602. Massage Therapists and Massage Therapy Businesses (Ordinance 465 Adopted August 10, 2020)

Sec. 602.01 - Statement of legislative intent. The city recognizes and accepts therapeutic massage as a scientific health care and/or maintenance technique or procedure for the human muscles, tendons, tissues and the like. The city finds that persons with specialized and standardized training who provide massage services provide a legitimate and necessary service to the general public. The city also finds that business establishments offering therapeutic massage services best serve the general public's interests when they operate in accordance with state laws and city ordinances. Accordingly, in order to protect the public's health, safety and welfare, including the protection of the city's legitimate massage therapists' profession and reputation, the city deems it necessary to regulate therapeutic massage establishments and massage therapists through the licensing process.

Sec. 602.02 - Definitions. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Subd. 1. Accredited Institution. An educational institution holding accredited status from a regional accrediting agency approved by the United States Department of Education presently or at the time the applicant obtained his diploma or certificate of graduation. The term "accredited institution" also includes a state-licensed institution.

Subd. 2. Applicant. Any person filing an application with the city clerk seeking a massage therapist or massage therapy business license pursuant to this chapter.

Subd. 3. Licensed Premises. The premises described in the application for a massage therapy business license issued pursuant to this chapter.

Subd. 4. Licensee. Any person issued a massage therapist or massage therapy business license pursuant to this chapter.

Subd. 5. Massage Therapist. A person who practices or provides therapeutic massage to another for a fee or other consideration paid either directly or indirectly. A massage therapist does not include a medical doctor, chiropractor, osteopath, podiatrist, licensed nurse, physical therapist, athletic doctor or trainer, or beautician (cosmetologist) or barber who confines the treatment to the scalp, face and neck or the lower leg and feet in the case of a pedicure.

Subd. 6. Massage Therapy or Therapeutic Massage. The scientific health care or health maintenance techniques or procedures carried out by a massage therapist involving the rubbing, tapping, pounding or kneading of a person's skin, muscles, and tissues or the stretching of body limbs (e.g., Thai massage) for the purpose of easing mental and physical tension, the breaking up of fatty tissues, relaxing muscles, or alleviating muscle spasms, pain relief, aiding in the healing process, promoting health and wellness, and the improvement of circulation through the body.

Subd. 7. Massage Therapy Business.

(1) The term "massage therapy business" means any enterprise, establishment, or operation, whether under the control of an individual or legal entity, providing or offering to provide massage therapy within the city for a fee or other consideration paid either directly or indirectly, that:

a. Has one or more massage therapists, other than the owner, employed or contracted to provide massage therapy for the massage therapy business; and

b. Is located in a fixed location in a zoning district which permits massage therapy.

(2) A massage therapy business does not include a health or medical facility, office or clinic operated by a state-licensed medical professional, or any health or medical-related business operated by a state-licensed medical professional, which provides therapeutic massage to its patients.

Subd. 8. State-licensed Institution. A private educational institution (collegiate or career school) holding licensed status, registration and financial aid eligibility approved through the state in which it is located, presently or at the time the applicant obtained a diploma or certificate of graduation.

Subd. 9. Student of massage therapy. A person who is enrolled in and attends classes at an accredited institution or at a state-licensed institution.

Sec. 602.03 - Licenses Required.

Subd. 1. Massage therapist license. No person may act as a massage therapist within the city without a license issued by the city.

Subd. 2. *Massage therapy business license.* No person may operate a massage therapy business within the city without a license issued by the city.

Sec. 602.04 - Exceptions to licensure.

Subd. 1. Section 602.03 (a) does not apply to, and no massage therapist license shall be required of, a student of massage therapy provided:

The massage therapy is provided during and as part of a course or clinical component of an accredited program or course work; and

The massage therapy student is supervised by an instructor or participating in a school sponsored externship or internship while providing or performing massage therapy. A notice, advising the public that the person who may provide massage therapy is a student of massage therapy and is not licensed by the city, shall be posted in a conspicuous location in a public area of the school.

Subd. 2. No massage therapist license is required if the massage therapist is hired or employed by, and exclusively provides treatment on the premises of, a medical professional licensed under Minn. Stat. chapters 147 or 148 or a dental professional licensed under Minn. Stat. chapter 150A. A massage therapist is not limited to providing treatment to patients of the medical or dental professional.

