

ORDINANCE NO. _____

**ORDINANCE DELETING IN ITS ENTIRETY CHAPTER 13
OF THE BELMONT MUNICIPAL CODE, MESSAGE
ESTABLISHMENTS, AND INTRODUCING AND
ADOPTING CHAPTER 13 REGARDING MESSAGE
ESTABLISHMENTS**

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

SECTION 1: Chapter 13 of the Belmont City Code is hereby amended to read as follows:

CHAPTER 13

MESSAGE ESTABLISHMENTS

Sections:

- 13-1. Purpose.
- 13-2. Definitions.
- 13-3–13-9. Reserved.
- 13-10. Permit required.
- 13-11. Application for Permit.
- 13-12. Massage establishment permit exemptions.
- 13-13. Technician permit exemptions.
- 13-14. Permit fee and investigation.
- 13-15. Business license.
- 13-16. Issuance or denial of permit.
- 13-17. Appeal.
- 13-18–13-19. Reserved.
- 13-20. Operating and sanitation requirements.
- 13-21. Display of signs and permits.
- 13-22. Notice of changes.
- 13-23. Inspection by officials.
- 13-24. Reserved.
- 13-25. Outcall services prohibited; exceptions.
- 13-26. Sale, transfer, relocation or expansion of establishment.
- 13-27. Revocation or suspension of permit.
- 13-28. Renewal of permit.

ARTICLE 1. GENERAL

Sec. 13-1. Purpose.

It is the purpose and intent of the city council that the operation of massage, bathing and other similar establishments and persons offering services therein, wherein the principal function is giving of massages and/or baths, as defined in this chapter, should be regulated in the interests of public health, safety and welfare by providing minimum building sanitation and health standards for such establishments, and by insuring that persons offering services therein possess the minimum qualifications necessary to operate such businesses and to perform such services.

Sec. 13-2. Definitions.

For the purpose of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

A. "Health officer" means the health officer of the County of San Mateo or his or her authorized representative.

B. "Massage" The method of treating the superficial parts of the human body for remedial or hygienic purposes by rubbing, pressing, stroking, kneading, tapping, pounding, vibrating or stimulating with the hands or any instrument.

C. "Massage, bathing or other similar establishments" (hereinafter sometimes referred to as "Establishment" or "Establishments") means any establishment having a fixed place of business where massages, baths or health treatments, involving massage, baths, hot tubs and/or saunas as the principal function, are given, engaged in or carried on, or permitted to be given, engaged in or carried on in any manner described in Section 13-2(B).

D. "Technician" means any person who administers a massage, bath or health treatment involving massage or baths as a principal function to another person for any consideration whatsoever.

E. "Person" means any individual, partnership, firm, association, corporation, joint venture or combination of individuals.

F. "Recognized School" means and includes any school or institution of learning which has for its purpose the teaching of the theory, method, profession or work of massage therapists, which school requires a resident course of study of not less than five hundred (500) hours to be given before the student shall be furnished with a diploma or certificate of graduation from such school or institution of learning showing the successful completion of such course of study. Schools offering correspondence courses(s) not requiring actual attendance of class shall not be deemed recognized schools. Schools not approved by the State of California under the provisions of Section 9431 1(d) of the California Education Code or an equivalent out of state school shall not be deemed a recognized school. The City shall have the right to confirm the fact

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that the applicant has actually attended classes in a recognized school for the aforementioned minimum time periods.

Secs. 13-3–13-9. Reserved.

ARTICLE II. PERMITS.

Sec. 13-10. Permit required.

It is unlawful for any Person to operate, engage in, conduct, carry on, or permit to be operated, engaged in, conducted or carried on (as the owner of the business or as the owner of the premises in which the business is located or in any other capacity) in or upon any premises within the city, the business of a massage, bathing or other similar establishment having massage or baths as a principal function, all as defined herein, unless a massage establishment permit and business license for such business has first been obtained from the city and remains in effect in accordance with the provisions of this chapter.

