



Meeting Date: 2/2/10

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

Agenda Item No. I-2

Reviewed By: City Manager

City Attorney

Finance

Other (Specify)

DATE: January 20, 2010

TO: City Council

FROM: Danielle Navas, City Treasurer
City Treasurer's Office

SUBJECT: 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 Subdivision (J) of Section 11-232, the first sentence and Subdivision (C) of Section 11-234, Subdivision (B) of Section 11-235, Subdivision (B) of Section 11-236, Subdivision (B) and (C) of Section 11-238, the title and first paragraph of Section 11-242, Subdivisions (C) and (D) of Section 11-244, and Subdivision (A) of Section 11-246 of the Oxnard City Code ("OCC"), repealing and readopting Subdivision (B) of Section 11-157, Subdivision (E) of Section 11-235, and Sections 11-239 and 11-243 of the OCC, and adding Subdivision (G) of Section 11-235, Subdivision (D) of Section 11-236 and Section 11-248 to the OCC regarding massage professionals and massage businesses or establishments.

DISCUSSION

Senate Bill No. 731 was adopted in 2008 to provide uniform standards concerning the education, training, and licensing of massage practitioners and massage therapists in the State of California. Beginning on September 1, 2009, the California Massage Therapy Council ("CMTC") began issuing certificates to massage practitioners and massage therapists who satisfy criteria set forth by the CMTC.

Generally, cities may not impose additional regulations or requirements on massage practitioners or massage therapists who have been certified by the CMTC. However, cities may impose additional regulations or requirements on massage businesses and establishments that are sole proprietorships, where the sole proprietor is certified by the CMTC, and massage businesses and establishments that employ or use only persons certified by the CMTC so long as such regulations or requirements are in compliance with Section 4612 of the California Business and Professions Code. Cities may still impose regulations and requirements on persons who are not certified by the CMTC.

On July 28, 2009, City Council adopted an ordinance which sets forth regulations for sole proprietors certified by the CMTC and massage businesses and establishments that employ or use only persons certified by the CMTC and a different set of regulations for massage professionals not certified by the CMTC. The proposed ordinance would separate and further clarify requirements for establishments that are sole proprietorships, where the sole proprietor is certified by the CMTC, and massage businesses and establishments that employ or use only persons certified by the CMTC. In addition, the proposed ordinance would further clarify those sections of the OCC concerning massage professionals not certified by the CMTC which require revision and would add new sections so as to be current with industry standard.

FINANCIAL IMPACT

The amount in fees to be collected for massage related permits for FY 09/10 is difficult to estimate at this time and is contingent on the number of individuals who receive certificates issued by the CMTC.

TG/jd

Attachment #1 - Ordinance

ORDINANCE OF THE CITY OF OXNARD

ORDINANCE NO. __

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OXNARD
REPEALING AND REDOPTING THE FOLLOWING: SUBDIVISION
(B) OF SECTION 11-157, SUBDIVISION (E) OF SECTION 11-235 AND
SECTIONS 11-239 AND 11-243 OF THE OXNARD CITY CODE,
AMENDING THE FOLLOWING: SUBDIVISION (J) OF SECTION 11-232,
THE FIRST SENTENCE AND SUBDIVISION (C) OF SECTION 11-234,
SUBDIVISION (B) OF SECTION 11-235, SUBDIVISION (B) OF SECTION
11-236, SUBDIVISIONS (B) AND (C) OF SECTION 11-238, THE TITLE AND
FIRST PARAGRAPH OF SECTION 11-242, SUBDIVISIONS (C) AND (D) OF
SECTION 11-244, AND SUBDIVISION (A) OF SECTION 11-246 OF THE
OXNARD CITY CODE, AND ADDING THE FOLLOWING: SUBDIVISION
(G) OF SECTION 11-235, SUBDIVISION (D) OF SECTION 11-236, AND
SECTION 11-248 TO THE OXNARD CITY CODE

.....

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

Part 1. Subdivision (B) of Section 11-157 of the Oxnard City Code is repealed and readopted 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, dance, massage establishment, and massage technician permits may be renewed in the following manner:

(1) Dance and massage establishment permits may be renewed by submitting to the license collector a renewal application, accompanied by the renewal fee set by resolution of the city council, no later than 30 days before the date the permit expires.

(2) Massage technician permits may be renewed by submitting the following to the license collector:

(a) A renewal application, accompanied by the renewal fee set by resolution of the city council, no later than 30 days before the date the permit expires;

(b) Proof of successful completion of a written practical examination administered by a certificant certified by the National Certification Board for Therapeutic Massage and Bodywork dated within one year of the date the renewal application is submitted or a certificate issued by the National Certification Board for Therapeutic Massage and Bodywork.”