Subd. 3. Section 602.03(b) does not apply to, and no massage therapy business license shall be required for:

(1) A health care office, clinic or facility owned by a municipality, the state or its agencies or licensed by the state;

(2) A business or entity owned and operated by a state-licensed medical professional through whom therapeutic massage is provided to its patients as a secondary health care treatment;

(3) Hospitals, hospice facilities, nursing homes or other approved institutions established for the hospitalization or care of human beings that are duly licensed under Minn. Stat. chapter 144;

(4) A health or sport establishment allowing persons of all ages on the premises and which meet the following criteria:

a. The primary purpose of the establishment is health and fitness, and the massage therapy is secondary;

b. No more than 20 percent of the establishment revenue is derived from massage therapy; and

c. Massage therapy does not occupy more than ten percent of the establishment's public floor space; or

(5) An accredited institution which provides an accredited program of study or course work in massage therapy or therapeutic massage provided:

a. The massage therapy is provided during and as part of a course or clinical component of the school's program or course work; and

b. The massage therapy student is supervised by an instructor or participating in a school-sponsored externship or internship while providing or performing massage therapy.

Sec. 602.05 - <u>License period, renewal and fees.</u>

Subd. 1. A massage therapist license issued under this chapter shall be issued for period of three (3) calendar years expiring on December 31 of the final year. Any massage therapy business license issued under this chapter shall be an annual license expiring on December 31 of every year. If an application is made during a license year, after the first day of a calendar year, the license, if issued, shall be issued for the balance of the license term, with an unexpired fraction of a month being counted from the first day of that month, as one full month. A license may be renewed as follows:

(1) The licensee shall complete the renewal application on a form provided by the city;

(2) The completed renewal application, along with the license fee, shall be filed with the city clerk no later than December 1 of the renewal year; and

(3) The massage therapy business licensee shall provide all information regarding ownership interest if different than the prior applications. If ownership interests have changed, an additional investigation fee must be paid.

Subd. 2. The license fees and investigation fees shall be set on an annual basis by Ordinance. If an application is made during a license term the fee for the license, if issued,

shall be prorated by the number of months remaining in the license term from the first day of the month in which the license could be issued to the last day of the term. Investigation fees shall not be prorated. Investigation fees shall not be refunded. If a license is issued, the license fee shall not be refunded.

Subd. 3. In the case of a massage therapy business that is wholly owned and operated by a massage therapist licensed under this chapter and that has no employee or contractor providing massage therapy other than the licensee, the massage therapy business license fee shall not be required and only the massage therapist license fee will be required. If it is determined at any time during the term of a license period that the massage therapy business is not wholly owned and operated by the massage therapist licensed under this chapter or has an employee or contractor providing massage therapy other than the licensee, the massage therapy business license fee shall be paid on a prorated basis for the remaining term of the massage therapy business license.

Sec. 602.06 - License application—Massage therapy business.

Subd. 1. Filing process. An application for a license to operate a massage therapy business shall be filed, along with all required fees, with the city clerk. The investigation fee is applied to the city's costs of the background investigation of the massage therapy business applicant and all persons that have a five percent financial interest in that business.

Subd. 2. Contents. The application form, prepared by the city clerk, must contain the following information:

(1) *All applicants.* For all applicants, the application must:

a. State whether the applicant is an individual, corporation, partnership or other form of organization;

b. State the full name, address, date and place of birth, and telephone number of the applicant, all owners and operators, including the designated on-site manager or applicant's agent;

c. State the address of the premises where the massage therapy business is to be located if proposed to have a fixed location in which the services are to be provided and, if the applicant does not own the premises, a copy of the lease agreement allowing the applicant to occupy the premises;

d. Describe the premises to be licensed;

e. State the name of the business if the business is to be operated under a name or designation other than the applicant's name. The application must contain a certified copy of the certificate required by Minn. Stat. §§ 333.01 and 333.02;

f. Contain proof of general liability insurance coverage as required by this chapter and, if required by state law, workers' compensation insurance coverage;

g. Contain proof of the applicant's identification and proof that the applicant is a United States citizen or is legally permitted to be in the United States. Proof of identification may be established only by one of the following:

