



Meeting Date: 12 /06/11

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input checked="" type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input type="checkbox"/> Public Hearing (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Prepared By: Tammy Gutierrez, Treasury Supervisor *ed* Agenda Item No. **I-6**

Reviewed By: City Manager *[Signature]* City Attorney *[Signature]* Finance *[Signature]* Other (Specify) *J. Cameron*

**DATE:** November 23, 2011

**TO:** City Council

**FROM:** Danielle Navas, City Treasurer *Edmeri for Danielle Navas*  
City Treasurer's Office

**SUBJECT:** Amendments to Ordinance Regulating Massage Professionals and Massage Businesses or Establishments

**RECOMMENDATION**

That City Council approve the first reading by title only and subsequent adoption of an ordinance amending the title of Article IV of Chapter 11, Sections 11-140, 11-141, 11-241, and 11-247, subdivision (B) of Section 11-157, and subdivision (G) of Section 11-232 of the Oxnard City Code ("OCC"), repealing and readopting Sections 11-143, 11-233, and 11-234 and subdivision (I) of Section 11-242 of the OCC, and repealing Sections 11-235 and 11-236, subdivisions (C) and (D) of Section 11-234 and the last sentence of subdivision (A) of Section 11-246 of the OCC regarding the regulation of massage professionals and massage businesses or establishments.

**DISCUSSION**

Assembly Bill No.619 was adopted in August 2011, will become effective on January 1, 2012, and amends certain provisions of Business and Professions Code Sections 4600 et seq., relating to massage therapy. The revisions to State law effectively limit the manner in which cities may regulate massage businesses or establishments that are sole proprietorships, where the sole proprietor is certified by the California Massage Therapy Council ("CAMTC"), and massage businesses or establishments that employ or use only persons certified by the CAMTC to provide massage therapy. The proposed ordinance would revise current provisions of the OCC related to CAMTC certified sole proprietors and CAMTC certified massage businesses and establishment to be consistent with State law.

In addition, the City currently issues permits to persons who practice massage therapy but who are not certified by the CAMTC and to massage businesses and establishments that employ or use persons who are not certified by the CAMTC. The proposed ordinance would eliminate the issuance of City permits and would require that all persons who practice massage therapy in the City be certified by the CAMTC. Requiring that all persons who practice massage therapy be certified by the CAMTC

eliminates the need for two different sets of regulations – one set for those who are certified by the CAMTC and one set for those who receive permits issued by the City. In addition, the CAMTC is able to verify that required schooling at a CAMTC approved school and training have been met by certificate applicants, while City staff has had a very difficult time verifying such information.

Although the proposed ordinance would require that all persons who practice massage therapy be certified by the CAMTC, the proposed ordinance would also provide one year for massage technicians that are not certified by the CAMTC but who hold a valid massage technician permit issued by the City to become certified by the CAMTC. In addition, the proposed ordinance would provide one year for operators of city permitted massage businesses or establishments to comply with the requirement that all individuals who perform massage therapy be certified by the CAMTC.

#### **FINANCIAL IMPACT**

The elimination of massage technician and establishment permits would result in a loss of revenue for FY 12/13 of approximately \$2,340.00.

TG/jd

Attachment #1 - Ordinance

ORDINANCE OF THE CITY OF OXNARD

ORDINANCE NO. \_\_

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OXNARD AMENDING THE TITLE OF ARTICLE IV OF CHAPTER 11, SECTIONS 11-140, 11-141, 11-241, AND 11-247, SUBDIVISION (B) OF SECTION 11-157, AND SUBDIVISION (G) OF SECTION 11-232 OF THE OXNARD CITY CODE, REPEALING AND READOPTING SECTIONS 11-143, 11-233, AND 11-244, AND SUBDIVISION (I) OF SECTION 11-242 OF THE OXNARD CITY CODE, AND REPEALING SECTIONS 11-235 AND 11-236, SUBDIVISIONS (C) AND (D) OF SECTION 11-234, AND THE LAST SENTENCE OF SUBDIVISION (A) OF SECTION 11-246 OF THE OXNARD CITY CODE CONCERNING THE REGULATION OF MASSAGE PROFESSIONALS AND MASSAGE BUSINESSES OR ESTABLISHMENTS

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The City Council of the City of Oxnard does ordain as follows:

**Part 1.** The title of Article IV of Chapter 11 of the Oxnard City Code is hereby amended to read as follows:

**“ARTICLE IV. DANCE PERMIT PROCEDURES”**

**Part 2.** Section 11-140 of the Oxnard City Code is hereby amended to read as follows:

“The purpose of this article is to establish a procedure for processing dance permits required by article V of this chapter.”