It is unlawful for any Person to act as a technician unless such Person has attained a technician's permit from the police department of the city and such permit remains in effect in accordance with the provisions of this chapter.

If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation together with the names and residence addresses of each of the officers, directors, and stockholders holding more than ten percent of the stock of the corporation. Each officer of the corporation or each partner in a partnership must submit an application and comply with Section 13-11. If one or more of the partners is a corporation, the provisions above pertaining to a corporate applicant apply.

Sec. 13-11. Application for permit.

Any Person, except as herein otherwise provided, desiring to operate a massage, bathing or similar establishment in the city shall apply for and must obtain a massage establishment permit. Any individual desiring to engage in the practice of massage in the city shall apply for a masseur/masseuse permit. A massage establishment permit or a technician permit may be obtained under this chapter by filing with the police department a sworn application in writing on a form to be furnished by the police department which shall give the following information:

- A. Name, residence and telephone number;
- B. The previous address of the applicant for the ten years immediately prior to the present address of the applicant;
- C. Social Security number and driver's license number if any;
- D. Birth certificate or other written proof acceptable to the police department that the

applicant is at least eighteen years of age;

E. Fingerprints (taken by the police department for criminal history investigation) and two passport photographs at least two inches by two inches showing the head and shoulders of the applicant in a clear and distinct manner, taken within the last sixty days immediately prior to the date of the filing of the application;

F. Applicant's height, weight, color of eyes and hair;

G. Business, occupation or employment of the applicant for the ten years immediately preceding the date of application;

H. The massage establishment permit and/or technician permit or similar business license and permit history of the applicant, individually or as a member of a corporation, business or partnership. Such history shall include whether such applicant, in operating massage establishments or providing massage services in this or another city or state, under license or permit, has had such license or permit revoked or suspended, or if such or similar proceedings are currently pending, the reasons therefor, and the business activity or occupation subsequent to such action of suspension or revocation;

I. If the applicant is a partnership, the application shall set forth the names and street addresses of each general and limited partner;

J. If one or more partners of the applicant are a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation or charter together with the state and date of incorporation and the full legal names and street addresses of each of its current officers and directors;

K. If the application is for a technician permit, the name and address of the establishment where the applicant is to be employed and the name of the Person holding the massage establishment permit for same;

L. Whether the applicant has ever been convicted of any crime, except misdemeanor traffic violations, and if so convicted, a statement must be made giving the place and court where such conviction occurred, the specific charge under which the conviction was obtained and the sentence imposed as a result of such conviction;

M. Whether any previous employer or Person while employed by or with the applicant has been convicted in a court of competent jurisdiction of an offense involving conduct which requires registration under California Penal Code subsection 290, or a violation of subsections 266(i), 311 through 311.7, 314, 315, 316, 318, 318.5, 318.6 or 647(a), (b), (d), (h), (i) or (k) of the Penal Code;

N. Whether the applicant has previously applied to the city for a massage establishment permit, or technician permit, the date of the application and every name(s) under

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which the application was made;

O. A diploma or certificate of graduation from a Recognized School, provided, however, that an applicant for a massage establishment permit who will have no physical contact with customers or clients need not possess such diploma or certificate;

P. Such other identification and information necessary to learn relevant matters specified above as required to be set forth in the application;

Q. A certificate executed under penalty of perjury from a medical doctor stating that the applicant has, within thirty days immediately prior to the filing of the application, been physically examined and tested for tuberculosis and found to be free from any infectious, contagious or communicable disease capable of being transmitted through the work of therapeutic massage;

R. A separate waiver and release signed by the applicant authorizing the city, its agents and employees to seek information and to conduct any requisite investigation into the truth of the statements made on the application and the qualifications and record of the applicant;

S. If the application is for a massage establishment permit, provide proof of malpractice insurance in the amount of not less than five hundred thousand dollars (\$500,000.00), or provide proof of membership in a professional massage association that provides automatic malpractice insurance as a benefit of membership in such organization. The applicant must maintain the malpractice insurance policy in the amount of \$500,000 or must maintain a current membership in a professional massage association that provides automatic malpractice insurance coverage at all times while the massage establishment permit is in effect; and

T. Evidence of current certification in cardiopulmonary resuscitation and first aid from the American Heart Association or the American Red Cross; and

U. If the application is for a massage establishment permit, provide the name and address of the owner and lessor of the real property upon or in which the business is to be conducted. In the event the applicant is not the legal owner of the property, the application must also be accompanied by a copy of the lease and a notarized acknowledgment from the owner of the property that a massage establishment will be located on his/her property.

