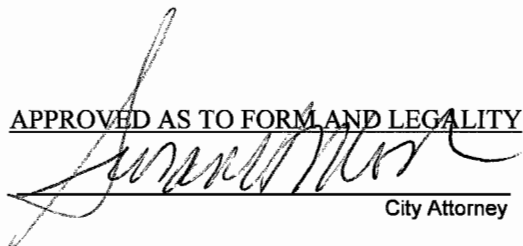


FILED
OFFICE OF THE CITY CLERK
OAKLAND

2008 DEC 22 AM 11:16

APPROVED AS TO FORM AND LEGALITY



City Attorney

OAKLAND CITY COUNCIL
ORDINANCE NO. 12914 C.M.S.

**An Ordinance Amending Oakland Municipal Code Chapter 5.36,
“Massage Establishments And Massage Therapists,” To Additionally Provide That:**

- A) Fully Clothed Chair Massage Conducted In Public View,**
- B) Offices Leased By Solo Practitioner Massage Therapists, And**
- C) Non-Massage Businesses That Lease Space To Solo Practitioner Massage Therapists Or That Offer Massage As An Incidental Service**

Are Exempt From The Requirement To Obtain A Massage Establishment Permit

WHEREAS, in 2005 the City adopted Ordinance No. 12675 C.M.S., which contained measures aimed at eliminating businesses that utilized the practice of massage as a cover for illegal activities such as prostitution and human trafficking; and

WHEREAS, those measures have been successful in enforcing against such businesses through the denial of their applications for massage establishment permits or revocation of existing permits; and

WHEREAS, one of the measures taken in 2005 was the elimination of most of the exemptions for Massage Establishment permits; and

WHEREAS, the City acknowledges that the vast majority of massage therapists are trained professionals, who conduct their practices legally and provide benefits to both the physical and mental health of their patrons; and

WHEREAS, many massage therapists practice massage therapy by leasing an office in a professional office building or a space in a non-massage business; and

WHEREAS, some businesses offer massage as an incidental service that is complementary to their principal business; and

WHEREAS, chair massage businesses perform massage on fully clothed patrons in public view; and

WHEREAS, under the current ordinance the aforementioned businesses are required to obtain Massage Establishment permits; and

WHEREAS, at an annual cost of over \$2,000.00 the requirement to obtain a Massage Establishment permit is a financial hardship to many solo practitioners; and

WHEREAS, this financial hardship has resulted in a number of solo practitioners refraining from obtaining their Massage Therapist Permits to avoid the Massage Establishment Permit requirement; and

WHEREAS, none of the aforementioned settings are conducive to the illegal activities that prompted the 2005 measures; and

WHEREAS, such businesses are still subject to fire and building codes to ensure the protection of the safety of their patrons; and

WHEREAS, the creation of three narrow exemptions will not alter the goals and purposes of the Massage Establishment Permit requirements; and

WHEREAS, the City Council finds and determines that the adoption of this Ordinance is exempt from CEQA under Sections 15061(b)(3) of the State CEQA Guidelines and authorizes the filing of a Notice of Exemption with the Alameda County Clerk.

WHEREAS, the creation of these exemptions will not weaken the enforcement tools available to prosecute illegal activity, regardless of the venue in which it occurs; now, therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. Oakland Municipal Code Chapter 5.36 is hereby amended to read as follows; additions are indicated by underscoring and deletions are indicated by ~~strike-through type~~;

5.36 MESSAGE ESTABLISHMENT AND MESSAGE THERAPISTS

5.36.020 Definitions.

As used in this chapter:

Applicant” is the individual or individuals applying for the massage establishment, massage therapist or massage therapist trainee permit. Only an owner or owners of a massage establishment may apply for a massage establishment permit.

“Chair massage” means massage given to a person who is fully clothed and sitting upright on a professional bodywork seat, a stool or office seat, wheelchair, or other chair-like device.”

