

Ordinance No. 2393

An Ordinance to Amend Chapter V, Business Regulations, Article 10, Massage Therapy of the Code of Ordinances of the City of Bonner Springs, Kansas

Be it Ordained by the Governing Body of the City of Bonner Springs, Kansas:

Section I: Chapter V, Business Regulations, Article 10, Massage Therapy is hereby amended as follows:

5-1001. Definitions.

(a) Accredited School: Any school or institute of learning which is accredited by the State Board of Education or equivalent and approved by any state massage specific license organization. For schools located in states that do not accredit or approve massage therapy programs, the City will consult national massage organizations such as the National Certification Board for Therapeutic Massage and Bodywork and the American Massage Therapy Association to determine if the school should be deemed accredited for purposes of this Article.

(b) Business premises: Those premises where a private or public commercial enterprise is conducted, but specifically not to include businesses conducted in a private residence, premises used for joint residential and business purposes, hotels and motels.

(c) Employee: Refers to any person, other than massage therapists, who renders any service to a licensee under this Article, who receives compensation from the licensee or patron.

(d) Establishment Applicant: Refers to any individual, who applies as an individual or a group of individuals; each stockholder who holds more than ten (10) percent of the stock of the corporation and each officer and director, if the application is a corporation; each partner, to include limited partners, if the applicant is a partnership.

(e) Establishment Representative: An employee, manager, independent contractor, unpaid volunteer or anyone who works at or on behalf of a massage establishment.

(f) Healing Arts Practitioner: Defined by the provisions of K.S.A. 65-2801, et. seq. and refers to a license issued to practice medicine and surgery, osteopathic medicine and surgery or chiropractic.

(g) In-office massage therapy: Massage that is conducted on the business premises of a massage client and is limited to massage therapy applied only above the massage client's waist. The patron must be fully clothed.

(h) In-office massage therapy establishment: Any establishment having a place of business where any person, firm, partnership, association, or corporation engages in the activities mentioned in 5-1001 (f) for compensation.

(i) Massage Therapy: Any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external soft parts of the body with the hands or with the aid of any mechanical or electrical apparatus or appliance with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments or other similar preparations commonly used in this practice. Massage as defined herein does not include the touching in any fashion of human genitalia.

(j) Massage therapy establishment: Any establishment where any person, firm, partnership, association, or corporation engages in or carries on or permits to be engaged in or carries on any of the activities mentioned in 5-1001 (f) for compensation but does not include "in-office massage therapy establishments".

(k) **Massage therapy (therapeutic):** The practice of therapeutic massage as the application of various techniques to the muscular structure and soft tissues of the human body, as a healing art, strictly non-sexual, requiring proof of education, training or education from an institution or business with accreditation recognized by the State, or as an apprentice to a licensed therapeutic massage therapist.

(l) **Massage therapist:** Any person who, for any consideration whatsoever, engages in the practice of massage as herein defined.

(m) **Patron:** Any person who utilizes or receives the services of any establishment subject to the provisions of this Article and under such circumstances that it is reasonably expected that he or she will pay money or give any other consideration therefore, provided a person under the age of 18 may utilize or receive massage therapy from a licensed massage therapist only if accompanied by a parent or legal guardian and a parent or legal guardian has authorized such therapy in writing.

5-1002. Reference to Chief of Police, Other Staff.

Any reference in this Article to the Chief of Police, City Clerk, Planning Director, Building Official, Code Enforcement Officer or Fire Chief shall include those persons, designees and any individuals designated by the City Manager.

5-1003. Business License Required.

No person, firm, partnership, association or corporation shall operate an in-office massage therapy establishment and/or massage establishment, as defined herein, without first having obtained a business license therefor, issued by the Governing Body of this City. It is unlawful to conduct such a business unless the license issued is current, unrevoked and not suspended. A separate license shall be required for each and every separate place of business conducted by any one licensee. Such license shall be valid for a period of twelve (12) months from the date of issuance; provided individuals conducting in-office massage therapy as defined by this Article shall be required to hold only one (1) permit; and provided further that individuals conducting massage therapy on permanent premises in addition to providing in-office massage therapy must hold a separate permit for in-office massage therapy and for the massage therapy establishment conducted on permanent premises.

