

ORDINANCE NO. -N.S.

REPEALING AND REENACTING BERKELEY MUNICIPAL CODE (BMC) CHAPTER
9.32 REGULATING MASSAGE PARLOR PERMITS

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

Section 1. That Berkeley Municipal Code Chapter 9.32 is hereby repealed and reenacted to read as follows:

Chapter 9.32

MASSAGE THERAPY

Sections:

9.32.010	Purpose
9.32.020	Definitions
9.32.030	Massage Therapy-CAMTC Certificate or Massage Therapy Permit Required-Exemptions
9.32.040	Massage Therapy Permit-Application-Contents required
9.32.050	Massage Therapy Permit – Criminal Background Check
9.32.060	Permit for Massage Establishments-Exemptions
9.32.070	Massage Establishment Permit Where Only CAMTC Certified Therapists Employed-Application-Contents required
9.32.080	Massage Establishment Permit-Application-Contents required
9.32.090	Massage Establishment Permit – Criminal Background Check
9.32.100	Permit Application-Grant or Denial
9.32.110	Permit-Period of validity and nontransferability
9.32.120	Permit-Renewal procedure-Deadline
9.32.130	Evidence of CAMTC Certifications-Massage Therapy Permits-Massage Establishment Permits
9.32.140	Inspection by Officials
9.32.150	Permit-Suspension or revocation authorized when-Appeals
9.32.160	Violation-Penalty
9.32.170	Severability

Section 9.32.010 Purpose

It is the purpose and intent of this Chapter to provide that all persons engaged in the practice of Massage Therapy in the City of Berkeley shall possess either a valid California Massage Therapy Council (CAMTC) certification or a valid Massage Therapy Permit and that all Massage Establishments that employ such persons possess a valid Massage Establishment Permit. These procedures and regulations are declared necessary to preserve and protect the health, safety and general welfare of the residents of the City.

Section 9.32.020 Definitions

A. "Bona fide massage therapy school" means an institution, school, or training center providing a course of training in bodywork, healing arts, massage, or touch therapy and issuing a diploma or certificate upon completion of at least five hundred (500) hours of classroom instruction.

B. "City" means the City of Berkeley.

C. "Compensation" means the payment, loan, advance, donation, contribution, deposit, exchange or gift of money or anything of value.

D. "Massage", "Massage Therapy" and "Bodywork" are used in the Chapter interchangeably and mean any method of pressure on, or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating the external parts of the human body with the hands or other parts of the body or with the aid of any mechanical or electrical apparatus, or other appliances or devices. Massage includes, but is not limited to, shiatsu, acupressure or similar activities.

E. "Massage Establishment" means any business or establishment at a fixed place of business which offers Massage Therapy 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.

F. "CAMTC Certificate" means a certificate issued to Massage Therapists and Massage Practitioners as those terms are used in Sections 4601 and 4604 of the California Business and Professions Code.

G. "Operator" means any person who supervises, manages, directs, organizes, controls or in any other way is responsible for or in charge of the overall operation, conduct or activities of a Massage Establishment.

H. "Owner" means any of the following persons: the sole proprietor of a Massage Establishment, any general partner of a partnership that owns and operates a Massage Establishment or any person with a twenty-percent (20%) or greater ownership interest in a corporation that owns and operates a Massage Establishment.

I. "Person" means any individual, proprietorship, partnership, firm, association, joint stock company, corporation or combination of individuals of whatever form or character.

Section 9.32.030 Massage Therapy-CAMTC Certificate or Massage Therapy Permit Required-Exemptions

It shall be unlawful for any individual to provide Massage Therapy in exchange for compensation within the City without first obtaining either a valid CAMTC certificate or a Massage Therapy Permit except for the following individuals:

A. Any individual licensed to practice the art of healing as defined under Division 2 of the California Business and Professions Code beginning at Section 500 while engaging in a practice within the scope of their license.

B. Any employee of a California state-licensed hospital, nursing home, sanitarium or other state-licensed physical or mental health facility while engaging in a practice within the scope of their employment.

C. Any employee of an Approved Massage School as that term is defined in Section 4600 of the California Business and Professions Code while engaging in a practice within the scope of their employment.