“Disqualifying offense” means any offense which disqualifies an applicant from obtaining a permit pursuant to this chapter or which mandates revocation of the permit if the offender already holds a permit. Disqualifying offenses are:

1. Conviction, plea of nolo contendere, plea bargain, or forfeiture on a charge of violating Section 243.4, 266, 266(a)—266(k), 314, 315, 316, 318 or Section 647(B) of the Penal Code of the State of California;
2. Requirement to register under the provisions of Section 290 of the Penal Code of the State of California;
3. Conviction, plea of nolo contendere, plea bargain, or forfeiture pertaining to any felony offense involving the sale of a controlled substance specified in Section 11054, 11055, 11056, 11057 or 11058 of the Health and Safety Code of the state of California;

4. Violation of any provision of this chapter that has resulted in a suspension or revocation of any permit issued under chapter, or violation of a similar law in any other jurisdiction, within the past five years that has resulted in a suspension or revocation of a permit under that law;

5. Conviction, plea of nolo contendere, plea bargain, or forfeiture on a charge of committing a violent crime or a crime of dishonesty, fraud or deceit with an intent to substantially injure another;

6. Conviction, plea of nolo contendere, plea bargain, or forfeiture on a charge of human trafficking in violation of United States Code Title 18, Chapter 77, Sections 1590, 1591 or 1592; or

7. Making a false statement on a permit application.

“Employee” means anyone other than the owner or owners of a massage establishment or the massage therapists or massage therapist trainees that renders service to the permittee and receives direct compensation from that permittee but who does not provide massage services.

“Erogenous areas” means the genitals, the nipples, the areolas, and/or the anus.

“Home occupation solo practitioner” means a massage therapist that practices massage within his or her own residence or on an out-call massage basis. All home occupation solo practitioners are subject to the requirements for home occupation businesses under Section 5.36.070 and no more than two massage therapists may operate as home occupation solo practitioners in any single residence.

“Human trafficking” means all human trafficking activities defined under the Trafficking Victims Protection Act of 2000 and any activities that are defined as violations under United States Code Title 18, Chapter 77, Sections 1590, 1591 and 1592.

“Incidental service” means that no more than twenty-five percent of the business’ revenue is derived from massage nor more than twenty-five percent of the floorspace is devoted to massage.

“Manager” or “Operator” means the individual or individuals appointed by the owner or owners of a massage establishment that are clearly designated in the employee register as having authority and responsibility to supervise employee(s), massage therapists or massage therapist trainees.

“Massage” means any method of pressure on or friction against the soft parts of the human body, whether clothed or unclothed, including but not limited to stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating with hands or with the aid of a mechanical electrical apparatus or appliance, with or without supplementary aids such as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments, hot or cold packs, or other similar preparations commonly used in massage practice. Types of massage may include, but are not limited to activities commonly known as massage therapy, bodywork, acupuncture, reflexology, deep tissue touch, and shiatsu release.

“Massage establishment(s)” means any establishment having a fixed place of business where any person, firm, association, or corporation engages in, permits to be engaged in or carries on any of the activities mentioned in this chapter. Any establishment engaged in, permitted to be engaged in or carrying on any combination of massage and bath house or other activity mentioned in this chapter shall be deemed a massage establishment.

“Massage therapist” means any person who, for any consideration whatsoever, engages in the practice of massage as herein defined, whether in a massage establishment within the city, in their residence or on an out-call basis anywhere within the city.

“Massage therapist trainee” means any person enrolled in a “recognized school” that has not completed three-hundred (300) hours of coursework at a recognized school.

“Non-massage business” means a business in which the practice of massage is not the principal activity of the business but is an incidental service and subordinate to the principal activity.

“Out-call massage service” means any business that provides, refers or otherwise facilitates massage for any consideration at a nonfixed location. Any such business is not required to obtain a permit as a massage establishment under the provisions of this chapter.