1. A valid driver's license, that includes the person's photograph and date of birth, issued by the state, another state, a province of Canada or a state of Mexico;

2. A valid identification card, that includes the person's photograph and date of birth, issued by the state, another state, Mexico or Canada;

3. A valid tribal identification card, that includes the person's photograph and date of birth, issued by the tribal government of a tribe recognized by the Bureau of Indian Affairs;

4. A valid military identification card issued by the United States Department of Defense;

5. A valid passport issued by the United States; or

6. In the case of a foreign national, a valid passport;

h. Identify the full name, address, date and place of birth, and telephone number of the person designated by the applicant as the massage therapy business' on-site manager or agent along with the notarized written consent of such a person to:

1. Take full responsibility for the conduct of the licensed premises and operation; and

2. Serve as agent for service of notices and other process relating to the license;

i. With respect to the applicant, owner, operator, or any person who has a five percent financial interest in the proposed licensed massage therapy business and the appointed on-site manager or agent of the applicant:

1. Information as to any and all criminal convictions of any state, county, or local law or regulation; and

2. Information as to any license denied, revoked, or suspended by any local unit of government or any state, and the business activity or occupation of that person following the license denial, revocation or suspension;

j. State whether all taxes and special assessments due and owing on the premises on which the applicant proposes to operate the massage therapy business are current. If the taxes or special assessments are delinquent, state for which years they are delinquent (only if the applicant or other entity in which the applicant has an interest has a legal duty to pay those taxes or assessments); and

k. Such other information as the city shall require.

Subd. 2 Individual applicants. For individual applicants, the application must:

a. State the applicant's full name, address, date and place of birth, and telephone number;

b. State whether the applicant has ever used or has been known by a name other than the name on the application and, if so, the name used and information concerning dates and places where used;

c. State the street and city addresses at which the applicant and on-site manager or agent lived during the preceding five years;

d. State whether the applicant or on-site manager or agent have ever been engaged in the operation of a business providing massage therapy. If so, they shall state the name, place and length of time of their involvement in such a business; and

e. State such further information as the city may require.

Subd. 3. *Partnerships.* If the applicant is a partnership, the license must be issued in the name of the partnership and the applicant must designate a person to be manager and responsible for the conduct and operation of the applicant's business. Such person shall remain responsible for the business' operation until the licensee designates in writing another suitable person. The licensee shall promptly notify the city clerk in writing of any such change indicating the name, address and telephone number of the new manager, and the effective date of the management change. The application must:

a. State the full name, address, date and place of birth, and financial interest of all general partners and all of the information concerning each general partner that is required in subsection (b)(1)b of this section;

b. State the full name, address, date and place of birth, and telephone number of the managing partner and the interest of each managing partner in the business;

c. Provide a copy of the partnership agreement; and

d. Provide such other information as the city may require.

Subd.4. *Corporation or other organization.* If the applicant is a corporation, the applicant must designate a person to be manager and responsible for the conduct and operation of the applicant's business. Such person shall remain responsible for the business' operation until the licensee designates in writing another suitable person. The licensee shall promptly notify the city clerk in writing of any such change indicating the name, address and telephone number of the new manager, and the effective date of the management change. The application must:

a. State the name of the corporation or business and, if incorporated, the state of incorporation;

b. Provide a copy of the certificate of incorporation. If the applicant is a foreign corporation, the applicant must provide a certificate of authority as required by Minn. Stat. § 303.06;

c. State the name of the manager, proprietor, or other agent in charge of the business and all of the information concerning each manager, proprietor or agent that is required in subsection (b)(1) of this section;

d. Provide a list of all persons who own or have a five percent or more interest in the corporation or organization or who are officers of said corporation or organization, together with their addresses and all of the information regarding such persons as is required in subsection (b)(1) of this section; and

e. Provide such other information as the city may require.

For purposes of proof of identification, the term "applicant" means the on-site manager or agent for a massage therapy business filing the application and the person signing the application for a massage therapy business license.

Sec. 602.07 - License application—Massage therapist license.

Subd. 1 Filing process. An application for a massage therapist license shall be filed, along with all required fees, with the city clerk. The police department shall conduct the background investigation before consideration by the city. All applications shall thereafter be considered and granted or denied by the city council.