5-1004. Limitations on In-Office Massage Therapy Licenses.

The authority granted a licensee issued an in-office massage therapy license is limited to the authority to conduct massage therapy on the non-permanent office premises of the licensee's clients and specifically does not include the authority to conduct massage therapy at a permanent premises operated by the licensee; provided, the licensee must have a permanent business office located within the City. If the licensee desires to conduct massage therapy both on the non-permanent office premise of the licensee clients and a permanent premises operated by the licensee, the applicant must obtain a separate license for in-office massage therapy establishment and a massage establishment license by submitting separate applications for each, provided only one (1) license fee shall be charged for both applications.

5-1005. Massage Therapist License Required, Categories, Educational Requirements, Renewal & Restrictions.

No person shall perform massage therapy or in-office massage therapy within the City, unless he or she has a valid massage therapist license issued by the City pursuant to the provisions of this Article. It is unlawful to perform such services unless the license issued is current, unrevoked and not suspended. Such license is not transferable or refundable and shall be valid for a period of twelve months from the date of issuance.

(a) The massage therapist license and educational requirements shall be as follows:

(1) **Massage Therapist.** To be eligible for issuance of a Massage Therapist license, an applicant must provide proof of completion of:

- (A) Successful completion of a course of instruction of not less than 500 hours, in the theory, method or practice of massage from one or more accredited schools. All practical and/or modality instruction must be completed as in-classroom/hands-on instruction, while theory instruction may be completed online. The applicant must also have successfully completed certification in American Red Cross first aid and American Heart Association CPR or the equivalent and provide current certification.
- (B) Proof of successful passage of the Board Certification exam administered by the National Certification Examination for Therapeutic Massage and Bodywork. The applicant must also have successfully completed certification in American Red Cross first aid and American Heart Association CPR or the equivalent, and provide current certification.

(b) Proof of completion of educational and training requirements must be by certified transcripts. The educational and training requirements required by this Article may be received from more than one school. An hour of instruction is defined as fifty minutes of actual instructional time.

(c) All applicants for renewal of a massage therapist license in any category must provide proof of recertification in American Red Cross first aid and American Heart Association CPR or the equivalent thereof prior to the approval of any renewal.

(d) All licensed massage therapists who apply for a renewal license must show proof that they received a minimum of twelve hours (fifty minutes per hour) of professional massage continuing education in the preceding twelve-month period. One hour continuing education credit will be awarded for each hour attendance at programs that relate to the theory or clinical application of theory pertaining to the practice of massage to include, but not limited to, clinical business practices, hygiene, record keeping, medical terminology, professional ethics, business management, human behavior, client interaction and State and local laws that are sponsored by a university, junior college or otherwise found to be acceptable by the City Clerk.

(e) Massage therapists shall notify the City of any change in employment within thirty (30) calendar days of the change to include a change in the therapist's employer or the addition or reduction of locations they perform massage therapy.

5-1006. Application for Massage Therapy Establishment and In-Office Massage Therapy Establishment Business License; Fees.

Every applicant for a business license to maintain, operate or conduct any establishment covered by this Article shall file an application with the City Clerk and pay an annual fee, as approved by the City Council, to the City Clerk, which shall not be refundable and an annual renewal fee as approved by the City Council. Sole practitioners who own and operate an establishment and are the only massage therapist on the premises will only be required to pay the annual massage therapy establishment and/or in-office massage therapy establishment business license fee.

The application for a license to operate any such establishment shall set forth the exact nature of the services to be provided, the proposed place of business and facilities and the name, address, and telephone number of each applicant.

In addition, any applicant for a business license shall furnish the following information:

- (a) Written proof that the applicant and/or manager is at least 18 years old.
- (b) Two portrait photographs at least two (2) inches by two (2) inches, and fingerprints, provided once an applicant has submitted an application containing their fingerprints, they will not have to submit fingerprints in any subsequent renewal application for that person.
- (c) The business, occupation or employment locations and contact information for each applicant and manager for the three (3) years immediately prior to the date of application.

(d) The massage therapy and in-office massage therapy establishment business license history of the applicant and managers; whether such person, in previously operating in this or another City or State under an establishment or therapist license, has had such license revoked or suspended, the reason therefore, and the business activity or occupation subsequent to such action of suspension or revocation.

