

CITY OF OAKLAND
AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2008 DEC 22 AM 11:16

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Administrative Hearing Officer
DATE: January 13, 2009

RE: **Adopt an Ordinance Amending Oakland Municipal Code (OMC) Chapter 5.36, "Massage Establishments and Massage Therapists," to 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

SUMMARY

On June 21, 2005 the City Council adopted a number of amendments to the OMC chapter that regulates permitting of massage establishments and massage therapists. The overall goals of the amendments were to recognize and encourage legitimate massage enterprises while providing the City with more effective tools for eliminating illegal activity. The closure of massage establishments that were acting as fronts or protection for prostitution services indicates that the ordinance provided the proper tools to accomplish the latter goal.

Among the 2005 amendments was the elimination of most Massage Establishment Permit exemptions. This unexpectedly had a chilling effect on legitimate practitioners, including some who had worked with and supported staff in the drafting of the 2005 amendments. Many solo practitioner massage therapists, who rented space in professional offices or health and beauty related businesses found that either they or the business were now subject to the requirement to obtain a Massage Establishment Permit at a cost exceeding \$2,000.00¹ annually.

The result was that many legitimate massage therapists stopped obtaining or renewing their Massage Therapist Permits for fear that they would be subjecting themselves to an unmanageable, ongoing expense. Additionally, since 2005, fully clothed chair massage businesses have opened at airports, shopping malls, and other public places. The Whole Foods store in Oakland would like to offer this service, but, under the existing ordinance, would be required to obtain a Massage Establishment permit to do so.

The proposed amendments are aimed at 1) retaining the tools the City established for eliminating illegal activity, 2) encouraging innovative evolutions within the therapeutic massage industry,

¹ Not including the required fire inspection fee, the cost of a Massage Establishment Permit is \$2,010.36 annually. The cost of a Fire Inspection varies by facility but averages \$150.00

Item: _____
Public Safety Committee
January 13, 2009

and 3) removing the financial disincentive for solo practitioners to acquire Massage Therapist permits, through a structure that ensures the health and safety of their patrons at a manageable cost to their business.

Staff proposes that fully clothed chair massage conducted in public view, professional offices leased by solo practitioner massage therapists, and non-massage businesses that lease space to solo practitioner massage therapists be exempt from the requirement to obtain a Massage Establishment permit. Such businesses would still be required to obtain the appropriate zoning clearances, fire inspections, business tax certificates, and all other requirements aimed at ensuring that Oakland businesses operate safely and to the benefit of the City, as well as of the business operators.

FISCAL IMPACT

On the surface the exemption of many businesses from the requirement to pay an annual permit fee of over \$2,000 would result in reduced revenues. However, staff anticipates that this will not be the case. Based on reports of solo practitioner massage therapists avoiding the Massage Therapist permitting process due to fear that they will be required to also obtain a Massage Establishment permit, staff anticipates there could be a slight increase in revenues. The revenue obtained for an initial massage therapist permit application is \$100. Annual renewals are \$50, so the total is not likely to be significant. No additional costs or staffing are anticipated if these exemptions are adopted.

BACKGROUND

The 2005 amendments to the Massage ordinance were extensive. They focused on closing loopholes and gaps that had resulted in the criminal prosecution of massage therapists who engaged in prostitution but allowed owners of the businesses to continue operating and to employ others who would engage in the same illegal activities. Staff received reports from massage therapists of managers who would tell them that they had to do whatever the customer asked. These reports supported changes to hold Massage Establishment management more accountable for all aspects of their businesses.

During the drafting of the 2005 amendments, staff worked closely with focus groups consisting of message therapists as well as massage establishment owners. All agreed that the major goals were the encouragement of legitimate massage and the elimination of illegal activity. However, because of the perceived deficiencies in the City's enforcement ability, the focus was on changes that would increase the enforcement bases and options available to the City.