Subd. 2. Contents. The application form, prepared by the city clerk, must contain the following information:

(1) The applicant's full name, address, date and place of birth, telephone number, weight, height, and eye color;

(2) The name, address and telephone number of the applicant's current employer;

(3) The applicant's employers, their addresses and the employment dates for the previous five years;

(4) The applicant's addresses for the previous five years;

(5) Other name, including date and place of use, used by the applicant;

(6) Proof of general liability insurance coverage in effect as required by this chapter (proof of insurance coverage may not be available to the applicant at time of application, but proof of insurance coverage shall be submitted to the city clerk prior to license issuance);

(7) Proof of the applicant's identification and proof that the applicant is a United State citizen or is legally permitted to be in the United States. Proof of identification may be established only by one of the following:

a. A valid driver's license that includes the person's photograph and date of birth, issued by the state, another state, a province of Canada or a state of Mexico;

b. A valid identification card, that includes the person's photograph and date of birth, issued by the state, another state, Mexico or Canada;

c. A valid tribal identification card, that includes the person's photograph and date of birth, issued by the tribal government of a tribe recognized by the Bureau of Indian Affairs;

d. A valid military identification card issued by the United States Department of Defense;

e. A valid passport issued by the United States; or

f. In the case of a foreign national, a valid passport;

(8) Information as to any and all criminal conviction of any state, county or local law or regulation;

(9) One of the following optional minimum requirements:

a. Proof of successful completion (a diploma or certificate of graduation) of a minimum of a 500 clock hours or 33 semester hours or 50 quarter hours comprehensive massage therapy program from an accredited institution or a state-licensed institution that includes subjects of anatomy, physiology, hygiene, ethics, massage theory and research, and massage practice;

b. Proof of passing the National Certification Exam offered through the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) or passing the Massage and Bodywork Licensing Examination (MBLEx) offered through the Federation of State Massage Therapy Boards; or

(10) Such other information as the city may require.

Subd. 3 Grant of reciprocity. Notwithstanding subsection (a) of this section, an applicant may be granted reciprocity from another jurisdiction if the applicant is currently licensed in the other jurisdiction and the other jurisdiction's licensing requirements are essentially equivalent, as determined at the discretion of the city clerk, to the licensing requirements found in this section. Once granted reciprocity, an applicant may be licensed under this section if the applicant has satisfied other nonjurisdictional and noneducational requirements of this section. All decisions made by the city clerk regarding reciprocity may be appealed to the city council.

Sec. 602.08 - License ineligibility.

Subd. 1. An application for a massage therapy business license shall be denied upon any of the following grounds:

(1) The proposed fixed location or premises in which the massage therapy business proposes to provide massage therapy services is not located in a properly zoned district in which a business, or medical or health care facilities or uses are permitted by the zoning ordinances of this Code;

(2) The owner, operator, or any person who has a five percent financial interest in the proposed massage therapy business or the appointed on-site manager or agent of the applicant has, within ten years of the date of application, a conviction for, or was charged with, but convicted of a lesser charge of, a crime directly related to the massage therapy business license. These crimes shall include, but not be limited to, any of the crimes listed at Minn. Stat. § 146A.08, subd. 1(b), 609.321, 609.322, 609.324, 609.3243, 609.33, 609.52, 609.527, 609.528, 609.582, 609.74, or 617.23 or a felony crime involving Minn. Stat. chapter 152, or a crime committed in another state under a statute in conformity with any of the statutes listed above. The council must consider evidence of rehabilitation as provided in Minn. Stat. § 364.03, subd. 3;

(3) The owner, operator, or any person who has a five percent financial interest in the proposed massage therapy business had a massage therapist or massage therapy business-related license in this or another jurisdiction that was suspended or revoked within ten years preceding the date of application;

(4) The application was incomplete or failed to comply with all of the requirements of this chapter;

(5) The applicant provided false or misleading information on the application form, or has failed to pay the applicable fees;

(6) The proposed licensed premises is the subject of delinquent or unpaid taxes, assessments, or other financial claims by the state, county or city and the applicant has an interest or legal duty to pay those taxes, assessments or claims;

(7) The applicant has been denied a license under this chapter within the previous 12 months.

