



Staff Report

City of Manhattan Beach

TO: Honorable Mayor Cohen and Members of the City Council

FROM: Robert V. Wadden Jr., City Attorney
Richard Thompson, Director of Community Development
Laurie Jester, Planning Manager

DATE: June 16, 2009

SUBJECT: Adoption of Ordinance No. 2123 Amending Manhattan Beach Municipal Code Chapter 4.36 Regarding Regulation of Massage Services.

RECOMMENDATION:

Staff recommends that the City Council adopt Ordinance No. 2123 Amending Manhattan Beach Municipal Code Chapter 4.36 regarding regulation of massage services.

FISCAL IMPLICATION:

The proposed ordinance may result in a reduced burden on Community Development staff due to their no longer having to process massage technician permits.

BACKGROUND:

On June 2, 2009 the City Council introduced and waived further reading of this ordinance.

DISCUSSION:

In 2008 the California legislature passed SB 731 which took effect in January 2009. The new law amended Business and Professions Code Sections 4600, et seq. to provide for a new State massage therapist license. This new license procedure expressly preempts any local licensing requirements. Since the City of Manhattan Beach currently has a local license requirement for massage practitioners, SB 731 would require an amendment to bring the Manhattan Beach ordinance into compliance with State law. The proposed ordinance would do this by substituting the State license for the required local license.

Because massage businesses are often covers for illegal prostitution businesses most California cities have traditionally regulated such businesses more stringently than other businesses. In 1996 Manhattan Beach adopted Chapter 4.36 of the Municipal Code which requires businesses providing massage services and individuals doing business as massage therapists to obtain regulatory permits in order to do business in the City. The existing law requires massage therapists to show that they have completed 100 hours of instruction at an accredited school and to have their background checked to determine if they have previously been convicted of morals offenses. The new State law establishes a State massage therapist license with similar requirements and preempts

local license requirements such as those in Chapter 4.36. The State law does not preempt regulation of massage businesses by the City. However, the new law does not preclude individuals who are not licensed from doing business as massage therapists.

The proposed ordinance removes those sections of Chapter 4.36 which require a local massage therapist license issued by the City and substitutes a requirement that anyone doing business in Manhattan Beach as a massage therapist must have a State license. This would bring the City's massage services regulations into compliance with State law and still require that individuals doing business in the City be professionally trained and not have a criminal record for prostitution related offenses. Regulation of massage businesses in the City will remain unchanged.

Attachments: Ordinance No. 2123
cc: Geoff Dolan, City Manager

ORDINANCE NO. 2123

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, AMENDING MANHATTAN BEACH MUNICIPAL CODE SECTIONS 4.36.010, 4.36.020, 4.36.030, 4.36.040, 4.36.050, 4.36.060, 4.36.070, 4.36.080 AND 4.36.170 REGARDING MASSAGE PRACTITIONERS

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The Manhattan Beach City Council hereby finds as follows:

- a. In 2008 the California legislature passed SB 731 which implemented a State licensing process for massage therapists;
- b. Presently Manhattan Beach Municipal Code Chapter 4.36 contains a City licensing procedure for massage therapists;
- c. SB 731 contains a provision which preempts any local licensing provision enacted by a local jurisdiction;
- d. It is therefore necessary and in the interest of the health, safety and welfare of the residents of Manhattan Beach to amend the City's local massage business ordinance to substitute the State massage therapist license for the local license;
- e. Pursuant to the California Environmental Quality Act (CEQA) and the Manhattan Beach CEQA Guidelines, this ordinance is exempt from CEQA in that it is covered by the general rule that CEQA [Section 15061 (3)] only applies to projects which have the potential for causing a significant effect on the environment, and since it can be seen with certainty that there is no possibility that the activity will have a significant effect on the environment, the activity is not subject to CEQA.

SECTION 2. Sections 4.36.010, 4.36.020, 4.36.030, 4.36.040, 4.36.050, 4.36.060, 4.36.070, 4.36.080 and 4.36.170 of the Manhattan Beach Municipal Code are hereby amended in their entirety to read as follows:

4.36.010 Definitions.

"Permit Administrator" shall mean the person or persons designated by the City Manager to administer the provisions of this chapter.