In 2005 the Bay Area was identified as an area in which human trafficking was occurring on a large scale and well organized basis. Amendment provisions were therefore included requiring

Item: _____
Public Safety Committee
January 13, 2009

more visibility of operations, such as daily staffing and clientele logs and a prohibition of locks on doors and warning devices.

The requirement to obtain a Conditional Use Permit for a Massage Establishment was eliminated in 2005. Massage Establishment permits are therefore no longer permanent land use rights, but are instead non-transferrable personal permits, with each new owner being required to establish their fitness to operate a massage business.

In place of the Conditional Use Permit the 2005 amendments established zoning and distance requirements. Massage Establishments must be in commercial, industrial, or manufacturing zones. Unless the City Administrator issues written findings that the establishment will not have an impact on public safety or neighborhood quality of life, massage establishments must also be at least 1000 feet from schools, libraries, youth centers, parks and recreation facilities, and other massage establishments. The last criterion ensures that the potential “attractive nuisance” aspect of a “massage ghetto” is not created.

Another of the 2005 amendments established that a violation of the chapter by employees of a massage establishment was also a violation by the owner. Utilizing this provision, the permits of two of Oakland’s eight permitted massage establishments were revoked after stings by the Oakland Police Department revealed ongoing prostitution. A third establishment that had long operated under a “healing arts” exemption was denied a permit after the exemption was eliminated in 2005 and a police sting, conducted while that establishment was applying for a permit, uncovered prostitution activity.

The “healing arts” exemption is an example of the abuse that can occur if exemptions are too broad. However, staff believes that the exemptions proposed in this report are narrow enough that they can be administered without re-creating the problems experienced prior to the 2005 amendments. Oakland also has both criminal and administrative enforcement tools that can be utilized to eliminate illegal activity, should any emerge.

KEY ISSUES AND IMPACTS

Fully Clothed Chair Massage Conducted in Public View

If chair massage conducted in public view had been prevalent in 2005, it would likely have been exempted at that time. Such businesses are relatively new to the massage scene but have increased greatly in popularity. Both the requirements that the patron remain clothed in a chair or chair-like device and that the massage be given in public view will significantly reduce the possibility of 1) sexual massage, 2) vulnerability of unclothed patrons to robbery or other crimes, and 3) the other concerns behind the requirement for Massage Establishments to obtain special business activity permits.

Item: _____
Public Safety Committee
January 13, 2009

Chair massage is often conducted in non-massage business settings, as the current interest of Whole Foods indicates. However, a chair massage business, even if operating in its own space, does not present the issues that create many of the Massage Establishment permit requirements. For example, permitted Massage Establishments must disinfect bathtubs after each use and shower rooms daily. The assumption is that patrons may desire to shower or bathe after massage, as unclothed massage often involves the application of unguents and oils to the body. Such facilities are not needed and generally not present in a facility that offers only chair massage.

The exemption of this type of business from the requirement for a Massage Establishment permit would not exempt the massage therapists who practice such massage. They would continue to be subject to the Massage Therapist permit requirements of criminal background checks, employment history, proof of ability to work in the United States, and educational requirements that ensure that they are not only adequately trained but also do not have a record of conduct that could be detrimental to their patrons.

Offices Leased by Solo Practitioner Massage Therapists

When the 2005 amendments were adopted, a provision was included to permit massage therapy as a home occupation. Solo practitioner therapists practicing from their homes are exempt from the Massage Establishment permit requirement.

The City's Massage Therapist Permit records indicate that the majority of massage therapists work as solo practitioners, not as employees or contractors in larger massage businesses. Many of these therapists, however, do not operate from their homes, either because they have no suitable space or because they have established their practices outside of their homes.

Solo practitioners who operate on an outcall basis, in which the therapist goes to a home or business to administer the massage, have never been subject to obtaining Massage Establishment permits – it would be totally impractical and impossible to administer a system that inspected and approved each location in which a therapist practiced. Many other solo practitioners, however, lease spaces in professional office buildings, particularly those offices located nearby and associated with hospitals and other medical facilities, and have built a clientele that includes many referrals from medical professionals.