V. A safety plan including, but not limited to, exterior lighting, parking lot security and emergency access to the establishment.

Sec. 13-12. Massage establishment permit exemptions.

The massage establishment permit required by this chapter shall not apply to hospitals, nursing homes, sanitariums, or other healthcare facilities duly licensed by the State of California.

Sec. 13-13. Technician permit exemptions.

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The technician permit required by this chapter shall not apply to:

- A. Physicians, surgeons, chiropractors, osteopaths, acupuncturists and physical therapists duly licensed to practice in the State of California when engaged in practice in the practice for which they are licensed by the State of California;
- B. Nurses duly registered by the State of California;
- C. Cosmetologists or barbers who are engaged in the practice for which they are licensed by the State of California;
- D. Accredited high school/college coaches and trainers employed therein while acting within the scope of their employment; and
- E. Trainers of any amateur, semi-professional or professional athlete or athletic team.

Sec. 13-14. Permit fee and investigation.

All applications for initial permits shall be accompanied by a non-refundable investigation fee, established pursuant to the city's fee schedule. Additional fees may be charged to cover costs of processing the applicant's fingerprints by the State of California. Within a period of sixty (60) days from the date of filing the application, the police department shall inspect the premises proposed to be used as a massage establishment, interview the applicant or any other person who may have relevant knowledge pertaining to the application and make any other investigation necessary to complete a written evaluation covering all of the criteria outlined in Section 13-16. Said sixty (60) days maybe extended for such period as may be necessary to obtain fingerprint records from the appropriate state agency and/or as necessary to obtain background information from any appropriate local agency.

Sec. 13-15. Business license.

At the time of the application for a massage establishment permit, applicant shall also apply for and furnish the information necessary to obtain a business license as required by Chapter 12, Article I of this code. No business license shall be issued until zoning clearance is obtained, the police department investigation is completed and the permit to operate is approved. The business license shall be issued upon payment of the business license fee as provided in Chapter 12, Article I of this code.

Sec. 13-16. Issuance or denial of permit.

Within sixty (60) days (or longer if such time period needs to be extended in order to obtain fingerprints records from the appropriate state agency) of completion of the written evaluation made pursuant to Section 13-14, the police department shall issue such permit if all

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required information has been furnished and the evaluation finds that:

- A. The character of the applicant is satisfactory;
- B. If the application is for a massage establishment permit, the establishment as proposed, if permitted, would comply with all applicable laws, including, but not limited to, the city's building, fire, health and zoning regulations;
- C. The applicant has not been convicted in a court of competent jurisdiction of an offense involving conduct which requires registration under California Penal Code section 290, or violations of sections 266(i), 311 through 311.7, 314, 315, 316, 318, 318.5, 318.6 or 647(a), (b), (d), (h), (i) or (k) of the Penal Code;
- D. The applicant has not been convicted of a crime involving the use of force or violence upon another;
- E. The applicant has not previously had a massage establishment permit or similar establishment permit or technician permit revoked by the city or any other public agency;
- F. The applicant has not been convicted of:
 - 1. Any offense involving sexual misconduct with children; or
 - 2. California Penal Code Section 290, California Penal Code Section 266(i), 311.7, 314, 315, 316, 318, 318.5, 318.6 or 647(a), (b), (d), (h), (i) or (k).
- G. The operation of the massage establishment at the proposed site would not violate the city's zoning, building, fire regulations, or other provisions of the Belmont Municipal and/or Zoning Code.
- H. The applicant has not knowingly and with intent to deceive made any false, misleading or fraudulent oral or written statements in the permit application, or in the application for a business license with the city, or to any Person investigating such application.
- I. The applicant does not have an infectious, contagious or communicable disease, and is not in violation of any federal, state or local health law or regulation.
- J. The applicant for a technician permit has satisfactorily passed all applicable competency examinations administered by Recognized Schools or applicable licensing agencies.
- K. The applicant and all employees have a current cardiopulmonary resuscitation certificate and first aid card from the American Heart Association or the American Red Cross, provided, however, an applicant for a massage establishment permit who will have no physical contact with customers or clients does not need to possess such certificate and card.