"Massage/bodywork" means and includes any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, or stimulating the external parts of the body, with or without the aid of any mechanical or electrical apparatus or appliances or with or without supplementary aids such as rubbing alcohol, liniments, antiseptics, oils, powders, creams, lotions, ointments, or other similar preparations, or skin care, body wrap, acupuncture, or other similar procedure but shall exclude any services defined in Business and Professions Code Section 7321 when performed by State licensed cosmetologists.

"Massage/bodywork business" includes but is not limited to any business where massage/bodywork services are provided, any business providing acupuncture, alcohol rubs, Russian, Swedish, or Turkish baths, electric or magnetic treatments conducted at a place of business located within the City.

"Massage/bodywork services" means the provision of massage/bodywork, as defined above, for consideration of any kind.

"Massage/bodywork practitioner" means any natural person, male or female licensed by the State of California pursuant to Business and Professions Code Sections 4600, et seq..

4.36.020 Massage/Bodywork business--Permit required.

Every person conducting, managing, owning, or operating a massage/bodywork business in the City, except as exempted under Sections 4.36.160 and 4.36.170 herein shall first obtain a permit under this chapter. Said permit shall be numbered and must be displayed by the licensee in a prominent place on the premises in which the business is conducted.

4.36.030 Massage/Bodywork practitioner – State Certificate.

Every person employed as a massage/bodywork practitioner or self-employed providing massage/bodywork services for compensation in the City shall obtain a certificate as a massage therapist as provided under Business and Professions Code sections 4600 et seq.. A person who has not obtained such a certificate may not legally provide any massage/bodywork or acupuncture services for compensation in the City of Manhattan Beach. Any person seeking a Manhattan Beach business license to do business in the City as a massage therapist/bodywork practitioner or to work in a massage/bodywork business as a massage therapist/bodywork practitioner must be able to prove to the City that they have a current State Certificate in good standing.

4.36.040 Application for permit.

Every person desiring a Massage/Bodywork Business permit under this chapter shall complete and submit to the City a written application in a form approved by the Permit Administrator. The application shall be completed under penalty of perjury under the laws of the State of California and shall at a minimum require the following information:

- (1) The name of the applicant and a complete statement regarding any and all true and fictitious names used by the applicant within the five (5) years immediately preceding the application;
- (2) The residence address, business address, and residence and business telephone numbers of the applicant;
- (3) The names, residence and business address and phone numbers of any copartners, excluding limited partners, of the applicant;
- (4) If the applicant is a corporation the name of the corporation shall be set forth exactly as shown in the articles of incorporation along with the names and residence addresses of each of the officers, directors, and each shareholder owning ten percent (10%) or more of the corporation. If one (1) or more of the owners is a corporation the provisions of this section pertaining to a corporate applicant apply;
- (5) The names, residence and business address and phone numbers of the managers and persons to be in charge;
- (6) The name, residence and business addresses and phone numbers of the owner of the premises, if any, in which the business is to be located and the written consent of said owner to operation of the business or a copy of the lease for the premises executed by the owner evidencing such consent;
- (7) The age and date and place of birth of the applicant;
- (8) The address and particular room or rooms and square footage of the premises in which the massage/bodywork activities are to occur;
- (9) A description of the exact nature of the business to be operated and the name under which it will operate;
- (10) The nature, name and place of applicant's business or employment during the five (5) years immediately preceding the date of filing of the application;
- (11) A two inch (2") square photograph of the applicant taken within the sixty (60) days immediately prior to the date the application is filed;
- (12) Whether or not the applicant or any partner, copartner, manager, or operator of the business being applied for has had a permit for the same or any similar business suspended or revoked anywhere, and if so, the circumstances of such suspension or revocation;
- (13) A statement that the applicant or any partner, copartner, manager, employee or operator of the business has never been convicted of violations of Penal Code Sections 266i, 315, 316, 318, 647(a) or (b) or any offense involving possession of the substances identified in Health and Safety Code Sections 11054, 11055, 11056, 11057, or 11058 or of any felony, or, if any such crime has been committed by such person, a complete statement of the nature of such crime and the place and date of conviction;