Under the current ordinance, the office spaces of solo practitioners are subject to the requirement to obtain a Massage Establishment permit. These permits should not be required, as the practitioners and their offices present few of the characteristics that provide the basis for the City's interest in regulating Massage Establishments. 1) As the designation "solo practitioner" indicates, these therapists do not employ others, so there is no concern that they will be engaging in human trafficking to provide massages or requiring others to prostitute themselves. 2) Their offices most often have no signage that is visible outside of the building, so there is no concern

Item: _____
Public Safety Committee
January 13, 2009

about the potential attractive nuisance component of too many massage establishments. 3) Their facilities normally consist only of therapy rooms and small office spaces. The leased spaces contain no bathing, showering or toilet facilities or the sanitation concerns that accompany such facilities. If these facilities are provided they are provided for and maintained by the building as a whole.

Like chair massage therapists, solo practitioners would be required to obtain Massage Therapist Permits to ensure that they have the appropriate training and that their backgrounds are free of criminal wrongdoing that would pose a threat to their clients. Additionally, like all Oakland businesses, their offices would be subject to compliance with building codes and inspections by the Oakland Fire Department to ensure the physical safety of their patrons.

Finally, because illegal activity can occur even under the best regulatory scheme, any reports of illegal activity at such businesses would be referred to the Oakland Police Department, with permits revocable upon documentation of such illegal activity. Revocation of an Oakland Massage Therapist permit for illegal activity has far-reaching ramifications, as most California cities conduct state-wide criminal background checks prior to issuing permits. Oakland can also invoke the tool of Nuisance Enforcement against the property owner, should evidence of ongoing illegal activity emerge.

Non-massage Businesses That Lease Space to Solo Practitioner Massage Therapists or That Offer Massage as an Incidental Service

Although the Whole Foods situation was listed under the topic of “Fully Clothed Chair Massage Conducted in Public View”, it is also an example of a business that is not primarily a massage business but leases space to massage therapists to provide services that is incidental to but complementary with its principal services. Other types of businesses that do this include hair salons, nail salons, and “day spas.” Under the current ordinance all of these businesses would be required to obtain a Massage Establishment Permit.

Businesses that lease space to solo practitioner massage therapists

As with the solo practitioners who lease their own office space, non-massage businesses that lease space to solo practitioners present few of the issues that prompt the regulation of massage establishments. 1) They are not the employer of the massage therapist and are therefore not in a position to exploit or traffic the therapist. 2) Their business is not representing itself as a massage business in terms of major signage and advertising. 3) Their revenues from massage services are a small proportion of their total business. 4) Their facilities may also be subject to inspection by the Alameda County Health Department. 5) Their facilities are subject to Oakland’s building and fire codes.

Businesses that offer massage as an incidental service

Prior to the 2005 amendments, businesses that offered massage as an incidental service were exempted from the massage establishment requirement. Although staff agrees with the removal of the “healing arts” exemption, as discussed above, staff believes the incidental service exemption should remain. Unlike some of the businesses that functioned under the “healing arts” exemption, staff never received complaints of illegal activity in businesses that functioned under the “incidental services” exemption.

The only policy-related difference between non-massage businesses that lease space to solo practitioner therapists and businesses in which massage is an incidental service is the employment aspect. In the case of an “incidental service”, the business owner could be the employer of the massage therapist, and therefore in a position to influence the massage therapist’s conduct. However, because massage is not the primary revenue source for such businesses, there is less incentive for the business owner to promote illegal activities for the financial benefit gained.