(e) Proof that managers successfully completed an in-person (not online) certification program in American Heart Association CPR and American Red Cross first aid or equivalent in-person programs and provide current proof of certification.

(f) Any criminal convictions, except minor traffic violations, fully disclosing the jurisdiction in which convicted and the offense for which convicted and circumstances thereof.

(g) In the case of applicants who intend personally to provide in-office massage therapy or massage therapy, the applicant must also apply for and receive a massage therapist license as provided for in Section 5-1007.

(h) Authorization for the City, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the establishment applicant for the license and the managers to work in a massage establishment.

(i) Applicants for renewal of an existing license need provide only that information or documentation necessary to insure up-to-date renewal application processing.

5-1007. Application for Massage Therapist License; Fees.

Any person who desires to perform or provide massage therapy or in-office massage therapy or to perform any massage services in a massage therapy establishment, as defined herein, shall file a written application with the City Clerk and pay a fee as approved by the City Council to the City Clerk for the first application, which shall not be refundable and an annual renewal fee as approved by the City Council. A massage therapist license shall be valid for a period of twelve (12) months from the date of issuance. This fee shall cover the cost to process the application to include the current KBI fingerprint fee. Only one massage therapy license shall be required for a massage therapist regardless of the activity or activities the therapist engages in that are permitted by this Article. Sole practitioners (who own and operate an establishment and are the only massage therapist on the premises), apply for a massage therapist license of any type and have successfully obtained a massage therapy establishment license or in office massage therapy license are exempt from paying the massage therapist license fee.

The application for a massage therapist license shall contain the following:

(a) Name, address and telephone number.

(b) Two portrait photographs at least two inches by two inches and a copy of a valid government issued identification card issued by the State of Kansas or Missouri.

(c) Applicant's weight, height, color of hair and eyes and fingerprints, provided once an applicant submitted fingerprints, they shall not be required to submit new fingerprints for any renewal application for that person.

(d) Written evidence that the applicant is at least 18 years old.

(e) Business, occupation, or employment of the applicant for the three (3) years immediately prior to the date of application.

(f) Disclosure of any criminal convictions or diversions, except minor traffic violations, and fully disclose the jurisdiction in which convicted or diverted and the offense for which convicted or diverted.

(g) The position or function the applicant will perform services within each location establishment. (If applicable).

(h) Authorization for the City, its agents, and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the license.

(i) Proof of the education and experience requirements set forth at 5-1005 herein.

(j) Copy of valid government issued identification card issued by the State of Kansas or Missouri.

(k) History of the applicant, whether such person, in operation in Kansas or another state under an establishment license, a therapist license or under another name had such license revoked or suspended and the reason therefor.

5-1008. Massage Therapy Establishment and In-Office Massage Therapy Establishment Business License Application Processing.

Upon receipt of a complete application for a "massage therapy establishment business license," the City Clerk shall immediately transmit one copy of the application to the Chief of Police for investigation of the application, which will include a background check. In addition, the City Clerk shall transmit a copy of the application to the Planning Director, Building Official, Code Enforcement Officer and Fire Chief, as applicable. It shall be the duty of the Chief of Police to investigate such application to determine whether the information contained in the application is accurate and whether the applicant is qualified to be issued the license. The Chief of Police shall report the results of the investigation to the City Clerk not later than ten (10) working days from the date the application is received by the City Clerk. It shall be the duty of the Planning Director, Building Official, Code Enforcement Officer and Fire Chief to determine whether the structure where the massage therapy business will be conducted complies with the requirements and meets the standards of the applicable health, zoning, building code, fire and property maintenance ordinances of the City, provided the premises need not be designed or set up for the requirements of a license being issued, provided further, all other code and zoning requirements must be met. All standards for premises set forth in 5-1016 must be met prior to the first day the premises opens for business. The Planning Director, Building Official, Code Enforcement Officer and Fire Chief shall report the results of their investigation to the City Clerk not later than ten (10) working days from the date the application is received by the City Clerk. Upon receipt of the reports from the Chief of Police, Planning Director, Building Official, Code Enforcement Officer and Fire Chief, the City Clerk shall schedule the application for consideration by the Governing Body at the earliest meeting consistent with the notification requirements established by law, provided the license application shall be approved or disapproved within 45 days from the date filed with the Clerk's office. The applicant shall be notified of the date when the Governing Body will consider the application, at which time the applicant will be afforded an opportunity to be heard. If there exist inspection items that relate to the structural design of the premises that cannot be verified prior to consideration of the application by the Governing Body, the Governing Body may approve the application and a license issued contingent upon satisfactory resolution of any such items.