- (14) A statement that the applicant or any partner, copartner, manager, employee or operator of the business is not required to register under Penal Code Section 290, or if any such person is so required, the circumstances leading to this requirement;
- (15) A diagram drawn to scale and dimensioned showing the number of rooms for said business, including a sketch of the interior arrangement thereof and a list of the equipment used thereon;
- (16) Sets of fingerprints of the applicant and the person or persons in charge of the business to be taken by the Manhattan Beach Police Department;
- (17) Copies of the State licenses (as provided by Business and Professions Code sections 4600 et seq.) of all employees of the business who shall be providing massage/bodywork services.
- (18) Such other information as the Permit Administrator shall deem necessary.

4.36.050 Notice of change.

Whenever any change occurs relating to the written information specified in Section 4.36.040, including changes in the physical layout of the business, changes in employees or operations the applicant shall report said change and provide all information which would have been required under Section 4.36.040 prior to its taking effect.

4.36.060 Employee reporting requirement.

The holder of a massage/bodywork business permit under this Chapter shall notify the Permit Administrator of the name and address of each person to be employed as a massage/bodywork practitioner, acupressurist, or any person engaged in performing massage/bodywork activities and provide a copy of the State license issued to that person pursuant to Business and Professions Code sections 4600, et seq. prior to that person being employed.

4.36.070 Employment of massage/bodywork practitioners without a State Certificate prohibited.

A permittee or person required to obtain a permit for a massage/bodywork business by this chapter shall not hire or employ or contract with as an independent contractor an individual to perform as a massage/bodywork practitioner unless that person possesses a valid certificate as a massage therapist as provided for in Business and Professions Code sections 4600 et seq.

4.36.080 Investigation.

The Permit Administrator upon receipt of a complete application for a massage/bodywork business permit hereunder or a renewal of such permit shall forward the application to the Chief of Police who shall conduct an appropriate investigation to determine whether said permit shall be issued in accordance with the procedures of this chapter as hereafter set forth. The Chief of Police shall forward his report to the Permit Administrator with his or her recommendation regarding grant or denial of the permit.

4.36.170 Ancillary massage/bodywork services.

Ancillary massage/bodywork services shall be exempt from the requirements of this chapter so long as all such services are performed by the holder of a State massage therapist certificate issued pursuant to Business and Professions Sections 4600 et seq.. Ancillary massage/bodywork services shall be those performed in a health club or beauty salon where twenty-five percent (25%) or less of the overall business operations is related to provision of massage/bodywork services as measured by the percentage of gross sales or floor area devoted to provision of massage/bodyworks, whichever is greater.

SECTION 3. Each and every other provision of Chapter 4.36 shall continue in full force and effect.

SECTION 4. Any provisions of the Manhattan Beach Municipal Code, or appendices thereto, or any other ordinances of the City, to the extent that they are inconsistent with this ordinance, and no further, are hereby repealed.

SECTION 5. This notice shall be published by one insertion in *The Beach Reporter*, the official newspaper of the City, and this ordinance shall take effect and be in full force and operation thirty (30) days after its final passage and adoption.

SECTION 6. The City Clerk shall certify to the adoption of this ordinance; shall cause the same to be entered in the book of original ordinances of said City; shall make a minute of the passage and adoption thereof in the records of the meeting at which the same is passed and adopted; and shall within fifteen (15) days after the passage and adoption thereof cause the same to be published by one insertion in *The Beach Reporter*, the official newspaper of the City and a weekly newspaper of general circulation, published and circulated within the City of Manhattan Beach hereby designated for that purpose.

PASSED, APPROVED, and ADOPTED this 16th day of June, 2009.

Ayes:
Noes:
Absent:
Abstain:

Mayor, City of Manhattan Beach, California

ATTEST:

City Clerk