

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE AMENDING SECTION 15.21 OF CHAPTER 15 OF THE OCEANSIDE CITY CODE TO ADD AN EXEMPTION FROM THE MASSAGE LICENSE REQUIREMENTS OF CHAPTER 15 FOR CERTAIN MASSAGE THERAPISTS PURSUANT TO CHAPTER 10.5 OF THE BUSINESS AND PROFESSIONS CODE AND TO CLARIFY EXEMPTIONS FOR THOSE INDIVIDUALS WORKING UNDER THE DIRECTION OF HEALING ARTS PRACTITIONERS.

WHEREAS, SB 731 added Chapter 10.5 to the Business and Professions Code which prohibits a city or county from requiring that persons certified pursuant to Chapter 10.5 obtain a local license to practice massage therapy;

WHEREAS, The City Council accordingly desires to amend section 15.21 of the Oceanside City Code to provide an exemption from the City’s massage license provisions for those persons who are validly certified pursuant to the provisions of Chapter 10.5 of the Business and Professions Code;

WHEREAS, the City Council finds that the current exemptions in section 15.21 of the Oceanside City Code for “persons working under the direction” of healing arts practitioners has led to situations where healing arts practitioners, primarily chiropractors, have utilized this as a loophole to open massage establishments in their name, while the employees who are giving the massages are rarely, if ever, actually supervised by the healing arts practitioner;

WHEREAS, the City Council finds that the Oceanside Police Department has conducted approximately 75 checks at massage establishments run by chiropractors in the last 5 years. Of these, on at least 50 occasions the chiropractor was not present while massages were being given by otherwise unlicensed individuals. Oceanside Police Department has conducted undercover operations at these types of establishments licensed in the name of absentee chiropractors, made various prostitution related arrests, and have found that this practice has resulted in these types of establishments being fronts for prostitution;

WHEREAS, the City Attorney recently brought a nuisance abatement action against one such establishment with an absentee chiropractor under the Red Light Abatement law;

///

PE

1 WHEREAS, the City Council finds that the health, safety and welfare of the citizens of  
2 Oceanside is negatively impacted by allowing unlicensed individuals to give unsupervised  
3 massages;

4 WHEREAS, the City Council desires to amend section 15.21 to ensure that the existing  
5 exemption for persons working “under the direction” of persons licensed by the State to practice  
6 the healing arts is limited to those instances where the licensee is directly supervising and  
7 physically present at the premises where the massage is taking place;

8 WHEREAS, the City Council finds that in the 2002-2003 legislative session, California  
9 Government Code section 51033 was amended following the passage of Assembly Bill 15. The  
10 amendment clarified that local governments may continue to regulate independent contractors.  
11 According to a press release from the office of then-Governor Davis, the purpose of AB15 was  
12 to “stop massage services that are a front for prostitution, by authorizing local governments to  
13 require a business license for independent contractors who are employed by State licensed  
14 cosmetologists and health care professionals (primarily chiropractors)”; and

15 WHEREAS, pursuant to the express authority of Government Code section 51033  
16 allowing cities to regulate independent contractors to healing arts practitioners, the City Council  
17 desires to amend section 15.21 to exclude independent contractors from those individuals who  
18 are exempt from the licensing provisions of Chapter 15.21.

19 NOW, THEREFORE, the City Council of the City of Oceanside does ordain as follows:

20 SECTION 1. Section 15.21 of Chapter 15 of the Oceanside City Code is amended to  
21 read as follows:

22 Sec. 15.21. Exemptions.

23 The permits and licenses required by this article shall not apply to the following:

24 (1) Hospitals, nursing homes, sanitarium, or persons holding an unrevoked certificate to  
25 practice the healing arts under the laws of the State of California.

26 (2) Persons, other than independent contractors, employed by and while working at  
27 any establishment referenced in subsection (1).

28 ///

1           (3)    Persons, other than independent contractors or employees of persons listed under  
2 subsection (4), employed by and working under the immediate and direct supervision of a  
3 person holding an unrevoked certificate to practice the healing arts referenced in subsection (1)  
4 while the certificate holder is physically present at the premises where the massage is taking  
5 place.