Subd. 2. An application for a massage therapist license shall be denied upon any of the following grounds:

(1) The applicant has, within ten years of the date of application, a conviction for, or was charged with, but convicted of a lesser charge of, a crime directly related to the massage therapy license. These crimes shall include, but not be limited to, any of the crimes listed at Minn. Stat. § 146A.08, subd. 1(b), 609.321, 609.322, 609.324, 609.3243, 609.33, 609.52, 609.527, 609.528, 609.582, 609.74, or 617.23 or a felony crime involving Minn. Stat. chapter 152, or a crime committed in another state under a statute in conformity with any of the statutes listed above. The council must consider evidence of rehabilitation as provided in Minn. Stat. § 364.03, subd. 3;

(2) The applicant had a massage therapist or massage therapy business-related license in this or another jurisdiction that was suspended or revoked within ten years preceding the date of application;

(3) The applicant is not 18 years of age or older;

(4) The applicant is not a United States citizen and is not legally permitted to be in the United States;

(5) The application was incomplete or failed to comply with all of the requirements of this chapter;

(6) The applicant provided false or misleading information on the application form, or has failed to pay the applicable fees;

(7) The applicant has been denied a license under this chapter within the previous 12 months.

Sec. 602.09 - <u>Investigation, granting and denial of license application.</u> Every license application must be reviewed by the police department, planning department and such other entities as the city administrator deems necessary, to determine whether the application satisfies all applicable legal requirements. The police department must conduct a review of the applicant's criminal history. If warranted by the police department's review of the applicant's criminal history, the department may require the applicant to provide fingerprints or a photograph. The license application, along with any referral department comments, shall be delivered to the City Council for its review and action. The council must approve a license application only if it satisfies all of the requirements of this chapter.

Sec. 602.10 - <u>Restrictions and regulations.</u>

Subd. 1. A massage therapy business license may only employ a massage therapist licensed under this chapter to perform massage therapy. A massage therapy business license

allows the licensee to operate the business only at the licensed premises except as otherwise provided in this subsection. A massage therapist employed or contracted by a massage therapy business licensee may provide massage therapy:

(1) To a client at the client's residence;

(2) In a long-term or short-term care facility, such as a hospital, nursing home, or convalescence facility;

(3) In connection with a special event or function whereby the massage therapist provides massage therapy to attendees of the event or function;

(4) At a place of business.

Subd. 2. The licensed premises shall, during operating hours, be open to inspection by any building, zoning, code or law enforcement officer to determine whether the licensed premises are in compliance with applicable laws and ordinances. As a condition to being issued a massage therapy business license, the licensee consents to these inspections by these officers. It is unlawful for any licensee, its agent, or employee to hinder or prevent these inspections by these officers. Those performing the inspections shall make every reasonable effort to honor and protect the privacy of the client.

Subd.3. The act of any employee of the licensee is deemed to be the act of the licensee. The licensee shall be responsible for all acts and conduct attributable to and in connection with massage therapy services provided by the licensee or occurring on the licensed premises; however, the licensee's good faith actions taken in the operation of the massage therapy business and in response to the acts or conduct of licensee's employees shall be considered in determining whether the licensee has acted responsibly.

Subd.4 The person receiving massage therapy shall at all times have his/her anus, intergluteal cleft (buttocks crease) and genitals covered with clothing or properly draped with nontransparent material.

Subd. 5. The licensee and licensee's employees shall at all times be fully clothed and shall not expose his/her breast, buttocks, anus or genitals.

Subd.6. A massage therapist may not touch or offer to touch, or provide massage therapy to, the penis, scrotum, mons veneris, vulva, or vaginal area of any customer or person inquiring of massage therapy.

Subd. 7. No alcoholic beverage, narcotic drug or controlled substance, as such terms are defined by state law or this Code, shall be used, ingested or present during any massage therapy session.

Subd.8. The licensee shall not knowingly bring or possess, or knowingly allow another person to bring or possess, a contraceptive device or obscene material.

