



Staff Report

DISCUSSION AND DIRECTION REGARDING AMENDMENTS TO BELMONT MUNICIPAL CODE CHAPTER 10, FORTUNETELLING AND OCCULT PRACTICES

Honorable Mayor and Council Members:

Summary

This Staff Report is part of the ongoing priority calendar effort to update and revise Belmont's Ordinances. Attached to this Staff Report is Chapter 10 of the Belmont Municipal Code, Fortunetelling and Occult Practices.

Staff recommends that the Council review and discuss the Ordinance and provide direction to staff for Ordinance amendments.

Background & Discussion

The City Clerk's office recently received an inquiry about obtaining a permit for a home-based telephone-only numerology business. In reviewing the City's current ordinance, staff noted that such a business would require a public hearing in front of the City Council. Staff is aware of only one other business operating within the City limits via permit under this Ordinance.

Staff has identified several issues which arise out of this Ordinance: First, assuming that the City would still requires permits for the activities listed in Section 10.1, should the City Council issue those permits pursuant to a public hearing process, or could staff, such as the police department, issue the permit after conducting a background check. The latter procedure would be similar to and consistent with the provisions of Chapter 13 of the Municipal Code regarding massage establishments. Under Chapter 13, the Police Department conducts an extensive background check and issues the permit so long as certain conditions have been met. Chapter 13 also provides a right of appeal to the City Manager, which is final. Aggrieved applicants could then challenge any denial in court.

The second issue is the amount of the permit fee, which had been set in 1961 at \$100.00. The City Council may wish to solicit input from the police department regarding an appropriate permit fee which would cover their costs for reviewing the application and issuing the permit. Staff would also include an appropriate appeal fee, as exists in the current Massage Ordinance.

Fiscal Impact

Revising the permit fee would allow the City to recover its costs in reviewing any application under this chapter.

Public Contact

Posting of City Council Agenda.

Recommendation

Staff recommends that the Council provide direction regarding the issues raised in this report so the ordinance can be revised and brought back to the City Council for introduction at the next available meeting.

Alternatives

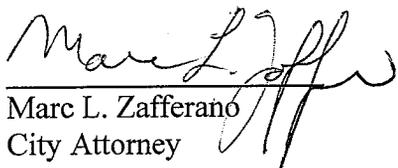
The City Council may wish to direct staff to pursue one of the following alternatives:

1. Leave the ordinance as it is;
2. Make additional changes other than those suggested by staff.

Attachments

- A. Belmont Municipal Code Chapter 10

Respectfully submitted,



Marc L. Zafferano
City Attorney

ATTACHMENT A

Belmont Municipal Code Chapter 10

Chapter 10 FORTUNETELLING AND OCCULT PRACTICES

Sec. 10-1. Permit required.

It shall be unlawful for any person to carry on, practice or profess to practice the business of or art of astrology, palmistry, phrenology, lifereading, fortunetelling, cartomancy, clairvoyance, clairaudience, crystal gazing, hypnotism, mediumship, spirit photography, spirit writing, spirit voices, spirit materialization, etherialization, prophecy, augury, divination, magic, necromancy, numerology, mesmerism, oriental mysteries, physiognomy, psychometry, seership, character reading and fortunetelling by handwriting analysis or other similar business or art without first obtaining a permit from the city council as provided for herein.

(Code 1961, § 12A.1)

Sec. 10-2. Permit application, fee.

Any person desiring to carry on any of the businesses or arts described in section 10-1 shall first apply to the city clerk for a permit. At the time of application, such applicant shall complete and sign such application forms as prescribed by the city clerk and pay an application fee of one hundred dollars (\$100.00).

(Code 1961, § 12A.2)

Sec. 10-3. Fingerprints, photographs required.

In addition, such applicant shall provide the police department of the city with a set of fingerprints of such applicant and all prospective employees of such applicant, together with a photograph of such applicant and all prospective employees of such applicant.

(Code 1961, § 12A.2)

Sec. 10-4. Notice of hearing required.

Upon receipt of an application for a permit required by this chapter, the city clerk shall notice a public hearing before the city council by publishing same in the Belmont Courier-Bulletin or such other newspaper as is generally circulated within the city. Such publication shall be made at least ten (10) days prior to the date of such hearing.

(Code 1961, § 12A.2)

Sec. 10-5. Council action on application.

At the time of the public hearing, the police department shall provide the city council with a report on the applicant and the prospective employees of the applicant, and the city council shall hear all evidence in support of and in opposition to such application. Thereupon, the city council shall have the power to grant a permit to such applicant if it feels that the granting of such permit is not detrimental to the health, safety, business, morals, comfort and general welfare of persons residing in or working in the city or is not detrimental or injurious to property and improvements in the neighborhood in which such business or art is to be conducted and is not contrary to the general welfare of the city and good cause

is shown for the granting of such application.

(Code 1961, § 12A.2)

Sec. 10-6. Permit issuance fee.

In the event that the city council or city manager determines that a license or renewal should be granted to an applicant hereunder, such license or renewal shall be granted by the city clerk upon the expiration of five (5) days from and after the date the city council or city manager takes action on the application and upon the applicant paying a license fee in the amount of two hundred fifty dollars (\$250.00).

(Code 1961, § 12A.4; Ord. No. 557, § 2, 2-24-75)

Sec. 10-7. Permit term; renewal.

Any license granted hereunder shall remain in effect for a period of one hundred eighty (180) days from and after the date of the granting thereof unless revoked by the city council as hereinafter provided.

Any application for renewal shall contain all the information, and shall be accompanied by the same application fee, required for the original application. Said renewal application shall be presented to the city manager who shall approve said renewal if he makes the findings specified in section 10-5.

If the city manager denies a renewal application, the applicant may within ten (10) days file an appeal with the city clerk. Said appeal will be processed by the same procedure as required for the granting of an original license.

(Code 1961, § 12A.3; Ord. No. 557, § 2, 2-24-75)

Sec. 10-8. Permit revocation authorized.

The city council shall at all times have the power to revoke any permit granted hereunder for cause. In the event the city council determines that there is cause for the revocation of any permit granted hereunder, it shall immediately notify the applicant thereof, in which event applicant shall immediately cease and desist from any further activities under said permit.

(Code 1961, § 12A.5)

Sec. 10-9. Appeal from revocation.

A permittee whose permit has been revoked shall have the right to appeal such order to the city council within five (5) days after receipt of such cease and desist order. Upon receipt of such appeal, the city council shall set the matter for public hearing at its next regular meeting. At such public hearing the city council shall take evidence both in support of and in opposition to such cease and desist order. After hearing all of such evidence, the city council shall have the power to either revoke such cease and desist order, or to confirm same.

(Code 1961, § 12A.5)

Sec. 10-10. Nuisance declared; abatement.

Any business or any building or structure within which a business is being operated contrary to the provisions of this chapter and any use of land, building or premises within which a business is being conducted, operated or maintained contrary to the provisions of this chapter, shall and the same is hereby declared to be unlawful and a public nuisance, and the city attorney shall, upon order of the city council, immediately take action for the abatement and removal and enjoinder in the manner provided by law.

(Code 1961, § 12A.6)

Sec. 10-11. Violations, penalty.

Any person, whether as principal or agent, employee or otherwise, violating or causing a violation of any of the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, be punishable of a fine of not more than three hundred dollars (\$300.00), or by imprisonment in the county jail for a term not exceeding ninety (90) days, or by both such fine and imprisonment. Such person shall be deemed guilty of a separate offense for each and every day during any portion of which the violation of this chapter is committed or continued to be committed by such person and shall be punishable as herein provided.

(Code 1961, § 12A.7)