant provided false or materially misleading information or concealed information relevant to the City's decision to issue the permit; or

3. The applicant or permittee is not in compliance with the regulations of this Code.

4. Prior convictions for other offenses will be evaluated on a case by case basis and may be taken into consideration as a component of the denial. (Ord. 2001-06).

B. An application for a permit may be denied if there is a criminal charge pursuant to Section 6.41.050 pending against the applicant, unless the applicant has been previously operating as a massage technician in accordance with a permit issued under this Chapter and is applying for a subsequent permit to continue such operation.

C. If an application is denied, the applicant shall not reapply for an Operations Permit under Chapter 6.41 for a period of one year from the date of denial/revocation. (Ord. 2001-06).

6.41.080 Regulations: Giving/Administering Massage.

A. It is unlawful for a massage technician to give or administer, for commercial purposes, a massage unless such massage technician is in possession of, and is in full compliance with the terms of, a validly issued, unexpired, and unrevoked Operations Permit: Massage Technician:

B. It is unlawful for a massage technician to give or administer, for commercial purposes, a massage unless such massage technician:

1. Is in possession of, and is in full compliance with the terms of, a validly issued, unexpired, and unrevoked Operations Permit: Massage Business; or

2. Is a massage business employee of a person who is either: (a) in possession of, and is in full compliance with the terms of, a validly issued, unexpired, and unrevoked Operations Permit: Massage Business; or (b) is exempt from such requirement.

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C. It is unlawful for a massage technician to give or administer a massage unless the patron's specified anatomical areas are fully covered. (SDCC 66.510.1a)

D. Technician's Clothing. It is unlawful for a massage technician to give or administer a massage unless the technician is clothed so as to be 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. Except, shorts may be worn so long as the shorts 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 an opaque material and will be maintained in a clean and sanitary condition. (SDCC 66.510.1b)

E. It is unlawful for a massage technician, while performing any task or service associated with the business of massage, to intentionally touch the specified anatomical areas of another person. (SDCC 66.510.1c)

F. Instruments.

1. It is unlawful for a massage technician to commence the giving or administering of a massage unless there is, at the location of the massage, adequate equipment and agents, approved by the Health Department, for sterilizing and disinfecting any instruments to be used in giving or administering a massage.

2. It is unlawful for a massage technician to use an instrument in giving or administering a massage unless the instrument is first sterilized and disinfected using sterilizing methods, disinfecting agents and sterilizing equipment approved by the Health Department.

G. Posted Massage Services. It is unlawful for a massage technician to give or administer, or offer to give or administer, a massage service in a massage establishment when the service is not posted as required by this Chapter.

6.41.090 Technician Trainee.

A. A individual may apply for a conditional Operations Permit: Massage Technician to operate as a technician trainee by submitting the following:

1. Student Status. Proof from a recognized school of massage that the trainee applicant is currently enrolled, and has completed at least 25 hours of instruction in massage;

2. Supervision. A letter signed by the Massage Business Operator of a lawful massage establishment stating the immediate intent to employ the trainee applicant to do massage as a trainee working under the direct supervision and control of a lawful massage technician; and
3. The other application information requirements imposed in this Chapter.

B. To obtain a permit under this Section, the trainee applicant is not required to meet the qualifying requirements specified in subsections A and B of Section 6.41.047.

C. The trainee permit shall allow the trainee to give or administer a massage subject to the following: (SDCC 66.511)

1. The massage shall be given or administered only in a massage establishment identified in a validly issued, unexpired, and unrevoked Operations Permit: Massage Business;
2. The massage shall be given or administered only under the supervision and direction of a massage technician who is in possession of a validly issued, unexpired, and unrevoked Operations Permit: Massage Technician; and
3. The massage shall be given or administered only in full compliance with the regulations of this Chapter imposed on massages given or administered by a massage technician.

D. The trainee permit shall expire nine months from the date of issuance and shall not be renewed unless good cause is shown by the applicant for such renewal.

E. A massage technician shall not be designated as the supervisor of more than two trainees at any one time.

6.41.100 Regulations: Off-Premises. It is unlawful for a massage technician to provide, or offer to provide, an off-premises massage unless:

A. The massage technician is working as part of a massage business which is in possession of, and is in full compliance with the terms of, a validly issued, unexpired, and unrevoked Operations Permit: Massage Business;

B. The massage is offered to be given or administered in full compliance with the regulations of this Title;

C. The massage is given or administered in full compliance with the regulations of this Title; and

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D. Before the massage is given or administered, the massage technician presents to the patron a written document which lists the services available and the cost of such services. The services shall be described in readily understandable language. (SDCC 66.513q)

6.41.110 Grandfather Clause (Ord) 2001-06).

All persons holding a valid Massage Technician permit, or an Off-premise Massage Technician permit have four years from July 1, 2001, to meet the educational requirements contained in Section 6.41.047. Such persons must provide proof of compliance with the City Clerk by July 1, 2005 or their permit will be automatically revoked.

6.41.120 Appeal Process: (Ord. 2001-06).

If, after investigation, the Issuing Officer determines that the application should be denied, or the issued permit revoked, the Issuing Officer shall prepare a notice of denial or revocation of the application setting forth the reasons for such denial or revocation and an explanation of the process for appealing the decision. Such notice shall be sent by registered mail to the applicant's last address provided in the application.

Any person who has had an application for a Sheriff Regulated license or permit denied or revoked may request, in writing, a hearing from the Issuing Officer within 10 days after receiving the denial or revocation. The request for appeal must briefly explain the reasons which such a denial or revocation is not proper.

Upon receipt of such written request for appeal, the City Manager shall assign the appeal to a Hearing Officer and within 10 days, the hearing officer will set a hearing not more than thirty days from time of assignment. At such hearing the Issuing Officer and the appellant and/or their representative may present evidence relevant to the denial or revocation. The Hearing Officer shall notify the appellant in writing of the findings, conclusions of law and the final decision within 10 days.

The decision of the Hearing Officer may be appealed to the City Council per Encinitas Code Section 1.12 and a hearing will be held in closed session.