Subd.9. Only a massage therapy licensee shall practice or provide therapeutic massage for:

(1) A massage therapy business licensee;

(2) A health care office, clinic or facility owned by a municipality, the state or its agencies or licensed by the state;

(3) A business or entity owned and operated by a state-licensed medical professional through whom therapeutic massage is provided to its patients as a secondary health care treatment;

(4) Hospitals, hospice facilities, nursing homes or other approved institutions established for the hospitalization or care of human beings that are duly licensed under Minn. Stat. chapter 144;

(5) A health or sport establishment allowing persons of all ages on the premises;

(6) Athletic directors and trainers who perform massage therapy in the course of any athletic program or event which is sponsored by a local unit of government or an educational institution that complies with all applicable state and local regulations; or

(7) Nonprofit corporations or associations duly organized under the laws of the state for civic, fraternal, social or business purposes.

Subd. 10. The licensee, its agents and employees must comply with all applicable ordinances, regulations and statutes.

Subd. 11. A massage therapist licensee shall not provide any massage therapy and the licensed premises shall not be open between the hours of 10:00 p.m. and 6:00 a.m. of any day.

Subd. 12. If the licensee is a partnership or corporation, the licensee must designate a person to be manager and responsible for the conduct and operation of the licensee's business establishment. Such person shall remain responsible for the conduct of the business until another suitable person has been designated in writing by the licensee. The licensee shall promptly notify the city clerk in writing of any such change indicating the name, address and telephone number of the new manager, and the effective date of the change in management.

Subd. 13. A massage therapist licensee shall have the city-issued license in his/her possession while providing massage therapy. A massage therapy business shall conspicuously post its city-issued license upon the licensed premises.

Subd.14. No license issued under this chapter may be transferred. A massage business therapy license shall terminate upon any change in the licensee's officers or ownership interests unless the change is approved by the City Council, in which case, the license shall continue in force until the end of the license term.

Subd. 15. The licensee must have obtained, from an insurance company authorized to do business in the state, a general liability insurance policy providing minimum coverage of $300,000.00 combined single limit per occurrence as well as workers' compensation insurance as may be required by state law. The licensee must provide a certificate of insurance evidencing the insurance coverage required by this subsection.

Subd. 16. All licensees shall comply with all health and sanitation laws and ordinances.

Sec. 602.11 - License suspension, revocation and denial.

Subd. 1. Any license issued by the city pursuant to the provisions of this chapter may be suspended, revoked or placed on probation or, in connection with the application or renewal of a license, denied upon a finding that the licensee:

(1) Failed to comply with any applicable state law, city ordinance or building, safety or health regulation relating to a massage therapist or massage therapy business;

(2) Employed or contracted with a person to perform massage therapy who is required to be licensed by this chapter, but who was not so licensed at the time of employment or contract;

(3) Violated any provision of this chapter;

(4) Failed to comply with any condition set forth in the license, set forth in a council action regarding the license, or set forth as part of the placement of the license on probation;

(5) Allowed the licensed business to be operated or maintained in a way that unreasonably annoyed, endangered or injured the safety, health, morals, comfort or repose of any considerable number of members of the public; or

(6) Provided false or misleading information on the application.

Subd. 2. Whenever it appears to the council that adequate grounds may exist for the suspension, revocation or imposition or probation of a license, the council shall, by resolution, specify the nature of the alleged grounds and order that a hearing on the matter be held as provided below.

Subd. 3. No such suspension, revocation or probation shall be effective until the licensee has been afforded an opportunity for a hearing after reasonable notice. The notice shall state the time, place and issues to be addressed. All parties will be afforded an opportunity at the hearing to present evidence and argument concerning the issues.

Subd. 4. Upon a finding that the licensee has violated any such statute or ordinance, the council may:

(1) Suspend the license for up to 60 days;

(2) Revoke the license; or

(3) Place the license on probation for a stated time period. The council may impose conditions upon the license during the time of probation.

Subd. 5. The filing of a criminal complaint against the licensee alleging a violation of Minn. Stat. § 609.321, 609.322, 609.324, 609.3242 or 609.3243 shall result in the immediate temporary suspension of the licensee's license. The temporary suspension shall terminate at the time the complaint is dismissed, the licensee is acquitted or the criminal charge is otherwise resolved, and for which all rights to appeal to a state court have been exhausted or waived.

Sec. 602.12 - <u>Penalty.</u> Any person violating any provision of this chapter shall be guilty of a misdemeanor. In addition to the remedies provided for in this chapter, the City may also impose administrative penalties as provided for in City Code