5-1009. Identification Cards.

All massage business establishment owners, managers or massage therapists issued a license pursuant to the provisions of this Article shall, at all times when working in an establishment or providing any service regulated by this Article, have in their possession a valid identification card issued by the City to include the massage therapist's license number, physical description and a photograph. Such identification cards shall be laminated to prevent alteration. Provided, that all persons granted licenses under this Article shall at all times keep their licenses available for inspection upon request of any person who by law may inspect same. Provided further that all licensees shall, when conducting in-office massage therapy or massage therapy off their business premises, wear on their clothing in a conspicuous location their identification card.

5-1010. Issuance of Massage Therapy Establishment Business License.

After the filing of an application in the proper form, the Governing Body shall examine the application, and after such examination, shall approve the issuance of a license for an in-office massage therapy establishment or a massage therapy establishment, unless the Governing Body finds that:

(a) The correct license fee was not tendered to the City, and, in the case of a check or bank draft, honored with payment upon presentation;

(b) The establishment operation, as proposed by the applicant, if permitted, would not comply with all applicable laws to include, but not limited to, the City's building, zoning and health regulations;

(c) The applicant, if an individual, or any of the stockholders who holds more than 10% of the stock of the corporation, any of the officers and directors, if the applicant is a corporation; or any of the partners, to include limited partners, if the applicant is a partnership; and the manager or other person principally in charge of the operation of the business, having been convicted of, or diverted on,

(1) a person felony, as defined by Kansas law;

(2) a non-person felony, as defined by Kansas law, in the ten (10) years immediately preceding the date of the application;

(3) an offense involving sexual misconduct with children;

(4) obscenity;

(5) promoting prostitution or equivalent charge as defined by K.S.A. 21-3513;

(6) solicitation of a lewd or unlawful act;

(7) prostitution;

(8) pandering or other sexually related offense;

(9) any violation of the law applicable to massage therapy arising out of the individual's prior massage establishment(s) or individual massage therapist license(s) in the ten (10) years preceding the date of the application.

(d) The applicant made any false, misleading or fraudulent statement of fact in the license application or in any document required by the City in conjunction therewith;

(e) The applicant or manager has had a massage therapy establishment or other similar permit or license denied, revoked, suspended or has voluntarily surrendered the permit or license in lieu of revocation or suspension for any of the above causes by the City or any other State or local agency within ten (10) years prior to the date of the application;

(f) Any establishment applicant or manager has previously been issued a license for an adult entertainment business or escort service or has been employed by any such establishment.

(g) The applicant, if an individual, or any of the officers and directors, if the applicant is a corporation; or any of the partners, to include limited partners, if the applicant is a partnership; and the manager or other person principally in charge of the operation of the business, has not attained the age of 18 years; and

(h) The manager or other person principally in charge of the operation of the business would be ineligible to receive any license under the provisions of this Article.

The record of the Governing Body shall show the action taken on the application, and if the license is granted, the Governing Body shall direct the City Clerk to issue the proper license. The license shall state that it is not transferable or refundable. The license shall be kept posted in an open and conspicuous place on the premises of the licensee. If an application is denied, the applicant shall be immediately notified by certified mail, return receipt requested, mailed to the last known mailing address of the applicant, and the notice shall state the basis for the disapproval. Any applicant aggrieved by the disapproval may seek judicial review to the Wyandotte County District Court as provided by law. Upon denial, any establishment applicant shall be ineligible to reapply for any license under this Article for a period of one year from the date of denial.

5-1011. Application Process and Issuance of Massage Therapist License.