The businesses exempted prior to 2005 on the basis that massage was an “incidental service” fell into the following categories:

<u>Type of Business</u>	<u># of Exemptions</u>	<u>Current Status</u>
Sports Club	2	Exempt under 2005 ordinance
Beauty Salon	4	Establishment permit required
Day Spa	2	Establishment permit required

Like the other categories of proposed Massage Establishment exemptions, the exemption for non-massage businesses would not apply to the Massage Therapist permit. Regardless of the venue in which they practice, massage therapists who practice in Oakland are required to meet the application requirements and to obtain and annually renew their Massage Therapist Permits. Also, like the other categories of proposed exemptions, reports of illegal activity would be referred to the police for confirmation and prosecution. Additionally, as with solo practitioners who lease their own office spaces, the City has the tool of Nuisance Enforcement available, should illegal activity occur on an ongoing basis.

SUSTAINABLE OPPORTUNITIES

Economic: The proposed exemptions will encourage legitimate solo practitioner massage therapists to maintain their permits, without fear of subjecting their offices to the expense and inapplicable requirements of Massage Establishment permits. They will also encourage non-massage businesses, whether they are Whole Foods or the local beauty shop, to expand their services. All of these activities will increase Oakland’s economic base.

Item: _____
Public Safety Committee
January 13, 2009

Environmental: Massage is known to reduce stress levels in its patrons. A less-stressed citizenry makes for more pleasant social interactions in our local physical environment.

Social Equity: Therapeutic massage offers psychological and physical benefits to its patrons. The proposed exemptions will allow legitimate solo practitioners to promote their services more openly, without fear of significant annual financial cost, and therefore be more available to Oakland's citizenry in general, not just those who have established connections to a therapist by referral. It will also make these benefits more available in public settings, also increasing general access by the public. Increased availability may also create a side effect of reduced prices, thereby expanding the base of those who can afford to access the services.

DISABILITY AND SENIOR CITIZEN ACCESS

Senior citizens who can benefit from therapeutic massage should see these services more publicly available as a result of the proposed exemptions.

RECOMMENDATION AND RATIONALE

Staff recommends that the City Council adopt an ordinance amending Oakland Municipal Code (OMC) Chapter 5.36, "Massage Establishments and Massage Therapists," to 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.

The rationale for this recommendation is primarily that these types of businesses do not present the same issues or concerns that prompt the requirement for a massage establishment permit. In the case of clothed chair massage, there is not the same concern for the vulnerability of the patron that exists in the case of unclothed massage. In the case of sole proprietors, there is no concern regarding the exploitation of employees. In the case of businesses that offer massage as an incidental service, there is less financial motivation to promote illegal activity in a service that constitutes a minor part of the business.

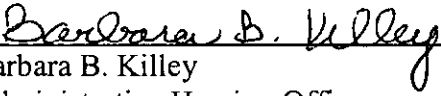
In all of the proposed exemption situations, the businesses remain subject to all Oakland building and fire code requirements, and the therapists must obtain massage therapist permits. In the event that illegal activity should occur, Oakland has the tools of criminal enforcement and administrative nuisance abatement available.

ACTION REQUESTED OF THE CITY COUNCIL

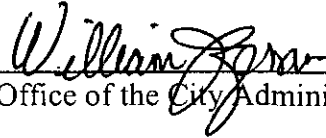
Staff requests that the City Council:

- 1) Accept this report
- 2) Adopt the proposed Ordinance amendments

Respectfully submitted,


Barbara B. Killey
Administrative Hearing Officer

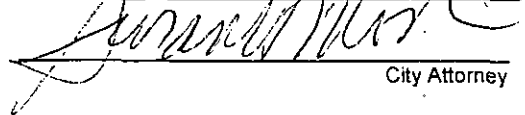
APPROVED AND FORWARDED TO THE
PUBLIC SAFETY COMMITTEE


Office of the City Administrator

Item: _____
Public Safety Committee
January 13, 2009

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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. _____ 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, acupressure, 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, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

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

DATE OF ATTESTATION: _____