6           (4)    Persons who are licensed by the Massage Therapist Organization or the California  
7 Massage Therapy Council pursuant to Chapter 10.5 (commencing with section 4600) of  
8 Division 2 of the Business and Professions Code, provided however, that such persons shall not  
9 be exempted from the provisions of this article if Chapter 10.5 is repealed.

10          (5)    Establishments or businesses that employ or use only persons who are licensed by  
11 the Massage Therapist Organization or the California Massage Therapy Council pursuant to  
12 Chapter 10.5 (commencing with section 4600) of Division 2 of the Business and Professions  
13 Code to perform massage, provided however, that such establishments or businesses shall not  
14 be exempted from the provisions of this article if Chapter 10.5 is repealed.

15          (6)    Nothing in this section shall relieve any person, establishment or business from  
16 the business license requirements of article I of this chapter. Any person, establishment or  
17 business claiming exemption from the provisions of this article under subsection (4) and or (5)  
18 of this section shall file a copy of the applicable license(s) issued by the Massage Therapist  
19 Organization or the California Massage Therapy Council with the business license division  
20 prior to performing any massage.

21           SECTION 2. Severability.

22           If any section, sentence, clause or phrase of this Ordinance is for any reason held to be  
23 invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision  
24 shall not affect the validity of the remaining portions of this Ordinance. The City Council  
25 hereby declares that it would have passed this ordinance and adopted this Ordinance and each  
26 section, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections,  
27 subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

28    ///

1 SECTION 3. The City Clerk of the City of Oceanside is hereby directed to publish this  
2 ordinance, or the title hereof as a summary, pursuant to state statute, once within fifteen (15)  
3 days after its passage in the North County Times, a newspaper of general circulation published  
4 in the City of Oceanside.

5 SECTION 4. This ordinance shall take effect and be in force on the thirtieth (30<sup>th</sup>) day  
6 from and after its final passage.

7 INTRODUCED at a regular meeting of the City Council of the City of Oceanside,  
8 California, held on the \_\_\_ day of \_\_\_\_\_, 2009, and, thereafter,

9 PASSED AND ADOPTED at a regular meeting of the City Council of the City of  
10 Oceanside, California, held on the \_\_\_ day of \_\_\_\_\_, 2009, by the following vote:

11 AYES:

12 NAYS:

13 ABSENT:

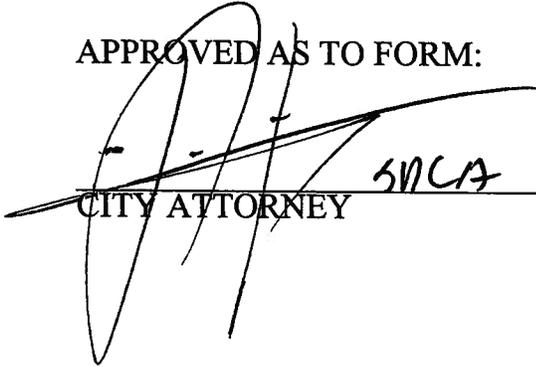
14 ABSTAIN:

15 MAYOR OF THE CITY OF OCEANSIDE

16  
17 ATTEST:

18 APPROVED AS TO FORM:

19 \_\_\_\_\_  
20 CITY CLERK

21   
22 \_\_\_\_\_  
23 CITY ATTORNEY *SNCA*

24  
25  
26  
27 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE AMENDING SECTION 15.21 OF  
28 CHAPTER 15 OF THE OCEANSIDE CITY CODE TO ADD AN EXEMPTION FROM THE MASSAGE LICENSE  
REQUIREMENTS OF CHAPTER 15 FOR CERTAIN MASSAGE THERAPISTS PURSUANT TO CHAPTER 10.5  
OF THE BUSINESS AND PROFESSIONS CODE AND TO CLARIFY EXEMPTIONS FOR THOSE  
INDIVIDUALS WORKING UNDER THE DIRECTION OF HEALING ARTS PRACTITIONERS.