The City Clerk shall issue a massage therapist license within 21 days following application, unless he/she finds that:

- (a) The applicant for the massage therapist license has been convicted of, or diverted on,
 - (1) a person felony, as defined by Kansas Law;
 - (2) a non-person felony, as defined by Kansas law, in the ten (10) years immediately preceding the date of the application;
 - (3) an offense involving sexual misconduct with children;
 - (4) obscenity;
 - (5) promoting prostitution as defined by K.S.A. 21-3513;
 - (6) solicitation of a lewd or unlawful act;
 - (7) prostitution;
 - (8) pandering or other sexually related offense;
 - (9) any violation of the law applicable to massage therapy arising out of the individual's prior massage establishment(s) or individual massage therapist license(s) in the ten (10) years preceding the date of the application.
- (b) The applicant has knowingly made any false, misleading, or fraudulent statement of fact in the license application or in any document required by the City in conjunction therewith;
- (c) The applicant had a massage establishment or therapist permit or license denied, revoked or suspended or involuntarily surrendered the permit or license in lieu of revocation or suspension by the City or any other state or local agency within ten (10) year prior to the date of application.
- (d) The applicant was issued a license for an adult entertainment business or escort service or was employed by any such establishment within ten (10) year prior to the date of application.
- (e) The applicant has not attained the age of 18 years.
- (f) That the correct license fee has not been tendered to the City, and in the case of a check or bank draft, honored with payment upon presentation;
- (g) That the applicant has not successfully completed the education standards required under the provisions of this Article.

The record of the Governing Body shall show the action taken on the application, and if the license is granted, the Governing Body shall direct the City Clerk to issue the proper license. The license shall state that it is not transferable or refundable. The license shall be kept posted in an open and conspicuous place on the premises of the licensee. If an application is denied, the applicant shall be immediately notified by certified mail, return receipt requested, mailed to the last known mailing address of the applicant, and the notice shall state the basis for the disapproval. Any applicant aggrieved by the disapproval may seek judicial review to the Wyandotte County District Court as provided by law. Upon denial, any establishment applicant shall be ineligible to reapply for any license under this Article for a period of one year from the date of denial.

5-1012. Revocation or Suspension of Business License.

(a) Any business license issued for an in-office massage therapy establishment or a massage therapy establishment may be suspended or revoked by the City Clerk for a violation of any of the provisions of this Article or the licensee or any establishment representative was convicted of any offense which would make them ineligible to receive a license; or in any case, in which the licensee or an establishment representative refused to permit, or hindered any City representative to conduct any investigation or inspection provided for in this Article.

(b) Written notice shall be sent to the person entitled to notice as stated in the business license and at the location specified in the license for notice. This notice shall state the specific basis for suspension or revocation and shall notify the licensee of the licensee's right to a hearing before the Governing Body to appeal the suspension or revocation. Any of the following shall establish a sufficient basis for suspension or revocation of the business license, if a licensee, its employee, or agent:

- (1) Is convicted of any offense which is a felony, the record of conviction being conclusive evidence thereof.
- (2) Supplies false information to the permit administrator or Police on the application for licensure or licensure renewal.
- (3) Allows the use of his or her establishment by an unlicensed person.
- (4) Violates any zoning, building or fire prevention ordinance.
- (5) Uses fraudulent, false, misleading or deceptive advertising to describe, promote or advertise any type of business activity or service which is expressly not massage therapy or has otherwise fraudulently engaged in massage therapy.
- (6) Has been convicted, to include a massage therapist, of any offense found in 5-1011 and 5-1012 herein and the licensee has actual or constructive knowledge of the violation or conviction.
- (7) Conducts or allows to be conducted any other business enterprise in the establishment.
- (8) Conducts any illegal activities or allows them to be conducted by anyone else.
- (9) Has an arrest record for any sexual offense or violation.
- (10) Has fraudulently obtained a license pursuant to the provisions of this ordinance.
- (11) Has ceased to meet any of the requirements for issuance of a massage therapy license or massage therapy establishment license.
- (12) Refuses to permit any duly authorized police officer or employee of the City to inspect the premises or the operations of the licensee.
- (13) Fails to comply with all applicable laws and regulatory provisions herein.

(c) Business Closed and Posted. Upon suspension or revocation of the business license, the business shall cease to operate and City officials shall post the business as closed.