L. The applicant has a diploma or certificate of graduation from a Recognized School, provided, however, that an applicant for a massage establishment permit who will have no physical contact with customers or clients does not need to possess such diploma or certificate.

M. The applicant has not had a prior application to the City for a massage establishment permit, or technician permit denied within the previous one (1) year prior to the date of the current application for a massage establishment or technician permit.

The permit shall be denied if all of the above findings cannot be made or if all of the information required is not supplied to the city. If denied, the reasons therefor shall be endorsed upon the application. The police department shall notify the applicant of the disapproval by first class mail with a copy of the application upon which the reasons have been endorsed.

Sec. 13-17. Appeal.

In the event a permit has been denied, applicant shall have ten (10) days from the date of mailing the notice within which to appeal to the city manager by filing a written application for a hearing. The application shall be filed with the city clerk. Notice for a hearing shall be given as follows:

A. Upon receipt of the appeal, the city clerk shall set a date and a time for the hearing within thirty (30) days from the date of filing the appeal, and shall give written notice of such hearing to the applicant at his or her address set forth in the appeal by first class mail at least ten days prior thereto.

B. On the date set, the city manager shall hear the matter, and may continue it from time to time before reaching a decision. If the city manager finds that the applicant has satisfactorily met all of the requirements of this chapter, he/she shall order the issuance of the permit and business license upon payment of all applicable fees. If the city manager finds that the requirements have not been met satisfactorily, he/she shall deny the permit and license.

C. All findings of the city manager shall be final and conclusive upon the applicant.

Secs. 13-18–13-19. Reserved.

Sec. 13-20. Operating and sanitation requirements.

All massage, bathing or other similar establishments shall comply with the following operating and sanitation requirements:

A. Advertising. No such establishment granted a permit under the provisions of this chapter shall place, publish or distribute or cause to be placed, published or distributed, any advertising matter that describes or depicts any portion of the human body in a manner, or with the use of descriptive language, which would reasonably suggest to prospective patrons that any

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service is available other than those services described in Section 13-2(B) of this chapter.

B. List of Services. A list of services shall be posted in an open, public place on the premises, and shall be described in readily understood language. No owner, operator, responsible managing employee, manager or permittee shall permit, and no massage therapist shall offer to perform services other than those posted.

C. Sanitation. All establishments shall comply with the following minimum sanitation requirements:

1. Employees, Technicians. All employees and technicians shall perform their work fully clothed, be clean and wear clean outer garments whose use is restricted to the establishment. Doors to dressing rooms and treatment rooms shall open inward, and may not be locked. Draw drapes, curtain enclosures, or accordion pleated closures are acceptable on all inner dressing and treatment rooms in lieu of doors. Separate dressing rooms and toilet facilities complying with the city building code shall be provided for each sex.

2. Linens. All establishments shall be provided with clean, laundered sheets and towels in sufficient quantity which shall be laundered after each use thereof and stored in closed, sanitary cabinets. Heavy white paper may be substituted for sheets provided that such paper is used only once for each Person and then discarded into a sanitary receptacle. Approved sanitary receptacles shall be provided for the storage of all soiled linens.

3. Facilities. At least one entrance door, allowing access to the establishment and any building it may be in, shall remain unlocked during business hours. All premises and facilities shall be maintained in a clean and sanitary condition, and shall be thoroughly cleaned each day of operation. The premises and facilities shall meet all code requirements of the city as to safety of the structure, adequacy of plumbing, heating, ventilation and waterproofing of rooms where showers, water or steam baths are given.