**Part 3.** Section 11-141 of the Oxnard City Code is hereby amended to read as follows:

“The license collector shall provide each applicant for a dance permit with a form specifying the information required for the permit. The city shall begin processing an application when the completed form, the applicable fee, and documents required are provided to the license collector.”

**Part 4.** Section 11-143 of the Oxnard City Code is hereby repealed and readopted to read as follows:

**“SEC. 11-143. ISSUANCE OF PERMIT.**

If the reports state no basis on which the permit cannot be issued and state no corrective action that must be taken before the permit can be issued, the license collector shall issue the permit, subject to any conditions recommended by the service providers.”

**Part 5.** Subdivision (B) of Section 11-157 of the Oxnard City Code is hereby amended to read as follows:

“(B) If an expiration date is specified in the permit, the permit shall expire on that date. Unless the permit was issued for a specific event or events, a massage technician permit issued before January 1, 2012, a massage establishment permit issued before January 1, 2012, and any dance permit may be renewed in the following manner:”

**Part 6.** Subdivision (G) of Section 11-232 of the Oxnard City Code is hereby amended to read as follows:

“(G) MASSAGE PRACTITIONER – Any person to whom a massage therapy certificate has been issued pursuant to Cal. Business and Professions Code, Section 4601, subdivision (b), paragraph (1) and who is engaged in the practice of massage therapy for compensation.”

**Part 7.** Section 11-233 of the Oxnard City Code is hereby repealed and readopted to read as follows:

**“SEC. 11-233. MASSAGE THERAPY CERTIFICATE REQUIRED; RENEWAL OF MASSAGE ESTABLISHMENT AND TECHNICIAN PERMITS; TECHNICIAN IDENTIFICATION BADGES REQUIRED; FEES.**

(A) No person shall perform massage or massage therapy without a valid massage therapy certificate issued pursuant to Cal. Business and Professions Code, Section 4601.

(B) No person shall operate a massage business or establishment or allow a massage business or establishment to operate unless each person who performs massage or massage therapy at that business or establishment has a valid massage therapy certificate issued pursuant to Cal. Business and Professions Code, Section 4601.

(1) Any owner or operator of a massage business or establishment who owns five percent or more of the massage business or establishment and who does not hold a valid massage therapy certificate issued pursuant to Cal Business and Professions Code, Section 4601, shall submit an application for a background check to the license collector. Fees for background checks shall be established by resolution of the city council.

(2) An application for a background check pursuant to paragraph (1) of subdivision (B) of this section shall contain the following information:

(a) The applicant’s full legal name and any name used by the applicant at any other time;

(b) The applicant’s date of birth;

(c) The name and telephone number of the massage business or establishment and the street address where the massage business or establishment is to be conducted;

(d) The applicant's occupation;

(e) The employment history, with dates of employment, of the applicant for the five years preceding the date of the application;

(f) The name and address of any massage business or establishment or other similar establishment owned or operated by the applicant; and

(g) The applicant's fingerprints.

(C) Notwithstanding subdivision (A) of this section, any person who holds a valid massage technician permit as of January 1, 2012, may operate as a massage technician until such permit expires. If such permit expires before December 31, 2012, the permittee may file an application with the license collector to renew the permit, which shall expire on December 31, 2012. Fees to renew such permits shall be established by resolution of the city council.

(D) Notwithstanding subdivision (B) of this section, any person who holds a valid massage establishment permit as of January 1, 2012, may operate a massage business until such permit expires. If such permit expires before December 31, 2012, the permittee may file an application with the license collector to renew the permit, which shall expire on December 31, 2012. Fees to renew such permits shall be established by resolution of the city council.

(E) If a permittee holds a valid massage technician permit for more than one location as of January 1, 2012, the permittee must renew any permit that expires before December 31, 2012, pursuant to subdivision (C) of this section for any location where the permittee intends to provide massage therapy until such renewed permit expires.

(F) While providing any massage therapy, all massage technicians shall display in a visible location in an area between the shoulder and the waist on the front of outer clothing worn by the massage technician an identification badge issued by the license collector."

**Part 8.** Subdivisions (C) and (D) of Section 11-234 of the Oxnard City Code are hereby repealed.

**Part 9.** Section 11-235 of the Oxnard City Code is hereby repealed.

**Part 10.** Section 11-236 of the Oxnard City Code is hereby repealed.

**Part 11.** Section 11-241 of the Oxnard City Code is hereby amended to read as follows:

“It shall be unlawful for any massage business or establishment owned and/or operated by a permittee to employ any persons under 18 years of age or to provide massage therapy to any person under 18 years of age, except at the special instance and request of a parent, guardian, or other person in lawful custody of said minor.”