D. Any person licensed to practice barbering or cosmetology as defined at Division 3 Chapter 10 beginning at Section 7300 of the California Business and Professions Code while engaging in a practice within the scope of their license.

E. Any person who possesses a valid Therapeutic Massage Business Service permit issued by the City of Berkeley before the effective date of this Chapter until that permit expires.

Section 9.32.040 Massage Therapy Permit-Application-Contents required

An applicant for a Massage Therapy 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 application shall specify the nature of the services to be provided and the name and address of the applicant. The application shall include a copy of a diploma or certificate issued to the applicant by a Bona Fide Massage Therapy School, as well as the address and telephone number of that Bona Fide Massage Therapy School. The applicant may provide additional documentation showing training and certification in bodywork, healing arts, massage, or touch therapy.

If any changes occur which result in changes to the information provided on an application required pursuant to this Section, the holder of a permit must submit an updated application within fifteen (15) days from the date of such changes.

Section 9.32.050 Massage Therapy Permit – Criminal Background Check

The Berkeley Police Department shall investigate the criminal history of the applicant. A Massage Therapy Permit will not be issued if the applicant has been convicted of any of the following offenses or convicted of an offense outside the State of California that would have constituted any of the following offenses if committed within the State of California:

A. An offense involving conduct which requires registration pursuant to Section 290 of the Penal Code;

B. An offense involving the use of force and violence upon the person of another that amounts to a felony;

C. An offense involving sexual misconduct with children;

D. An offense charged under Chapter 7.5 of Title 9 of the Penal Code;

E. An offense charged under Sections 266i, 647(a), 647(b), 315, 316 or 318 of the Penal Code.

Section 9.32.060 Permit for Massage Establishments-Exemptions

In accordance with subdivision (b) of Section 4612 of the California Business and Professions Code, it is unlawful for any person to engage in or conduct a Massage

Establishment in the City without first having obtained a permit to 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 person who possesses a valid Therapeutic Massage Parlor Establishment permit issued by the City of Berkeley before the effective date of this Chapter until that permit expires.

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

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

Section 9.32.070 Massage Establishment Permit Where Only CAMTC Certified Therapists Employed-Application-Contents required

In accordance with subdivision (b) of Section 4612 of the California Business and Professions Code, where a Massage Establishment employs or retains only individuals who possess valid CAMTC certifications to provide Massage Therapy in exchange for compensation, such application shall specify the nature of the Massage Therapy or Bodywork service available, the hours of operation, the name and address of the Establishment, the name and address of the owner(s) and operator(s) of the Establishment and the name and mailing address of the applicant. The application shall also include a copy of a valid CAMTC Certificate held by each person who is employed or retained by the Establishment to provide Massage Therapy services within thirty (30) calendar days of the commencement of such person's employment.

If an owner, operator, or holder of a permit issued under this Section makes any changes to the Massage Establishment which results in changes to the information provided on an application required pursuant to this Section, said person must submit an updated application within fifteen (15) days from the date of such changes.

Section 9.32.080 Massage Establishment Permit-Application-Contents required

Where a Massage Establishment employs or retains individuals who do not possess valid CAMTC certifications to provide Massage Therapy in exchange for compensation, such application shall specify the nature of the Massage Therapy service available, the hours of operation, the name and address of the Establishment, the name and address of the owner(s) and operator(s) of the Establishment and the name and mailing address of the applicant. The application shall also include a copy of either a valid CAMTC Certificate or a Massage Therapy Permit held by each person who is employed or retained by the Establishment to provide Massage Therapy in exchange for

compensation within thirty (30) calendar days of the commencement of such person's employment.

If an owner, operator, or holder of a permit issued under this Section makes any changes to the Massage Establishment which results in changes to the information provided on an application required pursuant to this Section, said person must submit an updated application within fifteen (15) days from the date of such changes.