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Part 2. Subdivision (J) of Section 11-232 of the Oxnard City Code is hereby amended to read as follows:

“(J) MASSAGE THERAPY CERTIFICATE – A certificate issued by the California Massage Therapy Council pursuant to subdivision (a) of Section 4601 of the California Business and Professions Code.”

Part 3. The first sentence of Section 11-234 of the Oxnard City Code is hereby amended to read as follows:

“Section 11-233 of this code shall not apply to the following:”

Part 4. Subdivision (C) of Section 11-234 of the Oxnard City Code is hereby amended to read as follows:

“(C) Persons who hold a valid certificate issued on or after September 1, 2009, by the California Massage Therapy Council.”

Part 5. Subdivision (B) of Section 11-235 of the Oxnard City Code is hereby amended to read as follows:

“(B) Furnish proof of successful completion of a written and practical examination administered by a certificant certified by the National Certification Board for Therapeutic Massage and Bodywork dated within one year of the date the application is submitted or a certificate issued by the National Certification Board for Therapeutic Massage and Bodywork;”

Part 6. Subdivision (E) of Section 11-235 of the Oxnard City Code is hereby repealed and readopted to read as follows:

“(E) Not have been convicted within five years immediately preceding the date of filing the application of any of the following offenses: California Penal Code sections 266i, 315, 316, 318, or 647(b); any felony offense involving the sale of a controlled substance specified in California Health and Safety Code sections 11054, 11055, 11056, 11057, or 11058; any offense in another state, which if committed in this State, would have been punishable as one or more of the above-mentioned offenses; any offense involving the use of force or violence upon the person of another; or any offense involving theft, embezzlement, or moral turpitude;”

Part 7. Subdivision (G) is hereby added to Section 11-235 of the Oxnard City Code to read as follows:

“(G) Not be required to register under the provisions of California Penal Code section 290.”

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Part 8. Subdivision (B) of Section 11-236 of the Oxnard City Code is hereby amended to read as follows:

“(B) Not have been convicted within five years immediately preceding the date of filing the application of any of the offenses listed in subsection 11-235(E) above;”

Part 9. Subdivision (D) is hereby added to Section 11-236 of the Oxnard City Code to read as follows:

“(D) Not be required to register under the provisions of California Penal Code section 290.”

Part 10. Subdivisions (B) and (C) of Section 11-238 of the Oxnard City Code are hereby amended to read as follows:

“(B) Every massage business or establishment as defined in paragraph (1) of subdivision (b) of Section 4612 of the California Business and Professions Code and every permittee of a massage business or establishment shall notify the license collector of any intention to rename, change management, or convey the business or establishment to another person within 15 days of such change.

(C) Every permittee of a massage business or establishment shall comply with the following requirements:

(1) Notify the license collector when the owner of the business or establishment sells or transfers the entire business or establishment to another person or when the owner of the business or establishment sells or transfers a portion of the business or establishment to another person.

(2) Provide to the license collector the names of all persons who will act as manager of the massage business or establishment prior to the commencement of massage therapy services at said massage business or establishment.”

Part 11. Section 11-239 of the Oxnard City Code is hereby repealed and readopted to read as follows:

“(A) Any massage technician whose permit is issued on or after the effective date of this ordinance, and any massage business or establishment owned and/or operated by a permittee whose permit is issued on or after the effective date of this ordinance, shall only provide massage therapy between the hours of 8:00 a.m. and 8:00 p.m.

(B) Upon renewal of a massage technician permit or upon renewal of a massage establishment permit, massage therapy shall only be provided between the hours of 8:00 a.m. and 8:00 p.m.”

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Part 12. The title of Section 11-242 of the Oxnard City Code is hereby amended to read as follows:

“11-242. PHYSICAL FACILITY AND BUILDING CODE REQUIREMENTS – STATE CERTIFIED MASSAGE BUSINESSES OR ESTABLISHMENTS .”

Part 13. The first paragraph of Section 11-242 of the Oxnard City Code is hereby amended to read as follows:

“The following facility requirements shall be applicable to all massage businesses and establishments described in paragraph (1) of subdivision (b) of Section 4612 of the California Business and Professions Code:”

Part 14. Section 11-243 of the Oxnard City Code is hereby repealed and readopted to read as follows:

“SEC. 11-243. PHYSICAL FACILITY AND BUILDING CODE REQUIREMENTS – CITY LICENSED MASSAGE BUSINESSES OR ESTABLISHMENTS.

The following facility requirements shall be applicable to all massage businesses and establishments owned and/or operated by permittees:

(A) All requirements set forth in section 11-242 above, with the exception of subdivision (B).

(B) A readable sign which complies with all applicable code requirements shall be posted at the main entrance identifying the establishment as a massage business or establishment.

