



Office of the City Manager

02

CONSENT CALENDAR

April 2, 2013

To: Honorable Mayor and Members of the City Council

From:  Christine Daniel, City Manager

Submitted by: Zach Cowan, City Attorney

Subject: Amending BMC Chapter 9.32 Massage Ordinance: Exempting Chair
Massage

RECOMMENDATION

Adopt first reading of an Ordinance amending Sections 9.32.020 and 9.32.060 of the Berkeley Municipal Code to exempt chair massage from the requirement for a massage establishment permit.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

On February 5, 2013, the Council referred to the City Manager an amendment to the Massage Ordinance (BMC Chapter 9.32) to eliminate the requirement that a location that provides chair massage, as defined in the Zoning Ordinance, obtain a massage establishment permit.

The proposed amendment does so. The proposed amendment also amends the definition of the term “massage establishment” to make clear that it is limited to locations where massage is actually offered.

All persons providing massage would still be required to have either an individual massage therapy permits or be CAMTC certified.

BACKGROUND

See “Current Situation and its Effects”.

RATIONALE FOR RECOMMENDATION

See “Current Situation and its Effects”.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Zach Cowan, City Attorney, 981-6998

Attachments:
1: Ordinance

ORDINANCE NO. #,### - N.S.

AMENDING BERKELEY MUNICIPAL CODE SECTIONS 9.32.020 AND 9.32.060
RELATING TO MASSAGE ESTABLISHMENT PERMITS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Section 9.32.020.E of the Berkeley Municipal Code is amended to read as follows:

E. "Massage Establishment" means any business or establishment at a fixed place of business at which ~~offers~~ Massage Therapy is offered in exchange for compensation. Any business or establishment which offers any combination of Massage Therapy and bath facilities, including, but not limited to, showers, baths, wet and dry heat rooms, pools and hot tubs, shall be deemed a Massage Establishment under this Chapter.

Section 2. That Section 9.32.060 of the Berkeley Municipal Code is amended to read as follows:

9.32.060 Permit for massage establishments--Exemptions.

It is unlawful for any person to ~~operate engage in or conduct~~ a Massage Establishment in the City without first having obtained a permit to ~~operate conduct~~ such pursuant to this Chapter. Every applicant for a Massage Establishment permit shall file an application with the ~~Revenue Collections division of the~~ Department of Finance upon a form to be provided by said Department and pay a filing fee which shall be non-refundable. The following entities are exempt from filing for permits for a Massage Establishment:

A. Any California state-licensed hospitals, nursing homes, sanitariums or other state-licensed physical or mental health facilities.

B. Any Approved Massage Schools as that term is defined in Section 4600 of the California Business and Professions Code.

C. Any Massage Establishment which employs or retains only individuals who possess valid CAMTC certifications to provide Massage Therapy in exchange for compensation at that Establishment as long as all of the following requirements are met:

1. Such Establishment provides copies or other evidence of the certificates held by all individuals employed or retained by it to the City in accordance with paragraph (2)(B) of subsection (b) of Section 4612 of the California Business and Professions Code; and

2. Any Owner of such Establishment who does not possess a valid CAMTC certificate completes a criminal background check pursuant to Section 9.32.080 in accordance with subsection (e) of Section 4612 of the California Business and Professions Code; and

3. Any Owner or Operator notifies the City in writing of any intention to rename, change management or convey such Establishment to another person in accordance

with paragraph (2) of subsection (d) of Section 4612 of the California Business and Professions Code; and

4. Such Establishment is in compliance with the requirements of this Chapter and the provisions of Chapter 10.5 (commencing with Section 4600) of Division 2 of the California Business and Professions Code in accordance with subsection (c) of Section 4612 of the California Business and Professions Code.

D. A location at which only Chair Massage as defined in Section 23F.04.010 is offered shall not require a Massage Establishment permit solely on the basis that Chair Massage is offered.

Section 3. Posting.

Copies of this Bill shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.