4. Patron Facilities. Patrons of the establishments shall be furnished with securable locker facilities, where the patron has the control of the key, and security deposit facilities for the protection of their valuables.

5. Hours. Massage establishment operations shall be carried on or conducted, and the premises shall be open, only between the hours of 7:00 a.m. and 10:00 p.m.

6. Handicapped Areas. Each establishment which begins operations after the effective date of this ordinance must have handicap access and restrooms equipped for handicapped patrons. Facilities operating as of the effective date of this ordinance which do not have handicap access and/or restrooms equipped for handicapped patrons shall be classified as nonconforming uses, exempt from the requirements of this subsection unless/until building permits are issued for remodel of the facility in which the establishment operates or the establishment relocates.

7. Changing Rooms. Each establishment must have restrooms and changing rooms for male and female patrons.

8. Lighting. Minimum lighting shall be at least one sixty (60) watt light in each enclosure where massage services are performed. The light switch for the interior lights in each enclosure will be within the enclosure. There shall be no light in the enclosure that is operated from outside the enclosure. There shall be no sound device (i.e., buzzer or bell) that can be operated from outside the massage enclosure.

9. Records. Every massage establishment shall keep a written record of the date and hour of each treatment; the name and address of each patron; the name of the massage therapist administering the treatment; and the type of treatment administered recorded on a patron release form. Such written record shall be open to inspection upon demand only by officials charged with the enforcement of this chapter and for no other purpose. Such records will be kept on the premises of the massage establishment for a period of two years.

10. No Residential Use. No part of the establishment shall be used for residential or sleeping purposes. Cooking or food preparation will be allowed on the premises for consumption by owners and employees only.

D. Interior Doors. The doors of all massage rooms, bathing rooms, or cubicles within such establishment must remain unlocked during any time the establishment is occupied.

E. Physical Contact. All employees, masseurs and masseuses shall not make intentional contact, occasional and/or repetitive contact with the genitals, anus, or areola (nipple) of another Person.

Sec. 13-21. Display of signs and permits.

No Person granted a massage establishment permit pursuant to this chapter shall begin operations until a recognizable and legible sign has been posted at the main entrance to the establishment premises in compliance with the city's sign ordinance. All permits granted shall bear the picture of the permittee and shall be posted within the establishment in a location in immediately available for inspection by representatives of the city. No Person granted a massage establishment permit pursuant to this chapter shall operate under any other name or at any other location than that specified in the permit.

Sec. 13-22. Notice of changes.

All Persons granted permits pursuant to this chapter shall report immediately to the police department and the finance department all changes of residence or business address or change of ownership of the establishment or service. Failure to give such notice within fifteen (15) days of the event of change shall constitute grounds for revocation of the permit.

Sec. 13-23. Inspection by officials.

The investigating officials of the city and the Health officer, shall have the right to enter the premises from time to time during regular business hours for the purpose of making reasonable inspections to observe and enforce compliance with the provisions of this chapter and code, including all applicable building, fire, electrical, plumbing or health regulations.

Sec. 13-24. Reserved.

Sec. 13-25. Outcall services prohibited; exceptions.

No Person shall engage in massage services at any place other than an establishment with a proper business license and with the requisite permits issued pursuant to this chapter, unless all of the following requirements are met:

A. The patron possesses and presents each time the services are rendered a valid prescription or other writing from a licensed physician to the effect that the patron of such services cannot be treated at a licensed massage establishment;

B. The Person rendering the services possesses an unrevoked technician permit issued under the provisions of this chapter, for a minimum period of one year; and

C. The Person rendering the services obtains and maintains a record of every prescription or other writing for each incident in which services are rendered with each record showing the name and address of the doctor, the date, and any prescription number.

Sec. 13-26. Sale, transfer, relocation or expansion of establishment.