**Part 12.** Subdivision (I) of Section 11-242 of the Oxnard City Code is hereby repealed and readopted to read as follows:

“(I) In each enclosed room or cubicle where massage therapy is administered and in the designated reception or payment area, a sign easily visible to customers shall be posted stating, “THIS MASSAGE ESTABLISHMENT AND THE MASSAGE ROOMS DO NOT PROVIDE COMPLETE PRIVACY AND ARE SUBJECT TO INSPECTION BY CITY, COUNTY, AND/OR HEALTH OFFICIALS WITHOUT PRIOR NOTICE.” Such signs shall be printed with letters that contrast against the background material and measure not less than one-half inch in height.”

**Part 13.** Section 11-244 of the Oxnard City Code is hereby repealed and readopted to read as follows:

**“SEC. 11-244. HEALTH AND SAFETY REQUIREMENTS.**

(A) The following health and safety requirements shall be applicable to all massage businesses and establishments described in Cal. Business and Professions Code, Section 4612, subdivision (b), paragraph (1):

(1) An adequate supply of clean sanitary towels, coverings, and linens shall be available at all times, and all massage tables shall be covered with a clean sheet or other clean covering for each customer. After a towel, covering, or linen has been used for one customer, it shall be deposited in a closed receptacle and not used until properly laundered and sanitized. Clean towels, coverings, and linens shall be stored in closed, clean, cabinets when not in use.

(2) All massage therapy rooms or cubicles, wet and dry heat rooms, steam rooms, toilet facilities, shower compartments, hot tubs, and pools shall be thoroughly cleaned and disinfected as needed and each day the business or establishment is in operation. All bathtubs shall be thoroughly cleaned and disinfected after each use.

(3) All liquids, creams, or other preparations used on or made available to customers shall be kept in clean and closed containers. Powders may be kept in clean shakers. All bottles and containers shall be distinctly and correctly labeled to disclose their contents. When only a portion of a liquid, cream, or other preparation is to be used on or made available to a customer, it shall be removed from the container in such a way as not to contaminate the remaining portion.

(4) All bathrobes or other garments that are provided for the use of customers shall be either fully disposable and shall not be used by more than one customer or shall be laundered and sanitized after each use.

(5) All footwear such as sandals or flip-flops that are provided for the use of customers shall be either fully disposable and shall not be used by more than one customer or shall be fully disinfected after each use.

(6) All combs, brushes, and/or other personal items of grooming or hygiene that are provided for the use of customers shall be either fully disposable and shall not be used by more than one customer or shall be fully disinfected after each use.

(7) The customer's genitals, public area, anus, and female patron's breasts below a point immediately above the top of the areola must be fully draped at all times while any employee of the business or establishment is in the massage therapy room or cubicle with the customer. No massage therapy shall be provided to a customer that results in intentional contact or occasional and repetitive contact with the genitals, anus, or areola of a customer.

(B) The following health and safety requirements shall be applicable to all massage businesses and establishments owned and/or operated by permittees:

(1) All requirements set forth in subdivision (A) of this section.

(2) Only one customer and only one massage technician shall be present in the massage room or cubicle from the time the customer enters the massage room or cubicle until the customer exits the massage room or cubicle.

(3) Notwithstanding any provision set forth in this article, only customers, managers, employees, massage technicians, and permittees shall be permitted in any massage room or cubicle or any break room or rest area during operating hours."

**Part 14.** The last sentence of Subdivision (A) of Section 11-246 of the Oxnard City Code, which reads as follows, is hereby repealed:

"Said inspections shall not include massage rooms or cubicles occupied by customers at the time of the inspection."

**Part 15.** Section 11-247 of the Oxnard City Code is hereby amended to read as follows:

"The permittee of any massage business or establishment shall be responsible for the conduct of all employees, agents, independent contractors, or other representatives of the business or establishment while such persons are on the premises of the business or establishment."

**Part 16.** Within 15 days after passage, the City Clerk shall cause this ordinance to be published one time in a newspaper of general circulation within the city. Ordinance No. \_\_\_\_ was first read on \_\_\_\_\_, 20\_\_ and finally adopted on \_\_\_\_\_, 20\_\_ to become effective thirty days thereafter.

AYES:

NOES:

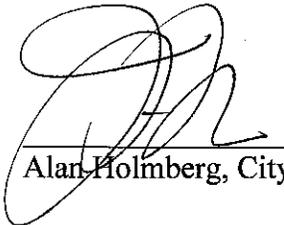
ABSENT:

\_\_\_\_\_  
Dr. Thomas E. Holden, Mayor

ATTEST:

\_\_\_\_\_  
Daniel Martinez, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Alan Holmberg, City Attorney  
for  
11.20.11