“Owner” of a massage establishment, or an out-call massage service, means any person, firm, association, corporation, limited partnership, limited liability company or any other entity that operates, maintains, or permits a massage establishment or out-call massage service. To the extent the “owner” is any type of association, partnership, corporation or other entity, “owner” includes all publicly named or registered persons, officers, directors, managers and shareholders within those entities. Where the “owner” is one or more persons, each such person is jointly and severally liable for compliance with this chapter. Only the “owner” of a massage establishment can hold the massage establishment permit.

“Patron” means any individual who pays or gives any consideration in exchange for massage services.

“Permitee” means the holder of the massage establishment, massage therapist, or massage therapist trainee permit.

“Public nuisance” shall be defined by state law. A violation of Sections 5.36.100, 5.36.160, 5.36.190 or 5.36.250 shall also be considered a public nuisance.

“Recognized school” means a school of massage, recognized by the state of California which: (i) teaches the theory, ethics, practice, profession and work of massage; and (ii) requires a residence course of study to be given and completed before the student is furnished with a diploma or certificate of learning or completion; and (iii) has been approved by the state of California Consumer Affairs Bureau pursuant to Section 94915 of the Education Code, or, if said school is not located in California, has complied with the standards commensurate with those specified in said Section 94915, or a school of equal or greater training that is approved by the corresponding agency in another state, or accredited by an agency recognized by the United States Department of Education.

“Unrecognized school” means any school of massage that does not meet the definition of “recognized school” but teaches or purports to teach the theory, ethics, practice, profession or work of massage. (Ord. 12675 § 4 (part), 2005)

5.36.030 Exemptions.

A. Massage Establishments. Massage establishment permits required by this chapter shall not apply to or include the following:

1. Licensed hospitals, nursing homes, and sanitariums;
2. Recognized schools of massage;
3. Duly licensed athletic facilities;
4. Medical facilities in which massage is performed as prescribed treatment only on patients of the medical facility;
5. Residences of home occupation solo practitioners; or
6. Barbershops and beauty shops provided that any massage services performed or provided are incidental or accessory and within the scope of any barber’s or beautician’s state of California license.
7. Businesses where only chair massage is performed, and it is performed in public view.
8. Offices leased by solo practitioners for the practice of massage.
9. Non-massage businesses that lease space to a solo practitioner for therapeutic massage or that offer therapeutic massage as an incidental service.

B. Massage Therapists. Individuals that conduct massage in facilities exempt from massage

establishment permit requirements are required to have massage therapist permits, except as provided below:

1. Persons holding a valid certificate to practice the healing arts under the laws of the state of California including, but not limited to, holders of medical degrees such as physicians, surgeons, chiropractors, osteopaths, naturopaths, podiatrists, acupuncturists, physical therapists, registered nurses and vocational nurses;
2. Students in training at a recognized school of massage where the student performs massage only under the direct personal supervision of an instructor certified by the California Department of Consumer Affairs Bureau for private post secondary and vocational education; or
3. Barbers and beauticians licensed under the laws of the state of California to provide massages to the neck, face, scalp, feet (up to the ankle), or hands (up to the wrists) while engaging in practices within the scope of their licenses.

C. Massage as an Incidental or Accessory Activity. Businesses that offer massage as an incidental or accessory service to their primary business services offered, as determined by the City Administrator, shall be required to comply with all provisions of this chapter, except that they shall be exempt from any requirements under this chapter that applies to employees or advertisements. (Ord. 12675 § 4 (part), 2005)

SECTION 2. Effective date: This ordinance shall become effective immediately upon final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA, FEB 17 2009, 20


PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and ~~PRESIDENT~~ DE LA FUENTE - 8

NOES- 0

ABSENT- 0

ABSTENTION- 0

ATTEST: 
 LaTonda Simmons
 City Clerk and Clerk of the Council
 of the City of Oakland, California

Introduction Date: JAN 20 2009

DATE OF ATTESTATION: 2/23/09