Section 9.32.090 Massage Establishment Permit – Criminal Background Check

Where an applicant(s) submits an application for a Massage Establishment Permit pursuant to Section 9.32.080, the Berkeley Police Department shall investigate the criminal history of each of the owner(s) and operator(s) of the Establishment except when the owner(s) and operator(s) possess either a valid CAMTC certificate or Massage Therapy Permit. A Massage Establishment Permit will not be issued pursuant to Section 9.32.080 if any of the owner(s) and operator(s) have been convicted of any of the following offenses or convicted of an offense outside the State of California that would have constituted any of the following offenses if committed within the State of California:

- A. An offense involving conduct which requires registration pursuant to Section 290 of the Penal Code;
- B. An offense involving the use of force and violence upon the person of another that amounts to a felony;
- C. An offense involving sexual misconduct with children;
- D. An offense charged under Chapter 7.5 of Title 9 of the Penal Code;
- E. An offense charged under Sections 266i, 647(a), 647(b), 315, 316 or 318 of the Penal Code.

Section 9.32.100 Permit Application-Grant or Denial

The Department of Finance will begin review of an application upon completion. It will conclude review of the application and issue a decision within thirty (30) days of submission of a completed application. In accordance with paragraph (7) of subdivision (b) of Section 4612 of the California Business and Professions Code, a permit application may be denied when the applicant has provided false information.

Section 9.32.110 Permit-Period of validity and nontransferability

A permit issued under provisions of this Chapter shall be nontransferable and shall be valid only for two years from the date of issuance.

Section 9.32.120 Permit-Renewal procedure-Deadline

Sixty (60) days prior to the date of expiration of any permit issued pursuant to this Chapter, the permittee shall apply to renew the permit. The permittee shall apply for

renewal of a permit in the manner provided in Sections 9.32.040-050 and 9.32.070-090 as applicable.

Section 9.32.130 Evidence of CAMTC Certifications-Massage Therapy Permits-Massage Establishment Permits

In accordance with paragraph (2) of subsection (b) of Section 4612 of the California Business and Professions Code, a Massage Establishment permitted pursuant this Chapter shall maintain on its premises evidence demonstrating that all persons providing Massage Therapy in exchange for compensation at such Establishment have obtained either a valid CAMTC certificate or a Massage Therapy Permit and that the Establishment has obtained a Massage Establishment Permit for review by City authorities.

Section 9.32.140 Inspection by Officials

In accordance with subsection (d) of Section 4612 of the California Business and Professions Code, a Massage Establishment permitted pursuant to this Chapter shall be subject to reasonable inspections during regular business hours for the purpose of ensuring compliance with this Chapter, Chapter 10.5 (commencing with Section 4600) of Division 2 of the California Business and Professions Code and applicable building, fire, electrical, plumbing or health regulations. A warrant shall be obtained whenever required by law.

Section 9.32.150 Permit-Suspension or revocation authorized when-Appeals

In accordance with subdivision (c) of Section 4612 of the California Business and Professions Code, any Massage Therapy or Establishment permit may be revoked or suspended by the Department of Finance, after a hearing, where any of the provisions of this Chapter, or the provisions of Chapter 10.5 (commencing with Section 4600) of Division 2 of the California Business and Professions Code are violated. During the time that the permit is suspended, it shall be unlawful for the permittee to exercise any of the rights granted under this Chapter.

Any decision to suspend or revoke a permit may be appealed to the City Manager. The decision of the City Manager is final. The City Manager may promulgate written rules and regulations for the conduct of hearings by the Department of Finance and appeals to the City Manager.

Section 9.32.160 Violation-Penalty

A. Every person who violates any provision of this Chapter shall be guilty of a misdemeanor and, upon conviction, such person shall be punishable as set forth in Chapter 1.20 of this Code.

B. Every person who violates any provision of this Chapter may be subject to administrative citations pursuant to Chapter 1.28 of this Code.

C. Each violation of this Chapter and each day of violation of this Chapter shall be considered a separate and distinct violation thereof and the imposition of a penalty shall be as set forth in subsection A of this Section for each and every separate violation and each and every day of violation.

Section 9.32.170 Severability

If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Chapter. In addition, the City Council hereby declares that it would have passed the ordinance codified in this Chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this Chapter would be subsequently declared invalid or unconstitutional.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 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.

At a regular meeting of the Council of the City of Berkeley held on September 22, 2009, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Worthington, Wozniak and Bates.

Noes: None.

Absent: None.