(C) A sign identifying the operating hours of the massage business or establishment shall be posted in an open and conspicuous public place at the business or establishment. Customers shall be allowed inside massage businesses or establishments only during posted operating hours.

(D) No person may be inside any massage business or establishment from two hours after the posted closing time until one hour prior to the posted opening time.

(E) A list of available services and the duration and cost of such services shall be posted in an open and conspicuous public place at the business or establishment. No services shall be offered or performed at the business or establishment unless so posted, and no sums shall be charged for services other than those posted.

(F) (1) All arrangements for services to be performed shall be made in a room in the massage business or establishment that is not used for the administration of any available service. No massage technician shall, after the commencement of any service

for any customer, advise, suggest, or otherwise indicate to such customer that additional services could be performed. No massage technician shall perform any service for any customer which was not requested by such customer when the initial arrangements for services were made.

(2) After arrangements for services to be performed have been made with any customer as set forth in paragraph (1) of this subdivision and prior to the commencement of any service for said customer, a written record shall be made containing the following information:

- (a) The date and hour of each treatment or service;
- (b) The name and address of the customer;
- (c) The name of the massage practitioner, massage technician, or massage therapist who administered such treatment or services;
- (d) A description of the services requested by the customer when the initial arrangements for services were made.

(3) The written records described in paragraph (2) of this subdivision shall be open to inspection upon demand only by officials charged with enforcement of this article to ensure compliance with this subdivision or any other applicable State or Federal laws and shall remain confidential.

(G) If male and female customers are to be served simultaneously at the massage business or establishment, separate bathing, separate massage rooms or cubicles, separate dressing facilities, and separate toilet facilities shall be provided for male and for female customers.

(H) A massage business or establishment shall not be located within 1,000 feet of another massage business or establishment, an adult book store, or an adult movie theater, measured in a straight line from the nearest wall of the massage business or establishment to the nearest wall of the other business. The foregoing sentence does not apply to:

(1) An adult massage business or establishment, which is subject to the locational requirements of section 16-337 of this code.

(2) A massage business or establishment that is operated on the same premises as another type of business, other than an adult business, and by the same persons who operate the other business; that occupies less than 30 percent of the square footage occupied by both businesses; and that is the source of less than 30 percent of the annual revenue derived from both businesses.

(I) A manager and/or permittee shall be present at the massage business or establishment at all times during operating hours. The manager and/or permittee shall be

familiar with the requirements of this article and be capable of communicating the provisions of this article to employees and customers of the business or establishment.

(J) No massage therapy may be administered within any massage room or cubicle which is fitted with a door capable of being locked. The front door of the massage business or establishment and doors separating the waiting or reception area from the remainder of the premises shall remain unlocked during operating hours and shall not be fitted with electronic locking devices.

(K) No massage business or establishment shall be equipped with any electronic videotaping or audio recording device for monitoring the activities, conversations, or other sounds in said massage business or establishment.”

Part 15. Subdivisions (C) and (D) of Section 11-244 of the Oxnard City Code are hereby amended to read as follows:

“(C) Only one customer and only one massage technician, massage practitioner, or massage therapist 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.

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

Part 16. Subdivision (A) of Section 11-246 of the Oxnard City Code is hereby amended to read as follows:

“(A) All massage businesses and establishments described in paragraph (1) of subdivision (b) of Section 4612 of the California Business and Professions Code and all massage businesses and establishments owned and/or operated by permittees shall permit representatives of the health department, police department, fire department, license collector, and/or other city or county departments or agencies to conduct reasonable inspections of the massage business or establishment, from time to time, during regular business hours, to ensure compliance with state and local laws, including but not limited to Chapter 10.5 (commencing with Section 4600) of the California Business and Professions Code where applicable, the requirements of this article, and/or other applicable fire, health, and safety requirements. Said inspections shall not include massage rooms or cubicles occupied by customers at the time of the inspection.”

Part 17. Section 11-248 is hereby added to the Oxnard City Code to read as follows:

“11-248. PERSONS USING ALCOHOL OR DRUGS PROHIBITED.

A person shall not enter, be or remain in any part of a massage business or establishment owned and/or operated by a permittee while in the possession of, consuming, or using any alcoholic beverage or drug. The permittee and/or manager shall not permit any such person to enter or remain upon such premises.”

Part 18. 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:

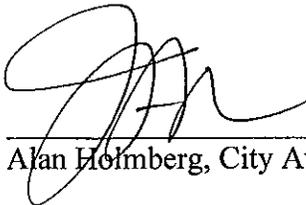
ABSENT:

Dr. Thomas E. Holden, Mayor

ATTEST:

Daniel Martinez, City Clerk

APPROVED AS TO FORM:



Alan Holmberg, City Attorney
for
1.25.10

ATTACHMENT 1
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