Upon sale, transfer or relocation of a massage, bathing or similar establishment, the permit and business license shall not be transferred without the written approval of the chief of police or his/her designee and the finance director or his/her designee. An application for such change shall be accompanied by a nonrefundable investigation fee, established pursuant to the city's fee schedule, and provide all of the information required in Section 13-11.

If the business is to be expanded, the permittee shall, prior to expansion, make application to amend its permit by submission of application information required by Section 13-11.

Sec. 13-27. Revocation or suspension of permit.

Any massage establishment permit or technician permit issued under this chapter shall be subject to suspension or revocation by the chief of police or his/her designee for violation of, or for causing or permitting violation of, any provision of this chapter or for any grounds that would warrant the denial of such permits in the first instance.

All Persons granted a massage establishment permit issued under this chapter shall also maintain a current business license, as required by Chapter 12, Article I of this Code. Failure to maintain a current business license shall be grounds for revocation of a massage establishment permit or technician permit issued under this chapter.

Prior to the suspension or revocation of any permit issued under this chapter, the permittee shall be entitled to a hearing before the chief of police or his/her designee, at which time evidence will be received for the purpose of determining whether or not such permit shall be suspended, modified, revoked or whether the permit may be retained. In the event the permit is suspended or revoked, the notification of the reasons for such suspension or revocation shall be set forth in writing and sent to the permittee by means of first class mail.

In the event of suspension or revocation of any permit, the permittee may appeal to the city manager in the manner provided in Section 13-17.

Sec. 13-28. Renewal of permit.

Every permit issued pursuant to this chapter shall be renewed annually, by means of an application submitted no less than ninety (90) days prior to the anniversary date of its issuance. Any permit not renewed shall be null and void on such anniversary date. The non-refundable investigation fee for renewals shall be established pursuant to the city's fee schedule. Additional fees may be charged to cover costs such as processing fingerprints. Prior to permit renewal being granted the permittee must:

A. Provide two passport photographs at least two inches by two inches showing the head and shoulders of the applicant in a clear and distinct manner, taken within the last sixty (60) days immediately prior to the date of the filing of the renewal application and current information concerning any changes to the facts set forth in the application on file and previously approved by the City;

B. Obtain a new certificate executed under penalty of perjury, dated within thirty (30) days of the renewal, from a medical doctor stating that the applicant for permit renewal is free from infectious, contagious or communicable diseases;

C. Obtain clearance from the police department signifying that the permittee has had no arrests or convictions for violations of those penal code sections listed in Section 13-11(M) of this code since the permit was issued or last renewed.

D. Any massage, bathing or other similar establishment, or individual, that has a permit issued prior to the effective date of this ordinance must apply for a new permit under this chapter when the previous permit expires. When renewing the permit, any such massage, bathing or other similar establishment or individual, must satisfy all the requirements of this chapter.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDING.

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The City Council finds that this ordinance is enacted in order to mitigate the threat posed to the public peace, health, or safety by Massage and Bathing Establishments. This ordinance provides for the amendment of existing regulations applicable to Massage Establishments. Such uses are already allowed under the City's existing zoning regulations. Therefore, it can be seen with certainty that there is no possibility that this ordinance may have a significant adverse effect on the environment, and therefore the adoption of this ordinance is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

SECTION 3: SEVERABILITY.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Belmont hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, phrase or portion may be declared invalid or unconstitutional.

SECTION 4: Pursuant to Section 36937 of the Government Code of the State of California, this Ordinance shall take effect and be in full force and effect thirty (30) days after its final passage.

SECTION 5: The City Clerk shall cause this Ordinance to be published and posted in accordance with the requirements of Section 36933 of the Government Code of the State of California.

Introduced this ____ day of _____, 2003.

* * * * *

PASSED AND ADOPTED as an Ordinance of the City of Belmont at a regular meeting thereof held on the ____ day of _____, 2003.

AYES, COUNCILMEMBERS:

NOES, COUNCILMEMBERS:

ABSENT, COUNCILMEMBERS:

ABSTAIN, COUNCILMEMBERS:

Mayor of the City of Belmont

ATTEST:

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Clerk of the City of Belmont