(d) Appeal. Upon receipt of a written request delivered to the City Clerk, an appeal of the suspension or revocation shall be heard by the Governing Body within thirty (30) days of the suspension or revocation. The licensee may submit evidence at the hearing which is relevant and material to the specific basis for suspension or revocation. The Governing Body shall make a final determination as to suspension or revocation. A licensee aggrieved by the decision of the Governing Body may appeal the decision to the Wyandotte County District Court as provided by law.

5-1013. Revocation of Massage Therapist License.

(a) Any Massage Therapist license issued for a massage therapist may be suspended or revoked by the City Clerk for a violation of any of the provisions of this Article or the licensee or any establishment representative was convicted of any offense which would make them ineligible to receive a license; or in any case, in which the licensee or an establishment representative refused to permit, or hindered any City representative to conduct any investigation or inspection provided for in this Article.

(b) Written notice shall be sent to the person entitled to notice as stated in the Massage Therapist license and at the location specified in the license for notice. This notice shall state the specific basis for suspension or revocation, and shall notify the licensee of the licensee's right to a hearing before the Governing Body to appeal the suspension or revocation. Any of the following shall establish a sufficient basis for suspension or revocation of the Massage Therapist license, if a licensee:

- (1) Is convicted of any offense which is a felony, the record of conviction being conclusive evidence thereof.
- (2) Supplies false information to the permit administrator or Police on the application for licensure or licensure renewal.
- (3) Uses fraudulent, false, misleading or deceptive advertising to describe, promote or advertise any type of business activity or service which is expressly not massage therapy or has otherwise fraudulently engaged in massage therapy.
- (4) Convicted of any offense found in 5-1011 and 5-1012 herein.
- (5) Conducts any other business enterprise in the establishment.
- (6) Conducts any illegal activities.
- (7) Has an arrest record for any sexual offense or violation.
- (8) Has fraudulently obtained a license pursuant to the provisions of this ordinance.
- (9) Has ceased to meet any of the requirements for issuance of a massage therapy license.
- (10) Refuses to permit any duly authorized police officer or employee of the City to inspect the records of the operations of the licensee.
- (11) Fails to comply with all applicable laws and regulatory provisions herein.

(c) Upon suspension or revocation of the Massage Therapist license, the Massage Therapist shall cease to operate in the City of Bonner Springs.

(d) Appeal. Upon receipt of a written request delivered to the City Clerk, an appeal of the suspension or revocation shall be heard by the Governing Body within thirty (30) days of the suspension or revocation. The licensee may submit evidence at the hearing which is relevant and material to the specific basis for suspension or revocation. The Governing Body shall make a final determination as to suspension or revocation. A licensee aggrieved by the decision of the Governing Body may appeal the decision to the Wyandotte County District Court as provided by law.

5-1014. Inspection Necessary.

No business shall be conducted on licensed premises unless an inspection by the Building Official or an authorized representative reveals that the establishment complies with each of the following minimum requirements:

(a) The walls shall be clean and painted with washable, mold-resistant paint in all rooms where water or steam baths are given. Floors shall be free from any accumulation of dust, dirt, or refuse. All equipment used in the business's operation shall be maintained in a clean and sanitary condition. Towels, linen, and items for personal use of operators and patrons shall be clean and freshly laundered. Towels, cloths, and sheets shall not be used for more than one patron. Heavy, white paper may be substituted for sheets provided that such paper is changed for every patron. No service or practice shall be carried on within any cubicle, room, booth, or any area within any permitted establishment which is fitted with a door that can be locked. These provisions are not applicable to an in-office massage therapy establishment.

(b) Toilet facilities shall be provided in convenient locations. When five (5) or more massage establishment employees and patrons of different sexes are on the premises at the same time, separate toilet facilities shall be provided. These provisions are not applicable to an in-office massage therapy establishment.

(c) Lavatories or wash basins provided with both hot and cold water shall be installed in either the toilet room or a vestibule. Lavatories or wash basins shall be provided with soap in a dispenser and with sanitary towels. These provisions are not applicable to an in-office massage therapy establishment.

(d) At least one water fountain, water cooler or bottled water shall be provided but shall not be located in toilet rooms or bathrooms.

The Building Official shall certify that the proposed business establishment complies with all of the requirements of this Section and shall give or send such certification to the City Clerk and Chief of Police. Provided, however, that nothing contained herein shall be construed to eliminate other requirements of statute or ordinance that relates to the maintenance of premises, nor to preclude authorized inspection thereof.

5-1015. Inspections, Immediate Right of Entry.

The Police Department and Building Official may from time to time make an inspection of each licensed establishment in this City, to include those locations where an in-office massage therapy establishment conducts its business and areas where a therapist performs massage therapy, to determine that the provisions of this Article are complied with. Such inspections shall be made at reasonable times and in a reasonable manner. It shall be unlawful for any licensee, manager or representative to fail to allow such inspection officer immediate access to the premises or to hinder such officer in any manner. Provided further, that any failure on the part of any licensee, manager or representative to grant immediate access to such inspector shall be grounds for the revocation or suspension of any business or employee license.

5-1016. Operation Regulations.

The operation of any in-office massage therapy establishment or massage therapy establishment, to include the provision of service by massage therapists, shall be subject to the following regulations:

(a) Hours. Such business shall be closed and operations shall cease between the hours of 10:00 p.m. and 6:00 a.m. each day provided the hours of operation for in-office massage therapy may be extended for in-office therapy conducted on premises with established evening and night shifts.

(b) Separation of sexes. It shall be unlawful for customers of opposite sex to receive treatment in the same room or the same quarters at the same time. This provision is not applicable to in-office massage therapy establishments.

(c) Danger to safety, health. No service shall be given which is clearly dangerous or harmful in the opinion of the Building Official, Property Maintenance Officer or Fire Chief to the safety or health of any person, and after such notice in writing has been delivered to the licensee from such director.

(d) Alcoholic beverages. No alcoholic beverages or cereal malt beverages, nor the consumption thereof, shall be allowed, permitted or suffered to be done in or upon any premises licensed under the provisions of this Article or during in-office massage therapy. Provided this restriction shall not apply to businesses where the licensed massage therapy is accessory to the predominant business purpose of the establishment, provided further, no alcohol is permitted on that portion of such premises where massage therapy occurs.

(e) Conduct of premises. All licensees licensed under the provisions of this Article shall at all times be responsible for the conduct of business on their licensed premises and for any act or conduct of his or her employees which constitutes a violation of the provisions of this Article. Any violation of the City, State, or federal laws committed on the licensed premises by any such licensee or employee affecting the eligibility or suitability of such person to hold a license or may be grounds for suspension or revocation of same.

(f) Every portion of a licensed establishment to include appliances and personnel shall be kept clean and operated in a sanitary condition.

(g) All licensees and representatives shall be clean and wear clean, modest outer garments. On all premises except in-office massage therapy establishments, provisions for a separate dressing room for each sex must be available on the premises with individual lockers for each employee. Doors to such dressing rooms shall open inward and shall be self-closing.

(h) All licensed employees and massage therapists must be modestly attired. Diaphanous or transparent clothing is prohibited. Clothing must cover the licensee's employees' or massage therapists' chests at all times.

(i) The private parts of patrons must be covered by towels, cloths or undergarments when in the presence of an employee or massage therapist. Any contact with a patron's genital area is strictly prohibited.

(j) All licensed establishments, when applicable, shall be provided with clean, laundered sheets and towels in sufficient quantity and such items shall be laundered after each use thereof and stored in a sanitary manner.

(k) Wet and dry heat rooms, shower compartments and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs or individual soak areas shall be thoroughly cleaned after each use.

(l) Table showers are strictly prohibited.

(m) No individual shall reside, inhabit or otherwise sleep overnight at an establishment with the exception of the licensee who operates an establishment in his/her home or residence but shall not reside, inhabit or sleep in the portion of the home or residence devoted to the practice of massage therapy.

5-1017. Supervision.

A licensee shall have the premises supervised at all times when open for business. The licensee or a person employed as a Massage Therapist shall personally supervise the business and shall not violate or permit others to violate, any applicable provision of this Article. The violation of any such provision by any agent or employee of the licensee shall constitute a violation by the licensee.

5-1018. Employee and Patron Registers.

(a) All establishments licensed under the provisions of this Article shall keep and maintain on their premises a current register of all their establishment representatives and list such employee's name, address and license number. Such register shall be open to inspection at all reasonable times by any health inspector or members of the Police Department.

(b) Every person who engages in or conducts a licensed establishment shall keep a daily register of services provided and all patrons, with names, addresses, and hours of arrival and, if applicable, the rooms or cubicles assigned. Said daily register shall at all times during business hours be subject to inspection by City officials and by the Police Department and shall be kept on file for one (1) year.

5-1019. Persons Under Age 18 Prohibited Services.

No licensee shall perform or permit any massage therapy to be provided to a person under the age of 18, provided a person under the age of 18 may utilize or receive massage therapy from a licensed massage therapist if accompanied by a parent or legal guardian and a parent or legal guardian authorized such therapy in writing.

5-1020. Advertising.

No establishment granted a license under provisions of this Article shall place, publish, or distribute or cause to be placed, published or distributed any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective patrons that any service is available other than those services as described in 5-1001, or that employees or massage therapists are dressed in any manner other than described in 5-1016.

5-1021. Transfer of Licenses; Other Licenses and Fees.

(a) No massage therapy establishment or in-office massage therapy establishment, or massage therapist licenses are transferable and such authority as a license shall be conferred only on the licensee named therein.

(b) Any applications made, fees paid, and licenses obtained under the provisions of this Article shall be in addition to and not in lieu of any other fees, permits or licenses required to be paid or obtained under any other ordinances of this City.

5-1022. Applicability to Existing Businesses.

The operators of any existing massage therapy establishment or in-office massage therapy establishment must comply with all provisions of this Article, subject to the educational and experience requirements set forth in Section 5-1005.

5-1023. Exceptions.

The provisions of this Article shall not apply to hospitals, nursing homes, sanitariums, or persons holding an unrevoked certificate to practice the healing arts, persons licensed to practice as a registered professional nurse under the laws of this State, persons licensed to practice as a physical therapist under the laws of this State, or persons working under the direction and supervision of any licensed healing arts practitioner or in any such establishment, nor shall this Article apply to barbers or cosmetologists lawfully carrying out their particular profession or business and holding a valid, unrevoked license or certificate of registration issued by this state.

5-1024. Further Regulations.

The City Clerk, Chief of Police or the City Manager may, after a public hearing, make and enforce reasonable rules and regulations not in conflict with, but to carry out, the intent of this Article.

5-1025. Restriction of Business to Premises.

(a) All massage therapy (not to include in-office massage therapy) provided for under this Article shall be conducted on the premises of a licensed massage therapy establishment, provided massage therapy may be conducted in a private residence under the following conditions:

- (1) If done at the direction of a licensed healing arts practitioner, or

- (2) If done at the written request of a person that shall provide the name and address of the requesting person, the date and time of the service, and the fees charged for the service. When private residence massage therapy is offered, whether by telephone, in person or in writing, the person offering such service must state clearly that they are a licensed massage therapist or that the service will be performed by a licensed massage therapist and that prior to any service being provided the person requesting the service will be required to sign a form requesting the service. All such written requests shall be kept by the licensed massage therapy establishment for a period of one (1) year and shall be produced for inspection when requested by any City official. Private residence massage therapy shall not be conducted between the hours of 10:00 p.m. and 9:00 a.m.

(b) All license massage therapy establishments shall be operated from a commercial business premise or shall be allowed by Special Use Permit in R-1 and R-1A residential zoning districts upon review and recommendation by the Planning Commission and approval by the Governing Body. Sole practitioners (therapists who work alone), are required to have both a massage therapist license and massage therapy establishment license and may work from a commercial business premise or private home, residence or non-commercial business establishment. (Ord. 2158, 1-2007)

(c) Massage therapy is permitted in the guest rooms of hotels and bed and breakfast establishments upon written approval of the hotel and bed and breakfast owners and/or managers.

Section II: This Ordinance shall in in effect from and after its passage and publication in the City's official newspaper.

Approved by the City Council and Signed by the Mayor on September 22, 2014.

Attest:



Jeff Harrington, Mayor



Rita Hoag, City Clerk

(Seal)